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## DOSTOEVSKY'S DOCTRINE OF CRIMINAL RESPONSIBILITY

PAUL C. SQUIRES\*

He who gave to the world the universal story of "Crime and Punishment" and the astounding psychological subtleties of Dmitri Karamazov's trial for parricide, wrote in his early youth this inspired text: "Man is a mystery. It must be unraveled, and if you give your life to the task, do not say that you have wasted it; I devote myself to this mystery because I wish to be a man."

Dostoevsky's life and works constitute one great, unceasing rebellion. Who could better bring us insight into the mind of the criminal—of the protester—than this unhappy being so hopelessly cleft within, a prey to the darker thoughts, a soul and body that had undergone the years of bondage in the House of the Dead? Nietzsche said: "Dostoevsky, the only psychologist from whom I had anything to learn." And in a letter by Georg Brandes to the author of "Zarathustra" we read: "Look at Dostoevsky's face: half the face of a Russian peasant, half the physiognomy of a criminal."

From the very first Dostoevsky concentrated upon this problem: What makes for the dwarfing of human personality? More particularly, who is the criminal and what should we mean by the expression 'criminal responsibility'?

"Letters from the Underworld" is his great essay on the human will and the psychological principles of inferiority. Whoever cannot accept life must carry on in the underworld, that vast region which is as much a symbol as a material reality. "Naturally nothing will be left for the mouse to do but to make a disdainful gesture with its little paw, indulge in a smile of deprecatory contempt wherein even the smiler itself will have no belief, and retire shamefacedly into its hole. There, in its dirty, stinking underworld, our poor insulted, brow-beaten mouse will soon have immersed itself in a state of cold, malignant, perpetual rancour.

"Now, it is just in this same cold, loathsome semi-mania, this same half-belief in oneself, this same conscious burying of oneself

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in the underworld, . . . this powerlessness to escape from one's position, this same poison of unsatisfied wishes that for ever penetrates inwards, this same fever of vacillation, . . . that there lies the essence of the strange delight of which I have spoken.

"What have *I* to do with the laws of Nature, or with arithmetic, when all the time those laws and the formula that twice two make four do not meet with my acceptance? . . . Yet, gentlemen, this formula is not life at all; it is only the beginning of death! At all events men have always been afraid to think that twice two makes four, and I am afraid of it too.

"Why, what man most needs is an *independent* will—no matter what the cost of such independence of volition, nor what it may lead to."

Like Bergson after him, Dostoevsky expounds the bankruptcy of the reason. "See here: reason is an excellent thing—I do not deny that for a moment; but reason is reason, and no more, and satisfies only the reasoning faculty in man, whereas volition is a manifestation of all life (that is to say, of human life as a whole, with reason and every other sort of appendage included)." Furthermore: "human nature acts as a whole, . . . so that, whether conscious or unconscious, sane or mad, it is always human nature. . . . Of course, he *may* make his volition march with his reason, and the more so if the former does not abuse the latter, but uses it with moderation.

"Man loves to construct and to lay out roads—of that there can be no question; but why does he also love so passionately to bring about general ruin and chaos?" He admits: "I myself know how vanity may lead a man to impute whole crimes to himself; of the working of such vanity I have a good idea."

## II

"Letters from the Underworld" thus places the psychological center of gravity in the emoto-volitional field. Now, what about some criminal portraits from the gallery of the "House of the Dead"? In this work he wrote: "Man is a creature that can get accustomed to anything, and I think that is the best definition of him."

Criminals, says Dostoevsky, are "dreadfully vain, boastful people, prone to take offense and great sticklers for good form. . . . As a rule vanity and regard for appearances were most conspicuous."

"Some who came to the prison were men who had lost their heads, had become too reckless when at liberty, so that at last they committed their crimes, as it were irresponsibly, as it were without an object, as it were in delirium, in intoxication, often from vanity excited to the highest pitch." Everywhere Dostoevsky stresses the egocentric disposition of the criminal.

"There was no sign of shame or repentance!" Avowals of repentance "were all words. I doubt whether one of the convicts ever inwardly admitted his lawlessness."

He goes on to say: "I never saw one sign of repentance among these people, not a trace of despondent brooding over their crime, and . . . the majority of them inwardly considered themselves absolutely in the right . . . it seems crime cannot be interpreted from preconceived conventional points of view, and the philosophy of it is a little more difficult than is supposed. Of course, prisons and penal servitude do not reform the criminal, . . ." For example, *this* fellow: "He was . . . a great rogue with a good knowledge of the law, . . . morbidly vain, had persuaded himself in earnest that he was the most truthful and honorable of men, and what is more, had done nothing wrong, and he clung to this conviction to the end."

Take the case of Akim Akimitch. He had once only in his life "tried to act on his own judgment, and that had brought him to prison." Akimitch "fully recognized that he had acted irregularly. He told me he knew it even before he shot the chieftain, he knew that an ally ought to be legally tried; but, although he knew this, he seemed unable to see his guilt in its true light."

Making the punishment fit the individual is "an insoluble problem, like squaring the circle. . . . I remember what absorbed me more than anything was one thought, which haunted me persistently all the time I was in prison, a difficulty that cannot be fully solved—I cannot solve it even now: the inequality of punishment for the same crime. It is true that crimes cannot be compared even approximately." He proceeds to illustrate just what he means, by reference to murder cases.

The convict Orlov represents one of the most—if not the most—difficult problems of responsibility: "He was a criminal such as there are few, who had murdered old people and children in cold blood—a man of a terrible strength of will and proud consciousness of his strength. . . . I can confidently say that I have never in my life met a man of such strength, of so iron a will as he. . . . His

was unmistakably the case of a complete triumph over the flesh. It was evident that the man's power of control was unlimited, that he despised every sort of punishment and torture, and was afraid of nothing in the world. We saw in him nothing but unbounded energy, . . . an eagerness to attain the object he had set before him. . . . When he realized that I was trying to get at his conscience and to discover some sign of penitence in him, he glanced at me with great contempt and haughtiness, as though I had suddenly in his eyes become a foolish little boy, with whom it was impossible to discuss things as you would with a grown up person."

And there was Petrov. "Men like (him) are only ruled by reason till they have some strong desire. Then there is no obstacle on earth that can hinder them. . . . That is the sort of man who will murder a man for sixpence to get a bottle of vodka, though another time he would let a man pass with ten thousand pounds on him."

On crime propagating itself, Dostoevsky remarks: "Suddenly something in him seems to snap; his patience gives way and he sticks a knife into his enemy and oppressor. Then the strangeness begins: the man gets out of all bounds for a time. The first man he murdered was his oppressor, his enemy; that is criminal but comprehensible; in that case, there was a motive. But later on he murders not enemies but anyone he comes upon, murders for amusement, for an insulting word, for a look, to make a round number or simply 'out of my way, don't cross my path, I am coming!'"

In "The Gambler" is the most significant passage: "I had dared so to risk, and, behold, again I was a member of mankind." And Raskolnikov, of "Crime and Punishment"—that great corner stone of modern criminology—cried out: "I wanted to *have the daring* . . . and I killed her. I only wanted to have the daring, Sonia! That was the whole cause of it."

Raskolnikov's crime was in the nature of an aberration, as Inspector Porfiry quite properly declared. He was a semi-responsible. He perpetrated the murders in a state of hysterical automatism. Rodion Raskolnikov is Dostoevsky's leading case: the young student of law has become so incapable of action that the only thing left him is a desperate and futile plunge into the extremity of gross sensation. In this major psychological principle is to be sought much of the etiology of crime. "I wanted to murder without casuistry, to murder for my own sake, for myself alone!"

In this exclamation is seen clearly the narcissistic essence of the thorough-going criminal act.

Svidrigailov is the phantom, the Fata Morgana, of what the inadequate Raskolnikov would *like* to be: a sinister presence, a will of steel. Svidrigailov—pervert, raper, uxoricide—succeeded in passing “beyond good and evil.”

Listen to Raskolnikov: “But how did I murder her? Is that how men do murders? Do men go to commit a murder as I went then? I will tell you some day how I went! Did I murder the old woman? I murdered myself, not her! I crushed myself once for all, for ever. . . . But it was the devil that killed that old woman, not I.”

At his trial Rodion concealed nothing whatever, going quite willingly into the smallest details of the crime. He made hardly any attempt to defend himself,—of course to the great disgust of his lawyers. He said nothing as to the real motive lying back of the murder, maintaining that the three thousand roubles was the one and sole reason for the act. The famous incident of the purse—which he had hidden under the stone unopened—led some of the legal lights to draw the “deduction that the crime could only have been committed through temporary mental derangement, through homicidal mania, without object or the pursuit of gain. This fell in with the most recent fashionable theory of temporary insanity, so often applied in our days in criminal cases.”

Raskolnikov’s confession is one of the world’s psychological masterpieces. He confessed in order to rid himself of a burden; *not* because he repented, however. Prison finally meant to be “*in freedom.*”

His dream about “the chosen” symbolizes crime as a virus, an infection, entering into the minds of men as did the devils into the swine; it powerfully portrays the overwhelming egomania of the criminal. All of Dostoevsky’s leading characters are “possessed,” like himself. Those who fell prey to the microbes “became at once mad and furious. But never had men considered themselves so intellectual and so completely in possession of the truth as these sufferers, never had they considered their decisions, their scientific conclusions, their moral convictions so infallible.” This dream represents crime as a derangement of the paranoid delusional order. Universal war is envisaged. The Four Horsemen of the Apocalypse ride forth. Brother murders brother in the most terrible sadistic bloodshed,—of which Dostoevsky frequently used to dream.

Raskolnikov asks himself, "What is meant by crime?" He answers: "My conscience is at rest. Of course, it was a legal crime; of course, the letter of the law was broken and blood was shed. Well, punish me for the letter of the law . . . and that's enough. Of course, in that case many of the benefactors of mankind who snatched power for themselves instead of inheriting it ought to have been punished at their first steps. But those men succeeded and so *they were right*, and I didn't, and so I had no right to have taken that step.

"It was only in that that he recognized his criminality, only in the fact that he had been unsuccessful and had confessed it. . . ." Here we see the criminalistic rationalization at its height.

The very name Raskolnikov is significant, for it means dissenter. The young Rodion was a semi-responsible, but he merited and received legal punishment. He failed not in intellect but in will: and he had sufficient insight to comprehend the vulnerable zone in his character, the Achilles heel of his psychological make-up. The "strength to transgress", in which he took so much pride, was in itself the major symptom of a weak will. For he felt the irresistible drive toward over-compensation, the need to prove to *himself* at any cost that he had a strong will.

Crime, then, teaches Dostoevsky out of the depths of his own experiences, is the exacerbation of inhibited, thwarted personality: and he brought this message many decades before Alfred Adler appeared on the scene with his doctrine of the inadequacy-reaction.

It is all a theme with variations: the striving for the feeling of superiority, of power, the Napoleonic or Jehovah complex. We are speaking, of course, of the genuine criminal; that is to say, one who commits crime for crime's sake, for the *feeling* he gets out of the anti-social act.

In the case of Raskolnikov, the time-worn knowledge test for responsibility is hopelessly out of touch with the psychological realities; he knows perfectly well that what he is doing is against the law; but that is not the crux of the situation. For he distinguishes carefully, only admitting that his act was contrary to the *letter* of the law. Yet, repressed and far down within himself, he also realizes that the deed is utterly opposed to the basic moral law.

### III

Shatov, in "The Possessed", says to the strong-willed "Vampire" Stavrogin—who is a criminal—: "Reason has never had power

to define good and evil, or even to distinguish between them even approximately; on the contrary, it has always mixed them up in a disgraceful and pitiful way . . ." Moral judgments, thus, are for Dostoevsky primarily matters of *feeling*. There is a highly important passage in the "House of the Dead", wherein he says: "Significantly the peasants all over Russia speak of crime as a misfortune, and of criminals as the unfortunate. It is a definition of deep import, and it is the more significant because it is unconscious, instinctive." Again: "Some one will say perhaps that the convict is a wicked man and does not deserve kindness; but surely there is no need to double the sufferings of one who is already stricken by the hand of God!" This concept in the field of human nature has an eminently respectable parallel in the common law: an act of God.

Dostoevsky is a firm believer in the supreme rôle played by inborn tendencies. "There are natures so innately good, so richly endowed . . . that the very idea of their ever deteriorating seems impossible. One is always at ease about them." It follows of necessity that he likewise believes in natures that are innately *bad*, that is to say, *unfortunate*. This is Dostoevsky's fundamental law of identity in the psycho-social realm. Nevertheless, he gives due tribute to the effect of training. For instance: "Tyranny is a habit; it may develop and it does develop, at last, into a disease. I maintain that the very best of men may be coarsened and hardened into a brute by habit."

Every lawyer ought to read the trial of Dmitri Karamazov, and every law student should be required to do so. It is the most remarkable account of such a proceeding ever composed, a triumph in the analysis of the psychology that "cuts both ways", that is a "two-edged weapon."

"You see," Dmitri says to Alyosha in prison, "I never had any of these doubts before, but it was hidden away in me. It was perhaps just because ideas I did not understand were surging up in me that I used to drink and fight and rage. It was to stifle them in myself, to still them, to smother them." This goes far to explain much of crime.

The term Karamazovism stands for degeneracy; for blind, sensual impulsiveness. But who murdered old Fyodor? Was the guilty man Smerdyakov, the epileptic illegitimate son; or was it Ivan? "There was no money. There was no robbery. And there was no murder either." Well, Smerdyakov is the choice of the populace, but Ivan is the man for the scientific psychologists. Ivan is Dostoevsky's



'doppelgänger' (phantom-double); he is the ultimate embodiment of the author's attitude toward life: *Ego contra mundum*. Ivan and Dmitri are semi-responsible, the former being an hysteric. The chapter entitled "The Devil. Ivan's Nightmare," is the most astounding portrayal of the hallucinatory experience to be found in the annals of psychology. The logic of Ivan is briefly and devastatingly to be stated in this wise: If there is no God, then all things are lawful.

Dostoevsky holds up to ridicule the contest between medical experts at the Karamazov trial. "There was, however, an element of comedy about it, through the difference of opinion of the doctors. The eminent Moscow doctor maintained that Dmitri's mental condition was to the highest degree abnormal, and that if the crime had been committed by him, it must, even if he were conscious of it, have been almost involuntary,"—like Raskolnikov's crime—"as he had not the power to control the morbid impulse that possessed him."

Dealing in this summing up before the jury with Dmitri's "fixed idea" about the three thousand roubles which he believed—rightly, as a matter of fact—should have come to him from his mother's estate, but of which his father had defrauded him, the prosecutor said: "The medical experts have striven to convince us that the prisoner is out of his right mind and, in fact, a maniac. I maintain that he is in his right mind, and that if he had not been, he would have behaved more cleverly. As for his being a maniac, that I would agree with you, but only in one point, his fixed idea about the three thousand."

Dostoevsky voices his view on the punishment of Dmitri dramatically through the words of the counsel for the defense: "These people have not given me to eat and to drink, have not visited me in prison and nakedness, and here they have sent me to penal servitude. I am quits, I owe them nothing now, and owe no one anything for ever. They are wicked and I will be wicked. They are cruel and I will be cruel."

#### IV

Contemporary opinion on the matter of criminal responsibility, as held by the more open-minded leaders of the legal profession, may be found authoritatively set forth in the writings of Judge Cardozo. We proceed to quote a few of his statements.

“. . . medicine and law . . . have divided with the years, yet they were not far apart at the beginning.”<sup>1</sup>

“Every one concedes that the present definition of insanity has little relation to the truths of mental life.”<sup>2</sup>

“Run your eyes over the life history of a man sentenced to the chair. . . . The heavy hand of doom was on his head from the beginning. The sin, in truth, is ours—the sin of a penal system that leaves the victim to his fate”—Judge Cardozo might also well have said, ‘that leaves the *victims* of the victim to their fate’—“when the course that he is going is written so plainly in the files of the courts and the stigmata of mind and body.”<sup>3</sup> How like this sounds to the doctrine preached so untiringly by Fyodor Dostoevsky!

“I think the students of the mind should make it clear to the lawmakers that the statute (*in re* first and second degrees of murder) is framed along the lines of a defective and unreal psychology.”<sup>4</sup> He is here treating of the concepts of deliberation and premeditation. “Upon the basis of this fine distinction (between the degrees) with its obscure and mystifying psychology, scores of men have gone to their death.”<sup>5</sup>

According to Section 34 of the New York Penal Law, “A morbid propensity to commit prohibited acts, existing in the mind of a person who is not shown to have been incapable of knowing the wrongfulness of such acts, forms no defense to a prosecution therefore.” *Knowledge* of the nature and quality of the acts is the sole criterion of responsibility laid down by the said statute. But: “Many states . . . recognize that insanity may find expression in an irresistible impulse, yet I am not aware that the administration of their criminal law has suffered as a consequence.”<sup>6</sup>

“Your hands (the psychiatrists’) must hold the torch that will explore the dark mystery of crime—the mystery, even darker, of the criminal himself, in all the deep recesses of thought and will and body.”<sup>7</sup>

In the leading Schmidt murder case, Judge Cardozo wrote: “We must not, however, exaggerate the rigor of the rule”—the rule that

<sup>1</sup> Cardozo, B. N., *Law and Literature*, 1931, 70.

<sup>2</sup> *Ibid.*, 106.

<sup>3</sup> *Ibid.*, 91.

<sup>4</sup> *Ibid.*, 100.

<sup>5</sup> *Ibid.*, 101.

<sup>6</sup> *Ibid.*, 107-108. (See *Commonwealth v. Cooper*, 219 Mass. 1; *Parsons v. State*, 81 Ala. 577; *Commonwealth v. DeMarzo*, 223 Pa. St. 573; *State v. DeJarnette*, 71 Va. 367; *Doherty v. State*, 73 Vt. 380).

<sup>7</sup> *Ibid.*, 95.

the defendant, in order to be punished, must be able to distinguish between right and wrong in respect to the particular act for the commission of which he is tried—"by giving the word 'wrong' a strained interpretation, at war with its broad and primary meaning, and least of all, if in so doing we rob the rule of all relation to the mental health and true capacity of the criminal."<sup>8</sup>

The far-reaching implications of this highly important case for a more scientific attitude to be assumed on the part of the law toward the grave problem of responsibility cannot be overestimated. It bids the courts to consider the erring man as a *whole*, not only in that aspect so dear to the psychology of medieval days—the intellectual, the cognitive; it opens wide the door for the exit of that hopelessly fictitious—and dangerously superficial—psychology which has from time immemorial been of the very warp and woof of the foundational concepts of our criminal law. Nor should there be any need to dilate here upon the arch-functions assigned by contemporary psychology to the emotions and the voluntary processes. Dostoevsky, whose epoch-making studies in criminalism are veritable marvels to psychoanalysts of every school, long ago showed the way in the exploration of the tortuous labyrinth leading to "all the deep recesses of thought and will . . ." and feeling.

## V

"There is no standard by which to measure the soul and its development. Even education is no test." So remarks Dostoevsky. Psychometry, to be sure, is a very recent acquisition, and still most unsatisfactory so far as the emotions and will are concerned. That even education is no test of true mental status is a proposition whose tragic exemplifications are strewn far and wide. The world market is cluttered up with 'educated' fools, criminals and delinquents of many brands.

The criminal, as Dostoevsky has told us in the "House of the Dead," thinks of freedom as "somehow freer than real freedom, that is, than it actually is." He has no comprehension of his position in the social context. He is typically impulsive, determined to 'get there' at one jump, as was Raskolnikov. The perception of right-and-wrong principle is glaringly inadequate when applied to him. *We must move the focus of the criteria of criminal responsibility, as Dostoevsky insistently taught, more and more away from the Reason Test toward the Emotion-Will Test.*

<sup>8</sup> People v. Schmidt, 216 N. Y. 324, 339.

Sapir<sup>9</sup> and Wolfarth<sup>10</sup> have pointed out the possibilities for criminology to be derived from the study of Dostoevsky's works. And as Murry has so forcefully expressed it, "Dostoevsky needed the reputation of a convict condemned in order that people should believe in him."<sup>11</sup> Also: ". . . there are no geniuses in Scotland Yard, but only clever men. They might be able to state the law, but they could not prove it in flesh and blood. A Dostoevsky can point the moral in the imperishable stuff of humanity. . . ."<sup>12</sup>

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<sup>9</sup> Sapir, B., *Dostojewsky und Tolstoi über Probleme des Rechts*, Tübingen. Mohr, 1932.

<sup>10</sup> Wohlfarth, P., *Die verbrecherische Persönlichkeit bei Dostojewski und Joseph Conrad*. *Monatsch. f. Krim. Psych.*, 1935, 26,349.

<sup>11</sup> Murry, J. M., *Fyodor Dostoevsky*, 1916, 71.

<sup>12</sup> *Ibid.*, 105.