

## Dostoevsky, the Law, and the Underground Man

GENTIL DE FARIA, *São Paulo State University (Unesp)*  
gentildefaria@uol.com.br

Received: June 27, 2017.

Accepted: September 14, 2017.

### ABSTRACT

Throughout the history of World literature no other writer has devoted more passionately to the issue of law in literature than Dostoevsky. The theme of law and justice is intertwined in the plot of his fiction and journalism from the earliest writings, reaching maturity with *Crime and Punishment*, his best-known novel among lawyers, to his last and greatest novel *The Brothers Karamazov*, a true legal novel. He acquired a good knowledge of the criminal proceedings of the tsarist regime and made remarkable literary use of the research he undertook to depict impressive social and psychological panel of his time. This paper focus primarily on the short novel *Notes from Underground* (1864), which opens the mature phase of the writer whose complex personality of its anonymous narrator and protagonist is latent in two other major characters - Raskolnikov and Ivan - that will appear in the best known works to be created some years later. "Notes" is a rich source for a multitude of interdisciplinary studies, especially psychoanalytic approaches trying to unravel the secrets of the odd behavior of the main character. The bellicosity, obsessive self-awareness, and verbosity of this self-entitled underground man is studied from a legal point of view following the readings of Bakhtin (dialogism) and Richard Weisberg (ressentiment). The legal themes of insult and revenge and human law and justice will be the axis of an analytical support whose goal is to understand the fascinating solitary existence struggling to enjoy the freedom to live.

**Keywords:** Dostoevsky, *Notes from Underground*, law, interdisciplinary studies, insult and revenge, trial by jury.

From ancient times throughout the history of Western World literature no other writer has devoted more passionately to the issue of law in literature than Dostoevsky. The theme of law and justice is intertwined in the plot of his fiction and activities as a journalist from the earliest writings. His maturity as a writer has strengthened with the publication of *Crime and Punishment* (1866), his best-known and most popular novel among lawyers and other legal professionals, and reached its peak with *The Brothers Karamazov* (1880).

Dostoevsky was a great connoisseur of the criminal procedures of the Tsarist regime. He attended numerous trials and wrote reports, sometimes with virulent attacks, on many decisions of the court. Acting as a journalist and observer, he took advantage of the research undertaken to depict an impressive social panel of his time. By the 1870s, his popularity reaches its peak and he became rather well-known, acclaimed by critics as the Russian Shakespeare. He kept weekly column, titled "The Diary of a Writer," which received letters from all over Russia. Readers often asked for his opinion on various subjects. Responding to a variety of issues concerning daily life, he became a true nation spokesman.

His intense activity as a pressman was later compiled into a book form which took the same title of the former column. The various articles and reports reveal a writer very concerned about issues related to education, especially to parent-child relationship. In this sense, it is remarkable the aesthetic effect he extracts from one of his stories, "Apropos of the Kroneberg Case", which is in the "Diary", and transfers it to the context of the novel *The Brothers Karamazov* in Ivan's gruesome accounts of child abuse by their own parents (Book V, 4, 214-216).

## Underground

His short novel *Notes from Underground*, published in 1864, opens the mature phase of the writer and became a rich source for a multitude of interdisciplinary studies, especially in the area of psychoanalytic approaches trying to unravel the secrets of the odd behavior of the main character who openly confesses emphatically from the very beginning of the narrative: “I am a sick man ... I am a spiteful man. I am an unattractive man.” The bellicosity, obsessive self-awareness, and verbosity of this self-entitled underground man offer a fertile ground for law and literature studies.

This first person-narrative was originally titled “A Confession” as Dostoevsky explains in a letter to his brother Mikhail Dostoevsky (1820-1864) of 9 October 1859 in which he mentions the project of writing a novel for the first time.

In December I shall begin writing a novel. Don't you remember, I told you about a certain *Confession* – a novel that I wanted to write after everything else, saying that I had to gain some experience first (...) I conceived of it during my years of imprisonment, lying on a bunk bed, at a painful moment of grief and disintegration. Confession will establish my name once and for all (*Notes*, 95)

The significant fragment of the quoted letter unfolds the conception of the literary work: it was conceived during the years of the author's arrest “at a painful moment of grief and disintegration.” Five years later Dostoevsky was still struggling to put an end to the text: “I'm trying to finish it off as quickly as possible, but at the same time I want to turn out well. It's far more difficult to write it than I'd anticipated.” (Letter of 20 March 1864, 95)

From the very first sentence, an unnamed, solitary, and weird narrator establishes a dense dialogue with an unspecified listener. The crescendo negative tone of the narrator predominates throughout the novel: “I'm forty now. I used to be in the civil service. But no more. I was a nasty official. I was rude and took pleasure in it.” [...] “Now I live out my days in my corner, taunting myself with the spiteful and entirely useless consolation that an intelligent man cannot seriously become anything and that only a fool can become something” (p.3-4).

The legal themes of insult and revenge and human law and justice are the leitmotif of the narration, which are dialectically intertwined as demonstrated by the accurate analysis of Bakhtin, “In the confession of the Underground Man what strikes us first of all is its extreme and acute dialogization: there is literally not a single monologically firm, undissociated word. (Bakhtin, 1994: 227)

The lone fight against the existence in search of the enjoyment of the freedom to live does not make him a spiteful and vindictive man; on the contrary, he becomes a resigned conformist, “suppose I am a babblers, a harmless, annoying bubble, like the rest of us” (*Notes*:13). According to him, man needs only one thing – his own independent desire, whatever that independence might cost.

In his negative critical view of humanity he considers man a frivolous being, and his only goal on earth is the incessant process of achieving through the rational formula “two times two makes four”. Consequently human beings have no free choice.

In the second part of the novel the reader realizes that the Underground Man is incapable

to interact with other people. A clear mark of this anti-social behavior occurs when Liza, reappears attempting a loving rapprochement. But being egotist he mocks and humiliates her wanting her to disappear, “I wanted to remain alone in my underground. ‘Real life’ oppressed me – so unfamiliar was it – that I even found it hard to breathe” (*Notes*: 88).

Showing strength and dignity, Liza escapes from him and quickly leaves the room with an angry and bitter “Good-bye.” The Underground Man tried to run after her but gave up on a whim, “I stood in the snow, peering into the murky mist” (*Notes*: 90).

At the end of his “confession”, the narrator disturbs the reader once more with a rhetorical provocative dilemma: “Which is better: cheap happiness or sublime suffering?” He does not give his own answer, but the listener infers that he prefers the sublime suffering.

Dostoevsky does not leave the final word to his hero. In fact the story does not end up forming a closed circle. So it remains open to the reader’s conclusion. The narrator abruptly suspends his narration by saying. “But enough; I don’t want to write any more ‘from Underground...’ The writer acting as an intruder to the plot picks up the thread of the narrative and gives an end: “However, the “notes” of this paradoxalist don’t end. He couldn’t resist and kept on writing. But it also seems to us that we might as well stop here” (*Notes*: 93).

### Confession and repentance

The title of the novel, *Crime and Punishment*, may suggest symmetry between crime and its punishment. But that is not what happens. The crime is committed in Part I and the punishment will be known to the reader dozens of pages later, in de Epilogue. Everything that lies in between is the Dostoevsky’s exploration the psychology of the criminal and his tormenting confession.

The final confession is straightforward and unexpected. Raskolnikov goes to the police office and says abruptly to Ilya Petrovitch: “It was I killed the old pawnbroker woman and her sister Lizaveta with an axe and robbed them.” The novel ends dramatically as a quick closing curtains of a theater. It is in the Epilogue, which is the subject of several debates among critics, that the author will inform the reader about the trial to which the killer was submitted. His sentence was eight years of hard labor in Siberia.

Nine months after he had been confined to prison, Sonya who was ill came to visit him and the two discover that they could be together after serving the sentence. At the beginning of their happiness, they underestimate the remaining long time for a life together, “only seven years!” as though they were merely seven days.

Similar to what occurred in *Notes from Underground*, the narrator takes over the narrative command and closes the novel by stating that this man’s renewal is the subject of another story:

But that is the beginning of a new story – the story of the gradual renewal of a man, the story of his gradual regeneration, of his passing from one world into another, of his initiation into a new unknown life. That might be the subject of a new story, but our present story is ended (*Crime and Punishment*: 464).

The use of interrelations of law and literature will be fully developed in the last novel written by Dostoevsky, *The Brothers Karamazov*, considered by many scholars his best

literary achievement.

### **Trial by jury**

A great legal reform was introduced in Russia in 1864 shortly before *Crime and Punishment* was written. The old inquisitorial principle was replaced by the adversarial principle. The secret proceedings were transformed in public trials before courts conducted by legal professionals. For the first time, Russians could visit the courts at work and read the trial accounts in the daily newspapers. The new criminal legislation exerted great impact on Dostoevsky's writings.

The implementation of the trial system by the jury in Russia took place on November 20, 1864, when Alexander II promulgated the Judicial Reform which was inspired by Western models. In 1917, juries were abolished by the Bolsheviks, but, ironically, they always petitioned this form of procedure when they were arrested and brought to trial. Only with the entry into force of the new Constitution on December 12, 1993, after the collapse of the Soviet Union, the jury trial was restored.

The Constitution of the Russian Federation contemplates the jury system in three brief passages: 1. In the case of capital punishment<sup>24</sup> the accused has granted the right to have his case examined by jury trial (Article 20, 2); 2. Federal Law can determine the cases to be examined by a court of jury (Article 47, 2), and “In cases fixed by the federal law justice shall be administered by a court of jury”<sup>25</sup> (Article 123, 4).

The legal issue is present throughout the novel, but it becomes the central axis of the plot in about 300 pages (of over the 700 pages that make up the complete text). Thus, almost half of the narrative focuses on the investigation of the crime and its subsequent judgment (Book XII). The actual legal part of the novel begins in Book IX, titled “The Preliminary Investigations”, when the young public official Pyotr Ilyich Perhotin goes to see the wealthy widow Madame Hohlakov one evening, and asks her, on his own, about the origin of the “two or three thousand rubles” he had seen with Dmitri, since he had given him ten rubles on loan two hours before.

After obtaining a statement signed by the widow, in which she asserted that had never lent that amount to Dmitri, Pierhotin takes the matter to Mihail Makarovitch Makarov, a retired lieutenant colonel and court advisor. Upon arrival, the young bureaucrat finds him playing cards with the prosecutor Ippolit Kirillovich, who was really a deputy prosecutor, but regarded by all as if he were the prosecutor. Kirillovich soon became fascinated by the unexpected criminal case: ‘It was a case that might well be talked about all over Russia’ (*The Brothers*: 418).

The interrogation begins with the judge and prosecutor, using a speech full with legal jargon incomprehensible to Mitya, seeking to establish an alleged incriminating fact against Dmitri. Neither the judge nor the prosecutors, at any time, recall the right of the accused to have the assistance of a lawyer. The accused is left alone to present his own defense. Only the right to remain silent is mentioned by the prosecutor.

<sup>24</sup> Although death penalty still remains in the Constitution, Russia has not executed anyone since 1996.

<sup>25</sup> According to statistics, Russian juries try approximately only 0.05% of all criminal cases.

Under pressure, isolated and without legal assistance, the unfortunate Mitya is taken to admit a crime he did not commit. He tries to tell the truth, but both judge and prosecutor were eager to extort his confession. After the interrogation of the accused and the examination of the witnesses, the investigation is closed and the final report was written. Here, again, we see the accuracy of knowledge by Dostoevsky about the bureaucratic Justice and the forensic jargon.

When the protocol had been signed, Nicolay Parfenovich turned solemnly to the prisoner and read him the ‘Committal,’ setting forth, that in such year, on such a day, in such place, the investigating lawyer of such-and-such a district court, having examined so-and-so (to wit, Mitya) accused of this and of that (all charges were carefully written out) and having considered that the accused, not pleading guilty to the charges against him, had brought forward nothing in his defense, while witnesses so-and-so and so-and-so, and the circumstances such-and-such testify against him, acting in accordance with such-and-such articles of the Statute Book, and so on, has ruled that, in order to preclude such-and-such (Mitya) from all means of evading pursuit and judgment, he be detained in such-and-such prison, which he hereby notifies to the accused all communicates a copy of this same ‘Committal’ to deputy prosecutor, and so on, and so on (p.470) .

The fragility of the preliminary investigation is blatant. Nobody was really convinced of Mitya’s guilt, nor the judge who regarded him “more unfortunate than guilty.” Kept in a pre-trial detention, he will face the next stage of the process and the worst: the trial by jury.

The lengthy Book XII, the longest in the novel, carries the significant title of “A Judicial Error” and consists of 14 chapters, all devoted to scenes of court. Here Dostoevsky demonstrates profound knowledge and extraordinary experience of forensic rituals. The narrator is at the center of events and thoroughly describes what he sees and feels, from various angles, from the opening of the court session, through the trial itself, until the protests of desperate Mitya claiming to be innocent of his father’s death.

“A fatal day” is the title of the first chapter of this Book. Given the importance and grandeur of the events, the narrator appears to be very modest and hesitant about his ability to report the facts as they actually happened. The reader, however, realizes that he has full control of the situation and makes an impressive report about the trial:

I hasten to emphasize the fact that I am far from esteeming myself capable of reporting all that took place at the trial in full detail, or even in the actual order of events. I imagine that to mention everything with full explanation would fill a volume, even a very large one. And so I trust I may not be reproached for confining myself to what struck me. I may have selected as of most interest what was of secondary importance, and may have omitted the most prominent and essential details. But I see I shall do better not to apologize. I will do my best and the reader will see for himself that I have done all I can (p.610).

Before entering the courtroom, the narrator, being assured of his mission, stimulates the reader’s curiosity by reporting the repercussions achieved by the case and its resonance throughout the country. Many famous people came from other provinces and even from Moscow and Petersburg to compete for seats in the courtroom, which soon were busy long before the date set for the trial.

The male audience was generally hostile to Mitya, while the women longed for the acquittal of the accused because he had the reputation of conqueror of female hearts. Making

this observation, the narrator found the division of the sexes in the audience, reflected by the discussions between husbands and wives.

The expectation of an exciting verbal battle between prosecutor and defense counsel also created an atmosphere of hysteria, produced by a noisy crowd eager for sensational revelations. The trial begins at 10 in the morning, with the arrival of the president, prosecutor and defense counsel. Each receives significant and ironic description by the narrator: “The president was a short, stout, thickset man of fifty, with a dyspeptic complexion, dark hair turning grey and cut short, and a red ribbon, of what order I don’t remember. The prosecutor struck me and the others, too, as looking particularly pale, almost green (p.613).

The jury, after a few refusals by the defense and prosecution, was composed of twelve people<sup>26</sup>: four petty officials, two merchants, six peasants and artisans. Dostoevsky was opposed to the system of trial by jury and this distrust is passed through conversations heard by the narrator even long before the trial, especially by ladies: ‘Can such a delicate, complex and psychological case be submitted for decision to petty officials and even peasants?’ or “‘What can an official, still more a peasant, understand in such an affair’ (p. 613).

In the description of the three groups of jurors, one realizes that the narrator seeks to demonstrate that those laypersons had no technical expertise to evaluate the case put on trial:

- Four petty officials: “men of no consequence and of low rank ... At most, they spent their leisure over cards and, of course, had never read a single book.”
- Two merchants: “looked respectable, but were strangely silent and stolid. One of them was close-shaven, and was dressed in European style; the other had a small, grey beard, and wore a red ribbon with some sort of a medal upon it on his neck.
- Artisans and peasants: “Two of them wore European dress, and, perhaps for that reason, were dirtier and more uninviting-looking than others (...) Yet their faces made a strangely imposing, almost menacing, impression; they were stern and frowning” (p 613/614).

The President opened the session and ordered to bring in the prisoner. There was a deep silence: “One could have heard a fly”. Mitya entered dressed in a new frock coat, gloves, and exquisite linen, looking an “awful dandy”.

The counsel for defense, Fetyukovich coming from Petersburg, is ironically depicted:

“He was tall, spare man, with long thin legs, with extremely long, thin, pale fingers, clean-shaven face, demurely brushed, rather short hair, and thin lips that were at times curved into something between a sneer and a smile.”

One can predict the resistance of the jury members, feeling inferior by the exaggerated elegance of the accused and the defense lawyer. Strictly following the legal formalities, the trial began by reading of the accusatory criminal libel. “The whole tragedy was suddenly unfolded before us, concentrated, in bold relief, in a fatal and pitiless light”, reports the narrator.

The next step was the hearing of witnesses, which followed the appropriate rules of

---

<sup>26</sup> The composition of the jury follows the western model and was implemented in Russia after the Judiciary Reform that took place about 15 years before the publication of the novel. They were twelve men, all parents, judging a case of parricide. This fact in itself can already give reasons for questioning the fairness and impartiality of the jurors.

procedure. The prosecution witnesses were heard first and then followed the examination of the documentary proofs, starting by reading the medical reports prepared by three experts; all unfavorable to the accused. The analysis of the observations made by these three doctors provides more elements that reinforce Dostoyevsky's disbelief in the trial by jury. Even the so-called scientific methods have not helped clarify the case.

The first expert was doctor Herzenstube, "a grey and bald old man of seventy, of middle height and sturdy build." Obstinate as a mule, he "roundly declared that the abnormality of the prisoner's mental faculties was self-evident." Being German, he confusedly expressed in Russian and that behavior amused the audience. He noted that the accused, "marched in like a soldier, looking straight before him, though it would have been more natural for him to look to the left where, among the public, the ladies were sitting, seeing that he was a great admirer of the fair sex and must be thinking much of what the ladies are saying of him now."

The second expert was a famous Moscow doctor, opponent to Herzenstube. For him, the accused was abnormal "in the highest degree," obsessive and maniac. At the end of his rhetoric speech, he added ironically about the observation made earlier by Herzenstube. The accused should not look to the left, but, on the contrary, "to the right to find his legal adviser, on whose help all his hopes rest on whose defense all his future depends."

The disagreement between the experts increases with the opinion of the young doctor Varvinski, the third expert. The prisoner, according to his "modest opinion," would naturally look straight before him on entering the court, as he had in fact done, as that was where the judges, on whom his fate depended, were sitting.

Besides the laughable disparity of the expert reports, the young doctor and doctor Herzenstube also acted as prosecution witnesses, enrolled by the prosecutor. This dual role as experts and witnesses is contrary to the legal principles of Criminal Law. The occurrence of this fact would be sufficient to entail the nullity of the trial process of the helpless Mitya.

After the hearing of the prosecution witnesses, the next step was the hearing of the witnesses called by the defense. In the sequence, it was heard: Alyosha, younger brother of Mitya; Katerina Ivanovna, former fiancée of the accused, who had lent him the money; Grushenka, who had had an affair with Mitya and the old Karamazov: "It was all my fault. I was laughing at them both – at the old man and at him, too - and I brought both of them to this. It was all on account of me it happened."

Ivan, another brother of Mitya, was called to testify. Like his brother Aliocha, he was not on oath. But he revealed the true identity of the killer: It was Smerdyakov, his bastard brother who had killed his father: "I was with him just before he hanged himself. It was he, not my brother, killed our father. He murdered him and I incited him to do it... Who doesn't desire his father's death?"

Soon after, another scene came to disrupt the trial. Katerina Ivanovna, in hysterics, breaks the session saying she had something to declare and shows the letter she had received from Mitya that explained how he would kill the father. Treacherously, his ex-girlfriend suggested that the crime was premeditated, affirmation that aggravated the situation of the accused. The reading of the letter, whose content was already known to the reader, caused more excitement in the audience (Book XI, 7, 574).

This letter read aloud by the clerk made an overwhelming impression. It revealed a thirsty for revenge by a rejected woman. Dostoyevsky, who was ironically against the use of



psychology in trials, used it to write about the bitterness in the heart of a woman who was replaced by another. The document, which disclosed the sole intention of the author to kill his father if he does not give him the 3,000 rubles to which he was entitled, became part of the material evidence of the crime and was decisive in convincing the jury.

Completed the hearing of witnesses and after Katerina's hysterical incident, brandishing the fatal letter, the president opened the floor for prosecution. The prosecutor said that from the beginning believed in the prisoner's guilt. He was accusing him not as an official duty, but 'for the security of society.' His long speech, written in a forensic hollow rhetoric, full of figures of speech well known by Dostoevsky and already widely criticized by him in other texts he wrote on the subject of trials by jury, ends with a peroration "in fever" for jurors to condemn the accused. For him, the jury at that moment represented Russia as a whole: "All Russia will hear you, as her champions and her judges, and she will be encouraged or disheartened by your verdict. Do not disappoint Russia and her expectations."

The prosecutor's final rhetorical appeal produced great effect. The defense lawyer<sup>27</sup> also did not understand the case of Mitya. At heart, he was not convinced of the innocence of his client. In this sense, he disqualifies the crime of parricide, and justifies it as just an ordinary case of murder because the tyrannical old Karamazov was not a "true father." The most suitable defense argument should be the denial of authorship, a thesis never considered by the defender, who from the beginning was not interested in knowing who the killer was.

The defense impassioned appeal aroused great enthusiasm in the audience. Amid the general euphoria, rose the prosecutor to make the rejoinder which caused some murmurs of protests. Kirillovich, feeling downcast by the commotion caused by the defendant's speech insists on the seriousness of the crime of parricide, which "is not a novel or a poem."

Concluded the speeches of the prosecution, defense and after the reply and the rejoinder, the president gave the word to the prisoner. Exhausted, both physical and mentally, Mitya, with a trembling voice, makes a beautiful humble and sensitive speech much more convincing than the pleadings by the prosecutor and defender. This scene is a striking example of the use of "plurality of voices", a notable feature of Dostoevsky's polyphonic novel, in the famous analysis of Bakhtin.

The jury retired for consultation and to formulate their conclusions. The president made a formal admonition to them: "Be impartial, don't be influenced by the eloquence of the defense, but yet weigh the arguments. Remember that there is a great responsibility laid upon you."

This last recommendation of the President shows a hint of his partiality. He advises the members of the jury not to get carried away by the eloquent words of defense. This would mean that they could also get carried away by the no less eloquent words of accusation? As it turns out, not even the president of the jury behaved with neutrality and impartiality.

It was almost one o'clock in the night, when the session was adjourned for deliberation. The expected verdict at the end was an inevitable acquittal of the accused. An hour later, the doorbell rang and the jury returned to the plenary. At this point, the narrator does not hide his difficulty in understanding what was happening:

---

<sup>27</sup> In general, the figure of a lawyer does not enjoy good reputation in the novel: "The Russian people have long called a barrister 'a conscience for hire' (218), says Ivan Karamazov to report cases of tortures of children by parents. Lawyers could easily get their acquittal in court.



I won't repeat the questions in order, and, indeed, I have forgotten them. I remember only the answer to the president's first and chief question: 'Did the prisoner commit the murder for the sake of robbery and with premeditation?' (I don't remember the exact words.) There was a complete hush. The Foreman of the jury, the youngest of the clerks, pronounced, in a clear, loud voice, amidst the deathlike stillness of the court:  
'Yes, guilty!' (p.699)

The jury did not recognize any mitigating circumstance of the crime.

The Russian Criminal Code then in effect imposed the punishment for the premeditated murder of a father was the death penalty. Dostoevsky attenuated it, opting for a 20-year sentence with hard labor in Siberia. In so doing, the writer reminds what had happened to him: his death sentence was transformed into exile. Mitya will be able to recover, as evidenced by the end of the novel. This same optimistic end about human nature bringing hope also occurred in *Crime and Punishment*. It remains a compensation for the unfortunate Mitya and Raskolnikov: the divine justice will absolve them in the Final Judgment.

#### REFERENCES

- Bakhtin, M. (1994) *Problems of Dostoevsky's Poetics*. Edited and Translated by Caryl Emerson, Introduction by Wayne C. Booth. Minneapolis: University of Minnesota Press.
- Dostoevsky, F. (2001). *Notes from Underground: an Authoritative Translation, Backgrounds and Sources, Responses, Criticism*. 2<sup>nd</sup> Edition. Trans. and edited by Michael R. Katz. Norton Critical Edition.
- (2005). *The Brothers Karamazov*. Trans. Constance Garnett. NY: Dover Publications.
- (2001). *Crime and Punishment*. E-book version. Phoenix-Library.