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Dostoevsky and Education through Punishment

Chris Barker

Abstract: In an important 1984 paper, "The Moral Education Theory of Punishment," Jean Hampton argues that the practice of inflicting painful criminal punishments is justified only if punishment is morally educative. Hampton's suggestion forms the point of departure for this article on Dostoevsky's *Crime and Punishment*. I show that Dostoevsky agrees with Hampton that punishment should aim at moral reform; however, Dostoevsky presents no evidence that self-punishment or legal punishment reliably cultivates respect for law, legal authority, oneself, or others as moral agents. Instead, Dostoevsky's post-Siberian writings are highly critical of Russian criminal justice, and emphasize that moral education comes through dialogue, reflection, and criticism. This highly individualized treatment may be experienced as painful, but it does not have to result from, and it may even be impeded by, legal "hard treatment."

Introduction

While deterrence and retribution are perhaps the dominant justifications of criminal punishment, it is plausible think of education as *the* most reasonable justification of punishment.[1] In this view, even harsh treatment can be justified if it advances the offender's education. Jean Hampton's 1984 article "The Moral Education Theory of Punishment" is perhaps the most well-known source of this approach. As Hampton explains,

> Punishments are like electrified fences. At the very least they teach a person, via pain, that there is a "barrier" to the action she wants to do, and so, at the very least, they aim to deter. But because punishment

Chris Barker is Assistant Professor of Political Science at The American University in Cairo, Room 2004, Prince Alwaleed Bin Talal Bin Abdulaziz Alsaud Hall (HUSS), AUC Avenue P.O. Box 74, New Cairo 11835, Egypt, (barkch@gmail.com).

[1]For the growing literature on punishment, overpunishment, and disproportionate punishment, see Arthur Shuster, *Punishment and the History of Political Philosophy: From Classical Republicanism to the Crisis of Modern Criminal Justice* (Toronto: University of Toronto Press, 2016); Thom Brooks, *Punishment* (Abingdon: Routledge, 2012), 13–85, esp. 51–63; Michelle Alexander, *The New Jim Crow: Mass Incarceration in an Era of Colorblindness* (New York: New Press, 2010); and the essays, including my own, in *Rethinking Punishment in the Era of Mass Incarceration*, ed. Chris W. Surprenant (New York: Routledge, 2017).

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> "fences" are marking moral boundaries, the pain which these "fences" administer (or threaten to administer) conveys a larger message to beings who are able to reflect on the reasons for these barriers' existence: they convey that there is a barrier to these actions because they are morally wrong.[2]

In practice, there are of course good reasons for thinking that offenders will try to avoid hard treatment, even if they think that criminals deserve punishment.[3] In theory, Hampton's insight helps to explain why offenders sometimes seek out corrective punishment for their own good, and, or so the theory goes, feel guilt and desire to be punished rather than to remain in uncorrected moral error.

In her later works, Hampton moves away from the moral education theory to adopt an expressive theory of retribution, which, she hopes, addresses two oversights in her 1984 article: the noneducability of some wrongdoers and the theory's unresponsiveness to claims made by or on behalf of victims.[4] It is likely that such a move must be made in order to place the moral subjectivity of victims back at the center of criminal punishment.[5] However, the present paper takes the 1984 article as a point of departure to consider morally educative punishment in Dostoevsky's novels, and especially in *Crime and Punishment*.[6] There are three reasons to revisit the idea that punishments that seek only or primarily to effect the moral improvement of the criminal are justified. First, moral education and related approaches are attractively forward looking. They look not at what offenders were, but at what they can become. Second, in the best case, punishment for the sake of education is tailored: education may justify severe restrictions on freedom or lenient sentences, but it depends on the offender and the situation. Finally, despite or

[2]Jean Hampton, "The Moral Education Theory of Punishment," *Philosophy & Public Affairs* 13, no. 3 (1984): 212.

[3]As Kant remarks, "it is impossible to will to be punished." See Immanuel Kant, *The Metaphysics of Morals*, in *Kant: Political Writings*, trans. H. S. Reiss (Cambridge: Cambridge University Press, 1991), 158.

[4]See Jean Hampton, "An Expressive Theory of Retribution," in *Retributivism and Its Critics*, ed. Wesley Cragg (Stuttgart: Steiner Verlag, 1992), 1–25 and Richard Dagger, "Jean Hampton's Theory of Punishment: A Critical Appreciation," *APA Newsletter on Philosophy and Law* 10, no. 2 (2011): 6–11.

[5]Jean Hampton, "Correcting Harms versus Righting Wrongs: The Goal of Retribution," *UCLA Law Review* 39 (1992): 1659–1702.

[6]Some questions must necessarily be left open. For example, some forms of punishment may simply not be educative, and others may not be suited to specific educative aims. Corporal punishment, for example, may not be cultivating. "Humbling" penalties may also prove to be a better alternative than the intentional infliction of physical discomfort, whether through incarceration or through some other approach. See Herbert Fingarette, "Punishment and Suffering," *Proceedings of the American Philosophical Association* 51 (1997): 499–525.

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really because of its flexibility, educative punishment respects the moral personality of the offender and (in some but not all versions) that of the victim.

Hampton herself suggests in passing that Dostoevsky's novel, with its exploration of the psychology of criminality, serves as an illustration—not, to be sure, as a standalone theory of punishment, but as additional psychological evidence—for Hampton's theory of the educative power of punishment.[7] She writes:

> Novelists like Dostoevsky have explored the criminal's need, born of guilt and shame, to experience pain at the hands of the society he has wronged in order to be reconciled with them. … Punishment understood as moral education would explain how it [punishment] could be perceived as a purification process. For how is it that one overcomes shame? Is it not by becoming a person *different* from the one who did the immoral action? … It might well be the yearning for that change which drives a person like Raskolnikov towards his punishment.[8]

At least on first look, this approach is sensible. The novel draws on Dostoevsky's own experience of penal servitude to tell the story of a murderer who unlearns his immoral attitude during incarceration. However, a closer look tells a different and even more interesting story. Dostoevsky characterizes his own period of punitive confinement in Siberia as follows: "I consider those four years as a time during which I was buried alive and shut up in a coffin."[9] His attitude towards punishment is reflected in the action of the novel. The protagonist, Raskolnikov, ends the novel by standing confused and unrepentant in the midst of his legal punishment. He has confessed; he has been punished; but he is not transformed by the experience of either.

Raskolnikov's (and Dostoevsky's) situation suggests an important question: What is it about crime and punishment that educates? On the evidence of the novel, the answer is: not much. *Crime and Punishment* does not vindicate moral education by providing "a full and compete justification" of

[7]Anna Schur, *Wages of Evil: Dostoevsky and Punishment* (Evanston, IL: Northwestern University Press, 2012), 13. For a defense of sentimentality that explains the use of an author such as Dostoevsky in a philosophical argument, see Robert Solomon, *A Passion for Justice: Emotions and the Origins of the Social Contract* (Lanham, MD: Rowman and Littlefield, 1995), 32–34, 236–38. For an ultimately critical account of the concreteness of restorative justice, see Annalise Acorn, *Compulsory Compassion: A Critique of Restorative Justice* (Vancouver: University of British Columbia Press, 2004).

[8]Hampton, "Moral Education Theory," 234. Compare Anna Schur, *Wages of Evil*, 13.

[9]Quoted in Fyodor Dostoyevsky, *The House of the Dead*, trans. David McDuff (London: Penguin Books, 1985), 7. Dostoevsky explains that the offender's "anguished, convulsive display of his personality" and his "instinctive longing for his own self" are thwarted by incarceration. These displays are said to resemble the convulsive cries of a man buried alive in a coffin, that is, Dostoevsky's own cries. See Dostoevsky, *Notes from a Dead House*, trans. Richard Pevear and Larissa Volokhonsky (New York: Vintage Classics, 2016), 80.

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Raskolnikov's punishment "at the hands of the society he has wronged."[10] Moral education theory also fails to explain Raskolnikov's character development in the novel and the "gradual renewal … gradual regeneration" that is foreshadowed in the novel's epilogue.[11] The novel ends with the failure of legal threats and punishment to cash out in reconciliation between offender and society, which is explained by Dostoevsky both as a failure of the individual subject and as a communicative failure of the legal system.

Part of the problem is that any *actual* criminal code is not adequate to the task of moral communication: crimes are not properly ranked by severity, laws are not equally enforced, and the trial process does not adequately track criminal liability. Dostoevsky does not help to resolve these specific problems. However, in order to understand the type of moral improvement that we expect from punishment, we must understand the complicated dialectic of moral transformation, and here the novel and the theory are of use.[12] As Dostoevsky writes, "To love your neighbor as yourself … is impossible. The law of personality on earth prevents it. The *I* prevents it."[13] As his novel shows, the thou and thee also prevent moral learning when they send mixed and confused signals about right and wrong. Raskolnikov's hesitation to confess and atone is partly explained by these shortcomings of family, community, law, and state. "How am I guilty before them?" he asks when contemplating giving himself up to the law. "Why should I go? Why should I tell them? It's all just a phantom. … They expend people by the millions themselves, and what's more they consider it a virtue. They're cheats and scoundrels, Sonya! … I won't go."[14]

To anticipate the conclusion of this article, *Crime and Punishment* shows the extent to which the legal process itself is implicated in communicative breakdown rather than in moral communication and education. What the novel contributes to the analysis of offenders' moral education is a thick,

[10]Hampton, "Moral Education Theory," 209, 234.

[11]Fyodor Dostoevsky, *Crime and Punishment*, trans. Richard Pevear and Larissa Volokhonsky (New York: Vintage Classics, 1993), 551.

[12]Mandeep K. Dhami, Greg Mantle, and Darrell Fox, "Restorative Justice in Prisons," *Contemporary Justice Review* 12, no. 4 (2009): 433–48; Kathleen Daly and Russ Immarigeon, "The Past, Present and Future of Restorative Justice: Some Critical Reflections," *Contemporary Justice Review* 1, no. 1 (1998): 21 – 45; Mark S. Umbreit and Ted Lewis, *Dialogue-Driven Victim Offender Mediation Training Manual: A Composite Collection of Training Resource Materials* (Center for Restorative Justice & Peacemaking, University of Minnesota, 2015).

[13]Fyodor Dostoevsky, *Dostoevsky's Occasional Writings*, trans. David Magarshack (Evanston, IL: Northwestern University Press, 1963), 305n.

[14]Dostoevsky, *Crime and Punishment*, 420–21. For criticisms of state power in Russia's 1845 criminal code, see Brian Conlon, "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," *Russian Law Review* 2, no. 4 (2014): 11.

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individualized account of a particular person caught in a system of investigation, trial, and punishment, which is consistent with Dostoevsky's insistence on examining particular rather than general cases. We learn about the very high price of the very long, demanding process of self-criticism that precedes moral transformation. A source of rich insight for practitioners seeking to refine techniques of restorative and rehabilitative justice is thus discovered. As with restorative justice's goal of renewed reconciliation between self and community, Dostoevsky's demanding conception of universal moral brotherhood remains elusive and perhaps undesirable for many of his characters, but isolation and separation from the moral community is also undesirable and perhaps impossible. Dostoevsky's genius lies in showing the reader the offender's isolation and suffering and the very particular and individualized treatment needed to restore moral community after crimes.[15]

Moral Education and Moral Relativity

In the words of the early American penal reformer Edward Livingston, "The greatest step … towards reformation, is from thoughtlessness to thoughtfulness. Few of those committed to prisons are accustomed to think: it is for want of thought that they became guilty."[16] Incarceration, penal servitude, and solitary confinement are, one hopes—given their harshness—supportive of thoughtfulness. Incarceration, though, is not always corrective in this way; in the (not necessarily reliable) opinion of some of Dostoevsky's characters, Russian punishments merely isolate convicts and cause pain without advancing moral reform.[17] In a later section, I will return to the question of the specifically Russian context of the workings of criminal justice. The question addressed here is whether self-complacency and self-love insulate wrongdoers from the "shock" given by legal punishment. For Dostoevsky, a high degree of insulation *may* justify increasingly sharp shocks to the criminal's system.

[15]For restorative justice and community, see Acorn, *Compulsory Compassion*, 86. Dostoevsky's ideal of moral brotherhood is developed in *The Brothers Karamazov,* discussed below, and the pain of its loss is the theme of *Crime and Punishment*.

[16]Alexis de Tocqueville and Gustave de Beaumont, *On the Penitentiary System in the United States, and Its Application to France: With an Appendix on Penal Colonies, and Also Statistical Notes*, trans. Francis Lieber (Philadelphia: Carey, Lea & Blanchard, 1833), 292.

[17]See Dostoevsky, *Notes from a Dead House*, 15–16; and Dostoevsky, *The Brothers Karamazov,* trans. Richard Pevear and Larissa Volokhonsky (New York: Farrar, Straus and Giroux, 2002), 64–66. The point is reinforced by contemporary criminal justice theory, which holds that greater severity in punishment (mandatory sentences, long sentences, mass incarceration) do not improve deterrence. See Michael Tonry, "Learning from the Limitations of Deterrence Research," *Crime and Justice* 37, no. 1 (2008): 279–311.

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Examining the acute contradiction between self and society, horrifically brought to mind by the act of murder, is one way towards thoughtfulness. As Dostoevsky writes in his notes about the novel, "N.B. His [Raskolnikov's] moral development begins from the crime itself; the possibility of such questions arise which would not then have previously existed."[18] However, the narrator of *Notes from a Dead House* opines that the "inequality of punishment for the same crime," not only as it is administered by the theoretically impartial state, but also as it is subjectively received by wrongdoers, undermines the lesson taught by criminal punishment. Strikingly, Dostoevsky writes in *Notes from a Dead House*, which was published in 1861, well after his own Siberian incarceration had ended, that this question is "partly insoluble" for him "even now." In explanation of this crucial point, Dostoevsky writes:

> True, crimes cannot be compared with each other, even approximately. For instance, two criminals each killed a man; the circumstances of both cases are weighed, and both wind up with the same punishment. Yet look at the difference between the crimes. … [He then enumerates different motives and circumstances of two homicides, which make it difficult for the state to assess degrees of criminal liability.] They both go to the same hard labor. … For each character there is a variation. … Here, for instance, is an educated man, with a highly developed conscience, with awareness, with heart. The aching of his own heart will kill him with its torment before any punishments. He will condemn himself for his crime more mercilessly, more pitilessly than the most terrible law. And here next to him is another man, who will not think even once of the murder he has committed all the while he is in prison. He even considers himself in the right.[19]

The narrator of *Notes from a Dead House* judges that most of the criminals with whom he is incarcerated do not blame themselves. They do not act as if they deserve punishment, and they are not ashamed by or even at times aware of

[18]Quoted and discussed (alongside student crimes, Pierre-François Lacenaire's crime and trial, Dostoevsky's own trial and mock execution, his experience of penal servitude in Siberia, and the contemporary question of Russian nihilism) in Joseph Frank, *Dostoevsky: The Miraculous Years, 1865–1871* (Princeton: Princeton University Press, 1995), 63–66, 87. Dmitri undergoes the same learning process after his arrest: "I've found out more in this one cursed night than I'd have learned in twenty years of living" (Dostoevsky, *The Brothers Karamazov,* 486). Tragically, some transgressions that kick moral reflection into gear end the possibility of moral regeneration. Thus, Dostoevsky writes in his notes that his character Stavrogin's violation of a young girl, described in the epilogue of *The Demons*, is "the most terrible sin, for which there is not, and cannot be, any forgiveness" (quoted in Frank, *Dostoevsky: The Miraculous Years*, 22).

[19]Dostoevsky, *Notes from a Dead House*, 49–50; Frank, *Dostoevsky,* 64.

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the moral force of societal condemnation.[20] At some point, the reader hopes, the penny drops, but the message drawn from Dostoevsky's experience of penal servitude is that some people seem to be incapable of moral learning. Dostoevsky complicates his point in *The Idiot*, where Myshkin argues that criminals, although knowing that they are wrong, successfully repress their human and Christian values.[21]

Presuming that authorities can distinguish between morally irredeemable types and those who are in various stages of denial, the depth of denial *may* justify increasingly sharp, graduated shocks to the criminal. They may even justify an initial shock to jar offenders into reflection upon their ways and their errors. The crucial point is that moral education becomes mere habituation, and not education, in the absence of the correct moral communication that is sent in a manner that can be received by the offender, and for this type of message there is no obvious formula.[22]

Raskolnikov's Morality and Christian Morality

In order for morally educative punishment to create the conditions for moral transformation, offenders must have the freedom to err and to mend their ways.[23] So, at least, Dostoevsky appears to think. For example, Raskolnikov acts in a morally generous or courageous manner in several scenes in the novel, and appears to know that what he did then was right. He intercedes on behalf of a drunken young girl to protect her from a man trying to take advantage of her. He pays Marmeladov's medical costs and supports the drunkard's family after his accidental death.[24] These examples of generosity and liberality, accomplished at personal risk, are, however, undermined by the *way* they are done, and by the existence of other motives, such as vanity, which suggest that he may not knowingly do the right thing for the right reasons. In almost every case of liberality, Raskolnikov is giving away other people's money, and even when he gives money anonymously, his sense of self-worth increases and the reputation for generosity trails after him. Raskolnikov himself questions his motives. These doubts may exacerbate his rational egoism and bring him to defend the "virtue" of "extraordinary men" and Napoleonic man prior to the killing. If Raskolnikov cannot know whether his motives are pure, his moral uncertainty may ironically radicalize into hardness and meanness under the withering pressure of

[20]Dostoevsky, *Notes from a Dead House*, 187.

[21]Fyodor Dostoevsky, *The Idiot*, trans. Richard Pevear and Larissa Volokhonsky (New York: Vintage Classics, 2003), 338–39.

[22]Michel Foucault, *Discipline and Punish*, trans. Allan Sheridan (New York: Vintage Books, 1995), 125, 170, 184.

[23]Hampton, "Moral Education Theory," 213.

[24]Dostoevsky, *Crime and Punishment*, 176, 185.

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analysis.[25] From this point of view, it is the process of analysis itself that is on trial in the novel. In a manner reminiscent of some romantic critics of utilitarianism and analytical philosophy's murder-to-dissect approach to social relations, the solidity of community melts into air through the destructive application of reason.[26] The symbol of analysis and social atomism is murder, and the only remedy is for Raskolnikov to give himself up to authorities whose power he cannot understand—or kill himself in the face of a guilt he cannot conceptualize and accept. This is the opposite of the thoughtfulness desired by moral reformers.

In what Dostoevsky calls the novel's "coup de maître," the reader learns only in fits and starts that Raskolnikov has become a changed and morally worse person than he was in his student days.[27] As Razumikhin guesses, Raskolnikov is a political or ideologized criminal, a dissenter (*raskolnik*) whose reason is "darkened" by the Western, progressive egoism of 1860s Russia, and who remains internally split (*raskol*), just as he splits his victims' heads with an axe.[28] However, he is also less than this—he is a vain young man who dislikes his living conditions and wants a quick and easy way out. Moreover, the fact that Dostoevsky can point to a recent ideological transformation in Raskolnikov makes his case *easy* to resolve. On the reading that is most generous to Raskolnikov, he was a moral young man, who, corrupted by the ideas described at greater length in *The Demons*, became a morally confused, violent criminal. To rehabilitate him would only require him to escape the recent influence of nihilistic egoism. Applying the scriptural epigraph of *The Demons* (Luke 8:32–36) to contemporary Russia, Dostoevsky writes in a personal letter that "the devils went out of the Russian man and entered into a herd of swine, that is, into the Nechaevs and Serno-Solovieviches, et al. These are drowned or will be drowned, and the healed man, from whom the devils have departed, sits at the feet of Jesus."[29] That could be Raskolnikov's future fate once he is purified from the influence of the Nechaevs of the world.

Dostoevsky may think that procedural justice does not have much impact on confession and reform, and, in fact, that Christian beliefs, or just the

[25]Schur, *Wages of Evil*, 120–22 and Dostoevsky, *Crime and Punishment*, 142–54, 255–58; 518, 419; 258–67, 273–74.

[26]"The beginning of Inquiry is Disease: all Science, if we consider well, as it must have originated in the feeling of something being wrong, so it is and continues to be but Division, Dismemberment, and partial healing of the wrong" (Thomas Carlyle, "Characteristics," in *A Carlyle Reader: Selections from the Writings of Thomas Carlyle* [Acton, MA: Copley, 1999], 37).

[27]Frank, *Dostoevsky: The Miraculous Years*, 86.

[28]Antony Johae, "Towards an Iconography of Dostoevsky's *Crime and Punishment*," in *Dostoevsky and the Christian Tradition*, ed. George Pattison and Diane Oenning Thompson (Cambridge: Cambridge University Press, 2001), 177–78.

[29]Quoted in Joseph Frank, *Dostoevsky: A Writer in His Time* (Princeton: Princeton University Press, 2010), 607.

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contradictory character of antisocial and criminal wrongdoing, force confession and bring about transformation all on their own. This interpretation of the novel is supported by the summary of the *future* novel that Dostoevsky sends to the publisher, N. M. Katkov:

> Here is where the entire psychological process of the crime is unfolded. Insoluble problems confront the murderer, unsuspected and unexpected feelings torment his heart. Heavenly truth, earthly law take their toll and he finishes by *being forced* to denounce himself. Forced because, even though he perishes in *katorga*, at least he will be reunited with people; the feeling of isolation, and separation from mankind, which he felt right after completing his crime, has tortured him.[30]

The view of criminality and punishment presented here could be described as optimistic: crime is self-regulating and the criminal is forced to confess because criminal wrongdoing involves an intolerable moral contradiction. Dostoevsky completes this interpretation as follows: "In my story there is also a hint of the idea that the prescribed judicial punishment for the crime frightens the criminal much less than lawgivers think, partly because he himself morally demands it." On this view, there is little need to levy specific deterrent penalties because crime is self-punishing, and, to the extent that retributive punishment is required, it simply enacts a form of the punishment to which the wrongdoer subjects himself.

In the time preceding his future moral transformation, Dostoevsky's Raskolnikov, confused and ashamed, seems to require segregation. Raskolnikov is capable of further violence, especially to himself (as Porfiry Petrovich observes), but also to others, and especially to other fallen characters such as Svidrigailov.[31] Moreover, from the point of view of proportionality in justice, Raskolnikov's self-punishment before and after his confession is not necessarily equal to his crime. It is episodic and convulsive rather than clear and definite. One can easily imagine a Raskolnikov who, like the Underground Man, suffers as much over a minor transgression as he does from a murder.

Since an important psychological truth about guilt and responsibility seems to dwell in the very uncertain area of forced ethical discourse about oneself, it is crucial not to conclude that Dostoevsky simply writes as a Christian expecting criminals to confess. Instead, one must consider the multiple layers of self-accusation and self-knowledge that must be breached—or rebuilt—before offenders are restored to a broader community.

[30]Quoted in Frank, *Dostoevsky: The Miraculous Years*, 40.

[31]Dostoevsky, *Crime and Punishment*, 170, 462, 464. The mysterious stranger of *The Brothers Karamazov* similarly plans to kill Zosima in order "to revenge myself … for everything." See Dostoevsky, *The Brothers Karamazov*, 312. My thanks to the anonymous reviewer who encouraged me to focus on the parallel between Raskolnikov's plight and that of the mysterious stranger.

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Self-Accusation and Self-Punishment

Although, as observed above, not every offender will react in the same way to transgression, the attractive idea of the novel is that criminality is a performative contradiction leading to acceptance of criminal liability, expiation through suffering, and a new embrace of moral community. Raskolnikov's odyssey allows the reader to explore this point in great detail.

The novel's first part describes the crime of double murder. At the very beginning of part 2, Raskolnikov's terror begins only a very short time after he had concluded that "everything has worked out well."[32] Within a few pages, Raskolnikov becomes hobbled by an "*unbearable* awareness" of his criminality.[33] When he is reunited with his joyous family at the beginning of part 3, we are told that Raskolnikov's "arms would not rise to embrace them; they could not." We later learn of his conflicted attraction to and repulsion from those closest to him—"I seemed to love them so much when they weren't here"—and also that he grows to "hate them."[34] A problem of human temporality is implicated here: before Raskolnikov acted, he did not know what his actions would make him become. "I had to have known beforehand," he despairs, "knowing myself, *anticipating* myself," and yet he could not know in advance whether he was an impressive Napoleon or merely a louse with a conscience.[35]

After the crime, he remains in contact with his family, in a sense, but no longer able to share the moral community within which the sentimental bond of family operates. Importantly, Raskolnikov retains an amiable and supportive friend, Razumikhin, but Raskolnikov cannot find community in the "second self" of friendship, either. Tragically, a more intellectually equal friendship might have allowed Raskolnikov to talk his plan through in advance, as opposed to writing an article to a faceless audience that cannot criticize and challenge his conclusion. In this regard, Porfiry Petrovich turns out to be the better second self than Razumikhin. Porfiry Petrovich's intellect is critical of and evenly matched to Raskolnikov's intellect, and Porfiry Petrovich is less hopeful and trusting than Razumikhin.[36]

The crux of the novel is not the murder—that is exposed to the reader in part 1 of the six parts—but Raskolnikov's suffering. As Sonya sees, because Raskolnikov lets her see it, he is "terribly, *infinitely* unhappy."[37] Dostoevsky provides a stunning, extended commentary on Raskolnikov's condition

[32]Dostoevsky, *Crime and Punishment*, 86, 90–91.

[33]Ibid., 191–92, 197–98 (emphasis added).

[34]Ibid., 227, 275. He feels the same inability to identify his emotions in his relation to Sonya. See ibid., 408–9.

[35]Ibid., 273–75.

[36]The theme of the companion who is perceived as an accuser, but in fact is accepted as a "friend," is also in Dostoevsky, *The Brothers Karamazov*, 310.

[37]Dostoevsky, *Crime and Punishment*, 325 (emphasis added).

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after his "confession" to a police clerk regarding the existence of an earlier monetary debt. In this and in a later confrontation with Zamyotov, Raskolnikov is testing out the different ways of engaging with others, experimenting with acts such as confessing, declaring, and giving testimony. All seems to point towards a basic desire to confess the murder.[38] It is when Raskolnikov is talking to the police about one thing but has in mind his much graver moral error that he suddenly becomes "decidedly indifferent to anyone's possible opinion," and he concludes that any future happiness is foreclosed. Dostoevsky continues:

> Even if he had been sentenced to be burned at that moment, he would not have stirred, and would probably not have listened very attentively to the sentence. What was taking place in him was totally unfamiliar, new, sudden, never before experienced. Not that he understood it, but he sensed clearly, with all the power of sensation, that it was no longer possible for him to address these people in the police station, not only with heartfelt effusions, as he had just done, but in any way at all, and had they been his own brothers and sisters, and not police lieutenants, there would still have been no point in his addressing them, in whatever circumstances of life. Never until that moment had he experienced such a strange and terrible sensation. And most tormenting of all was that it was more a sensation than an awareness, an idea; a spontaneous sensation, the most tormenting of any that he had yet experienced in his life.[39]

Once again, Dostoevsky de-emphasizes the threat of judicial punishment, or proportionality, or fear of the human community. Instead, it is the absence and *impossibility* of further meaningful communication that Raskolnikov feels. Even denunciation would be welcome, because denunciation relies on a mutuality that Raskolnikov finds shattered.

This spontaneous sensation of paralyzing guilt impedes rather than aids calculations about the effects of potential punishment.[40] This is so because Raskolnikov realizes that his act of murder means, implicitly, that he no longer recognizes the moral authority of the community. If they burn him alive in an intensely painful fashion, he would fear the pain of the fire, but he would have no stake in the justice of the foreign community that condemns him. He would die like a stray, raging animal: killed, but not punished. Porfiry Petrovich recognizes Raskolnikov's dilemma when he threatens to arrest him. When Raskolnikov responds that he will flee Russia, Porfiry denies that he can rid himself of his exclusion and taint simply by leaving that community and going to another. As Porfiry concludes, "*It's impossible*

[38]Ibid., 163.

[39]Ibid., 103–4.

[40]For the argument that citizens may not be responsive to increased legal threats, see Tonry, "Learning from the Limitations of Deterrence Research."

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for you to do without us."[41] But it is also impossible for Raskolnikov to live with his erstwhile peers.

In this condition of extreme distress, it is impossible to speak without resorting to mere chatter and bavardage, without always making the "fig in the pocket" and putting one's tongue out on the sly.[42] This theme is revisited when Raskolnikov is walking through town, deciding whether to kill himself or to turn himself in to the police. "All the people that he met were repulsive to him" in this state of self-loathing.[43] Standing on a bridge over the Neva River, he rejects a gesture of pity and sympathy extended by a poor, elderly woman. Dostoevsky narrates that "it seemed to him that at that moment he had cut himself off, as with scissors, from everyone and everything."[44] This sensation later sweeps over Raskolnikov again when he promises his mother, "We'll have time to talk all we want!" only to remember that "not only would he never have the chance to talk all he wanted, but that it was no longer possible for him to talk at all, with anyone, about anything, ever."[45] When this type of opinion is vocalized, it is paradoxical. The expression of the wish ("Would that moral community were possible, and that we could recognize each other—but we cannot!") implies its own rejection, because the vocalization of the plea implies that the entreaty can be received. Speaking to Zamyotov, and *wanting* to confess, Raskolnikov thinks that a "terrible word was trembling on his lips, like the hook on that door [in the room that he committed murder]: another moment and it would jump out; another moment, and it would let go; another moment and it would be spoken."[46] His irresoluteness is sweet in comparison to silence, because, in silence, it is consistent to think that there is simply no possibility of human community.

The difficulty for moral education posed in these absolutely wrenching descriptions of total communicative breakdown is twofold. First, the punishments of Raskolnikov's conscience act on him quite independently of judicial punishment, and perhaps against judicial punishment. The narrator of *Notes from a Dead House* admits that "the moment before punishment is hard, so hard that I may sin in calling this fear cowardly and fainthearted."[47] But in that passage Dostoevsky is analyzing fears that are excited by the threat of immediate punishment. Raskolnikov is afraid of the torture of interrogation, of the punishment of *katorga*, of the humiliation of the community's expressive

[41]Dostoevsky, *Crime and Punishment*, 461.

[42]Fyodor Dostoevsky, *Notes from Underground*, trans. Richard Pevear and Larissa Volokhonsky (New York: Vintage Classics, 1994), 35; *Crime and Punishment*, 162–63, 191. The manner is imitated by Porfiry Petrovich (his "senselessly empty phrases," punctuated by "enigmatic little words," at 337).

[43]Dostoevsky, *Crime and Punishment*, 110.

[44]Ibid., 115.

[45]Ibid., 229.

[46]Ibid., 165.

[47]Dostoevsky, *Notes from a Dead House*, 185.

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condemnation, and of violent death.[48] This latter end is what Raskolnikov fears when he approvingly quotes Victor Hugo on preferring to live "a thousand years, an eternity" on a narrow ledge, surrounded by an abyss, so long as he did not have "to die right now."[49] "Only to live, to live, to live!" he promises himself. But Raskolnikov is lying to himself when he argues that he prefers and could enjoy mere life. Raskolnikov's conscientious feeling of guilt would last an eternity on that ledge, and that ledge would become a "house of the dead" as complete and as demoralizing as the work camp of Dostoevsky's Siberian years. This is made explicit when Raskolnikov questions whether suffering ends with incarceration.[50] Why—and what—would incarceration heal, if at least his suffering is just and deserved, as it clearly is by the lights of the louse-conscience, but does not lead to moral transformation?

The second problem for moral education is that although Raskolnikov's conscience is punitive, Dostoevsky has not argued that it is objectively punitive or that his spontaneous guilt is universally morally reliable. In fact, there may be concrete preconditions required by Dostoevsky's version of moral education, including prior acceptance of or inculcation in Christian religion; a normal, nonsociopathic character; and the absence of circumstances favorable to legitimizing criminal behavior, such as political ideologies that whitewash murder. That is, when Dostoevsky the novelist describes the workings of Raskolnikov's punitive conscience, he does not argue that each and all possess this conscience or even that it reliably tracks moral truths. Some denizens of the dead house avoid Raskolnikov's choice of suicide or moral reform. Some ideologues, such as *The Demons*' Pyotr Stepanovich Verkhovensky, and some allegedly progressive types such as *Crime and Punishment*'s Luzhin, are what we might call heartless, although they might call themselves guiltless.

The Theory Revisited

If one brackets broader, more difficult questions of moral relativity and objectivity in order to look directly at the educative function of criminal punishment, the case for moral education through punishment is not any more secure. As Hampton argues, punishment "can teach both wrongdoers and the public at large the moral reasons for choosing not to perform an

[48]See Dostoevsky, *Crime and Punishment*, 347–49 for the torture of interrogation, and *The Brothers Karamazov*, 467 for its criticism ("Unlearn this official method of interrogation"). See also Dostoevsky, *The Demons*, trans. Richard Pevear and Larissa Volokhonsky (New York: Vintage Classics, 1994) 693, 697, and (on life in prison versus a death sentence) Dostoevsky, *The Idiot*, 59–66, 61.

[49]Dostoevsky, *Crime and Punishment*, 158 and 557n20.

[50]Ibid., 170, 188.

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offense."[51] Punishment is in this most attractive of formulations "moral communication."[52] How, though, does moral communication occur through the medium of painful judicial punishments? How does punishment communicate about moral reasoning in a way that avoids becoming demoralizing?

Some of these questions are beyond the scope of this paper, but other questions are helpfully examined within a specific legal/historical context such as Dostoevsky's Russia. In Dostoevsky's novels, one finds that the law itself is implicated in communicative breakdown rather than in moral communication. That is to say, the law itself can be a bad teacher about legal threats and legal punishment.[53]

The Judicial Process and Moral Education

In order to justify the educative imposition of painful judicial punishments, criminal prosecution and punishment should directly serve the aims of moral education, and punishment should do this more efficiently and humanely than the workings of an offender's own spontaneous, guilty conscience. The legal process from investigation to punishment should contribute identifiable goods such as procedural fairness and objectivity to the process of punishment, and by doing so make punishment better suited to the aim of education.

The question whether the legal process does so or not is of particular relevance to Dostoevsky's milieu, where a "golden age" of Russian legal reform (1864–1917) promised to transform relations between citizens and state in a humanizing manner.[54] However, after the 1864 reforms, Dostoevsky remained a critic of the system, not because he thought the judicial process insufficiently transparent, adversarial, democratic, and Westernizing, but because he felt that the new judicial process, despite creating new courts and allowing better access to justice for the lower classes, got in the way of truth seeking. Specifically, justice and truth were compromised by jury nullification and unscrupulous attorneys' ability to gain acquittals through eloquence.[55]

[51]Hampton, "Moral Education Theory," 213.

[52]Ibid., 216.

[53]Michael Tonry distinguishes between cases where legal threats are not communicated well and where legal threats are not implemented. Some messages are also demoralizing, e.g., capital punishment may have a brutalization effect. See Tonry, "Learning from the Limitations of Deterrence Research," 283, 286.

[54]See Gary Rosenshield, *Western Law, Russian Justice: Dostoevsky, the Jury Trial, and the Law* (Madison: University of Wisconsin Press, 2005) and Conlon, "Dostoevsky v. the Judicial Reforms."

[55]This theme is developed at greatest length in book 12 of *The Brothers Karamazov.*

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Dostoevsky's brief description of the events after Raskolnikov's confession—his pretrial incarceration, trial, post-trial transportation, and penal servitude in Siberia—should be read as a criticism of the Russian legal system. Under existing Russian law, Raskolnikov is liable for a maximum sentence of twenty years' penal servitude. Instead of receiving this sentence, he is assessed an eight-year term of incarceration at hard labor. A list of mitigating factors accepted by the sentencing judge is supplied in the novel's epilogue. They include: (a) Raskolnikov's illness and distress prior to the crime; b) the fact that he did not make use of what he had stolen; (c) "the circumstances of the accidental killing of Lisaveta"; (d) the confession of his guilt at a time when there was no clear evidence against him; (e) the fact that he had used his last resources to help a poor fellow-student and the student's father while he was a student; and (f) the fact that he had previously saved two small children from a fire.[56]

Accepting criminal responsibility requires, perhaps above all, transparency about one's own mental states. The state's use of educative punishments should clarify confusion about these mental states, and reduce disproportionate societal condemnation and disproportionate self-punishment.[57] In Raskolnikov's case, the finding of the trial court does not advance his acknowledgment of responsibility. First, unless it is the product of unusual carelessness on Dostoevsky's part, characterizing Lisaveta's death as "accidental" in the list of mitigating circumstances provocatively misstates the gravity of Raskolnikov's premeditated and malicious act.[58] The narrative of the event shows that the robbery and murder were premeditated to a high degree.[59] Second, just as it is fair to wonder whether Porfiry Petrovich's investigation is conducted in a harassing manner,[60] it is also fair to ask whether the state ends up making too favorable a case for Raskolnikov at trial. Porfiry Petrovich suppresses aspects of Raskolnikov's confession and presents Raskolnikov's act not as the product of a long-settled intention whose justification is laid out in a six-month-old scholarly article but as a "darkening" of the intellect. Thus, after what amounts to charge and sentence bargaining, Raskolnikov is given a punishment that is disproportionate to his crime.

In *The Idiot*, Myshkin complains that the jury trial does not advance procedural objectivity. Dmitri Karamazov's trial and erroneous conviction in *The*

[56]Dostoevsky, *Crime and Punishment*, 536–37.

[57]Other examples of incorrect or disproportionate punishment and self-punishment include the drawn-out criminal trial of the minor bureaucrat Gorshkov in *Poor Folk*, and the painter Nikolai's self-punishment in *Crime and Punishment*. See Fyodor Dostoyevsky, *Poor Folk and Other Stories*, trans. David Duff (New York: Penguin Books, 1988), 105–6.

[58]Compare Dostoevsky, *Crime and Punishment*, 537 with 79.

[59]See ibid., 4–9, 68–69, 75, 78–79.

[60]See Conlon, "Dostoevsky v. the Judicial Reforms," 12, 19; Dostoevsky, *Crime and Punishment*, 354, 420–21, and *The Brothers Karamazov*, 467.

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Brothers Karamazov provide further support for Myshkin's point.[61] In a nutshell, Russian criminal justice fails to advance moral education or properly locate criminal liability. It is the absence of judicial moral communication that partly explains why Dostoevsky ends the novel with a very ambiguous epilogue. On the final page of the epilogue, Dostoevsky hints that Raskolnikov sees moral reform on the horizon. However, Dostoevsky leaves it an open question whether Raskolnikov's criminal punishment advances that transformation, or whether his internal dialogue and his coming to faith depend upon separate, nonjudicial processes of moral reform.

Moral Education and Incarceration

The apparent disconnect between Raskolnikov's moral development and his criminal sentence and punishment clearly undermines the electrified fence metaphor advanced by Jean Hampton. Nevertheless, Dostoevsky chooses to end the novel when Raskolnikov is at a very early stage of his moral reflection and transformation, perhaps implying that *prolonged* incarceration might force the desired type of moral change, even or especially because one cannot be precise about when and how moral transformation occurs. Moreover, indeterminate sentences and greater local control (by prison wardens and parole boards) over the type of sentences and the level of rehabilitation that is required before re-entry into society may help the process of individualizing punishment and reform. Be this as it may, the decision to concentrate on an unreformed Raskolnikov serves to focus attention on the individual wrongdoer's confused *resistance* to moral education. Although moral reformation and return to some form of moral community are clearly crucial to Dostoevsky's understanding of crime and punishment, the case that he makes through Raskolnikov's example is that moral education is deeply personal and individual and relies upon highly contextual elements that a criminal justice system only formalizes with difficulty.

As the reader learns at the novel's end, Raskolnikov finally decides to admit his guilt to himself. To do so, he appears to need a spiritual guide (*dukhovnik*, in the Orthodox tradition) in the form of Sonya, who is the voice (and image) of simple morality pushing him to confess his guilt.[62] Raskolnikov also explicitly requires the person of the "fiery lieutenant," whom he despises, but whose authority and toughness he seems to need to make a complete verbalization of guilt. Raskolnikov, who has committed violence against women, may need a gendered intervention in order to deal with his crimes, and to talk through his crimes with both adversarial and supportive interlocutors.

[61]See Dostoevsky, *The Idiot*, 337–38; *The Brothers Karamazov*, 656–756; and Conlon, "Dostoevsky v. the Judicial Reforms," 32.

[62]Nadieszda Kizenko, "Confession in Modern Russian Culture," *National Council for Eurasian and East European Research* (2007): 1–23.

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Without explicitly theorizing about it, Dostoevsky's Raskolnikov checks many of the boxes of restorative justice, including the "personalized experience of justice as an individual and relational achievement."[63]

The Russian legal system shares Raskolnikov's commitment to verbalization. In the pre-1864 Russian courts, confession was the preferred evidence of guilt, presumably because it offered certainty of guilt, and perhaps because it echoed the annual public confession required by the Russian Orthodox Church until 1905 as part of a cycle of confession-penance-communion (*govenie*).[64] The backdrop of confession is present across all of Dostoevsky's novels; however, it is not clear that confession would operate the same way in a legal and intellectual context where confession was not given a prominent place by religious authority. It is also doubtful that it is just to put the power to encourage confession in the state's hands, at least not without further protections against *false* confession and *self*-incrimination.[65]

It is certainly not clear, at the novel's puzzling conclusion, what work confession actually does.[66] In the average criminal case, confession might create further space for self-inquiry and dialogue. In other words, it might have instrumental value rather than becoming the act that creates the transformative moral reconciliation that Sonya promises to Raskolnikov. The novel's epilogue, which takes place almost a year and a half after his confession, shows Raskolnikov as badly off as before. He even becomes newly morally resistant. Raskolnikov had expressed confused doubts about the justice of punishment prior to his confession, and he continues to live out these doubts. At that earlier time, he expressed his worries in a series of questions:

> They [Donya and Sonya] say the ordeal is necessary for me! Why, why all these senseless ordeals? Why, am I going to have a better understanding then, when I'm crushed by suffering and idiocy, in senile powerlessness after twenty years of hard labor, than I have now? And why, then, should I live? And why do I agree to such a life now?"[67]

In part 1 of the novel, Raskolnikov was able to retain his sense of moral self-worth and to commit murder by opining that the pawnbroker's murder was

[63]Acorn, *Compulsory Compassion*, 5.

[64]Conlon, "Dostoevsky v. the Judicial Reforms," 12, 19; Kizenko, "Confession in Modern Russian Culture," 12.

[65]Kizenko, "Confession in Modern Russian Culture," 6, 7, 14, 18.

[66]For the place of confession and juridical avowal in the construction of identity, see Michel Foucault, *Wrong-Doing, Truth-Telling: The Function of Avowal in Justice*, trans. S. W. Sawyer (Chicago: University of Chicago Press, 2004), 17–19; Foucault, *The Hermeneutics of the Subject: Lectures at the Collège de France 1981–1982*, trans. G. Burchell (New York: Palgrave Macmillan, 2005), 59.

[67]Dostoevsky, *Crime and Punishment*, 520.

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"not a crime."[68] To Donya, near the conclusion of the story, Raskolnikov still denies his criminality: "Crime? What crime? … I killed a vile, pernicious louse, a little old money-lending crone who was of no use to anyone, to kill whom is worth forty sins forgiven, who sucked the life-sap from the poor —is that a crime?"[69] If anything, he argues that, in theory, his act was moral by an act-utilitarian standard.[70] But by engaging in a tortured dialogue with Sonya, he confronts and abandons the easiest explanation of his conduct (hunger/robbery), and graduates to another explanation (Napoleonic desire), and then to yet another (desire to help his family), and then to an apparently final explanation ("I wanted *to dare*").[71] What is important in this pained searching for justified beliefs is his inability to interrupt the cycle of justifications and to achieve closure on his own.

Repentance and expiation *would* accomplish this aim. However, he cannot repent:

> Oh, how happy he would have been if he could have condemned himself! He could have endured everything then, even shame and disgrace. But he judged himself severely, and his hardened conscience did not find any especially terrible guilt in his past, except perhaps a simple *blunder* that could have happened to anyone. He was ashamed precisely because he, Raskolnikov, had perished so blindly, hopelessly, vainly, and stupidly, by some sort of decree of blind fate, and had to reconcile himself and submit to the "meaninglessness" of such a decree if he wanted to find at least some peace for himself.[72]

Clearly, reconciling oneself to "meaningless" is not the intended thoughtfulness that lies behind morally educative punishment, unless the world is indifferent and amoral. Immediately following this passage, Raskolnikov explains that his "conscience is clear," and that "this alone he recognized as his crime: that he had not endured it, but had gone and confessed."[73] On this view, Raskolnikov is punished in a world without moral order precisely by playing the good Christian and confessing his crime. However, as noted above, the novel ends with the possibility that moral redemption may occur in a "new story" that is not a part of our "present story."[74] The "new

[68]Ibid., 71.
[69]Ibid., 518.
[70]Johae, "Towards an Iconography of Dostoevsky's *Crime and Punishment*," 181. It is important to note that utilitarian theory is just what Raskolnikov rejects in Luzhin's views. See Dostoevsky, *Crime and Punishment*, 148–53.
[71]Dostoevsky, *Crime and Punishment*, 412–13, 415, 416, 418. Ironically, Razumikhin rejects the liberals' sociological theory of crime, but he (and others, including Sonya and Rodion's mother) are eager to find mitigating factors in Raskolnikov's living conditions (190–91, 231, 268).
[72]Ibid., 543.
[73]Ibid., 543.
[74]Ibid., 551.

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story" is not closely tied to the criminal justice system's embodiment of communicative rationality. In this way, the cycle of incomplete justifications closes without actual closure, and this "new story" is accurately presented as a leap over a gap in explanation rather than the *product* of a process that began with Raskolnikov's confession.[75]

Although it is risky to interpret Dostoevsky's novel by laying great emphasis on his own experiences, Dostoevsky's accounts of his own Siberian incarceration do help us to understand the novel's theory of justice. After his mock execution and subsequent imprisonment in Siberia, Dostoevsky saw a moral and intellectual "transformation" in himself.[76] The same transformation is spoken of at the end of *Notes from the Dead House*, although in that book the narrator, Gorianchikov, dies despondent and unredeemed.[77] In *The Brothers Karamazov*, Dmitri learns to speak in a new voice through the very experience of trial.[78] The semiautobiographical accounts of penal servitude and the trilogy of novels about criminal justice and political ideology that he produced after his incarceration (*Crime and Punishment*, *The Demons*, *The Brothers Karamazov*) suggest that Dostoevsky is still processing his own political and moral transformation long after his judicial punishment ends. In all likelihood, his transformation is just as much the product of these acts of autobiographical self-reflection as it is the product of the painful confinement at hard labor. One could still argue that Dostoevsky needed to be shocked into considering his errors by the "electrified fence" of threatened execution in 1849 or the humiliation of penal servitude in the years afterward, but Dostoevsky populates his literary universe with a variety of characters, some who receive the shock (e.g., Dunya's rejection of Svidrigailov) and do not walk the "psychic" path from solitary anguish to brotherhood, and others who do.[79]

Rather than explaining moral transformation through a bare shock to the moral system, the novel succeeds primarily because there is an educative dialogue, led by someone with personal knowledge of the main actors, who guides moral confrontation and insight. In Raskolnikov's case, the process that most directly leads to moral education is a dialogic, victim-centered approach that occurs largely outside of the criminal proceedings. Sonya acts as a surrogate victim for Raskolnikov, one whose goodness recalls Lisaveta's simplicity and goodness. It is this personification of innocent victimhood that pressures Raskolnikov to recognize the moral goodness in others that he categorically denies in the case of the pawnbroker.

[75]Raskolnikov resists Nikolai's anguished but perhaps too easy conclusion: *The sin is mine*. See ibid., 351.

[76]See the two letters cited in Dostoevsky, *Notes from a Dead House*, viii–ix.

[77]Schur, *Wages of Evil*, 89.

[78]Dostoevsky, *The Brothers Karamazov*, 750, 753.

[79]For parallel "duels" between Zosimov and the young landowner, and Dunya and Svidrigailov, see Dostoevsky, *The Brothers Karamazov*, 298–300, 303 (the psychic path) and Dostoevsky, *Crime and Punishment*, 490–97.

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Raskolnikov's reform arguably would not take place without the initial conversations with Sonya, their Bible study, and her continued presence with him in Siberia.[80]

The novel's educative dialogues are also adversarial, and this adversarial "legal technique" becomes an explicit theme in the cat-and-mouse game played by Raskolnikov and Porfiry Petrovich.[81] The line that the inspector must walk is thin: he does not want to create a false confession and conviction, but he wants a confession, as he makes clear when he finally confronts and accuses Raskolnikov of the double murder. Outright arrest might give the offender "a definite position … defining him and reassuring him psychologically, so that he would be able to hide from me in his shell" by turning his mind to the game of defending himself.[82] It is the investigator who first introduces the example of the resurrected Lazarus, suggesting that Rodion's connection with Sonya through their reading of 2 John 1–45 is set in motion by the investigative process. Porfiry also provides other cues to Raskolnikov as to what he should do. About the pledge, Porfiry says: "You ought to make a statement to the police," perhaps planting a thought regarding confession. Porfiry's investigation also turns up crucial pieces of evidence, namely, Raskolnikov's article confessing his ideology and his return trip to the scene of the crime.[83]

The pressure of investigation clarifies Raskolnikov's moral dilemma and forces a decision, but it would be hard to say that Porfiry Petrovich follows a formula that could be imitated by others. Most importantly of all, the investigator understands the particularity of offenders and offenses and learns to react to (and lead) the specific individual in front of him:

> it must be observed that the general case, the one to which all legal forms and rules are suited, and on the basis of which they are all worked out and written down in the books, simply does not exist, for the very reason that every case, let's say, for instance, every crime, as soon as it actually occurs, turns at once into a completely particular case, sir; and sometimes, just think, really completely unlike all the previous ones, sir.[84]

The irony of this crucial passage is that Porfiry Petrovich is relying on his experience with criminal psychology to argue for complete individualization of treatment of offenders. In a further irony, he is right: the experienced observer sees that each general type is embodied in a particular.

[80]Dostoevsky, *Notes from Underground*, xvi. For a modern-day parallel, see Umbreit and Lewis, *Dialogue-Driven Victim Offender Mediation Training Manual*, 20.

[81]The technique and its effects are described at Dostoevsky, *Crime and Punishment*, 334–37, 343, 349.

[82]Ibid., 339.

[83]Ibid., 250, 344–47.

[84]Ibid., 339.

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The Importance of the Contextual Tailoring of Punishment for Moral Learning

Above, I have argued that Dostoevsky reminds us of the relativism and situatedness of moral learning. While acknowledging the contours of the specific Russian religious, philosophical, and political contexts analyzed by authors such as Anna Schur and Joseph Frank, *Crime and Punishment* retrieves the individual from being wholly subsumed under the medical, legal, political, or religious general case.[85] Thus, in *The Demons*, faulty moral education is presented as the result of adopting extreme ideas about political justice and social organization.[86] The same 1860s nihilism provides the ideological context of Raskolnikov's behavior in *Crime and Punishment* and informs his guilt even when it is felt, phenomenologically, as a "spontaneous sensation."[87] So, too, Raskolnikov's behavior is undoubtedly shaped by the cultural context of Russian society, both with respect to the tension between social classes in reform-era Russia, and also by the influence of Orthodox Russian Christianity.[88] Nevertheless, as important as social, economic, political, and religious contexts are for explaining criminality and punishment, a satisfying account of punitive moral education should focus attention back on the individual.

Dostoevsky's novels do not seem to support the view that there are stages of moral renewal akin to the stages of grief or of dealing with victimization. His characters are instead obsessed with achieving paradise "at once," an aim that may actually impede their gradual spiritual and intellectual development, and, as observed above, their moral transformation appears to begin

[85]See, in comparison, Schur, *Wages of Evil*, 14–15, 99–103. For Schur, Dostoevsky understands criminality through the lens of an essentially Russian concept of self. Dostoevsky therefore thinks of moral transformation as a "mystical event" produced by a "volatile, spontaneous self that the author valorizes as a distinctively Russian feature" of human psychology (*Wages of Evil*, 14–15, 116, 125, 128). This view intersects with Jean Hampton's view of crime as the product of a "prior defiant act" of a defiant individual (Hampton, "Mens Rea," in *The Intrinsic Worth of Persons: Contractarianism in Moral and Political Philosophy*, ed. Daniel Farnham [Cambridge: Cambridge University Press, 2007], 98–100). As Schur recognizes, Razumikhin subscribes to the living self/soul theory in the novel (Dostoevsky, *Crime and Punishment*, 256), and *The Brothers Karamazov* shows that Russians are beset by the contradictions of a "broad, Karamazovian nature" (699). While it is not possible to address the particularity of Russian character here, it is correct to say that each offender is embedded in a family, a nation, and (for Dostoevsky) a universal brotherhood of humans whose conception may be importantly Russian.

[86]Michel Foucault, "The Subject and Power," in *Essential Works of Foucault, 1954–1984*, vol. 3, *Power*, trans. Robert Hurley et al. (New York: Free Press, 2000), 326–48.

[87]Dostoevsky, *Crime and Punishment*, 104.

[88]Dostoevsky, *The Brothers Karamazov*, 65.

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at the very moment of their guilty act.[89] Some individuals will require a completely clear and uncontaminated field akin to solitary confinement in order to learn about morality, and they will benefit from isolation.[90] Others will require daily structure, constant social support, and a variety of restraints on their freedom.

Judging by the evidence of the post-Siberia novels, the most that can be said for punishment is that it clears a space and/or time for the offender potentially to become "a person *different* from the one who did the immoral action." Dostoevskian moral education requires difficult and very painful or dangerous cooperation from victims or victims' families. Most of all, it requires massive, intelligent buy-in from the offender. Raskolnikov, for example, experiences his interrogation as torture.[91] But he avoids killing himself precisely because of these painful interventions.[92] There is no reason for investigation and trial to *be* punitive, but this is not to say that retributive or deterrent punishment may not be justified on other grounds, and that being investigated or engaging in moral introspection and dialogue may not be experienced as painful even though the aim is not painful shock, but the painful dialogue that awakens thoughtfulness.

Conclusion

It may be useful to step back momentarily from Porfiry Petrovich's "particular case" and consider the general case of moral education once again. Jean Hampton describes moral education theory as

> an attempt to explain punishment as a good for those who experience it, as something done *for* them, not to them, something designed to achieve a goal that includes their own moral well-being. This is the justification of punishment the criminal needs to hear so that he can accept it as legitimate rather than dismiss it as vindictive.[93]

This attractive view of punishment makes it seem that punishment is something that a criminal should want to experience. If this insight were justified, it would go a long way towards reconciling democratic society to

[89]For Alyosha's change in a "moment," see Dostoevsky, *The Brothers Karamazov*, 362. For forgiveness in a moment, see ibid., 412. For paradise in a moment, see ibid., 308.

[90]Gorianchikov, the noble who narrates *Notes from the Dead House*, says that "I blessed my fate for having sent me this solitude, without which neither that judgment of myself nor that strict review of my past life could have been" (Dostoevsky, *Notes from a Dead House*, 280; Schur, *Wages of Evil*, 98). Tocqueville and Beaumont observed of the early American use of solitary confinement that this form of punishment "does not reform; it kills" (*On the Penitentiary System*, 5).

[91]Dostoevsky, *Crime and Punishment*, 349.

[92]Ibid., 517.

[93]Hampton, "Moral Education Theory," 237.

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punishment, and even to mass incarceration. If large numbers of citizens were incarcerated on moral-educationist grounds, it might suggest that moral perfection, not improvement, was the aim of punishment. Still, if we stipulate that the law does not ask more of individuals than they can possibly do, does Dostoevsky help us to understand the educative benefits of investigation, trial, and punishment?

Taking Dostoevsky's post-Siberia novels as evidence, it is far from clear that pain communicates a moral message, or that hard treatment reduces reoffending either in the case of offenders such as Raskolnikov or the hardened offenders described in *Notes from a Dead House*. There is little indication in the novel that changes in one's moral being occur through subjection to judicial punishment. Moreover, although even he does not become morally educated in the novel, Raskolnikov is an easy rather than a hard case. He has no permanent mental diseases or defects and no apparent early childhood trauma to work through. Beyond a few bad months, he even lacks bad habits. If one were serious about transplanting Dostoevskian "particular cases" into the actual world of criminal justice, one would find far more disadvantaged individuals with far more significant educational and emotional deficits who pose much deeper problems for moral reformation.[94] Thinking in this vein, it seems that neither the mentally ill sociopath nor the author of minor transgressions (e.g., speeding, driving on a suspended license) ought to face painful shocks to their moral compass.[95] Crimes where the motive is not the egoist's "dear self" or moral defiance but weakness, thoughtlessness, and conformism may simply not require educative punishment.[96] Incarcerating such persons in a highly structured environment that is quite unlike the unstructured environment of civil society may not teach the type of skills they need to navigate the real world, and incarcerating *anyone* under conditions of "less eligibility," where they are subject to prison violence, social isolation, and discipline, may not serve a rehabilitative aim.

As Dostoevsky implies, generally applicable criminal laws cannot ever specify the exact link between crime and punishment successfully, and it would take a Herculean effort from law enforcement and judicial officers to tailor the system to the needs of each individual, as Porfiry Petrovich does for Raskolnikov. Still, it is utopian to think that citizens are capable of guiding *themselves* through the arc of criminality, repentance/expiation, and reconciliation. Dostoevky's post-Siberian writings suggest instead that a

[94]In contrast, more than ten percent of offenders in the United States are homeless before entry to jail; two in five prison and jail inmates lack a high school equivalency; and almost a third of state and a quarter of federal prisoners committed their offense while under the influence of drugs. See "NRRC Facts and Trends," *Justice Center: The Council of State Governments* (2016), https://csgjusticecenter.org/nrrc/facts-and-trends/.

[95]Dagger, "Jean Hampton's Theory," 7.

[96]Jeffrie Murphy, "Jean Hampton on Immorality, Self-Hatred, and Self-Forgiveness," *Philosophical Studies* 89, no. 2 (1998): 215–36.

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massive amount of prerestorative, predialogic guidance is required before reconciliation between individual offenders and their communities can be achieved. Dostoevsky focuses on moments of transformation, and on shocks that bring about those moments. Dostoevsky's novels present "before" pictures that show men such as Raskolnikov in isolation and suffering, and "after" pictures of brotherhood and spiritual renewal, such as Zosima and Sonya. Connecting these images is no exact mechanism—not incarceration and reflection, not public confession, not discussion with and exhortation by a spiritual guide—to bring us from "before" to "after." The legal processes of investigation and interrogation, trial, and conviction do not adequately address the complex relations between feelings of guilt, power and powerlessness, and legal prohibitions. These relations are often obscure to the accused, and misunderstood by the accuser. A mixture of adversarial and supportive dialogue guiding self-reflection is required for moral education, but the mixture of these strategies remains specific to the individual case and escapes formalization and general application.

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