

ARTICLES

DOSTOEVSKY V. THE JUDICIAL REFORMS OF 1864: HOW AND WHY ONE OF NINETEENTH-CENTURY RUSSIA'S GREATEST WRITERS CRITICIZED THE NATION'S MOST SUCCESSFUL REFORM

BRIAN CONLON,*

United States Court of Appeals for the Eighth Circuit
(St. Louis, USA)

The legal reforms of 1864 marked a shift in Russian legal culture from an amorphous, corrupt, pre-modern system of procedure, structure, and customary law to an independent, modern, and westernized system as liberal as that of any nation. These reforms were nearly universally lauded by legal and cultural critics, both at the time they were introduced and in historical accounts. Despite the apparent necessity and success of the new courts, one of the leading figures in nineteenth-century Russian literature (and indeed the history of world literature), Fyodor Mikhailovich Dostoevsky, continually criticized the new system in both his fiction and non-fiction.

Through the synthesis of historical, legal, and literary analysis, this study will examine why Dostoevsky had an adverse reaction to the reforms, the literary techniques he used, and whether Dostoevsky presented a viable alternative to the reformed courts. In order to fully comprehend Dostoevsky's reaction to the reforms, this study will contrast the pre and post-reform judicial systems in Imperial Russia. This study will explore the scope and evolution of Dostoevsky's criticism of the law through analysis of his pre-reform fiction, including 'House of the Dead' and 'Crime and Punishment,' his post-reform fiction, including 'The Idiot,' 'Demons,' and 'Brothers Karamazov,' and portions of his experimental literary periodical, 'A Writer's Diary.'

Key words: Dostoevsky; 1864 legal reforms; Russian literature; Brothers Karamazov; Russian legal history; law and literature; Alexander II; Crime and Punishment; Russian legal profession.

* Brian Conlon wishes to thank Alan Stone, John Givens, and Rose Moss for their assistance with this project.

1. Introduction

The legal reforms of 1864 marked a shift in Russian legal culture from an amorphous, corrupt, pre-modern system of procedure, structure, and customary law to an independent, modern, and westernized system as liberal as any nation of Europe or North America. These reforms were nearly universally lauded by legal and cultural critics, both at the time they were introduced and in historical accounts. The judicial reform is not only considered 'the most successful of the Great Reforms,'¹ but also necessary 'to improve the internal organization of Russia, to better the administration, to develop trade and industry and to improve morality.'² Despite the apparent necessity and success of the new courts, one of the leading figures in Nineteenth-Century Russian literature (and indeed the history of world literature), Fyodor Mikhailovich Dostoevsky, continually criticized the new system in both his fiction and non-fiction. Dostoevsky did not merely devote a short story or newspaper article to lampooning the most successful reform of Alexander II, he consistently criticized the courts in all of his major works, including devoting an entire book of his most highly regarded and penultimate novel, 'The Brothers Karamazov,' and significant portions of his experimental literary periodical, 'A Writer's Diary,'³ to criticizing the modernized and democratized justice system. Although some of this legal exposition can be attributed to Dostoevsky's interest in the law, lawyers, and criminality exhibited throughout his life, there is a marked increase in both the volume and the depth of criticism Dostoevsky heaps upon the new system, as compared to the universally criticized pre-reform system. Dostoevsky's disapproval stems from his moral distrust of lawyers and the increased role of lawyers – particularly defense attorneys – in the new system, the introduction of the highly malleable jury in criminal proceedings, the openness of the courtroom, and the rise in importance of psychological and medical experts. Dostoevsky perceives these aspects of the judicial reforms as leading to the subversion of the truth and Russian Orthodox morality by artifice and Western moral relativism.

Through the synthesis of historical, legal and literary analysis, this study will examine the philosophical and historical reasons why Dostoevsky had an adverse reaction to the reforms, the literary techniques he used to convince his readers of the defects of the new system, and whether Dostoevsky presented a viable legal

¹ Joan Neuberger, *Popular Legal Cultures: The St. Petersburg Mirovoi Sud*, in *Russia's Great Reforms, 1855–81* 231 (Ben Eklof et al., eds.) (Indiana University Press 1994) [hereinafter *Russia's Great Reforms*].

² Dimitri Obolensky quoted in W. Bruce Lincoln, *The Great Reforms: Autocracy, Bureaucracy, and the Politics of Change in Imperial Russia* 107 (Northern Illinois University Press 1990). Prince Dimitri Obolensky was one of the few legal scholars in Russia prior to the reforms, claiming in the late 1850^s: 'The most fundamental reason why a proper judicial order does not exist among us . . . is that we have no lawyers' (*Id.* at 108).

³ Often translated as 'Diary of a Writer.'

alternative to the reformed courts.⁴ This paper will contextualize the judicial reforms and Dostoevsky's reaction to them by first providing a rough sketch of what the Russian judicial system was like prior to the reforms of 1864. The paper will then address Dostoevsky's interest in the law under the old system by surveying the fiction he wrote during the pre-reform years.⁵ Next, the legal reforms themselves will be explained and explored in some detail in order to demonstrate the scope and importance of the legal revolution and the social and political reactions that took place in Russia during the short time between the reform's implementation and the completion of 'The Brothers Karamazov.' Finally, this paper will explore in detail Dostoevsky's criticism of the judicial reforms by closely analyzing his pre-Karamazov, post-reform fiction, his case analysis of four criminal cases in 'A Writer's Diary,' and the final book of 'The Brothers Karamazov,' aptly titled 'A Judicial Error.'

2. A Broken System: 'Court and injustice were synonyms in the mind of the people'⁶

When a liberal national reform comes from the top down in an autocratic country, it is safe to assume that there was something drastically wrong with the status quo. As liberal writer and cultural critic Alexander Herzen wrote, '[s]o great are the disorder, brutality, arbitrariness, and corruption of the Russian court . . . that a man brought to trial fears not the punishment of the court, but the trial. He looks forward to being sent to Siberia.'⁷ Indeed, as historian W.E. Mosse notes, 'for the mass of the Russian people, the law did not exist.'⁸ The gross inequality of both the Russian criminal and civil justice systems even made the conservative autocrat Tsar Nicholas I take notice:

⁴ While there have been previous studies of Dostoevsky and his relation to the law courts in Russia, none have sought to cover the evolution of Dostoevsky's pre and post-reform views through an examination of all his major fiction and non-fiction works, while simultaneously providing a clear legal perspective on the immense differences between the pre and post-reform court systems.

⁵ Although 'Crime and Punishment' was printed in serial form in 1866, two years after the pronouncement of the reform, and the same year as the introduction of the new courts in St. Petersburg, for purposes of this paper it will be treated as pre-reform fiction. Porfiry Petrovich jokes with Raskolnikov: 'Now that the reform is coming, they'll at least change our title,' and the reforms were not implemented until 1866 (Fyodor Dostoevsky, *Crime and Punishment* 337 (Richard Pevear & Larissa Volokhonsky, trans.) (Vintage Books 1992) [hereinafter Dostoevsky, *Crime and Punishment*]).

⁶ I.S. Aksakov quoted in Gary Rosenshiel, *Western Law, Russian Justice: Dostoevsky, the Jury Trial, and the Law 22* (University of Wisconsin Press 2005). In this book Gary Rosenshiel performs an in-depth literary and historical analysis of Dostoevsky and his relationship to the law courts. Rosenshiel's primary focus is on 'The Brothers Karamazov,' but he also examines 'A Writer's Diary' and some of Dostoevsky's earlier fiction. Rosenshiel's central concern is the jury system and its relation to Dostoevsky's conception of justice. He ultimately concludes: 'The Jury trial is not only antithetical to truth and justice, it is in Dostoevsky's world worse: it is irrelevant' (*Id.* at 225).

⁷ Quoted in *id.* at 20.

⁸ W.E. Mosse, *Alexander II and the Modernization of Russia* 23 (English Universities Press 1958).

'I feel ashamed and sad that such disorder could exist almost under my eyes and remain unknown to me.'⁹ The overwhelming need for change was clear by the time Alexander II took the throne in 1855.

While the main focus of Dostoevsky was on the criminal justice system in Russia, the legal reforms included an overhaul of the civil system which was also in drastic need of an overhaul. Before the reforms, the court system was divided by class. The gentry, merchants and state peasants each had their own court systems, while the serfs, who made up more than one third of the population at the time of the emancipation,¹⁰ did not have access to any courts and relied on the gentry for any legal problems that might arise.¹¹ The civil system was inefficient to almost an absurd level, as suits were known to drag on for twenty years¹² and could potentially pass through eleven courts.¹³ If a Russian was privileged enough to access the courts they faced a purely inquisitorial system based on document review. This process was inconvenient for all Russians, particularly the vast majority of the population who were illiterate.¹⁴ As historian Peter Solomon, Jr., explains, '[i]n civil cases, the requirement of providing not only the essence of the case but also references to relevant laws (which were unavailable without writing the capital) made the process complicated, expensive, time consuming, and impractical for most complaints.'¹⁵ In short, prior to the reforms, most Russians did not even consider the civil courts an option for resolving disputes.

Legal professionals in the pre-reform era were as limited and ineffectual as the institutions they served. Judges were constrained politically and by their lack of education. As Solomon notes, '[t]he typical judge was uneducated in law, depended on his clerks to explain cases, and accepted bribes.'¹⁶ The problem of bribery was

⁹ Quoted in Mosse, *supra* n. 8, at 86.

¹⁰ Lincoln, *supra* n. 2, at 62. The Emancipation Acts that freed the serfs were signed in 1861, State and Crown Peasants (those tied to the Romanovs) who were also bound to the land under the old regime, were not emancipated until 1863 and 1866 respectively. For more on the emancipation, see *id.* at 62–90.

¹¹ Peter H. Solomon, Jr., *Courts and Their Reform in Russian History*, in *Reforming Justice in Russia, 1864–1996: Power, Culture and the Limits of Legal Order 6* (Peter H. Solomon, Jr., ed.) (M.E. Sharpe 1997) [hereinafter *Reforming Justice in Russia*].

¹² Harriet Murav, *Russia's Legal Fictions 57* (University of Michigan Press 1998). 'A case involving the debts of one Ivan Balashev that had dragged on for twenty years' (*Id.*). In this book Harriet Murav examines some of 'A Writer's Diary' and 'The Brothers Karamazov,' focusing primarily on the elements of carnival in Dostoevsky's courtroom and Dostoevsky's own psychology.

¹³ Mosse, *supra* n. 8, at 23.

¹⁴ As late as 1897 the Russian literacy rate was twenty-one percent (see Jeffrey Brooks, *Readers and Reading at the End of the Tsarist Era*, in *Literature and Society in Imperial Russia, 1800–1914 119* (William Mills Todd, III, ed.) (Stanford University Press 1978)).

¹⁵ Solomon, Jr., *supra* n. 11, at 6.

¹⁶ *Id.*

especially rampant in the old courts, as Slavophile¹⁷ intellectual I.S. Aksakov wrote, '[o]ur boldest dreams did not go so far as to assume that a court completely without bribes – ah, but for a court without bribes! – could exist in our fatherland.'¹⁸ Judges were either elected or appointed, but were subject to supervision by the provincial governors, and their decisions could be overturned by appeal to the Senate or the Tsar. Not only were the judges constrained by outside influence, they were also constrained by their lack of education, legal or otherwise. As famous jurist and friend of Dostoevsky, A.F. Koni wrote, '[t]he law itself sanctioned the composition of courts . . . in which all the judges were illiterate.'¹⁹ Hence, at the time of the reform, Russia had a judicial system proscribed to only written proceedings, with many illiterate judges. Those few judges who were trained at institutions like the Imperial School of Jurisprudence in St. Petersburg were taught, 'only to administer the law, not to interpret it, analyze its flaws, or change it.'²⁰ The judges in the first half of the nineteenth century were both wildly incompetent and consistently corrupt.

If judges were ineffective and lacking in any real power, lawyers simply were not a factor in either the civil or criminal law system. Solomon explains: 'There were no state prosecutors, nor was there a defense bar. To the tsars, lawyers represented a potential threat to their unlimited power.'²¹ The shameful condition of the civil system, complete with its inequalities, needless complexity, and corruption would be enough to warrant a drastic change, but the equally disgraceful condition of the criminal courts made the reform arguably as essential for Russia joining the modern world as the emancipation of the serfs.

The very definition of a crime in the 1845 Code of Criminal and Correctional Penalties²² indicates the focus of the criminal system: 'Any breach of the law which impinges on the inviolable right of the supreme power, and the powers established by the latter, or which affects the rights or security of society or individuals is a crime.'²³ The focus on power and violations of the power structure indicate that the criminal code was designed to maintain the rigid social and religious order of the Imperial Russian state, not necessarily protect the individual Russian people.

¹⁷ A conservative strand of nineteenth-century Russian thought, generally rejecting Western influence in favor of belief in the superiority of Russia, its people and institutions, particularly the Russian Orthodox Church. Dostoevsky was heavily influenced by this way of thinking.

¹⁸ Quoted in Rosenshiel, *supra* n. 6, at 22.

¹⁹ *Id.* at 21.

²⁰ Lincoln, *supra* n. 2, at 106.

²¹ Solomon, Jr., *supra* n. 11, at 7.

²² Although the Code was updated and edited extensively before the Soviet Revolution, this definition remained controlling until 1917.

²³ Frances Nethercott, *Russian Legal Culture Before and After Communism: Criminal Justice, Politics and the Public Sphere* 25 (Routledge 2007).

'Of around 2,035 articles, only 320 . . . detailed crimes involving loss inflicted on an individual (life, property, health).'²⁴

The criminal inquisitorial procedure of pre-reform Russia had three major distinctive and interrelated characteristics: presumption of guilt, confession as the best proof of that guilt, and, much like the civil procedure, the criminal procedure was conducted principally through written documents.²⁵ This inquisitorial system relied heavily on a pre-trial investigation conducted by the police and other government officials. This investigation was reviewed by the court in writing and a verdict was issued based on the one-sided evidence presented. If the report included an admission of guilt it was considered the strongest possible evidence, even though torture to obtain such confessions was not outlawed until near the turn of the nineteenth century.²⁶ This formal, impersonal and inequitable process 'entrenched the already rigid hierarchies and social divisions' of Russia and left the accused with no recourse and no understanding of how to defend himself.²⁷

In political criminal cases of particular interest to the Tsar, the state dispensed with criminal law altogether and tried the accused in front of military tribunals entitled to institute harsher penalties than the criminal courts. Dostoevsky himself faced such a tribunal in connection with his early membership in the liberal Petrashevsky circle. Officially, Dostoevsky was 'condemned . . . for failing to report Belinsky's criminal letter about religion and government . . . to forfeit his civil rights and death by firing squad.'²⁸ Of course, Dostoevsky did not actually die at the hands of a government firing squad, but he came very close, as Nicholas I had arranged for Dostoevsky and the other members of the Petrashevsky group to have their sentences commuted; only he did not inform the prisoners and had them led up to the scaffold where a mock execution awaited, complete with a priest, a firing-squad of sixteen with loaded rifles, three thousand witnesses, and black hoods draped over the faces of the accused.²⁹ Dostoevsky did not get up to face the firing squad, but three of his compatriots, including Petrashevsky, faced certain death before the Tsar's reprisal was announced. Dostoevsky's sentence had already been commuted three days earlier to 'four years at hard labor and thereafter service as an ordinary soldier.'³⁰ While Dostoevsky's personal experience with the pre-reform justice system is especially

²⁴ Nethercott, *supra* n. 23, at 6.

²⁵ Girish Bhat, *The Consensual Dimension of Late Imperial Russian Criminal Procedure: The Example of Trial by Jury*, in *Reforming Justice in Russia*, *supra* n. 11, at 62.

²⁶ *Id.*

²⁷ Bhat, *supra* n. 25, at 62–63.

²⁸ Geir Kjetsaa, *Fyodor Dostoevsky: A Writer's Life* 84 (Siri Hustvedt & David McDuff, trans.) (Viking 1987).

²⁹ *Id.* at 84–91.

³⁰ *Id.*

stark, it is by no means unique. To the contrary, Dostoevsky's experience is indicative of the caprice of the justice system before the reforms.

Most convicts sentenced to hard labor faced a permanent loss of their civil rights, so the inclusion of 'service as an ordinary soldier' to Dostoevsky's sentence indicated leniency which Dostoevsky attributed to the Tsar giving consideration to his 'youth and talent.'³¹ The less fortunate criminals' 'perpetuity of punishment' distinguished Russia from the nations of Western Europe that restored civic rights to all criminals who completed their sentences.³²

Both correctional and punitive punishments varied based on one's social estate. Thus, members of the non-privileged estates may have been subjected to a public lashing or other humiliation that a noblemen in the same position would not have faced.³³ The most common punitive sentences were the death penalty, exile to Siberia or the Caucasus, and hard labor. In addition, convicts could be subject to corporal punishment before serving their extended sentences. In lieu of corporal punishment (flogging, beating, etc.), members of the privileged class were susceptible to public shaming rituals.³⁴ This punishment could be particularly gruesome: 'Those condemned to political death are to be flogged with the knout, have their nostrils torn out, be chained in fetters, and sent to Rogervik and other places.'³⁵ Nikolai Chernyshevsky³⁶ was 'dragged through the streets of St. Petersburg,' before serving his time in Siberia.³⁷ Although corporal punishment had been generally abolished as part of the reforms, public shaming remained, thus causing Chernyshevsky to note, '[s]hame and the irreversible loss of one's honor is what stands out before all other impressions' of the Russian punitive system.³⁸

The pre-reform judicial system of Russia was overwhelmingly unorganized, corrupt, dependent on the Tsar, inefficient, ineffective, class discriminatory, and brutal. It was populated by bureaucrats and judges who were uneducated in the law and easily corruptible. The criminal system was controlled heavily by the political state apparatus, and inflicted punishments, not so much designed to reform, but to humiliate those convicted. As a first-hand witness to some of the system's most egregious processes and punishments, Dostoevsky wrote novels and shorter works

³¹ Kjetsaa, *supra* n. 28, at 85.

³² Nethercott, *supra* n. 23, at 27.

³³ *Id.* at 26.

³⁴ *Id.*

³⁵ *Id.* at 27.

³⁶ Famous Russian socialist author of 'What Is to Be Done?,' the novel which Dostoevsky responded to directly and venomously in 'Notes from Underground.'

³⁷ Nethercott, *supra* n. 23, at 27.

³⁸ Quoted in *id.* at 28.

before the reforms that dealt harshly, if not extensively, with the Russian judicial and penal systems.

3. Dostoevsky's Pre-Reform Legal Fiction: 'The House of the Dead,' 'Crime and Punishment,' and Others

Dostoevsky's pre-reform fiction, while not as voluminous as his later works, is perhaps more diverse, ranging from socially conscious pathetic romance ('Poor Folk'), to Gogolian bureaucratic madness ('The Double'), from pure satire ('The Friend of the Family')³⁹ to a semi-autobiographical depiction of a Siberian hard labor camp ('The House of the Dead'), and from polemical response to socialist ideology ('Notes from Underground') to perhaps the most famous psychological crime drama in world literature ('Crime and Punishment'). While not all of these works deal directly with the Russian legal system, 'Crime and Punishment' and 'The House of the Dead' do so extensively. In these works, and to a lesser extent his other fiction, a glimpse of Dostoevsky's view on the pre-reform justice system can be gained.

3.1. 'The House of the Dead: Brutality and Arbitrary Sentencing

'The House of the Dead' was written by Dostoevsky beginning in 1859, the year he returned to St. Petersburg from four years of penal servitude (1850–54) and four more years of mandatory military service in Siberia.⁴⁰ The novel, published in 1861, consists of the 'found notes' of Alexandr Petrovich, a wife-murderer from the upper class of Russian society. Petrovich is little more than a proxy for Dostoevsky to relate his experiences, as Dostoevsky's biographer Joseph Frank notes, 'there are several indications in the text that . . . the author has been sent to Siberia for a political crime and not for murder.'⁴¹ The story of the narrator's experience with the law is not especially harrowing: '[H]e had killed his wife in the first year of his marriage, had killed her from jealousy, and had surrendered himself to justice (which had done much to mitigate his sentence). Such crimes are always looked upon as misfortunes, and pitied accordingly.'⁴² This mercy and understanding seems to be a far cry from the system described by historians, but the totality of the novel reinforces the brutality and ineffectiveness of the criminal justice system.

In one passage Dostoevsky describes how ineffectual the punishment, he and the characters of the novel received:

³⁹ Often translated as 'The Village of Stepanchikovo and Its Inhabitants.'

⁴⁰ Joseph Frank, *Introduction*, in Fyodor Dostoevsky, *The House of the Dead and Poor Folk* xxiv (George Stade, ed., & Constance Garnett, trans.) (Barnes & Noble 2004) [hereinafter Dostoevsky, *The House of the Dead*].

⁴¹ *Id.*

⁴² Dostoevsky, *The House of the Dead*, *supra* n. 40, at 9.

I never saw one sign of repentance among these people, not a trace of despondent brooding over their crime . . . Of course, prisons and penal servitude do not reform the criminal . . . prison and the severest hard labor only develop hatred, lust for forbidden pleasures and a fearful levity . . . Moreover, [the criminal] has already endured punishment at [society's] hands, and for that reason almost considers himself purged and quits with society.⁴³

In addition to general ruminating on the ineffectiveness of imprisonment, Dostoevsky spends an entire chapter of the novel on corporal punishment. He notes as an asterisk to the chapter that, '[a]ll that I am writing here about corporal punishment was true in my time. Now I am told that all this is changed and still changing.'⁴⁴ In the chapter, Dostoevsky illuminates 'the acute purely physical terror' the inmates experience just prior to the punishment, and points out that birch rod lashings are 'the worst of all punishments in use in Russia' and will kill a man with 'even four hundred strokes.'⁴⁵ Dostoevsky further explores the psychology of the executioner, relating tales of a kind executioner adding fifty lashes because an inmate did not cry out in pain, and the bribes all prisoners pay their tormentors 'even if it is his last penny' to avoid the full wrath which can 'kill a man at one blow.'⁴⁶ Dostoevsky contends that this punishment does not only hurt the prisoner, but society as a whole: '[T]he right of corporal punishment given to one man over another is one of the sores of social life . . . and a sufficient cause for its inevitable dissolution.'⁴⁷

Dostoevsky complements this in-depth exploration of the pre-reform penal system with vignettes of how the criminal justice system brought the characters to 'The House of the Dead.' A handsome twenty-two-year-old is sentenced to four years for unwitting participation (at the behest of his older brother)⁴⁸ in a double homicide robbery of rich Armenians. Baklushin, a former sergeant, was sentenced to life for murdering a German romantic competitor for daring him not to shoot. Although this seems like a horrific crime, the narrator informs us that 'they could not have given you more than ten or twelve years at the utmost.' Baklushin's explanation of his sentence reveals the absurdity and caprice of the justice system:

⁴³ Dostoevsky, *The House of the Dead*, *supra* n. 40, at 19–20.

⁴⁴ *Id.* at 199.

⁴⁵ *Id.* at 199–202.

⁴⁶ *Id.* at 204–05.

⁴⁷ *Id.* at 202.

⁴⁸ Dostoevsky appears to rationalize this punishment and even portray it as too severe: 'The respect due to an elder brother is so great among the mountaineers that the boy did not dare ask, did not even dream of asking, where they were going . . . The only mercy shown by the court to Aley was that he received a shorter sentence: he had been sent to Siberia for four years' (*Id.* at 64–65).

When I was brought to the court the captain swore at me with nasty words before the court. I couldn't control myself and said to him, 'What are you swearing for? Don't you see you are in a court of justice, you scoundrel!' Well, that gave a new turn to things; they tried me again and for everything together they condemned me to four thousand blows and sent me here.⁴⁹

There is something fundamentally wrong with a system that gives ten years for murder and a lifetime and ten potentially fatal beatings for that same murder and some court and class disturbance. Finally, Dostoevsky adds another dimension to the injustice experienced in 'The House of the Dead' by revealing that a convicted parricide,⁵⁰ who had never confessed, though 'the facts were so clear that it was impossible to have any doubt of his guilt,' was in fact not guilty and acquitted and set free after the real criminals confessed ten years later.⁵¹ This wrongful conviction, alongside the seemingly random sentences gives the reader a sense that not only is 'The House of the Dead' a brutal and dehumanizing place of punishment, but that the court system which forces the inmates into the 'House' is also fundamentally flawed.

3.2. 'Poor Folk,' 'The Friend of the Family,' and 'Notes from Underground'

Before addressing the legal dimensions of 'Crime and Punishment' a quick survey of lesser works reveals Dostoevsky's continued interest in the law and justice. In 'Poor Folk,' a former government official, Gorshkov, is erroneously charged with 'swindling and robbery.' His case lasts for many years and he is 'turned out of the service' though he is never found guilty of any crime. Finally, Gorshkov's name is cleared and the court orders him to receive 'a considerable sum of money' from the merchant who swindled him. However, Gorshkov dies that same night from the strain of the emotionally exhausting legal ordeal.⁵²

In 'The Friend of the Family,' one landowner 'scribbled off a petition and handed it in, appealing to the court to adjudge him the land formally with compensation for loss and damage' against another landowner, even though the second landowner

⁴⁹ Dostoevsky, *The House of the Dead*, *supra* n. 40, at 132.

⁵⁰ This parricide bears a striking resemblance to Dmitri Karamazov, the character whose trial and wrongful conviction serve as Dostoevsky's final statement on the state of the reformed courts. Like Dmitri he was a 'a man of reckless behavior [*sic*], that . . . had got into debt, and had killed his father because he coveted the fortune he would inherit from him.' Dostoevsky further describes the nameless character as 'a whimsical, frivolous fellow, extremely lacking in common sense, though by no means a fool' (*Id.* at 255). This is clearly a Dmitri prototype serving time in 'The House of the Dead' twenty years before his trial in the reformed courts.

⁵¹ *Id.* at 255.

⁵² Dostoevsky, *The House of the Dead*, *supra* n. 40, at 401–12.

'had yielded all claim to it' simply because of a temporary personal dispute, only to three days later 'apologize . . . with tears in his eyes,' and quash his petition.⁵³

The conflation of revenge with justice presented in a comedic tone in 'The Friend of the Family' is explicated by the narrator of 'Notes from Underground':

A man takes revenge because he finds justice in it. That means he has found a primary cause, a basis – namely, justice. So he is set at ease on all sides and, consequently, takes his revenge calmly and successfully, being convinced that he is doing an honest and just thing. Whereas I do not see any justice here, nor do I find any virtue in it, and, consequently, if I set about taking revenge it will be solely out of wickedness.⁵⁴

Thus the law serves as a petty threat and ineffective remedy, not only because the system is flawed, but because humans are not fundamentally concerned with impartial justice, but with justice derived from personal vengeance.

3.3. 'Crime and Punishment': A Self-Absorbed Lawyer, a Homicidal Law Student, and a Playful Prosecutor

'Crime and Punishment' was written in 1865–66 and was published serially beginning in January 1866,⁵⁵ so that it was uniquely constructed at a time when the legal reforms had been announced, but had not yet been implemented. There are, however, several indications of the coming reform in the novel. In particular, Dostoevsky creates three characters who would potentially play a role in the upcoming reforms and can be loosely considered part of the pre-reform justice system.

Pytor Petrovich Luzhin, failed forty-five-year-old courtier of Raskolnikov's noble sister Dunya, prominently represents the archetype of the self-absorbed lawyer Dostoevsky fears will populate the new system. Luzhin is a low-ranking official in the pre-reform court system who 'wants to open a private attorney's office in Petersburg.'⁵⁶ Luzhin is a man of 'small education' who nevertheless has 'various suits and litigations,' and 'has an important matter before the Senate.'⁵⁷ Luzhin is the type of uneducated legal professional who dominated the pre-reform courts. However, it is not his position, but his disposition and psychology that are important

⁵³ Fyodor Dostoevsky, *The Friend of the Family*, in *The Short Novels of Dostoevsky* 808 (Constance Garnett, trans.) (Dial Press 1945).

⁵⁴ Fyodor Dostoevsky, *Notes from Underground* 17–18 (Richard Pevear & Larissa Volokhonsky, trans.) (Vintage Books 1993) [hereinafter *Dostoevsky, Notes from Underground*].

⁵⁵ Richard Pevear, *Foreword*, in *Dostoevsky, Crime and Punishment*, *supra* n. 5, at vii.

⁵⁶ Dostoevsky, *Crime and Punishment*, *supra* n. 5, at 35–36.

⁵⁷ *Id.*

to Dostoevsky and indicative of his view of the legal profession. Luzhin is described as 'arrogant,' 'very calculating,' and 'somewhat vain and very much likes to be listened to.'⁵⁸ He believes in science and economics, in so far as they support his view: 'Love yourself before all, because everything in the world is based on self-interest.'⁵⁹ His writing is described as 'quite illiterate' and later confirmed to be a 'legal style . . . legal documents are still written that way.'⁶⁰ Luzhin's dress is European and his hair is curled by a hair dresser which makes him appear younger than he is. However, there is still something 'unpleasant and repulsive in this rather handsome and solid physiognomy,' which 'proceeded from other causes.'⁶¹ This wholly negative description of Luzhin foreshadows Dostoevsky's more explicit criticism of lawyers in his later works.

Raskolnikov himself was 'preparing to be a lawyer' before he became obsessed with his idea and dropped out.⁶² Raskolnikov studied criminal law principally, having published articles on criminal law and investigative techniques. He says, 'there exists a certain legal rule, a certain legal technique . . . to begin from afar . . . and then suddenly, in the most unexpected way, to stun [the criminal] right on the head with the most fatal and dangerous question.'⁶³ Raskolnikov rejects the law and legal processes with his great man theory⁶⁴ which leads him to commit a senseless double homicide. In his scholarly article, he emphasizes, 'the lawgivers and founders of mankind . . . the Napoleons, and so forth, that all of them to a man were criminals, from the fact alone that in giving a new law they thereby violated the old one . . . and they certainly did not stop at shedding blood either.'⁶⁵ Raskolnikov's knowledge of the ineffective pre-reform system, as a law student, can be seen as a cause of his radical theory and subsequent crime. It is yet another condemnation of the system

⁵⁸ Dostoevsky, *Crime and Punishment*, *supra* n. 5, at 35–36.

⁵⁹ *Id.* at 148–49. Luzhin takes this language from Chernyshevsky and the 'rational egoists,' who believed that 'all human behavior was motivated by the desire to maximize personal pleasure and to avoid pain' and if people were 'enlightened' they would realize 'that the maximization of society's interests also best served their personal interests;' therefore if institutions were arranged correctly, everyone working exclusively in their own self-interest would create a Utopian society (see Michael R. Katz & William G. Wagner, *Chernyshevsky, What Is to Be Done? and the Russian Intelligentsia*, in Nikolai Chernyshevsky, *What Is to Be Done?* 17–18 (Michael R. Katz, trans.) (Cornell University Press 1989)). Dostoevsky strongly disagreed with the rational egoist theory and, as previously mentioned, wrote 'Notes from Underground' as a direct response and refutation to Chernyshevsky's 'What Is to Be Done?'

⁶⁰ Dostoevsky, *Crime and Punishment*, *supra* n. 5, at 234.

⁶¹ *Id.* at 146.

⁶² *Id.* at 338.

⁶³ *Id.* at 334.

⁶⁴ Raskolnikov believes that great men like Napoleon (and himself) are not bound by the laws governing everyone else, and sometimes it is necessary for great men to transgress the law and traditional morality for the eventual betterment of mankind. See Dostoevsky, *Crime and Punishment*, *supra* n. 5, at 415–19, 518–19.

⁶⁵ Dostoevsky, *Crime and Punishment*, *supra* n. 5, at 260.

that a law student thinks that all great men must be violent criminals in order to change society for the better.

Porfiry Petrovich is a manic, comic, and extremely proficient local police inspector in the department of investigation . . . a lawyer.⁶⁶ In the novel, Porfiry is in essence the inquisitorial system, serving as both police investigator and prosecutor. He regularly visits Raskolnikov, speaks in hypotheticals and approaches the entire process as if it were some type of a psychological game, whereby he tries to get Raskolnikov to confess to the crime he knows he committed. Porfiry, though diligent and playful, is eminently fair, keeping his word to Raskolnikov in not revealing any of his evidence at trial.⁶⁷ Porfiry is aware of the inadequacies of the old system and hopeful and skeptical about the coming legal reforms. He says: 'What can we do about the ideas people have of our juridics! There are some who are terrified of "having the law on them." Whose fault is that? Maybe something will come from the new courts. Oh, God grant it!⁶⁸ He tells Raskolnikov: '[Y]ou're right sir . . . to laugh so wittily at our legal forms⁶⁹ and jokes with the gallows humor of a life-long bureaucrat: 'Now that the reform is coming, they'll at least change our title, heh, heh, heh!⁷⁰ Porfiry, out of all Dostoevsky's characters, perhaps tracks the author's cautious optimism about the new system most closely. If Luzhin is the type of lawyer that makes the adversarial system fail, then Porfiry is the type of investigator that can make an inquisitorial system work.

Raskolnikov's trial is not the corrupt paper trial often seen in the pre-reform era. Raskolnikov's circumstances are taken into account, with many friends and psychologists testifying that he was both temporarily insane and a generally sympathetic figure. Dostoevsky notes Raskolnikov's strange behavior: '[F]ell in opportunely with the latest fashionable theory of temporary insanity, which in our time they so often try to apply to certain criminals.⁷¹ This skeptical and mocking tone with regard to psychological testimony will serve as one of the recurring themes of Dostoevsky's criticism of the new court system. The fact that Raskolnikov confessed apparently on his own volition, both ensured that he would be found guilty (as confession was the highest form of proof) and mitigated his sentence to eight years of penal servitude in Siberia.⁷² Significantly, there is no mention of lawyers or juries in Raskolnikov's trial, only investigators and judges.⁷³ The trial takes place at the end of

⁶⁶ Dostoevsky, *Crime and Punishment*, *supra* n. 5, at 133.

⁶⁷ *Id.* at 537.

⁶⁸ *Id.* at 455.

⁶⁹ *Id.* at 338.

⁷⁰ *Id.* at 337.

⁷¹ *Id.* at 536.

⁷² *Id.* at 537.

⁷³ *Id.* at 535.

an era of fully developed inquisitorial justice in Russia, complete with psychological testimony and consideration of the criminal's behavior and morality, independent of the crime itself. These considerations, while helping to mitigate the pre-determined guilt of Raskolnikov, will, in the new system, lead to unjustified acquittals and, in the case of Dmitri Karamazov, false convictions.

Like many of the ideas in Dostoevsky's fiction, his view of the pre-reform legal system in Russia as illustrated in his fiction is complicated. In one sense, Dostoevsky criticizes the caprice of the civil system and the inhumanity of criminal punishment, seeming to indicate that there are better means of achieving justice. In another, Dostoevsky presents the psychological view of capricious men capricious not amenable to impartial justice. Under a third conception, one can view the inquisitorial system as achieving justice in the case of Raskolnikov's lenient sentence. However, Dostoevsky's predominant view of the pre-reform justice system aligns with the legal and cultural critics, namely, that the old system was broken and, as Porfiry Petrovich says, '[m]aybe something will come from the new courts. Oh God, grant it!'⁷⁴

4. The Reform of the Law Courts: 'Justice and mercy may reign in her courts'⁷⁵

In Alexander II's 1856 manifesto declaring an end to the Crimean War, he hinted that Russia's justice system needed rapid reform. He promised that 'justice and mercy may reign in her [Russia's] courts . . . under protection of laws that are equally just for all.'⁷⁶ This was Alexander's first explicit promise of reform to the Russian people.⁷⁷ However, it was not until late 1861 when Alexander commissioned a panel of nine experts to prepare the judicial reforms, that any real progress was made. This group consisted mostly of law professors and other legal minds who were familiar with both the Russian system and the various systems of Western Europe.⁷⁸ In April of 1862, the committee submitted a memorandum entitled 'Basic Principles for the Transformation of the Courts' to Alexander II. The memo called for an independent judiciary, open public trials, jury trials, a reorganization of the courts, and simplification of procedures; the plan was wholly accepted by Alexander II, save for the radical proposal of jury trials in political cases.⁷⁹ The proposal was hugely influenced by the German and French judicial systems and marked the collapse of a wall 'which for forty-five years had separated and isolated our legislative activity

⁷⁴ Dostoevsky, *Crime and Punishment*, *supra* n. 5, at 455.

⁷⁵ Alexander II quoted in Lincoln, *supra* n. 2, at 57.

⁷⁶ *Id.*

⁷⁷ Mosse, *supra* n. 8, at 86.

⁷⁸ Lincoln, *supra* n. 2, at 109–12.

⁷⁹ *Id.*

from the direct influence of European knowledge and contemporary progress . . . The principles of European public law and knowledge . . . finally gained free admittance to our legislative practice.⁸⁰ In October 1862, the principles were made public and comments were sought from external legal experts. Those comments were considered by a new panel of thirty-one experts (eight of whom had served on the original committee),⁸¹ who drafted the Judicial Reform Statutes of November 20, 1864 that overhauled the procedure and structure of the Russian system permanently.⁸² Not only were the reforms themselves unprecedentedly modern and liberal, the process by which they were created was equally modern. Instead of a top-down dictate from the Tsar and other non-expert officials, the judicial reforms were carefully considered by a group of experts, publicized mid-process, and finalized by Russia's finest legal minds.

While the reforms of 1864 set up the justice of the peace courts for petty criminal and civil matters and 'ordinary' courts for more important matters, each with a court of appeals and further appeal to the Senate,⁸³ in 1861 a special customary volost' (or rural district) court was introduced for peasants as part of the Emancipation.⁸⁴ Although these courts retained much of what was vilified about the old system, they were the courts of first resort for roughly eighty percent of the population in the late nineteenth century.⁸⁵ The volost' courts, while not bound to the statutory conventions of the other courts, retained a certain amount of rigidity and formality in its written proceedings, and the judges of these courts were uneducated, elected peasants. Although Dostoevsky has little to say about these courts, it is important to note that a large portion of the Russian justice system was left largely unaffected by the westernization and modernization of the Judicial Reforms of 1864.⁸⁶

The justice of the peace court (*mirovoi sud*) was one of the most popular innovations of the new system. Since their opening in 1866, everyone from newspaper reporters to A.F. Koni recognized that the courts 'immediately gained popularity among the people.'⁸⁷ Even those who did not receive favorable verdicts were impressed by the court. One peasant, who was fined for an outburst in court,

⁸⁰ Dzhanshiev quoted in Lincoln, *supra* n. 2, at 112.

⁸¹ There were at least 446 comments submitted (Mosse, *supra* n. 8, at 87).

⁸² Lincoln, *supra* n. 2, at 114–15.

⁸³ Mosse, *supra* n. 8, at 88.

⁸⁴ Jane Burbank, *Legal Culture, Citizenship, and Peasant Jurisprudence: Perspectives from the Early Twentieth Century*, in *Reforming Justice in Russia*, *supra* n. 11, at 85–88.

⁸⁵ *Id.* at 91.

⁸⁶ For further reading on the volst' courts and their evolution through the twentieth century see Burbank, *supra* n. 84, at 82–106.

⁸⁷ Neuberger, *supra* n. 1, at 234.

remarked: 'A verdict fair and square, that's right, and along the way I got burned for two rubles . . . [I]t's okay, it didn't do me much good, but it's interesting.'⁸⁸ Indeed the courts became so popular that in Moscow the average justice saw 2,800 cases a year, roughly three times the estimated docket of the court when it was introduced.⁸⁹

This popularity stemmed primarily from the relative democratic informality of the justice of the peace courts. The justices of the peace [hereinafter JPs] were elected and though not always highly educated, were 'popular and responsible local figures, capable of winning the people's trust and familiar enough with local customs to base decisions on them.'⁹⁰ The JPs were supposed to simultaneously 'teach the law to the people' and decide civil cases through mediation and criminal cases through personal conscience and common sense. Local custom and personal predilection played an equal role with statutes in determining outcomes.⁹¹ As historian Joan Neuberger writes, '[e]very day in the *mirovoi sud*, local custom confronted modern Western legal statute to produce a new legal culture.'⁹² JPs were 'scrupulously polite without distinction of persons,'⁹³ and were sometimes accused of even favoring the lower classes and 'going out of their way to humiliate or injure the well born.'⁹⁴ Whether or not these accusations are justified or simply a reaction to the leveling of a previously undeniably hierarchical system is unclear, but the justice of the peace courts presented a large portion of the Russian population with access to justice uninhibited by stilted formality and rigid class structures.

The types of cases brought before the JPs indicate that the people perceived the court as capable of resolving any dispute, no matter how small or personal. Domestic disputes included attempts to dissolve marriages, prevent sons from drinking, or prevent daughters from exhibiting 'loose behavior.'⁹⁵ Public insults were also cause to bring suit.⁹⁶ In one case, a landlord brought a case against a tenant for three rubles and fifty kopeks, the tenant agreed to pay then and there, only to have the landlord forgive the debt, and declare he had brought the case 'just to test the new system, which he found to be "fine."⁹⁷ It was not just the participants who were exposed to the JP courts; reporters were invited inside the courtroom and gave reports in the

⁸⁸ Neuberger, *supra* n. 1, at 241.

⁸⁹ Mosse, *supra* n. 8, at 88.

⁹⁰ Neuberger, *supra* n. 1, at 236.

⁹¹ *Id.* at 232.

⁹² *Id.* at 233.

⁹³ Mackenzie Wallace quoted in Mosse, *supra* n. 8, at 89.

⁹⁴ Neuberger, *supra* n. 1, at 235.

⁹⁵ *Id.* at 239.

⁹⁶ *Id.*

⁹⁷ *Id.* at 238–39.

newspapers, detailing the entertaining nature of the proceedings, complete with anecdotes about a JP's humorous remarks or biblical references.⁹⁸ One especially ambitious JP advertised for the new courts by 'strolling around his district at various times of day, listening to the complaints of the local population, and resolving their disputes right on the street.'⁹⁹

While the justice of the peace courts were popular and substantively important in providing Russians with a relatively fair and accessible avenue to resolve disputes, the ordinary courts dealt with the more difficult criminal cases that interested Dostoevsky. Like the justice of the peace courts, the more formal courts opened in St. Petersburg and Moscow in 1866 and spread slowly through Russia over the next couple decades.¹⁰⁰ The most outstanding features of these new courts were the introduction of a legitimate legal profession, the jury trial, and the court's openness and independence.

The judges of the ordinary courts were appointed by the Tsar, had lifetime tenure, and had far better legal training than their justice of the peace contemporaries. Judges in these courts were given the discretion not only to apply the law (as the pre-reform judges had) but to interpret the law in partial reliance on their own conscience.¹⁰¹ As judges became more educated and free in their decision-making, legal scholarship and interest rose dramatically culminating in an increasingly competent bar. In 1858, *The Journal of the Ministry of Justice* was established and started publishing scholarly articles on legal topics from famous Russian scholars like Vladimir Spasovich, and European scholars in translation.¹⁰² With the rise in legal scholarship through the 1860^s there was a 'sharp increase in the number of students matriculating in law, making up more than half the total number of students registered at Russian universities by the end of the decade.'¹⁰³ It is no wonder that Dostoevsky styles Raskolnikov a former law student. Russia was quickly developing a set of relatively educated trained professionals to populate the modern courts.

The final and perhaps most important and revolutionary actor in the new justice system was the jury. Juries decided 'three-fourths of all recorded criminal cases' in Russia after the reform and were given ample leeway in so doing.¹⁰⁴ Although jurors

⁹⁸ Neuberger, *supra* n. 1, at 236.

⁹⁹ *Id.* at 240.

¹⁰⁰ Mosse, *supra* n. 8, at 88.

¹⁰¹ Solomon, Jr., *supra* n. 11, at 7.

¹⁰² Nethercott, *supra* n. 23, at 8.

¹⁰³ *Id.*

¹⁰⁴ Alexander K. Afanas'ev, *Jurors and Jury Trials in Imperial Russia* (Willard Sunderland, trans.), in *Russia's Great Reforms*, *supra* n. 1, at 214.

were forced to take a highly religious and moral oath before serving,¹⁰⁵ Dostoevsky scholar Gary Rosenshield notes:

There were no overly legal constraints placed on Russian jurors. Russian juries often did not decide on the basis of statutory law and did not generally consider themselves bound by the law. Russian juries were mainly 'law-finding' (lawmaking) rather than 'fact-finding' bodies . . . they placed more emphasis on moral and circumstantial issues, such as the moral character of the defendant, the defendant's past behavior, evidence of contrition, and the commensurability of the sentence and the indicted behavior. Even though jurors might believe that the defendant committed the crime for which she or he was charged, if they were sympathetic to the defendant's plight, interpreted the circumstances of the crime extenuatingly, or believed that the punishment did not fit the crime, they might engage in jury nullification . . . jurors were supposed to carefully weigh the evidence and deliver a decision in accord with conscience.¹⁰⁶

While the juries did not abuse their power systematically, even precipitating the withdrawal of certain inhumane laws jurors refused to enforce, traditional Russian prejudices did drive jury decisions in some instances. Juries were known to be especially hard on horse thieves and those accused of sacrilege, and lenient towards crimes against women, official corruption, and those tried on the eve of peasant holidays.¹⁰⁷

Russian juries were neither wholly democratic nor dominated by any particular social group. While a minimal property requirement excluded 'the great majority of the Russian population' from jury service, peasant jurors accounted for over fifty-seven percent of jurors outside of St. Petersburg and Moscow, over thirty-six percent in Moscow, and over twenty-six percent in St. Petersburg.¹⁰⁸ In addition to the property requirement, jurors had to be between twenty-five and seventy years of age and

¹⁰⁵ Under Art. 666 of the of the Statute of Criminal Procedure the oath read: 'I promise and swear to almighty God, before the Holy Gospel and the life-giving Lord's Cross, that in this case for which I have been selected as juror, I shall devote the full force of my mind to a diligent examination of the circumstances both incriminating the defendant and vindicating him. I shall cast a decisive vote on the basis of what I see and hear in court, according to the plain truth and the conviction of my conscience. I shall neither acquit the guilty nor convict the innocent, remembering throughout that I must give answer before God on the Day of Judgment. In affirmation thereof, I kiss the word and cross on my Savior. Amen.' Quoted in Rosenshield, *supra* n. 6, at 97.

¹⁰⁶ *Id.* at 102–03.

¹⁰⁷ Afanas'ev, *supra* n. 104, at 227.

¹⁰⁸ *Id.* at 215–21. This data is from 1883, the numbers are similar in 1873. For further systematic analysis of jury composition in the post-reform courts *see id.* at 215–28.

have spent two years in the district.¹⁰⁹ Convicted criminals, priests, monks, military officers, and certain civil servants were not allowed to serve,¹¹⁰ neither were the blind, deaf, dumb, insane, or non-Russian speakers.¹¹¹ There was no literacy requirement, indeed 'almost half the jurors could neither read nor write . . . it was not uncommon for juries to be disbanded and reselected because none of the standing jurors was qualified to serve as chairman[,] . . . required by law to be able to read and write.'¹¹²

The problem of uneducated juries was exacerbated by the fact that as the system became more well established, the novelty and honor of serving became less alluring to the educated elite of Russia. Jurors were forced to stay within the courthouse as long as the trial lasted, sleeping on 'bare benches' next to 'gruesome pieces of material evidence' in 'old, dilapidated buildings that were cold or noxious in the winter and hot and stuffy in the summer.'¹¹³ From 1866–72, 'legal proceedings for evasion of jury duty were initiated against 2,358 persons.'¹¹⁴ As one observer described, '[a] veritable epidemic of different illnesses would befall rich merchants and noblemen who had been selected to jury service; rich landowners would be overrun with unexpected misfortunes on their estates, and civil servants would become suddenly imbued with an exceptional desire to carry out their official assignments.'¹¹⁵ This evasiveness led the government to institute greater wealth and literacy requirements for juries beginning in the late 1880^s,¹¹⁶ but the juries Dostoevsky knew consisted of a wide-variety of Russians given unprecedented discretion in making important decisions about criminality independent of the traditional autocratic structure.

Equally important as the new judicial actors was the overhaul of criminal procedure. Gone was the inquisitorial system with its presumption of guilt and ministerial written procedures, giving way to an oral trial with defense attorneys and adversarial procedures.¹¹⁷ The state still had a distinct advantage over the defense

¹⁰⁹ The juror lists for each year were published in official provincial newspapers and perspective jurors were informed individually of how long they would be required to serve. The primary list in St. Petersburg and Moscow consisted of 1,200 each year and 200 reserve jurors, while the other provinces had 400 primary and 60 reserves (Afanas'ev, *supra* n. 104, at 216).

¹¹⁰ 'Civil servants serving in the departments of defense and judicial ministries, ecclesiastical treasurers, forestry wardens, police officers, public school teachers' were all not allowed to serve (*Id.* at 215–16).

¹¹¹ *Id.* at 215.

¹¹² *Id.* at 222.

¹¹³ *Id.* at 224.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 226.

¹¹⁶ Afanas'ev, *supra* n. 104, at 228.

¹¹⁷ Girish Bhat argues that the post-reform courts represented a hybrid of the old inquisitorial system and the Western adversarial systems, creating a distinctly Russian 'consensual' system. While Bhat's arguments are compelling, and much of the information on the court's criminal procedure is drawn from his article, the finer points are largely irrelevant for Dostoevsky. It is sufficient to note that the system established by the reforms was significantly more adversarial than the pre-reform system. See Bhat, *supra* n. 25, at 61–81.

attorney in pre-trial fact-finding. As Russian legal scholar Girish Bhat explains, '[i]n the reformed criminal procedure, almost all of the evidentiary and administrative preparation for jury trials were completed without the participation or even knowledge of the accused and defense counsel.'¹¹⁸ While the pre-trial investigation was supposed to be neutral, without the defendant's interests represented, it is difficult to concede that it was.

However, once the trial began the two attorneys were on appreciable equal footing. Article 630 of the Statute of Criminal Procedure provided:

The following rights are granted to each side: 1) to present evidence in support of its testimony, 2) to have removed from testimony, with just cause, witnesses and experts; to put questions to them . . . to object to witnesses' testimony and to request that a particular witness be cross-examined in the presence or absence of another witness, 3) to make observations and offer explanations concerning all that transpires in court, and 4) to refute the conclusions and views of the opposing side.¹¹⁹

In addition, Art. 632 gives 'the right to the last word' on each disputed topic to 'the accused or to the defense counsel.'¹²⁰

Article 700 stipulated that the order of witnesses shall be victims, witnesses of the accuser, and then those called by the defense, unless the judge alters the structure (as he can under Art. 701).¹²¹ Witnesses could be questioned by the judge, jurors, and the accused himself. In fact in the case of Nikolai Frantsov Orvid,¹²² tried in Moscow in 1866, the presiding judge was the first to question each witness, and, since Orvid pled not-guilty, when each witness was done answering, the judge would ask the accused: 'Do you object to this witness's testimony?'¹²³ Another case tried in Moscow in 1867,¹²⁴ saw medical experts¹²⁵ questioned by jurors 'whenever

¹¹⁸ Bhat, *supra* n. 25, at 63.

¹¹⁹ Quoted in *id.* at 66–67.

¹²⁰ *Id.* at 67.

¹²¹ *Id.* at 70.

¹²² Orvid was tried for injuring three men, one of whom died in the hospital. His principle defense was that he was 'heavily intoxicated at the time.' He was found guilty, but deserving of leniency (*id.* at 73).

¹²³ *Id.* at 70–75.

¹²⁴ Marva Volokhova was tried for the premeditated murder of her husband. The body was found chopped in half and the trial received a great deal of media attention. She was acquitted, due to the performance of her defense attorney and the poor performance of the prosecutor (*id.* at 74).

¹²⁵ While the introduction of medical or other 'expert' testimony is not addressed in the historical literature as a major, or indeed a noticeable, part of the judicial reforms, Dostoevsky spends a great deal of time in both his fiction and 'A Writer's Diary' on the subject. This is perhaps not surprising due

they wished and . . . in an informal, manner.¹²⁶ Witnesses, like jurors had to give a highly Orthodox Christian oath before testifying.¹²⁷ The one exception was that if family members wished to testify, they could not do so under oath and in no case were they made to testify against their family.¹²⁸ This focus on informal questioning, family, and Orthodoxy tempers the image of the court as a modern secular westernized institution.

The prosecutor and defense attorneys were limited in what they could say in their closing arguments by the Statute of Criminal Procedure. Under Art. 739, the prosecutor 'should not present the case in a one-sided manner . . . he should exaggerate neither the significance of the incriminating proof and evidence in the case nor the gravity of the offense.'¹²⁹ In addition under Art. 740, if the prosecutor 'is sufficiently impressed by the defense's attempted vindication of the accused, then he is obligated to cease his affirmation.'¹³⁰ Likewise Arts. 745 and 746 were designed to make sure the defense attorney did not go overboard in arguing for his client. Article 745 provided that, '[t]he defense counsel shall confine himself to topics bearing directly on the case. He shall be expected to show proper respect to religion, the law, and established authority, and shall not employ expressions of speech deemed insulting to any individual.'¹³¹ Furthermore under Art. 746, 'the defense attorney . . . shall refer only to legal statutes that assist in further defining the exact nature of the offense under examination, or to statutes that might justify leniency from the court in the event of a conviction.'¹³² The statutes were clearly designed to circumscribe the power of the lawyers and hold all the participants to the lofty goals of fairness, rationality, and legal legitimacy.

Despite the statutory restrictions, defense attorneys in particular could sway juries with their impassioned and often times over-the-top closing arguments. Indeed, 'prominent Russian lawyers came to view and publish their summations as literary

to Dostoevsky's focus on psychology generally and his belief that science is incapable of explaining human behavior. Expert testimony is likewise given little attention in this overview, but will be treated in upcoming sections.

¹²⁶ Bhat, *supra* n. 25, at 83.

¹²⁷ The witness oath was as follows: 'I promise and vow to almighty God, before the Holy Gospel and the life-giving Lord's Cross, that being swayed neither by friendship, kinship, expectation of advantage or any other such motives, I shall, according to my conscience, reveal the plain truth on all aspects of this case, and shall not conceal anything unknown to me. I shall bear in mind that in all this I will have to give answer before the law and before God on the Day of Judgment. In affirmation of the said oath, I kiss the word and cross of my Savior. Amen.' Quoted in Rosenshield, *supra* n. 6, at 97–98.

¹²⁸ *Id.* at 98–99.

¹²⁹ Quoted in Bhat, *supra* n. 25, at 71.

¹³⁰ *Id.*

¹³¹ *Id.* at 72.

¹³² Quoted in *id.* at 72

creations.¹³³ Brilliant defense attorneys like Vladimir Spasovich and P.A. Aleksandrov gave stirring speeches in defense of political and violent criminals like Vera Zasulich,¹³⁴ swaying juries with their talent and liberal ideals. Such attorneys quickly gained national prominence as the trials were open to the public and newspapers often reproduced closing arguments. From 1871 to 1877 defense lawyers were able to gain the successful acquittal of ninety political criminals, and clearly guilty criminals were regularly acquitted on the basis of the defense attorney's eloquence.¹³⁵ A Moscow prosecutor in 1875 observed: 'There is no moral indecency which could not appear in print if the hero of this indecency is a lawyer.'¹³⁶ Another Russian attorney described the defense attorney's role as that of 'the most pitiful buffoon: to grow indignant, without feeling any strong emotion, to beat himself in the chest, where absolutely no feeling stirred, to squeeze tears from eyes that did not want to cry . . . It all entered the program of generally accepted oratorical devices.'¹³⁷ These talented lawyers who used their skills to manipulate jurors are the subject of the majority of Dostoevsky's criticism of the new courts.

While criminal procedure was drastically altered and ameliorated by the Judicial Reform Statute of 1864, no such overhaul took place in the area of substantive punishment. The 1866 revision of the 1845 Code of Criminal and Corrective Punishments 'sustained, rather than challenged, the strict, yet cumbersome original classification of punishments.'¹³⁸ Punishments like the death penalty, exile and public shaming remained in place long after the courts had been reformed. In fact, the high acquittal rates, often attributed to the eloquence of defense attorneys or the unawareness of juries, may very well have been caused by the harsh and mandatory punishments that followed a conviction. Jurors may have thought the accused guilty, but not deserving of the punishments so brutally depicted in 'The House of the Dead.'¹³⁹

One area in which there is a clear tension between the traditional Russian moral conception of right and wrong and the legal distinctions drawn by the new courts was peasant arson in the countryside. In the late nineteenth century arson was seen as an acceptable way to resolve disputes among families or communities of

¹³³ Rosenshield, *supra* n. 6, at 14.

¹³⁴ Zasulich was defended by Aleksandrov in 'the most famous trial of the nineteenth century.' Zasulich was clearly guilty of trying to kill the military governor of St. Petersburg, but was acquitted to 'cries of unrestrained joy, hysterical sobbing, desperate applause' due in large part to Aleksandrov's brilliant performance (*Id.* at 133–35).

¹³⁵ Nethercott, *supra* n. 23, at 25.

¹³⁶ M. Gromnitskii quoted in Murav, *supra* n. 12, at 78.

¹³⁷ N.P. Karabchevskii quoted in *id.* at 82.

¹³⁸ Nethercott, *supra* n. 23, at 25.

¹³⁹ Cathy A. Frierson, *Of Red Rooter, Revenge, and the Search for Justice: Rural Arson in European Russia in the Late Imperial Era*, in *Reforming Justice in Russia*, *supra* n. 11, at 124.

peasants and was not viewed as morally wrong if it simply caused property damage.¹⁴⁰ However, in the courts, illegality was dependent simply on property damage and did not account for relationships.¹⁴¹ The new definitions and enforcement mechanisms were ineffective in reducing arson in the countryside, as the conviction rate hovered around fifty percent.¹⁴² Peasant jurors viewed arson as a potential 'legitimate means of achieving immediate justice,' saw mandatory exile as too harsh a punishment, and, in some instances, feared 'revenge from the arsonist or his or her family.'¹⁴³ The peasants' nullification of arson law indicates that not all Russian citizens were willing to accept the new westernized law and justice with open arms.

One particular episode indicates how some peasant communities viewed arson as a means of communal justice, rather than an illegal act to be sanctioned. A horse thief named Ivan Tereshin robbed peasants in the village of Brednikha, was found guilty, sent to jail, released, stole again, beaten by peasants nearly to death, and then burned down the entire village with his brother. The villagers 'caught the Tereshin brothers. They beat them, tied them up and threw them into the flames of a bonfire of the brothers' property.'¹⁴⁴ Though the rule of law was beginning to take root in Russia through a more systematic and just court system, communal vengeance as justice, as identified by Dostoevsky in 'Notes from Underground,' was still alive.¹⁴⁵

One final aspect of the judicial reforms that deserves brief attention is the independence of the judicial system from the all-encompassing power of the Tsar. As previously noted, the Senate stood as the highest court of appeals in the post-reform judicial system. Both criminal and civil cases were subject to the Senate's jurisdiction. The Civil Cassation Department of the Senate was 'charged both with making definitive interpretations of the law and with ensuring the uniform application of the law throughout the empire,'¹⁴⁶ while the Criminal Cassation Department served a similar role in criminal cases.¹⁴⁷

One particular line of cases reveals the direct impact the Civil Cassation Department had on the modernization and westernization of the laws. Through

¹⁴⁰ Frierson, *supra* n. 139, 120–21.

¹⁴¹ *Id.* 111.

¹⁴² *Id.* 124.

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 116.

¹⁴⁵ *See supra*, at 17.

¹⁴⁶ William G. Wagner, *Civil Law, Individual Rights and Judicial Activism in Late Imperial Russia*, in *Reforming Justice in Russia*, *supra* n. 11, at 29.

¹⁴⁷ The workings of these two courts became newsworthy, as the precedential value of their opinions was recognized by the lower courts. 'The general press, too, commented frequently on decisions of the high court, with most newspapers containing a section devoted to cases heard before both the Civil and Criminal Cassation Departments' (*Id.* at 33).

the 1860⁶ divorce was not within the jurisdiction of the civil courts and marital separation was not allowed under civil statutes unless granted by the minority Catholic or Evangelical Lutheran Churches. Orthodox Russian women who were abused by their husbands had no legal recourse.¹⁴⁸ While initially upholding the law, the Civil Cassation Department from the mid-1870⁶ onward effectively made that law obsolete by 'formulating the rule that a wife was not obligated to live with her husband, yet retained the right to support from him, if for reasons beyond her control co-residence with him proved impossible.'¹⁴⁹ The Court effectively led the way on the westernization and modernization of Russian marital relations, and their decisions were finally codified into statutory law in 1914.¹⁵⁰ The Civil Cassation Department, an entity that was based on the French model, had effectively altered the legal structure of patriarchal Russian familiar relationships without input from the Tsar, a truly remarkable achievement from a court whose predecessor was little more than an especially bureaucratic and ineffective wing of the Tsar's autocracy.

There is little doubt that the reformed system, with all of its warts and persistent inequalities, was far and away superior to its predecessor in both the civil and criminal arenas. The reforms brought Russians justice that was consistent, even-handed, procedurally more accessible, and fundamentally fairer. The justice of the peace courts provided Russians with an efficient and effective means of settling minor legal disputes, which would never have been adjudicated in the old system. The criminal courts introduced the most democratic institution in all of Russia, the jury, and an adversarial system that legitimately allowed the defendant to tell his side of the story through an eloquent and capable mouthpiece. But was all this too much, too soon? Was the replacement of Orthodoxy, Autocracy, and Nationality with westernized and modernized justice really desirable in a society built and maintained on those values?¹⁵¹ Did this new system of justice really work as well as historians and most contemporary commentators believe, or were there fundamental flaws in the system that made it no better than the old one? Dostoevsky's commentary – both in his fiction and in 'A Writer's Diary' – sheds some light on these questions and illuminates Dostoevsky's major problems with the highly lauded system.

¹⁴⁸ Wagner, *supra* n. 146, at 30.

¹⁴⁹ *Id.* at 31.

¹⁵⁰ *Id.* at 30–31.

¹⁵¹ Under the regime of Nicholas I, the ideals of Orthodoxy, Autocracy, and Nationality (later called 'Official Nationality') were exalted as a response to European Enlightenment and served as both a rationalization of Tsarist rule and as a way of raising national spirit by conferring 'a higher value on Russian ideas, institutions, and especially on the Russian people, who were celebrated as trusting, faithful and pure of heart.' David L. Ransel, *Pre-Reform Russia*, in *Russia: A History 159* (Gregory L. Freeze, ed.) (2nd ed., Oxford University Press 2002).

5. Optimism, Idiots, Demons and Adolescents

5.1. Initial Optimism

Like the vast majority of educated Russians and Europeans, Dostoevsky was initially impressed by the legal reforms and the Russian people's immediate acceptance of the modern legal regime. In August 1867, Dostoevsky wrote to his 'unforgettable friend' Apollon Nikolaevich from Geneva.¹⁵² In the letter Dostoevsky praises:

[T]he stability and unexpected maturity of the Russian people in encountering all out reforms (if only the legal one alone) . . . the Russian people, thanks to its benefactor and his reforms, has finally been put little by little into such a position that it is being forced to become accustomed to efficiency and self-observation . . . this time now is nearly more important than Peter the Great's.¹⁵³

Dostoevsky concludes that soon 'there will be *correct judgment* everywhere, and then what a great renewal!¹⁵⁴

In October, Dostoevsky wrote Maykov and again expressed interest and praise for the courts from Geneva, though he also showed some reservations:

As soon as I arrive, I'll go around in person, to the courts . . . Our jurors are as good as can be. But as for our judges, one could wish for somewhat more education and practice. And you know what else: moral principles. Without that basis nothing can be established. But thank God, things are going well so far.¹⁵⁵

It is this concern about 'moral principles' that would form the basis for Dostoevsky's critique, not only of judges,¹⁵⁶ but of the entire legal system.

5.2. 'The Idiot': 'obsessed with being a lawyer' (Lebedev)¹⁵⁷

'The Idiot' is a high-concept novel that places a Christ-like figure, Prince Myshkin, in upper-class nineteenth-century Russia. Dostoevsky's initial optimism is attributed

¹⁵² Dostoevsky spends much of this letter complaining about life abroad and how much he misses Russia.

¹⁵³ *Fyodor Dostoevsky to Apollon Maykov, August 16, 1867*, in 2 *Fyodor Dostoevsky Complete Letters* 254 (David A. Lowe, ed. & trans.) (Ardis 1989) [hereinafter 2 *Fyodor Dostoevsky Complete Letters*].

¹⁵⁴ *Id.*

¹⁵⁵ *Fyodor Dostoevsky to Apollon Maykov, October 9, 1867*, in 2 *Fyodor Dostoevsky Complete Letters*, *supra* n. 153, at 280.

¹⁵⁶ In fact, Dostoevsky's criticism is rarely focused on the quality of the judges in the new courts.

¹⁵⁷ *Fyodor Dostoevsky, The Idiot* 398 (Alan Myers, trans.) (Oxford University Press 1992) [hereinafter *Dostoevsky, The Idiot*].

to Myshkin himself, before the action of the novel takes place: '[D]on't you recall what we spoke of once, two or three months ago? We actually talked about the number of fine, talented defense lawyers already to be found in our newly-instituted law court! And how many splendid jury verdicts there had been? How glad you were . . . we said it was something to be proud of.'¹⁵⁸ Although the courts were open to the public, Dostoevsky remained abroad from 1867–71 and therefore must have relied on reports from the media and letters he received.¹⁵⁹ Whatever the cause, the optimism of pre-novel Myshkin, Porfiry Petrovich, and Dostoevsky himself has evaporated by the time 'The Idiot' was drafted. In its place Dostoevsky creates a lawyer who does not heed Vladimir Spasovich's warning: '[E]ach one of us must be above all a sincere person, and an attorney only when he is before the judge in the fulfillment of his duty.'¹⁶⁰ Dostoevsky's parodic characterization of Lebedev reveals that a man who acts like a lawyer outside as well as inside a courtroom is little more than a scoundrel with no moral compass.

Lebedev's nephew describes him as a lawyer who 'goes round the law-courts making fancy speeches and keeps it up with his children at home. He spoke before the magistrates five days ago . . . he's been going over the same speech to us here every morning, word for word as he did there; this is the fifth time today . . . he's so fond of it. He's in love with himself.'¹⁶¹ Despite his criticism, Lebedev's nephew seems to be influenced by the legal oratory of his uncle when he gives a convoluted speech to Myshkin to explain his own dishonesty. A fourth character, Radomsky, remarks: 'This reminds me . . . of the celebrated defense lawyer who recently pleaded the poverty of his client as an excuse for murdering six people in one fell swoop.'¹⁶² Radomsky later brings up the same incident: '[I]n his poverty-stricken condition, it must *naturally* have occurred to the accused to do away with these six people . . . the lawyer . . . was utterly convinced that he was voicing the most liberal, the most humane and progressive thought.'¹⁶³ According to Myshkin, this type of argument is 'a good deal more the general rule than an individual instance.'¹⁶⁴ The principle problem with this, according to Myshkin, is that criminals, although not repentant under the old system, at least knew themselves to be criminals, while under the new system: 'They think to themselves that they had a right to do it, and even . . . that they did the right thing . . . That's where the terrible difference lies.'¹⁶⁵ The failure of the new criminal justice system

¹⁵⁸ Dostoevsky, *supra* n. 157, at 355.

¹⁵⁹ See William J. Leatherbarrow, *Introduction* in Dostoevsky, *The Idiot*, *supra* n. 157.

¹⁶⁰ Vladimir Spasovich quoted in Murav, *supra* n. 12, at 82.

¹⁶¹ Dostoevsky, *The Idiot*, *supra* n. 157, at 202–03.

¹⁶² *Id.* at 298.

¹⁶³ *Id.* at 354.

¹⁶⁴ *Id.* at 356.

¹⁶⁵ *Id.* at 355–56.

to align with Dostoevsky's moral conceptions of right and wrong by letting morally corrupt criminals free with not-guilty verdicts based on defense attorney's clever liberal arguments, is a repeated theme in Dostoevsky's criticism of the new courts.

At Myshkin's birthday party later in the novel, Lebedev takes on the challenge of representing a twelfth century man who 'in the course of a long life of deprivation he had killed and eaten personally, in deadly secret, sixty monks and several lay infants, about six, no more.'¹⁶⁶ Dostoevsky is clearly parodying the defense attorney speeches in the new courts. Lebedev describes the man's behavior as 'perfectly understandable and natural,' though 'the number of persons devoured seems excessive.'¹⁶⁷ He adds that the man 'never laid a finger on lay persons' and 'ecclesiastics lived at least sixty times as happily and comfortably as the rest of mankind . . . sixty times fatter than the rest of humanity.'¹⁶⁸ Lebedev describes the eating of the infants as an experiment 'to abate his sin as far as possible' and 'not at all nutritious . . . rather over-sweet and unseemly.'¹⁶⁹ Lebedev concludes by contrasting the moral hardness of the accused with the opulence of the nineteenth century: 'We've all grown flabby, all, all of us! But that's enough, that's not the point now; the point now . . . is shouldn't we be seeing about the refreshments.'¹⁷⁰ These artful (and in this case, hyperbolic and ridiculous) situational arguments strive to eliminate any moral accountability for morally reprehensible criminal behavior. It is not only the morally subversive substance of the arguments, but also the nonchalance Lebedev exhibits in defending the truly wicked, that Dostoevsky shows to be potentially disastrous for Russia in 'Demons.'

5.3. 'Demons:' Liberal Courts as a Gateway to Tyranny

Dostoevsky's third major novel, 'Demons,'¹⁷¹ was written between 1869 and 1872 and published serially through 1873. The novel is very loosely based on the activities and eventual murderous infighting of a Nihilist revolutionary group led by Sergei Nechaev.¹⁷² Law does not play a central role in the novel, as there seems to be an acute lack of oversight in the sphere of colliding worldviews and dangerous ideas which Dostoevsky creates. However, the novel's characters do not see the law as a stabilizing force to be overcome in leading Russia into chaos, but an example of

¹⁶⁶ Dostoevsky, *supra* n. 157, at 396.

¹⁶⁷ *Id.* at 396–97.

¹⁶⁸ *Id.* at 397–98.

¹⁶⁹ *Id.* at 398–99.

¹⁷⁰ *Id.* at 399–400.

¹⁷¹ Often translated as 'The Possessed.'

¹⁷² Richard Pevear, *Foreword*, in Fyodor Dostoevsky, *Demons* vii (Richard Pevear & Larissa Volokhonsky, trans.) (Vintage Books 1994) [hereinafter Dostoevsky, *Demons*]. In November 1869, Nechaev and another member of the group brutally murdered a former member, Ivan Ivanov, a promising young student and friend of Dostoevsky's brother-in-law (*Id.*).

how susceptible Russia is to revolution. Pyotor Verkhonsky, the leader of the nihilists, describes how easy a revolution would be by using the actors of the new liberal and westernized court system as examples:

The lawyer who defends an educated murderer by saying that he's more developed than his victims and couldn't help killing to get money, is already ours . . . Jurors who acquit criminals right and left, are ours. The prosecutor who trembles in court for fear of being insufficiently liberal, is ours, ours . . . When I left, Littre's thesis that crime is insanity was raging;¹⁷³ I come back – crime is no longer insanity but precisely common sense itself, almost a duty, at any rate a noble protest.¹⁷⁴

Far from being a step towards freedom and fairness, Verkhonsky portrays the new courts as evidence of the vulnerability of the Russian people to new radical ideas and their tyrannical consequences. Legal actors wanting to seem liberal, educated, and western will follow the nihilists and socialists unquestioningly if only to appear sophisticated.

Dostoevsky further gives an everyman's interpretation of the reports of acquittals based on psychological testimony:

I'll tell you, here's the secret of our new courts . . . Suppose a man steals or cheats and gets caught and clearly exposed – so, run home quickly, while there's still time, and kill your mother. You'll be acquitted instantly, and the ladies will waive their cambric handkerchiefs from the gallery – it's unquestionably true!¹⁷⁵

The law in 'Demons' is unable to prevent or punish the various murders, arsons, and sexual abuses of the novel.¹⁷⁶ None of the characters seem to fear the law or the courts as a constraint on their criminal and subversive activities. Instead, the new courts are an indicator of how the Russian people can be manipulated at the whim of those who seek to destroy Russia and the values upon which it was built.

5.4. 'The Adolescent': A Tale of Two Courts

'The Adolescent,'¹⁷⁷ the least well-known and least critically acclaimed of Dostoevsky's major novels, was published serially in the literary magazine *Notes of*

¹⁷³ Emile Littre was a French materialist philosopher.

¹⁷⁴ Fyodor Dostoevsky, *Demons*, *supra* n. 172, at 420.

¹⁷⁵ Dostoevsky, *Demons*, *supra* n. 172, at 298.

¹⁷⁶ Stavrogin, the protagonist of *Demons* (if there is a protagonist), confesses in the appendix of the novel (originally deemed unprintable) to violating a fourteen-year-old girl.

¹⁷⁷ Often translated as 'A Raw Youth.'

the Fatherland beginning in 1875.¹⁷⁸ Dostoevsky is, once again, highly critical of the new criminal courts, though the justice of the peace court performs admirably, if comically, in its one appearance in 'The Adolescent.'

In the novel, a comparatively well-off woman, Tatyana Pavlovna, strikes her cook, Marya, for insubordination, and Marya, with the help of a retired midshipman, who 'occupied himself with soliciting various sorts of cases . . . in his struggle for existence,'¹⁷⁹ brings her in front of the justice of the peace. The cook requests a fine, 'otherwise, if you put the lady in prison, who am I going to cook for?'¹⁸⁰ Tatyana responds by telling the judge: 'I beat her and I'll beat her more.'¹⁸¹ She is fined three rubles for her insubordination and the midshipman 'got shamefully confused and made the whole courtroom laugh' in his concluding speech.¹⁸² Despite this comedy of errors, the court reaches an equitable result, with Tatyana being forced to pay Marya fifteen rubles. Tatyana pays on the spot and the two discuss what is for dinner that night before Marya kisses her mistress 'as a sign of reconciliation.'¹⁸³ Once again, Dostoevsky uses parody and hyperbole to describe the justice system, but the justice of the peace court in this case provides swift justice for Marya, a cook, who would have had no recourse against the capricious impulses of her master in the old system.

Lawyers do not get even comic praise in the novel. A lawyer is defined as a '*hired conscience*.'¹⁸⁴ In one incident a civil lawyer takes a man's last fifteen rubles, listens for less than three minutes, and gives the unhelpful advise, 'if he wants to . . . the merchant will pay you back, if he doesn't, he won't' and then the lawyer makes 'a joke from the Gospel: "Agree with thine adversary . . . whiles thou art in the way, till thou hast paid the uttermost farthing."¹⁸⁵ For Dostoevsky and his conservative Orthodox readers, lawyers are more than just ineffectual and greedy; they are subversive of traditional Orthodox morality.

The Western European roots of the new court reforms are also taken to task by Dostoevsky in 'The Adolescent.' He writes about a committee of jurists appointed by the English Parliament in the eighteenth century 'to examine the whole trial of Christ . . . solely in order to find out how it would go now, by our laws, and that it was all done with all solemnity, with lawyers, prosecutors, and the rest . . . the jury

¹⁷⁸ Richard Pevear, *Introduction*, in Fyodor Dostoevsky, *The Adolescent* xx (Richard Pevear & Larissa Volokhonsky, trans.) (Vintage Books 2003) [hereinafter Dostoevsky, *The Adolescent*].

¹⁷⁹ Dostoevsky, *The Adolescent*, *supra* n. 178, at 369.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.* at 369–70.

¹⁸³ *Id.* at 370.

¹⁸⁴ *Id.* at 383.

¹⁸⁵ *Id.* at 171.

had to hand down a guilty verdict.¹⁸⁶ Dostoevsky's implicit question to his reader is: how just is a court system that would be forced to convict Christ, the savior of all mankind? For a man who once wrote, '[i]f anyone could prove to me that Christ is outside the truth, and if the truth really did exclude Christ, I should prefer to stay with Christ and not with truth,¹⁸⁷ the fact that a justice system would necessarily convict Christ is perhaps the greatest possible indictment.

The inability of the criminal system to comport with traditional Orthodox Christian, and therefore Russian, morality is underscored in the retelling of an incident of a discharged soldier who robbed peasants, and, despite the total lack of evidence, interrupted his eloquent lawyer and 'confessed everything, with tears and repentance.'¹⁸⁸ The jury, however, returned a not-guilty verdict: 'Everybody shouted, rejoiced, and the soldier . . . didn't understand anything . . . He began to be anguished, brooded, didn't eat, didn't drink, didn't speak to people, and on the fifth day he up and hanged himself.'¹⁸⁹ The character who is telling the story echoes Dostoevsky's concern about what happens to a criminal who is exonerated for something he knows is morally wrong: 'That's how it is to live with a sin on your soul!'¹⁹⁰ Thus the new justice system frustrates and puts into despair the criminal who genuinely wants to repent and suffer for his moral,¹⁹¹ while exalting the unrepentant as mere products of their environment, not responsible for their morally abhorrent actions. While the old system punished Russian criminals harshly, at least they – like Raskolnikov and Dostoevsky himself – had the opportunity to resurrect themselves through suffering.

6. Fact is Stranger than Fiction: 'A Writer's Diary'

Between February 1876 and October 1877, Dostoevsky wrote directly on four criminal cases in his experimental and unprecedented monthly personal literary journal, 'A Writer's Diary.' In the journal, Dostoevsky wrote about important issues and current events, responded to reader's letters, and published his own short stories and literary criticism. The cases Dostoevsky decided to analyze, Kroneberg,

¹⁸⁶ Dostoevsky, *The Adolescent*, *supra* n. 178, at 271.

¹⁸⁷ *Fyodor Dostoevsky to Mme. N.D. Fonvisin, March 1854*, in *Letters of Fyodor Mikhailovich Dostoevsky to His Family and Friends 71* (Ethel Golburn Mayne, trans.) (Horizon Press 1961).

¹⁸⁸ Dostoevsky, *The Adolescent*, *supra* n. 178, at 383.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ It is at best questionable whether a Russian criminal would genuinely want to face the full brunt of the penal system in order to find repentance through suffering, but to Dostoevsky suffering and acceptance of one's guilt are necessary aspects of spiritual and personal reformation. As Sonya advises Raskolnikov in 'Crime and Punishment,' after he confesses to her, '[a]cept suffering and redeem yourself by it, that's what you must do.' Dostoevsky, *Crime and Punishment*, *supra* n. 5, at 420.

Kairova, Kornilova, and Dzhunkosky are all cases of domestic violence, three of which involve violence towards children,¹⁹² and all of which end in acquittal of a seemingly guilty person. As one might expect, Dostoevsky is overwhelmingly critical of the acquittals, the lawyers involved, and the new legal system generally. However, in the Kornilova case, Dostoevsky plays an active role in obtaining the acquittal of a woman who threw her six-year-old stepdaughter from a window, employing many of the same psychological excuses he so hardily reviles and criticizes when attorneys, both fictional (Lebedev) and factual (Spasovich), use them.

6.1. The Kroneberg Trial: Spasovich v. Dostoevsky

The first case analyzed in detail by Dostoevsky is the Kroneberg case which took place in St. Petersburg District Court. Dostoevsky's description of the facts is as follows:

[A] father had whipped his child, a girl of seven, with excessive cruelty; according to the charge, he had treated her cruelly before this as well. A stranger . . . could not stand the screams of the tortured girl who, for a quarter of an hour . . . had cried out, 'Papa! Papa!' while being beaten with switches. The switches, according to the testimony of an expert, turned out not to be switches but *Spitzrutent* – that is, proper sticks –absolutely unthinkable to be applied to someone of seven.¹⁹³

Though Dostoevsky concedes that '[t]he father was acquitted . . . and that is a good thing'¹⁹⁴ and the current Code of Punishments' definition of torture is ambiguous and 'inapplicable given the measure of his crime,'¹⁹⁵ Dostoevsky takes the opportunity to criticize perhaps the most well-known defense attorney of his day, Vladimir Spasovich, for his vilification of the child, refusal to admit that Kroneberg's actions were morally wrong, and the corrupting and subversive nature of his artistic defense.

Dostoevsky begins his critique with a barrage of insults at the legal profession generally. He relates his personal experience: when arrested with the Petrashevsky group Dostoevsky's lawyer informed him that 'I was not guilty but that what I had done was absolutely right' despite the fact that Dostoevsky was 'completely guilty.'¹⁹⁶ He then characterizes lawyers more broadly as 'lying and . . . just doing it for the

¹⁹² The innocent suffering of children is a repeated theme in Dostoevsky's work, and is the chief reason why Ivan Karamazov refuses to believe in God.

¹⁹³ Fyodor Dostoevsky, *1 A Writer's Diary, 1873–76* 356 (Kenneth Lantz, trans.) (Northwestern University Press 1993) [hereinafter *Dostoevsky, 1 A Writer's Diary*].

¹⁹⁴ *Id.* at 358.

¹⁹⁵ *Id.* at 375.

¹⁹⁶ *Id.* at 360.

money.' A lawyer is a 'Shyster,' a 'Blood-sucker,' someone 'doomed to be dishonest,' and, repeating the epithet from 'The Adolescent,' a hired conscience.¹⁹⁷ Dostoevsky transitions to his critique of Spasovich's speech by calling him 'a remarkably talented lawyer' and his speech, 'a masterpiece of art;' however, Dostoevsky concludes, this masterpiece 'left an almost foul taste in my mouth.'¹⁹⁸ For Dostoevsky, a talented lawyer who gives artful speeches is far more dangerous than an ineffective one.

Perhaps Dostoevsky's greatest substantive problem with Spasovich's approach to the Kroneberg case is his focus on blaming the victim, in this case, a seven-year-old girl. This is not a unique or abstract tactic given the fact that 'Russian juries placed special weight on the moral character of victims.'¹⁹⁹ Nonetheless, Spasovich's vilification of the child as 'sly, a cry-baby, hard to manage,' a 'great one for bawling . . . who lies, who steals, who is untidy, and who has a nasty, secret vice' is according to Dostoevsky, 'the essential falsehood on which the case rests.'²⁰⁰ Dostoevsky contends that all these insinuations are derived from the fact that she did not recognize her father after three years of abandonment, stole a single prune once, and was generally quiet and withdrawn.²⁰¹ This vilification and stretching of facts is done artfully and subtly by Spasovich,²⁰² so that the jury does not consciously notice that he is defaming a seven-year-old girl in order to save the father who severely beat her. Dostoevsky calls this type of advocacy 'inconceivable and intolerable,' questioning '[w]hy was she splashed with so much filth and left with a stain that will never disappear?'²⁰³ Dostoevsky admonishes Spasovich:

Oh, acquit your client, Sir, as quickly as you can . . . But leave us, at least, our pity for this infant; do not judge her with such a serious air, as if you yourself believed in her guilt. This pity is our treasure, and it is a terrible thing to tear it out of our society.²⁰⁴

While Dostoevsky chastises Spasovich for his eloquence and exaggerations in defending his client and vilifying the beaten daughter, Dostoevsky uses similar techniques in his critique of the Kroneberg case. He emphasizes Kroneberg's western

¹⁹⁷ Dostoevsky, 1 *A Writer's Diary*, *supra* n. 193, at 360–61.

¹⁹⁸ *Id.* at 364.

¹⁹⁹ Rosenshield, *supra* n. 6, at 44.

²⁰⁰ Dostoevsky, 1 *A Writer's Diary*, *supra* n. 193, at 369.

²⁰¹ *Id.* at 369–72.

²⁰² For example, Spasovich, quickly escalates the child's prune theft, 'from prunes to sugar, from sugar to loose change, from loose change to banknotes is a straight path and an open road!' (*Id.* at 381).

²⁰³ *Id.* at 382–83.

²⁰⁴ *Id.*

roots; his education (a Law degree from 'the Central School' in Warsaw); that he was a member of the French army; and the fact he is living with a French woman in St. Petersburg who is not the mother of the child. Dostoevsky uses his literary powers to compare the woman who tried to prevent the beating and finally complained to the authorities to a 'mother hen standing before her chicks and spreading her wings to defend them.'²⁰⁵ Dostoevsky combats Spasovich's claim that the streaks on the little girl's back six days after the beating 'represented no serious injury' with reference to his time in Siberia. He claims that inmates who were whipped up to two thousand times with the same instrument used on the little girl '*had almost always completely healed* [emphasis in original]' given a similar rest period.²⁰⁶ Dostoevsky asks rhetorically: 'Do you really believe that this was not a case of torture? Did this little girl not suffer and cry, "Papa, Papa!" for a quarter of an hour under the dreadful sticks?'²⁰⁷

Dostoevsky heightens the pathos and sympathy his readers might naturally feel for the little girl by imagining the psychology of tortured children:

Their hearts are full of innocent, almost unconscious love, and blows such as these cause a grievous shock and tears that God sees and will count. For their reason is never capable of grasping their full guilt . . . Have you seen a child cowering in a corner, trying to hide, and weeping there, wringing his hands (yes, wringing his hands – I've seen it myself) and *beating his chest with his tiny fist* [emphasis in original], not knowing himself what he is doing, not clearly understanding his own guilt or why he is being tormented but sensing all too well that he is not loved?²⁰⁸

Dostoevsky plays to the sympathies of his reading audience in trying to convince them of the moral guilt of both Kroneberg and Spasovich, while at the same time blaming Spasovich for using the same techniques in the courtroom in characterizing the little girl. The difference is that Dostoevsky is not a 'hired conscious,' but a powerful writer with a highly developed Christian moral compass, trying to convince his readers of what is morally right and wrong, not trying to make money and earn fame by gaining acquittals for guilty clients.

Dostoevsky admits that Spasovich has the law on his side in this case; however, he 'cannot help but see something deeply false.'²⁰⁹ The law of torture itself needs to face an '*independent* examination [emphasis in original]' to 'make the laws conform

²⁰⁵ Dostoevsky, 1 *A Writer's Diary*, *supra* n. 193, at 371.

²⁰⁶ *Id.* at 374.

²⁰⁷ *Id.* at 375.

²⁰⁸ *Id.* at 380.

²⁰⁹ *Id.* at 384.

to the nature of our society. I can't decide what we need here; I'm not a lawyer.²¹⁰ This criticism of the substantive law is fleeting and secondary to Dostoevsky's primary critique of the legal profession as a corrupting agent, calling its establishment, 'an excellent thing but somehow also a sad one.'²¹¹ Dostoevsky imagines modern law schools training lawyers to

[H]ave agile minds and arid hearts . . . a school in which every healthy feeling is distorted when the occasion demands distortion; a school that teaches every possible method of personal attack . . . based on need and demand, whose techniques have been elevated to the level of a principle and . . . have acquired a luster of heroism that is universally applauded.²¹²

Dostoevsky's nightmarish vision here is of law school as a breeding ground for future Spasoviches who manipulate the Russian justice system to undermine the moral ideals of Russian Orthodoxy.

After all this criticism of the courts and lawyers specifically, Dostoevsky still does not believe the courts and the legal profession are fundamentally bad, stating: 'I would only like us all to become a little better . . . I am an incorrigible idealist.'²¹³ Through Dostoevsky's immense and harsh criticism of the legal profession and Spasovich in particular in the Kroneberg case, he convinces his readers, using literary and rhetorical techniques similar to those of Spasovich, that Kroneberg's actions were morally reprehensible, and that Spasovich's defense was equally amoral, but he is not trying to undermined the new courts as an institution or instrument for positive social change.

6.2. The Kairova Trial: A Typical Case of Moral Depravity

In the May 1876 issue of 'A Writer's Diary,' Dostoevsky responds to a reader's letter that takes issue with the acquittal of Kairova, a Russian actress who brutally slashed her lover's wife with a razor, and the audience that broke out in applause as the verdict was read.²¹⁴ Dostoevsky thinks his reader is 'overly harsh,' calls the case 'a typical phenomena of today's life,' and laments: 'I am just happy Kairova was released; I am only unhappy that she was acquitted.'²¹⁵ This theme is continually brought up in Dostoevsky's assessment of this case and the legal system generally. Dostoevsky is not concerned with punishing those he thinks are wrongly acquitted. In fact, he

²¹⁰ Dostoevsky, 1 A Writer's Diary, *supra* n. 193, at 384.

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.* at 471–72.

²¹⁵ *Id.* at 472–74.

does not seem to want any of the guilty parties to be actually punished (perhaps due to his own experience with the Russian penal system). Instead the system is failing because 'evil must still be called evil, despite any humane feelings.'²¹⁶ Dostoevsky uses his favorite model of Jesus in explicating his position: 'He forgave the guilty woman, "Go forth and sin no more." That means that He still called the sin a sin; He forgave it, but He did not justify it.'²¹⁷ It is the justification of clearly 'evil' or 'sinful' actions that disturbs Dostoevsky the most about the new court system, not that the people who committed the sin do not face earthly punishment.

Despite Dostoevsky's lukewarm reception of his reader's criticism of the Kairova trial, Dostoevsky does examine the case in some detail, taking issue principally with the confusing jury instruction and the characterization of Kairova by her defense attorney, Utin. The question posed to the jury, upon request of the prosecution, was as follows:

Did Kairova, *having premeditated her act*, inflict on Alexandra Velikanova, *with intent to take her life*, several wounds with a razor on her neck, head and chest, *but was prevented from the ultimate consummation of her intent of murdering* by Velikanova herself or her husband [emphasis in original]?²¹⁸

Dostoevsky responds: 'One can only give an affirmative answer to a question posed that way if one has supernatural, divine omniscience.'²¹⁹ There is just no way of knowing what Kairova would have done if she was not stopped. Knowing that exile and horrific punishment faced Kairova if she was convicted, the jury erred on the side of the defendant. Dostoevsky does not blame the jury for the verdict: '[W]e have the conscience of the jury, and that is something great and important; that is the good service rendered by the new courts.'²²⁰ For Dostoevsky, the jury is never truly at fault for their potentially morally suspect verdicts, it is the confusing instruction, ambiguous statute, or deceptive defense attorneys who prevent the juries from making the right decisions.

Much as Dostoevsky criticized Spasovich, for his defense of Kroneberg, he does the same for Utin's defense of Kairova. According to Dostoevsky, Utin 'almost sing[s] praises to the crime.'²²¹ Utin analogizes Kairova's reaction to the return of her lover's wife to that of 'a lioness whose cub is being taken away.'²²² Utin claims: 'To give him

²¹⁶ Dostoevsky, 1 *A Writer's Diary*, *supra* n. 193, at 485.

²¹⁷ *Id.*

²¹⁸ *Id.* at 476.

²¹⁹ *Id.*

²²⁰ *Id.* at 478.

²²¹ *Id.* at 484.

²²² *Id.* at 482.

up without a struggle would not be the act of a woman . . . One would have to be made of stone; one would have to be without a heart.²²³ Dostoevsky mocks this praise of Kairova as a model of passionate womanhood: 'And if there had been a woman who at such a moment were capable of throwing away the razor and finding another solution to the problem, then it follows that you would have called her not a woman but a stone, a woman without a heart.'²²⁴ Dostoevsky takes special issue with Utin's use of the Gospels, quoting Christ with reference to Kairova: 'She loved much and much is forgiven her.'²²⁵ Dostoevsky responds: 'Christ did not at all have *that kind of love* in mind . . . I think it a sacrilege to refer here to this great and touching place in the Gospels [emphasis in original].'²²⁶ Dostoevsky is particularly concerned with the picture Utin presents, again not because of the legal outcome it helps precipitate but because 'the tribunes of our new courts are truly a school of ethics for our society and our People. This is the school in which our People learn truth and morality; how, then, can one listen indifferently to the things one hears from these tribunes?'²²⁷ Dostoevsky's primary concern is with morality and the courts sending the wrong moral message to the Russian people through the eloquent amoral defenses and acquittals of people who have acted criminally, and, more importantly to Dostoevsky, have sinned.

6.3. The Kornilova Trial: 'A Case That is Not as Simple as It Seems'²²⁸

At the very end of his May 1876 article on the Kairova case, Dostoevsky mentions the case of a 'step-mother who threw her six-year-old stepdaughter out of a fourth-floor window, but the child got up quite unharmed.'²²⁹ He does so explicitly to emphasize the extent to which lawyers will defend indefensible actions. He parodies an imagined closing statement:

Gentlemen of the jury, it is only natural that she should conceive a hatred for this child . . . in a moment of despair, in a passing fit of madness, scarcely knowing what she was doing, she seizes the girl and . . . Gentlemen of the jury, who among you would not do the same? Which one of you would not have thrown the girl out the window?²³⁰

²²³ Dostoevsky, 1 *A Writer's Diary*, *supra* n. 193, at 483.

²²⁴ *Id.* at 484.

²²⁵ *Id.* 489.

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ Dostoevsky's title for his October 1876 article on the Kornilova case.

²²⁹ Dostoevsky, 1 *A Writer's Diary*, *supra* n. 193, at 488.

²³⁰ *Id.* at 488–89.

This line of parody and critique of what might happen in the Kornilova trial is fully consistent with Dostoevsky's previous articles; however, Dostoevsky completely reverses his position when he picks up the topic again in October, after Kornilova has been convicted.

Dostoevsky begins his October article by restating his earlier argument that 'evil was *almost* acknowledged as good' in recent acquittals and that this stemmed from 'a misunderstanding of the fact that in court the first thing, the very first principle, is to define and specify, as far as possible, what is evil and proclaim it publicly as evil.'²³¹ However, Dostoevsky insists that after hearing about the verdict in the Kornilova case (guilty with a sentence of two years and eight months of hard labor, for the crime she readily admitted to), '[t]his is a time when they should have let her off; this time they should have said: "There was no crime . . . she did not throw the girl out the window."²³² Dostoevsky's sincere advocacy of a position he coldly parodied is, according to him, attributable to 'a most legitimate legal ground for acquitting the accused: the fact she was pregnant.'²³³ Dostoevsky takes the psychological significance of her pregnancy as the essential reason why she should be acquitted.

After railing against the psychological tactics used by defense attorneys throughout his fiction and non-fiction, Dostoevsky tries his hand at doing just that, not mockingly or in order to reveal the absurdity of another attorney's argument (as he did with Spasovich), but in a legitimate attempt to evoke sympathy for the accused and perhaps get her case reversed. Dostoevsky contends that pregnancy can 'take a strange and fantastic hold on her psyche,' assuming 'extraordinary, abnormal, almost bizarre forms.'²³⁴ He recounts an anecdote about a pregnant woman who stole compulsively and creates a literary psychological portrait of the accused: '[L]eft alone with her stepdaughter, abused by her husband and angry at him, she might have thought, "What if I throw this wretched little girl out the window?"²³⁵ If Spasovich had characterized the victim step-daughter as a 'wretched little girl' and the accused as 'abused,' he surely would have been subject to Dostoevsky's wrath, but here Dostoevsky himself elevates the accused and blames the victim.

Dostoevsky uses his literary abilities to imagine the pathetic scene of the convicted woman and her family. He writes: 'So she will go to Siberia, perhaps, in conscience and in the depths of her soul considering herself guilty . . . never will it occur to her

²³¹ Dostoevsky, 1 *A Writer's Diary*, *supra* n. 193, at 642.

²³² *Id.* at 643.

²³³ *Id.* For an account that Dostoevsky's about face as attributable to his desire to construct himself in 'Diary' as a 'child of, and as father to, a new Russia' (see Murav, *supra* n. 12, at 127–155). According to her thesis, here Dostoevsky takes on the forgiving father role, whereas in the previous cases, he is the offended child.

²³⁴ Dostoevsky, 1 *A Writer's Diary*, *supra* n. 193, at 644.

²³⁵ *Id.* at 645.

. . . that had she not been pregnant, nothing would have happened.²³⁶ Dostoevsky heaps on the pathos, claiming that her son is ‘condemned to Siberia before he’s even born,’ imagining that the little girl will visit the accused in the prison hospital and ‘will likely run errands every day from her father to her “sweet mummy,” taking fancy loaves of bread: “Here, Mummy,” she’ll say, “Daddy’s sent you some tea and sugar as well.”’²³⁷ He imagines the accused will ask forgiveness of her husband and that they will have a tearful scene of remorse and regeneration at the train station before she leaves for Siberia. Dostoevsky is clearly using his artistic ability to the same intended effect he continually chastises lawyers for using their oratorical abilities. Presumably, Dostoevsky believes he is justified because of his sincere belief – based on Kornilova’s immediate confession and pregnancy – that she was culpable for her action and not actually responsible because of her psychological state.²³⁸

Dostoevsky was not content simply to write in his ‘Diary.’ He actively pursued the case, visiting the accused and her family, seeking a royal pardon on their behalf, helping to get the verdict overturned, and finally exalting in Kornilova’s acquittal at retrial. Dostoevsky visited Kornilova five days after she gave birth and wrote about it in the December issue of ‘Diary,’ as well as letters to his friends. In a letter to a lawyer friend, Konstantin Maslyannikov, on November 5, 1876, Dostoevsky exalts, ‘in my piece, I had *almost* guessed literally everything [emphasis in original].’²³⁹ His novelistic invention of her regeneration is confirmed by the observations of a prison wardress who noticed a significant change in Kornilova’s attitude and his own observation that ‘she is obviously tormented by her reminiscences. She has deep and sincere grief over her past strictness toward the child.’²⁴⁰

Convinced his instincts were correct, Dostoevsky aggressively pursued her release, writing again to Maslyannikov in late November: ‘I’m especially glad that you replied; you are the whole hope, because the Senate, of course, will not decide in her favor, and then right away a request for a royal pardon, and you surely will help as you promised.’²⁴¹ To Dostoevsky’s surprise the Senate did quash the court’s verdict on the basis of ‘a violation of Article 693 of the Criminal Code,’²⁴² which forbids an individual from testifying as both an expert and a witness.²⁴³

²³⁶ Dostoevsky, 1 *A Writer’s Diary*, *supra* n. 193, at 645.

²³⁷ *Id.* at 646.

²³⁸ Kornilova confessed her crime at the police station right after she threw her step daughter out the window.

²³⁹ *Fyodor Dostoevsky to Konstantin Maslyannikov, November 5, 1876*, in 4 *Fyodor Dostoevsky Complete Letters* 338 (David A. Lowe, ed. & trans.) (Ardis 1991) [hereinafter 4 *Fyodor Dostoevsky Complete Letters*].

²⁴⁰ Dostoevsky, 1 *A Writer’s Diary*, *supra* n. 193, at 726.

²⁴¹ *Fyodor Dostoevsky to Konstantin Maslyannikov, November 21, 1876*, in 4 *Fyodor Dostoevsky Complete Letters*, *supra* n. 239, at 342.

²⁴² Dostoevsky, 1 *A Writer’s Diary*, *supra* n. 193, at 726.

²⁴³ Murav, *supra* n. 12, at 135.

At retrial, the jury acquitted Kornilova in fifteen minutes, despite the prosecutor warning the jury 'not to yield to the influence of "certain talented writers."²⁴⁴ In the April 1877 issue of 'Diary,' Dostoevsky lauds the psychological experts whose testimony supported his pregnancy hypothesis as 'luminaries' and 'remarkable.'²⁴⁵ He describes the happy scene of the acquittal: 'Many crossed themselves, some congratulated each other and shook hands.'²⁴⁶ According to Dostoevsky, the entire incident left Kornilova 'with the impression of the enormous lesson she had learned, a lesson that would last for her whole life, and an impression of the clear intervention of the hand of God in this case – beginning with the miraculous sparing of the child.'²⁴⁷

Some did not see the hand of God in the acquittal, but Dostoevsky's hand meddling in the same way he saw Spasovich meddling in the Kroneberg case. An article in the *Northern Messenger* attacked Dostoevsky's involvement in the case as naïve and ultimately justifying child abuse.²⁴⁸ In the December 1877 issue of 'Diary,' Dostoevsky defended himself by focusing on the regeneration of Kornilova and her reconciliation with the stepdaughter.²⁴⁹

For Dostoevsky, the justice system worked in the Kornilova trial, even if it was only with his helping hand. If one considers Dostoevsky's unyielding support of Kornilova, and her eventual acquittal, in the context of his previous fiction, it becomes clear that the chief explanation does not stem from her pregnancy, as Dostoevsky himself reports, or some change in Dostoevsky's opinion of what the courts should stand for, but from Kornilova's ability to admit her guilt, admit that her actions were evil and sinful, and then seek forgiveness. This is all Dostoevsky wants out of the justice system. As the other cases illustrate, he never seeks actual punishment for the obviously guilty, he only wants a statement of the guilt to reinforce the Christian culpability and regeneration through forgiveness and suffering that he so deeply believes is the key to saving humanity.

Kornilova is a Dostoevsky hero incarnate, a woman who committed a terrible crime in psychological agitation and is reborn through acceptance of her crime, suffering, and seeking forgiveness. Dostoevsky believes there is no danger to society in letting her go free, because she has already confessed her guilt and is actively seeking forgiveness from those she offended. Dostoevsky's desire to see his worldview substantiated in the person of Kornilova trumps his more general

²⁴⁴ Quoted in Murav, *supra* n. 12, at 135.

²⁴⁵ Fyodor Dostoevsky, *2 A Writer's Diary, 1877–81* 963 (Kenneth Lantz, trans.) (Northwestern University Press 1994) [hereinafter Dostoevsky, *2 A Writer's Diary*].

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ Quoted in *id.* at 1224.

²⁴⁹ Rosenshield, *supra* n. 6, at 85–89. Rosenshield argues that the Kornilova articles can be viewed as an allegory about the fate of the Russian people and their need for regeneration and redemption.

concern about acquittals creating the perception of amoral blamelessness in the minds of the Russian people.

6.4. The Dzhunkovsky Trial: Dostoevsky as Moral Judge

In the July and August 1877 issue of 'Diary',²⁵⁰ Dostoevsky comments on yet another criminal case decided by the new courts, the trial of Major Alexander Afansevich Dzhunkovsky and his wife, Ekaterina Petrovna Dzhunkovsky, for the abuse of three of their children, Nikolai, Alexander, and Olga.²⁵¹ The Dzhunkovskys admittedly locked their children in a toilet for long stretches, left them without food, and forced them to eat and sleep in servants' rooms. The children were forced to massage their mother's feet for hours on end, and were beaten with fists, 'birch rods, branches, and a horse whip' for meager infractions²⁵² – all this, despite the fact that the Dzhunkovskys were quite rich landowners and could afford to educate and care for their children.²⁵³ The Dzhunkovskys were acquitted on all counts.

Dostoevsky, having learned his child-abuse law from the Kroneberg case, asks rhetorically:

And why not? What's remarkable is not that they were acquitted but that they were charged and brought to trial. Who – what court – could have found them guilty, and of what? Oh, of course there is a court that could find them guilty and show clearly of what, but it is not a criminal court with jurors who judge by written law.²⁵⁴

Dostoevsky is alluding to the fact that not only is the Russian system incapable of dealing with this type of behavior, but all man-made law is incapable of punishing the Dzhunkovskys' particular type of abusive behavior. With this in mind Dostoevsky imagines a six-page 'Speech by the Presiding Judge' that should be given to the Dzhunkovskys upon their release.

Dostoevsky begins his imagined speech, which is more of a moral lecture on child-raising and the reformatory power of God's love than any sort of legal explanation, by reminding the defendants that 'apart from this court there is another court – the court of your own conscience. You must act so that this court as well would acquit

²⁵⁰ From May – August 1877 'Diary' was printed bi-monthly, rather than monthly as it had previous been and continued to be for the rest of 1877, halting in 1878–79, and finishing with one final issue in 1880.

²⁵¹ Dostoevsky, 2 *A Writer's Diary*, *supra* n. 245, at 1044.

²⁵² *Id.* at 1045–47. Other accusations included being forced to live in 'a filthy state' with 'shabby clothes' (*Id.*).

²⁵³ *Id.* at 1047.

²⁵⁴ *Id.*

you.²⁵⁵ Dostoevsky admonishes the Dzhunkovskys for their 'indolence, indifference' and hatred towards their children, warning that 'the birch rod will not correct him [the child] but will only corrupt him.'²⁵⁶ He counsels the defendants: 'The most important thing here is that both sides will have to forgive a great many things,' and to blame themselves and not their children.²⁵⁷ If they can do this, it means that 'God has made you see clearly and has enlightened your conscience.'²⁵⁸ Dostoevsky finishes by emphasizing the power and necessity of love: 'And so, may God help you in your decision to put right your failure. Seek out love and store it up in your hearts. Love is so all-powerful that it can regenerate even us.'²⁵⁹

This pedagogical speech that Dostoevsky writes with such moral certainty is ultimately what he wants out of a criminal justice system. He does not believe in punishment, but wants the accused and society to know that their actions were morally wrong and that they can reform themselves by taking responsibility and seeking forgiveness through God and active love. Lawyers undermine this possibility by making excuses and moral justifications for the accused, turning an opportunity for moral education into a further cause of moral degeneration in society. Unlike both the arbitrary pre-reform courts and the westernized courts of the reform era, in Dostoevsky's ideal courtroom, everyone leaves with a more definite sense of right and wrong and an understanding of what they can do to reform their behavior. But no one leaves in shackles.

7. 'The Brothers Karamazov': The Final Verdict is 'A Judicial Error'²⁶⁰

'The Brothers Karamazov,' completed in 1880, less than a year before Dostoevsky's death,²⁶¹ represents a capstone to both Dostoevsky's literary career and his criticism of the Russian judicial system. It is in the trial of Dmitri Karamazov, which takes up the entirety of the final book of the novel, where Dostoevsky presents his final vision of the reformed court system so highly praised in Russia and the western world. Although the narrator professes: 'I am far from considering myself capable of recounting all that took place in court, not only with the proper fullness, but even

²⁵⁵ Dostoevsky, *A Writer's Diary*, *supra* n. 245, at 1054.

²⁵⁶ *Id.* at 1054–56.

²⁵⁷ *Id.* at 1057.

²⁵⁸ *Id.*

²⁵⁹ *Id.* at 1059.

²⁶⁰ The title of the last book of 'The Brothers Karamazov.'

²⁶¹ Dostoevsky died of a lung hemorrhage on January 28, 1881 in St. Petersburg at the age of 59. See Frank, *supra* n. 40, at xxiv.

in the proper order;²⁶² 'A Judicial Error' presents a clear and highly stylized vision of a post-reform criminal trial. Unlike Dostoevsky's earlier fiction, this vision is remarkably comprehensive, including a great many subtle details of court organization and procedure that neither his earlier fiction nor his non-fiction touched upon. Unlike Dostoevsky's non-fiction, where he has to characterize the facts to convince his readers of his perspective, Dostoevsky completely controls the facts of Fyodor Pavlovich's murder and shapes the trial to amplify his concerns about the post-reform criminal system.

7.1. A Faithful Rendition

Before reaching Dostoevsky's criticism of the courts in 'A Judicial Error,' Dostoevsky's apparent historical fidelity and close attention to detail in Dmitri's trial merits some examination. The jury consists of 'four of our officials, two merchants, and six local peasants and tradesman.' Even the officials were 'minor persons of low rank . . . scarcely known in our society . . . who most assuredly had never read a single book.'²⁶³ This account of illiteracy and rank among the jurors is remarkably consistent with demographic data of jury composition at the time.²⁶⁴

Dostoevsky was no less accurate in describing the witness procedures in the Karamazov trial. For example, when Dmitri's brothers, Alyosha and Ivan are brought to the stand, Dostoevsky is careful to point out that neither is under oath and the presiding judge is the first to question them.²⁶⁵ After Alyosha's testimony, the presiding judge asks Dmitri to confirm his brother's testimony, and he is permitted to speak after his attorney's closing argument.²⁶⁶ These careful procedural descriptions indicate to his contemporary readers that Dostoevsky is truly an observant student of the modern court, and lends credence to the satirically warped carnivalization and biting criticism that is at the heart of his depiction.

7.2. 'Bread and circuses!'²⁶⁷ Trial as Carnival

Preeminent Russian literary theorist and Dostoevsky scholar Mikhail Bakhtin introduced the theory of literary carnival in the early twentieth century and applied it to the works of Dostoevsky in his seminal work 'Problems of Dostoevsky's Poetics.'²⁶⁸

²⁶² Fyodor Dostoevsky, *The Brothers Karamazov* 656 (Richard Pevear & Larissa Volokhonsky, trans.) (Vintage Books 1990) [hereinafter Dostoevsky, *The Brothers Karamazov*].

²⁶³ Dostoevsky, *The Brothers Karamazov*, *supra* n. 262, at 659–60.

²⁶⁴ See Afanas'ev, *supra* n. 104, at 214–30; *supra*, at 24–25.

²⁶⁵ Dostoevsky, *The Brothers Karamazov*, *supra* n. 262, at 675–85.

²⁶⁶ *Id.* at 678–89.

²⁶⁷ Ivan rants on the witness stand: 'If there were no parricide they'd all get angry and go home in a foul temper . . . Circuses! "Bread and circuses!"' (*Id.* at 686).

²⁶⁸ Mikhail Bakhtin, *Problems of Dostoevsky's Poetics* (Caryl Emerson, ed. & trans.) (University of Minnesota Press 1984).

Carnival is where 'all distinctions are made relative . . . all decorum, propriety and distinction is suspended . . . What predominates in carnival is not the display of power and rank, but laughter that destroys all distinctions.'²⁶⁹ One of the necessary elements for carnival is 'the making public of specifically nonpublic spheres of life.'²⁷⁰ There is perhaps no greater instance of this than a criminal trial. Dostoevsky places a great emphasis on the public nature of the trial and the spectacle it produces. The narrator describes the popularity and absurdity of the scene:

By the day visitors had come to us . . . from several other Russian cities . . . [a]ll the tickets were snapped up . . . certain quite unusual seats were even reserved behind the table at which the judges sat: a whole row of chairs appeared there . . . the lawyers alone, who arrived from all over, turned out to be so numerous that no one knew where to put them.²⁷¹

The crowd is so numerous that it is physically impinging on the space reserved for the official participants in the trial.

The views of the different groups in the crowd also reveal a subversion of the traditional moral and legal concerns inherent in a murder trial. The women are described as 'hysterical' and 'greedy' in their support of Dmitri not because they believe in his innocence,²⁷² but 'because an idea had been formed of him as a conqueror of women's hearts.'²⁷³ As a result, 'all the husbands of these ladies arrived in court feeling not only ill disposed towards the defendant but even resentful of him . . . [T]he majority of men decidedly wished to see the criminal punished.'²⁷⁴ As for the cavalcade of lawyers who traveled to attend the trial, they 'cared not about the moral aspect of the case, but only, so to speak, about its contemporary legal aspect.'²⁷⁵ The women want Dmitri acquitted because of his amorous reputation, the men want him to be convicted for the same reason, and the lawyers want to see a show of legal tactics. No one in the crowd is concerned about whether Dmitri actually committed the crime and the moral ramifications of his conviction or acquittal. The crowd is there to enjoy the drama of it all, to see the hero (in the case of the women) exonerated, or the villain (in the case of the men) denounced, while the lawyers are

²⁶⁹ Murav, *supra* n. 12, at 60.

²⁷⁰ Mikhail Bakhtin, quoted in *id.*

²⁷¹ Dostoevsky, *The Brothers Karamazov*, *supra* n. 262, at 656–58.

²⁷² The ladies think after a few witnesses: 'He is guilty, but he will be acquitted because of humaneness, because of the new ideas, because of the feelings that are going around nowadays' (*id.* at 663).

²⁷³ Dostoevsky, *The Brothers Karamazov*, *supra* n. 262, at 657.

²⁷⁴ *Id.* at 657–58.

²⁷⁵ *Id.* at 658.

simply there for the technical mastery of the actors (lawyers). Whether the court reaches the correct outcome, either morally or legally, is wholly irrelevant.

The spectacle of the trial is not simply a matter of the presence of the crowd; the legal actors are depicted in such an estranged comical fashion that it becomes difficult for the reader to take the trial seriously.²⁷⁶ The crowd stands ‘through the whole “case” in a closely packed lump;’ the prosecutor appears ‘somehow too pale, with an almost green face;’ and the presiding judge has a ‘hemorrhoidal face’ and wears ‘a red ribbon’ in his hair.²⁷⁷ The four officials sitting on the jury have ‘old wives,’ and ‘heap[s] of children, perhaps even going barefoot;’ and together ‘have never read a single book;’ while one of the merchant jurors wears ‘some medal around his neck on a red ribbon.’²⁷⁸ Dmitri himself appears, ‘a terrible dandy;’ and his defense attorney has ‘small and inexpressive’ eyes that are ‘so unusually close together’ that ‘his physiognomy had something sharply birdlike about it.’²⁷⁹ These mildly grotesque descriptions help illustrate the absurd nature of the trial and the carnivalesque reversal of the solemnity regularly associated with murder trials.

The carnival is further expanded with the strange exclamations of the participants, not at all indicative of the gravity one would expect from a murder trial. For instance, when Dmitri hears of Smerdyakov’s death, he exclaims in open court: ‘The dog died like a dog!’ When he is asked how he pleads, he exclaims: ‘I plead guilty to drunkenness and depravity . . . Dmitri Karamazov is a scoundrel, but not a thief!’²⁸⁰ Later when Dmitri compares the faithfulness of a servant testifying against him to that of ‘seven hundred poodles,’ he is reprimanded, and then exclaims: ‘Then I am, I am a poodle!’²⁸¹ Ivan gets in on the absurd, yet tragic, drama, entering to testify in half-delirium, claiming: ‘I’m not mad, I’m simply a murderer.’²⁸² When asked to present a witness to verify his truthful account of the events,²⁸³ he says: ‘He’s got a tail, Your Honor, you’d find him inadmissible . . . Why, why is everything in the world so stupid!’ In response to his testimony, Katerina Ivanovna presents contradictory evidence and then begins ‘sobbing, with loud shrieks,’²⁸⁴ but is calmed down in time to condemn Dmitri. All this shows a trial out of

²⁷⁶ This descriptive style is reminiscent of one of Dostoevsky’s predecessors and literary heroes, Nikolai Gogol.

²⁷⁷ Dostoevsky, *The Brothers Karamazov*, *supra* n. 262, at 657–59.

²⁷⁸ *Id.* at 660.

²⁷⁹ *Id.*

²⁸⁰ *Id.* at 661.

²⁸¹ *Id.* at 666.

²⁸² *Id.* at 686.

²⁸³ In fact, Smerdyakov is the murderer of Fyodor Pavlovich, but Ivan’s failure to act and the subversive ideas he placed in Smerdyakov’s head weigh heavy on his conscience.

²⁸⁴ Dostoevsky, *The Brothers Karamazov*, *supra* n. 262, at 687.

control, a comedy of errors, a public space where the controlling power of the judge and jury are subverted by the outbursts of the witnesses and the defendant.

In the trial of Dmitri Karamazov the serious task of establishing guilt or innocence, of condemning a man or letting him go free, is reduced to a theatrical show. In fact, after Katerina's intervention, the narrator proclaims: 'I suppose our lady spectators were left satisfied: the spectacle had been a rich one.'²⁸⁵ For Dostoevsky, the spectacle and the carnival nature of the trial itself is a problem, not only because such trials serve as perverse entertainment, rather than the moral education he had envisioned, but because spectators mistake the trials for moral education and are thereby easily misled by expert witnesses and lawyers.

7.3. Expert Witnesses: Three Heads are Equal to None²⁸⁶

Despite the anomalous praise Dostoevsky heaps on the medical expert (who happens to agree with him) in the Kornilova trial, medical and psychological expert witnesses have been a point of Dostoevsky's ridicule dating back to 'Crime and Punishment.' Dostoevsky saves his most virulent and comical depictions for 'The Brothers Karamazov.'²⁸⁷ Three expert doctors testify as to Dmitri's mental state, and the narrator admits, the results are 'partly even comic, as it were, owing to some disagreement among the doctors.'²⁸⁸ The first doctor to testify is a local German by the name of Dr. Herzenstube. He testifies that Dmitri's 'mental abnormality is self-evident' based on the fact that 'he kept his eyes fixed straight in front of him' and not at the ladies to his left.²⁸⁹ The famous Moscow doctor, 'considered the defendant's condition abnormal, "even in the highest degree," because he 'ought not to have looked so fixedly in front of him . . . that he ought to have been looking . . . precisely to the right, seeking out his defense attorney.' Finally, the young local Dr. Varinsky concludes that 'by looking straight in front of him, he thereby precisely proved his perfectly normal state of mind.'²⁹⁰ To this Dmitri exclaims: 'Precisely right!'²⁹¹

The author, the reader, and the narrator all know that Dmitri is not abnormal and was not abnormal at the time of the murder, which he did not commit.

²⁸⁵ Dostoevsky, *The Brothers Karamazov*, *supra* n. 262, at 692.

²⁸⁶ While testifying at the trial, one of the medical experts, Dr. Herzenstube, tries to say the phrase two heads are better than one: 'But the Russian proverb says: "It is good when someone has one head, but when an intelligent man comes to visit, it is better still, for then there will be two heads and not just one . . ."' (*Id.* at 673).

²⁸⁷ For a discussion of similar passages, drawing the conclusion that the medical experts (Hertztrube, in particular) are depicted as victims of the judicial system, see Rosenshield, *supra* n. 6, at 141–45.

²⁸⁸ Dostoevsky, *The Brothers Karamazov*, *supra* n. 262, at 671.

²⁸⁹ *Id.*

²⁹⁰ *Id.* at 673.

²⁹¹ *Id.*

However, Dostoevsky gets his point across comically by having all three 'experts' cite the same observation for mutually exclusive conclusions. All expert testimony is highly malleable: the experts can reach different conclusions based on their own biases, imprecise observations, which side sought their testimony, and other selfish motivations.²⁹² To Dostoevsky, medical and psychological experts (unless they justify his own personal intuition, like the Kornilova expert) have no special ability to discern the mental state of the accused based on their observations, just as lawyers and juries have no special ability to discern the truth about a crime based on the evidence and testimony of witnesses.

7.4. Ippolit Kirillovich v. Fetyukovich: A Selfish Duel

While the carnivalized nature of Dmitri's trial persists throughout 'A Judicial Error,' Dostoevsky spends about two thirds of the section on the speeches of the two attorneys. Consistent with his earlier writings, Dostoevsky is overtly critical of their tactics, motivations, and ultimate conclusions. The prosecutor, Ippolit Kirillovich, is portrayed as a vain, middling careerist, who sees the Karamazov trial as his last opportunity to demonstrate his merit to the world. Ippolit has a 'passion for psychology,' is 'too ardent and morbidly susceptible,'²⁹³ and is 'trembling with the desire to "save society."'²⁹⁴ In short, Ippolit Kirillovich is sincerely desires to convict Dmitri and reinforce the moral underpinnings of traditional Russian society, but also sincerely desires to see his career resurrected and demonstrate his talents to the public.

Fetyukovich, Dmitri's attorney, is essentially the literary double of Spasovich, the famous attorney Dostoevsky ardently criticized for his defense of Kroneberg.²⁹⁵ Fetyukovich is the reason lawyers come to the trial from all over Russia: 'His talent was known everywhere, and this was not the first time he had come to the provinces to defend a celebrated criminal case. And after his defense such cases always became famous all over Russia.'²⁹⁶ Fetyukovich is fully aware that the audience is there to see him perform, and his principal motivation is not to ensure Dmitri's acquittal,²⁹⁷ but to impress the audience with his oratory, logic, and contemporary ideas.

²⁹² Dostoevsky more than hints that Herzenstube takes such a definitive position because the famous Moscow doctor had been making 'several extremely insulting comments with respect to Dr. Herzenstube's abilities,' and that the Moscow doctor took his position only to further humiliate Herzenstube (Dostoevsky, *The Brothers Karamazov*, *supra* n. 262, at 671–73).

²⁹³ *Id.* at 658.

²⁹⁴ *Id.* at 692.

²⁹⁵ Rosenshield, *supra* n. 6, at 37.

²⁹⁶ Dostoevsky, *The Brothers Karamazov*, *supra* n. 262, at 658.

²⁹⁷ It becomes clear through Fetyukovich's speech that he does not, in fact, believe that Dmitri is not-guilty.

Before the closing arguments, Fetyukovich demonstrates his skill by undermining the morality of the prosecution's witnesses without really examining the substance of their testimony. Fetyukovich chides Grigory for drinking a 'tumbler and a half' of pure spirits on the night in question and not knowing what year it is,²⁹⁸ he exposes Rakitin for taking money for bringing Alyosha to Grushenka,²⁹⁹ and outs Trifon Borisovich as a thief.³⁰⁰ As the narrator states, 'Fetyukovich succeeded in morally tainting each one of them and letting them go with their noses somewhat out of joint. Amateurs and lawyers were filled with admiration, and only wondered, again, what great and ultimate purpose all this could serve.'³⁰¹ Though the Russian system does warrant Fetyukovich's close attention to the morality of witnesses, the 'ultimate purpose' Fetyukovich is serving with his tricky cross-examinations is his own aggrandizement and perpetuation of his reputation as a brilliant jurist.

Ippolit Kirillovich 'put his whole heart and all the intelligence he possessed' into his closing argument,³⁰² with the result being the creation of his own psychological novel fabricated out of the evidence and testimony given at the trial. Before reaching the facts of the case, Ippolit begins with morality. He relates stories of horrible crimes, recently brought in the Russian court, noting that the Russian people 'pretend that we are horrified, while, on the contrary, relishing the spectacle.'³⁰³ He then alludes to Gogol's image of Russia as a Troika³⁰⁴ as 'innocently infantile sunnymindedness' claiming: '[I]t would be impossible to arrive at anything sensible with such horses!'³⁰⁵ Ippolit is rewarded with applause for his opening literary and cultural critique, which has absolutely nothing to do with the case at hand.

Ippolit is spurred on by the applause and turns to characterizing the Karamazovs to set the stage for his own novel. The father, Fyodor Pavlovich is a 'wicked cynic and sensualist,' Ivan 'no longer believes in anything,' Smerdyakov is a 'sick idiot' whom Ivan 'horrified . . . with his spiritual unrestraint,' Alyosha is 'pious and humble,' but contains 'that timid despair that leads so many in our poor society, fearing its cynicism and depravity, and mistakenly ascribing all evil to European enlightenment' and as

²⁹⁸ Grigory is Fyodor Pavlovich's loyal servant who was struck by Dmitri the night of the murder.

²⁹⁹ Rakitin is a socialist seminarian and cousin of Grushenka, the lover of Dmitri Karamazov, object of desire for Fyodor Pavlovich Karamazov and potential corrupter of Alyosha Karamazov, who is himself in the seminary.

³⁰⁰ Dostoevsky, *The Brothers Karamazov*, *supra* n. 262, at 666–70. Trifon Borisovich is a witness to Dmitri's spending spree in Mokroye.

³⁰¹ *Id.* at 670.

³⁰² *Id.* at 693.

³⁰³ *Id.* at 695.

³⁰⁴ The final poetic image of Gogol's comic masterpiece 'Dead Souls' is a galloping Troika.

³⁰⁵ Dostoevsky, *The Brothers Karamazov*, *supra* n. 262, at 695.

such 'perhaps threatens more evil for the nation than . . . his elder brother [Ivan].'³⁰⁶ Finally, Dmitri is portrayed as a maximalist representation of Russia; he is 'capable of containing all possible opposites and of contemplating both abysses at once, the abyss above us, an abyss of lofty ideals, and the abyss beneath us, an abyss of the lowest and foulest degradation.'³⁰⁷ From these exaggerated, but not altogether inaccurate characterizations, Ippolit builds his psychological novel.

The first psychological portrait of Dmitri begins with Ippolit describing exactly what Dmitri did with the money Katerina Ivanovna gave him, for the precise reason that he did it, only to scoff: '[I]t is hard to imagine anything more contrary to reality. One can suppose anything but that.'³⁰⁸ This type of psychological assumption seems incongruous with the characterization of Dmitri as capable of anything. Likewise, Ippolit describes Dmitri's behavior the night of the murder as premeditated – as demonstrated in a drunken and cryptic letter he sent to Katerina – and caused by jealousy of his father and Grushenka. All this is correct, or at least, not wholly inaccurate, and then with incredulity, Ippolit describes what actually happened: '[A]nd so the unfortunate man steals up to the window, respectfully peeks in, virtuously resigns himself, and sensibly departs . . . and we are asked to believe this, we who know the defendant's character.'³⁰⁹ Ippolit precisely does not know Dmitri's character. He clearly explains what actually happened and then claims it to be an impossibility based on his own inconsistent psychological assessment of Dmitri.

Ippolit applies the same techniques in exonerating the true murderer, Smerdyakov. He discounts Dmitri, Ivan, Alyosha, and Grushenka's testimony accusing Smerdyakov, as unjustifiable because it is based solely upon 'the look on [Dmitri's] face' and Grushenka's assertion that Dmitri is 'not the sort of man to lie.'³¹⁰ These are the people who actually know Dmitri intimately and psychologically, but Ippolit is so convinced of his superior psychological perception that he dismisses their testimony.

The prosecutor continues in his perceptively misperceptive pattern of describing events just as they happened and then chiding his own narratives as psychologically impossible. He sarcastically describes Smerdyakov 'shamming an attack of the falling sickness . . . to make it more convenient for himself to get up suddenly and then kill his master!'³¹¹ No sooner is the truth out than Ippolit recants it: 'I am ashamed to make such suggestions, and yet, just imagine, this very thing is precisely what the

³⁰⁶ Dostoevsky, *The Brothers Karamazov*, *supra* n. 262, at 696–97.

³⁰⁷ *Id.* at 699.

³⁰⁸ *Id.* at 700–01.

³⁰⁹ *Id.* at 705–06.

³¹⁰ *Id.* at 706.

³¹¹ *Id.* at 710.

defendant asserts.³¹² The prosecutor can glean the truth from the facts of the case, but refuses to believe them, or even conceive them as possible, because of his flawed psychological assumptions.

Ippolit does not have to make these psychological assumptions to reach the conclusion that Dmitri is the murderer (the weight of the evidence points in his favor), but he does so to demonstrate his power as a lawyer, deep thinker, and man of psychological expertise. Ippolit eventually does delve into the facts, boasting of his own investigating abilities, and convincingly presenting his story of Dmitri killing his father out of jealousy. He claims, plausibly: '[T]here is not one fact in the defendant's favor.'³¹³ Finally, Ippolit concludes where he began with morality, nationality, and the image of the out of control Troika:

Remember that you are the defenders of our truth, the defenders of our holy Russia, of her foundations, of her family of all that is holy in her! . . . Yes, here, at this moment, you represent Russia, and your verdict will resound not only in this courtroom but for all of Russia . . . our fateful troika is racing headlong, perhaps to its destruction . . . do not add to [European nations'] ever-increasing hatred with a verdict justifying the murder of a father by his own son . . . !³¹⁴

Ippolit's rhetoric is at once liberal and conservative, he is concerned about the impression Russia leaves on the rest of Europe, yet cajoles the jury not to let holy Russian ideals be undermined. All of this is unnecessary, however, and, like the false psychology he employs to prove Dmitri's guilt, is said for the edification of the prosecutor himself, so that his ideas, his literary and psychological notions, can finally gain their due respect.

After the speech, Dostoevsky keenly illustrates the crowd's reaction with disembodied critiques heard in the audience. 'Too wrapped up in psychology,' says one voice, 'Yes, he's a master of it,' responds another, 'And now he just couldn't resist. Vanity,' says a third.³¹⁵ Ippolit's speech is described as 'clever' by three separate voices.³¹⁶ The audience sees what Dostoevsky wants the reader to see, that while the speech successfully achieved its goal of enhancing Ippolit's reputation, it did not lead towards the truth or cause the audience to consider Dmitri irrefutably guilty. The audience is not concerned about the truth or falsity of the allegations against Dmitri, or the prosecutor's over-arching moral view, but only about the style of the speech and what

³¹² Dostoevsky, *The Brothers Karamazov*, *supra* n. 262, at 711.

³¹³ *Id.* at 722.

³¹⁴ *Id.*

³¹⁵ *Id.* at 722–23.

³¹⁶ *Id.*

it says about the lawyer himself. This is why the audience's most pressing concern after the prosecutor concludes is: 'What will the defense attorney say?'³¹⁷

Fetyukovich's speech is divided into two parts: '[T]he first half was a critique, a refutation of the charges, at times malicious and sarcastic. But in the second half of the speech he seemed to change his tone and even his method, and all at once rose into pathos, and the courtroom seemed to be waiting for it and all began trembling with rapture.'³¹⁸ In the first half, Fetyukovich ridicules the psychological portrait of the prosecutor, proclaiming 'a weakness for going straight to the point,' and mocking the prosecutor as 'possessed by a certain, so to speak, artistic game . . . the creation of a novel . . . as my opponent a profound and most subtle psychologist, who has long deserved special renown for this quality in our still young legal world.'³¹⁹ Fetyukovich explains that if Dmitri thinks the way the prosecutor indicates, he should have killed Grigory as well, only 'to demonstrate that one can draw whatever conclusions one likes' from psychology.³²⁰ He mocks: 'Psychology prompts novels even from the most serious people.'³²¹ From the outset, Fetyukovich is out not only, or even principally, to exonerate his client, but to ridicule his opponent and to show off his great talent for logic and oratory.

Fetyukovich refutes the story the prosecutor invented about what happened to the money supposedly stolen from Fyodor Pavlovich and then asks: 'Is it not a fantastic, is it not a novelistic suggestion? . . . And with such novels we are prepared to ruin a human life!' Fetyukovich creates his own novel of the events, pointing out that there is no proof the money actually existed, therefore there can be no robbery. This is a logical flourish, a proof of an unnecessary premise, but Fetyukovich is concerned about his own agenda, not necessarily the acquittal of his client. His next step is to 'prove' that there was no murder either. Before he reaches this peak, he further ridicules the prosecutor's psychological portrait of Dmitri by asking: '[H]ave you not created a different character, Mr. Prosecutor?'³²² Fetyukovich characterizes Smerdyakov as 'a decidedly spiteful being, enormously ambitious, vengeful, and burning with envy,' and gives his own psychological novel of Smerdyakov murdering his illegitimate father.³²³ The fact that Fetyukovich's novel is far closer to the truth

³¹⁷ Dostoevsky, *The Brothers Karamazov*, *supra* n. 262, at 723. This phrase, or a substantially similar one, is repeated three times during the audience's comments following the prosecutor's speech, not including the utterance: 'It wasn't very smart of him to prod the Petersburg fellow,' while the defendant himself is mentioned only twice, in one repetitious exchange (*Id.*).

³¹⁸ *Id.* at 725.

³¹⁹ *Id.* at 726–27.

³²⁰ *Id.* at 728.

³²¹ *Id.*

³²² *Id.* at 736. Ironically, Dostoevsky refers to Spasovich as 'Mr. Defense Attorney' in his Kroneberg article, while Spasovich's literary double, Fetyukovich, refers to Ippolit Kirillovich as 'Mr. Prosecutor.'

³²³ *Id.* at 738.

than Ippolit's is irrelevant; both lawyers present psychological portraits – based on conjecture and intuition – designed to demonstrate their own personal ability.

Though the prosecutor honestly believes his account of the events, Fetyukovich does not. He begins the second-half of his speech: '[L]et me suppose my defendant is guilty of parricide.'³²⁴ Dostoevsky titles this section 'An Adulterer of Thought,' for the subversive moral position Fetyukovich espouses, that is, blaming Fyodor Pavlovich for his own murder.³²⁵ Fetyukovich repeatedly quotes the bible, including '[f]athers provoke not your children' and warning if they fail, '[w]ith what measure ye mete, it shall be measured to you.'³²⁶ In short, Fyodor Pavlovich failed as a father and therefore deserved to be murdered and not loved. Fetyukovich contends that it is a Christian 'duty and obligation to foster only those convictions that are justified by reason and experience,' and receives loud applause from the audience.³²⁷ Fetyukovich argues that a son must have a reason to love his father, outside of the 'mystical prejudice' of birth, or else the son is justified in seeing his father as his enemy.³²⁸ He proclaims that it was exactly because Fyodor Pavlovich was his father that Dmitri killed him in

[A] natural fit of passion . . . But even then the killer did not kill . . . Such a murder is not a murder. Such a murder is not a parricide, either. No, the murder of such a father cannot be called parricide. Such a murder can be considered parricide only out of prejudice!³²⁹

From the premises that Fyodor Pavlovich was a bad father and Dmitri killed him, Fetyukovich reaches the conclusion that Fyodor Pavlovich was not a father and Dmitri is not only not a parricide, but not even a murderer. Fetyukovich calls for mercy from the courts that 'exist not only for punishment but also for the salvation of the ruined man.'³³⁰ He finishes his speech with a rhetorical flourish, contrasting the prosecutor's image of the 'mad Troika' with his 'Russian chariot' carrying the unique Russian truth.³³¹ Fetyukovich remarkably turns the acquittal of a parricide into something sacred, based on scripture and distinctly Russian truth. This is just what Dostoevsky is trying to expose: the distortion of morality through the eloquence of lawyers.

³²⁴ Dostoevsky, *The Brothers Karamazov*, *supra* n. 262, at 741.

³²⁵ *Id.*

³²⁶ *Id.* at 744.

³²⁷ *Id.* at 745.

³²⁸ *Id.* at 745–46

³²⁹ *Id.* at 747.

³³⁰ *Id.* at 747–48.

³³¹ *Id.* at 748.

The crowd's reaction to Fetyukovich's speech is unrestrained rapture: '[W]omen wept, many of the men also wept, even two of the dignitaries shed tears.'³³² There was no doubt that Fetyukovich had won the duel with Ippolit Kirillovich, but the final word in a Russian criminal trial is given to the defendant. Dmitri simply states:

I did not kill him. I erred, but I loved the good . . . My thanks to the prosecutor, he said much about me that I did not know, but it is not true that I killed my father . . . My thanks also to the defense attorney, I wept listening to him, but it is not true that I killed my father, there was no need even to suppose it!³³³

Dmitri's simple honesty reveals a great deal about the lawyer's speeches. Both speeches end up assuming Dmitri killed his father by presenting different 'psychological novels' of the characters, based on the evidence presented in the case and assumptions about the character's behavior. Where they differ is that the prosecutor argues that parricide should be punished, while Fetyukovich argues, through deceptive logical loops, that it should not be. For Dostoevsky, both lawyers far overstep their bounds as advocates for their own personal aggrandizement and lose sight of the truth and morality which characterize Dmitri's final words.

7.4. The Verdict

Dostoevsky's final word on the court system comes from the peasant jury of 'The Brothers Karamazov' who ultimately find Dmitri guilty without extenuation and sentences him to twenty years in Siberia. Despite the brilliant subversive nature of Fetyukovich's speech, the jury returns a verdict in accord with the weight of the evidence. The only problem is we, as readers, know that Dmitri is not guilty. Even when the jury is not swayed by the eloquence of defense attorneys, they still get the verdict wrong. All the double talk of the prosecutor and defense attorney, the mutually exclusive opinions of the psychological experts, and the carnivalized theatrical atmosphere lead to the conclusion that not only is the Russian court system more of a show than a tool for moral education, but that the system is incapable of determining truth, only clouding it with psychological conjecture and theatrical oratory.

'The Brothers Karamazov' gives the reader the impression that the reformed court system was a miserable failure, simply a stage for great orators to challenge each other with psychology, philosophy, and even theology in front of crowds principally interested in the drama of the scene and not the fate of the accused or the enforcement of the laws. But failure compared to what? Dmitri surely would have been convicted under the old Russian system and indeed, under almost any workable system one could imagine. The jury saw through all the show and came

³³² Dostoevsky, *The Brothers Karamazov*, *supra* n. 262.

³³³ *Id.* at 750.

down on the side of the evidence. Dostoevsky's problem is not the results reached by the new court system, but the show itself, and how the law courts, that he had such high hopes for as schools of morality and literacy in Russia, had turned into showcases for attorneys' amoral distortions.

8. Conclusion

Dostoevsky's criticism of Russian legal culture started before the judicial reforms of 1864 and only became more pervasive in his work after the successful and popular reforms were implemented. Though these reforms vastly reduced the secrecy, inequality, and fundamental unfairness of the old system, they did not reach Dostoevsky's ideal of a legal system that would teach and morally regenerate the Russian people by declaring criminals morally culpable for their crimes, while at the same time showing Orthodox Christian compassion in refraining from unduly punishing them.³³⁴ While this is a high, and perhaps, logistically unattainable ideal, the new system did more than just fail to reach the goal, it produced lawyers who actively subverted traditional morality in trying to save their clients and gain personal notoriety with artistic and amoral speeches. Dostoevsky's concerns about lawyers over-stepping their bounds were seemingly addressed in the Statute of Criminal Procedure of 1866, but were apparently not strictly enforced, for this is the key strand in Dostoevsky's criticism of the reformed courts. Dostoevsky's other criticisms are scattered and particular to certain cases; faulty jury instructions, ambiguous statutes, and over-emphasis or neglect of psychological testimony are all brought up intermittently depending on Dostoevsky's view of a particular case. Dostoevsky does not want to break down the new system entirely, believing in the righteousness of Russian juries; he only wants to prod it in what he perceives as the morally right direction, by tweaking certain processes and limiting the influence of lawyers, so that the courts more often call 'sin a sin,' rather than 'sing praises to a crime.'³³⁵

While Dostoevsky's critique is fundamentally about the divergence of the new western-influenced Russian law courts and Orthodox Christian morality, his focus is on the lawyers who undermined that morality, not necessarily the system that produced the lawyers. It is an open question what form Dostoevsky's critique would take if the statutory limitations on the content of criminal lawyer's speeches were

³³⁴ While it is true that Dostoevsky repeatedly laments in 'Diary' that he is pleased that the accused was released, but displeased that they were not convicted, it is evident from 'House of the Dead' that 'the most unnatural actions of the most monstrous murderers' must meet some punishment if only to 'protect society from further attacks on its security' (Dostoevsky, *The House of the Dead*, *supra* n. 40, at 19–20). Just where Dostoevsky might draw the line for who must be punished to protect society and how harshly is an open question. However, it is clear that Dostoevsky did not support the harsh penal system in place.

³³⁵ Dostoevsky, 1 *A Writer's Diary*, *supra* n. 193, at 484–85.

strictly enforced, for the courts' results would no doubt still not align perfectly with Dostoevsky's ideal, but there would be no individual actor to blame, only the evolving legal and moral preferences of the Russian people.

References

Afanas'ev, Alexander K. *Jurors and Jury Trials in Imperial Russia* (Willard Sunderland, trans.), in *Reforming Justice in Russia, 1864–1996: Power, Culture and the Limits of Legal Order* 214–30 (Peter H. Solomon, Jr., ed.) (M.E. Sharpe 1997).

Bakhtin, Mikhail. *Problems of Dostoevsky's Poetics* (Caryl Emerson, ed. & trans.) (University of Minnesota Press 1984).

Bhat, Girish. *The Consensual Dimension of Late Imperial Russian Criminal Procedure: The Example of Trial by Jury*, in *Reforming Justice in Russia, 1864–1996: Power, Culture and the Limits of Legal Order* 61–81, 83 (Peter H. Solomon, Jr., ed.) (M.E. Sharpe 1997).

Brooks, Jeffrey. *Readers and Reading at the End of the Tsarist Era*, in *Literature and Society in Imperial Russia, 1800–1914* 119 (William Mills Todd, III, ed.) (Stanford University Press 1978).

Burbank, Jane. *Legal Culture, Citizenship, and Peasant Jurisprudence: Perspectives from the Early Twentieth Century*, in *Reforming Justice in Russia, 1864–1996: Power, Culture and the Limits of Legal Order* 82–106 (Peter H. Solomon, Jr., ed.) (M.E. Sharpe 1997).

Dostoevsky, Fyodor. 1 *A Writer's Diary, 1873–76* 356, 358, 360–61, 364, 369–72, 374–75, 380–84, 471–74, 476, 478, 482–85, 488–89, 642–46, 726 (Kenneth Lantz, trans.) (Northwestern University Press 1993).

Dostoevsky, Fyodor. 2 *A Writer's Diary, 1877–81* 963, 1044–47, 1054–57, 1059, 1224 (Kenneth Lantz, trans.) (Northwestern University Press 1994).

Dostoevsky, Fyodor. *Crime and Punishment* 35–36, 133, 146, 148–49, 234, 260, 334, 337–38, 415–20, 455, 518–19, 535–37 (Richard Pevear & Larissa Volokhonsky, trans.) (Vintage Books 1992).

Dostoevsky, Fyodor. *Demons* 298, 420 (Richard Pevear & Larissa Volokhonsky, trans.) (Vintage Books 1994).

Dostoevsky, Fyodor. *Notes from Underground* 17–18 (Richard Pevear & Larissa Volokhonsky, trans.) (Vintage Books 1993).

Dostoevsky, Fyodor. *The Adolescent* 171, 271, 369–70, 383 (Richard Pevear & Larissa Volokhonsky, trans.) (Vintage Books 2003).

Dostoevsky, Fyodor. *The Brothers Karamazov* 656–61, 663, 666–73, 675–89, 692, 693, 695–97, 699–701, 705–06, 710–11, 722–23, 725–28, 736, 738, 741, 744–48, 750 (Richard Pevear & Larissa Volokhonsky, trans.) (Vintage Books 1990).

Dostoevsky, Fyodor. *The Friend of the Family*, in *The Short Novels of Dostoevsky* 808 (Constance Garnett, trans.) (Dial Press 1945).

Dostoevsky, Fyodor. *The House of the Dead and Poor Folk* 9, 19–20, 64–65, 132, 199–202, 204–05, 255, 401–12 (George Stade, ed., & Constance Garnett, trans.) (Barnes & Noble 2004).

Dostoevsky, Fyodor. *The Idiot* 202–03, 298, 354–56, 396–400 (Alan Myers, trans.) (Oxford University Press 1992).

Frank, Joseph. *Introduction*, in Fyodor Dostoevsky, *The House of the Dead and Poor Folk* xxiv (George Stade, ed., & Constance Garnett, trans.) (Barnes & Noble 2004).

Frierson, Cathy A. *Of Red Rooter, Revenge, and the Search for Justice: Rural Arson in European Russia in the Late Imperial Era*, *Reforming Justice in Russia, 1864–1996: Power, Culture and the Limits of Legal Order* 111, 116, 120–21, 124 (Peter H. Solomon, Jr., ed.) (M.E. Sharpe 1997).

Fyodor Dostoevsky to Apollon Maykov, August 16, 1867, in 2 *Fyodor Dostoevsky Complete Letters* 254 (David A. Lowe, ed. & trans.) (Ardis 1989).

Fyodor Dostoevsky to Apollon Maykov, October 9, 1867, in 2 *Fyodor Dostoevsky Complete Letters* 280 (David A. Lowe, ed. & trans.) (Ardis 1989).

Fyodor Dostoevsky to Konstantin Maslyannikov, November 21, 1876, in 4 *Fyodor Dostoevsky Complete Letters* 342 (David A. Lowe, ed. & trans.) (Ardis 1991).

Fyodor Dostoevsky to Konstantin Maslyannikov, November 5, 1876, in 4 *Fyodor Dostoevsky Complete Letters* 338 (David A. Lowe, ed. & trans.) (Ardis 1991).

Fyodor Dostoevsky to Mme. N.D. Fonvisin, March 1854, in *Letters of Fyodor Mikhailovich Dostoevsky to His Family and Friends* 71 (Ethel Golburn Mayne, trans.) (Horizon Press 1961).

Katz, Michael R., & Wagner, William G. *Chernyshevsky, What Is to Be Done? and the Russian Intelligentsia*, in Nikolai Chernyshevsky, *What Is to Be Done?* 17–18 (Michael R. Katz, trans.) (Cornell University Press 1989).

Kjetsaa, Geir. *Fyodor Dostoevsky: A Writer's Life* 84–91 (Siri Hustvedt & David McDuff, trans.) (Viking 1987).

Leatherbarrow, William J. *Introduction* in Dostoevsky, *The Idiot* (Alan Myers, trans.) (Oxford University Press 1992).

Lincoln, W. Bruce. *The Great Reforms: Autocracy, Bureaucracy, and the Politics of Change in Imperial Russia* 57, 62–90, 106–08, 109–12 (Northern Illinois University Press 1990).

Mosse, W.E. *Alexander II and the Modernization of Russia* 23, 86–89 (English Universities Press 1958).

Murav, Harriet. *Russia's Legal Fictions* 57, 60, 78, 82, 127–155 (University of Michigan Press 1998).

Nethercott, Frances. *Russian Legal Culture Before and After Communism: Criminal Justice, Politics and the Public Sphere* 8, 25–28 (Routledge 2007).

Neuberger, Joan. *Popular Legal Cultures: The St. Petersburg Mirovoi Sud*, in *Russia's Great Reforms, 1855–81* 231–36, 238–41 (Ben Eklof et al., eds.) (Indiana University Press 1994).

Pevear, Richard. *Foreword*, in Fyodor Dostoevsky, *Crime and Punishment* vii (Richard Pevear & Larissa Volokhonsky, trans.) (Vintage Books 1992).

Pevear, Richard. *Foreword*, in Fyodor Dostoevsky, *Demons* vii (Richard Pevear & Larissa Volokhonsky, trans.) (Vintage Books 1994).

Pevear, Richard. *Introduction*, in Fyodor Dostoevsky, *The Adolescent* xx (Richard Pevear & Larissa Volokhonsky, trans.) (Vintage Books 2003).

Ransel, David L. *Pre-Reform Russia*, in *Russia: A History* 159 (Gregory L. Freeze, ed.) (2nd ed., Oxford University Press 2002).

Rosenshield, Gary. *Western Law, Russian Justice: Dostoevsky, the Jury Trial, and the Law* 14, 20–22, 37, 44, 85–89, 97–99, 102–03, 133–35, 141–45, 225 (University of Wisconsin Press 2005).

Solomon, Peter H., Jr. *Courts and Their Reform in Russian History*, in *Reforming Justice in Russia, 1864–1996: Power, Culture and the Limits of Legal Order* 6–7 (Peter H. Solomon, Jr., ed.) (M.E. Sharpe 1997).

Wagner, William G. *Civil Law, Individual Rights and Judicial Activism in Late Imperial Russia*, in *Reforming Justice in Russia, 1864–1996: Power, Culture and the Limits of Legal Order* 29–31, 33 (Peter H. Solomon, Jr., ed.) (M.E. Sharpe 1997).

Information about the author

Brian Conlon (St. Louis, US) – Term Staff Attorney at the United States Court of Appeals for the Eighth Circuit (210 N. 17th str., unit 308, St. Louis, Missouri, 63103, United States; e-mail: bsconlon@gmail.com).