

**Writing Justice: Fiction and Literary Lawyers in
Late Imperial Russia, 1864-1900**

by

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ABSTRACT

My dissertation investigates the unique relationship between fiction, law, and literary criticism in nineteenth century Russia, in the decades following the judicial reform of 1864 that marked the introduction of public trials and trial by jury. Where previous scholarship has remarked on the overwhelmingly negative depiction of courts in late imperial fiction and journalism, my dissertation offers a major correction to this dominant view by looking at the writings by “literary lawyers,” a group of late imperial jurists who were also exceptionally successful as litterateurs. Specifically, I explore the writings by such prominent literary lawyers as Vladimir Spasovich (1829-1906), Anatoly Koni (1844-1927), and Sergey Andreevsky (1847-1918), and several others. These literary lawyers wrote both commentaries on the meaning of law for Russian society and literary analyses of the great works of fiction of Russia’s Golden Age. In my dissertation, I focus on the impact of their writings on the competing conceptions of Russian attitudes towards legal justice. Using their respectable position as literary critics, these lawyers mounted the vigorous defense of legal culture. Specifically, they combatted the one-sided historical view of Russia’s deeply-rooted hostility towards law and courts that emerged through the writings and ideological work of such authors of outsized weight and influence as the charismatic editor of *Moskovskie vedomosti* [*Moscow News*] Mikhail Katkov and novelists Fyodor Dostoevsky and Lev Tolstoy, who deliberately crafted an incomplete picture of court justice that has constrained our understanding of it ever since. After the judicial counter-reforms

of the 1870s and 80s deprived courts of their important freedoms, literary criticism became important for Russia's literary lawyers as it offered them an opportunity to express their intellectual position. Using their privileged status as literary experts, these lawyers did their best to recast the works of the great writers as allies in their defense of courts as the sites of legal and humane justice. The war of words between Russia's writers and lawyers demonstrates that, as a public forum, the medium of literature and literary analysis provided an important venue for debates about the meaning of legal justice in a reluctantly reforming society.

INTRODUCTION

The Authority of Law: Fiction, Literary Criticism, and the Literary Lawyers

in Late Imperial Russia (1864-1900)

For some organic reason,
We are utterly unequipped
With these progenies of Satan,
Common sense and legal wit.
Russian natures are too broad,
And our truth does not conform
To the formal, narrow road
Of a strictly legal form.

*From a satirical poem by Boris Almazov. Quoted
from the essay by Bogdan Kistyakovskiy "In the
Defense of Law" (1909).¹*

What makes people respect law? This question was not on my mind as I began to write this dissertation. However, as I progressed in my writing, the question of respect for law began to emerge more frequently and more urgently, often in connection to a particular chapter that I was working on at the time. It is a common statement in any discussion of Russia's legal culture—be it the nineteenth, twentieth, or even twenty-first century—that Russia has always lacked a properly developed legal consciousness, and, throughout history, Russian authorities (monarchs, the Communist Party leaders, post-communist authorities) gravitated towards lawlessness. Writing in 1909, the legal scholar Bogdan Kistiakovskii lamented the absence of respect for law even among Russian intelligentsia, a lack that for Kistiakovskii was confirmed by the hostility of

Russian literature to the idea of the rule of law. Kistiakovskii's use of the term "literature" should, however, be clarified: by "literature," Kistiakovskii referred not to fiction specifically, but to other kinds of writings, predominantly philosophical and polemical in nature, that in the Western European context corresponded to such influential works as Montesquieu's *The Spirit of the Laws* (1748) or Rousseau's *The Social Contract* (1762). Kistiakovskii argued that in the absence of important works about the significance of law for society Russian intelligentsia continued to lack the intellectual nourishment necessary for the development of a more respectful attitude towards law as a social mechanism. Kistiakovskii wrote:

Our intelligentsia's legal consciousness could have been developed by the exposition of legal ideas in literature. Such an exposition could have at the same time been an index of our legal awareness. The intense activity of consciousness, the persistent exertion of thought in a given direction, always receives its expression in literature. In it we must first seek our testimony as to the nature of our legal consciousness. [...] Now, in that totality of ideas out of which our intelligentsia's world-view takes shape, the idea of law has no place at all.

Literature specifically is a witness to this [gap] in our social consciousness.²

Kistiakovskii was certainly correct, and nothing comparable to Montesquieu's or Rousseau's writings emerged in Russia. Catherine II's *Nakaz*, permeated with the legal ideas of the French Enlightenment, could not be compared to the aforementioned works due to the fact that it was a set of instructions penned by the Empress for the legislative commission, and not a reading of a broader, intellectual appeal. However, Kistiakovskii's essay did not offer a completely adequate depiction of Russia's legal reality either. Published as a part of *Vekhi* [*Landmarks*], a most famous collection of essays that was highly critical of the intelligentsia, this essay greatly

underestimated the positive impact of the attitudes of late imperial intellectuals on the legal consciousness of their time.

Kistiakovskii wanted to make his reader think that Russians were somehow inherently allergic to the idea of legality. While the whole premise of hostility to the law may be hard to fathom for Anglo-American readers who generally value the impartiality of law and the institution of jury trial as protecting freedom and civil rights, it is important to remember that Russian anti-legalism (i.e. the notion that all Russian people traditionally distrusted Roman law, and were oriented towards a communal, moral, organic “inner justice”) was a cultural construct, created and perpetuated by Russian intellectuals themselves. This idea originated with Slavophiles, and was conceived by them long before the judicial reform of 1864. Of course, Russians had many reasons to distrust the pre-reform courts, where the lawsuits dragged out for decades. However, the notion of anti-legalism is not very helpful if we want to understand the whole range of attitudes towards law that began to animate the public after the judicial reform of 1864. Russian conservatives (among them Mikhail Katkov, the conservative journalist and editor of *Moskovskie vedomosti* [*Moscow News*]) eventually adopted the view of new courts that was reminiscent of Slavophiles: for them, the post-reform court was a dangerous Western import, capable of inciting discord among the population. Nevertheless, many ordinary Russians were enthusiastic about the new legal system with its trial by jury, oral adversary procedure, and lawyers. Another group within Russian society that had a positive and hopeful vision of Russia’s legal culture were liberal jurists. Contrary to Bogdan Kistiakovskii’s claim about the absence of legal consciousness among the intelligentsia, the members of this group not only possessed a legal consciousness, but they also made a vigorous effort at creating a substantial body of writing

and public speeches that promoted the rule of law, and, beyond doubt, affected the legal consciousness of their time. This leads me to the topic of my dissertation.

My dissertation shows that there was more to this picture than Kistiakovskii's essay suggested. The alleged anti-legalism of Russians was a cultural construct, and not all Russian intellectuals were hostile towards law and lacked a legal consciousness. Prominent Russian jurists whose writings and speeches are analyzed in my dissertation—I call them the “literary lawyers”—greeted the judicial reform of 1864 with delight. Even when the judicial counter-reforms limited the freedoms granted to new courts by the judicial reform of 1864, literary lawyers continued to believe in courts as unique sites of protected speech and protected civil rights. In response to the counter-reforms' deleterious effects on these sites, they mounted a vigorous defense of court justice by engaging themselves with literary criticism that, in the context of increased censorship of public speech, continued to provide a relatively free space for expressing their legal views. Specifically, literary lawyers took upon themselves the task of exposing the limitations of the legal views promoted by such authors of outsized weight and influence as Mikhail Katkov, Fyodor Dostoevsky, and Lev Tolstoy, who crafted in their writings a deliberately incomplete picture of court justice that has constrained our understanding of legal justice in Russia ever since. My dissertation also demonstrates how in Russia, a highly ideologically controlled society, the nexus between law, fiction, and literary analysis fulfilled the role of an important critical node of political, moral, and, most importantly, legal thinking. During the judicial counter-reforms, the state strengthened its ideological control over Russian courts and legal professionals. However, the thinking about state, society, and law continued to take place within a relatively public medium of literary criticism. In this context, Russia's literary lawyers acquired the role of major players in the legal debates of the late nineteenth

century, a debate that unfolded most forcefully in the space created at the junction of Russian courts, fiction, and literary criticism.

After the judicial reform of 1864, the first generation of court professionals had to fulfill a vast task. Relatively quickly and with limited prior experience, they had to learn how to talk about legal topics to Russian jurors and the public in general. In the absence of other available tools, these court professionals used literature and literary criticism as a language that allowed them to communicate their legal views in an accessible fashion. Court professionals began to practice their skill of literary analysis within the literary Shakespearean Circle, a literary collective that was founded by the prominent Saint-Petersburg lawyer Vladimir Spasovich in 1874. This collective existed until the end of the nineteenth century, and united within itself predominantly literature-loving lawyers. The members of the Shakespearean Circle gathered in order to discuss Shakespeare's tragedies, French classicist drama, Russian writers of the past, modern European and Russian prose and poetry, and many other topics of cultural or literary significance as they came to prominence in contemporary literary debates. Among Russian authors, they were particularly interested in the writings of Dostoevsky and Tolstoy, two major novelists whose novels *The Brothers Karamazov* (1881) and *Resurrection* (1899) offered very unflattering depictions of court justice. Remarkably, the members of the Shakespearean Circle tried to uncover within the infertile ground of these novel traces of the approval of law. This was an uphill battle, because both authors were outspoken in their hostility to the courts. While it remains highly questionable whether their literary exercises persuaded other intellectuals that Dostoevsky and Tolstoy either respected law or weren't particularly hostile towards it, their work offered a forceful defense of the courts, which was picked up by other liberal proponents of legality and courts of law. Moreover, they strategically diverted attention from the deliberate and

systematic critiques of courts by Mikhail Katkov, Dostoevsky, and Tolstoy, to a more individuated, novelesque lampooning of over-talkative lawyers (Dostoevsky) or corrupt officials (Tolstoy).

Each chapter of my dissertation investigates a particular phenomenon of the Russian nexus between law and literature from the perspective of the very unique group of late imperial intellectuals, whom I call the “literary lawyers.” The rich memoirist literature and fiction of the late nineteenth century frequently applied the Russian word *advokat* (the word with the primary meaning “defense lawyer”) to different types of legal professionals who practiced some kind of a literary hobby and frequented literary salons and circles of Saint-Petersburg and Moscow. In the chapters of my dissertation, I draw primarily on the writings and speeches of three prominent “literary lawyers”: the law professor and defense lawyer Vladimir Spasovich (1829-1906), prosecutor, judge, and statesman Anatoly Koni (1844-1927), and defense lawyer Sergey Andreevsky (1847-1918). It is important to stress that all three men knew each other rather well: their friendship was cemented by their decades-long literary collaboration within the literary Shakespearean Circle. In the aftermath of the judicial reform of 1864, “literary lawyers” became a common phenomenon on the literary horizon of Russia’s two capitals.

I chose Vladimir Spasovich, Anatoly Koni, and Sergey Andreevsky as the main actors in my discussion of the nexus between literature and law in Russia for three main reasons. First, in addition to their exceptional visibility and success as court professionals, all three men were tremendously influential as literary critics, in fact, to the extent that their publicly expressed literary appraisal could make or break the author. In his memoir *The Novel of My Life* (1926), the writer Ieronim Iasinskii describes the impact of these particular literary critics on the literary reputation of the young Anton Chekhov.³ In 1886, upon reading one of Chekhov’s short stories

in Alexey Suvorin's *Novoe Vremya*, the "literary lawyer" Evgeny Utin got excited about the young author's rising star, and took upon himself the task of promoting the author among his colleagues. Iasinskii writes: "Utin telephoned Urusov, Koni, and Andreevsky, and recommended each of them to read Chekhov's short story about the hungry priest. In a matter of days, the fame of Chekhov was solidified."⁴ Second, all three men were not simply accomplished jurists, but also real court celebrities, whose professional accomplishments were known throughout the Empire. Third, all of them left a particular mark in the history of Russian literature.

Among late imperial court professionals, Vladimir Spasovich occupied a very special position. As the founder of the aforementioned literary Shakespearean Circle, he encouraged his colleagues for over two decades both for the purposes of professional self-fashioning and as a means of promoting legal culture and legal consciousness. Spasovich joined the newly formed Russian bar in 1865, thus becoming a member of the first generation of Russian lawyers. Before 1865, Spasovich lectured as a law professor at his *alma mater*, the Saint-Petersburg University. A scholar at heart, Spasovich truly loved the job: his lively and accessible lectures in criminal law attracted a great number of students to the study of law, and he quickly acquired the status of the University's most inspired and beloved professor. In 1861, Spasovich, along with other prominent professors (Alexey Pypin, Mikhail Stasiulevich, Boris Utin, and several others), was forced to resign from his professorship because he refused to take part in the repressive measures directed against students who partook in student disturbances. Spasovich's resignation jumpstarted his career as a literary scholar, an important hobby that lasted throughout his whole career as a defense lawyer. As a literary critic and scholar, Vladimir Spasovich penned the first book-length history of Polish literature in Russian and essays about Shakespeare, Byron, Lermontov, etc. While as a literary scholar Spasovich was well known among the narrow circles

of Russian intellectuals and *littérateurs*, as a defense lawyer he had a far more substantial claim to fame. He took part in a number of important political and criminal trials (among them the notorious Nechaev trial of 1871), and his successful defenses eventually endowed Spasovich with the unofficial title of the “king of the Russian bar.” Unfortunately, in the annals of Russian literature, Spasovich—an honest professional and moral man—was immortalized as the unprincipled lawyer Fetyukovich in Fyodor Dostoevsky’s novel *The Brothers Karamazov*. This questionable “honor” befell Spasovich after he won the acquittal of a certain Kroneberg, who was tried in 1878 for the cruel battery of his young daughter. In his defense speech, Spasovich suggested that, while Kroneberg’s cruelty was not justifiable, his actions were culturally conditioned, and he acted in the same way as other Russian parents who punished their children physically. Spasovich’s rhetoric alarmed Dostoevsky, who saw in the lawyer’s argument a certain ideologically harmful adulteration of thought that sought to acquit not only the criminal, but the crime itself.

The writings by my second literary lawyer, Anatoly Koni, proved particularly illuminating in the investigation of the nexus between literature, law, and morality in late imperial Russia. While the writings about court justice by Dostoevsky and Tolstoy condemned “court justice” as immoral and unjust, Koni viewed ethics as an inherent part of court justice. It must be noted that as a *littérateur*, Koni was different from Vladimir Spasovich and Sergey Andreevsky. Born into a literary family (his father Fyodor Koni was a playwright and theater critic, his mother—an actress and writer), Koni practiced literature as his second, if not first, profession. He wrote throughout his life, leaving behind a number of perceptive and beautifully crafted essays and memoirs dedicated to Russia’s major writers (Goncharov, Turgenev, Dostoevsky, Tolstoy, and others), many of whom were his close acquaintances. Moreover, he

edited or contributed articles to several academic editions of the collected works by major writers: among them are the beautiful Brockhaus-Efron editions of Shakespeare and Pushkin. In 1900, for his literary accomplishments Koni was awarded the honorary membership in the Imperial Academy of Sciences in Saint-Petersburg. Once again—as was the case with Vladimir Spasovich—Koni was far more famous throughout the Russian Empire in his capacity as a free-thinking judge than as a literary critic. In his judicial capacity, he earned both fame and notoriety when, despite the pressure from the government, he acquitted Vera Zasulich, a woman who in 1878 shot and wounded F.F. Trepov, the Governor-General of Saint-Petersburg. Koni was connected to the world of literature in many ways, but one of his most significant contributions to Russian literature was a story about an episode he had witnessed in court that he shared in 1887 with Lev Tolstoy, and that inspired Russia's foremost novelist to pen his most socially and politically ambitious novel *Resurrection* (1899). Koni's passion for literature was so great that he succeeded in inculcating with it his close friend and colleague Sergey Andreevsky, whom he met in 1868 in Kharkov while serving as an assistant prosecutor at a local court.

Sergey Andreevsky (1847-1918) was the youngest among the aforementioned literary lawyers, and he established himself not only as a literary critic, but also as a poet and author of an unusual memoir titled *The Book of Death*. Several of his essays were recognized by contemporaries as significant contributions to literary criticism (specifically, his essays about Evgeny Baratynsky and Fyodor Dostoevsky's *The Brothers Karamazov*). While Andreevsky's poetry was bland, his memoir can be read as a fascinating, non-fictional companion piece to Tolstoy's novella *The Death of Ivan Ilych*. Suffering from necrophobia, Andreevsky recorded his life through a series of emotionally intense brushes with death: deaths of relatives, friends and acquaintances, and of prominent literary and historical figures. Although his fascinating memoir

was published in its entirety only after Andreevsky's death, the critic frequently read selected chapters at literary gatherings in Saint-Petersburg. One of these chapters, the chapter about the death of Andreevsky's beloved sister Masha, earned a great praise from such important literary figures as Dmitri Merezhkovsky and Zinaida Gippius. My translation of the chapter about Masha has been published by *Toronto Slavic Quarterly*, and is appended to this dissertation. While the fame of Spasovich and Koni as court professionals rested upon their remarkable role in notorious political trials, Andreevsky's fame as a defense lawyer was built upon the excitingly literary quality of his court speeches. Most of Andreevsky's speeches had a distinctly literary feel to them, as they were narrated in a fashion that invoked short stories. These speeches engaged listeners with the defendants' psychologies, pasts, complex hidden motivations, substantiating the lawyer's dramatic accounts with allusions to familiar literary plots. Andreevsky's court speeches were so unique that already during his life time they went through five publications, and it was rumored that provincial lawyers plagiarized his defenses almost *verbatim*.⁵

To sum up, the chapters of my dissertation examine the various ways in which the aforementioned literary lawyers employed literature and literary criticism in order to achieve goals that had to do with the defense and advancement of legal culture in Russia. These lawyers, acknowledged by their contemporaries as literary scholars and critics, used literature as a tool for their professional self-fashioning. They also used literary criticism in a way that called into question Russian literature's alleged anti-legalism. Finally, Russian literature itself inspired the creation by these brilliant late imperial lawyers of the genre of court speech. I use the term "court speech" to refer to the body of court speeches—usually, the closing speeches by famous lawyers—that at the end of the nineteenth century developed as a self-consciously literary genre. These court speeches usually told the stories of defendants in a manner that invoked short stories

or novellas. By now long forgotten, the court speeches by famous lawyers at the end of the nineteenth century competed in popularity with the best works of Russian fiction. While I deal in my dissertation with the fiction about court and trials by Fyodor Dostoevsky and Lev Tolstoy, my focus is not on the literary analysis of these undoubtedly important works, but chiefly on the reception of their fiction by Russian lawyers. I would like to spend the remainder of this introduction by introducing and briefly discussing (1) historical background; (2) relevant scholarship that informed my approach to the topic of law and literature in Russia's cultural context.

Historical Background: The Judicial Reform of 1864 and Counter-Reforms

My dissertation treats people, phenomena, and events associated with the judicial reform of 1864 and judicial counter-reforms of the 1870s and 1880s. The reform of 1864 created a modernized court equipped with trial by jury, oral litigation, and independent judges and lawyers. Excited about the promise of just courts, the best, most talented, and well educated people of this era became court professionals. The new system was very different from the pre-reform system of legal justice. For instance, in the pre-reform courts the verdict was issued by the judge based on the secret, inquisitorial, and written procedure. Because the process was highly hermetic, most Russians distrusted courts and judges, and viewed legal justice as highly arbitrary and inherently unjust. For the first time in Russian history, the new system of court justice made possible a defense of the accused, established limits to the tyranny of the state, and, most importantly, gave birth to the new type of court professionals who had a strong desire to make the new system work. This change in the system of legal justice in Russia was sudden and unprecedented, and many scholars ascribe it to the emancipation of Russian serfs in 1861. The

emancipation ended the legal authority of landowners over Russian peasants, and, consequently, created a need for a new system of courts that could handle the legal affairs of the newly liberated Russian subjects.¹ While it was not the primary intent of Alexander II, the judicial reform had one important side effect. The freedom of speech that was granted to courts by the judicial reform was instrumental in carving within Russia's limited public sphere a space where the urgent issues of the day could be discussed in an explicit fashion. In the absence of a parliament in Russia, the courts quickly transformed into a political and civic platform, causing a great displeasure of the authorities.

The era of the new courts' unrestrained freedom was cut short by the judicial counter-reforms that were set into motion in response to the political trials of the 1870s. During these trials, liberal lawyers frequently defended their clients by criticizing absolutism for not offering Russia's youth any licit avenues for their civic aspirations. This sort of rhetoric was used by lawyers during the scandalous Nechaev trial in 1871. Sergey Nechaev, the leader of the revolutionary group "People's Vengeance," persuaded several of his comrades to kill a fellow student Ivanov, in hopes that a collaboratively committed murder would forge stronger ties amongst the members of his group. Nechaev's crime was gruesome, but most of the students who were arrested had no connection to either Nechaev or his organization, and the trial resulted in a great number of acquittals. The speeches of lawyers and defendants during this trial attracted a lot of public attention, and the authorities responded by introducing laws that curtailed the independence and openness of new courts to the public, limited the independence of judges, and narrowed the competence of juries. In fact, in 1872 the government set up the Special Office of

¹¹ See, for instance: Samuel Kucherov, *Courts, Lawyers, and Trials under the Last Three Tsars*, New York: F.A. Praeger, 1953, 21.

the Governing Senate, a special court for political cases to which the judicial statutes did not apply. After this, all political trials were tried behind closed doors, with some minor exceptions. For instance, the 1878 trial of Vera Zasulich was public. However, it happened only because the authorities decided to classify Zasulich's case as a criminal offence, mistakenly hoping that the jury would indict her. Other major trials of the 1870s (for example, the trial of the 193 and the trial of the 50) took place in the presence of lawyers, but behind closed doors and only with the limited presence of public observers, gaining publicity mainly through the abbreviated and heavily censored descriptions of these trials published in official media outlets or illegal publications of trial-related materials abroad. The counter-reforms reached a culmination with the law of August 14th 1881 titled "Measures for the Preservation of State Order and Public Tranquility." Decreed by Alexander III in the aftermath of his father's assassination, this law allowed governors to arrest, exile, or hand over to a military court any individual suspected of political unreliability, even in cases of simple criminal offenses.⁶

After a brief period of judicial freedom and public trials, the judicial counter-reforms brought about a change in the political and intellectual environment, affecting the ways the literary lawyers felt about courts and their own professional endeavors. After the initial judicial reform of 1864, this group, similarly to the rest of Russian society, experienced a short era of excitement about the new democratic courts. However, as the judicial counter-reforms of the 1870s and 1880s took back many important freedoms granted to courts by the statutes of 1864, the literary lawyers, like their literary counterparts, began to express dread at the fact that the bureaucratic spirit of officialdom began to take possession of the new court and court professionals. Anatoly Koni's characterization of this process provides a potent illustration of how the literary lawyers perceived this devastating change:

Here and there, old wine seeped through new skins. Some people prematurely grew tired, losing the breadth and independence of their views. The organic ties between different judicial institutions weakened, and in many places routine tries to take the place of real work. A quickness of procedure replaced depth and calm composure; in some instances, serving a calling was replaced by seeking career advancement. Preoccupation with the “latest news” oozes into the very process of administering justice, and sometimes the figure of the court professional [*sudebnyi deiatel'*] is overshadowed by the figure of the court bureaucrat [*sudeiskii chinovnik*].⁷

It must be noted that Koni, like many other literary lawyers, generally refrained in his public speeches or writing from mentioning or criticizing the judicial counter-reforms directly. The metaphor of “old wine” seeping through “new skins” is the closest we get to the condemnation of the government’s anti-democratic policies, and it represents an instance of the Aesopian language used by these late imperial intellectual to address troubling political issues.

Responding to the un-freedom that befell Russian courts and “sickened” their profession, the literary lawyers gave public speeches and lectured and wrote about fiction in a manner that offered a self-justifying narrative intended to counter the contemporary anti-legal propaganda, and to prevent the hijacking and exploitation of court-related fiction as a literary crutch in support of the conservatives’ arguments about the organic deficiencies of court justice. The speeches and literary essays penned by the literary lawyers during the late 1870s and 1880s begin to carry the imprint of an ideological struggle against the government’s repressive policies, especially those directed at curtailing the freedoms of Russian courts. This tendency surfaces in the literary lawyers’ public speeches and lore of professional self-fashioning (discussed in

Chapter 1); it surfaces in the responses of the literary lawyers to Mikhail Katkov's editorials in *Moskovskie vedomosti* (discussed in Chapter 3); finally, it surfaces in the ways the literary lawyers handled the fiction and legal views of Dostoevsky and Tolstoy (discussed in Chapters 4 and 5).

Relevant Scholarship and Concluding Remarks

There are several important, book-length studies that treat the nexus between law and literature in late imperial Russia, and in all of them Dostoevsky plays a central role: Harriet Murav's *Russia's Legal Fictions*, Gary Rosenshield's *Western Law, Russian Justice: Dostoevsky, the Jury Trial, and the Law*, and Anna Schur's *Wages of Evil: Dostoevsky and Punishment*.⁸ In her book *Russia's Legal Fictions*, Harriet Murav explores the conflicts between Russian writers and the law, and, more specifically, the ways in which these writers imagined and represented the law, legal language, and authority. Analyzing Dostoevsky's legal attitudes, Murav argues that in his articles about the scandalous criminal trials of the 1870s (published on the pages of *The Writer's Diary*) Dostoevsky positioned himself as a moral authority vis-à-vis Russian courts.⁹ Another study of law and literature, *Western Law, Russian Justice* by Gary Rosenshield, argues that both in his fiction and non-fiction Dostoevsky aimed to represent the new court as a corrupter of native Russian values: i.e. instead of providing a moral education for the public, the new court subordinated the important questions of morality to questions of law. In a very recent study *Wages of Evil: Dostoevsky and Punishment* (2012), Anna Schur explores the relationship between Dostoevsky's views on juridical punishment and penal politics of his time. Schur concludes that throughout his writing career Dostoevsky remained ambivalent about punishment imposed by law: while he never abandoned his Christian beliefs, these beliefs did not lead to any

public denunciation of legal punishment.¹⁰ Ultimately, the aforementioned three studies offer a number of crucial insights into Dostoevsky's legal views: his belief in the superiority of moral justice over legal justice, his anti-legalism, and his indecision about the necessity of punishment. Indirectly, these study also provide a commentary about the important place of Russia's new legal culture within the literary imaginary of Dostoevsky.

While the studies of law and literature during this period cannot bypass a reference to Dostoevsky, looking at law exclusively from his perspective is limiting, especially if we consider that Dostoevsky was only one voice among many other voices who strove to make sense of Russia's new legal culture through writing. While I gleaned a number of illuminating insights from the aforementioned studies, in the process of brainstorming and writing my dissertation I worked out two rules that guided me through this project. First, I decided to explore the nexus between law and literature not from the perspectives of major novelists, but from the opposite perspective: of lesser known, legally trained writers. This (in addition to my serendipitous "discovery" of Sergey Andreevsky's brilliant memoir *The Book of Death* on the shelf of the University of Michigan's graduate library) is the reason why I look at the phenomenon of law and literature from the perspective of literary lawyers. Second, I decided not to presume that during the late imperial era the legal views of such important novelists like Dostoevsky and Tolstoy were more important, respected, or, in fact, more representative of the attitudes of contemporary Russian citizens towards law than the views of literary lawyers.

As several relatively recent studies by historians suggest, the notion of Russian anti-legalism (i.e. the notion used to describe a certain collective Russian consciousness, averse to any type of formal, legal justice) is not at all helpful if we try to get a better understanding of the whole range of legal experiences and attitudes that existed within Russian society. As Richard

Wortman showed in his excellent study *The Development of a Russian Legal Consciousness*, even before the judicial reform of 1864 there were people within the tsarist administration, who respected law, were capable of drafting and implementing a judicial reform, and strove to assume the attributes of legal professionals.¹¹ In the aftermath of the judicial reform of 1864, respect towards law spread among other strata of Russian society. In her study *Russian Peasants Go to Court*, Jane Burbank showed that, despite the intelligentsia's belief that Russian peasant culture was inherently collective and anti-legal, at the beginning of the twentieth century peasants were increasingly willing to solve their problems in courts.¹² Similarly, Louise McReynolds illustrates in her book *Murder Most Russian: True Crime and Punishment in Late Imperial Russia* that, thanks to the coverage of sensational trials by contemporary newspapers, by the beginning of the twentieth century newspaper readers were effectively inculcated with the modernized, legal, forensic, and civic subjectivity.¹³ Finally, justice of peace courts (i.e. arbitration courts that handled minor cases according to a simplified legal procedure) proved also very popular.¹⁴ Their success testifies that thousands of Russians, living in the cities and in rural areas, adjusted to the new legal culture relatively quickly.

To conclude, a look at the writings by literary lawyers confirms a very similar version of late imperial legal reality. Although the literary lawyers entertained a somewhat skewed vision of their favorite works of fiction, Russian culture on the whole was not as anti-legal as the writings of Fyodor Dostoevsky and Lev Tolstoy might have led us to believe. However, the dilemma persists: the legal attitudes of these famous novelists remain on the forefront of Russian literature and culture, while the views of literary lawyers have gradually receded into the past. My dissertation seeks to reverse this relationship by foregrounding the voices and opinions of literary lawyers vis-à-vis Russian writers, and by offering mini-histories of the cultural activities of

literary lawyers—their spectacular court performances, public speeches, and engagement with literary criticism—that, at the end of the nineteenth century, fashioned them as court celebrities, notable public figures, and insightful literary critics. This positioning (literary lawyers vis-à-vis writers) is particularly appropriate for the discussion of the law’s place within the literary imaginary of the late imperial era for two reasons. First, as a professional group, literary lawyers inhabited the same cultural space as Dostoevsky and Tolstoy, with whom they also shared a number of psychological and intellectual characteristics. Literary lawyers, like the authors they read and studied, loved literature, had strong moral commitments, and felt that by doing their work (writing, speaking, or representing the interests of other people in courts) they were standing up for truth and justice. Second, because literary lawyers loved literature, they were strongly affected by the criticisms of their profession in the works of literature. However, unlike Russian writers, they occupied a very unique position to pass an authoritative judgment about the state of legal affairs in Russia. While they undoubtedly belonged to the relatively exclusive club of Russian *littérateurs*, their practical experience in court insured that they understood better than fiction writers people’s social experiences, and were more attuned to the infinite differences in class, wealth, psychology, individual stories, and legal circumstances. This was the main reason why the literary lawyers tried so hard to reduce the harming effect of Russia’s most remarkable novels about courts by showing that, after all, Dostoevsky’s *The Brothers Karamazov* and Tolstoy’s *Resurrection* were literature, and, consequently, they had to be used appropriately: as the enlightening literary studies of humanity, and, perhaps, as an instruction for those practicing law, but not as a weapon aimed to destroy the respect of Russian readers towards law.

¹ B.A. Kistiakovskii, “V zashchitu prava (Intelligentsiia i pravosoznanie)” [“In the Defense of Law: The Intelligentsia and Legal Consciousness”] in N.A. Berdiaev, S.N. Bulgakov, et al., *Vekhi: Sbornik Statei o Russkoi Intelligentsii: Reprintnoe Izd. 1909 goda*, Moskva: Mezhdunarodnaia assotsiatsiia deiatelei kul'tury “Novoe vremia,” 1990, 125-155. Page 131. Translation is mine. In Russian: По причинам органическим / Мы совсем не снабжены / Здравым смыслом юридическим, / Сим исчадем сатаны. / Широки природы русския, / Нашей правды идеал / Не влезает в формы узкия, / Юридических начал.

² This and most other translations of *Vekhi* come from the following English-language edition: *Landmarks: A Collection of Essays on the Russian Intelligentsia, 1909*, Ed. Boris Todd, translated by Marian Schwartz, Karz Howard: New York, NY, 1977, p. 113. In Russian: “Правосознание нашей интеллигенции могло бы развиваться в связи с разработкой правовых идей в литературе. Такая разработка была бы вместе с тем показателем нашей правовой сознательности. Напряженная деятельность сознания, неустанная работа мысли в каком-нибудь направлении всегда получают свое выражение в литературе. В ней прежде всего мы должны искать свидетельств о том, каково наше правосознание. [...] Можно сказать, что в идейном развитии нашей интеллигенции, поскольку оно отразилось в литературе, не участвовала ни одна правовая идея. И теперь в той совокупности идей, из которой складывается мировоззрение нашей интеллигенции, идея права не играет никакой роли. Литература является свидетельницей этого пробела в нашем ощущенном сознании.” See: *Vekhi* 126-27.

³ Ieronim Iasinskii is not the most reliable source of information as in his milieu this minor author was known for his frequent change of beliefs and love for gossip, but even if this anecdote is only partially true, it offers an interesting insight into Iasinskii's perception of the literary lawyers' impact on the contemporary literary life. For a more detailed discussion of Iasinskii, see Chapter 1 of this dissertation, pages 33-35.

⁴ I.I. Iasinskii, *Roman moei zhizni: kniga vospominanii [The Novel of My Life]*, Moskva: Novoe Literaturnoe Obozrenie, 2010, in 2 volumes, 1: 479. In Russian: “Утин позвонил по телефону Урусову, Кони, Андреевскому и всем рекомендовал прочесть рассказ Чехова о голодном священнике. В один день упрочилась слава Чехова.” Iasinskii refers to Chekhov's short story “The Nightmare” [“Кошмар”] (1886).

⁵ The first publication took place in 1892, the last—in 1916. These speeches were republished only recently, in 2000, but regrettably this new edition lacks any academic commentary, and is preceded only by Anatoly Koni's brief essay on Andreevsky. See: Andreevsky, S.A. *Izbrannyye trudy i rechi*. Tula: Avtograf, 2000.

⁶ For the information on the judicial counter-reforms, see: Bruce W. Lincoln, *The Great Reforms: Autocracy, Bureaucracy, and the Politics of Change in Imperial Russia*, DeKalb, Ill.: Northern Illinois University Press, 1990; A.I.U. Polunov, *Russia in the Nineteenth Century: Autocracy, Reform, and Social Change, 1814-1914*, Armonk, N.Y.: M.E. Sharpe, 2005; B.V. Vilenskii, *Sudebnaia reforma i kontrreforma v Rossii*. Saratov: Privolzh. kn. izd. 1969. For the information about political trials, see: Samuel Kucherov, *Courts, Lawyers, and Trials Under the Last Three Tsars*, New York: F. A. Praeger, 1953; N.A. Troitskii, *Advokatura v Rossii i politicheskie protsessy: 1866-1904 gg*, Tula: Avtograf, 2000.

⁷ Koni, A. F., *Ottsy i deti sudebnoi reformy: k piatidesiatiletiiu sudebnykh ustavov*, Moskva: Sytin, 1914. Pages 16-17. In Russian: “Кое-где в новые меха просочилось старое вино, кто-то преждевременно устаёт и утрачивает широту и независимость взглядов, органическая связь между отдельными судебными учреждениями слабеет, рутината то тут, то там пытается усесться на месте живого дела, быстрота производства заменяет глубину и достоинство спокойствия, —иногда служение призванию уступает стремлению к служебному повышению, —чуждая правосудию «злота дня» просачивается в некоторых случаях в отправление последнего, и подчас образ судебного деятеля затемняется образом судейского чиновника.”

⁸ See: Harriet Murav, *Russia's Legal Fictions*. Ann Arbor: The University of Michigan Press, 1998; Gary Rosenshield, *Western Law, Russian Justice: Dostoevsky, the Jury Trial, and the Law*, Madison, Wis.: University of Wisconsin Press, 2005; Anna Schur, *Wages of Evil: Dostoevsky and Punishment*, Evanston, Ill.: Northwestern University Press, 2012.

⁹ Murav writes: “Dostoevsky fashions an authoritative role for himself in the *Diary* by constructing a narrative about himself. This underlying narrative unfolds in Dostoevsky's discussion of the Kroneberg, Kornilova, Kairova, and Dzhunkovskii case. I will show the main contours of this narrative mirror the themes of the cases, namely, childhood and parenthood. Dostoevsky the author of *The Diary of a Writer* authors himself as a child of, and as a father to, a new Russia.” Murav 127.

¹⁰ Schur's interpretation of Dostoevsky's legal views is similar to Andrzej Walicki, who suggested in his book *Legal Philosophies of Russian Liberalism* that Dostoevsky's view of law offered a peculiar combination of the negative of law with the positive view of it as a "system of commands to be obeyed." See: Andrzej Walicki, *Legal Philosophies of Russian Liberalism*, Oxford: Clarendon Press, 1987, page 76.

¹¹ Wortman, Richard, *The Development of a Russian Legal Consciousness*, Chicago: University of Chicago Press, 1976.

¹² Burbank, Jane, *Russian Peasants Go to Court: Legal Culture in the Countryside, 1905-1917*, Bloomington: Indiana UP, 2004. For instance, Burbank writes: "Not only were peasants in court, they were there as plaintiffs, seeking justice from the state's representatives on the bench. And they were not a 'they.' Court records revealed individuals with a variety of notions of how to live, in a profusion of conflicts with their neighbors, families, and business partners. These individuals were not content with custom; they had to have the law" (xiv).

¹³ McReynolds, Louise, *Murder Most Russian: True Crime and Punishment in Late Imperial Russia*, Ithaca, N.Y.: Cornell University Press, 2013.

¹⁴ See: Joan Neuberger, "Popular Legal Cultures: The St. Petersburg Mirovoi Sud," in Ben Eklof et al., *Russia's Great Reforms, 1855-1881*, Bloomington: Indiana University Press, 1994.

CHAPTER 1

The Shakespearean Circle:

Lawyers, Literary Criticism, and the Law

in Late Imperial Russia

[T]he bar flourished from the very beginning and turned out an important nursery of general culture.

D.S. Mirsky, *A History of Russian Literature*¹

One cannot forget all of the artistic delights and joyful minutes, experienced by each member during the meetings of the Shakespearean Circle, to which we escaped from the unpleasant impressions in order to relax and forget ourselves in the collaborative effort of investigating the eternal principles of artistic truth and beauty.

Anatoly Koni, from his memoirs, *Collected works* in 8 volumes, 5:119.²

There is no single explanation as to why so many of the late imperial lawyers and jurists strove for and achieved fame as literary critics. Indeed, busy as they were with their juridical duties and journalistic writings, a time-consuming “hobby” of reading and writing about literature would have seemed rather an unlikely choice for this busy late imperial professional. Nevertheless, the figure of the lawyer-critic, or the “literary lawyer,” as this type of *littérateur* was baptized by his literary colleagues, became such a frequent and familiar occurrence on the literary horizon of Saint-Petersburg that several important works of prose made comical use of it.

Tolstoy's novel *Resurrection* contains a satirical and simultaneously disturbing scene, which depicts the visit of Prince Nekhlyudov to the office of a fashionable Saint-Petersburg lawyer Fanarin. The lawyer is hired by Nekhlyudov to save a young prostitute Ekaterina Maslova from an unreasonably harsh and undeserved sentence. Nekhlyudov interferes on behalf of Maslova because he feels guilt for her legal and moral demise. Indeed, as a juror he was responsible for the negligence which resulted in a harsh verdict. What is even more shocking for Nekhlyudov, in the attractive woman on the trial bench he suddenly recognizes a young girl whom he seduced, impregnated, and abandoned years ago. Tolstoy reveals in his monumental legal novel the moral qualms of Nekhlyudov, contrasting them with the indifference of Fanarin, whose sybarite habits and literary pretensions (he is a self-styled literary critic) cast this new public profession into an entirely different light. Tolstoy exposes his skepticism towards lawyers, whom he views as a modernized incarnation of the almighty Russian bureaucrat, whose literary scholarship is simply a fancy cover-up for the lack of normal human concern with the destinies of their unfortunate clients.³ The meeting of Nekhlyudov and Fanarin is interrupted by the unexpected and tactless intrusion of the lawyer's wife, who enters the office together with a foppishly dressed man, in whom Nekhlyudov immediately recognizes a well-known writer. The wife pleads with her lawyer-husband to come to their literary *matinee* next door to listen to the writer's poem and to delight their guests with his own critical essay on Garshin. Tolstoy emphasizes the fact that the mistress of the house—an unusually ugly, but ostentatious creature—styles herself as a bohemian hostess of a literary salon. Tolstoy signals the ridiculousness of the couple's artistic and literary posturing by introducing an outlandish sartorial accessory, the wife-hostess's flashy garment made of yellow and green velvets and silks. The startling intrusion of the "salon" into the lawyer's office signals to the reader the indifference of the lawyer towards his client. While

the lawyer remains serene and unaffected by Maslova's bitter lot, Nekhlyudov is revolted by the fact that Fanarin can calmly enjoy his literary pastimes when the pressing issues of human life and wellbeing are at stake, and promptly escapes the inappropriate and ill-timed carnival.⁴

Today, this scene from Tolstoy's novel requires a historical gloss since the actual figure of the literary lawyer, upon whom this fictional pattern developed, has receded into obscurity. However, during the last three decades of the nineteenth century the public identities of such notable legal figures as Anatoly Koni, Konstantin Arsen'ev, Vladimir Spasovich, Sergei Andreevsky, and Prince Alexander Urusov rested upon the combination of their legal and literary accomplishments (as celebrated lawyers and literary critics). These men were active participants in many literary circles, where they mingled with other writers, and they also had a literary collective of their own, the literary Shakespearean Circle, which existed from 1874 till the late 1890s, and at different times attracted to its meetings prominent writers; Pyotr Boborykin, Dmitry Merezhkovsky, Ieronim Iasinskii, philosopher Vladimir Soloviev, and the poet Nikolai Minskii participated in the meetings over a number of years. The members of the circle gathered in order to discuss Shakespeare's tragedies, French classicist drama, Russian writers of the past, modern European and Russian prose and poetry, and many other topics of cultural or literary significance as they came to prominence in contemporary literary debates. Thus, for example, in his *Resurrection* Tolstoy draws a portrait of Fanarin based on his experience of the literary milieu in the late 1880s, when Russian writers and literary lawyers were writing and lecturing on Vsevolod Garshin's lifeworks due to the writer's tragic and untimely suicide in 1888.⁵

The goal of this chapter is to explore the significance of literature and literary criticism for the creation of a more positive image of courts and the rule of law in Russia by drawing on the literary activities of two important lawyers Vladimir Spasovich and Anatoly Koni, both of

whom belonged to the aforementioned Shakespearean Circle, a literary body situated at the heart of the literary and intellectual life of Saint-Petersburg. I argue that the literary lawyers' passionate engagement with literature and vocal support of literary pastimes, which they considered to be central to the lawyers' civic and moral growth, became instrumental in creating a strand of thinking within the contemporary debate about court justice that emphasized the existence of legal consciousness in Russia. Equipped with their love for literature, these lawyers used the nexus of law and literature as a critical node of political, moral, and legal thinking, thus transforming literary criticism into a place where the work of thinking about state, society, morality, and law was taking place. While the decision of these two lawyers to dedicate themselves to the study of literature was partially indebted to the age-old tradition among Russia's educated classes to love, talk, and write about literature, there were some additional reasons for them to seek a professional and moral self-affirmation in literature. The newness of the Russian lawyer as a cultural phenomenon, their participation in widely publicized trials, as well as their tremendous success as court speakers gradually transformed Russian lawyers into true celebrities, whose defense speeches were read by contemporaries on par with the best fiction by Leo Tolstoy, Fyodor Dostoevsky, and Anton Chekhov.⁶ This unrivaled personal popularity of lawyers, combined with their marginal status as the champions of the individual's rights in the context of absolutism, gave rise to the powerful wave of criticism directed against this profession by conservatives and liberals alike. The aforementioned Shakespearean Circle, an initiative which eventually established Russian lawyers in the eyes of the public as prominent literary critics, was founded at the height of the media war against lawyers in the 1870s. By that time, the name of Shakespeare was an important part of Russia's cultural vocabulary. In this chapter, I suggest that the participation of lawyers in the literary life of the time provided this fascinating

group with a peculiar route to mold their own image and sense of self against the grain of the negative public opinion: as lovers of literature, civically-minded intellectuals, and men of honor. In addition to this act of professional self-fashioning, the literary activities of lawyers also played an important role because they provided lawyers with the opportunity to voice their own, alternative conception of the place and significance of the rule law in Russian culture. By looking at the literary criticism penned by two prominent Russian jurists, Vladimir Spasovich and Anatoly Koni, in which these lawyer-critics provided a defense of their favorite authors, characters, or issue of importance, and the body of lore they produced to celebrate their professional union, the famous *Dinner Speeches* by Vladimir Spasovich, in which this prominent lawyer projected the collective image of lawyers as a *fellowship* of like-minded individuals united by their *love* of law and literature, I look at the subtle ways in which literary criticism helped the late imperial lawyer to position himself on the public podium right next to the Russian writer, the traditional defender of the little man against the arbitrary authority of the Russian state.

The Shakespearean Circle and Its Founder Vladimir Spasovich: A Brief History

In order to comprehend the significance of Russia's literary lawyer fully, one has to place this mesmerizing public figure onto the literary map of his era, or—using a more appropriate term introduced by Boris Eikhenbaum—to position this figure in relation to the “literary *byt*” of his time. Since the word *byt* is not easily translatable into English (*byt* means the “way of life,” which takes place within a specific “environment”), I will use the term “literary milieu” to describe Eikhenbaum's concept. In the eponymous essay, which was published in 1927,

Eikhenbaum proposed to study literature as the interplay between various extra-literary forces, active within the literary milieu at any given time: the intellectual influences and affinities formed within various literary societies and circles, cultural attitudes and myths, as well as changes in the conditions of literary labor *per se*.⁷

In this regard, the literary lawyer emerged as a result of the changes generated within the literary milieu by the liberal reforms of the 1860s. The number of *littérateurs* soared after the Great Reforms loosened censorship, and new thick journals and even greater numbers of newspapers and popular magazines flooded the literary market. This unexpected abundance of new publications and, consequently, *littérateurs*, changed the demographic profile of Russian writers. Previously colonized by lesser numbers of aristocratic writers and influential literary critics, literary labor suddenly transformed into a more democratic affair, as new writers of humbler social origins entered the literary profession in droves. Moreover, a rich literary life began to thrive around the editorial offices of thick journals and newspapers, transforming them into peculiar professional organizations, which provided the novel *littérateurs* with an important space where ideas, literary tastes, and civic attitudes were created, changed, and disseminated. The animated excess of this literary life spilled over into literary societies and circles, which began to mushroom in Saint-Petersburg and Moscow after the 1860s. Finally, even the figure of the “purebred” writer—a universally admired novelist or poet—was crowded out by numerous socially and politically variegated *littérateurs*. Tolstoy “left” literature for Yasnaya Polyana, while other prominent writers (Saltykov-Shchedrin and Dostoevsky, for example) adapted to the challenge by styling themselves as journalists. The reconfigured literary milieu was filling up quickly with editors, journalists, and others who lived by the fruit of their literary labors. Ironically, despite the commercial character of their literary work, these new writers tapped into

the humanistic and civic traditions left over from their predecessor, the proverbial “Great Russian writer.”

Literary lawyers, who became a legitimate addition to the recently reconfigured literary milieu as they formed their literary circle in 1874, also tapped into the familiar elements of the previous literary culture by styling themselves as literary critics. On the whole, literary criticism was associated in Russia with its civic strain established by Vissarion Belinsky in the 1840s, which was continued by his epigones in the 1860s (Nikolai Chernyshevsky, Nikolai Dobroliubov, and Dmitrii Pisarev). These prominent literary critics created the tradition of using literary works for discussing Russia’s social and political exigencies. Consequently, faced with the necessity to talk about their immediate professional and civic concerns—the ambiguous position of law in Russian society, which was not accustomed to legal ways and lawyers—literature-savvy lawyers turned to literary criticism. Their transformation into literary critics occurred gradually, under the influence of their peers within the journalistic-literary milieu, membership in which the lawyers earned by contributing articles to *Vestnik Evropy* [*Messenger of Europe*], a thick journal published by Mikhail Stasiulevich. Publishing in *Vestnik Evropy*—as Vladimir Spasovich, Konstantin Arsen’ev, and Anatoly Koni frequently did—meant to belong to the editor’s intellectual circle, a close-knit community of like-minded liberal intellectuals. Stasiulevich, a charismatic editor and renowned historian, met with his circle of friends and colleagues weekly, and an impressive pantheon of Russian literature and culture gathered frequently around the dining table in his Saint-Petersburg apartment: Ivan Goncharov, Ivan Turgenev, jurist and historian Konstantin Kavelin, lawyer Konstantin Arsen’ev, and other imperial celebrities. The intimate exposure of Russian lawyers to literary and intellectual debates, combined with the overall literocentric attitudes of the Russian intelligentsia, who grew

accustomed to measuring their social existence against the examples established in literary works, prodded the lawyers to branch off as a literary collective.

A detailed factual history of the Shakespearean Circle is hard to restore due to the fragmented character of surviving evidence: only a few brief articles sum up scarce facts. We know, for example, that the members of the group gathered to discuss the works of literature and held readings of prose and translations of literary works, but occasionally their discussions turned to socially oriented topics. The members met three times per month, and these meetings often took place in Spasovich's apartment on 47 Nikolaevskaia Street in Saint-Petersburg. The members and their guests were invited to meetings with postcards announcing the topics of talks and location (see Figure 1.1). Without exception, guests invited to the meetings of the Shakespearean Circle also belonged to the literary and intellectual elite of Saint-Petersburg. For example, the prominent mystical philosopher, Vladimir Soloviev—an unlikely candidate for a circle consisting of predominantly Westernized liberals, but who approved of Russia's new public justice and was opposed to Tolstoy's legal nihilism—attended the meetings of literary lawyers, whom he befriended in the 1890s at the house of Mikhail Stasiulevich.⁸

Not much is known for certain about the Shakespearean Circle beyond these few facts. However, the scarcity in terms of published factual accounts is not surprising for a literary circle, and must not be taken as evidence of this group's insignificant place in comparison to other literary associations. Less structured than literary societies, circles were organized around a person or group with a shared *Weltanschauung*. More frequently than not, they had no formal literary credo except for the unwritten shared beliefs of their members, and kept no record of their deliberations. The indirect evidence, however, in the form of literary criticism and public pronouncements on the significance of literary scholarship by literary lawyers is plentiful, and

offers a far more illuminating insight into the lawyers' literary hobbies. Similarly, miscellaneous allusions to the activities of literary lawyers, scattered across memoirs of contemporary literati, offer a good idea of how literary lawyers were perceived by their non-lawyer literary colleagues.⁹ These recollections about literary lawyers obtained from memoirs offer rich cues about the relationship between literary lawyers and their literary milieu, where Russia's public men—bound by the body of literary conventions and high social expectations of men of letters—connected to and competed against each other for voice, vision, and influence.

When Vladimir Spasovich founded his Shakespearean Circle, the literary milieu of Saint-Petersburg and Moscow was bustling with activity. There already existed numerous literary societies, circles, and salons, which boasted significantly higher memberships than the Shakespearean Circle. However, the Shakespearean Circle stood out among other literary groups because it was founded *by a lawyer and for lawyers*. Not uncommon for his generation, Spasovich had an idealized view of literature as a moral filter, the study of which, in his opinion, purified the soul. For a lawyer, Spasovich reasoned, literature was doubly as important because it allowed him to maintain high moral, professional, and civic standards. These views, expressed by Spasovich on numerous occasions, testify to the fact that indeed Shakespearean scholarship was not the main *raison d'être* for the Shakespearean Circle. A literary circle provided literature-loving lawyers with private ground, where they could talk about literature and current issues of importance, thus asserting intellectual and spiritual fellowship and human worth outside of their wage-earning profession, which transformed the lawyer into a universally recognized public figure, but simultaneously made him object to the venomous criticisms of press, which by the mid-1870s habitually accused lawyers of moral relativism, vanity, and intemperate financial

appetites, casually labeling them “lying tongues,” “conscience for hire,” “adulterers of thought,” and “*ablakats*.”¹⁰

Despite the obtrusive stereotypes that floated freely on the pages of contemporary newspapers, the Shakespearean Circle remained for over two decades a foundry of literary talents, bringing to the forefront of literary scholarship the “mighty coterie” of the lawyerly world: Konstantin Arsen’ev (1837-1919), Aleksandr Urusov (1843-1900), Evgenii Utin (1843-1894), Anatolii Koni (1844-1927), and Sergei Andreevsky (1847-1918). Accomplished in their primary legal careers, these remarkable men of law strove to assert themselves as literary critics, eventually succeeding and acquiring for themselves the nickname “literary lawyers.”¹¹ This epithet underscored their significance as both literary figures and lawyers, who for a number of decades remained highly visible on Russia’s public stage as insightful and well-published critics and all-Russian court celebrities, with a political scandal or two attached to their professional resume. Indeed, Vladimir Spasovich served as a defense lawyer during the Nechaev trial, while Anatolii Koni presided over the notorious trial of Vera Zasulich.¹²

It is not accidental that a decisive call to study literature came from a man like Spasovich, who at various critical times in his very public life resorted to writing about literature as a refuge from life’s hardships and an avenue for expressing his deeply felt civic and moral convictions. Spasovich was born in Minsk in 1829 into a mixed Russian-Polish family (he and his brothers belonged to the Orthodox Church, while the sisters were baptized Catholic). A similarly eclectic spirit ruled his education: although he graduated from a Russian gymnasium, his mother inculcated him with a love of Polish culture and literature. In 1845, Spasovich moved to study law at the Saint-Petersburg University, and upon graduation joined the faculty at his alma mater. Extremely liberal in his views, after the student disturbances of 1861 Spasovich refused to

condemn his students, and was forced to resign from his teaching position. For a while, the “unemployed” professor Spasovich resorted to writing about literature before joining in 1866 the newly formed Saint-Petersburg bar.

Spasovich quickly achieved success in his new career. Indeed, in the introduction to one of his literary studies the publisher sketched Spasovich’s literary biography, but omitted the facts of his legal career altogether, justifying his decision by the fact that as a lawyer Spasovich was well known to the majority of educated Russians.¹³ Nevertheless, despite his larger than life fame as a lawyer, literary study was never peripheral to his intellectual and moral universe. His extensive publishing record is a powerful proof that he held his belief in the mission of literature to humanize and ennoble society close to the heart. Upon his death in 1906 Spasovich left a significant body of texts: recorded public speeches, lectures on literature, and a plethora of insightful literary essays dedicated to Russian, Polish, and Western European authors, published separately and as a monumental ten-volume edition of his collected works. In addition to Shakespeare, Spasovich studied Byron, Pushkin, Lermontov, Mickiewicz, Schiller, and Goethe: many of his literary essays, along with the statements on a variety of pressing contemporary issues masterfully interwoven with his literary analyses, reached a wider audience as publications in the prestigious *Vestnik Evropy*.¹⁴

For almost five decades of his legal career, Spasovich relied on literature as a means of making his civic voice heard. After the Polish uprising of 1863, for example, Spasovich resorted to literature for endorsing the unpopular idea of ethnic tolerance and advancing the Polish cause, an act which made his public persona a target of vicious criticism. Expectedly, while the Russian public admired the legal artistry of the “king of the Russian bar” (as Spasovich was called by his contemporaries), many of them were not fond of Włodzimierz Spasowicz, an influential Saint-

Petersburg intellectual openly committed to the free cultural development of Poles.¹⁵ It is precisely at this time of Spasovich's "Polish troubles" that he contributed a chapter on Polish literature to the *History of Slavic Literatures* by the notable literary historian Alexey Pypin, which became the first study of this sort in the Russian language.¹⁶ Needless to say that Spasovich was harshly criticized for this step, which was interpreted by many contemporaries as a political provocation. Nevertheless, for the whole duration of his public career Spasovich strongly supported the ideal of cultural open-mindedness by defending it with the mighty power of his verbal artistry. In one of his charismatic speeches, for example, Spasovich compared the interaction between two cultures to the confluence of two rivers, whose streams carry their varicolored waters peacefully side by side for many kilometers before finally mixing. An effort to mix these waters by force, Spasovich continued, would bring no harmony, but only destroy the beauty present in each stream.¹⁷ This tendency—to employ the "literary" to defend one's political, social, legal, and ethical views—became a signature element of the lawyers' literary criticism.

Eventually, literary lawyers achieved an unprecedented literary fame; however, their existence within the literary milieu of the 1870s, 80s, and 90s as literary critics did not remain unclouded, attracting criticisms from their literary peers and even a complete rejection of their literary-critical merit. In his survey of the fin-de-siècle literary circles and societies published in *Vestnik Literaturny* [*Messenger of Literature*] in 1919, Abram Kaufman summed up the literary activities of the Shakespearean Circle with the sarcastically dismissive witticism: "The Shakespearean Circle did not produce Shakespearean scholars among us."¹⁸ Kaufman's retrospective slight of literary lawyers' achievements as Shakespearean scholars is not in the least accurate, as I will show in my next section, but it captures the overall attitude of certain late

imperial literati, who discounted the scholarship of literary lawyers as a mere cover-up for their insatiable social ambitions. Following in the footsteps of Mikhail Katkov's *Moskovskie Vedomosti* [*Moscow News*], well-known writers began to frown upon literary lawyers' vocal presence within the literary milieu of the time.¹⁹

Among those who harbored a secret dislike of literary lawyers was Ieronim Iasinskii (1850-1931), a minor but prolific prose writer and, paradoxically, a member of the Shakespearean Circle in the 1880s and 90s. In his curious memoir *The Novel of My Life*, Iasinskii sketched an unflattering portrait of the lawyer-critic. Although Iasinskii's literary reputation was heavily marred by his frequent lampooning of close literary friends and acquaintances, his poisonous remarks about literary lawyers shed light on the success and wide connections of literary lawyers within the literary milieu, their encyclopedic grasp of literary texts, rhetorical gift, and public visibility.²⁰ Recollecting the dynamic literary scene of the 1880s, Iasinskii writes in his lively, but ill-humored memoir:

Almost daily somebody had a *jour fix*. There were also gatherings at the home of Evgenii Utin, a lawyer and journalist from *Vestnik Evropy*. Once upon a time, he killed in a duel some Zhokhov, also a lawyer, and after this had about himself an air of gloomy reverie. As a lawyer, he earned big honorariums and lived in grand style. Celebrities of all kinds gathered in his drawing room, but predominantly they were lawyers who "played literature." Prince Urusov analyzed Flaubert with great enthusiasm, Spasovich raved about Mickiewicz, Utin occupied himself with the analysis of the most insignificant French writer Octave Feuillet. Koni was immersed in the study of Pushkin, Arsen'ev studied Shakespeare, and Andreevsky—Alfred Musset and George Sand. I was entrusted with Zola, and I

pointed out in my talk the characteristic feature of this writer to depict ordinary life of the human collective: the street, crowd, not a bad device for describing and creating types. The text of my talk was published afterwards in one of the thick journals. Stasiulevich attended, shrouded in an aura of thoughtfulness. [...]

I remember, Saltykov once stopped by. He coughed for a long time in the hallway to the great concern of Utin's wife, who thought that the great man coughed intentionally in order to draw attention to his persona. After his bout of coughing passed, he asked:

-What do you have tonight? A card game? [...] No? Andreevsky reads about Alfred Musset and George Sand? Then I have nothing to do here. I better go home. And he left.²¹

Expectedly, Iasinskii's memoir trivializes the literary pastimes of his former associates.

Although the memoir acknowledges the breadth of literary topics explored by the members of the circle, it dismisses the literary and civic significance of the scholarship by lawyers as "literary games." Iasinskii's irony about Utin's dueling misfortune casts the literary lawyer Utin as a parodical figure, suggesting that Iasinskii viewed the literary hobbies of lawyers as a vulgar travesty, as little associated with the serious literary scholarship as a duel of two lawyers was reminiscent of Pushkin's *Eugene Onegin*.²²

While Iasinskii's resentment of literary lawyers seems absurd due to his long-time affiliation with the Shakespearean Circle, the literary lawyers' all-Russian fame could have been the underlying reason for his bitterness. Iasinskii, fully a product of his era which brought about the commercialization of the literary market, was preoccupied with the idea of ultimate literary success. Indeed, he studied the works of Zola with diligence in order to understand how the

celebrated French author managed to appeal to such a great number of his French and foreign readers. Although Iasinskii seemed to have figured out the secret behind the French author's literary triumph—Zola's gift of writing for ordinary readers about ordinary things—he never managed to achieve even a fraction of it for himself. In this context, literary lawyers, whose court speeches attained an exceptionally wide circulation and, as many contemporaries acknowledged, were read on par with the best fiction of the time, provided an unpleasant reminder about the unpredictability of a writer's professional success within the competitive and constantly changing literary market of the post-reform era.

Despite the mild envy which surrounded their vocal presence in the literary milieu, literary lawyers enjoyed the delights of literary creativity, lively discussion, and sophisticated companionship within the semi-public arena of the Shakespearean Circle, while effortlessly disseminating a collective image of themselves as scrupulous professionals and public men of literary gifts. Undeniably, the Shakespearean Circle was instrumental in placing literary lawyers in close contact with other writers. Invited by their friend-lawyers, various representative of the literary profession—prose writers, poets, and journalists—frequently attended the meetings of the circle as guests. Likewise, in their capacity as literary critics these lawyers had legitimate and welcomed access to the literary societies, circles, and salons of the capital, a privilege, which placed them at the cutting edge of the literary life of the time. By participating in literary events, the lawyers stayed informed about most current trends in prose and poetry, theatre and art, eagerly introducing new subjects into their own repertoire. This fascinating proximity and partial superimposition of the literary and legal worlds in Saint-Petersburg produced a peculiar type of the cultural “cross-pollination” across the writer-lawyer divide.

Thoroughly informed about the newest literary trends, literary lawyers were very responsive to the changing heartbeat of the literary market and fashions. Although the Shakespearean criticism was really important for the birth of the Russian lawyer as a respectable literary critic during the late 1870s, in the 1880s the group moved to contemporary topics: the new French poetry, modern theatre, contemporary fiction, travel narratives by the members of the group, etc. In 1898, for instance, the members of the group debated the artistic merits of the much discussed staging of Chekhov's new play *The Seagull* and listened to Dmitry Merezhkovsky read from his yet unpublished novel *Leonardo da Vinci*.²³ Alexander Urusov introduced his colleagues to Flaubert and Baudelaire.²⁴ While the older members of the circle remained attached to the great works of Russian romanticism and realism, others—like Alexander Urusov and Sergei Andreevsky—rejuvenated the circle in the 1890s with their interest in modernist prose and poetry. The dynamism of the lawyers' literary menu and changes in their circle's membership—in the 1880s and 90s, Dmitry Merezhkovsky, Ieronim Yasinsky, and Nikolai Minsky attended the meetings—attest to the vitality of this literary collective.

By the 1890s, literary lawyers established themselves solidly as an unquestionable authority in matters concerning literary tastes. Their opinions about the newest prose and poetry were respected and feared even by the most accomplished writers. In 1889, in an account of an upcoming reading of his story "A Nervous Breakdown" in the Russian Literary Society, Chekhov wrote: "The discussion will be interesting. I have to put my neck under the blows of such irresistible dialecticians as the lawyers Andreevsky and Prince Urusov."²⁵ In one of his poems, Maximilan Voloshin referred to Alexander Urusov as the "high priest of books and tastes" (*tvorets lyudei, glashatai knig i vkusov*).²⁶ The declarations of contemporaries about the merits of literary lawyers as critics instrumental in shaping contemporary literary tastes were

supplemented with official honors. Several literary lawyers carried important positions in other literary societies or were elected as members to the Imperial Academy of Sciences. In addition to being a close acquaintance of Turgenev, Goncharov, Tolstoy, Dostoevsky, and Chekhov, Anatoly Koni was honored in 1900 for his literary accomplishments with an honorary membership in the Imperial Academy of Sciences.²⁷ Konstantin Arsen'ev had been presiding for a number of years over the Court of Honor in the Writer's Union in Saint-Petersburg, and, like Koni, was awarded in 1903 the rank of an academician for his published studies of Saltykov-Shchedrin, Nekrasov, Maikov, Fet, Garshin, Hugo, Flaubert, and Zola. Generous public recognition of the lawyers' literary activities finalized their emergence as lawful citizens in the republic of Russian letters.

Why Literature? The Dinner Speeches of Vladimir Spasovich

The question of why Russian lawyers dedicated themselves to literary criticism can be answered in many different ways: because of their family background and education, which was conducive to fostering interest in literature and other fine fruits of culture, because of their thorough knowledge of it, because it gave them as representatives of intelligentsia the feeling of having a voice even in the absence of civil liberties in Russian society, and finally because to attend a literary salon has been always considered *comme il faut* among educated Russians. While all of these reasons matter, the encouragement to study literature that came from within the legal milieu itself—with the older and prominent lawyers like Vladimir Spasovich advertizing the benefits of literary study to their young colleagues—played a far more important role in prompting Russian lawyers to study literature with the goal of improving themselves as professionals and wise and moral human beings, whose insight and knowledge of human psyche,

rhetorical skill, and good sense of right and wrong, refined and strengthened by literary pursuits, was frequently the only guarantee of a just and legal verdict, carried out in spite of political or any other public pressures.

The “godfather” of the Shakespearean Circle Vladimir Spasovich was responsible for advancing the lore of professional self-fashioning, which placed literature at the heart of a lawyer’s professional universe. Spasovich hoped that as a practice literary scholarship would create the public perception of the lawyers as a moral man, a professional, and a citizen. Spasovich called out to his colleagues to study literature and to write about it, since, as he put it, “silence is not always proper for good citizens during difficult and disorderly years.”²⁸ In the mid-1870s, as attacks against new public courts and lawyers intensified, Vladimir Spasovich began to advocate literary scholarship aggressively, employing in his public speeches the metaphor of the bar as a fellowship of like-minded individuals, united by their love of liberty, literature, law, and truth. Most clearly these professional sentiments were articulated in his famous *Dinner Speeches* [*Zastol’nye rechi*], which he had been composing for over twenty-five years (1874-1901) for the festive annual banquets organized by the Saint-Petersburg bar. Although written for less formal gatherings of colleagues and friends, *Dinner Speeches*—an unusual verbal monument to the miraculous genesis of the legal profession in Russia—presents Russian lawyers as men firmly rooted in two worlds: their immediate historical world, to which they responded as citizens, and the world of literature, from which they drew their moral strength and eternal human values.²⁹

As the body of Spasovich’s speeches suggests, the word “truth”—searching, finding, or obscuring the truth—became central to the lawyers’ self-identification in the 1870s. Ironically, the same word played an important role in the anti-court and anti-lawyer campaign of the 1870s

and 1880s. A change in the political climate in the 1870s, which positioned the lawyer vis-à-vis Russia's bureaucracy, gave rise to the criticism of lawyers on moral grounds. After Russian lawyers, including Spasovich himself, took an active part in the political trials of the 1870, to the dismay of the authorities transforming the court into an oppositional political stage, the government took measures to prevent such escapades in the future.³⁰ In 1874, Alexander II postponed the establishment of new councils of the bar, thus essentially depriving provincial lawyers of the opportunities to connect to each other in order to defend the interests of their corporation against the pressures exerted by the government. After the notorious acquittal of Vera Zasulich in 1878, the competence of juries over political trials was severely limited, and the Ministry of Justice requested the State Council to allow the minister to supervise the activities of lawyers in order to prevent them from *obscuring the truth*.³¹ The final blow to the achievements of the legal reform came when Alexander III replaced the trial of political offenses by the administrative exile to Siberia, without any prior criminal investigation. Not surprisingly, throughout his tenure as a lawyer Spasovich struggled against the officially sanctioned stereotype of the lawyer as the perpetrator of falsehood by advancing an alternative vision of the bar as a stronghold of truth and civic resistance to the arbitrary violence and comparing it to a "bone," which got stuck "in the throats of high-ranking officials."³²

Needless to say, literature played a key role in Spasovich's effort to forge a legitimate counter-image of the bar. In his *Dinner Speeches*, he frequently resorted to poetry in order to awaken in his listeners a strong feeling of belonging to a very special union of professionals, committed to their mission of protecting law and the truth embodied in law. Likewise, Spasovich urged lawyers to study literature in order to raise the overall moral standards of their profession. As a cumulative text, these speeches provide a systematic set of points, which develop the idea

of the Russian lawyer as a public figure richly endowed with civic sensibilities and respect for literature as a tool of social criticism and social change. In the context of the campaign against lawyers, Spasovich believed that the bar could survive only if the barristers treated their professional duties not as a paid craft, but as a free artistic activity.³³ The rhetorical manner of Spasovich's addresses also suggests that he viewed himself and his colleagues as men of letters: not accidentally, Spasovich frequently seasoned his ideological points with verse, taking for granted the universal accessibility of the poetic language among his legal milieu.

Spasovich's very first speech, which he gave at the annual dinner in 1873, positioned the figure of the Russian lawyer within his cultural and historical context and created the core vocabulary, which endowed the lawyer as a public figure with a strong civic aura. Comparing the lawyer in Russia to his Western counterpart, Spasovich pointed out his marginal position in society. While French or English lawyers were held in high esteem, and the best of them provided cadres for the magistracy, in Russia, Spasovich argued, the bar was created to become an *asylum* for the political *personae non gratae*.³⁴ Because of this, Spasovich continued, Russian lawyers developed stronger ties to each other, forming a fellowship of like-minded individuals in the country where "fellowships of any sort [were] not allowed."³⁵ Seeing schools and universities succumb in the 1870 to classical education, which was introduced for deterring youth from political activities, Spasovich began to view the bar as the last stronghold of civic education in Russia. His concern with the education in Russia, and specifically with its civic kind, remained a permanent theme in Spasovich's public pronouncements. A former university professor himself, Spasovich was pained by the fact that universities lost their independence, and he used harsh words to decry this loss, describing the education at the universities, which he nicknamed as "greenhouses for Latin flowers and Hellenic asparagus," as "philological idleness," "harmful

waste of energy and time,” and “mental masturbation.”³⁶ With schools and universities failing to educate young citizens, Spasovich described Russian lawyers as *knights* defending free speech.

In the same speech from 1874, Spasovich wrote:

To a certain degree, we are the *knights* of a live word, freer than the word of the press, the word which won't be silenced by the most zealous presiding judges because while the presiding judge is thinking about stopping you, the word has already galloped three *versts* away, and it is irretrievable.³⁷

The words that Spasovich used to describe the bar and lawyers—*asylum, fellowship, knights*—invoke the European Middle Ages, and one is forced to assume that his choice of vocabulary was intentional rather than accidental. In the face of political instability which affected all strata of Russian society, to depict the bar as a knightly order meant to inculcate lawyers with the spirit of resistance and pride in their mission to serve the ideals of truth and justice.

For a number of years, Spasovich had been dedicated to the goal of inseminating his colleagues with the idea of their lasting professional fellowship via the medium of literature. A man of letters, Spasovich countered the fiery anti-lawyer rhetoric of Mikhail Katkov (whom Spasovich disliked intensely, calling him an “ominous old man”³⁸) with equally eloquent speeches saturated with verse. In one of his most “literary” speeches from 1884, Spasovich responded to Katkov’s editorial, in which this journalist described the bar as a state within a state and accused it of political subversion, by concurring jokingly and then quoting at length a passage from Goethe’s *Faust*, praising those laboring for the sake of future generations:

He only earns his Freedom and Existence,
Who's forced to win them freshly every day.
Childhood, manhood, age's vigorous years,

Surrounded by dangers, they'll spend here.

I wish to gaze again on such a land,

Free earth: where a free race, in freedom, stand.

Then, to the Moment I'd dare say:

'Stay a while! You are so lovely!'³⁹

A skilled rhetorician, Spasovich used Goethe's verse with the aim of trivializing the effort of the conservative journalist to intensify the witch-hunt for the Russian lawyer, on the one hand. On the other hand, he inserted the verse in order to highlight to his colleagues the social significance of their profession. In the same speech, Spasovich stressed the importance of collegiality for the continuing existence of the bar by likening lawyers to men who support the "temple of law" with their own bodies.⁴⁰

Finally, the speeches of Spasovich project the vision of the Russian lawyer as a genuine enthusiast and pioneer of law. I will quote a relevant toast from 1884 in full, since it offers one of the most concise and direct statements about Spasovich's view of the significance of the lawyer's literary word in serving the goal of truth and justice:

Sirs! I drink to the health of our union, and to those things which are honest, pure, honorable, and ideal in this union; to the cult of *truth*, with a hope that we, those who were nicknamed "sophists of the nineteenth century,"⁴¹ would have more *truth* among ourselves than prosecutors and judges; that we would remember that we are the priests of the word, but not the hagglers of the word, that we must keep this sacred fire not as the priestesses of Paphos, but as vestal virgins; that our ideal is the sincerity of beliefs, and not a theatrical act of furnishing the lies as *truth*; that we must defend this belief in the face of danger from the authorities or hostile

crowds. If our union would stand upon this foundation, the enemies won't prevail against us, even if all rhetorical thunders and bullets from the Scriptures, either from the Book of Genesis or Ecclesiastes, were flying at our fragile temple. I would like to express in one or two words something that I have in my heart, and which if we did not have it among us, would make me say to our corporation: vanish, go away! If I lived during the era of Rousseau or even Karamzin, I would toast to virtue! If I were young and still lived during the years of infatuation with Hegel, I would declare: to the idea! Today I have to raise my glass to the most complicated and latest of sentiments in our social life: for justice, for its subtlety, wisdom, and moral purity, which one does not learn from rules or prohibitions, but of which we have a lot among our guild. This makes me believe that we won't perish.⁴²

This toast offers an example of how Russian lawyers adopted the vocabulary of the traditional literary and moral discourse for the purpose of carving for themselves a social and professional niche within Russia's limited public sphere. By relying on the same vocabulary of moral discourse, which their opponents used to undermine the foundation of their profession—the words “truth,” “sincerity of beliefs,” “moral purity,” and “justice” are just a few examples—they mobilized their various selves in order to combat the negative stereotype of their profession. These “selves”—of citizens, lovers of literature, and defenders of truth—invented and publicized by Vladimir Spasovich, provided the Russian lawyer with the reason “to be.”

Why Shakespeare?

The fact that Russian lawyers organized in 1874 a literary circle for the sole purpose of studying Shakespeare is not surprising. Thanks to the efforts of Russian writers, who helped Russian readers to make sense of Shakespeare and to fall in love with his dramas, by the 1870s Shakespeare became a universal point of reference in the conversation of Russian intellectuals about Russia, its history, and social problems. Beginning with the 1830s and through the 1870s, Shakespeare went through two major waves of assimilation, with each wave adding an essential element to Russia's nascent Shakespearean scholarship. As elsewhere in Europe, romantic writers were the first to draw attention to Shakespeare. Preoccupied with the issues of nationalism, Russian romantics—Alexander Pushkin, Alexander Groboedov, and Orest Somov—began to assimilate Shakespeare in the light of Russia's own political struggles. When the issues of civil liberties and the emancipation of the serfs became urgent after the war of 1812, Shakespeare was frequently invoked by the intellectuals for the expression of their uttermost concerns with freedom.⁴³

The next stage in the assimilation of Shakespeare in Russia arrived with the gradual emergence of realism in Russian literature in the late 1830s and 40s, when among his Russian admirers Shakespeare began to acquire a peculiarly civic flavor. This important change took place at the time when Shakespeare's drama was finally adapted to Russian theatre, thus becoming an active script in the consciousness and vocabulary of a much larger segment of Russian society. In Nikolai Polevoi's lively new translation, the figure of Hamlet—performed in 1838 by two brilliant actors, Vasily Karatygin in Saint-Petersburg and Pavel Mochalov in Moscow—suddenly came to signify the whole of Russian intelligentsia, a group of intelligent human beings, endowed with civic aspirations, capable of comprehending historical processes and essential conditions of human existence, but deprived of voice and subdued into civic

inactivity. Upon the staging of *Hamlet*, many important writers and critics—Vissarion Belinsky, Ivan Turgenev, and Pavel Annenkov—delved into the investigation of Shakespeare’s realism. Turgenev, who became an avid fan of Shakespeare, penned several novels and essays drawing on the character of Shakespeare’s Hamlet. Turgenev’s “Hamlets”—his Chelkaturin from *The Diary of a Superfluous Man* (1850) and Rudin (1856), men of talent and knowledge—were failing to make themselves useful to the society and people around them.⁴⁴ For Turgenev, Shakespeare eventually came to signify Russianness *per se*, as he suggested in his speech “Hamlet and Don Quixote” in 1860, because of the English author’s passion for truth, thirst for self-knowledge, and readiness to forgive.⁴⁵ Pavel Annenkov, who invented the term “Russian Hamletism” to describe the intellectual dissatisfaction of Russian intelligentsia with their position in society (their lack of political rights and inability to apply themselves civically), described the implication of Shakespeare for Russian intellectuals as follows:

Shakespeare allowed a whole generation of Russian people to feel that they were intelligent human beings capable of comprehending the historical process and the essential conditions of human existence. And all this at a time when indeed a whole generation had no real social integration and no voice, even in the slightest affairs of civil existence.⁴⁶

This comment summed up the interpretations of Shakespeare, which by the 1870s had taken deep root in Russian culture. Shakespeare’s dramas inculcated Russian readers with the heightened sense of history and taught them about the psychological depths of human psyche, while also providing a literary “playground” for Russian intelligentsia’s unrealized civic potential.

Russian lawyers entered the field of Shakespearean studies precisely at the point, when Shakespeare as a topic for a lively literary conversation began to imply a strong degree of ethical and civic engagement. By styling themselves as Shakespearean scholars, lawyers gave to their literary colleagues a tacit but strong message of belonging to the *same* social layer and possessing the *same* sensibilities. “We are not merely lawyers,” their literary activities seemed to suggest, “But we are cultured and honest men, responsible citizens, with a finely developed taste for literature, truth, beauty, and justice.” Steeped in the spirit of literature, which provided a civic impetus for many generations of Russian intellectuals, Russian lawyers certainly knew well the literary interpretations of Shakespeare by Russian writers and critics and were aware of the provocative civic connotations of Shakespeare’s drama. Moreover, it is also intriguing that they refused to look at Shakespeare from a legal point of view, especially because they knew about such studies by Western lawyers, which were reviewed in Russian thick journals and promptly translated into Russian. A study of this sort by the German jurist Joseph Kohler was published in the early 1880s.⁴⁷ In it, Kohler argued that Hamlet’s indecisiveness had to do with the juridical conflict of his era over the ethical aspect of blood feud. In his book, Kohler argued that Hamlet hesitated to act because of his rather modern intolerance of violence.⁴⁸ Russian literary scholars, including literary lawyers, dismissed Kohler’s interpretation as an attempt to impose nineteenth century sentiments upon *Hamlet*, remaining loyal to the “interpretive path” treaded for them by Pushkin, Belinsky, and Turgenev.

For the literary lawyers, their choice to follow in the footsteps of their famous predecessors eventually paid off, and their literary output was recognized by their literary peers as a valuable contribution to the academic Shakespearean studies. Literary lawyers turned to Shakespeare at the moment when the study of Shakespeare already evolved into a serious

academic discipline, and the process was finalized by the appearance in 1902 of the ultimate five-volume Brockhaus-Efron edition of Shakespeare's collected works.⁴⁹ This impressive publication, edited by the literary historian and bibliographer Semyon Vengerov (1855-1921), was richly illustrated and accompanied by extensive scholarly commentaries. What made this publication even more fascinating for the purpose of my study, commentaries and new translations for this spectacular edition were contributed by five members of the Shakespearean Circle. Anatoly Koni penned a number of commentaries; Vladimir Spasovich provided an introduction to *Coriolanus*, and Konstantin Arsenev—to *Richard II*. Two other members of the Shakespearean Circle—a well known poet Nikolai Minskii and translator Pyotr Veinberg—provided translations. Some of these translations and essays were read and discussed for the first time at the meetings of the Shakespearean Circle.⁵⁰

In order to understand the significance of the literary lawyers' participation in Vengerov's publishing project, a few words should be said about Vengerov and the editorial agenda behind his magnificent five-volume *Shakespeare*, which became the ultimate academic and artistically most ambitious edition of Shakespeare's collected works in late imperial Russia. Vengerov, one of the most respected and productive *littérateur* within Saint-Petersburg's literary world, also earned a degree in law (from Saint-Petersburg University) and even served shortly as a lawyer-in-training before dedicating himself fully to the career in professional letters. He published extensively throughout the 1880s, producing a number of general studies of Russian literature and individual authors (among others, he wrote about K.S. Aksakov, V.G. Belinsky, A.F. Pisemsky, I.A. Goncharov, and N.V. Gogol). However, ultimately Vengerov achieved the apex of his literary fame as a meticulous bibliographer, who over the course of his life amassed an enormous archive of materials about various Russian *littérateurs*, and one of the most

successful editors of his time.⁵¹ His reputation as an editor was established through the participation in the prestigious multi-volume Brockhaus-Efron encyclopedia⁵² His edition of Shakespeare was also conceived and printed under the auspices of the Brockhaus-Efron publishing house, a part of this publisher's series *Biblioteka velikikh pisatelei* [*Library of Great Writers*].

The idea behind the tomes of *Biblioteka* was to offer to Russian readers the up-to-date academic editions of world's greatest writers, beginning with the best representatives of ancient Greek literature (Homer, Euripides, Aeschylus) and extending, through the most important Western European authors (Dante, Moliere, Schiller, Goethe, Dante, Byron), to the "founding fathers" of Russian literature (Pushkin, Lermontov, Gogol) (see Figure 1.2). While the title of this series suggests a rather traditional edition of world's best writers, the ornate title page to Vengerov's edition of Shakespeare, designed in the style Art Nouveau by the brilliant late imperial illustrator Evgeny Lansere, suggests a more ambitious agenda on the part of the editor. The medallions with the portraits of Pushkin, Lermontov, and Gogol, placed at the bottom of the illustrated frame and directly opposite from Homer, Euripides, and Aeschylus, suggest that Lansere as well as Vengerov (who was deeply engaged with the efforts to illustrate his *Shakespeare*) viewed Russian literature, despite its late arrival to the "symposium" of world literatures, as an equal to other Western European literatures and the heir of the Western literary tradition.⁵³

In addition to his ambition to produce a book series offering the vision of Russian literature as the heir of the Western literary canon, Vengerov was also aiming at making the publication of each individual author into a spectacular exhibit of Russia's artistic and literary potential. Indeed, his *Shakespeare* can be rightfully considered a "total work" of book art that

offered to the late imperial reader an unprecedented opportunity to savor *one* book through its multiple pleasures: a literary pleasure, from reading the best old and newest translations of Shakespeare; an intellectual pleasure, from engaging into a lively conversation about Shakespeare with the brightest literary minds of the time; a visual pleasure, from absorbing these tomes' exquisite, multi-style, and intoxicating visuality.⁵⁴ Finally, as Vengerov acknowledged in his introduction, he also hoped for this pioneering edition of Shakespeare to become of practical use to Russia's burgeoning theatre arts. Obviously, this intent emerged from Vengerov's close collaboration with Evgeny Lansere and Leon Bakst, two important artists, who belonged to the Russian Art Nouveau group *Mir iskusstva* [*The World of Art*] and, in accordance with their belief in applied art, used their inexhaustible creative energies for designing theatrical productions and illustrating books. The collaboration between Vengerov and his illustrators turned out to be a productive one. *Hamlet* alone was accompanied by forty illustrations, ranging from the photographs of Elsinore and ornamental designs (included to aid theatre designers) to the paintings depicting characters, specific scenes from the play, past theatrical performances, and various European actors, who made their name in theatre as Hamlets or Ofelias (like the inimitable Sarah Bernhardt or Saint-Petersburg actor Vasily Karatygin). Overall, all illustrations selected by Vengerov seem to suggest that the editor held the interests of the contemporary theatre very close to his heart. *Hamlet*, for instance, was accompanied by not one, but many illustrations depicting the encounter of the prince with his father's ghost or Ofelia's madness, thus providing a helping hand to theatre directors working towards their own interpretation of *Hamlet*'s key scenes (see, for instance, Figures 1.3 and 1.4). The same principle of theatricality applies to all of the editor's visual choices. The portrait of Vasily Karatygin (see Figure 1.5)

draws attention to the minor details of the actor's elaborate velvet attire and gesture, thus making theatre loom large in the background of the play's every line.

It goes without saying that the very fact of the literary lawyers' active participation in Vengerov's Shakespeare—designed by the ambitious editor as a cultural, literary, and theatrical encyclopedia—testifies to the high quality and literary and intellectual value of their literary scholarship. Moreover, in a brief survey of the most important Shakespearean scholarship produced in Russia Vengerov went so far as to mention the essay on *Hamlet* by Vladimir Spasovich right next to the works by Vissarion Belinsky, Ivan Turgenev, and Nikolai Storozhenko (at the time, the only Russian scholar whose studies of Shakespeare were recognized internationally).⁵⁵ In the light of Vengerov's genuine belief that Spasovich's essay about *Hamlet* occupied a special position within Russian Shakespearean studies, the question arises: what was so special about this essay, by now long forgotten, that made Vengerov, a respectable scholar and editor, make a special mentioning of it?

It is not easy for the modern reader of Spasovich's essay to grasp the uniqueness of his reading of *Hamlet*. After all, from our modern point of view the critic sums up *Hamlet* in a rather conventional way. Moreover, the style of this era's literary criticism, marked by excessive summarizing and reliance on allusions instead of a guiding thesis, detracts us, his modern readers, from understanding the meaning of his points altogether. However, the contemporaries of Spasovich, who were thoroughly familiar with Russia's political context of the time, undoubtedly had a much easier time understanding the points implied by Spasovich in his essay. By the end of the 1870s, Russia's political situation began to invoke the gloom of Hamlet's Denmark. The educated society was distressed with the "rotten state" of affairs both, in Russia's foreign and internal affairs. The diplomatic defeat in the difficult and life-costly Russo-Turkish

war of 1877-78, the gothic horrors of which were masterfully described by Vsevolod Garshin, shocked the intelligentsia with its purposelessness. The failure of the government to guarantee political rights to Russian subjects resulted in political terrorism and growing restiveness of the educated society, both liberal and conservative, who by the end of the 1870s began to demand political reforms, a constitution, and national assembly. These demands were countered by the government with the reactionary policies retracting previous liberal reforms. The political environment became especially stifling for jurists like Vladimir Spasovich because counter-reforms hit Russia's courts the hardest when the government transferred the jurisdiction over political crimes back to the state, instituted military tribunals for political crimes, and began to persecute lawyers.⁵⁶ Although jury trials weren't abolished, Konstantin Pobedonostsev, one of the most influential but also ominous figures associated with the counter-reforms in Russia, proposed in his memorandum from October 30th 1885 a program for a judicial reorganization, which involved an eventual abolition of an independent judiciary and public jury trials.

With the political reaction and censorship on the rise, literature and literary scholarship once again gained significance as the foremost medium of political and social criticism. Therefore, it comes as no surprise that Vladimir Spasovich used his essay on *Hamlet* to describe Denmark's "rotten affairs" in a manner invoking Russia's own political troubles. This essay, which was written by Spasovich for the presentation at the Shakespearean Circle, was eventually revised into a public lecture, given in Saint-Petersburg and Warsaw. The fact that this essay, characterized by a rather thinly veiled political agenda, was published in 1883 in a magazine titled *Iskusstvo* [Art] highlights the specificity of Russia's public sphere at the time, which under the threat of persecution once again retreated into its "literary" womb.⁵⁷ Nevertheless, despite its explicit allusions to the pitiful state of affairs in Russia, Spasovich succeeded to keep his

discussion of *Hamlet* as literary as possible, never dropping the word “Russia” in his discussion of Shakespeare. Of course, his caution was justified. Due to the tightening of censorship, several major newspapers and literary monthlies were reprimanded and even suspended during the early 1880s (among them were the influential newspaper *Golos* [Voice] and Saltykov-Shchedrin’s journal *Otechestvennye zapiski* [Notes of the Fatherland]). In the realm of literature, not only fiction writers of Tolstoy’s stature were threatened by censors, but literary scholars as well were forced to exercise caution. In 1885, *The History of Recent Russian Literature* by the aforementioned friend and colleague of Spasovich Semyon Vengerov was banned by the authorities for its supposedly subversive content.⁵⁸

Spasovich fashioned his essay in a way that allowed him to achieve a two-fold goal: to condemn the tyranny of the state, but to do so in a subtle way so as not to attract any official attention to his literary *exercices*. He succeeded, since his fairly explicitly political literary essay was published without consequences for the author, while Vengerov’s study was suppressed only two years later. Of course, Spasovich knew perfectly well that any scholarly discussion of Russian literature would have been perceived by the authorities *a priori* as more transgressive than an essay about a drama by a foreign author (even if the drama was *Hamlet*), and he used this knowledge to his advantage by expressing his deeply held political beliefs from a safer ground of a foreign literature. Needless to say that as one of the most skilled court speakers of his court-obsessed era, Spasovich had no difficulty recasting the tragedy of the fictional Danes into an Aesopian tale about Russia’s own political woes. Moreover, because his audience, mainly Russian intelligentsia, was well trained in extracting civic messages from literary texts, the process of meaning-making was a two-way street. Spasovich provoked his responsive readers to look at Russia and its politics and politicians through the lens of Hamlet’s Denmark, cautioning

them about the detrimental effects of tyranny upon the nation's psyche. The following passage from Spasovich's essay is a representative example of his rhetoric, highly suggestive of the political oppression in Russia:

Bloody wars passed, and the era of peace, passivity, and lazy repose arrived. The barbarians got a bit of superficial polish and education, but the impact of culture stopped on the surface, without penetrating any deeper. They wear sable furs, dress up in velvet, travel to Paris to acquire good manners, or to Wittenberg to learn the sciences and to practice fencing with thin French swords. In international affairs, they handle their political goals without resorting to violence, through diplomacy alone, but, under the polished and smooth surface, in every Dane hides a barbaric man, who likes to give free reign to his desires, loves to indulge in gluttony and drinking, and feels no need in refined pastimes, intellectual labor, and studies. "This heavy-headed revel east and west," Hamlet says, "Makes us traduced and tax'd of other nations / They clepe us drunkards, and with swinish phrase / Soil our addition" (1:4:17-20).⁵⁹

A bit further, Spasovich continues with an even more sarcastic statement about the state of affairs in Denmark, this time omitting a supporting quote, which adds a uniquely personal touch to his "literary analysis":

All of Denmark looks like a gigantic pub, and the whole court is an assembly of lackeys of different kinds, stupid and uncultivated, similar to Rosencrantz and Guildenstern who spy on Hamlet. [...] Servility and spying, driven to the highest degree, are the main elements of the contaminated atmosphere of the court and people.⁶⁰

The main concern of this passage is Denmark's cultural stagnation, the consequence of the government's pervasive control over the private lives of Danes. While superficially life in Denmark appears stable, and the Danes drink and make merry, Spasovich interprets these festivities as a symptom, manifested by a society handicapped by the fear of spies and subdued into a vegetative state: drowned in alcohol (a suggestive allusion, considering Russia's image as a drinking nation) and deprived of civic aspirations. No doubt that this unflattering assessment was easily interpreted by Spasovich's contemporaries as a political reference to domestic affairs and a condemnation of Russia's civic limbo. Finally, Spasovich's reference to the demoralizing effect of spying could not have escaped the attention of his contemporaries, since Russia's secret police, so called *Okhranka*, was aggressively following the activities of suspicious intellectuals, including Spasovich himself.

In his analysis of *Hamlet*, Spasovich also satirizes the high-positioned bureaucrat Polonius, the chief counselor of the king, responsible for instilling the atmosphere of fear in Denmark. While Spasovich relies in his analysis on direct quotes from *Hamlet*, his reading of Polonius most certainly invoked in his readers the thought of Russia's own villainous bureaucrat: the Procurator-General of the Holy Synod Konstantin Pobedonostsev. Pobedonostsev, who rose to power from his position as a tutor to the Romanov family, achieved a tremendous political influence and was the engineer of Russia's counter-reforms. A reference to this ominous political figure is not surprising. After all, at the time Pobedonostsev provided a prototype for several major novels of the time. Lev Tolstoy fictionalized Pobedonostsev as Alexey Karenin in his *Anna Karenina* (1878); he most likely provided an inspiration for Dostoevsky's Grand Inquisitor from *The Brothers Karamazov* (1881); Andrey Bely depicted Pobedonostsev as the old senator Ableukhov in his monumental novel *Petersburg* (1912). However, to Spasovich belongs perhaps

the only instance of using an existing literary character as an allusion to a real-life major political figure. Expectedly, Spasovich veiled his satire with the protective “literary wrapper,” but his description of Polonius triggers unmistakable associations with Pobedonostsev: the Procurator’s exclusive closeness to the royal family, his reactionary and rather bizarre political views, total rejection of liberalism, and an iron grip on all aspects of public life in Russia.⁶¹ This is how Spasovich describes his Polonius-Pobedonostsev:

All intellectual possessions of this old man, who bends like rubber for the family of the monarch, but acts haughty and important towards everybody else, are limited to his inexhaustible chattiness. He becomes thrilled from pleasure of hearing the stream of excessively noisy phrases that he regurgitates, and this quality intensifies as he ages.⁶²

And a bit further, Spasovich continues:

Nobody would be interested in this elderly baby, who as of yet did not outgrow his diapers, but unfortunately Polonius occupies a high official post, rules over people, and poses an important authority: in the matters of art, because he studied rhetoric and once upon a time performed in a theatre in the scene of the stabbing of Julius Caesar; in poetry—because he had once upon a time also chased after women. In politics, he thinks of himself as a Machiavelli (*Hamlet* 3:1) because he has at his disposal the whole arsenal of crafty and useless advice.⁶³

Spasovich’s sarcasm directed at Shakespeare’s Polonius echoes the educated society’s attitudes towards Pobedonostsev, who for over two decades dominated Russia’s cultural landscape, usurping all branches of public life and expressing opinions on the widest range of topics. While Spasovich satirizes the nature of the prime-minister’s “expertise” in the matters of theatre,

poetry, and rhetoric, to his contemporaries his comments suggested Pobedonostsev's oppressive "expertise" on various matters of public significance: religion (the Procurator strongly encouraged the persecution of Old Believers), ethnic relations (he encouraged Russification and anti-Semitism), and public justice (in an ironic twist of fate, the Procurator, a man who helped design Russia's legal reform of 1864, later tried to do away with public courts and lawyers).

Surprisingly, Spasovich places the responsibility for Denmark's pitiful state of political affairs not on its rulers, but on the Danish elite, reproaching them of civic indifference and escapism. While Spasovich makes this point in reference to Shakespeare's Denmark, there is no doubt that his accusation was directed at Russia's educated, but civically passive elite as well. This sentiment resonated with the ideas expressed by Spasovich in his *Dinner Speeches* as well, in which he argued that silence was not a proper response for good citizens during "difficult and disorderly years."⁶⁴ Similarly, Spasovich's striking declaration about a "barbarian man" hiding in every Dane was most likely taken by his contemporaries as a self-referential allusion. Indeed, for Spasovich many educated Russians retained a "barbaric" trait of not raising their voices in support of their deeply held beliefs, like Shakespeare's Danes or Dostoevsky's Dmitry Karamazov seeking forgetting in drunken revelries. The theme of the Russian elite's passivity, which runs through all of Spasovich's writings, intersected with the same sentiments expressed by other prominent Russian writers. In addition to some earlier examples (like Ivan Goncharov's *Oblomov*, for instance), the escapism of Russian intellectuals was thoroughly investigated in the fiction of Mikhail Saltykov-Shchedrin. In his novel *Contemporary Idyll* (1877-1883), Saltykov sketched a parodic portrait of two Russian intellectuals who decided to cease all intellectual activities in order to avoid arrest. When they realize that "not thinking" is simply not enough to keep them out of jail, they decide to engage in the acts of "aggressive criminality," sanctioned by

the state. This similarity in the attitudes by both authors towards the escapist representatives of their own milieu emphasizes Spasovich's understanding of literary criticism as a deeply social and political genre. Moreover, his essay does not only give a very definite idea of how this late imperial liberal viewed contemporary events, but it also offers us a glimpse at the "unrecorded aspect" of history, for instance, their deeply held anxiety that reaction in Russia will undermine the civic foundation of their own cultural and intellectual milieu.

While Spasovich was undeniably successful at sneaking a political commentary into his literary essay, this was not his only accomplishment as a literary critic. He also offered a radically new interpretation of the figure of Hamlet. Departing from the priggish interpretations of Hamlet as an incorrigible idealist, Spasovich suggested that by the end of the drama Hamlet himself transforms into a criminal, matching in villainy and moral corruption his uncle Claudius. Spasovich blamed the theatrical performances of *Hamlet* for advancing a rather simplified interpretation of Hamlet. These performances—Spasovich argued—overemphasized the scenes in which the "beautiful aspects of Hamlet's flexible and fast-changing personality shone brightly," and disregarded the shadier sides of his psyche.⁶⁵ Undoubtedly it was Spasovich's background as a defense lawyer that made him notice these dark psychological changes in Hamlet. Pondering Hamlet's gradual advancement on the road of crime, Spasovich suggested that Shakespeare's *Hamlet* was, first and foremost, a story about how the evil can grow within an individual from a mere fleck of dust, and how a gifted mind can develop a capacity for evil by surrendering itself to dark thoughts and deeds. Addressing this issue, Spasovich wrote:

Shakespeare penned a heart-wrenching drama, in which we see a gentle and noble heart poisoning itself, the hero's character getting corrupted, thought collapsing

from a clash with reality, and we also see how, in the end, death serves the hero well, because it is better for the hero to die from his clash with reality than to sacrifice reality to his poetic whims, dreams, and flashes of feeling.⁶⁶

Needless to say, Spasovich's proposition that every man, even a man like Hamlet, can fall very low if his social environment is sufficiently "rotten" sounded like a word of caution to his own cultural milieu. If, indeed, Hamlet could succumb to his environment and become a murderer (after all, he killed Polonius, his uncle Claudius, and Laertes, and devised a treacherous plan to get rid of Rosencrantz and Guildenstern), then what could happen to Russian intelligentsia, who were finding their own environment increasingly more rotten? While Spasovich does not verbalize this allusion, he expressed in his essay a fear that seems to suggest this interpretive opportunity. Pondering an alternative ending to *Hamlet*, in which the young prince would survive and become the king of Denmark, he exclaimed: "The reign of this king-the poet would offer a curious sight for our eyes, a sight which would, most likely, make many think about the times of Claudius with a great nostalgia."⁶⁷ Of course, there is no evidence in the essay itself that this lament of the lawyer-critic had any connection to Russia's political reality of the time, however, the parallel between Spasovich's anxiety about the power falling into the hands of Hamlet, who came to know the sweetness of violence, and Russia's own Hamlets, who throughout the 1870s exceedingly chose the road of terrorism as a means of overturning absolutism, strikes one as uncanny.

To conclude, it was perhaps this intellectual richness of Spasovich's reading of *Hamlet* that made Vengerov acknowledge this critic's contribution to the study of Shakespeare's play. On the one hand, Spasovich held firmly on the traditional interpretations of Hamlet established by his famous predecessors: Russian romantics, Belinsky, and Turgenev. On the other hand, he

enriched these readings of Hamlet by showing how, despite this character's idealism, he nevertheless managed to get corrupted under the influence of his "rotten" environment. In a way, Spasovich "modernized" Hamlet for the Russian readers and theatre-goers by showing that the hero did not remain unaffected by his circumstances. Indeed, the opposite was true: his circumstances not only corrupted his soul, but also transformed him into a murderer and heartless criminal like everybody else. In a way, Spasovich managed to revamp Hamlet in order to make him into a better "lens" through which one could observe Russia of the 1870s and 80s: seized by counter-reforms, suffering from oppression from above and political terrorism from below, and retreating once again into a civic slumber. By showing the negative effects of the environment upon Hamlet, Spasovich also managed to invest the play with a didactic message, thus making Shakespeare into a peculiar literary expert in the matters of political oppression. The manner in which he suggested to read *Hamlet* seemed to be a word of caution to his contemporaries. Indeed, if even Shakespeare believed that Hamlet was transformed into a murderer through his politically unhealthy environment, then what would one expect in Russia, a country with a similarly explosive political situation? The voice of Spasovich present behind the scenes seemed to tell to his readers: "Whatever happened to Hamlet can happen to you. If you consider yourself to be immune to the detrimental influences of your environment, you are mistaken. The only solution to this situation is to enact changes within this environment. Therefore: be a citizen and raise your voice!" While these exact words were left unsaid by Spasovich, whatever he managed to put in words—Denmark's corrupted politics, obscurantism of its politicians, and Hamlet's degradation—provided his audience, among them Vengerov, with the allusions necessary to look at their own society from the Shakespearean point of view.

Anatoly Koni on Pushkin and Law

The reverberating and pure spring of his poetry flooded the Russian land with a full and wide river. Through his moral profile Pushkin talks about eternal beauty, love to truth, kindness to the fallen, about compassion.
Anatoly Koni, "The Ethical Persona of Pushkin" (1899).⁶⁸

Another important member of the Shakespearean Circle, Anatoly Koni (1844-1927)—a learned Russian jurist, prominent judge, and professor of law, member of the State Council, and honorary member of the Imperial Academy of Sciences in Saint-Petersburg—left a remarkable trace in Russian culture as a scholar of literature. Cumulatively, his incredibly erudite essays and memoirs provide a history of nineteenth century literature written from the point of view of Russia's quest for legal justice. Indeed, in his writings Koni looked at the ways in which different Russian writers engaged with legal justice, which for Koni formed a "zodiacal constellation" of universally human ethical and civic concerns with justice, truth, liberty, and society's common good. Personally acquainted with the majority of Russian realist writers from the second part of the nineteenth century (Lev Tolstoy, Ivan Turgenev, Ivan Goncharov, Fyodor Dostoevsky, Alexey Pisemsky, Anton Chekhov, and many others), Koni recorded each of his personal relationships with writers as reflections on these writers' contribution to the advancement of the idea of justice and legality in Russia.

The presence of a juridico-humanistic angle in the writings of Koni—the memoirist—was by no means surprising. Due to his prominent position both in legal and literary milieus, Koni moved easily between various intellectual circles of the time, promoting literary sensibilities among lawyers, while simultaneously forming close relationships with contemporary fiction writers, not infrequently because he consulted them in relevant legal matters. In this manner, Koni became closely acquainted with Lev Tolstoy and Fyodor Dostoevsky, who sought his legal

help and advice on several occasions. Koni's turn to literary criticism was fueled by his life-long quest for the proof that legal ways were not, by any means, incompatible with Russian culture. Indeed, in his writings Koni tried to subvert the stereotype of legal justice as a purely Western import, too un-Russian to serve Russian society well, by showing that, as a social mechanism, it was befitting Russian people, whom Koni depicted merciful by nature and full of desire for truth and social fairness. He argued that Russian literature as well as the personae of Russia's greatest writers contained the clearest evidence of this national feature.

In his essays and lectures on Russian writers, given at such prestigious venues as the Academy of Sciences in Saint-Petersburg, Koni toyed with the idea of the great Russian writer as the pioneer of progress, humanism, and legality in Russia, even if the evidence in some cases pointed otherwise. Koni's attitude towards literature was, of course, quite common among the educated intelligentsia, many of whom sought the solution to Russia's social and political problems in novels and viewed literary criticism as a civic activity. However, this jurist's relationship with the world of Russian letters was marked by even higher intensity due to his thoroughly literary upbringing. Fyodor Koni, Anatoly Koni's father, was a renowned playwright, who for a number of years published *Pantheon*, a journal dedicated to theater. Ivan Lazhechnikov, the famous author of historical novels, was Koni's godfather. His mother was also a writer and gifted actress known under the name Sandunova.⁶⁹ Moreover, Koni's teenage years fell in the decades of the 1850s and 60s, an era of unusual social and literary upheaval, a fact which also explains his love for literature and literary codes and scripts. In one of his memoirs, Koni described the collective literary consciousness of his generation as follows:

The onset of adolescence coincided for me with the amazing rise of Russian literature at the end of the 50s and beginning of the 60s. To talk about the feelings

and inner experiences at the appearance of *Rudin*, *First Love*, *On the Eve*, and especially *Fathers and Children* meant to talk about the history of literary impressions of all people from my generation.⁷⁰

Not surprisingly, throughout his career in law, Koni remained loyal to his literary selfhood, using Russian writers and their literary masterpieces as the main entrance into Russia's "legal laboratory," where contemporary intellectuals struggled to define the place, significance, and utility of Russia's new legal practices using the traditional vocabulary of moral discourse: "justice," "mercy," "liberty," and "truth."

As a critic with the primary professional background in law, Koni developed a unique signature style in his approach to literature. Firstly, he frequently focused on the literary works that discussed crime, its origins and social implications, or dealt with the issue of justice in general. Secondly, throughout his life Koni remained passionately interested in the collective persona of the Russian writer, which, due to his intimate friendships with many of them, steered his pen towards the genre of critical biography. Therefore, in many of his essays Koni blended literary analysis with reflections on the author's persona, with most attention given to the writer's ethical principles and legal views. In this fashion, Koni touched upon a number of important literary texts and writers, whose voices provided a major input to the public discussion of legal justice: Dostoevsky and his novels *Crime and Punishment*, *The Brothers Karamazov*, and *Memoirs from the House of the Dead*; Tolstoy and his play *The Live Corpse*; Chekhov and his memoir *The Island of Sakhalin*. With the aforementioned authors, Koni was acquainted personally. In the mid-1870s, Dostoevsky sought Koni's legal help in several court cases involving children. Tolstoy drew on Koni's knowledge of court procedures, and in the course of their acquaintanceship received a fine "literary gift" from his jurist-friend: the plot for his novel

Resurrection.⁷¹ However, Koni was interested not only in the authors, with whom he was acquainted personally. His interest in the legal and ethical beliefs of Pushkin, for example, points towards his desire to “excavate” the evidence that a certain legal awareness always existed within Russian culture, even prior to the legal reform of 1864.

Koni turned to Pushkin in the 1880s, in the aftermath of Fyodor Dostoevsky’s famous speech, dedicated to the unveiling of the first monument to the poet in Moscow. In this speech, Dostoevsky presented his beloved poet Pushkin as a “pan-human,” who surpassed all other great Western authors in the innate ability to understand, respond, and embrace people of the world, and, *most importantly*, as the ultimate expression of Russianness.⁷² After this speech, the figure of Pushkin transformed into an important cultural metaphor, which, thanks to the efforts of other writing intellectuals, gradually acquired additional cultural meanings. Among others, the representatives of new professions and scientific fields seized the Pushkin metaphor, using it as a way of legitimizing their respective professional realms in the eyes of the public. For instance, as Marina Mogil’ner illustrated in her recent study, Russian physical anthropologists brought their nascent science to public attention by engaging with the debate on Pushkin’s pan-humanity and his racial origins.⁷³ As a jurist, Koni “discovered” in Pushkin yet another facet to his pan-humanity: his ability to see the positive side of legal justice, ahead of his lawless era. By representing Pushkin as the proponent of legal thinking, Koni indirectly suggested that legal justice was not at all an a-historical Western import. On the contrary, a desire for just laws was organic to Russian culture, a fact to which the writings of Pushkin, Russia’s “most national” poet, served as an irrefutable proof.

Koni began his career as a scholar of Pushkin within the familiar surroundings of the Shakespearean Circle, gradually acquiring prominence and moving his scholarship to public

venues. By 1899, when he delivered his speech “The Ethical Persona of Pushkin” at the poet’s centennial anniversary at the Academy of Sciences, Koni was already a recognized authority on Pushkin.⁷⁴ In fact, the same speech was later published by Semyon Vengerov’s in his academic Brockhaus-Efron edition of Pushkin, which is the best testimony to the perceived high scholarly value of Koni’s scholarship of Russia’s foremost bard.⁷⁵ In his important speech, Koni employed the figure of Pushkin in order to show that the poet’s ethical persona, faith, and his deep loyalty to the idea of truth and fairness—qualities, Koni argued, which were typical for all Russian people—was indeed connected to the great poet’s respect for law and his hopes that one day Russia would be ruled by law, and not by the arbitrary will of the monarch. Characterizing the significance of Pushkin as a public voice, Koni described him as the mouthpiece for Russian people’s passion for truth and justice. He wrote:

Pushkin, the inimitable voice for the native roots of the national spirit, powerful and inspired smith of the native tongue, thinker and bard, historian and citizen, provides an inexhaustible source for study. [...] With him, our literature acquired its true meaning as an expression for the society’s qualities and needs and messenger of its aspirations. Whatever issue is under investigation, one must almost always go upstream, back to Pushkin. Nothing was alien to him; his mind, sober, insightful, and free from exclusiveness, armed with the genial force of expression, responded to all manifestations and questions of life surrounding him, igniting sparks upon each contact with it, and his deep love for his fatherland, filled with feeling, but deprived of sentimentality, forced him to see all conditions of its everyday life and history. [...] Pushkin was filled with the feeling of and search for truth.⁷⁶

On the ideological plane, Koni's speech echoed the sentiments of Dostoevsky and the Slavophile philosopher Alexei Khomiakov, whose idea that each nationality possessed a certain unique set of innate features influenced both, the writer and the lawyer. For Khomiakov, Russian people were united through their faith; for Dostoevsky, Russian people were linked together by their unique ability to comprehend and embrace all other cultures; Koni invested the idea of Pushkin's pan-humanity with yet another deeply passionate observation: for him, the most pronounced feature of Pushkin (and, consequently, of Russian people) was their powerful love of truth and justice.⁷⁷

Truth as a concept was central to Koni's speech as well as to his worldview, but his understanding of what constitutes the truth was rather complex, consisting of multiple philosophical and ethical layers. Koni refused to view truth as finite and circumscribed by visible facts. He argued that truth is hard to arrive at, even if one has all facts and evidence at his disposal, and only via artistic imagination one can move closer toward the ever-elusive truth. Pushkin's art, Koni continued, was characterized by the poet's access to the higher and more panoramic vision of life and its truths:

And *love of truth* rules in Pushkin's work, that higher truth, which seeks and depicts the acts of a human being ideally; not the type, which describes everything within the limits of a fact, without raising the eyes from the ground and looking to further horizons, thus pleasing cold-hearted mediocrity, envious and hungry for entertainment.⁷⁸

For Koni, Pushkin's poetic imagination and his love for truth were inextricably connected to his respect and high hopes for legal culture in Russia. Indeed, Koni argued, armed with these two virtues Pushkin, unlike his less "poetically" and "prophetically" gifted contemporaries, was able

to transcend the ideological limitations of his land- and serf-owning estate, divining the benefits of the rule by law well ahead of his lawless era. In other words, following the cultural impulse of his era to endow Russia's greatest poet with the desirable political, social, spiritual, and even racial features, Koni invested *his* Pushkin with two of his own loves: the love for truth and for law. By doing so, the jurist Koni seemed to be gently nudging Pushkin's "enlightened posterity" to stop seeing legal justice as a Western import and to accept it as an adequate and organic way of governing Russia's social and political clockwork.

Koni's discussion of Pushkin's works and his ability to pull together from the poet's well known poems and prose a cohesive picture of his legal views exposes this lawyer-critic as a passionate and attentive reader. It also suggests that Koni was searching in literature for the proof of his deeply cherished belief that public justice found in Russia an intellectually fertile ground. In order to show the intellectual "ripeness" of the Russian will for law and public justice, Koni turned to Pushkin's poems directed against the lawlessness of absolutism and serfdom, specifically to "Ode to Liberty" (1817) and "The Village" (1819), as well as to his poetry and prose that focused on crime and criminals. Among the latter category, Koni drew his examples from Pushkin's long narrative poem *The Gypsies*, his historical novel *The Captain's Daughter*, drama *Boris Godunov*, to name just a few. For Koni, the aforementioned texts were a sign of Pushkin's loyalty to the idea of law as the only mechanism that can protect the individual from the political or criminal violence. Koni wrote:

Envisioning his ideal society, in which "the union of the powerful laws and holy liberty is strong,"⁷⁹ Pushkin viewed this specific union as a necessary condition and guarantee of peace and social progress in the future. Powerful laws must protect the weak, serve as a bridle for those who like Aleko [a character from

Pushkin's narrative poem *The Gypsies*] "want liberty only for themselves," and manifest the understanding by the lawmaker of the inalienable rights of the human being. From here comes the idea that the laws should be well-thought-out and humane.⁸⁰

Further, Koni points out that the origins of Pushkin's noble legal aspirations lay in the condition of serfdom *per se*. Upon entering life with the intention to "to dedicate to the fatherland the most beautiful aspirations of the soul," Pushkin had to experience the unavoidably painful clash with the various manifestations of owning the souls of less fortunate others.⁸¹ This clash, Koni argued, was instrumental in drawing the poet's attention to the brutal lawlessness of serf-owning. Thus, his poem "The Village" (1819), which opens with the peaceful pastoral of village life, quickly transforms into a gloomy tableau as Pushkin begins to spill at his reader the images of barbaric rural cruelties: peasants, forced to labor for their *barins* like slaves; their daughters, forced to become concubines to their aging masters; their sons, taken away for a life-long military service. Koni underscored Pushkin's rage at the ethical and legal mayhem of Russia's serfdom by directing the attention of the public to Pushkin's use of the word "law" in "The Village": "Here [in the village] the barbaric master, without feeling and without law, has appropriated with the violent lash the labor, property, and time of the peasant."⁸² Koni's example invokes his idea that for Pushkin (and we can assume for Koni as well) justice was founded upon two principles: the principle of truth (in the quote above described as "feeling") and the principle of law.

However, from Koni's perspective, Pushkin's intellectual engagement with the idea of law and lawlessness was not his most important achievement. Even more Koni praised Pushkin for his insights into the nature of crime, its dark psychology, and affects of guilt upon human psyche, the insights that, Koni argued, were "astounding" even for practicing jurists.⁸³ Koni's

view of Pushkin as a perceptive observer of the criminal mind is culturally significant because it placed Pushkin ahead and, perhaps, even above Dostoevsky, whose novel *Crime and Punishment* became in 1866 a remarkable literary threshold that humanized the ways in which Russian public looked at criminals, crime, and punishment. Describing *Pushkin's* views of the interrelationship between law, punishment, and the individual, Koni wrote:

Crime rocks the very foundations of a society. Therefore, the penalizing law is necessary, but it is very important that legal blows do not punish an individual needlessly, that they do not intrude upon his private life till he is proven to have infringed upon someone else's rights. This idea, at times too nebulous even for some lawmakers, presented itself clearly to Pushkin. "Laws describe only the crime, but not the individual's private life, letting the conscience deal with one's vices and weaknesses," Pushkin says, thus delineating the limits of the punishing law.⁸⁴

Koni's examples from Pushkin's works support this understanding of the poet's attitude towards punishment. In the scene from Pushkin's long narrative poem *The Gypsies* (1827), the gypsies simply banish Aleko for the murder of his unfaithful wife Zemfira, without further bloodshed. Koni draws the readers' attention to the gypsies' non-violent way of enforcing peace among themselves. Guided by their aversion to slaughter, they ask Aleko to leave them: "Leave us, proud man! / We are wild and have no laws. / We do not torture or punish, / We do not need blood and moans, / But we don't want to live with a murderer."⁸⁵

To highlight Pushkin's intolerance of cruelty, Koni juxtaposes this scene of the bloodless punishment from *The Gypsies* with the scene of the torture in Pushkin's short historical novel *The Captain's Daughter* (1836). In the novel, the young officer Petr Grinev observes the

interrogation and torture of Pugachev's spy, a Bashkir man, well over seventy, his ears and nose missing from the previous "encounters" with law. Koni's choice to illustrate Pushkin's disapproval of physical punishment is particularly effective because in this specific scene the voice of the author overlays that of the narrator, thus making it very apparent that the attitude expressed in the text belongs to Pushkin:

[...] It was thought that the offender's own confession was indispensable if his guilt was to be fully established—an idea that not only lacks foundation, but is diametrically opposed to sound legal thinking; for if a denial by the accused is not accepted as proof of his innocence, then an accusation by him should be even less of a proof of his guilt. Even today I sometimes hear old judges express regret over the abolition of this barbaric practice. In the days of my youth no one—neither the judges nor the accused—doubted the torture was necessary. Therefore the commandant's order neither surprised nor troubled any of us.⁸⁶

What is also fascinating about Koni's choice of this passage, that it can be read as a rather thinly veiled allusion to Russia's "legal theatre" of the time. While Pushkin's novella described the events of the past (the Pugachev's rebellion took place in 1774-75), there is no doubt that Koni drew attention to Pushkin's disapproval of cruel legal practices of the past in order to cast away some of the accusations thrown against Russian public courts in the 1870s. During this decade, public courts were criticized for acquitting defendants too frequently. While the authorities tended to blame these acquittals on the incompetence of Russian jurors and manipulative lawyers, Koni's speech urged the public to search for the origins of Russian jurors' leniency elsewhere, perhaps within the maze of the merciful Russian psyche itself. In late nineteenth century Russia, still powerfully suspicious of all things legal, the project of articulating a detailed

and reasoned picture of Pushkin's legal views, consistent with Russia's post-reform public justice, meant much more than a fanciful exercise in public rhetoric. By showing the continuity between Pushkin's views on justice and Russia's modernized legal culture, based on leniency and tolerance, Koni essentially reclaimed public justice as an expression and integral part of Russia's national spirit.

Conclusion

While literary lawyers labored diligently to upend the negative stereotypes of their profession, their literary scholarship was also a strong contribution to the struggle for shaping the understanding of post-reform courts and the law in Russia. By reading and interpreting literary works as well as by partaking in the contemporary discussion of the culturally emblematic literary figures like Shakespeare and Pushkin (who was considered the "Russian Shakespeare"), these lawyers not only developed a more viable professional selfhood, firmly rooted in both, the modern legal and traditional literary discourses on truth. By participating in the literary life of the time as critics, these lawyers—and I hope that my discussion of Vladimir Spasovich and Anatoly Koni provides a convincing case in support of this claim—were doing an important work of building a public image of law. Koni's investigation of Pushkin's legal thought, for instance, illustrated that Russia's new courts could not be categorized as a foreign import because the new court culture arose from an existing and native legal consciousness: a realization by certain advanced individuals (like Pushkin) that the rule of law was essential for Russia's successful cultural development. By highlighting this aspect in Pushkin's thinking, court professionals transformed their literary hobby into an almost intellectual position that stressed the fact that Russia had a history of legal consciousness, and ignoring it would make a disservice to Russia's

progress towards a society ruled by law. While for this group of late imperial professionals their literary leisure still possessed a high intrinsic value, they began to look at their professional legal duties as equally meaningful. The generation of Russian jurists (or *pravovedy*), who labored in various legal venues before the legal reform of 1864, had very limited opportunities to practice law in a meaningful way, felt trapped by the quagmire of legal bureaucracy, and thus frequently were more dedicated to literature than to law.⁸⁷ Unlike their unfortunate predecessors, the post-reform “literary lawyers” took pride in their legal duties and work, and they had many reasons to feel this way. They defended their clients in Russia’s new “living court,” or *zhivoi sud* as Russia’s public justice was nicknamed by contemporary journalists. They participated in political trials, thus submitting to the dangers of political prosecution. Finally, their artful defense speeches taught Russia to be more tolerant and merciful in the matters involving human lives. Not accidentally, these lawyers developed a more apt sense of commitment to their profession. This commitment manifested itself in their literary criticism, which began to weave their legal, civic, and ethical preoccupations into Russia’s literary fabric. Of course, literature *per se* remained very important to the sensibilities of Russian lawyers, but they began to employ the literature exceedingly for the purpose of exposing the spiritual communion between the timeless ethical principles of truth and justice and the live social organism of the post-reform legal justice.

Figure 1.1: Invitations to the Meetings of the Shakespearean Circle.⁸⁸

В пятницу 8^{го} ноября, в 8^½ в.
собрание кружка в квартире
В.Д. Спасовича (Николаевская, 47).
Предмет беседы — доклад В.С. Со-
ловьева: «Объяснение многозначности усло-
вия в поэме в нравственном
отношении».

В четверг 24 октября в 8^½ в.
в квартиру В.Д. Спасовича (Николаев-
ская, 47) — собрание кружка. Предмет
беседы — доклад П.И. Вейнберга:
а) о новой пьесе Чехова «Чайка»,
б) о новой пьесе Зюдермана «Фри-
цшилька».

Invitation (top):

“The circle will meet on Friday, November 8th [1896], at 8:30 pm in the apartment of V.D. Spasovich (Nikolayevskaia str., 47). The subject of the talk: the presentation of V.S. Solov’ev on the ethical implications of economical conditions.”

Invitation (bottom):

“The circle will meet on Thursday, October 24th [1898], at 8:30 pm in the apartment of V.D. Spasovich (Nikolayevskaia str., 47). The subject of the talk: the presentation by P.I. Veinberg about a) Chekhov’s new play *Seagull*, b) Sudermann’s new play *Fritz*.”

Figure 1.2: The Cover of S.A. Vengerov's Collected Works of Shakespeare, 1902-1904.



Figure 1.3: Illustration from Vengerov's *Shakespeare*: "Hamlet and the Ghost."



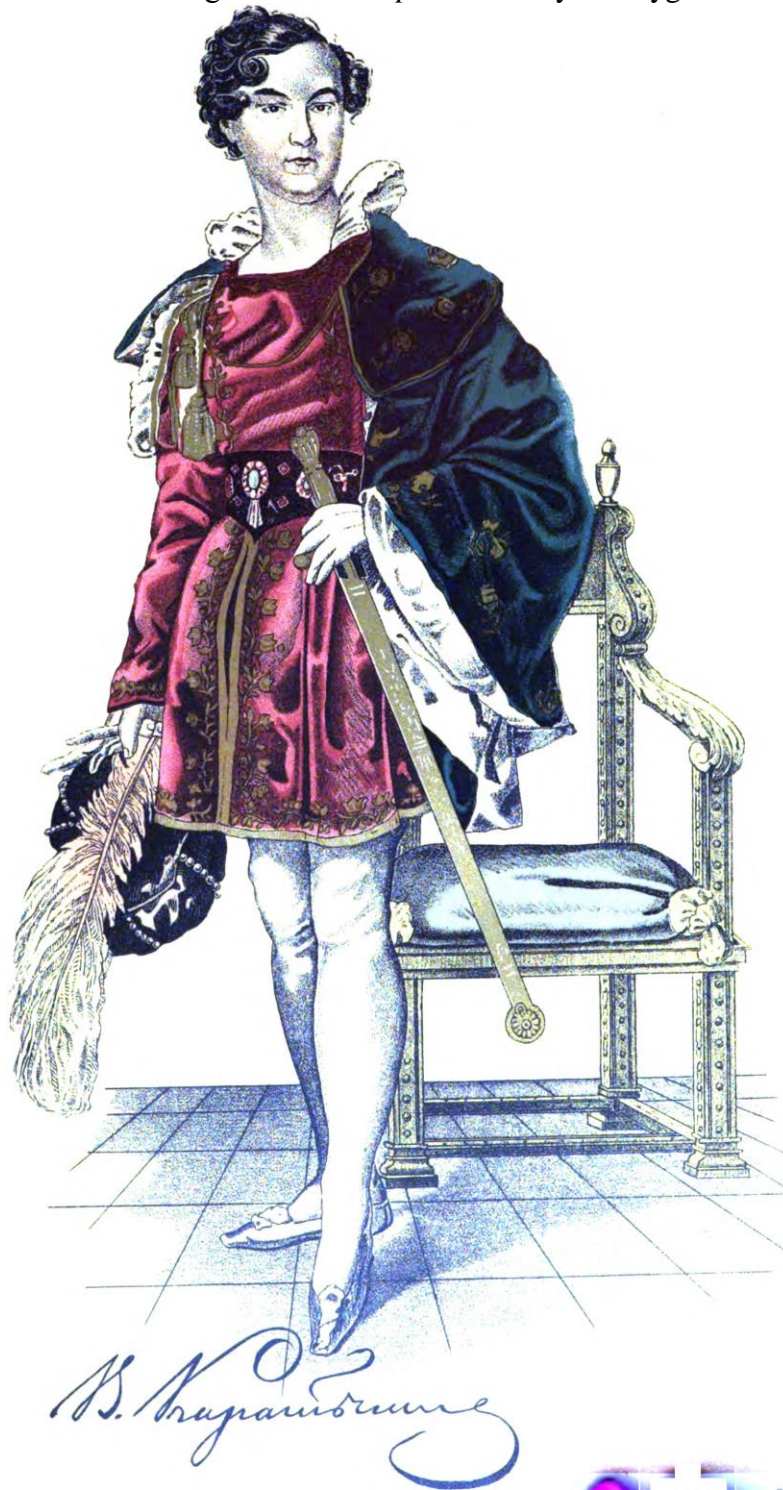
Caption: Hamlet and the Ghost. From the series of lithographs to Hamlet by the famous French artist Eugène Delacroix (1798-1863).

Figure 1.4: Illustration from Vengerov's *Shakespeare*: Scene from the Performance.



Caption: Scene from the performance. Painting by the modern English artist Abbey.⁸⁹

Figure 1.5: Illustration from Vengerov's *Shakespeare*: Vasily Karatygin as Hamlet.



Caption: Vasily Karatygin as Hamlet

CHAPTER 1

¹ Mirsky, D.S. *A History of Russian Literature: From Its Beginnings to 1900*. Ed. Francis J. Whitfield. Evanston, Illinois: Northwestern UP, 1999.

² Koni, A.F. "Vladimir Danilovich Spasovich (1829-1907)," *Sobranie sochinenii v 8 tomakh*, Moskva: Yuridicheskaiia literatura, 1968. 7: 249-240.

³ Among other major literary works which endow the lawyer with the gift for words or a literary hobby, which are combined with his explicit indifference towards the client is Tolstoy's *Anna Karenina*. The nameless Saint-Petersburg lawyer, whose moth-infested office Alexey Karenin visits to get a consultation about the divorce, is definitely a match for the heartless bureaucrat Karenin. Dostoevsky's *The Brothers Karamazov* is yet another major example.

⁴ *Resurrection*, Part I, Chapter 45. Page 209.

⁵ Two books of recollections dedicated to Garshin appeared: *Krasnyi tsvetok* (Saint-Petersburg, 1889) and *Pamiati Garshina* (Saint-Petersburg, 1889). Literary lawyers did not remain behind, and also penned several essays dedicated to Garshin. For example, Sergei Andreevsky read his essay on Garshin at the meeting of the Russian Literary Society: it was later published in *Russkaia Mysl'* # 6, 1889 [*Russian Thought*]. It was also read at the meeting of the Shakespearean circle (RNB. F. 21., Ed. Hr. 363)

⁶ This topic is discussed in more detail in chapter 2 of my dissertation, which deals with the rise of cause célèbre in Russia.

⁷ Eikhenbaum (along with his colleagues, literary scholars Boris Shklovsky and Yury Tynyanov) opposed this sociological approach to literary texts and figures to the sociological approach practiced by other Soviet literary scholars at the time. He rejected "vulgar sociology," which reduced literary texts either to their socio-economic circumstances or ruminations on the issues of class. After Eikhenbaum moved away from the formalist principles in the study of literature, he published a number of studies which carry the imprint of his *literaturnyi byt* concept: *Lev Tolstoy in the 50s* (1928), *Lev Tolstoy in the 60s* (1931), and *Lev Tolstoy in the 70s* (1940). More on *literaturnyi byt*: Matejka, Ladislav, and Krystnya Pomorska, eds. *Readings in Russian Poetics: Formalist and Structuralist Views*. Ann Arbor: University of Michigan, 1978. Also: Tynyanov, Yu.N. "Literaturnyi fact," in *Poetica. Istoriya literatury*. Kino, Moskva, 1977. 255-69; Eikhenbaum, B. "Literaturnyi byt," in *O Literature*. Moskva: Sovetskii pisatel', 1987. 428-36; Aronson, M, and S. Reiser, *Literaturnye kruzhki i salony (Literary Circles and Salons)*, edited by Eikhenbaum, Leningrad: Priboi, 1929. Selected secondary sources: Chidakova, M.O. "Sotsial'naya praktika, filologicheskaya refleksiya i literature v nauchnoi biografii Eikhenbauma i Tynyanova." In *Tynyanovskii sbornik: Vtorye Tynyanovskie chteniya*. Ed. M.O. Chudakova. Riga: Zinatne, 1986. 103-31; Pereverzev, V. F. *U Istokov Russkogo Realisticheskogo Romana*. Moskva: Khudozh. lit-ra, 1965; Lovell, Stephen. "Tynyanov as Sociologist of Literature." *The Slavonic and East European Review* 79:3 (2001). 415-33.

This approach to the study of literature is reminiscent of a more recent work by Pierre Bourdieu, who similarly suggested looking at literature through the sociological lens of its establishments. See: Bourdieu, Pierre. *Rules of Art: Genesis and Structure of the Literary Field*, Stanford University Press, 1996. I chose Eikhenbaum over Bourdieu because Eikhenbaum's theoretical lens was developed with the Russian literature and cultural context in mind, and was subsequently applied to the nineteenth century texts and literary phenomena.

⁸ At the moment, I do not know whether Soloviev attended the meetings of the Shakespearean circle regularly or only occasionally. The fact of his presentation at the meeting of the Shakespearean circle is supported by archival evidence: I found an invitation to Soloviev's talk at the Shakespearean circle in the archives of the National Public Library in Saint-Petersburg (see figure 1.1 in the appendix to this chapter). I would like to gain access to the unpublished archives of Vladimir Spasovich and Anatoly Koni in order to get a more clear idea about the topics and attendance at their meetings.

⁹ There is not a single study of this peculiar literary body, emblematic of the interrelationship of literature and legal culture in Russia, except for a brief excerpt from the article by Rovda, K.I., "Shekspirovskie kruzhki v Peterburge Moskve," pp. 589-96, published in *Shekspir: Bibliografiia russkikh perevodov i kriticheskoi literatury na russkom yazyke, 1748-1962*. Eds. Alekseev, M. P. Moskva: Kniga, 1964. 589-96. Brief references to this peculiar circle of lawyers-writers are spread out across various memoirs. For example, see Arsen'ev, K.K. "Vospominaniia o knyaze Aleksandre Ivanoviche Urusove" In *Prince Aleksandr Ivanovich Urusov*, Moskva, 1907. Page 237. The circle is also

mentioned in the memoirs of Pyotr Boborykin: Boborykin, P.D. *Za polveka*. Moskva-Leningrad: ZIF, 1929. Page 186. Also see some reference to the circle is contained in the letter of F. Batyushkov to Anton Chekhov. See Chekhov, A.P. *PSS* 17, Moskva: Goslitizdat, 1949. Page 470.

¹⁰ See Chapter 3 of this dissertation for my discussion of the role Russian journalists played in launching a massive attack against new public justice and legal professionals. The derogatory label “adulterer of thought” was first introduced by the journalist Evgeny Markov in his feuilleton “The Sophists of the Nineteenth Century” published in *Golos* [Voice] in 1875. Later, Dostoevsky reused it in *The Brothers Karamazov*. The derogatory label *ablakat* was commonly used in the nineteenth century to suggest an incompetent lawyer and/or his ignorant low-class client, incapable of even pronouncing the foreign word *advokat* correctly (and thus replacing it with a comically sounding non-word *ablakat*). See: Mikhelson, M.I. *Russkaia mysl i rech. Svoe i chuzhoe. Opyt russkoi frazeologii. Sbornik obraznykh slov i inoskazanii*. In 2 vols. SPb: Tip. Ak. Nauk, 1896-1912.

¹¹ Dmitry Mirsky (1890-1939) dedicated a very brief chapter in his brilliant history of Russian literature (1926), which still remains a standard English-language guide of this sort, to the accomplishments of literary lawyers. See Mirsky, D.S., *A History of Russian Literature: From Its Beginnings to 1900*. Ed. Francus J. Whitfield. Evanston, Illinois: Northwestern UP, 1999. 358-60.

¹² In 1878, Spasovich was harshly criticized by Fyodor Dostoevsky in his mono-journal *A Writer's Diary* for his defense of Kroneberg, who was put on trial for beating his little daughter. Kroneberg walked out of the courtroom a free man due to Spasovich's masterful defense.

¹³ See the introduction “Vladimir Danilovich Spasovich” to Spasovich, V. D. *Publichnie leksii: Byron i nekotorye iz ego predshestvennikov*. Sankt-Peterburg: Tagov, 1885. Page 5. Ironically, despite the prominent position of Spasovich as a late imperial celebrity, positioned at the important intersection of law, literature, and public life, up until now there is no single *critical* biography of his life. All biographies of Spasovich are rather factual. See for example: Skripilev, E.A., and G.M. Reznik. *V.D. Spasovich: Korol' Russkoi Advokatury*. Moskva: In-t gosudarstva i prava Rossiiskoi akademii nauk, 1999. Also: Troitsky, N.A. *Tsarism pod sudom progressivnoi obshchestvennosti* (1866-1885). Moskva: Nauka, 1979; Troitsky, N.A., *Korifei rossiiskoi advokatury*, Moskva: Centrpoligraf, 2006; Andreevsky, S.A., “Rech' na yubilee V. D. Spasovicha” and “Spasovich” in *Izbrannyye trudy I rechi*, Tula: Avtograf, 2000. Koni, A.F. “Vladimir D. Spasovich” in *Sobranie sochinenii v 8 t*. Moskva, 1968. Volume 5;

¹⁴ See for example volumes 1, 8, 9, and 10 of Spasovich's *Collected Works* for his literary criticism: Spasovich, V.D. *Sochineniia v 10 tomakh*. S.-Petersburg, 1889-1902. Other literary criticism published as books: Spasovich, V.D. *Publichnyia leksii: Bairon nekotorye iz ego predshestvennikov*. S.-Petersburg, 1885; Spasovich, V.D. *Pushkin i Mitskevich u pamiatnika Petra Velikago*, S.-Peterburg, 1887; Spasovich, V.D. *Baironizm u Pushkina i Lermontova*. S.-Petersburg, 1888.

¹⁵ For the Polish-Russian relations in the 1860s, see Ransel, David L. *Polish Encounters, Russian Identity*. Bloomington: Indiana University Press, 2005.

¹⁶ Pypin, Aleksandr Nikolaevich, and V. D Spasovich. *Obzor istorii Slavianskikh literatur*. Saint-Petersburg, 1865. The study was published for the second time in 1879.

¹⁷ From the dinner speech by Spasovich from May 31, 1891. In V.D. Spasovich. *Izbrannyye trudy i rechi*. Avtograf: Tula, 2000.

¹⁸ First published: Evgen'ev, A [Kaufman, A. E.] “Pisatel'skie obshchestva I kruzhki.” *Vestnik Literatury* # 1 and # 3 (1919). Qtd.in Schrub, Manfred. *Literaturnye ob'edinenia Moskvyy i Peterburga 1890-1917 godov*, Moskva: NLO, 2004. Page 283.

¹⁹ See Chapter 3 of my dissertation for the discussion of Mikhail Katkov's criticism of post-reform courts and court professionals.

²⁰ On the views and position of Ieronim Iasinskii in his literary milieu, see Pil'd, Lea, “Ieronim Iasinskii: Positsiya i reputatsiya v literature” [“Ieronim Iasinskii: The Position and Reputation in Literature”]. <http://www.ruthenia.ru/document/528718.html>. 2003.

²¹ I. Iasinskii, *Roman moei zhizni* [The Novel of My Life], Leningrad, 1926, 182-83.

²² In yet another anecdote from his memoir, Iasinskii describes Ivan Goncharov's visit to Utin's house, during which the literary lawyers Anatoly Koni and Sergei Andreevsky hijack the conversation from Goncharov, whom Utin invites precisely in order to hear the old master speak about his brilliant life and travels (see appendix for my translation of this anecdote). While the absolute truthfulness of this anecdote is questionable, this mini-narrative is representative of Iasinskii's attitude towards the competitive presence of literary lawyers within the literary market of the time. Here is y translation of Iasinskii's anecdote (Ibid., 185):

“Next year, on my request Utin invited Goncharov for a cup of tea.

-Nobody will be there, except you, Bibikov, and me, of course; and I will invite Koni and Andreevsky for liveliness. You, of course, remember, how delightful Goncharov is when he begins to talk. And how amazingly simply and beautifully he tells of his meetings and travels. The old man is in excellent shape, what a lively mind!

Anticipating great pleasure, Bibikov and I arrived at the appointed time, and the unerring Goncharov arrived with the punctuality of a king. He was well past seventy, but he moved, looked, and talked like a young man, vivaciously and with excitement. We sat down at the round table, and Goncharov, whom everybody considered a conservative, and he was this way in public life, began to recollect with great relish the fifties and sixties. But here arrived Koni and Andreevsky, also talented celebrities, accustomed to speaking well and, especially, drawing attention to themselves. Koni immediately interrupted Goncharov and began to describe his own version of the sixties, and the lawyer Andreevsky gallantly and gracefully intervened and advanced his own point of view. Goncharov waited politely, without arguing, and leaving the sixties, moved onto the characterization of Saltykov as a writer, and began to talk about Russian humor, which can be ...

-Either quiet and light-hearted laughter... Andreevsky jumped in.

-Or an angry and scathing satire rising to the heights of sardonic laughter, Koni gallantly interrupted Andreevsky.

Koni talked for a long time, without interruption, he talked wittily and bookishly, but we did not want to hear him. When he stopped, Goncharov glanced at his watch, did not say a word either about Saltykov or Russian humor, and began to talk once again about the future destiny of the Russian letters; but celebrated jurists also had an authoritative opinion on this topic, and they hastened to express it with the appropriate logic and persuasiveness.

Gradually, Goncharov lost his enthusiasm, took a ceremonious leave from the host and us, and despite Utin's pleas, did not stay for supper and left for his home on Mokhovaya street.

-An eccentric old man!—Andreevsky said after he left, ruffling the beautiful black hair on the back of his head, without noticing our hateful glances, mine and Bibikov's.”

²³ RNB, F. 601, Ed. Hr. 716.

²⁴ On Urusov's contribution to the Shakespearean circle, see Boborykin, P.D., *Vospominania v 2-h tomakh*, Moskva: Khudozhestvennaia literature, 1865. 1:368.

²⁵ Translation is mine. See Chekhov, *PSS (Pis'ma)* 3:82-83.

²⁶ See Maximilain Voloshin's poem “R.M. Hin” (1913).

²⁷ Koni's beautifully written memoirs about these authors are one of his foremost literary accomplishments. See Koni, A.F., *Sobranie sochinenii v 8 tomakh*. Moskva: Yuridicheskaiia literatura, 1966. Volume 6.

²⁸ *Zastol'nyia rechi* 20, 21. Speech from 1879.

²⁹ See Spasovich, V.D. *Zastol'niya rechi (1873-1901)*. Leipzig: E.L. Kasparovich, 1903.

³⁰ On the history of the Russian bar, see: Gessen, I.V. *Istoriya Russkoi advokatury*. Moskva: Yurist, 1997. (originally published in 1914); Kucherov, Samuel. *Courts, Lawyers, and Trials Under the Last Three Tsars*. New York: F.A. Praeger, 1953; Vilenskii, B. V. *Sudebnaya reforma i kontrreforma v Rossii*. Saratov: Privolzh. kn. izd. , 1969.

³¹ Kucherov 269.

³² Spasovich, V.D. *Zastol'niya rechi (1873-1901)*. Leipzig: E.L. Kasparovich, 1903. Page 14.

³³ *Zastol'nyia rechi* 69. Speech from 1896.

³⁴ *Zastol'nyia rechi* 4. Speech from 1873.

³⁵ *Zastol'nyia rechi* 5. Speech from 1873.

³⁶ *Zastol'nyia rechi* 9. The speech from 1874.

³⁷ *Zastol'nyia rechi* 5. Italics are mine.

³⁸ *Zastol'nyia rechi* 37. Speech from 1884.

³⁹ English translation by A. S. Kline. In Russian: Лишь тот свободный жизни властелин, / Кто дни свои в борьбе проводит трудной. / Пускай в борьбе ведет свой круглый год / Дитя и крепкий муж и старец хилый – / И предо мной восстанет с чудной силой / Моя земля, свободный мой народ. / Тогда скажу я: чудное мгновенье, Прекрасно ты! продлись, постой!

⁴⁰ *Zastol'nyia rechi* 38. The speech from 1884. On the whole, the idea of the lawyer as a defender of the individual's civic liberties is common in *Dinner Speeches*. In a speech from 1886 Spasovich named *vol'nolyubie*—a poetic word coined by Pushkin to replace the western word “liberal,” with the literal meaning “love of liberty”—as the foundational characteristic of the Russian lawyer (*Zastol'nyia rechi* 41).

⁴¹ The label was coined by Evgeny Markov in his feuilleton “The Sophists of the Nineteenth Century” published in *Golos [Voice]* in 1875. For the translated excerpt from this feuilleton see appendix A of this draft, pp. 34-38.

⁴² *Zastol'nyia rechi* 38-39. Speech from 1874.

⁴³ More on this, see Levin, Yury D. “Shakespeare and Russian Literature: Nineteenth Century Attitudes.” *Russian Essays on Shakespeare and His Contemporaries*. Eds. Alexandr Parfenov and Joseph G. Price. Newark: University of Delaware Press, 1998.

⁴⁴ See Turgenev’s “The Diary of a Superfluous Man” (1850) and *Rudin* (1856).

⁴⁵ See I.S. Turgenev, “Rech’ o Shekspire” in *Sochineniya*. 12:327.

⁴⁶ Qtd. in Levin 86-87. Originally in P. Annenkov, *Aleksandr Sergeevich Pushkin v Aleksandrovskuyu epokhu*. St.Petersburg, 1874. 298.

⁴⁷ Published in German in 1883 as *Shakespeare vor dem Forum der Jurisprudenz*. The Russian translation *Gamlet s tochki zreniya prava* was published in Saint-Petersburg in 1898.

⁴⁸ Kohler’s study was mentioned in the commentary to the academic Brockhaus-Efron edition of Shakespeare. See Rozanov, M.N. “Gamlet.” In *Shekspir*. Ed. S.A. Vengerov. Saint-Petersburg: Brockhaus-Efron, 1902-1904. 3:70.

⁴⁹ Rozanov, M.N. “Gamlet.” In *Shekspir*. Ed. S.A. Vengerov. Saint-Petersburg: Brockhaus-Efron, 1902-1904. 3:70.

⁵⁰ Minskii translated Antony and Cleopatra, while Petr Veinberg contributed several translations.

⁵¹ For Vengerov’s general works on Russian literature, see, for example: Vengerov, S. A. *Ocherki po istorii russkoi literatury*. Hague: Mouton, 1907; Vengerov, S. A. *V chem ocharovanie russkoï literatury: rechi i vystupleniia*. Petrograd: Svetoch, 1919. My sources for the biographical information on Vengerov are: V. N. Baskakov, “S. A. Vengerov”, *Russkie pisateli 1800-1917: biograficheskii slovar*, 4 vols, Moscow, 1989-(1999), 1: 411-12; Kalenteva, A.G. *Vliublennyi v literaturu: ocherk zhizni i deiate'nosti S.A. Vengerova: 1855-1920*. Moskva: Kniga, 1964; A

great source on Vengerov’s significance as a literary scholar, see: Byford, Andy, “S. A. Vengerov: The Identity of Literary Scholarship in Late Imperial Russia,” *The Slavonic and East European Review* 81: 1 (January 2003), pp. 1-31; Byford, Andy, *Literary Scholarship In Late Imperial Russia: Rituals of Academic Institutionalization*, London: Modern Humanities Research Association, 2007.

⁵² Vengerov also served as an editor for the important *Kritiko-biograficheskii slovar' russkikh pisatelei i uchenykh: ot nachala russkoi obrazovannosti do nashikh dnei [Critical and Biographic Dictionary of Russian Writers and Scholars, from the Beginnings of Russian Civilization to the Present]*, S.-Peterburg: I. Efron, 1889-1904.

⁵³ Vengerov details his efforts to illustrate *Shakespeare* in the introduction to the first volume. See *Shakespeare* 1: 112.

⁵⁴ This edition used some of the existing translations of Shakespeare by P.I. Veinberg, P.P. Gnedich, Apollon Grigor'ev, A.V. Druzhinin, P.P. Kozlov, and A.I. Kroneberg, but Vengerov solicited new translations as well. The new translations of dramas were supplied by P.P. Gnedich and P.I. Veinberg. Konstantin Bal'mont, Nikolai Minskii, Konstantin Sluchevskii, Konstantin Fofanov (and many others) provided the new translations of Shakespeare’s sonnets. Among the contributors to this remarkably elegant edition were the amazing pleiad of literary scholars: Semyon Vengerov himself, N.I. Storozhenko (the foremost scholar of Shakespeare in Russia), E.V. Anichkov, F.D. Batyushkov, F.A. Braun, Zinaida A. Vengerova, Yurii A. Veselovskii, A.G. Gornfeld, N.P. Dashkevich, F.F. Zelinskii, A. I. Kirpichnikov, Vsevolod F. Miller, F.G. Mishchenko, P.O. Morozov, L.A. Polonsky, E. L. Radlov, V.V. Stasov, L.Yu. Shepelevich, and L.I. Shestov.

⁵⁵ See *Shakespeare* 5: 437-96.

⁵⁶ On the crisis of the Russian Autocracy during this era, see: Zaionchkovskii, P. A. *The Russian Autocracy Under Alexander III*. Gulf Breeze, FL: Academic International Press, 1976; Zaionchkovskii, P. A. *Krizis Samoderzhaviia na rubezhe 1870-1880-kh godov*. Moskva: Izd-vo Moskovskogo universiteta, 1964.

⁵⁷ I am working with the version published in Spasovich’s collected works. See: Spasovich, V. D.

“Shakespeare’s Hamlet,” in *Sochineniia v 10-ti tomakh*. Saint-Petersburg: Knizhnyi magazin Br. Rymovich, 1899-1900. Volume 1, pp. 93-125.

⁵⁸ Zaionchkovskii’s *The Russian Autocracy Under Alexander III* contains an insightful chapter on the censorship of the press during the decades of the 1880s and 1890s (see pp. 154-180). As Zaionchkovskii shows, during the early part of the 1880s (precisely at the time when Spasovich published his essay “Shakespeare’s Hamlet”), many newspapers and journals were severely repressed or closed down (*Golos [Voice]* and *Otechestvennye zapiski [Notes of Fatherland]* were closed in 1883-1884, for instance). Literature and literary scholarship did not escape censorship either, and many books were officially banned from the public domain.

⁵⁹ *Ibid.*, 95-96.

⁶⁰ *Ibid.*, 96.

- ⁶¹ For the brief overview of Pobedonostsev's views, see: Walicki, Andrzej. *A History of Russian Thought: From the Enlightenment to Marxism*. Stanford, California: Stanford UP, 1979. 297-300.
- ⁶² *Ibid.*, 97.
- ⁶³ *Ibid.*, 98.
- ⁶⁴ See note 29.
- ⁶⁵ *Ibid.*, 119.
- ⁶⁶ *Ibid.*, 113.
- ⁶⁷ *Ibid.*, 124.
- ⁶⁸ Koni, A.F. "The Ethical Persona of Pushkin." In *Sobranie sochinenii v 8-mi tomakh*. Moskva: Yuridicheskaiia literature, 1968. 6:24-59 .
- ⁶⁹ For Koni's biography, consult his *Sobranie sochinenii v 8 tomakh*. Moskva: Yuridicheskaiia literature, 1968. See also: Smoliarchuk, V.I., *Anatoly Fedorovich Koni: 1844-1927*. Moskva: Nauka, 1981; Pomar, Mark G. *Anatoly Fedorovich Koni: Liberal Jurist as Moralist*. Pittsburg: Center for Russian and East European Studies, University of Pittsburgh, 1996; Troitskii, N.A. *Advokatura v Rossii i politicheskie protsessy 1866-1904 gg*. Tula: Avtograf, 2000.
- ⁷⁰ Quoted in Koni, A.F. *Sobranie sochinenii v 8 tomakh*. Moskva: Yuridicheskaiia literature, 1968. 6:8.
- ⁷¹ While Russian writers came to Koni for stories and legal consultations, the great jurist turned to literary analysis as an appropriate training ground for the lawyer whose professional duties required him to read the crime, criminal, while simultaneously aligning these "readings" with the existing laws and elusive moral sense. Like many of his colleagues, Koni believed that in order for the court to remain just, jurists have to get a grasp of the defendant as a human being, whose character and crime possess their own story.
- ⁷² Dostoevsky, F.M. *Polnoe sobranie sochinenii v 30 t*. Leningrad, 1984. 26: 136-49.
- ⁷³ See Mogil'ner, Marina. *Homo imperii: istoriya fizicheskoi antropologii v Rossii (konets XIX—nachalo XX v.)*. Moskva: NLO, 2008.
- ⁷⁴ See footnote 1 for the citation.
- ⁷⁵ Vengerov, S.A, ed. A.S. *Pushkin (Biblioteka velikih pisatelei)*. Saint-Petersburg: Brockhaus-Efron, 1907-1909. Volume 3.
- ⁷⁶ Koni, A.F. *Sobranie sochinenii v 8-mi tomakh*. Moskva: Yuridicheskaiia literature, 1968. 6:24-25.
- ⁷⁷ In this speech, Koni quotes from Alexey Khomiakov's (1804-1860) essay "To the Serbs: A Letter from Moscow." See Koni 30, or Khomiakov, A.S. *Polnoe sobranie sochinenii v 2-kh tomakh*. Moskva, 1900. 1:377.
- ⁷⁸ Koni 36. Italics belong to Koni.
- ⁷⁹ Koni quotes from Pushkin's "Ode to Liberty." In Russian: "Gde krepko s volnostiu sviatoi—zakonov moshchnykh sochetan'e."
- ⁸⁰ Koni 41-42.
- ⁸¹ Koni 43. Koni quotes from the poem "To Chaadaev" ("K Chaadaevu," 1818).
- ⁸² In Russian: "Здесь барство дикое, без чувства, без закона, / Присвоило себе насильственной лозой / И труд, и собственность, и время земледельца."
- ⁸³ *Ibid.*, 46.
- ⁸⁴ Qtd. in Koni 45. The original quotation comes from Pushkin's article "Mnenie M.E. Lobanova o dukhe slovesnosti, kak inostrannoï, tak i otechestvennoï" (1836).
- ⁸⁵ In Russian: "Оставь нас, гордый человек! / Мы дики, нет у нас законов. / Мы не терзаем, не казим, не нужно крови нам и стонов, / но жить с убийцей не хотим."
- ⁸⁶ Koni 48. Translation comes from Pushkin, A.S. *The Collected Stories*, Trans. by Paul Debreczeny. New York: Everyman's Library, 1999. Page 374.
- ⁸⁷ I draw on the wonderful study by Richard Wortman for the information on Russian *pravovedy*. See: Wortman, Richard. *The Development of a Russian Legal Consciousness*. Chicago: University of Chicago Press, 1976. The chapter "The Emergence of a Legal Ethos" was especially helpful.
- ⁸⁸ RNB, F. 601, Ed. Hr. 716, L. 6 and 8.
- ⁸⁹ Vengerov makes a slight mistake here. Abbey, or Edwin Austin Abbey, was actually an American artist and talented illustrator, who moved to England in 1878. He published his illustrations in *Harper's Weekly* and *Scribner's Magazine*, and was specifically renowned for his illustrations of Shakespeare.

CHAPTER 2

Russian Cause Célèbre:

Court Speech as a Literary and Social Genre in Late Imperial Russia

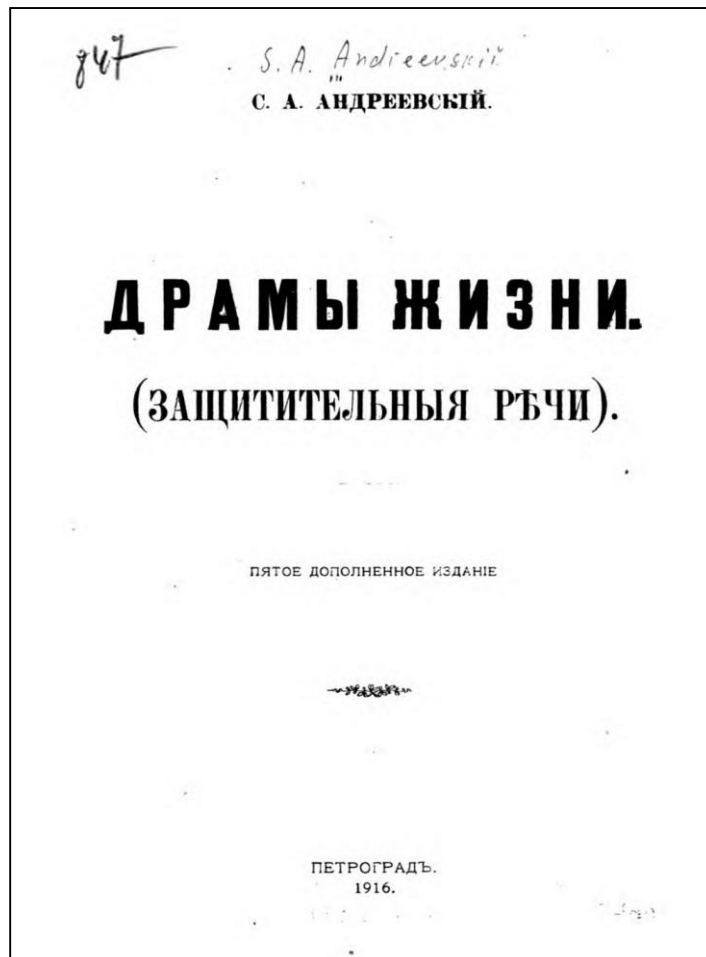


Figure 2.1: The Front Page of the Fifth Edition of Sergey Andreevsky's Collected Speeches: *The Dramas of Life*, Petrograd: 1916.

I respect your books and your authorial sense. [...] For me, the speeches of such jurists as you, Koni, or others pose a dual interest. In them, I seek, first, literary qualities and artistry, and, second, things which have sholarly, legal and practical significance.

Anton Chekhov, from a letter to Sergey Andreevsky (1891).¹

His speeches are amazing. It is unclear whether you are reading defense speeches or fine literary works.

Leon Liakhovetskii, *The Characterization of the Famous Russian Court Speakers* (1897).²

The speeches of Andreevsky are important mainly because of the beauty and literariness of their form.

Alexander Timofeev, *Court Rhetoric in Russia [Sudebnoe krasnorechie v Rossii]*, 1900.³

Introduction: Sergey Andreevsky and the Rise of Causes Célèbre in Late Imperial Russia

Gossip and scandal have always sold well, but in late imperial Russia, writings which dealt with scandalous trials—court chronicles, published speeches of defense attorneys, as well as fiction—were received and consumed by the public enthusiastically and in unusual quantities. Such popular newspapers as *Golos* [Voice] and *Moskovskie Vedomosti* [Moscow News] published daily reports on court cases, and engaged in their editorials with the debates about court-related controversies. Some might explain the passion of the Russian public for the ‘scandalous’ condescendingly, as the curiosity of philistines about the dirty laundry of others. However, we should not forget that Dostoevsky would fall into this category of the curious as well. To a greater degree the intense interest of the public in criminal trials was encouraged by the artful way in which the private affairs of ordinary Russians were described in court by defense lawyers. In the new public courts, lawyers, a new profession introduced by the legal reform of 1864, were fashioning the crime stories for their large audiences: those present in the courtroom as well as even more numerous newspaper readers. Not surprisingly, civically-minded

Russian lawyers, who, in the absence of other avenues for training in legal eloquence drew inspiration from works of literature, even in criminal trials used the opportunity to speak publicly in order to communicate to Russian society their deeply cherished moral and social beliefs. While these once highly publicized criminal trials are forgotten today, during the last three decades of the nineteenth century they provided as much food for civic thought as political trials.

This chapter explores the genre of court speech as a unique cultural phenomenon that arose in late imperial Russia in the aftermath of the legal reform of 1864. I argue that court speech developed as a self-consciously literary genre, and that readers, commentators, and members of the public understood it, appreciated, lampooned, and criticized it as such. After the legal reform equipped Russian courts with juries and put lawyers in charge of telling the criminals' stories, the courtroom transformed into one of Russia's most fascinating public spectacles. The trials became magnetically attractive to the public: the litigations were unquestionably theatrical, and Russia's lawyers achieved great mastery in crafting the stories of their clients into captivating literary vignettes. While the theatricality and literariness of the post-reform litigations was frequently mocked in the contemporary press, the stories that the lawyers told in their court speeches were not merely "literary." They taught the Russian public tolerance and empathy towards criminals and attuned them to the issues of social justice. In this chapter, I argue that in the context of late imperial Russia court speech acquired the significance of a literary genre that was instrumental in expanding the notion of "justice" to include legal, social, and ethical arguments. In the first section of this chapter, I offer a reading of court speeches by Sergey Andreevsky, a legal celebrity and one of Russia's literary lawyers, whose court speeches were praised by contemporaries for their magnificent evocativeness. In the second section, I read the legal memoir of Anatoly Koni in which the prominent jurist recollects the details of the

famous trial of Karl Landsberg (1879). This trial, which was used by Fyodor Dostoevsky to define the essence of *Karamazovshchina*, is used by Koni in a dual way. Koni relies on literary devices—he creates a masterful portrayal of the defendant’s psychology, and his account draws on multiple literary allusions—but his legal insights also help the reader to get a grasp of Landsberg as a juridical persona with legal rights. In the concluding section of this chapter, I offer my final insights into the role of court speech within the culture of late imperial Russia by looking at Petr Sergeich’s (Porokhovshchikov’s) study of this genre in the book *The Art of Court Speech [Iskusstvo rechi na sude]*. In his book, published in 1910, Sergeich elaborated on the social utility of literature for legal storytelling.

The Art of Public Speech in Russia

The significance of the lawyers’ contribution to the advancement of public speech cannot be understood fully without a glance at the history of this genre in Russia. Public speaking as a peculiar art form emerged in Russia only during the second half of the nineteenth century, significantly later than in other European countries, where public speech had existed and played an important political and social role for much longer. In France, for example, the art of public speaking became very prominent after the revolution of 1789, producing such exemplary public speakers as Marat and Robespierre. The same was true for the art of legal eloquence, which in France emerged after the introduction of the modern trial by jury at the end of the eighteenth century (almost a century earlier than in Russia). In this regard, the situation with public speech in Russia was strikingly different. Of course, educated Russians were well familiar with the finest accomplishments of Roman orators and Western public speakers of the eighteenth as well as nineteenth centuries. For example, the forceful political eloquence of the French prime-

minister Leon Gambetta was widely known and appreciated by the nineteenth century Russian readers of popular magazines, as the caricature published in *Oskolki* [*Fragments*] suggests.⁴ However, public speech did not materialize in Russia as an independent genre of public discourse until the 1860s, when the liberal reforms of Alexander II finally established public arenas—*zemstvos* and public courts—for Russian intellectuals to exhibit their civic thought as well as verbal wit and eloquence.

In theory, Russian intellectuals knew how to speak well: the first important monograph on the art of rhetoric was penned by Mikhail Lomonosov already in 1748. However, in practical terms public speech was almost non-existent in Russia before the era of the Great Reforms, except for the limited, in terms of its public appeal, ecclesiastical eloquence. In 1888, characterizing Russia's nascent art of court speech, the prominent lawyer Konstantin Arsen'ev wrote:

Russian legal eloquence is a very young plant. [...] It is without kith or kin. It has no roots in our near past, or centuries ago. Since the closing of the Pskov *veche* in the sixteenth century, from the time of the final triumph of the written trial Russian people had no place to practice public speaking: even within the relatively intimate space of circles, the free and loud word resounded still less frequently.⁵

Arsen'ev's reference to circles is interesting because the types of conversations that took place within these circles—conversations about literature, history, philosophical and aesthetic debates—represented the infancy of public speech in Russia. Although the members of circles met regularly and discussed the topics that were to animate the Russian educated elite for the remainder of the nineteenth century, their meetings were more private than public. They took

place in the homes of their members, and only the members of a relatively hermetic group of like-minded individuals, mostly close friends and acquaintances, were invited to contribute to the dialogue.⁶

In his article, Arsen'ev also mentions the immediate predecessor of court speech in Russia: the eloquence of Russian university professors. Among the most eloquent university-bred speakers were such famous professors of history as Timofei Granovski, Sergei Soloviev, Nikolay Kostomarov, and Vasily Kliuchevsky. The speeches of these professors had quite an amazing impact beyond the walls of the Universities. Decembrists testified that their ideas were formed by professors' lectures, many intellectuals from both the radical and liberal camps claimed to be shaped and inspired by university professors, and the universities themselves became the hotbeds of political activism throughout the second half of the 19th century. However, the eloquence of the professors was accessible only to the most educated groups within Russian society and did not acquire the universal appeal achieved by court speech during the last three decades of the nineteenth century when every newspaper reader became enamored by this exceedingly entertaining new genre. Amazingly, with almost no tradition to draw upon, Russian lawyers succeeded in creating a solid school of legal eloquence within a very short time. Already in 1900, Alexander Timofeev, a law professor at Saint-Petersburg University, claimed in his study *Court Eloquence in Russia* that the court speeches of late imperial lawyers possessed the "impression of originality and independence," and were very distinctive from any other national traditions of legal eloquence.⁷ Similar claims appear in three other studies of Russian legal eloquence, which appeared roughly at the same time: by the writer and journalist Boris Glinskii, writer and lawyer Leon Liakhovetskii, and jurist Petr Sergeich.⁸

Sergey Andreevsky

Among Russian court celebrities, Sergey Andreevsky occupied a very special place. While the defense speeches of this popular lawyer were frequently labeled by other jurists as un-judicial due to his excessive use of literary allusions and lofty rhetoric, Andreevsky was instrumental in the transformation of ordinary criminal trials into true causes célèbres, which succeeded in capturing the attention of newspaper readers all across Russia. While undoubtedly a talented *littérateur* (as we have seen, Andreevsky was a poet, literary critic, and author of a brilliant memoir), his success as a court speaker was in part due to his gift of addressing in his speeches Russia's social problems by revealing the social roots of crimes. For example, his defense speeches could transform an otherwise ordinary trial into a tale about social degeneration, a critique of outdated social values, or an indictment of the whole society. While Andreevsky and other lawyers were frequently criticized for blaming the crime on society, the pairing of *private* and *public* matters was unusual for Russia and constituted a substantial advance in contemporary thinking about crime and criminals. Thus, the debates between prosecution and defense, which took place in Russian courts in the 1870s, 80s, and 90s, enlightened the Russian public about the societal roots of crime. While the scandalous revelations about intimate matters of private individuals (love, marriage, child-rearing, and family-life) drew the attention of the public to court cases, the court also began to play the role of an unofficial school of civic thought because it provided each crime with its own "social story." Andreevsky's theatrical court performances were emblematic of the growing awareness that the experience of ordinary people was important enough to serve as a story worth telling and a foundation for moral and legal norms.

The Zaitsev Affair

Andreevsky made his debut in court in 1878, as a defense attorney in the trial of Pavel Zaitsev. Zaitsev, a 17-year-old youth, was put on trial for the murder of the owner of a money-changing shop on the Nevsky prospect. This crime was fairly simple. Zaitsev, homeless and unemployed, killed the man with an ax, like his famous literary predecessor Rodion Raskolnikov. At the time, the speech delivered by Andreevsky in defense of Zaitsev was considered among the highest achievements of Russian legal eloquence. Although many court lawyers were praised for their eloquence, and such experienced and inspired court speakers as Alexander Urusov, Anatoly Koni, and Vladimir Spasovich earned their fame through their mastery of courtroom storytelling, Andreevsky was a very special case. His speeches were filled with literary allusions: this attracted a lot of criticism from his colleagues, but also earned him the semi-official title of “poet-lawyer.” Despite the fact that the defendant confessed to the murder and that the case did not allow for even the slightest doubt about Zaitsev’s guilt, Andreevsky persuaded the jurors that the deed was involuntary manslaughter and not a cruelly premeditated murder. As a defendant in a non-political trial, Zaitsev did not face a death penalty. However, Andreevsky’s smart defense helped him receive a relatively lenient sentence of eight years of labor and exile. The speech delivered by Andreevsky on behalf of his young client made him into an all-Russian celebrity almost overnight. The most striking feature of this speech was its extreme skill at providing a psychologically and rhetorically persuasive portrait of the criminal and his crime. Its sophisticated form made the life of an ordinary person—a provincial child-apprentice, cruelly devoured by the inhospitable and indifferent city—appear epic and emblematic of exploitation and urban poverty, a theme which acquired currency in Russian culture thanks to works of literature (think, for example, of Dostoevsky’s *Poor Folks*). Via the

magic of his legal storytelling, Andreevsky transformed the murderer Zaitsev into a victim of societal injustice. Moreover, Andreevsky suggested that the murder was not premeditated (although the defendant apparently purchased the ax shortly before the murder) and was committed in a state of desperation.

In this speech, Andreevsky pioneered his method of psychological defense, which mimicked the devices of Russian literature in the portrayal of characters, with the most attention paid to the tiniest details and states of the human soul. In essence, these defenses owed much both to Dostoevsky's expertise in depicting deviant psychology and Tolstoy's ability to distinguish between various and frequently conflicting desires of the soul. It must be said that Andreevsky—a man who considered the lawyer to be a “talking writer”—succeeded in producing the desired result and bringing the jurors to his side. Zaitsev, who committed his cruel murder in the light of the day, provoked horror among city-dwellers, and this feeling accompanied him into the courtroom. In his speech, Andreevsky managed to alleviate the fears of jurors by exposing economic hardship as the reason for this crime: his success in court was confirmed by the verdict of jurors, who returned the verdict of “guilty, but deserves clemency.” Andreevsky opened his celebrated defense with a prolonged introduction explaining the reason for defending a person who has confessed to his crime. Overall, it was a common device in the late imperial courtroom, and it served the goal of educating the Russian public, not yet accustomed to public justice, about the right of each person to a legal defense. After this educational introduction, Andreevsky moves on to depict the defendant's harsh and joyless life in the house of a shoemaker who took the boy in as an apprentice and domestic servant. Andreevsky refrains from criticizing the master, but his depiction of Pavel's apprenticeship—an unpaid five-year domestic slavery—offers a powerful condemnation of a society that exploits its

children. Andreevsky fashions the story of Pavel in a manner that invokes Chekhov's later short stories, "Van'ka" (1886) and "Sleepy" (1888), which dealt with the same topic of children who have to work and are abused by their masters.

From the depiction of Zaitsev's joyless life in his master's home, he moves on to the tale of Zaitsev's moral demise. After four years of a dull and joyless life, Zaitsev begins to drink and skips work, thus ultimately ending up in the street when his master expels him. Andreevsky's depiction of urban poverty is realistic, yet wonderfully poetic. Describing Zaitsev's life in the street, Andreevsky compares a homeless man to a wandering star, "not guided by anything," and one which can "destroy any hindrance in its way and get destroyed itself by the collision."⁹ Hungry, rootless, and without any prospects for the future, Zaitsev has nothing left to do but to commit his first fraud. Pretending to still being employed by the shoemaker, Pavel collects money from his old master's clients and begins to sell knickknacks from a vending tray. His new business brings almost no income, making Zaitsev feel more alienated from his environment: "He hears the noise, he sees big buildings and the faces of passersby, but he does not have a peaceful point of view while looking at it as we do. He is surrounded by something live, but indifferent, hostile, ready to be merry or even laugh when he is already gone."¹⁰

Andreevsky's evocative depiction of the crime and the criminal's psychology suggested empathetically that crime can be environmentally conditioned. Here is how Andreevsky describes Zaitsev's gradual advancement towards the idea of a murder:

One day in November, Zaitsev stands with his vending tray at the window of the exchange-shop. He sees money in the window: paper bills, silver, and gold. He knows that this money will give him everything. He feels drawn to it. [...] He felt that in order to get to the money he had to do something horrible. [...] Shortly

before the murder, Zaitsev bought an ax. [...] He thought: this is not yet a crime, an ax might come in handy for something. [...] Regretfully, Zaitsev is not a psychologist. He did not know that buying an ax after such thoughts will make him a slave of this stupid thing, that the ax will come alive at this very minute and that it will become a silent instigator. People say that Zaitsev's act was too bold. This is not boldness, but stupidity. This is the *blindness of agitation*. It is stupid to walk into a shop as transparent as a glass lantern and as frequently visited by customers as a drugstore, in order to murder in the bright light of day.

After invoking a vivid picture of Zaitsev's gradual fall from grace, Andreevsky once again resorts to a didactic speech, asking his listeners to reflect on the implications of their important decision:

But what is awaiting Zaitsev? After your verdict, he will return to prison. He will be alive today and tomorrow, and a month or year from now, but then he will begin to notice that he has neither air nor will, desires, attachments, or future. He will notice that in fact he does not live any longer. Then he will see that he had already died and will recollect that he died precisely today, after your verdict.¹¹

This speech is an intriguing monument to the genesis of court speech as a medium, which merged within itself literature and moral and civic thought. While, in a rather un-judicial gesture, Andreevsky urged his listeners to re-imagine the inner life and motives of Zaitsev, his speech also encouraged the listeners to consider, as moral individuals and citizens, the implications of punishment. Andreevsky's comparison between imprisonment and death was an extreme device, but it invited the public to ponder the meaning and effect of criminal punishment upon the individual. If a crime was produced by a temporary failure in judgment or economic

hardship, and not by a permanent mental and moral deficiency—Andreevsky seemed to suggest—should not be society extremely careful in determining the measure and degree of the upcoming punishment? The ability to re-narrate the crime story in favor of his defendant, a goal that he achieved via the medium of literature, allowed Andreevsky (as well as many other lawyers) to transform the courtroom into a peculiar site of negotiation of societal values and attitudes towards crime, criminals, and punishment.

The speeches of Andreevsky are also full of literary allusions. The trial of Ivanov, yet another of Andreevsky's successes as a court speaker, is a great example of this. Ivanov was tried in 1891 for stabbing to death, in a jealous rage, his fiancée Nastia. A handsome young man, Ivanov was well educated and held a decent job as a scribe at the army headquarters. However, at the time of the murder, he worked as a mechanic at a factory after being fired for drinking. Upon meeting Nastia, Ivanov fell in love almost immediately, proposed to her, and received a "yes" from his beloved right away. The murder occurred shortly afterwards, when Ivanov suddenly realized that Nastia was frivolous, kept a lover, and was not in love with him. In Andreevsky's depiction, this seemingly unimportant case becomes emblematic of the times. Andreevsky says that Ivanov seems like he is "almost completely taken from the most passion-filled novels of our time: he has Karamazov blood in him, there is a great similarity with Pozdnyshev from *The Kreutzer Sonata*... And even his last name "Ivanov," eponymous with the title of Chekhov's play, seems to suggest that a lot of people like him appeared during our times."¹² Describing Ivanov's love, Andreevsky crosses over into the realm of literature, describing Ivanov's love with a quote from the French author Jean Richepin: "Our fathers loved like rabbits. We love like snakes. Our love is, in a way, an infernal mixture of spicy vodka and holy water."¹³ In order to prove that Ivanov fell in love at the first sight, Andreevsky refers to

poetry: “Everybody can possess poetry; it is not aristocratic, and in the case of Ivanov, who considers himself to be poetic by nature, I can quote a few names known to him also: Dante, Romeo, Faust.” This type of defense was frequently criticized. Timofeev, for example, says on this account: “Dostoevsky, Tolstoy, Chekhov, Richepin, Dante, Romeo, Faust: and all of this on the account of a very minor love affair. This rhetorical device invokes thought about the excess of adornments and quotations. In this system, people who should retain their individual qualities [...] transform into invented ad hoc heroes, living not in reality, but in [the speaker’s] imagination.”¹⁴

Another aspect which made Andreevsky into one of the most celebrated court speakers was his gift of psychological characterization of his clients. In fact, in many of his speeches the characterization of the criminal’s inner states and attitudes is central to the defense. In style, these characterizations invoke Tolstoy’s “dialectics of the soul”: the lawyer-artist does not ignore the complexities of individual psychology and motives. The purpose of these characterizations was, as Timofeev pointed out in his study of court rhetoric, to resolve the question as to what degree a given defendant poses a threat to society and how he or she should be treated by jurors.¹⁵ These descriptions are frequently very theatrical, as for example in the scene of murder which Andreevsky described to the jurors during the trial of Ivanov. This is how Andreevsky describes Ivanov’s reaction to Nastia’s confession that she does not love him:

Precisely with these words of Nastia, events began to unfold rapidly towards the end...He ground his teeth. You can say that at this moment a wild animal began to arouse within this man, tired out to the last degree, with his fiery blood, his violent character, and high moral demands for a woman. At this moment, Nastia suddenly saw her demise written in the features of Ivanov’s drawn face. She

screamed in terror: “Go!” For the last time, Ivanov asked her: “Are you driving me away?” (The knife was already in his hand, but at what point did it slip into his hand like a snake?) “Yes, go away!”—“Then die, you poor wretch!”¹⁶

In his account of Ivanov’s crime, Andreevsky tries to convey the idea that Nastia provoked Ivanov by her cold-hearted unfaithfulness. While this defense does not seem very appealing today, Andreevsky fictionalized the crime in the spirit of contemporary fiction in order to make his audience pause and consider the crime of this ordinary man with more attention. His defense takes a rhetorical turn when Andreevsky suggests that metaphorically Ivanov experienced a stabbing before Nastia did: “Without exaggeration we can say that, with these words which meant an unexpected and complete break-up, Nastia thrust a sharp knife into Ivanov’s heart before he thrust his knife into her heart.”¹⁷ As many commentators suggested, it was a signature element of Andreevsky’s style to approach the crime from an unusual, rather literary angle, not shying away from potential skepticism and criticisms from his listeners. In spite of these commentators suggesting the danger of such defenses, which seemed to lead the public away and not towards justice, this device is well deserving of attention in terms of providing the public with an alternative story, thus making them aware of the multiplicity of stories that can be associated with one seemingly simple crime.

The rhetorical exuberance of Andreevsky’s speeches—his numerous literary allusions, melodramatic storytelling, and tendency to fashion the real life characters in a way that triggered for his listeners the memories of familiar literary plots—served a very important function. The familiar literary tropes that might have appeared excessive or even harmful to some contemporary critics of court justice were employed by Andreevsky in order to invoke in his audience empathetic feeling towards the defendant. Not accidentally, the concluding passages in

many of his speeches, including the aforementioned court cases of Zaitsev and Ivanov, deal with the topic of feeling. In both instances, Andreevsky instructed the jurors to check their verdict against their inner feelings of right and wrong. At the end of his defense of Ivanov, Andreevsky reminded the jurors about the power of emotions and especially jealousy over people's behavior, citing as his example Pozdnyshev, the protagonist and jealous wife-murderer from Tolstoy's novella *The Kreutzer Sonata*. Arguing that the problem of emotional crimes cannot be solved through sexual abstinence (the remedy proposed by Tolstoy), Andreevsky suggested taking a more practical approach to real life problems by looking at the criminal as a psychologically complex individual who has the capacity to transform, and, thus, deserves a merciful verdict. In his speech, Andreevsky encouraged the jurors to judge, but to do so with kindness:

Try to punish. Take charge of the complex personality of Ivanov, and to all of his questions about the contradictions of life, to all the troubles of his unbridled, but good heart, respond with the verdict of guilty. And when you already have a full grasp of this case, then, in order to refrain from excessive cruelty, remember the letter of Clara [Ivanov's previous fiancé] that he received in jail: "I do not understand how a kind person like you could commit this horrible crime."¹⁸

Andreevsky's reference to Clara, who bemoans her former lover's destiny and calls him "kind," invokes the parallel with Dmitri Karamazov from Dostoevsky's *The Brothers Karamazov*. Labeled by the prosecutor Ippolit Kirillovich as a man of "two abysses," Dmitri is similar to Ivanov (or vice versa) in that he is a kind and noble man, who is suspected of committing a heinous crime in addition to his innumerable other transgressions. Subtle literary allusions of this kind played a tremendously important role in Andreevsky's rhetorical repertoire. By invoking the association between Ivanov and Karamazov and Zaitsev and Raskolnikov, Andreevsky

encouraged the jurors to dissociate the individual from his or her crime and instead to consider these seemingly insignificant criminals as psychologically complex individuals. In fact, if Ivanov and Zaitsev were similar to literary criminals and defendants, whose moral struggles and complex mental processes were put on literary display by Dostoevsky, then the real life defendants—who were undoubtedly as complex as their literary cousins—deserved as much attention from their judges and jurors. Andreevsky felt that his duty as a lawyer was to increase his listeners' awareness that justice *per se* was always more complex than simply reaching a verdict, and that a just verdict required emotional intelligence in addition to legal literacy. For Andreevsky, literature provided a language for discussing the emotional aspect of crime. Not accidentally, at the end of his defense of Zaitsev, Andreevsky exclaimed: "If I persuaded at least one person among you to share my feelings towards the defendant, than I consider that I accomplished the task that was entrusted to me."¹⁹

Beyond Karamazovshchina: Anatoly Koni about the Karl Landsberg Affair

In 1908, Anatoly Koni published in *Russkaia starina* [*Old Times in Russia*] a memoir detailing his participation in the famous trial of Karl Landsberg, at which he served as a presiding judge.²⁰ The trial took place in Saint-Petersburg in 1879, and immediately attracted a lot of attention from the public who were fascinated by Landsberg's life story with its rapid success and equally rapid fall from grace. Landsberg, an ambitious young officer, murdered his benefactor Vlasov, from whom he had borrowed a large sum of money. Along with Vlasov, Landsberg murdered the maid who accidentally stumbled upon the bloody scene. The reason for this double murder was simple. Landsberg was afraid that Vlasov might expose his financial insolvency, thus jeopardizing his chance at matrimonial happiness: Landsberg was engaged to a

girl from a wealthy family. Although today we do not remember Landsberg or his crime, at the time even Fyodor Dostoevsky became interested in Landsberg's bizarre story, introducing a paragraph-long description of the noble officer-turned-murderer into his novel *The Brothers Karamazov*. In the novel, Ippolit Kirillovich, the prosecutor at the trial of Dmitri Karamazov, uses the case of Landsberg as an example supporting his claim about the pitiful state of morals in Russia. Unlike *The Brothers Karamazov* in which Landsberg's crime was used as an emblem of moral depravity, Koni's memoir attempts to gain understanding of Landsberg by constructing a composite narrative that draws on plot elements familiar to the average Russian reader from works of literature: Pushkin's novella *The Queen of Spades* and Dostoevsky's murder novels, in particular. Whether his understanding of Landsberg's crime was affected by the way the defendant's personality surfaced during the trial, or whether the judge superimposed familiar literary plots upon Landsberg out of his habit as a literary critic, we do not know. However, Koni's memoir remains a fascinating monument to the importance of the interplay between law, literature, and life in late imperial Russia.

The trial of Karl Landsberg became a true *cause célèbre* because the crime committed by the defendant seemed almost incompatible with his personality and talents. Landsberg was an extremely successful man. A veteran who took part in the bloody Russo-Turkish War, Landsberg returned unharmed to Saint-Petersburg and quickly gained access to the capital's best society. Moving swiftly up the career ladder, he befriended a great number of important people. He was about to marry a girl from a wealthy family when a horrible tragedy unfolded. Landsberg's newly acquired lifestyle—he paid regular visits to the city's most respectable homes, received high-positioned guests in his flat, attended balls and opera—wasn't cheap, and he fell into debt. For a while, Landsberg was able to remain afloat by borrowing money from Vlasov, an elderly

family friend. However, the time to repay his debt was approaching fast and Landsberg had no money. Vlasov began to joke about a certain “little surprise” that he had prepared for his young mentee, and his ambiguous jokes began to unnerve Landsberg. While Vlasov had no children and treated Landsberg very paternally, the young man knew that Vlasov was a difficult person, and could be unpredictable. He also knew that if the information about his financial difficulties leaked out, his career and prospective marriage would suffer irreparable damage. Not seeing any other solutions to his predicament, Landsberg decided to save his life’s happiness by “simply” murdering Vlasov. After the murder, Landsberg put pillows under the heads of his victims (Vlasov and his maid) in order to prevent blood from seeping through the ceiling into the apartment downstairs, and walked out of the apartment with his promissory notes. In an ironic twist of fate, after police arrived at the scene of the murder, they discovered among Vlasov’s papers a letter in which the victim wished happiness to Landsberg and asked him to accept the ill-fated promissory notes as his wedding gift.

Despite its appeal as a sensation at the time, Landsberg’s trial would seem less important today if it had not made its way into Dostoevsky’s novel *The Brothers Karamazov*. Although the bloody ordeal received sparse coverage in the novel, it remains crucial for our understanding of *The Brothers Karamazov*. Indeed, Dostoevsky shaped the story of Landsberg into a literary parable that shed light on what this important novelist considered to be the greatest problem of his time: the materialism of his society along with the simultaneous and rapid loss of spirituality, the phenomenon that Dostoevsky labeled as *karamazovshchina*. The closest definition of this term is contained in the speech of Ippolit Kirillovich, the prosecutor in the trial of Dmitri Karamazov. Ippolit Kirillovich brands Landsberg’s crime—a murder for money and in order to preserve one’s social status and career—as emblematic of Russia’s spiritual degradation. In his

speech, Ippolit Kirillovich laments about the horrors of crimes like the one committed by Landsberg:

[H]ourly we read of things before which the [case of Dmitri Karamazov] pales and seems almost something ordinary, but what is most important is that a great number of our Russian, our national, criminal cases bear witness precisely to something universal, to some general malaise that has taken root among us, and with which, as with universal evil, it is already very difficult to contend. Here we have a brilliant young officer of high society, just setting out on his life and career, who basely, stealthily, without any remorse, puts a knife into a petty official, his former benefactor, and his serving woman, in order to steal his own promissory document, and the rest of the official's cash along with it: 'It will come in handy for my social pleasures and my future career.' Having stabbed them both to death, he leaves, putting pillows under the heads of the two corpses. [...] Granted he is a monster, but now, in our time, I no longer dare to say he is just an isolated monster. Another man may not kill, perhaps, but he will think and feel exactly the same way, in his heart he is just as dishonest as the first.²¹

This passage does not require much commentary since Dostoevsky's point is fairly clear. For Dostoevsky, the case of Landsberg was not an isolated instance of moral failure or poor judgment, but the symptomatic manifestation of his society's materialism and lack of moral values.

Koni's memoir "improves" the story of Landsberg and takes it beyond *karamazovshchina* by enlivening it with additional plotlines, many of them reminiscent of famous novels and novellas about crime and criminals. For example, Landsberg in Koni's rendition of his story

seems to owe a great deal to Hermann from the novella *The Queen of Spades* by Alexander Pushkin (incidentally one of Koni's favorite authors). Although Pushkin's masterful novella is never mentioned in the memoir, Koni's narrative choices—the details that he chooses to highlight or ignore—help the reader to fashion Landsberg into a modern day Hermann, the protagonist from *The Queen of Spades*. Like Hermann, Landsberg is an officer of the engineers. Like Hermann, Landsberg is not wealthy, but desires passionately to acquire wealth. Finally, like Hermann, he is a calculating character, but his calculations prove all wrong as he falls victim to fate. While Landsberg's story is far more psychologically nuanced than Hermann's ordeal, Koni unwittingly depicts Landsberg as the victim of a Hermann-like drive to become rich and achieve success as fast as possible. Like Hermann, Landsberg develops an addiction to cards, and gambling begins to define his relationship with money. Koni mentions that Landsberg's addiction to gambling began in 1878, at the end of the bloody Russo-Turkish war. While waiting in San Stefano for the peace treaty, Landsberg began to play cards out of "boredom and depression," eventually losing four thousand roubles of his own and borrowed money.²² Life beyond his means becomes a habit for Landsberg, who continues with the same style of life after the war. Koni writes:

Soon upon his arrival to Saint-Petersburg, thanks to Landsberg's sociable character, connections, education, and social status, he was introduced into the best families of the capital, where he was received enthusiastically as a person who did not drink or smoke, and for whom "dances were the greatest enjoyment in life." Life in the circles to which he belonged was expensive. He had to keep a well-furnished apartment, pay for a good seat in the opera, order his clothes from

an expensive tailor, and receive guests. The modest means at his disposal were not sufficient to maintain this lifestyle.²³

In this passage, Koni depicts the environment of affluence that pushed Landsberg into debt. Although Koni does not justify Landsberg's crime, at the very least his depiction is precise, honest, and persuasive, especially when it concerns the potential roots of Landsberg's crime and the challenges of fitting in with this type of social milieu. Koni also remarks on the traces of obsession in Landsberg's behavior. Describing Landsberg's preoccupation with his social status, Koni draws on a line from the defendant's letter, in which Landsberg, dispirited by his rapid fall from grace, exclaims: "Let them see the visiting cards of those who visited or returned visits to me!"²⁴ For "Koni's" Landsberg, cards, dances, and the opportunity to socialize in style become the ultimate admission ticket into the world of wealth and privilege, the world that he desired so much to make his own, very much like his literary predecessor Hermann.

Koni's narrative of Landsberg's story is also reminiscent of Dostoevsky's murder novels. While Landsberg's murder of his moneylender was not, by any means, identical to the murder committed by Rodion Raskolnikov in *Crime and Punishment*, Koni's treatment of certain aspects of Landsberg's story invokes the familiar literary formulas. Firstly, like Rodion Raskolnikov, Landsberg commits a double murder, and his second murder is unplanned. Like the unfortunate Lizaveta from *The Crime and Punishment*, Vlasov's maid stumbles upon the bloody scene by accident. Secondly, Koni focuses on Landsberg's inner torment and inability to murder Vlasov at the first attempt, which also makes Landsberg similar to Raskolnikov. Finally, the observant judge draws the attention of his reader to Landsberg's peculiar *idée fixe*—another similarity with Raskolnikov—that the murder of two people, committed by him in cold blood, was somehow socially justified.

Koni discusses Landsberg's *idée fixe* in the opening pages of his essay, while drawing on the letter that was penned by Landsberg during the investigation, and that was never revealed during the trial. In his letter, Landsberg offered a detailed explanation of his thoughts before the murder. Surprisingly, the letter cited Landsberg's military training as the factor that instigated the murder. In his essay, Koni quotes and paraphrases Landsberg, while looking with a certain bedazzlement at the young man's "unusual logic":

"From the very first day of my military service—[Landsberg] wrote—everyday I was taught how to use rifles and guns and how to do field engineering, i.e. methods for killing as many enemies as possible [...]. Reading and studying military history ceaselessly, he, according to his statement, saw that one third of the state budget was being used to maintain the military, that Napoleon III, feeling that he had lost his charm in the eyes of Europe, had jumped at the first opportunity to start a horrible war against Germany in which hundreds of thousands of people would perish, and which would cost many families their fathers, husbands, and brothers. To France, it would cost two provinces and many billions, while Germany once again would be using this money to acquire more arms for a new war, which once again would destroy hundreds of thousands people. Is it punished? No. The manufacturer Krupp earns millions selling arms, officers get promoted, receive medals "for bravery," and earn retirement. Landsberg himself received two crosses, with swords and a ribbon—one for participation in the military assault on the Makhrama fortress in the Khanate of Kokand, where many people were slaughtered, and a second for participation in the extermination, under the command of General Skobelev, of the remaining

enemy forces. Later, when he and his battalion returned to the capital after the war with Turkey in which many thousands of people perished, he and many others received laurel wreaths from enthusiastic crowds.” He then concludes his testimony with the following confession: “[On the day of the murder], I was thinking about all of this, in order to persuade myself that the murder that I had conceived was right and beyond reproach.²⁵

It is worth mentioning that, anticipating a negative response from jurors and the public, Koni persuaded Landsberg not to use this argumentation in court. However, in his essay he included the previously unmentioned letter as an integral and fascinating part of Landsberg’s story.

In his memoir, Koni expresses surprise at Landsberg’s unusual logic:

Landsberg began to persuade himself that if he murdered people during the military campaign, people who did not do anything bad to him personally, why not to kill a person whose existence threatens his whole life?²⁶

A bit further, Koni continues:

One could not but fall deeply in thought over this note’s peculiar and dark logic [in Russian: *svoeobraznaia i mrachnaia logika*]. It opened up the door into the world of pretentious relationships, superficial splendor, sought after greedily, and inner descent into barbarism.²⁷

Koni’s reaction to Landsberg’s deviant reasoning reveals his fascination with the defendant’s way of thinking, which he interprets not as the defendant’s profound critique of war, but as a peculiar mental disorder. While he offers no explanation of Landsberg’s delusion, the way in which Koni formulates Landsberg’s *idée fixe*—kill if you need to do so—immediately invokes

Raskolnikov's outlandish and self-obsessed theory that moral rules do not apply to extraordinary people.

Further Dostoevskian motifs resurface in Koni's memoir when he discusses the trial and describes Landsberg's demeanor in court. Like Dmitri Karamazov, Landsberg is both agitated and indifferent, and sometimes there is not much of a transition between these two states. Koni writes:

The defendant, clearly trying to suppress agitation and frequently resting his eyes on the face of the Savior above the judge's desk, confessed to the murder, and proclaimed that at the time he was not aware of the implications of his deed, and then told the court about the events that preceded and followed his evil act.

Afterwards, he became completely indifferent to everything around him. He did not ask the witnesses any questions, and sat with his head hanging down. In response to my offer to counter a witness testimony that painted him in a very unattractive light, he, without any emotion, answered that his life was over, and he would not defend himself. He repeated the same thing in his final statement, adding that he would not be asking the jurors for lenience.²⁸

Like Dmitri Karamazov, who confesses to all transgressions—except for the murder that he did not commit—Landsberg makes no effort to conceal anything. Similarly, Koni draws attention to Landsberg's emotional outbursts, a detail that is also prominent in Dostoevsky's description of Dmitri's behavior in court. Like Dmitri Karamazov, Landsberg fluctuates between agitation and indifference, almost without any transition between these two states. Finally, Landsberg's despair, refusal to defend himself, and belief that his life is over also call to mind Dmitri's mental state during the trial. Although these minor psychological details, familiar to the Russian

reader from the works of fiction, did not transform Landsberg into a likable character, Koni's account of Landsberg removed the aura of monstrosity from the defendant's public image.

Throughout the nineteenth century, Russian writers turned to crime stories for inspiration. In turn, Russian legal professionals borrowed insights from their beloved literary works, and relied on the familiar narrative formulas in order to fashion relatable stories for the defendants. In other words, Russian literature became a treasury of plots explaining various sorts of criminal behaviors and personalities. Naturally, because of his extreme preoccupation with crime, Dostoevsky became a household name for jurists. Koni's memoir of the Landsberg affair is yet another example of how all sorts of legal professionals (judges, prosecutors, and lawyers) drew on literature as the inspiration for their legal thinking, oftentimes without a direct reference to the literary texts that inspired them. By placing the defendant against the background of easily recognizable literary narratives by Pushkin and Dostoevsky, Koni produced a less stigma-ridden portrait of Karl Landsberg. Koni's memoir is also a perfect illustration of how in late imperial Russia literature shaped the values and views of legal professionals, enriching legal storytelling with the psychological complexity and insight gained from fiction.

The Courtroom as a Theatre

Our knowledge of the late imperial courtroom—by knowledge I mean the experiential and emotional perception of what it felt like to observe a trial by jury for the first time or to see a celebrated lawyer perform a brilliant defense—is gleaned from the works of Russian literature that tended to look at the contemporary trial critically. These works explicitly suggested that the eccentricity and sensationalism of public trials distracted the courts and jurors from their duty to find out the “truth.” While the moralizing prose works by Dostoevsky and Tolstoy are still a

helpful source of knowledge about the more intimate history of legal justice in Russia, one must not forget that the contemporaries of public justice were utterly enchanted by it. While writers and journalists were skeptical about the enthusiasm of the public for the trials, which, in their opinion, were more like circuses rather than temples of justice, these “circuses” were filling a certain lack within Russia’s public sphere. The public trial became the stage not only for scandalous revelations of private secrets, but for provocative modern ideas as well, thus exposing the public to new social phenomena and ways of civic and ethical thinking. In other words, from within the courtroom, and at times even from the trial bench, new ideas resounded more loudly and more urgently than from any other public office, church, or work of fiction. By putting social, political, and spiritual “ulcers” into this peculiar public display, the courts acquired the significance of a theatre and a school that educated the public while keeping it entertained. The more “lighthearted” types of writing from this era (feuilletons, memoirs, etc.) convey the picture of the contemporary courtroom as entertaining (even if the spectacle seems at times to exceed all measure), but also heavily didactic because there, under the guise of a theatrical act, the public was finally served a vision of truth and justice that were not purely esoteric notions, but a synthesis of common sense ethics, law, and public negotiation.

As the textual testimonies and images from the era of the 1870s and 80s suggest, the courtroom was perceived by contemporaries as a peculiar, but yet very important type of “social theatre.” Indeed, the court (which functioned in accordance with a certain legal “scenario”) *was* a theatre where the new ideas of law, justice, and truth were inextricable parts of each and every performance. This idea surfaces, for example, very prominently in the memoir of Sergey Andreevsky, whose recollection foregrounds the sense of awe that he experienced as a young man, while attending his first ever public trial. Andreevsky writes:

The new public trial, when I saw it for the first time while sitting in the middle of a thick crowd behind the railing, immediately captured my imagination with its ceremonial forms and lively content. In front of my eyes, one of the most common human misfortunes was unfolding and had to be resolved in some way, but with all truth and justice. It seemed that the judges were elevated above life, like gods on the clouds. Everybody felt somehow that they, according to their essence, were free of faults and sins. Everybody addressed them by standing up from their seats, and when they announced something, their declarations resounded like the words of destiny. The general tone of all appeals to the court and the answers had a touch of sophisticated righteousness and the most pure striving for justice. Therefore, all actors of the legal scene quickly became favorites of the public.²⁹

Unlike his more famous contemporaries Dostoevsky and Tolstoy who ascribed the popularity of lawyers to their unscrupulous use of court rhetoric, Andreevsky refuses to denigrate public justice on the grounds of its theatricality and adherence to a prescribed ritual. On the contrary, he admires the new forms, which, in his opinion, endowed the new legal professional with a strong sense of dignity and duty, the main reason—he argues—for the judges' and lawyers' popularity with the late imperial public.

While not neglecting the suspense of the new public trial, its poetic asides and melodramatic innuendos, the memoirs and feuilletons from this era tend to pay a lot of attention to the public and their reactions to the happenings in the courtroom. While public participation was of a passive kind—the spectators observed the trial, applauded when the lawyer's artistry warranted such an outpouring of emotion, and, most importantly, chatted with each other about

the trial during breaks—it is remarkable that the public remains a permanent presence in all accounts of public trials, be they journalistic or fictional. In his recollection about the first public trial in Moscow in 1865, the writer Semyon Shcheglovitov offers a striking image of the courtroom swarming with the spectators. Several soldiers were being tried for an alleged robbery and murder. In his description of this trial Shcheglovitov specifically points out that it took place in a hotel hastily converted into a courthouse, and that the space of the court was unimaginably filled with people:

There were a lot of people [in the courtroom]. [...] The attendees were sitting everywhere: on the desks, chairs, benches, closets, trunks, windows [...]. The defense lawyer was showing off his eloquence. In regards to the testimony by the little girl who survived, he said, for instance the following: “One cannot doubt the testimony of a little child because lies are the attribute of adults.” [...] He energetically cautioned the court against the prospect of a bloody error. He reminded the judges about the unfortunate trials, during which the innocents were sentenced, and he quoted from Victor Hugo’s *The Last Day of a Condemned*. He drew the attention of the military court to the passage from this work, in which the defendant is listening to the death sentence being read to him while admiring the splash of sunlight that entered the prison through the window and was playing on the wall of his cell. Finally, the defense lawyer begged the court not to deprive the defendants of a chance to repent for their crime and to make peace with God and people. At these words of the lawyer, the defendants fell down onto their knees and cried out: “Have pity on us, poor wretches, and have compassion for our

woeful situation.” The public, delighted by the “splash of sunlight” and shattered by the dramatic performance, [...] bursted in applause.³⁰

It is not difficult to notice that the way Shcheglovitov describes the court is highly suggestive of a theatre. Indeed, the lawyer and his clients collaborate in order to create a persuasive and entertaining melodrama; the lawyer’s manner of expressing himself also seems to be more fit for a dramatic actor than for a legal professional; finally, the cathartic apotheosis of the trial—the extravagant *tableau vivant*, in which the kneeling defendants plead for mercy—is also very theatrical. However, ultimately it is the presence and approval of the “act” by the public, their applause, that solidify the image of the new court as a theatre and spectacle of justice.

The aforementioned testimonies were more than simply a sign of the public’s initial excitement about a novelty, this tendency (courthouses filled to the brim with ecstatic spectators) continued well into the subsequent decades. In the woodcut titled “In the Hallway of the Court during the Nechaev Trial,” the artist depicts the busy and seemingly noisy crowd waiting for the Nechaev trial to resume (see Figure 2.3).³¹ The focus of the artist is on the crowd in the hallway. Those in attendance seem to be absorbed by their conversations, undoubtedly about the trial. In the crowd, one can easily spot many women and educated urban men, as well as officers and even one well-to-do peasant or merchant. The drawing frames the public as not the passive recipient of court rhetoric, but as an active, alert, and engaged party. In yet another illustration titled “*The Trial of the Regicides*,”³² which was published in *Oskolki [Fragments]* in 1881, the artist emphasizes the theatricality of the trial by offering the view of the courtroom from above, from what appears to be the balcony for the public and journalists (see Figure 2.4). While the trial of the regicides in 1881 was the most high profile court case in the history of post-reform court justice, the way in which the artist depicted the trial, as if observed from a theatre box,

suggests his perception of the courtroom as a public spectacle. It must be noted that jurors did not participate in political trials. However, between 1871 and 1881 even high profile political cases were conducted in strict accordance with the new legal procedure. These trials remained public, and the newspapers were allowed to publish reports about the proceedings; all defendants had lawyers; after the indictment, all prisoners were provided the chance to explain their motives and views; finally, witnesses played an integral role even in political trials.

On a more light-hearted note, the journalists kept on complaining about the exceptional popularity of trials and the inability of courts to accommodate all those wishing to attend the trials. Remarkably, the trials that the public strove to see were not the trials of sociopathic murderers *à la* Raskolnikov or political criminals. More frequently than not, popular trials involved domestic and familial affairs, as was the case with the famous Miasnikov trial, which took place in 1872. Although the defendants in this trial were accused only of falsifying the will of a deceased merchant, the trial competed in popularity with the Nechaev trial a year prior. The affair began in 1858, after the death of the rich merchant Kozma Beliaev. The widow of Beliaev inherited all of Beliaev's possessions (money and several factories), but later sold everything to some people by the name of Miasnikov, Beliaev's old companions. After the transaction already had taken place, the will was challenged by Beliaev's other relatives, who claimed the inheritance papers had been falsified. The lawsuit dragged out for a number of years, until it was finally resolved by a jury trial.

Two feuilletons published in *Iskra* in 1872, in the wake of this famous trial, mock the public for their child-like fascination with Russia's circus-like justice. What is captivating about these feuilletons, however, is the insight they offer into the reception of public trials by ordinary Russians. While all other aspects of big trials can be easily reconstructed (indeed, the speeches of

lawyers were published and newspapers reported on the factual aspects of each trial), these feuilletons add a nice vignette to the history of the reception of public justice in Russia. The following facetious remarks about the need to build bigger court rooms or to move the next session of a popular trial to a nearby theater give a very good idea of what the attendance at big trials was like. *Iskra*'s playful feuilletonist writes:

Mr. Iazykov [one of the defense lawyer's in the Miasnikov trial] begins to summon the souls of the deceased from the other world to be his witnesses. "Here in court"—the defense lawyer announced—"the shadows of the deceased are invisibly present..." The jurors look around nervously and sigh. Only the public appears to be skeptical: they know very well that there is not enough space in the courtroom to accommodate even the living, and if one gathered all those who died during the Miasnikov's lawsuit, even the court hallway would not be enough.

[...]

Yet another comment from this feuilleton suggests that, as a type of a spectacle, the courts were on a par with the holiday *balagans* [carnival booths], drawing as many or more people:

If during the organization of our new and lawful courts the architects took into consideration the volume of the public who try in vain to get in, then these courts would have been built twice or three times more spacious than the *balagans* of Malafeev and Berg constructed for *Maslenitsa*,³³ with their attractive harlequins and journeys of the bankrupted merchants to hell.³⁴

Another feuilleton titled "Spiritualism as Applied to Court Practices" (possibly penned by the same author, since the style is similar), the author discusses the alleged "gossip" that the next court

session in the famous Miasnikov trial would be taking place in the *Passage* theatre, if the judge allowed the invitation of a medium to the trial, who would be then communing with the “deceased witnesses”:

[...] If [the invitation of a medium to the trial] happens, it is proposed to move this court session to the theater, which is located in *Passage*, where, during the previous Carnival a Chinese or Japanese magician showed tricks, swallowed swords and fire, and afterwards pulled from his stomach unimaginably many yards of silk ribbon. This last suggestion was put forth because of the great numbers of people who would rush to attend such an interesting trial. Some even say that in order to prevent excessive crowds, a fairly expensive price will be charged for entrance.³⁵

While the aforementioned feuilletons sensationalize and mock the Miasnikov trial in order, undoubtedly, to sell their own publication, the type of a parody offered by the author to the reader sheds light on the interest of the public in this and other court trials. For example, the gossip about the invitation of a medium to the trial works as a comic ploy precisely because it hyperbolizes the infatuation of the contemporary public with criminal trials.

The caricatures from this era also emphasize the theatrical nature of post-reform court justice and the literariness of lawyers. Such are the caricatures that got published in the popular magazine *Oskolki* [*Fragments*] in 1882-84. In the caricature titled “The Lawyer in Court,” the post-reform lawyer is presented as a dramatic performer who becomes selfishly inebriated with his flowery, clichéd rhetoric and expressive gestures (see Figure 2.5). The focus on the lawyer’s gestures is especially intriguing. The lawyer’s gestures and captions suggest that the lawyer relies excessively on the didactic and moral rhetoric typical of Russian literature. The lawyer

points his finger at the prosecution, as if blaming them for the unjust accusation. He points his finger upwards, to an imaginary “heaven,” as if reminding his audience about higher truth and justice. He closes his eyes in theatrical terror at the prospect of an undeserved sentence; he presses his hand against his heart as a theatrical sign for a sincere and humble plea for mercy. The cartoonist unmasks this dramatic artistry as the lawyer’s professional pretense by drawing a smug smile on the lawyer’s face after the trial and placing a money bag into his hand. The final caption— “The defendant went off to serve his hard labor sentence. The lawyer received 500 roubles. Colleagues shake his hands with congratulations”—projects the negative attitude toward the lawyer as a dramatic actor, who uses his literary gift in order to sway the public to his side. The caricature “The Litigants and Their Lawyers” once again represents the lawyer as an unprincipled, albeit artistic, extortionist (see Figure 2.6). The frame “The Provincial Lawyer and His Prototype” depicting the lawyer and his chameleon-like prototype exploits the derogatory term “spineless,” used to describe the “elasticity” and performativity of the lawyers’ views. In the same caricature, the lawyer is depicted playing a flute in order to recover emotionally from a lost case. This frame mocks lawyers’ widely known fondness of the arts. Finally, the caricature “Dreams” portrays a lawyer dreaming about his tongue being cut off, which obviously points towards the lawyer’s major social offence: the use of his literary talent for driving the public to a state of ecstasy, in which they easily forget about the main purpose of the trial, justice (see Figure 2.7). These caricatures suggest that *Oskolki* mirrored and simultaneously perpetuated the image of the lawyer as a theatrical figure, prone to abusing the power of his literary gift.

“The Art of Court Speech”: A Professional’s Look at Lawyers’ Literary Creativity

If we look at feuilletons and caricatures, it seems that the public viewed trial by jury only as a source of slap-stick comedy. However, there were many observers of contemporary court justice who placed tremendous value on the new court as a peculiar school of humanistic values. Such observers were usually trained in law, and had a keen eye for the cultural significance of well known court speeches. In 1910, the bookstores in Saint-Petersburg began to sell the book by Petr Sergeich³⁶ titled *The Art of Court Speech [Iskusstvo rechi na sude]*.³⁷ Sergeich served as a member of the Saint-Petersburg circuit court, was a loyal student of the “literary lawyer” Anatoly Koni, and even established himself as a translator of Schopenhauer. Upon his immigration to the United States, Sergeich taught history and published a book about Shakespeare.³⁸ Unlike the parodical accounts of court trials mentioned earlier, Sergeich’s influential study offered a positive look at literary creativity in the courtroom. In the chapter dedicated to this important aspect of court speaking, Sergeich wrote:

What is this criminal case the prosecutor and defense lawyer receive from the hands of a court’s secretary? It is a dozen or two of either very messy or overly tidy records, decrees, and police reports strung together by a wire and secured with a seal. This is very much like a telegraph wire that is not in use. Your art as a court speaker begins when the spark of your dynamic thought and passionate feeling runs through this wire, inspiring and enlivening these gray sheets.³⁹

Sergeich’s study argued that literary creativity was indispensable to the success of trial by jury. Through the familiar medium of literary storytelling, a genre very much like a traditional short story or novella, court speech invited the public to see the human subject buried underneath legal paperwork and to be more attentive to the phenomena of Russia’s rapidly modernizing life.

In his study, Sergeich advanced a very specific attitude towards Russian lawyers as professionals who stood in the avant-garde of cultural changes. Specifically, he showed that the speeches by Russian lawyers were challenging the old-fashioned beliefs about family, marriage, child rearing, and many other pressing contemporary issues. Although Sergeich's book was written primarily as a guide for legal professionals, his goal was to address a broader audience of non-professional readers and literature aficionados. In fact, in his review of Sergeich's book Anatoly Koni argued that *The Art of Court Speech* was a book written for all those who felt that Russian court speeches were a "marker of society's social development" [*pokazatel' obshchestvennogo razvitiia*].⁴⁰ Written in a conversational manner, the book offered a number of fresh insights into what distinguished an ordinary court speech from a court speech that was almost a literary masterpiece. It should be mentioned that Sergeich did not consider the literary creativity of lawyers harmful. On the contrary, he considered the narrativization of a crime to be indispensable to the success of legal justice because a smartly fashioned story helped the public to make sense of otherwise disconnected facts. Going meticulously through his examples—a selection of celebrated trials from the 1870s, 80s, and 90s—Sergeich argued that Russia's best court speakers treated their cases in the fashion of fiction writers. In the remainder of this section, I will discuss Sergeich's views of the role of literary creativity in the navigation of the complex boundary between legal and ethical issues, and his rationale for advocating literature as the path towards better justice.

For Sergeich, the most important function of literature in the courtroom was its ability to bridge the gap between law and ethics. While the eternal dilemma of law versus ethics continued to plague the contemporary debates on legal justice, Sergeich viewed this juxtaposition differently. He wrote:

The ethical evaluation of a crime cannot be found in written legal codes. Because of the infinite colors of real life, in most cases the ethical evaluation merely approximates legal evaluation, and oftentimes it contradicts the latter altogether. We can even say that the ethical evaluation is floating in the air, and it is the speaker's responsibility to grasp its essence and then to convey it to the judges.⁴¹

For him, the legal and ethical evaluations of the crime were complementary, and literature served the purpose of explaining the crime in a way that enabled the judge and jurors to have a more complete grasp of the circumstances of the case in order to pick the legal punishment that was neither too cruel nor too lenient.

As an example, Sergeich recounted in his study a case in which eloquent speech by the lawyer led to the acquittal of the defendant who was obviously guilty of killing his father. Although the defendant was caught red-handed at the crime scene and confessed to the murder without hesitation, the lawyer succeeded in turning the sympathy of the public towards the criminal by exposing the murdered father's cruel and manipulative treatment of his son. The defendant was a young peasant. As a child, he was sent by his father to the city in order to become a shoemaker's apprentice. The father, who had at his disposal an atypically large income, chose not to take care of his son. The boy was growing up in the city alone, away from his family. As usually happens, at the right age he fell in love. When his girlfriend became pregnant, the young man decided to marry her. He asked his estranged father for blessing, but his father refused and even threatened to deprive his son of the inheritance money if he proceeded with the wedding plans. Loving his girlfriend passionately, the son refused and made the wedding arrangements against his father's will. A week before the wedding, the son went to visit

his father. After getting in yet another argument, the son slaughtered his father with the blade of a harrow.

The lawyer can achieve success—i.e. acquittal—even in a hopeless case like the aforementioned parricide by narrativizing the crime and by bringing the underlying theme of family relations to the narrative foreground. This type of narrative effort, Sergeich argued, required the lawyer to insert himself *into* the case. Sergeich wrote:

The defense lawyer won't waste his time on an argument against the prosecutor. He will agree with everything, admitting that he is horrified by the crime even more than the prosecutor. However, he will introduce the topic of family relations. He will tell and prove that the father was a libertine and cruel despot, and that the son's position was desperate, and he committed the crime because of his righteous impulse to save the honor of the girl whom he made a mother, and not out of self-interest or other lowly feelings.⁴²

This type of defense, Sergeich suggested, was effective because it appealed to the jurors' sense of their role in the judicial process. Specifically, Sergeich argued that the jurors passed their verdicts based on their perception of the defendant's personality; the consideration of the crime's legal aspects was largely secondary to the emotional or melodramatic aspect of the courtroom drama. Using a literary example, Sergeich argued that Pozdnyshov, the wife murderer from Leo Tolstoy's novella *The Kreutzer Sonata*, was acquitted precisely because the jurors must have developed empathy for his tragic circumstances.⁴³

Sergeich argued that yet another contemporary trend—the drive to understand the environmental roots of each given crime—required the lawyer to be literarily creative. Sergeich wrote:

Not a single phenomenon of social life is fully independent of contemporary reality. On the contrary, all phenomena are usually closely linked to each other. We need sunlight and warmth, oxygen of the air, food, and spiritual nourishment drawn from people and books in order to survive. In turn, we also produce a physical and spiritual impact on events and people with whom we come into close contact. As a social phenomenon, every crime is connected to life in contemporary society with thousands of threads. [...] Let the conditions of contemporary social life become the frame for your case, and let the case become the centerpiece of these conditions. Let the case fuse within itself, like a spider web fuses within itself separate threads and circles, all scientific and ethical consciousness and all practical and spiritual strivings of a society, in which the defendant has lived and committed his crime.⁴⁴

The literary imagination allowed the lawyer to look beyond the facts of the crime and to discern its hidden social and economic causes. The lawyer had to be a storyteller in order to re-imagine and re-construct for himself his defendant's background and possible motives. Only then, upon developing a holistic vision of the crime, the lawyer can deliver to jurors the adequate and full story.

Finally, the instability of ethical values in late imperial Russia, a society that had been in flux since after the Great Reforms of the 1860s, was yet another reason as to why the literary creativity was indispensable to legal justice. Unlike the most influential prose works of the late imperial era that dealt with trials and relied on the ethical codes of their authors (see Chapter 4 for my discussion of Dostoevsky's *The Brothers Karamazov*, and Chapter 5 for the discussion of Tolstoy's *Resurrection*), the lawyers had to deal with a rather "marshy" terrain of contemporary

ethical values. Highlighting these values' instability, Sergeich assigned to the Russian lawyer the leading role in shaping the ethical understanding of each individual court case. He wrote:

The ethical views of a society are not as rigid and conservative as written laws. At times, the ethical consciousness of people undergoes slow and gradual changes, and at other times, the reassessment of values is quick and unexpected.

Sometimes, seemingly deeply rooted beliefs change almost daily, not infrequently clashing with each other. Everyone understands and interprets ethical requirements differently, and they are free to express their interpretations. [...]

[The court speaker] has a choice between two roles. He can be an obedient, loyal, and self-assured mouthpiece of mainstream beliefs. [...] But a different scenario might take place: the court speaker is not at all obliged to be the herald of the interests of either the ruling or downtrodden classes. In front of judges, he can play the role of the debunker of common fallacies, superstitions, stagnation, and society's blindness. He can go against the current, defending his own, new and unheard-of views and convictions.⁴⁵

Thus, for Sergeich the speech of the Russian lawyer was a peculiar genre. On the one hand, a typical court speech possessed all features of a traditional short story, which sought to provoke an emotional reaction in the listener. On the other hand, more often than not it contained ideologically or ethically provocative or even revolutionary views and convictions. Sergeich, a legal professional himself, defended these risky convictions and points, viewing them as an attempt to handle the uncertainties of contemporary life. Moreover, Sergeich believed that no plot was too small or insignificant for the lawyer, whose primary task was to define each crime's ethical underpinnings. In order to prove that no crime was too insignificant for the lawyer,

Sergeich drew in his book on literature. A theft of an overcoat—a really minor crime—was developed by Nikolai Gogol into one of the most influential short stories in the history of Russian literature. Continuing along the same line of argument, Sergeich wrote: “There are no bad plots in literature as there are no such court cases from which an educated and sensitive person could not find a foundation for a literary court speech.”⁴⁶ For Sergeich, the literariness of court speech—which he nicknamed as “literature on the fly” [*literature na letu*]⁴⁷—put the spotlight on the individual and on Russia’s most pressing social ills.

In order to support his point about the importance of literary storytelling for influencing the attitudes of the public and redefining the shape of their ethical views, Sergeich drew on Sergey Andreevsky’s masterful defense speech given at the trial of Andreev in 1907. In his speech, Andreevsky retold a seemingly ordinary crime as a complex literary tale, filled with disappointments and deceit, and reminiscent of Shakespeare’s tragedies. In his speech, Andreevsky also exposed the controversial nature of marriage, marital happiness, and familial relations in late imperial Russia. The defendant Andreev, a seemingly ordinary man and stockbroker by profession, married his lover Sara Levina, with whom he had been together for over fourteen years. Prior to his affair with Levina, Andreev was married to another woman for thirteen years, but he left his first family for Levina. Shortly before the bloody tragedy broke loose, Sara Levina met General Pistol Kors. The enamored general began to shower Levina with gifts. Not being aware that Levina was Andreev’s kept woman, Pistol Kors began to urge his mistress to divorce “her husband” and marry him instead. In order to preserve the respect of her future high-positioned husband, Levina persuaded Andreev to marry her (which he did), and immediately after the wedding ceremony requested a divorce.

In his speech, Andreevsky did not simply zoom in on Andreev's psychological trauma and Levina's villainy. Contrary to custom, he proposed to view the fourteen year long relationship of Andreev and Levina as a marriage, and not as a common-law cohabitation. Andreevsky did so by calling Andreev and Levina "husband" and "wife," and by providing a very explicit explanation for his choice of the words. This argument undoubtedly reflected the changing attitudes of ordinary Russians towards common law marriage. By suggesting that the relationship between Andreev and Levina was like a marriage, Andreevsky acknowledged the existence of a certain cultural prejudice against the common-law union, but also recognized this phenomenon as widespread and familiar, and not in the least dissimilar from a regular marriage. Without negating the fact of Andreev's guilt, Andreevsky refused to acknowledge his relationship with Levina as morally depraved, advancing instead the picture of his client as a moral and monogamous man. In order to illustrate this tactic, Sergeich pulled the following passage from Andreevsky's provocative appeal:

Andreev had every right to think of himself as a happy husband. You might ask: "A husband? But Levina has been his kept woman for almost fourteen years?" Is it worth arguing against this point? Because of their hypocrisy, people have invented many pretentiously high-flown and contemptuous labels. If a man is wedded to a woman in a church, people say she is his "spouse, wife." But if not, she is called a "concubine, kept woman." [...] But is not a husband almost always responsible for the financial up-keeping of his wife? For me, a real marriage is the loving union between a man and a woman, when neither he nor she needs anybody else, and when he replaces for her all other men, and she replaces for him all other women.⁴⁸

A bit further, Sergeich zooms in on Andreevsky's smart tactic in order to explain its impact on the listeners:

[Andreevsky discovered] the marital ideal in a common-law marriage. If a different court speaker, be it a prosecutor or lawyer, decided on the spur of the moment to voice such risky proposition in front of the jury, he would, of course, produce the most unfavorable impression. [...] However, an artist, who conceived and articulated within himself this protest against the requirements of formal morality, approaches [this idea] gradually. Preparing his listeners, he speaks calmly, sincerely, and plays with his words effortlessly and gracefully. And his listeners swallow the pleasant poison submissively.⁴⁹

For Sergeich, Andreevsky's keen eye for the specifics of the case and his ability to craft a *good* (i.e. literarily persuasive) *story* explained the impact of his speech on the public. Despite the fact that his argument seemed like a lawyerly provocation, Andreevsky succeeded in invoking in the jurors sympathy for a man, who abandoned "all other women" for the sake of dedicating the rest of his life to a treacherous creature like Sara Levina.

Sergeich found in Andreevsky's speech yet another important aspect of courtroom literariness: the ability to deliver the story of the crime as a sequence of emotionally powerful vignettes. In this manner, Andreevsky conjured from the files of the case a portrait of the vile and manipulative Sara Levina, who (thanks to Andreevsky's storytelling) gradually acquired the features of Shakespeare's Lady Macbeth. He also fashioned the murderer Andreev as a foolish and romantic victim of Levina's demonic trickery. In order to show the power of Andreevsky's speech, Sergeich quoted a passage from this lawyer's psychologically chilling picture of Levina's cold-heartedness, sociopathic cruelty, and strange power over two foolish lovers:

The pious and joyful bridegroom, Andreev leads his bride around the lectern, holding in his hand a brand new wedding ring. He feels the dignity of the moment. He thanks God for finally making his love legitimate in the eyes of the people. The newlyweds kiss in front of guests. And at the same moment, the pleased Pistol Kors—who knows nothing about this event—thinks to himself: “Of course, the most difficult thing will be to obtain a divorce. But together we will succeed! She will certainly divorce her husband because of me.” The lovers of Sara Levina deserve pity, don’t they? ⁵⁰

For Sergeich, court speech of this kind was the outcome of a process that was very similar to fiction writing. Musing about the creation of the evocative images in the courtroom, Sergeich wrote:

For a long time, he [Andreevsky] carried within himself these three figures [Levina, Andreev, and Pistol Kors], peered into them, brought them closer and moved away from them, castigated and idealized them till he recreated in himself their dramas, and they suddenly arose in front of him as a majestic and irresistible tableau.⁵¹

Sergeich’s take on the creativity of the lawyer owes to his proximity to the world of law. In fact, in his book he mentions a conversation with Andreevsky, in which Andreevsky acknowledged his love for his clients or “characters.”⁵² Sergeich’s discussion of the relationship between the lawyer and his “characters” is also reminiscent of the relationship between the prose writer and characters in his novel. Sergeich uses the verb “*srodnit’sia*”—to become akin, to become one—in order to describe the relationship of the lawyer-author with his creations.

To conclude, in the final paragraphs of his chapter about literary creativity in the courtroom, Sergeich raised the question of the relationship between the rhetoric of court speech and truth. Anticipating the criticism that the speeches like the one by Andreevsky were manipulating the truth, Sergeich offered a philosophical reflection about the nature of truth *per se*. Sergeich wrote:

The speaker did not deviate from reality at all. He added nothing to the facts of the case. However, whatever was in this case, he reworked in a way that was similar to recreating it from beginning to end. He understood the case in his own way, and then perfectly internalized this new understanding. This understanding might not be completely fair or true. However, his explanation was so simple, so clear, and agreed so well with the facts [...] that the jurors, prosecutor, and the unbiased presiding judge could not resist this court speaker.⁵³

In other words, Sergeich argued that Andreevsky's point that Andreev fell victim to Levina's manipulations did not in the least misrepresent the truth. It simply offered an alternative look at the events, reversing the roles and forcing the jurors to see the flip side of the story: the victimhood of the murderer and predatory behavior of the victim.

Conclusion: Court Speech as a Literary Genre for Modernity

Court speech—as it existed in late imperial Russia—disappeared after the Revolution of 1917, and today we can rely only on Dostoevsky and a few obscure late imperial sources in order to truly understand the cultural significance of this fascinating genre. Located at the intersection of many intellectual endeavors, court speech was, first and foremost, a didactic literary form that became instrumental in advancing thinking across various branches of knowledge. It was

advancing juridical consciousness among Russia's various social circles. It also existed as a type of literature, which was read by many Russians for entertainment. However, for some readers and observers of court justice this genre became an invaluable source of knowledge about their own culture, the contemporary state of ethical and social attitudes, and other motley aspects of Russia's modernity. For those who had a chance to attend court trials in person, court speech was a dramatic form. In other words, there was something incredibly appealing about this peculiar art form for many people. Despite its simplified rhetoric, even the most cerebral and talented prose writers of the late imperial era Fyodor Dostoevsky and Lev Tolstoy grew fascinated by the plots spun by Russia's savvy literary lawyers. While in *The Brothers Karamazov* Dostoevsky poked fun at the odd logic of Fetyukovich's defense speech, this "oddness," as Petr Sergeich showed persuasively in his insightful book *The Art of Court Speech*, was indicative of the social changes that were taking place in Russia. In their speeches, the lawyers strove to rethink and reinterpret the new conditions of life. In this regard, court speech became a medium through which the lawyer could look at the world from a different point of view: more modern and less bound by traditional ethical values. If before 1864 Russian readers relied on the novel for making sense of their immediate cultural milieu, after 1864 court speech began to perform the same function: it talked about Russia's modernity, legal rights, changing ethics, and many other important issues. Unlike the old-fashioned novel, court speech was also more accessible. It was very short and easy to comprehend, it dealt with exciting contemporary topics, and, most importantly, it was created on the spot (not accidentally, Sergeich nicknamed it "literature on the fly"). In a way, *The Dramas of Life* was literature for the new era, capable of keeping up with the quickening pace of cultural changes in fin-de-siècle Russia and providing a space for discussing burning issues of the day.

Figure 2.2: “Gambetta’s Gestures during Speeches,” *Fragments*, 1881.



Тиражъ 1000 экз. Р. Галич. № 106.

Дополнено изданиемъ. С. 8. 8 25 Октября 1881 г.

Редакторъ-Издатель Р. Галич.

Figure 2.3: “In the Hallway of the Court during the Nechaev Trial.”⁵⁴



В коридоре суда во время нечаевского процесса

*Рисунок на дереве Бролина
Гравюра К. Венермана*

Figure 2.4: "The Trial of the Regicides," *Fragments*, 1881.

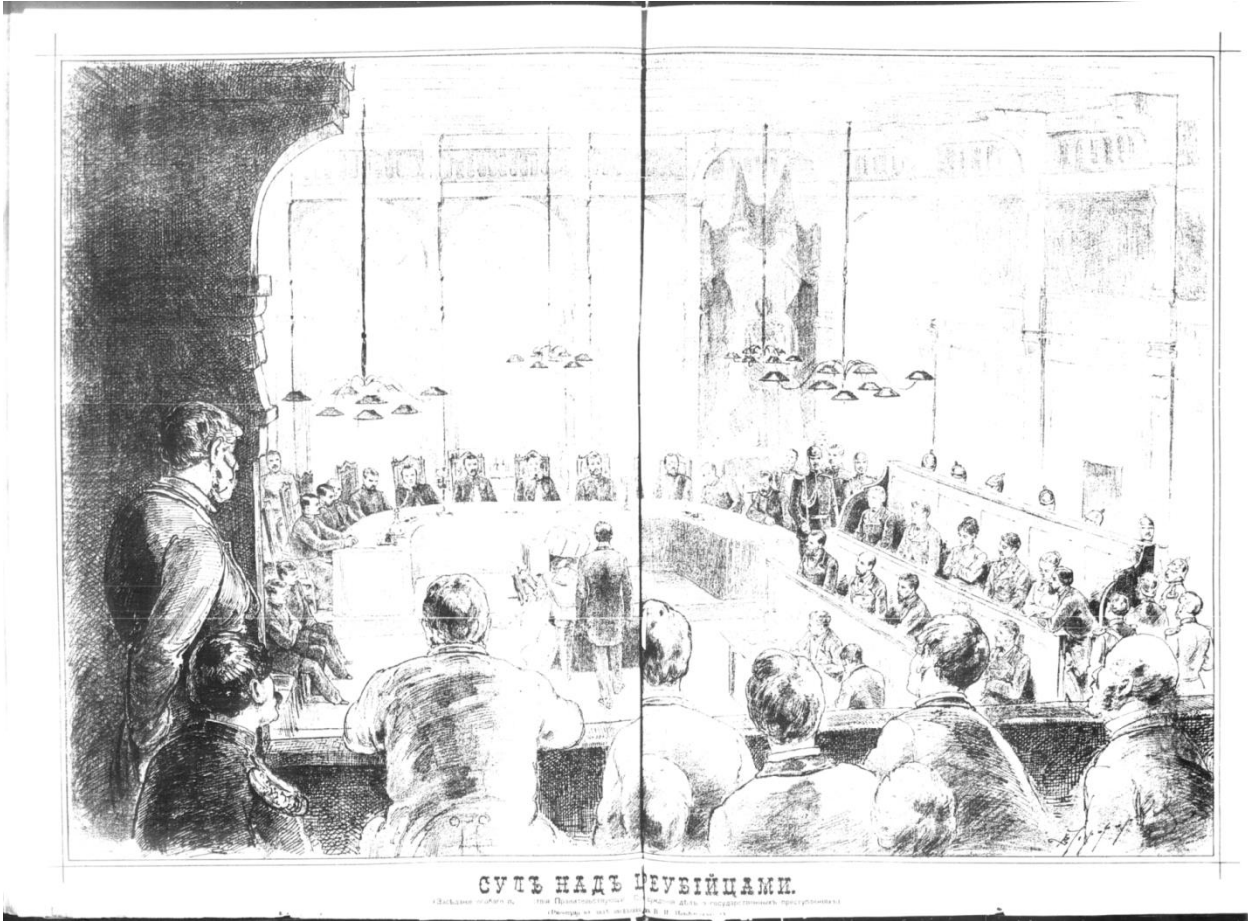


Figure 2.5: "The Lawyer in Court," *Fragments*, 1884.



Captions in English:⁵⁵

Frame 1 (first row, left): During the speech of the prosecutor.

Frame 2 (middle, first row): “The lawyer begins to speak addressing the judges: ‘Your Honors! You hear what the defendant is accused of ...’”

Frame 3 (right, first row): “Let us be sober and attentive, let us investigate carefully all evidence of the prosecution, to follow, step-by-step, the in all respects beautiful speech of the prosecutor ...”

Frame 4 (left, second row): “If it was proven to me that the defendant in fact committed the horrible villainy attributed to him, I would be the first to stigmatize and to punish him with my indignant contempt...”

Frame 5 (middle, second row): “But I do not want to hear that everything attributed to him is the truth...”

Frame 6 (right, third row): “Have faith, Heavens are just, and virtue must triumph...”

Frame 7 (left, third row): “Let’s return to society its useful member; let us fulfill the duty of our conscience...”

Frame 8 (right, third row): “The defendant went off to serve his hard labor sentence. The lawyer received 500 roubles. The colleagues shake his hands with congratulations.”

Figure 2.6: "The Dream of a Lawyer," *Fragments*, 1884.

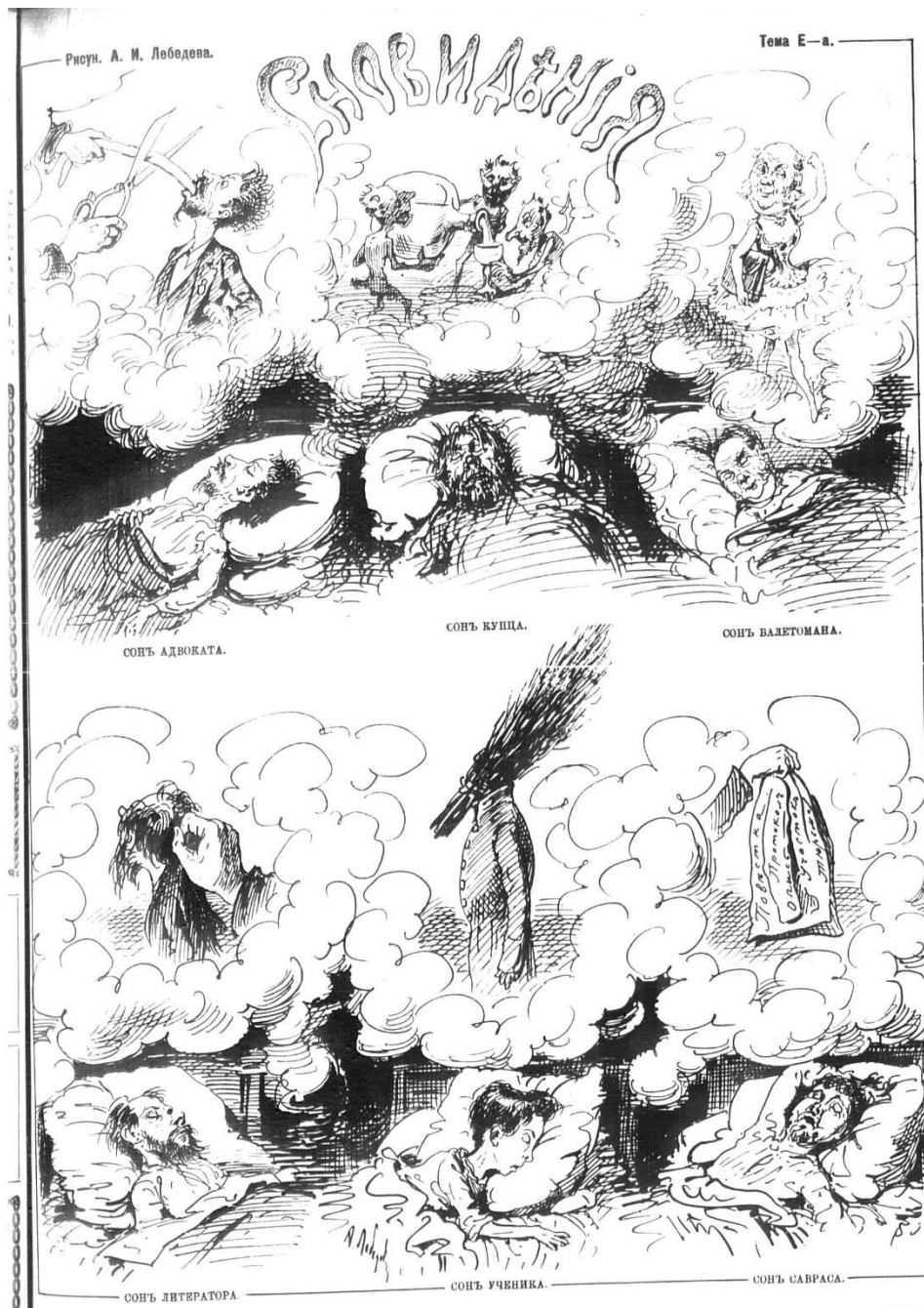
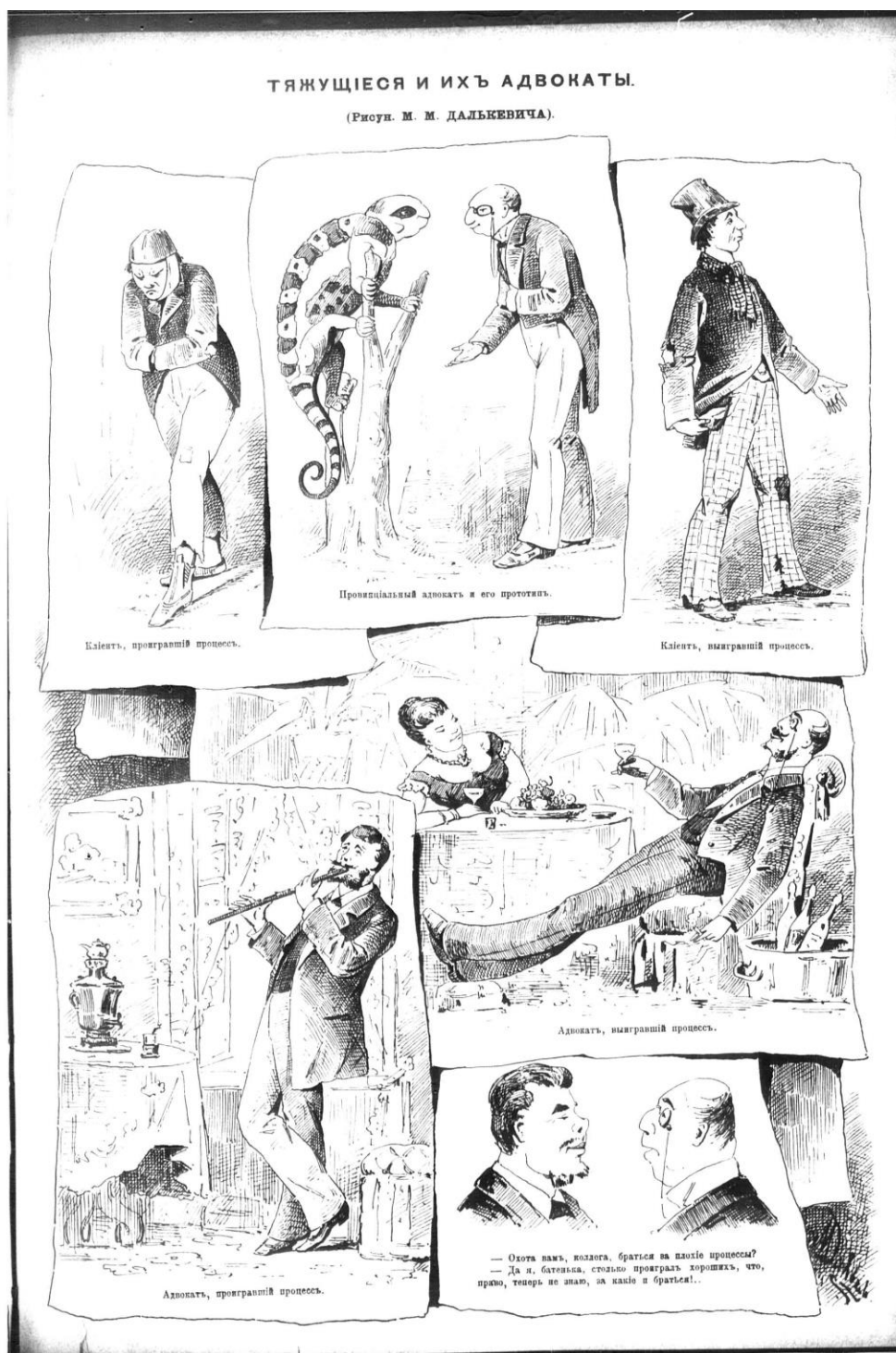


Figure 2.7: "The Litigants and Their Lawyers," *Fragments*, 1882.



FRAME 1 (first row, left): "The client who lost the trial."

FRAME 2 (first row, middle): “The provincial lawyer and his prototype.”

FRAME 3 (first row, right): “The client who won the trial.”

FRAME 4 (second row, left): “The lawyer who lost the trial.”

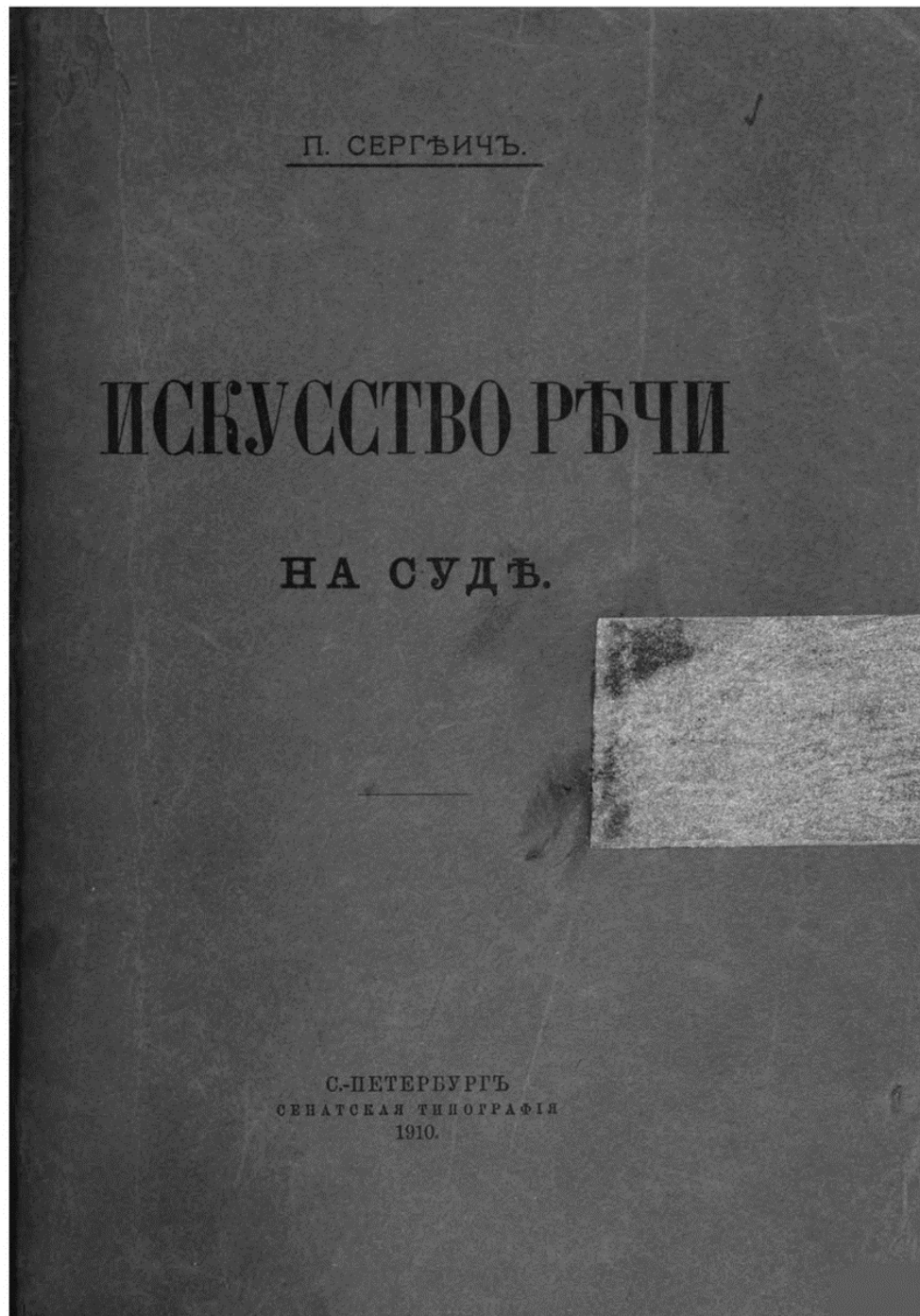
FRAME 5 (second row, upper right): “The Lawyer who won the trial”

FRAME 6 (second row, upper right): “The dialogue between the lawyers.”

--Why do you want to take over bad cases?

--My dear, I already lost so many of the good ones that I practically don't know which ones to take!

Figure 2.8: The Front Page of *The Art of Court Speech*, 1910.



CHAPTER 2

¹ Translation is mine. See Anton Chekhov, *Polnoe sobranie sochinenii i pisem, 30 vols*, Moskva: Nauka, 1973, 4:335.

² Liakhovetskii, L.D. *Kharakteristika izvestnykh russkikh sudebnykh oratorov s prilozheniem izbrannoi rechi kazhdogo iz nih*. Saint-Petersburg, 1897. 45.

³ See Timofeev, A.G. *Sudebnoe krasnorechie v Rossii: kriticheskie ocherki*. SPb: 1900. 125.

⁴ See Figure 1 at the end of this chapter.

⁵ See Arsen'ev, K.K. "Russkoe sudebnoe krasnorechie" ["Russian Court Eloquence"]. *Vestnik Evropy*, 1888, # 4, page 768.

⁶ For information on literary circles, see: Aronson, M, and S. Reiser, *Literaturnye kruzhki i salony (Literary Circles and Salons)*, edited by Eikhenbaum, Leningrad: Priboi, 1929; Schrubka, Manfred. *Literaturnye ob'edinenia Moskvy i Peterburga 1890-1917 godov*, Moskva: NLO, 2004; Brown, Edward J., "The Circle of Stankevich," *American Slavic and East European Review* 16: 3 (Oct., 1957), 349-368.

⁷ See Timofeev, A.G. *Sudebnoe krasnorechie v Rossii: kriticheskie ocherki*. SPb: 1900. Page 2.

⁸ See: Glinskii, B.B. *Russkoe sudebnoe krasnorechie*. Saint-Petersburg, 1897; Liakhovetskii, L.D. *Kharakteristika izvestnykh russkikh sudebnykh oratorov s prilozheniem izbrannoi rechi kazhdogo iz nih*. Saint-Petersburg, 1897; Sergeich, P. [Porokhovshchikov, P.S.] *Iskusstvo rechi na sude*. Saint-Petersburg, 1910.

⁹ Andreevsky 55.

¹⁰ Andreevsky 55.

¹¹ Andreevsky 56-57.

¹² Timofeev 113.

¹³ Timofeev 113.

¹⁴ Timofeev 114

¹⁵ Timofeev 117.

¹⁶ Andreevsky 183.

¹⁷ Andreevsky 184.

¹⁸ Andreevsky 185.

¹⁹ Andreevsky 58.

²⁰ Anatoly Koni, *Sobranie sochinenii v 8mi tomakh*, "Landsberg," Moskva: Yuridicheskaiia literatura, 1966, 1: 148-66. Originally, this essay was published in *Russkaia Starina [Old Times in Russia]* in 1908.

²¹ Dostoevsky, F.M. *The Brothers Karamazov*. Trans. By Richard Pevear and Larissa Volokhonsky. New York: Farrar, Straus and Giroux. Book 12, chapter 6, page 693-694 (PSS 15:123-24).

²² Koni 150.

²³ Koni 150-51.

²⁴ Koni 151.

²⁵ Koni 150-51.

²⁶ Koni 151.

²⁷ Koni 152.

²⁸ Koni 157. There are further similarities between Koni's depiction of the public at Landsberg's trial and Dostoevsky's depiction of the public in *The Brothers Karamazov*. However, Dostoevsky's depiction of the agitated public is not his invention. Already during the late 1860s the newspapers began the tradition of sensationalizing contemporary courtrooms, frequently comparing them to theatres and circuses. In his essay, Koni re-creates the excitement of the upcoming trial by relying on the familiar cultural trope. He writes: "The crowd, greedy for spectacles and animated by their sick curiosity, was literally holding a siege, and at times stormed behind the thick barriers that divided the general courtroom from the entrances to the conference room and room for witnesses. The ladies especially distinguished themselves, or specifically the sort of ladies who at the time were known as "court ladies." They came to all big trials, their eyes burned with the desire for new impressions, heartless curiosity, or hysterical sentimentality. One of them went very far and bit the hand of the usher, who was trying to keep the barrier shut, through which she wanted to sneak into the courtroom" (Koni 155-56).

²⁹ Quoted from S.A. Andreevsky. *Kniga o smerti*. Ed. I.I. Podolskaia. Moskva: Nauka: 2005. P. 67. This recollection was recorded by Andreevsky approximately in 1895. In Russian: “Новое судебное разбирательство, когда я впервые его увидел, сидя в густой толпе за решеткою, сразу захватило меня своими торжественными формами и живым содержанием. На моих глазах восстанавливалось, во всей своей правде, одно из повседневных людских несчастий, которое нужно было так или иначе разрешить. Судьи казались мне высоко превознесенными над жизнью, как боги на облаках. Каждому невольно думалось, что они, по самой природе, освобождены от всяких погрешностей и пороков. Все обращались к ним не иначе, как вставая с своих мест, и когда они что-нибудь объявляли, то их определение раздавалось в зале, как приговор судьбы. Общий тон всех воззваний к суду и всех ответов суда был проникнут самым изысканным благородством и самым чистым стремлением к справедливости. Понятно поэтому, что все актеры судебной сцены весьма скоро сделались любимцами публики.”

³⁰ S. Nevedenskii [Shcheglovitov]. *Katkov i ego vremia*. Sankt-Peterburg, 1888. Pp. 469-70.

³¹ See Appendix A. This illustration comes from the following source: N.A. Troitskii. *Advokatura v Rosii i politicheskie protsessy 1866-1904 gg.* [*The Bar in Russia and the Political Trials, 1866-1904*]. Tula: Avtograf, 2000. P. 238. Troitskii does not indicate the source or date of this visual, but I assume it was created at the time of the trial in 1871.

³² See Appendix B.

³³ *Maslenitsa* is a Russian folk holiday, celebrated during the last week before the Great Lent. It roughly corresponds to the Western Christian Carnival.

³⁴ “Gde sudy, gde balagany?” [“Courts or Balagans?”]. See *Iskra* [*The Spark*] № 9 for 1872 (March 5th).

³⁵ “Spiritualism as Applied to Court Practices” [“Spiritism v priminenii k sudebnoi praktike”] in *Iskra* [*The Spark*] № 10 for 1872 (March 12th).

³⁶ Sergeich is a pseudonym. The real name of the author is Porokhovshchikov.

³⁷ Remarkably, this book has been republished several times after the Revolution of 1917, despite the fact that Sergeich immigrated to the United States, and far more times during the post-Soviet decades. It still remains a standard text for law students in Russia

³⁸ See: Porokhovshchikov, Petr Sergeevich, *Shakespeare Unmasked*, New York, N. Y.: Savoy Book Publishers, 1940.

³⁹ Sergeich 152-53.

⁴⁰ A. F. Koni, *Izbrannye proizvedeniia* [*Selected Works*], Moskva: 1956, 93.

⁴¹ Sergeich 145-46.

⁴² Sergeich 147-48.

⁴³ Sergeich 148-49.

⁴⁴ Sergeich 149-150.

⁴⁵ Sergeich 150-51.

⁴⁶ Sergeich 155.

⁴⁷ Sergeich 156.

⁴⁸ Sergeich 160.

⁴⁹ Sergeich 160-1.

⁵⁰ Sergeich 162.

⁵¹ Sergeich 162.

⁵² Sergeich 162.

⁵³ Sergeich 166.

⁵⁴ N.A. Troitskii. *Advokatura v Rosii i politicheskie protsessy 1866-1904 gg.* [*The Bar in Russia and the Political Trials, 1866-1904*]. Tula: Avtograf, 2000. P. 238.

⁵⁵ Translations are mine.

CHAPTER 3

Mikhail Katkov, Literary Lawyers, and the Trope of the “Organic Error”

Mikhail Katkov (1818-1887), a visible public figure, editor, and journalist, was in large part responsible in shaping the attitudes of Russian readers towards the post-reform court justice. While public courts drew a lot of journalistic attention from the very first days of their existence, the pre-Katkovian depictions of public courts focused on the courtroom as one of the most sought after spectacles, but offered next to nothing in terms of civic thought. Mikhail Katkov’s fiery editorials changed the ways in which Russian readers began to view the post-reform trial by jury. Specifically, he took the textual representations of new courts beyond the rather limited preoccupation with the court as a *theatrical* spectacle, suggesting instead that the new public court was an *ideological* or *civic* spectacle. It was a place where various people and ideologies met, mingled, and clashed. While Katkov offered a rather dim vision of new courts as a place where unprincipled lawyers corrupted the public with their provocative and dangerous political views, his writings were significant as a *gesture*. They pointed towards the ideological importance of the contemporary courtroom, and invited a more vibrant textual encounter with legal culture. While one cannot but feel skeptical about the influence of a single individual over the important issues of court justice, Katkov’s rhetorical influence over these matters cannot be underestimated. Similarly to his opponents (the literary lawyers), he engaged in the same battle

for public opinion in the matters of Russia's relationship with the law and new courts. In fact, as a journalist Katkov was responsible for crafting a number of important clichés about courts and Russia's hostility to law. For example, Katkov invented the important literary trope of the "organic error" that, in his opinion, led to the failure of justice in Russia's new courts. The literary lawyers did not remain silent and attempted to undermine Katkov's influence in perceptions of law, but they failed to achieve a comparable level of popular success. Nevertheless, the debate between Katkov and literary lawyers succeeded in foregrounding the late imperial courtroom as one of the most civically, ethically, and artistically significant public spaces in Russia.

Mikhail Katkov: Towards the Literary Trope of an "Organic Error"

The idea of some inherent organic "defect"—which, from now on I will call an "organic error"—was inaugurated by Mikhail Katkov in the editorials that he regularly penned for his newspaper *Moskovskie Vedomosti* [*Moscow News*]. According to Katkov, the new court contained a certain organic flaw, which was responsible for the overwhelmingly high numbers of erroneous verdicts. Katkov talked specifically about the courts that were established by the judicial reform of 1864. Although the idea of what constituted this proverbial "organic error" remained hazy and ill-defined in Katkov's journalistic lore, Katkov's visibility as a journalist and his ability to write about vital contemporary matters in a lively manner drew the attention of the public to what he had to say about contemporary courts. In 1916, the writer and philosopher Vasily Rozanov gave the following characterization of Katkov's extraordinary gift of influencing hearts and minds: "Katkov's pen was larger and wiser than Katkov himself. At his best moment he could say a single word, and this word, in its intensity, force, and beauty, was already a fact."¹

Rozanov's impressionistic characterization of Katkov's significance is very perceptive. Indeed, Katkov's opinions, which frequently were less than true, tended to stick with his readers, inadvertently tinting the subsequent readings of contemporary phenomena. While this influence might not be as obvious today, many works of literature carry the imprint of Katkov's ideas, tropes, and language.

Katkov's efforts to persuade the public that something was *organically* wrong with Russian courts date back to the trial of the Nechaev revolutionary group, one of the most scandalous political trials of the nineteenth century.² Everyone's attention was drawn to the crime and the criminals on trial. Sergey Nechaev, the leader and mastermind of the revolutionary group, persuaded his comrades to kill Ivanov, a fellow student revolutionary, who had decided to break from the group. After Ivanov's dead body was discovered, Nechaev escaped to Switzerland, but more than sixty students were accused of belonging to his revolutionary group and put on trial. While many of the defendants knew little about Nechaev and his group, and were eventually acquitted with the help of their lawyers, the trial revealed some chilling details about Nechaev's views.³ The public was especially revolted by Nechaev's catechism of immorality for the sake of revolution, to which poor Ivanov had fallen victim. Nechaev had hoped that a collaboratively committed murder would forge stronger ties amongst the members of his revolutionary cell. Because the defendants were tried in accordance with the new judicial statutes of 1864 (although without a jury), the court remained open to the public throughout the trial, and the grisly details revealed during the proceedings caused a surge of interest and writing on the topic of revolutionary madness. Dostoevsky responded to the trial with his novel *The Possessed* (1871-72), in which he explored the psychology of this crime as well as the inner workings of the nihilism.

While the rest of Russian society was engrossed in the gory details of Ivanov's murder and pondered *Nechaevshchina* as a horrifying contemporary phenomenon and expression of Russia's troubles, Mikhail Katkov responded to the trial with a ruthlessly critical editorial that set an important precedent for all of his later writings about court justice.⁴ Three months after the trial, Katkov, in one of his editorials dedicated to court justice, came forth with the following statement: "Did we succeed to organize trial by jury, an institution that everyone deeply cherishes, correctly? Isn't there an error of sorts in its organization? We are absolutely certain that there is an error."⁵ Legal professionals declared this accusation to be unfounded, but their attempts to reason against Katkov's smartly-fashioned rhetoric were unsuccessful. Katkov had set out to craft his editorials as stories designed to show that "something was rotten" within Russia's new courts. The courtroom, Katkov argued, was a dangerous political stage, employed by legal opportunists to serve their political or other selfish aspirations. While his newspaper published only two articles about the Nechaev trial, he was the first journalist to avert his journalistic gaze from *Nechaevshchina* and to peer inquisitively and censoriously at Russia's new courts. This extremely significant journalistic event established a new pattern for how courts and lawyers were treated by contemporary journalists and fiction writers.⁶

Describing the significance of the Nechev trial, Saltykov-Shchedrin pointed out sarcastically: "In our opinion, the principal outcome of the trial is that it offered to our *literatura* a chance to express their innermost feelings."⁷ By "literature," Saltykov referred not to fiction writers, but to his colleagues-journalists. Considering that these journalists wrote for daily newspapers, meaning that they sought to both mold public opinion as well as, at least to a degree, reflect the public's opinion back at them, the feelings expressed on the pages of contemporary newspapers reflected some feelings of Russian readers. Overall, feelings—of vexation,

bewilderment, and perhaps disgust—played an important role throughout the Nechaev trial. The bizarreness of Ivanov’s murder, Nechaev’s lies that involved a great number of young people in the largely imaginary revolutionary network, and Nechaev’s troubling lack of moral conscience provoked an agitation among the observers of this fascinating trial who struggled to grasp the essence and origins of the disturbing events. In an attempt to provide an explanation for the Nechaev phenomenon, *Sankt-Peterburgskie vedomosti* compared his success in recruiting the followers to the success of Russia’s greatest literary swindler Gogol’s Khlestakov, who, in a similar fashion, fooled the whole town into believing that he was indeed the government inspector:

[...] Khlestakov, who wrote all of Russian literature, is the prototype of Nechaev, a great model, whom Nechaev replicates in a remarkably consistent fashion. Not knowing French, he nevertheless organizes a strike among Belgian workers, joins an international organization where he immediately begins to play his role by writing proclamations and introducing himself to Bakunin and other émigrés as the greatest figure of the student movement, of course, assuring them that a vast revolutionary network exists in Russia.⁸

While this literary comparison is rather atypical, and other newspaper articles depicted the events in a more matter-of-fact fashion, this unlikely juxtaposition of Nechaev and Khlestakov expresses well the core emotion that animated the public at the time: an amazement at Nechaev’s uncanny charisma.⁹ Indeed, the journalistic writing that emerged during the trial seemed to manifest the overwhelming need to answer the questions: How could an odious and immoral man like Nechaev have drawn to himself a group of students and manipulated them into committing a murder? What in the world could have moved these young people to abjure all

reason and follow into the footsteps of a revolutionary maniac? The obsessive questions that lingered as a theatrical backdrop to the crime and trial were met with a slew of reflective answers. Generally, as exemplified in the passages quoted above, the newspapers were inclined to satirize and trivialize Nechaev in order to make the phenomenon look and feel less threatening politically as well as ethically. However, prior to Katkov's focus-shifting mid-trial editorial journalists did not view the contemporary courtroom and its democratic practices as a part and parcel of Russia's revolutionary problems.¹⁰

Katkov changed this. The significance of Katkov's notorious editorial is hard to overestimate. The journalist took advantage of the powerful and contradictory emotions that had been agitating the public, and channeled them into vilification of Russia's new democratic courts. While his musings about the courtroom as a moral void were, for the most part, not based in reality, he nonetheless succeeded in inculcating Russian society with the infectious idea that judges and, to an even greater degree, lawyers were directly responsible for the spread of the revolutionary plague. This editorial publicly established Katkov's views of the new legal system, which remained almost unaltered for the next decade and a half. In his editorial, Katkov proposed to view the contemporary courtroom as a narrative frame that, if employed by ideologically unreliable judges and erratic lawyers, had the power to corrupt Russia's moral universe by making the public believe that a lie was truth, truth was a lie, a political criminal was a martyr, and a murderer or thief—a victim of social injustice. Katkov's success in capturing and keeping the attention of readers with his emotional and rhetorically savvy anti-court propaganda provides a perfect example of how, in Russia's cultural context, the emotional word of a *literator* (a man of letters, a literary man) continued to exercise a great power over the collective imagination and sentiments of the public.

Katkov's "Organic Error" and The Brothers Karamazov

Katkov's trope of the "organic error" left a visible imprint on Dostoevsky's depiction of Dmitri's trial in his novel *The Brothers Karamazov*. Reflecting on the trial of Dmitry Karamazov, the narrator of Fyodor Dostoevsky's novel *The Brothers Karamazov* (1881) says: "I keep thinking that if one were to recall everything and explain everything as one ought, it would fill a whole book, even a quite large one."¹¹ Ironically, by the time we arrive at the final book of *The Brothers Karamazov* titled "A Judicial Error" ("*Sudebnaia oshibka*") the story of the Karamazovs already has been told as a long, complex, and ambiguous novel. During the ensuing trial, the story is told once again. However, everything we have come to know about the events of the novel is turned topsy-turvy. The narrative space of the courtroom is filled up with stories of wounded egos, civic sagas, and mutual misunderstandings. Details completely irrelevant to the case at hand are disguised as "evidence," "witness testimony," and "court speeches." It becomes apparent that the title "A Judicial Error" does not describe the trial adequately. The verdict of "guilty" that Dmitry receives from the jury cannot be tied to any specific judicial error because absolutely nothing during the trial goes right. The public (consisting overwhelmingly of silly ladies and their jealous husbands) are interested in the details of the trial. However, their desire to see justice served is eclipsed by their personal sympathies or antipathies. Furthermore, the witnesses are too emotionally distraught, and hence inconsistent, to give coherent and logical testimonies. The medical experts' testimony transforms into a dramatic vendetta between a medical celebrity invited from Moscow and a modest but talkative local doctor. Legal professionals do not fare any better in terms of their ability to capture the essence of events. The prosecutor is obsessed with the role the famous court case might play in his hoped for stardom.

Finally, Dostoevsky depicts the defense lawyer as a sophist, whose legal arguments defy morality as well as common sense. The lawyer's musings about the parricide—he suggests that killing a pathetic father like Fyodor Pavlovich should not be even considered a crime—infuriate the jury, which consists of peasants, petty merchants, and low-ranking officials. Their verdict of “guilty” is an attempt to defend their patriarchal values from a raging liberal.

This attack against peasant-jurors is particularly out of character for Dostoevsky, who generally harbored great respect for peasantry, viewing them as the repository of traditional rustic values of humility, suffering, and faith.¹² His uncompromising rejection of the trial by jury is also somewhat astounding considering the fact that as a young man Dostoevsky experienced the horror of an unjustifiably harsh verdict in the pre-reform court that did not yet have a jury. In the late 1840s he was sentenced to death for a rather insignificant offence (a verdict that fortunately for Dostoevsky and his readers was commuted to four years of hard labor and exile to Siberia).¹³ Given the unsparing portrait of every aspect of the public trial by jury leaves the essence of “judicial error” undefined and ambiguous. The question arises: in Dostoevsky's fictional universe, what does the term “judicial error” stand for, or, in other words, *what is the substance of the judicial error?* I would like to suggest that the term “judicial error” (*sudebnaia oshibka*) from Dostoevsky's novel *The Brothers Karamazov* does not refer to any specific error that took place during the trial of Dmitry Karamazov. In his depiction of Dmitry's trial, Dostoevsky was influenced by the contemporary perception that a certain flaw was inherent within the new legal system *per se*, a perception that originated in the editorials of Mikhail Katkov.

Dostoevsky's depiction of Dmitry Karamazov's trial in the book “A Judicial Error” is complex. Too many voices resound, colliding and subverting each other at every step of the way.

The trial itself is sketched parodically, which bars the reader from formulating a coherent and simple opinion as to the meaning of Russia's most famous literary trial. Dostoevsky's own journalistic responses to contemporary verdicts (of the Kroneberg, Kornilova, Kairova, and Dzhunkovsky trials), which were published in his *Writer's Diary* in the late 1870s, do not provide a comprehensive interpretive key for the understanding of the trial in *The Brothers Karamazov*.¹⁴ Ideologically the novel goes far beyond the ordinary criticism of talkative and unprincipled lawyers and courtroom bureaucracy. Dostoevsky describes the courtroom in a very detailed fashion, shifting his novelistic attention to and from the judge, the lawyers, and the other participants in the exciting courtroom spectacle: the public, Dmitry Karamazov, his two lovers, his brothers, and assorted witnesses. Indeed, because the number of witnesses and contradictory testimonies grows exponentially, even an experienced reader turns the last page of "A Judicial Error" puzzled more than before over the questions: What does this fictional trial mean, and what is the proverbial judicial error, announced with aplomb in the title? Why does nothing go right during the trial of Dmitry Karamazov?

While not accounting fully for the mad havoc of Dmitry Karamazov's trial, Katkov's literary trope of the "organic error" provides a nice departing point for reading and understanding Dmitry's trial and for situating the elusive Dostoevsky on the axis of feelings harbored by his contemporaries towards the new public trial by jury. Dostoevsky's setup of Dmitry's trial shows that the novelist was affected by attitudes akin to Katkov's sentiment that something was *organically* wrong with the new trial by jury. The superficial liberalism of the contemporary courtroom and, subsequently, the "immoral" narrative choices made by judges and lawyers for the sake of showcasing their liberal ideas were important targets for Dostoevsky's scathing novelistic criticism. He rejects liberal rhetoric, exposing it as a superficial and ineffective way of

understanding and dealing with crime, culpability, the human soul, and the idea of moral responsibility. While Dostoevsky does not relieve society of its collective responsibility for the criminal, this responsibility is of a different kind: based on Christian rather than on legal principles. For Dostoevsky, the whole of society is indeed responsible for the crime, but only because of the inherent sinfulness of everybody, which ultimately bars any single individual from assuming the role of a judge. This universalist idea re-surfaces in various shapes and forms throughout the novel, but is especially pronounced in the homilies of the Elder Zosima, whose ideas we become acquainted with through Aleksey Karamazov's diary. A secular statement of the same point is given by the prosecutor Ippolit Kirillovich in his speech at Dmitry's trial, in which he claimed that the defendant's criminality was merely a reflection of his society's moral corruption.¹⁵

In contrast to Dostoevsky's universalist projections, all societal arguments voiced by legal professionals during the trial of Dmitry Karamazov appear pretentious, false, and designed to promote the author of these arguments rather than to discover truth and restore justice. In the Katkavian fashion, Dostoevsky mocks the judge presiding over Dmitry's trial, who makes a cameo appearance in the first pages of the trial. Dostoevsky references the judge only as an "educated" and "humane" man with the "good practical knowledge of law," who, however, is concerned only with his public image as a "progressive man" (*peredovoi chelovek*).¹⁶ The two attorneys who take the main stage during the trial, the prosecutor Ippolit Kirillovich and Dmitry's lawyer Fetyukovich, fall even lower on the scale of morality. Dostoevsky introduces them (via the voice of his narrator and snippets of the conversations in the courtroom) as vain professionals, more preoccupied with their public image than with the destiny of the unfortunate man on trial.¹⁷ Describing the defense lawyer Fetyukovich, Dostoevsky does not forget to

mention that the famed lawyer takes over Dmitry's case "for sport" (*dlia igry*) and as a great opportunity to show off his famous "juridical brilliance."¹⁸

Unlike Katkov who accused judges and lawyers of false liberalism but projected a more hopeful image of the public's "common sense," the moral vision of the public at the trial of Dmitry Karamazov is dulled by their infatuation with liberal sentiments. The ladies, who swarm in great numbers to the courtroom in order to see the trial of Dmitry Karamazov, a recognized "conqueror of women's hearts," fall victim to the allure of "new ideas." In his description of the trial, Dostoevsky exposes these ladies' utter confusion about the purpose and meaning of the trial. As we learn from Dostoevsky, the ladies arrive to the courthouse hoping to witness the spectacularly sensational acquittal of Dmitry Karamazov. Their childish anticipation of a heart-stopping spectacle is rendered by Dostoevsky parodically. Although the ladies believe that Dmitry killed his father, they nevertheless anticipate an acquittal, "because of humanness, because of the new ideas, because of the new feelings that are going around nowadays."¹⁹ While not all those attending the trial are swayed by liberal rhetoric, Dostoevsky's skeptical and unsentimental treatment of the "new feelings" suggests that he perceived them as a petty intellectual fashion. This becomes very clear during the witness testimony of Rakitin, one of Alyosha Karamazov's companions in the monastery. On the witness stand, Rakitin seizes the opportunity to show himself off as a modern man of enlightened attitudes by arguing that Dmitry's crime—not even proven as committed by Dmitry at the time of Rakitin's courtroom appearance—was a "tragedy," which resulted from the "ingrained habits of serfdom and a Russia immersed in disorder and suffering from a lack of proper institutions."²⁰ Rakitin's lack of conviction is exposed almost immediately by Fetyukovich, who reveals to the public the

hilarious truth: the newly-minted liberal is also the author of a recently published religious pamphlet, dedicated to the deceased Father Zosima and filled with pious ideas.

While the exposé of liberals remains central to Dostoevsky's critique of the contemporary courtroom as a place where judicial errors were *supposed to happen*, were *unavoidable*, this exposé was not the last word in Dostoevsky's novelistic war against Russia's new courts.²¹ In his *The Brothers Karamazov*, Dostoevsky advances the idea of the "organic error" even further by suggesting that the literariness that was overflowing contemporary courtrooms was as much at fault in prompting judicial errors as the infatuation of legal professionals with liberalism. Indeed, it is impossible to ignore the fact that Dostoevsky dedicates more than half of "A Judicial Error" to the parody of two court speeches—by the prosecutor Ippolit Kirillovich and lawyer Fetyukovich—both of them saturated with literary references and metaphors. Dostoevsky's choice to write an extended and striking parody of contemporary court speeches is not at all surprising. A long forgotten genre today, at the time when Dostoevsky wrote his *Brothers Karamazov* court speeches were a wildly popular read.²² They appeared regularly in newspapers. Many books of collected court speeches by famous lawyers were printed in the 1870s and 80s. Remarkably, as a genre, court speeches competed in popularity with contemporary fiction, seducing readers by their exciting but true-to-life content and literary merits.²³

Because the *literariness* of the contemporary court speech was so much like the *literariness* of the contemporary Realist novel (both had the power to influence minds), Dostoevsky felt deeply offended by the misuse of the talented rhetoric in the contemporary courtroom. According to the chapters depicting the speeches of attorneys, the tendency of lawyers to fashion their court speeches as if they were mini-novels was the ultimate source for judicial errors. Dostoevsky's stance about the use of literature in the courtroom is consistent with

the attitudes of many educated Russians towards literature. Novels occupied a very special place in the hearts of Russian readers. They were the depository of moral values, and also a powerful and public tool for social criticism. Dostoevsky, the celebrated author of *Poor Folk* (1846), was more than aware of this special role of Russian literature as the school of proper values. The exaggerated literariness of Dmitry's trial, depicted in "A Judicial Error" as a mask for the petty ambitions of legal professionals, was an offence to literature and went against the expectation of what a literary word was supposed to do: to teach noble ideals and to serve justice and truth.

The court speeches in "A Judicial Error" are peppered with literary metaphors that do not lead anywhere, distract the court from solving the important questions posed by the trial, and pollute the narrative space of the courtroom with verisimilar but false stories. The prosecutor Ippolit Kirillovich, a man whom Dostoevsky endows with a novelistic mind and childish passion for psychology, sets the "literary wheel" of the trial into motion. Instead of sticking to the evidence, the prosecutor infuses his speech with literary allusions and metaphors, designed to make the public see the significance of Dmitry's trial outside the provincial courtroom and law *per se*. As such, his famous metaphor of the "galloping troika," driven by the Karamazovs (obviously borrowed from Nikolai Gogol), plays no other function in the speech beyond projecting the apocalyptic vision of Russia's modernity: crippled by materialism, lack of faith, and uncontrollable sensuality. For Dostoevsky, this "troika," a symbol of the trial's literary excess, which figures so prominently in the prosecutor's statement, is precisely the "troika" that carries Russian courts, along with Russian justice, not towards but away from truth and justice. Similarly, Dostoevsky depicts Ippolit Kirillovich's naïve desire to use psychology as a tool of legal investigation as yet another "novelistic impulse." Indeed, what Ippolit Kirillovich shows off

as psychology is merely a literary metaphor, the “glue” that holds together the character of Dmitry Karamazov, whom Ippolit Kirillovich “novelized” into existence.²⁴

In order to solidify his reading of Dmitry Karamazov’s psychology, Ippolit Kirillovich introduces the literary metaphor of “two abysses.” According to him, Dmitry is a man filled with moral contradictions, and thus capable of contemplating “two abysses” simultaneously: the “abyss of lofty ideals” above and the “abyss of the lowest and foulest degradation” beneath.²⁵ The prosecutor coins his metaphor in order to patch the narrative that otherwise contains gaps, to dispel the potential sympathy of the public for Dmitry, and to show that despite several good qualities—his past generosity, his desire to help his father’s servant Grigory whom he unintentionally wounded—Dmitry still is a murderer. In his response to the prosecution, the lawyer Fetyukovich objects to Ippolit Kirillovich’s use of pseudo-psychology, which, he argues, prompts “novels even from the most serious people.”²⁶ Although the intuitive and more levelheaded Fetyukovich succeeds in giving a more truthful account of the events on the fateful night of the murder, his defense fails precisely because Fetyukovich (quite like Ippolit Kirillovich) cannot stop at the right time, and his storytelling degrades gradually into several self-contained but irrelevant “novels.”²⁷ Not satisfied with the fact that he had already explained why Dmitry could not have killed and robbed his father, Fetyukovich supplies his listeners with two additional, rather odd tales. According to Fetyukovich, Dmitry could not have committed a theft because the ill-fated money of his father did not exist at all. Further, Fetyukovich suggests slyly that if even Dmitry killed his father, he should not be considered guilty because Fyodor Pavlovich was a bad father. As Dostoevsky illustrates, the effect of this literary itch to tell all criminal melodramas that one could possibly imagine leads to Dmitry’s tragic conviction; by showing the jurors that he has no faith in Dmitry’s innocence (as his legal argument continue to

contradict each other), Fetyukovich annuls all of his previous stories as containing no objective truth outside themselves.

Dostoevsky's *The Brothers Karamazov*, a masterpiece that grew out of the novelist's decade-long experience observing the new adversarial court, labeled the outcome of Dmitry Karamazov's trial as a "judicial error." A close look at this "judicial error" shows that *whatever* Dostoevsky chose to disguise under this term was a far more complex cultural and ideological observation. In the long run, a judicial error was not a term but a disguised critique directed against new adversarial courts. These courts challenged Russia's monarchy by providing a public forum for all political, social, and spiritual concerns of the era. The lawyers, who argued that an outrageous phenomenon like Nechaev could have risen only in Russia, a country with an oppressive government, undoubtedly provided a voice to many others who had no access to a public forum of this sort. Thanks to the literary talents of Russian lawyers, transgressive liberal ideas—deemed by Katkov deliterous to the art and business of justice—resounded all across Russia. While in some instances the sophisticated excurses into history, contemporary politics, sociology, and psychology could have lead Russian jurors astray, the freedom of speech practiced in courts brought about a certain important change within Russian society. On the stage of Russia's new courts, the lawyers discussed current issues (be it politics or psychology), thus undermining the hegemony of Russian literature and teaching Russian society that not only Onegin, Pechorins, and Bazarovs possessed meaningful stories, but the lives of those anonymous Ivanovs, Petrovs, and Sidorovs deserved a novel of their own.

Katkov's Further Criticisms of New Courts: The Courtroom as a Moral Void and Rhetorical Hell

Katkov's editorials provided a major influence on the contemporary public debates concerned with post-reform courts. The first public trial took place in 1866, two years after the judicial statutes of 1864 announced the reform of Russia's judicial system. Setting up the new system seemed almost like an impossible affair; it required time and effort, and, most importantly, it required a new team of legal professionals (judges, prosecutors, and lawyers) who could handle the challenges of conducting a public trial by jury. They had to know how to make a persuasive legal case, and how to speak in court. As the first trials by jury took place, the art of court speech developed rapidly into one of the most popular late imperial genres. It was widely admired by newspaper readers and fiction writers. Excitement about the new courts hung in the air. In his editorials, even Mikhail Katkov expressed his satisfaction with the new trial by jury, which was initially frequently hailed by contemporaries as the "living court" (*zhivoi sud*). This cheerful term characterized the court as a place of a lively and dialogic legal discussion enhanced by the adversarial procedure and, thanks to the participation of defense lawyers, more humane toward individuals on trial.²⁸ The affirmative label mirrored the overall feeling that the new court was a humane and just place, where justice was achieved through an objective and lively legal negotiation.

Katkov's attitude towards new courts underwent a major and fairly sudden transformation during the Nechaev trial. However, even in his Nechaev editorial one can still see the remnants of Katkov's positive attitudes towards the new court. Katkov introduced the notion of the court as a moral void, but he refrained from criticizing the principles upon which the new court was organized. Katkov opened his editorial with the following cautious statement:

The new system of court justice is organized so well that it might even seem that things could easily run by themselves, without the intervention of people serving

it. Indeed, we got off to a very good start with the reform. Although the same people run it, the process of justice undoubtedly gained from the change in the ways the courts are organized. In addition, whatever you say, we have many worthy and gifted people. However, we totally agree that even for gifted and respectable people a high and substantive mental development is a must, and our courts would not lose from it. This condition is especially important in those cases that involve the foundations of human morality and public order and fall under the jurisdiction of courts, whose responsibility it is not to simply resolve individual cases by punishing the guilty and acquitting the innocent, but to improve the morality of their respective societies.²⁹

By drawing the attention of his readers to the “moral development” of legal professionals and by endowing them with the responsibility of improving their society’s mores, Katkov opened a door for further criticisms against this professional group. The post-reform court, as any other court throughout human history, was destined to run into the same old conflict between law and morality. However, in the post-reform courtroom the question of morality became more urgent. Before the judicial reform of 1864, the court system was divided by class. The post-reform courtroom transformed into a meeting ground for Russia’s estates and classes. A Russian jury could consist of nobles and civil servants, merchants and peasants, townspeople and *raznochintsy*, but the composition of each given jury varied depending on the location of the trial. In rural areas, peasants formed the majority on juries, while in Saint-Petersburg, for instance, many jurors were civil servants.³⁰ This diversity in the jurors’ social background meant that each jury was very unique in terms of their system of values. Frequently even the judges had a very hazy idea of what to expect from jurors, who earned the nickname “mysterious strangers”

from the prominent imperial jurist Anatoly Koni.”³¹ In the context of social diversity that changed the face of Russian justice, Katkov’s call to judges and other legal professionals to treat the courtroom as a school of moral values was not an easily achievable task, since in most cases the jurors, judges, and lawyers differed widely in their political, social, and spiritual beliefs and values.

As one might expect, Katkov did not fail to apply the criticism of the insufficient “moral development” to Russian judges. According to him, Russian judges were contaminated by the spirit of false liberalism, which meant that they aspired to appear liberal while having only a vague understanding of liberalism’s “true meanings.”³² As compared to their colleagues in the West, Katkov argued, Russian judges compensated for their lack by adopting a parodically exaggerated liberal rhetoric. In his editorial, Katkov dedicated substantial effort to mockery of the rhetorical embellishments employed by misguided and pretentious Russian judges, whose demeanor the journalist contrasted with the imagined reserve, reasonableness, modesty of British or French judges:

Freeing the defendants who were acquitted and with whom the court became sufficiently acquainted during the trial, a British judge would have said: “Go, you are free. Your actions are not punishable by the law to which the prosecution referred. However, remember that you came dangerously close to committing a serious offense.” [. . .] However, [the British judge] most likely would not have said in a state of exaltation: “Defendant! Your place is not on this shameful bench, but among the public, your place is among us!” [. . .] In the circumstances of this trial one cannot find reasons for a proclamation of this kind, and it can be explained

only as a tribute to civilization, in this case somewhat unnecessary. An English or French judge would simply say: “Defendant, answer the question.” In our court, the judge would say: “Mister So and so, would you be so kind to explain?” or “Dear Sir! The member of the court (the rank, an honorific title, and last name follow here) would like to ask you...” The presiding judge in other countries would not say anything of this kind; such fine flowers of speech, such mutual introductions, reminiscent of a salon, where people gathered for a pleasant conversation, are not allowed in the courtrooms in other countries, where the mores are more vulgar.³³

In this passage, Katkov obviously drew on the fact that, indeed, during the Nechaev trial many defendants were acquitted and freed directly in the courtroom.³⁴ However, he remains conveniently silent about the fact that many of those acquitted during the trial had served substantial time in jail prior to the trial, despite not having any connection to Nechaev or the murder, and knowing nothing or very little about his revolutionary organization.³⁵ Katkov also conveniently endows his imaginary British judge with the ability to impose a moral judgment upon defendants. He specifically suggests that, unlike Russian judges, a British judge would have pointed out to the defendants their dangerous proximity to crime. It is noteworthy that in order to sway the reader to his side Katkov invoked in his readers the sense that a judge must *judge*, rather than reminding them about the objective fact of legal life: the primary duty of a judge was to remain impartial while presiding over the trial, considering the evidence, and assuring that correct legal measures are applied to the verdict.

In addition to his criticism of the judges' insufficient "moral development," Katkov articulated in his editorial yet another criticism, this time directed against Russian lawyers, whom he charged with abusing their right to exercise freedom of speech in the court of law. In his editorial, Katkov drew an ominous vision of the courtroom as a *rhetorical hell*, where the freedom of speech granted to Russian courts by the judicial statutes of 1864 is hijacked by unscrupulous lawyers and their defendants. Entrusted into the hands of lawyers, whom Katkov painted as selfish pursuers of personal benefits, freedom of speech transforms uncannily into an opportunity for lawyers to awe their public with fancy sophisms and to inculcate the "immature minds" of the Russian youth with politically harmful ideas and topsy-turvy moral reasoning.³⁶ Describing the role of lawyers during the Nechaev trial, Katkov argued that they, as a group, posed a great danger to the society not because they defended criminals, but because, in the heat of legal debates, they frequently fell victim to their own rhetoric, sliding into a mode of defending the idea of crime *per se*:

If in human dealings, even under best of conditions, things cannot go without errors, if in the courtroom the lawyer is not always able to observe the divide between the truth and untruth, if, in the heat of litigation, he is carried away by his own words (because he vainly desires to triumph over truth itself, or he has a more noble motive and feels compassion for the "unfortunate" who entrusted himself to his care), and if he is resolved to sacrifice the truth, let it be for the benefit of the criminal, and not the crime. If you absolutely have to, exonerate the man and argue, as much as your conscience allows, that he is not guilty of the crime, or that, contrary to the statement of the prosecution, his deed was not criminal, do not say

that a bad thing is good, and, whatever this law might be, do not obstruct it in the court of law. If you don't like the law, protest against it in a different place in whatever fashion suits you, but do not dare to protest in the courtroom, which rests upon this law and has no meaning outside of it. If nothing else holds you back, there are some simple rules of propriety. You still want to look like a civilized person, you know when to wear a tailcoat and when a simple frock, and you do not pay visits without a tie. Try, in the very least, to preserve your decency. And if the chatterbox cannot prevent himself from chatting away, then I dare to say, you, our esteemed judge, have the right to stop him at that very moment as he pronounces the words that possess him more than he possesses them.³⁷

Interestingly, in this argument as in his discussion of Russian judges, Katkov once again refrains from discussing the actual duties and functions of lawyers. Indeed, his satire is directed at one of the lawyer's primary legal responsibilities: introducing the public to an alternative perspective on the acts of his defendants. This device—blaming the lawyer or judge for something that constitutes his primary professional duty and surrounding the notion of “legal” with an aura of parody, falsity, and personal moral failure—is integral to Katkov's later anti-court treatises. Furthermore, by likening the business of justice to the habit of choosing one's clothing, Katkov makes it feel like the task of finding out the truth is rather uncomplicated. One just has to make the appropriate choices by listening to one's moral voice, then he has to choose the right topics and words to discuss it in order to shed the light onto the case in question.

However, the lawyers (because of their moral faults and political biases)—Katkov argued—tended to make un-*organic* narrative choices. In other words, they chose to talk about

topics that had little to no relevance to the trial, the so-called “red herrings,” introduced into the courtroom debates purely for the sake of elevating their own status as public figures and champions of various political and social causes. The parodical image of the lawyer as a courtroom “chatterbox,” who is possessed by his own words, quickly made its way into Russian fiction, giving rise to the wave of literary texts that mocked courts and lawyers in the manner of Katkov.³⁸ The reason for the success of this type of parody was, of course, its comical appeal, but also the resistance of Katkov and perhaps of Russian society as a whole to the arguments delivered in courts that sought to acquit individuals based on the external, political or social, circumstances. Undoubtedly, in the intellectual context, where both social and legal reasoning still remained a novelty, they made an easy target for journalistic bullying. Continuing with his line of thought and arguing against the use of social criticism in court, Katkov claimed that during the Nechaev trial the discussion of student rights was used by lawyers as a ploy to transform the courtroom into a political showcase:

Throughout the Nechaev trial, there was unending talk about student uprisings. Our students have many friends. Not only the newspapers write on their behalf, but the lawyers defend them in the courtroom, and the defendants themselves occasionally act as lawyers. We do not know how admissible this is on the part of defendants, but at least for them it is natural. They are nihilists. However, the lawyers are expected to defend their clients from criminal charges, instead of discussing the general issue of student rights. It is not good to take advantage of the university youth’s immaturity by befuddling them with newspaper articles and

proclamations. But is it any better to use for the same purpose the sacred right of the court to freedom of speech?³⁹

A bit further in his editorial, Katkov describes how freedom of speech was “abused” during the trial, when the defendants (whom he continues to call “nihilists”) were given the floor. The trial, he argued, did not enlighten the “nihilists” about their misguided thinking, but encouraged them to grow fonder of it due to the supportive environment of the courtroom:

At the closing of the trial, the defendants were allowed to speak. And here, one barked a poem, and the other seized the opportunity to show off in front of the judges. The latter, a young man of twenty-two, was more corrupted than others, but also more distinguished because of his superficial gleam of culture. Under other circumstances, he would have perhaps turned out to be a good Russian force [*russkaia sila*]. Because of his ambition and dreams of becoming a hero of the revolution, he was seized by deceit. The litigations did not soften him. They only made him wrap his revolutionary coat tighter. Instead of pouring out his soul to the public, he broke into a cold and abstract speech about the significance of spilled blood for the revolutionary effort.⁴⁰

In these two passages, Katkov draws a disturbing picture of Russian lawyers vis-à-vis their defendants, the revolutionaries. In Katkov’s interpretation of the trial, the revolutionaries are depicted as morally corrupted individuals, pathologically unconcerned with the committed murder, and egotistically preoccupied with their self-image as the heroes of revolution. By offering this dark collective portrait of the defendants, Katkov indirectly projected the negative

image associated with the defendants—their human callousness, political vanity, and fondness for meaningless rhetoric—onto their defenders.

Although Kakov's assertions about the Nechaev trial were largely hyperbolic, the rhetorical accessibility and intimate tone of his writing insured that his editorial provided the intellectual prototype for the subsequent depictions of lawyers in newspaper journalism and fiction. Katkov made it explicit in his editorial that he was writing for ordinary readers, not for Russia's legally-savvy intellectuals. Moreover, throughout his editorial Katkov continually described himself as a part of a certain "public," who felt bewildered by the trial's corrupted logic. Katkov affirmed a common ideological ground with his "public":

[W]e believe that, in our capacity as a public, we don't simply have the right, but it is our duty to learn from the lessons that this trial offered in abundance. We must comprehend the issues that the trial raised, and, most importantly, we have to take over the task of defending "someone" who might feel wronged by the trial. This "someone" is common sense, which was attacked many times throughout the trial.

[...]

The public was left in a state of bewilderment. The criminals were punished according to some article of the criminal law, but the way of thinking that informed their actions was not simply left untouched, it was even praised. Nihilists are being exiled, nihilists are being jailed, but the nihilism itself is held in high esteem in the court of law.⁴¹

Although the "public" was used by Katkov in a rhetorical sense, the intimate and assuring tone of his writing must have been appealing at least to some readers, especially because Katkov

ascribed to “them” the important function of the guardians of common sense and morality against the ideological faddism of lawyers and nihilists. Of course, by stressing the role of the public in safeguarding reason and traditional values, Katkov succeeded in directing the attention to the alleged madness of the courtroom taken over by erratic and immoral legal professionals. Similarly, Katkov’s penchant for using the pronoun “we” instead of a more modest “I” projected the impression that, in fact, a large segment of society disapproved of the ways in which modern trials were conducted, and Katkov was their designated speaker. This also eventually affected the ways in which the writers and journalists began to perceive their role when writing about courts and lawyers; vis-à-vis the letter of law, they were the voice of conscience and reason as well as holistic thinkers, who possessed the power of seeing the truth through the rhetorical and ideological webs spun by lawyers. This model was, for instance, successfully applied by Dostoevsky in *The Brothers Karamazov*. By appending to his novel a long section dedicated exclusively to the trial, Dostoevsky created a contrast between the courtroom storytelling with its irrelevant rhetoric and spurious social insights and the rest of the novel, with its true-to-life observations of the novelist-narrator.

After his Nechaev editorial, Katkov assumed the role of unofficial judge in matters concerning legal justice by quickly publishing in his newspaper several important articles dealing with Russian courts.⁴² Katkov’s charges against the courts remained the same, but two months after the trial of the nihilists he came up with a new accusation. This time he claimed that Russian courts acquitted the defendants whose guilt was confirmed beyond reasonable doubt too frequently, arguing that these acquittals (as well as other legal troubles) were due to a certain “organic error” inherent within the new court’s organization.⁴³ Katkov used the exaggeratedly comical, hyperbolic examples of acquittals to support his claim. For example, Katkov cites a

court speech, supposedly given by a lawyer from Kishenev, but neither this lawyer's name nor the details of the trial are revealed to the reader. According to Katkov, the lawyer addressed his jurors by saying: "Dear Sirs of the Jury! Not long ago I was defending a thief, and you acquitted him. Then I defended a different thief, and you acquitted him also. Now I am defending the third thief, and I am sure you will acquit him as well."⁴⁴ While confirming the authenticity of this example seems impossible, the emphasis that Katkov places on the absurdity of the lawyer's expectation that his defendant will be acquitted is reminiscent of the same motif in Dostoevsky. As discussed further below, in the trial chapters of *The Brothers Karamazov*, Dostoevsky depicted with great sarcasm provincial ladies, who arrive to the courtroom expecting to savor the spectacle of Mitya's acquittal and release, despite the fact that they believe him to be guilty.

Literary Lawyers Respond to Mikhail Katkov, the "Tsar of Phrase Mongering"

While it might seem improbable that the efforts of a single person provided the ultimate angle from which the courts and lawyers were perceived and treated in public discourse, his influence in matters of law was an undeniable fact of public life in late imperial Russia. In 1883, one of the most eloquent Saint-Petersburg lawyers Sergey Andreevsky addressed the jurors in the courtroom with a speech that, among other things, highlighted the importance of jurors' voices for the new public court. In this speech, Andreevsky used a smart pun, which passionately refuted the accusation of incompetence thrown against Russian jurors by a certain prominent journalist. This journalist, whose name Andreevsky diplomatically omitted from his speech, dismissed the verdicts of Russian jurors as the "court of the street" (*sud ulitsy*). The offensive label betrayed this journalist's distrust of jury trials, where, in his opinion, the process of legal justice was dangerously entrusted into the hands of semi-literate peasants and lowlifes, incapable

of analyzing complex legal problems and passing reasonable verdicts. Andreevsky refuted this harsh point with the following playful subversion:

Recently one journalist dared to describe jurors as coming “from the streets.” But, contrary to what he intended, I view this word not as a verbal abuse against trial by jury, rather a definition that keenly combines the two most valued features of this court. It is true: you are the street! We are gladdened by that. The air is fresh in the street. Without exceptions, we all go there. Eminent or insignificant, we are all equals there because we feel secure before people’s eyes. Before the ‘street’ nobody allows himself to forget about shame. Let’s remember the funeral the prosecutor talked about yesterday: when you follow the deceased beloved in the street, strangers take their hats off and make the sign of the cross. In the street, a sick person is helped, and a poverty-stricken person gets alms. “The street” will stop a wrongdoer and will catch a running thief! When a misfortune befalls your home—a robbery, murder, fire—where do you run for help? To the street. Because there you can always find people ready to serve the principles of universal justice. Bring these principles to our courts. Let justice come from the street because the lawmaker himself wished to take his judges precisely from there, and not from the offices and salons.⁴⁵

Remarkably, Andreevsky seized the interpretive opportunity that was offered by the ill-intended “street metaphor,” showing through his evocative examples that the voices of jurors, enriched through their knowledge of life, were the “fresh air” of legal justice that prevented courts from transforming into lifeless punitive mechanisms.

Although Andreevsky omitted the name of his mysterious opponent, the jurors undoubtedly recognized in this description the persona of the influential journalist and editor of *Moskovskie Vedomosti* Mikhail Katkov. By 1883, Katkov had established himself as the most dedicated ideologist of absolutism and avid critic of public courts, which beginning with the 1870s became one of the main targets for his venomous journalistic anathemas.⁴⁶ Because of the violent tone of his editorials and catchy metaphors, Katkov's depiction of post-reform courts and lawyers impacted the ways in which fiction writers began to portray Russia's young legal culture. Andreevsky, a literary man himself, was well aware of the fascinating power of Katkov's words, that according to the comment by Vasily Rozanov were "larger and smarter" than Katkov himself. Indeed, Katkov's words, upon emerging from under his pen, somehow succeeded in blurring the difference between fact and fiction, at least in the matters of legal justice. Not accidentally, in his oral refutation of Katkov he directed his effort at subverting Katkov's language, first and foremost, directing the attention of his listeners to the positive aspects of being an ordinary person "from the street." Jurors, Andreevsky argued with confidence and conviction, were the "fresh air" of legal justice. Their common sense and freedom from legal clichés guaranteed that Russian courts remained lively, humane, and just.

The influence of Mikhail Katkov's legal views on Russian public can be understood only in the overall context of the tradition of social and political criticism in Russia. From 1871 till 1887 Katkov kept on returning to the same types of legal criticisms, developing and fine-tuning them with each consecutive court case covered in his newspaper. Although many of the aforementioned accusations thrown against new courts were criticized by liberal publications (first and foremost, by *Vestnik Evropy* [*Messenger of Europe*]), Katkov's arguments and approach to legal culture gained a strong foothold in Russian journalism, and gradually seeped

through into Russian prose and poetry. This phenomenon of Katkov's overwhelming influence in legal matters can be explained by the nature of Russian public sphere, unaccustomed to any other types of social and political criticism except those that were delivered via fiction and offered a moral lesson. While the journalists from *Vestnik Evropy* argued in support of new public courts by explaining the mechanisms of legal justice, in which the deferral of justice for the duration of the trial and suspending moral judgment did not equate with the miscarriage of justice, Katkov responded to each trial in *media res*, mulling over each minute detail or absence of a "deserved" moral condemnation, while using an evocative "we" typical for his writing and an immediate and furious torrent of striking examples, visual descriptions, and catchy "Katkovian" phrases. Katkov, a philologist by training, understood better than his colleagues-jurists that for the readers, who could steal a peak into the new "court theater" only via his court chronicles and editorials, a vivid description was worth more than a rational explanation of why a new public court was bad. Katkov evoked on the pages of *Moskovskie vedomosti* the theatrical feel of a public trial, drawing the reader first into his web of his rhetoric. Katkov specifically focused on recreating the ambiance of the courtroom. By describing the courtroom as a fiction writer would, Katkov projected the persona of an authoritative witness who attended the trial in person, and therefore was qualified to pass judgment on court proceedings. Katkov's aggressive attacks against courts seemed to project his confidence in the existence of a strongly opinionated Russian public, first, and the consensus of this public with his opinion, second. Not surprisingly, in part due to his skilled use of rhetorical devices, Katkov gradually became an opinion-maker in legal matters. Although there were other journalists and publications more qualified to make judgments about Russia's legal reform, Katkov and his *Moskovskie Vedomosti* embodied the success of newspaper journalism, which began to thrive during the era of the Great Reform. With

its more immediate reactions to current events and a larger audience, newspapers like *Moskovskie Vedomosti* could reach the readers faster than previously influential “thick journals.”

In the article published shortly after Katkov’s death, the lawyer Konstantin Arsen’ev evaluated his impact on Russian culture with the following bitter summary: “Whatever doctrine or criticism the preacher proselytizes, the certainly talented, decades long sermon would undoubtedly create among his listeners a certain mood. A certain sum of sentiments and views would spread among them.”⁴⁷ Undoubtedly, Arsen’ev, a lawyer by profession, meant first and foremost Katkov’s sermons directed against Russian courts. Arsen’ev was one of the so called “literary lawyers,” a group of prominent lawyers, who in addition to their legal careers established themselves as reputable literary critics and journalists.⁴⁸ The articles penned by “literary lawyers” provided the main opposition to Katkov’s anti-court propaganda. After the appearance of Katkov’s fateful editorial in which he finally proclaimed that Russia’s new legal system contained an organic error, “literary lawyers” embarked on the mission to discredit Katkov. In 1872, Boris Utin, a journalist and professor of law, published in *Vestnik Evropy* a long article titled “The Chronicles of Court Justice. Dedicated to *Moskovskie vedomosti*.”⁴⁹ In his insightful article, Utin attempted to subvert Katkov’s influence in legal matters by exposing his deceptive rhetorical strategies. Utin, who knew legal procedures, argued that Katkov’s criticisms of the new court had nothing to do with the actual trials, but instead expressed Katkov’s unease with courts as Russia’s most liberal institution. In the article, the law professor also pointed out that Katkov was intentionally misleading his readers by reporting on important cases prior to their completion. Utin viewed Katkov as nothing more than a rhetorically skilled and manipulative politician (a “tsar of phrase mongering” [*tsariok frazy*] as Utin nicknamed him), who used catchy phrases to sway the public to his side.⁵⁰ Katkov’s “organic error” does not exist,

Utin argued, and Katkov complained on account of “minor legal setbacks,” i.e. problems that were resolved at a later point of each respective trial.⁵¹ Utin’s points might have carried a lot of weight with the readers of *Vestnik Evropy*; however, the sheer length and complexity of Utin’s reasoning and writing assured that his important counterpoints remained largely impenetrable, perhaps only drawing more attention to Katkov’s ideas, labels, and his invective journalism.

Despite their passionate defense of new courts and constructive criticism of Katkov’s anti-court proagenda, the literary lawyers achieved nothing beyond re-focusing the attention of the public on Katkov and making his ideas grow into a well-established cultural trope. While Katkov’s claims lacked in legal substance, his rhetoric generously compensated for this lack. Katkov’s journalism, which inhibited the gray area between literature and newspaper writing, actualized the idea of an “organic error” into an effective literary tableaux by fleshing out forcefully the descriptions of courtroom settings, judges and lawyers, and the representations of thoughts and speeches of these characters. Thus, gradually the idea that Katkov sketched in his first editorial emerged as a set of actual ready-to-use literary representations. The trope also possessed an ideological significance: it provided a convenient blanket term for any philosophical objections that a writer like Katkov (or Dostoevsky) could have harbored in regards to legal woes.

The debate about public justice that was unfolding within the journalistic sphere of the time between Mikhail Katkov and literary lawyers and their disagreements over the issue of whether there *was* or *wasn’t* an organic error within the new legal system transformed the court into an ideological or civic spectacle. While this spectacle was played out via the medium of texts, the powerful and frequently scandalizing rhetoric of this debate insured that the eyes of the Russian readers were on it. Katkov was undoubtedly the winning party in this debate, especially

because his vocabulary and tropes became very important in all later discussions of public justice (in fiction as well as in journalism). However, while the newspaper readers undoubtedly enjoyed his fiery, lively style, the dialogic exchange between Katkov and literary lawyers was also very important. First and foremost, it enriched the repertoire of civic sentiment in legal matters available to the public. Because the transition to public justice in Russia was so sudden (and without a precedent in the previous legal history), the public was very limited in their repertoire of response to public trials. On the whole, they were illiterate about legal terms and issues, and, as many contemporaries pointed out, the public generally lacked the habit to think about issues civically. The debates between Katkov and the literary lawyers provided a great example of how a civic individual must think and react to contemporary events. They provided the public with a symbolic model, which showed all different ways of how one could think about a public trial. By arguing publically over various legal issues, Katkov and the literary lawyers offered to their readers the images of civic thought, speech, and behavior.

CHAPTER 3

¹ Vasily Rozanov [V. Vetlugin]. “Suvorin and Katkov.” *Kolokol [Bell]*, March 11th 1916. I quote from an on-line version of this article.

² On the change of Katkov’s attitudes towards new courts, see: Tvardovskaia, V. A. *Ideologiia poreformennogo samoderzhavii: M. N. Katkov i ego izdaniia*. Moskva: Nauka, 1978. 143-144.

³ More on Nechaev and the trial, see: Ronald Hingley, *Nihilists: Russian Radicals and Revolutionaries in the Reign of Alexander II (1855-81)*, London: Weidenfeld and Nicolson, 1967, 56-59; N.A. Troitskii, *Advokatura v Rossii i politicheskie protsessy 1866-1904 gg.*, Tula: Avtograf, 2000, 236-46; O. V. Budnitskii, *Terrorism v rossiiskom osvoboditelnom dvizhenii: ideologiia, etika, psikhologiia (vtoraia polovina XIX—nachalo XX v.)*, Moskva: Rosspen, 2000, 38-44.

⁴ Prior to this trial, Katkov looked at Russia’s post-reform courts with a great degree of sympathy. In his editorials from the late 1860s, he described Russia’s new courts as the “court of life” (*zhivoi sud*) and like other Russian subjects rejoiced at the fact that Russia had a sufficient number of qualified legal professionals to transform law from a heavily theoretical and philosophical discipline of jurisprudence into a useful legal practice of negotiating the question of guilt and innocence in court. Also see the footnote # 14.

⁵ See *Moskovskie Vedomosti* # 254 (November 19th 1871).

⁶ I chose Katkov's editorial about the Nechaev trial because it opened a new era in his writings about courts. While this editorial does not yet state explicitly his belief that the new trial by jury contains an organic error, it set up the pattern for all of his future editorial concerned with this topic. After his editorial dedicated to the Nechaev trial, he published a series of editorials, this time about ordinary criminal trials, which advanced the same idea. See: *Moskovskie vedomosti* ## 217 and 227 ("Nedostatki nashei sudebnoi praktiki" from October 6th and October 18th 1871), 223 ("Beznravstvennost' priemov, upotrebliaemykh nekotorymi advokatami pri zashchite" from October 13th), 254 ("Zloupotreblenie opravdatel'nymi prigovorami v nashikh sudakh" from November 19th). These editorials offered a wide range of criticisms, but they generally followed the footsteps of Katkov's editorial about the Nechaev trial: they reproached the lawyers for their "immorality," faulted the courts for unreasonable acquittals, and ostracized the judges for not providing moral guidance during the trials.

⁷ See: M.E. Saltykov-Shchedrin. *Sobranie sochinenii v 20 tomakh*. Ed. A.S. Bushmin et al. Moskva: Khudozhestvennaia literature, 1965. 9: 191.

⁸ M.E. Saltykov-Shchedrin. *Sobranie sochinenii v 20 tomakh*. 9: 205.

⁹ Among the newspapers which reported on this trial most frequently were *Sankt-Peterburgskie vedomosti* [*Saint-Petersburg News*] and *Golos* [*The Voice*]. See for example *Sankt-Peterburgskie vedomosti* ## 180, 190, 194, 195 and *Golos* ## 183, 188, 190, 197, and 201. Among the articles dedicated to the trial, only one issue of *Golos* (# 197) reproached the judges and lawyers for their "excessive politeness."

¹⁰ See *Moskovskie vedomosti* # 161 for 1871 (July 24th)

¹¹ I rely on the translation of *The Brothers Karamazov* by Richard Peaver and Larissa Volokhonsky. See: Fyodor Dostoevsky. *The Brothers Karamazov*. Trans. by Richard Peaver and Larissa Volokhonsky. New York: Farrar, Straus and Giroux, 2002. 12: 656.

¹² In the article "Kollektivnyi portret rossiiskikh prisiazhnykh v romane *Bratia Karamazovy*," V.A. Tvardovskaia offers a very insightful analysis of Dostoevsky's attitudes towards peasant-jurors and the significance of the "guilty" verdict in *The Brothers Karamazov*. See: *Dostoevskii: Materialy i issledovaniia*. Sankt-Peterburg: Nauka, 2001. 17: 164-73.

¹³ In his study *Western Law, Russian Justice: Dostoevsky, the Jury Trial, and the Law* (Madison, Wisconsin: The University of Wisconsin Press, 2005), Gary Rosenshield finds the source of Dostoevsky's discontent with the trial by jury (as the title suggests) in the failure of the new Western system to accommodate a uniquely Russian sense of justice. I seek to illuminate the "archeology" of these attitudes, by excavating the intellectual context and relevant debates concerning the trial by jury that were occurring during the decade preceding the publication of Russia's most intellectually influential literary masterpiece.

¹⁴ On Dostoevsky's treatment of the trial by jury and his response to specific imperial trials in his *Writer's Diary*, see: Gary Rosenshield, *Western Law, Russian Justice: Dostoevsky, the Jury Trial, and the Law*, Madison: The University of Wisconsin Press, 2005; Harriet Murav, "Dostoevsky's *Diary*: A Child Is Being Beaten," in *Russia's Legal Fictions*, Ann Arbor: The University of Michigan Press, 1998. 125-57.

¹⁵ For Zosima's pronouncement, see Chapter 3 "From Talks and Homilies by the Elder Zosima" in Book VI "The Russian Monk." Zosima specifically says: "Remember especially that you cannot be the judge of anyone. For there can be no judge of a criminal on earth until the judge knows that he, too, is a criminal, exactly the same as the one who stands before him, and that he is perhaps most guilty of all for the crime of the one standing before him" (pp. 320-22). This conception of guilt based on the Scriptures is echoed in the secular argument of Dmitry Karamazov's prosecutor, who says: "Another man may not kill, perhaps, but he will think and feel exactly the same way, in his heart he is just as dishonest as the first." See Chapter "The Prosecutor's Speech. Characterizations" in Book XII "A Judicial Error" (p. 694).

¹⁶ Dostoevsky, F.M. *The Brothers Karamazov*. Trans. By Richard Pevear and Larissa Volokhonsky. New York: Farrar, Straus and Giroux. P. 658 (PSS 15:92).

¹⁷ *Ibid.*, 658 and 724 (PSS 15:92 and 15:152).

¹⁸ *Ibid.*, 663 (PSS 15:96).

¹⁹ *Ibid.*, 657 and 663 (PSS 15:95 and 15:96).

²⁰ *Ibid.*, 667 (PSS 15:99).

²¹ A nice synopsis of Dostoevsky's legal views, which emphasizes Dostoevsky's rejection of the liberal idea that crime was a pathological condition resulting from poverty and criminal environment, is offered by Andrzej Walicki, see: Andrzej Walicki, "Fyodor Dostoevsky and Lev Tolstoy," *Legal Philosophies of Russian Liberalism*, Notre Dame: The University of Notre Dame Press, 1922.

²² A chapter of my dissertation deals with Russian nineteenth century court speeches. At this point, the information about the significance of court eloquence in late imperial Russia can be drawn primarily from nineteenth-century or early twentieth-century sources. Among recent studies, the books by N.A. Troitskii contain a plethora of information about specific lawyers and their achievements as court speakers (see Troitskii, N.A., *Korifei russkoi advokatury [The Luminaries of the Russian Bar]*, Moskva: Tsentrpoligraf, 2006). Among older sources, the article by the nineteenth century lawyer and journalist Konstantin Arsen'ev is invaluable (see: Arsen'ev, K.K. "Russkoe sudebnoe krasnorechie" ["Russian Court Eloquence"], *Vestnik Evropy* # 4, 1888]). Additional helpful sources: Glinskii, B.B., *Russkoe sudebnoe krasnorechie*, Saint-Petersburg, 1897; Liakhovetskii, L.D., *Kharakteristika izvestnykh russkikh sudebnykh oratorov s prilozheniem izbrannoi rechi kazhdogo iz nih*, Saint-Petersburg, 1897; Timofeev, A.G., *Sudebnoe krasnorechie v Rossii: kriticheskie ocherki*, Saint-Petersburg, 1900; Sergeich, P. [Porokhovshchikov, P.S.], *Iskusstvo rechi na sude*, Saint-Petersburg, 1910.

²³ I will refrain from a more detailed discussion of court speeches in this article. I treat the court speech as the important phenomenon in the culture of late imperial Russia in the chapter of my dissertation titled "The Rise of Cause Célèbre in Late Imperial Russia: Sergey Andreevsky."

²⁴ In *The Brothers Karamazov* Dostoevsky discredits the use of psychology and medical expertise in the contemporary courtroom as "literature." Despite this, it must be noted that the arguments of medical nature became increasingly successful in late imperial courts. On the use of psychiatry in Russia's adversarial courts and how it redefined the acceptable scripts for proving guilt or innocence, see: Louise McReynolds, "Witnessing for the Defense: The Adversarial Court and Narratives of Criminal Behavior in Nineteenth-Century Russia," *Slavic Review* 69: 3 (Fall 2010), 620-44.

²⁵ *Ibid.*, 699 (*PSS* 15:129).

²⁶ *Ibid.*, 727 and 728 (*PSS* 15:156).

²⁷ Dostoevsky's insistence on the fact that all arguments in the trial of Dmitry Karamazov (whether they were made by the prosecution or defense) were simply "literature" reflected the fact that many lawyers at the time relied heavily on literary devices (literary metaphors, references to well-known works of literature, etc.) in order to make their points more persuasive for to the public in the capitals. Late imperial lawyers were very conscious of the importance of literature for their profession. See, for instance, the following speech delivered by the famous Saint-Petersburg lawyer Sergey Andreevsky to the group of young lawyers around the turn of the twentieth century: S. A. Andreevsky, "On the Criminal Defense," *Izbrannye Trudy i Rechi*, Tula: Avtograf, 2000, 285-312.

²⁸ For Katkov's positive evaluation of the new courts' achievement, see, for example, *Moskovskie Vedomosti* # 130 from June 6th 1869. Overall, the expression *zhivoi sud* was fairly typical for the late 1860s, see the memoir One of the most prolific legal writers Anatolii Koni uses this expression on multiple occasions. See, for example, his "Iz let yunosti i starosti" in *Sobranie sochinenii v 8 tomakh*, Moskva: Yuridicheskaya literature., 7: 83-85.

²⁹ See *Moskovskie vedomosti* # 161 for 1871 (July 24th)

³⁰ For the information on the social composition of Russian juries see Alexander K. Afanasev, "Jurors and Jury Trials in Imperial Russia," in *Russia's Great Reforms, 1855-1881*, translated by Willard Sunderland, in Ben Eklof, John Bushnell, and Larissa Zakharova, Bloomington: Indiana UP, 1994. 214-230.

³¹ This expression belongs to the prominent imperial jurist Anatoly Koni. Qtd. in Afanasiev, "Jurors and Jury Trials in Imperial Russia," 217.

³² The idea that "false liberalism" was harmful to Russia's political wellbeing surfaced in Katkov's editorials on multiple occasions. For instance, see the following editorials: "Istinnyi i falshivyi liberalism" ["The True and False Liberalism"] in *Moskovskie vedomosti* # 178 for 1863 (August 15th); "Liberalism v Rossii" ["Liberalism in Russia] in *Moskovskie vedomosti* # 106 for 1878 (April 28th); "Chto znachit slovo reaktsiia! Gosudarstvennaia vlast.' Nashi liberaly" ["What Does the Word 'Reaction' Mean? The Government. Our Liberals"] in *Moskovskie vedomosti* # 79 for 1881 (March 19th). The first editorial was published in 1863 (the year of the Polish uprising), the second—in 1878 (the notorious political trial of Vera Zasulich), and the third—in 1881 (the assassination of Alexander II). The accusation of legal professionals in "false liberalism" signaled to the readers of *Moskovskie vedomosti* that Katkov began a war against Russia's new democratic courts.

³³ *Ibid.*

³⁴ During the Nechaev trial, 87 people who were put on trial, and 42 people were acquitted directly in the courtroom. The remainder of defendants received light sentences (from a week up to a year and a half in prison), and only four of Nechaev's closest accomplices were sentenced to hard labor and exile to Siberia. Nechaev himself was not present at the trial: he fled the country, and the authorities managed to get hold of him only in 1872. In 1873 he

stood a trial by jury, and was sentenced to twenty years of hard labor. However, he spent the next twenty years not in Siberia, but at the political prison located in the Peter and Paul Fortress in Saint-Petersburg.

³⁵ Katkov's criticism of judges affected the ways in which other newspapers reported on the trial. In the aftermath of Katkov's editorial *Golos* also mentioned the excessively polite rhetoric of judges (see *Golos* # 197, from August (?) 1871); this mentioning was made in the manner highly reminiscent of Katkov.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Aside from Dostoevsky's *The Brothers Karamazovs*, beginning with the late 1870s and through the 1890s courts and lawyers received a harshly comical treatment in Mikhail Saltykov-Shchedrin's *The Contemporary Idyll* (1878-1883), Lev Tolstoy's *Anna Karenina* (1878), *The Kreutzer Sonata* (1889), and *Resurrection* (1899), and in a number of Anton Chekhov's short stories ("A Court Case" (1883), "The Night before the Trial" and "In the Court" (1886), "In Trouble" (1887)).

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² See, for example: *Moskovskie Vedomosti* ## 174 (August 11th 1871, "Nravstvennyie obiazannosti sudeiskogo zvaniia i nepravilnoe ponimanie ikh"), 217 and 227-B (October 6th and October 18th 1871, "Nedostatki nashei sudebnoi praktiki"), 223 (October 13th 1871, "Beznravstvennost' priemov, upotrebliaemykh nekotorymi advokatami pri zashchite")

Katkov's animosity and his writings about courts and lawyers became a widely known fact of late imperial Russia's world. The following sources on Katkov are very helpful in providing a timeline for and ideological outline of his legal views: Chernukha, V. G. *Pravitelstvennaia politika v otnošenii pečati, 60-70-e gody XIX veka*. Leningrad: Nauka, 1989, 151-97; Nevedenskii, S. *Katkov i ego vremia*. 1888; Tvardovskaia, V. A. *Ideologiia poreformennogo samoderzhavii: M. N. Katkov i ego izdaniia*. Moskva: Nauka, 1978. Other useful sources: Durman, Karel. *The Time of the Thunderer: Mikhail Katkov, Russian Nationalist Extremism and the Failure of the Bismarckian System, 1871-1887*. Boulder: East European Monographs, 1988; Katz, Martin. *Mikhail N. Katkov; A Political Biography, 1818-1887*. The Hague: Mouton, 1966; Renner, Andreas. "Defining a Russian Nation: Mikhail Katkov and the 'Invention' of National Politics." *The Slavonic and East European Review* 81:4 (October 2003). Pp. 659-682; Sementkovskii, R.I. *M. N. Katkov*. 1892.

⁴³ See *Moskovskie Vedomosti* # 254 (November 19th 1871).

⁴⁴ See *Moskovskie Vedomosti* # 254 (November 19th, 1871)

⁴⁵ Qtd. in Cherkasova, N. V., *Formirovanie i razvitie advokatury v Rossii (60-80 gody XIX veka)*, Moskva: Nauka, 1987. 119. In Russian: Еще недавно один публицист дерзнул назвать суд присяжных 'улицей'. Но, вопреки намерениям, я вижу в этом слове не унижение или поругание суда присяжных, а такую характеристику его, в которой метко соединены едва ли не самые дорогие черты этого суда. И правда: пусть вы—улица! Мы этому рады. На улице свежий воздух; мы бываем там все; без различия, именитые и ничтожные; там мы все равны, потому что на глазах народа чувствуем свою безопасность; перед улицей никто не позволит себе бесстыдства; вспомним и похороны, о которых говорил вчера прокурор: когда вы по улице провожаете близкого покойника, незнакомые люди снимут шапку и перекрестятся... На улице помогут заболевшему, подадут милостыню нищему, остановят обидчика, задержат бегущего вора! Когда у вас в доме беда—грабеж, убийство, пожар—куда вы бежите за помощью? На улицу. Потому что там всегда найдутся люди, готовые служить началам общечеловеческой справедливости. Вносите к нам, в наши суды эти начала... Приходите судить с улицы, потому что сам законодатель пожелал брать своих судей именно оттуда, а не из кабинетов и салонов.

⁴⁶ The following sources on Katkov are very helpful in providing a timeline for and ideological outline of his legal views: Chernukha, V. G. *Pravitelstvennaia politika v otnošenii pečati, 60-70-e gody XIX veka*. Leningrad: Nauka, 1989; Nevedenskii, S. *Katkov i ego vremia*. 1888; Tvardovskaia, V. A. *Ideologiia poreformennogo samoderzhavii: M. N. Katkov i ego izdaniia*. Moskva: Nauka, 1978. Other useful sources: Durman, Karel. *The Time of the Thunderer: Mikhail Katkov, Russian Nationalist Extremism and the Failure of the Bismarckian System, 1871-1887*. Boulder: East European Monographs, 1988; Katz, Martin. *Mikhail N. Katkov; A Political Biography, 1818-1887*. The Hague: Mouton, 1966; Renner, Andreas. "Defining a Russian Nation: Mikhail Katkov and the 'Invention' of National Politics." *The Slavonic and East European Review* 81:4 (October 2003). Pp. 659-682; Sementkovskii, R.I. *M. N. Katkov*. 1892.

⁴⁷ Arsenev, K.K. "Mikhail Nikiforovich Katkov." *Za chetvert veka (1871-1894): sbornik statei*. Petrograd: Tipografiia Stasiulevicha, 1915. 324-336. Katkov died in August 1887, and this article is essentially an assessment of his lifeworks. Considering the history of tensions between Katkov and his liberal opponents, the article does not give a very bright assessment of Katkov's public service. Originally published in *Vestnik Evropy* from September 1887.

⁴⁸ To this group belonged such prominent jurist as the aforementioned Konstantin Arsen'ev, Anatoly Koni, Vladimir Spasovich, and Evgeny and Boris Utins.

⁴⁹ Boris Utin's "The Chronicles of Court Justice. Dedicated to *Moskovskie vedomosti*" ["Iz sudebnogo mira. Posviashchaetsia Moskovskim vedomostiam"] was published in *Vestnik Evropy* from February 1872. The article was signed with the initials "V.O."

⁵⁰ *Vestnik Evropy* from February 1872.

⁵¹ Under "minor setbacks" Utin meant, for example, the need to wait for the results of an appeal, and other similar things.

CHAPTER 4

Dostoevsky, Literary Lawyers, and the Ethics of Feelings

So, tell me, am I trying to discredit the legal profession and the new courts? God forbid: I would only like us all to become a little better than we are. This is a most modest wish, but alas, a most idealistic one. I am an incorrigible idealist; I am seeking sacred ideals; I love them, and my heart thirsts after them because I have been so created that I cannot live without sacred ideals—otherwise, is there any point in worshipping them?

Fyodor Dostoevsky, “Apropos of the Kroneberg Case,” *A Writer’s Diary*, February 1876.¹

The hysterical environment at the trial of Dmitri Karamazov makes it hard for the reader to see that in the cosmology of this complex novel, feelings are intertwined with the success or failure of court justice. Buried under the layers of overwrought gestures, over-processed rhetoric, and explosive Dostoevskian “erotica,” the important feeling of empathy remains almost invisible. However, the characters of the novel who truly empathize with Dmitri Karamazov deliver honest and unadorned testimonies that point towards the truth, while the characters who are enslaved by legal conventions fill the narrative space of the courtroom with confusing and irrelevant chatter. For Dostoevsky, this philosophical mindset—the privileging of truth-illuminating feelings over legal formulas, which from now on I will call the “ethics of feelings”—became the imaginative recipe for “better justice,” not susceptible to irrelevant distractions and petty ambitions. Contemporaries were very well aware of Dostoevsky’s penchant for depicting feelings, but many viewed his overreliance on them as yet another

manifestation of what they saw as his sadistic writerly personality and backward ideology. This outlook stalled the study of Dostoevsky's last novel *The Brothers Karamazov* because it was understood by many as a failed attempt at realism. In this chapter, I argue that, unlike these critics, the literary lawyers Anatoly Koni and Sergey Andreevsky went against the grain, appropriating Dostoevsky's ethics of feelings for the purposes of court justice in Russia. While Koni credited Dostoevsky with promoting a more tolerant attitude towards criminals, Sergey Andreevsky became the first critic to solidify the status of *The Brothers Karamazov* as a realist novel by arguing that *karamazovshchina* had become the expression of Russia's new reality, especially of the reality showcased in Russian courts.

PART I

The Brothers Karamazov: A Novel about Justice and the Importance of Feelings

[...] I must admit, these are not even thoughts, but some kind of feelings...

Fyodor Dostoevsky, "Apropos of the Kroneberg Case," *A Writer's Diary*, February 1876.²

A lot has been said about Dostoevsky's aversion to trial by jury and to lawyers, the two fascinating cultural novelties that were introduced into Russian courts by the judicial reform of 1864. Some scholars and readers of Dostoevsky felt that he rejected trial by jury because of the crude storytelling that went on in court. This storytelling reduced the complexity of life to legal clichés, thus removing crime "as if it were a hat" and "mechanizing the human being," as a consequence losing the ability to see the true essence of guilt or innocence."³ In a recent study of Dostoevsky's attitudes towards trial by jury, Gary Rosenshield points to the author's disapproval of the way Western legal practice was imposed in Russia, without consideration for its

compatibility with the local customs and understanding of justice.⁴ While the aforementioned take on Dostoevsky's animosity towards all things legal rings true, I want to highlight yet another important facet in Dostoevsky's legal attitudes, which seems fairly obvious, although until now it has received no attention. Dostoevsky arrived on the legal scene of the 1860s with an open mind, like everybody else excited about trial by jury. Indeed, according to the memoir of his wife Anna Grigorievna, Dostoevsky frequently expressed his approval of the "just and wise verdicts" of Russian jurors.⁵ Dostoevsky's attitudes changed only in the 1870s, after he became deeply entangled in the details of several trials, penning the articles for his *Writer's Diary* specifically criticizing the shortcomings of the new trial. While his attitudes might have been affected by the negative publicity that the new courts received from Mikhail Katkov and his newspaper *Moskovskie Vedomosti* [*Moscow News*], Dostoevsky jumped on the bandwagon of criticism directed against the new courts for a quite different reason. In 1876, he wrote in his *Writer's Diary* about two trials in particular: Kairova and Kornilova trials. In each instance, Dostoevsky criticized the lawyers for their rhetorically powerful, but deceptive court speeches. In his opinion, these court speeches misrepresented the events, inculcated the public with erroneous ethical views, and affected the ability of the public to feel compassion. By un-teaching the public to experience feelings in a natural way—to cry when a child cries and to be enraged at her tormentor—the new legal culture interfered with the society's ethics on the whole, transforming cruelty and injustice into a culturally accepted norm.

Not accidentally, throughout the chapters on the trial of Dmitri in *The Brothers Karamazov*, Dostoevsky emphasizes feeling. The ability to feel and experience compassion is associated with the truth. Dostoevsky shows lack of feeling as the major impediment on the road towards a just verdict. In his depiction of the trial of Dmitri Karamazov Dostoevsky

demonstrated that feelings—the innate ability of a human being to empathize with another human being—endow the individual with an intuitive understanding of justice. In contrast to the emotive understanding of justice, the more abstract and unemotional path of law was depicted by Dostoevsky as disempowering to reason and ethical sense, a trap luring the court into an inescapable maze of legal abstractions and civic common places.

The idea that one's *feelings* should be integral to legal justice began to emerge in Dostoevsky's mind as he observed contemporary trials. Scholars and biographers of Dostoevsky frequently point out that the author had very conflicted attitudes towards trial by jury. In the 1870s, he became deeply engaged with several criminal trials, but almost immediately developed a distaste for the ways in which trial by jury, conducted in accordance with the new legal ritual, belittled the significance of *feelings* for legal justice. For Dostoevsky, justice rested, first and foremost, on the ability of a given society to feel a genuine Christian sympathy for those “unfortunates” (*neschastnye*), as the criminals were nicknamed by many ordinary Russians, whom fate threw into the whirlwind of a trial. A just verdict was for Dostoevsky a sublime moment, which advanced all participating individuals—whether they were sitting on the trial bench, presiding at the desk of the judges, or observing the trial from the seating area for the public—towards a deeper understanding of individual guilt, enlightening all involved parties about their responsibility for all injustices taking place in this imperfect world. A just verdict could be neither an easy acquittal without repentance on the part of the criminal, nor an exceptionally cruel penalty imposed upon the criminal by society. One arrived at a just verdict by observing the individuals on the trial bench attentively and compassionately, by trusting one's ethical sense and intuition, and by being wary of framing the complex and elusive phenomena of life within inflexible legal clichés.

The idea of feelings' importance for legal justice emerged in Dostoevsky journalism especially prominently after the notorious Kroneberg trial. This trial, which took place in the Saint-Petersburg District Court in 1876, became famous because it involved a child victim and ended in the acquittal of the defendant. The man on trial, a certain Kroneberg, was arrested after his housemaid Agrafena Titova reported to the police that her master was abusive towards his six-year-old daughter, beating her frequently and with excessive cruelty. The witness, a lower-class woman, brought to the police the birch rod or rather a *Spitzruten* (a big stick, generally used to punish soldiers, not children), with which Kroneberg was whipping his daughter, and the girl's blood-stained clothes. The trial confirmed that Kroneberg was indeed brutal with his child. However, Vladimir Spasovich, one of Saint-Petersburg's most respected and eloquent lawyers, persuaded the jurors to acquit Kroneberg. His main argument was that while Kroneberg was a poor model for how to bring up children (Spasovich described him as a poor pedagogue [*plokhoi pedagog*]), his behavior was not by any means criminally punishable. Spasovich argued that Kroneberg did not differ from the majority of Russian parents, who punished their children in the same physically violent, barbaric fashion.

While Spasovich did not exaggerate in claiming that birching was a common punishment in Russia, Dostoevsky refuted his excuse furiously. In his opinion, rhetoric of this kind encouraged the jurors as well as the whole society to look indifferently at the tears of an innocent child, too young to understand the injustice or to speak on her own behalf. Dostoevsky was also enraged by the rhetoric of the defense that denigrated witnesses and the child herself. In order to whitewash Kroneberg, his lawyer argued that the girl had acquired some bad habits, and the father had to punish her in order to correct her vices. Upon reading about the trial in the newspaper *Golos* [*Voice*], Dostoevsky responded furiously. He argued that court speeches à la

Vladimir Spasovich were detrimental to the society's moral health because they interfered with the existing system of ethical values, based in the Scriptures, thus un-teaching the society to feel pain for the suffering of the other. Another point that displeased Dostoevsky was the undeniable fact of Spasovich's literary talent. For Dostoevsky (as well as for the remainder of Russia's educated society), the ability to influence others with words imposed a certain moral requirement upon the individual who possessed the literary gift. Dostoevsky viewed Spasovich's success in the courtroom as the misapplication of literature for the unholy purpose of making the jurors and Russian society insensitive to the pleas of the "insulted and injured."

In his account of the Kroneberg trial, Dostoevsky foregrounded the idea that one's feelings were the best way to understand whether something was fair or not. Unlike the intricate legal rhetoric that hindered the individual's ability to see the truth clearly, feelings worked in a very simple fashion. If something did not feel right, if it seemed cruel or unfair, then it *was* not right, and it *was* cruel and unfair. In his response to the Kroneberg trial, Dostoevsky positioned himself as a *feeling subject* vis-à-vis the backdrop of the human indifference promoted in Russia's new courts. He insisted that his reaction to the trial was not based on any logical reasoning, but on the intuitive feeling that something went horribly awry during the Kroneberg trial. Describing his reaction to the trial, he wrote: "I must admit, these are not even thoughts, but some kind of feelings." ⁶ Contrary to Dostoevsky's seeming humility—because these are merely feelings, Dostoevsky suggested to his readers, you are free to ignore them, if you can—his account of the Kroneberg trial projected an apocalyptically disturbing vision of the court. In the courtroom, inspired literary rhetoric, traditionally the mirror of Russian spirituality and civic feeling, was hijacked by unscrupulous professionals in order to mask abuse and injustice.

Transformed into an empty rhetorical device, the speeches of lawyers sought to falsify the truth and reality itself. Dostoevsky wrote:

[Kroneberg] was accused of “torture”—that charge alone was dreadful. Mr. Spasovich began directly by rejecting any notion of torture. “There was no torture; the child was in no way abused!” He denied it all: the “spitzrutens,” the bruises, the blows, the blood, the honesty of the prosecution’s witnesses—absolutely everything—that’s a remarkably bold tactic, an assault, if you will, on the conscience of the jury; but Mr. Spasovich is well aware of his own strength. He even repudiated the child and her tender years; he destroyed any pity for the child among his audience and tore it from their hearts by its very root. The cries of “Papa! Papa!” “that went on for a quarter of an hour” while the child was being beaten (and even if they only lasted five minutes)—all this disappeared, while in the foreground appeared “an active little girl with a rosy face, laughing, sly, perverse, with secret vices.” His audience all but forgot that she was seven years old. Mr. Spasovich cleverly obfuscated her age as the thing most dangerous for him.⁷

A bit further, Dostoevsky formulates his attitudes towards the speech of the lawyer even more bluntly, accusing the lawyer of glossing over the crime, in an attempt to prevent the rise of natural, human feelings of disgust in the public:

[A]s I already mentioned, he needs to destroy in you all sympathy for the child. And although he has in stock a lot of devices to do so, he is still afraid that the sufferings of the child will invoke in you (heaven forbid!) human feelings. And your human feelings are dangerous to him.⁸

From this speech on the role of the lawyer in the trial emerges the figure of the future fictional lawyer Fetyukovich, a man who knows the rhetorical mechanics of the trial well, but who is deprived of a certain moral “compass,” the lack of which manifests itself in the ease with which Fetyukovich toys with society’s important ethical non-negotiables.

In his article about the Kroneberg trial, Dostoevsky also stressed the importance of heart-felt testimony, i.e. the testimony of the witnesses whose souls were unmarred by legal phrasemongering. For Dostoevsky, such unscripted and emotional testimonies were highly superior to the scripted argumentation of lawyers. The uncomplicated testimony of Kroneberg’s housemaid Agrafena Titova, from Dostoevsky’s point of view, provided a far more illuminating insight into the trial than the complex, but insincere and agenda-driven storytelling of Vladimir Spasovich. Dostoevsky was swept away by the special ability of such genuine witnesses as Agrafena to convey with a few simple words the panorama of cruelty, pain, and emotional damage. Dostoevsky specifically mentioned the testimony given by Agrafena to the police. Allegedly, describing what had happened to the child in the aftermath of the abuse, she said: “Now the child sits alone and does not speak to anyone.”⁹ For Dostoevsky, these words were incredibly eloquent because they arose immediately from the witness’ heart, filled with pain for another human being: “In these words one does not simply hear a deep sympathy, but one also sees the attitude of a sensitive observer, who looks in pain at the sufferings of a tiny and abused creature of God.”¹⁰ For Dostoevsky, the simple and genuine speech radiates healthy compassion, which arises within the non-legally savvy, lower-class people naturally. Overall, the naturalistic approach to justice as a universal, animal-like impulse is typical for Dostoevsky. In his article, Dostoevsky even compared Agrafena to a hen, flapping her wings in defense of her baby-chicks, thus further naturalizing justice: making it, plain and simple, *into* a feeling. Remarkably,

Agrafena's heart, unlike the hearts of legally savvy witnesses, remains unaffected by the harmful sophistry propagated in contemporary courts, which Dostoevsky nicknamed in his article sarcastically as the "school of perverted wit and cold-heartedness" (*shkola izvorotlivosti uma i zasusheniia serdtsa*) where "every healthy feeling is distorted" (*shkola izvrashcheniia vsiakogo zdorovogo chuvstva*).¹¹ Considering that the topic of feelings was central to how Dostoevsky viewed contemporary trials, it comes as no surprise that the trial of Dmitri Karamazov (Dostoevsky's only fictional depiction of a trial by jury) zoomed in on emotion as the driving force behind the judicial error that took place during this famous fictional trial.

Before I turn to the analysis of Dostoevsky's treatment of feelings in Dmitri Karamazov's trial, I want to touch upon the ambiguity of the term "judicial error." Although this term belongs among the oldest phenomena of legal life (in England, the House of Lords was handling judicial errors as early as the fourteenth century), it lacks a straightforward definition.¹² Among the primary meanings of "judicial error" is the failure of the court to reach a correct verdict. This means that either an innocent person was convicted, or a guilty defendant acquitted. However, the same term might refer to a great range of procedural errors in court justice. Among the judicial errors of this type would be the unintentional or intentional errors of judges, if, for instance, the judge applied the right law incorrectly, chose the incorrect law, or made a mistake in the legal procedure. In addition to the aforementioned judicial errors, the following legal irregularities also fall under the category of judicial errors: any further inaccuracies in legal procedure, errors related to the improper behavior of lawyers, and even the way the court handles the murky balance between legal and moral justice.¹³ Because the legal term "judicial error" invokes a wide range of meanings, its literary hypostasis should be handled with even more care. The multiplicity of meanings is the core quality of literature; for this reason, it is highly

implausible that in his most ambitious philosophical novel Dostoevsky wished to apply this term in any singular way. Although as a court-goer and newspaper reader Dostoevsky was unquestionably aware of the “judicial error’s” multiple meanings, as a fiction writer he produced a text that conflated the legal meanings of this term with the meanings related to human nature *per se*. Numerous legal irregularities during the trial—the failure of the judge to prevent the court from hearing the damaging testimonies of raging witnesses and a hysterical defendant and the unrestrained rhetoric of lawyers—do not explain fully Dostoevsky’s message as to what went awry during the trial. I would like to argue that Dmitri’s wrongful sentence is neither *The Brothers Karamazov*’s primary nor even secondary focus. There is plentiful evidence in the novel to suggest that for Dostoevsky this term became encrusted with multiple intangible connotations: the moral, psychological, and societal shortcomings which became exposed during the trial and contributed to the perception that both the verdict and trial were nothing more than a superficial legal farce. The verdict is wrong not because Dmitri is innocent, but because the majority of human interactions in *The Brothers Karamazov* are corrupted. Absorbed by their petty ambitions, the witnesses are incapable of telling the truth. Furthermore, even familial relations acquire the aura of crime. For example, the Karamazovs are united not through their familial love, but through mutual hatred and maliciousness. In this world, crime spreads like plague, and the reader begins to view the social network within which the Karamazovs are entangled as *a priori* criminal. Ivan did not kill; however, he was the first to suggest to Smerdyakov that parricide is permissible. Dmitri did not kill, but, in his hatred, he came dangerously close to murder. Smerdyakov killed, but his act was provoked by Ivan’s specious reasoning and provocative suggestions and Dmitri’s unrestrained hatred. Thus, in the novel the verdict is a judicial error because it placed the burden of responsibility and punishment on one

person, thus obscuring “hidden crimes”: i.e. the collectively perpetuated offense against humanity, which expresses itself through human indifference or a culture of hatred cultivated within the Karamazov clan.

The trial of Dmitri Karamazov is saturated with emotion, but, as Dostoevsky illustrates, the feelings of the participants in this legal spectacle have very little relevance to justice. The public at Dmitri’s trial are excited about the upcoming legal spectacle, but exhibit no human empathy for the defendant and his family. In fact, within the novelistic universe of *The Brothers Karamazov*, possession of a certain legal expertise seems to correlate with a high degree of ethical myopia. The public is depicted as too excited about the upcoming trial, and too agitated by the presence of a star lawyer in their insignificant provincial town. The public arrive at the trial “burning with impatience” after, as the narrator mentions, two months of “discussion, supposition, exclamation, anticipation.” The setup of the trial—the anticipation of an exhilarating court spectacle along with the public’s solid knowledge of the “legal script”— makes the attendees of the trial perceive the court as if it were a theatre. The court becomes even more theatre-like, as the narrator describes the exceptional over-crowdedness of the courtroom. As we learn, “All the tickets were snapped up,” and some additional seating was set up behind the table of the judges. Nevertheless, many spectators stood throughout the whole trial, “in a closely packed lump, shoulder to shoulder.”¹⁴

Another theatre-like aspect of the trial comes into view as we realize that neither the public nor experts and witnesses have any genuine empathy for Dmitri and his family and lovers, whose lives were affected by Fyodor Pavlovich’s death and Dmitri’s arrest. The public observes the trial as if it were a play, where a tragedy exists only for the duration of the spectacle, and is undone as soon as the curtain falls. Dostoevsky reduces the emotions of the public to the

parodical antagonism between the town's ladies, masochistically enamored by Dmitri's brutishness, and their husbands, jealous of Dmitri's irresistible male appeal. As we learn from the narrator, more than half of the public in the courtroom are ladies. Despite the overwhelmingly great number of ladies in the courtroom, their presence does not transform the court into a more spiritual and humane place. Because of Dmitri's reputation as a "conqueror of women's hearts," the ladies are simply curious about the women in his life, his fiancée Katerina Ivanovna (a proud and aristocratic girl) and lover Grushenka (a local "hetaera"). More than anything, they want to see for themselves why both Fyodor Pavlovich and his son Dmitri were driven to insanity by a seemingly "plain tradeswoman" Grushenka. The narrator describes the ladies of the audience comically, specifically stressing the emotion associated with their courtroom presence: their "hysterical, greedy, almost morbid curiosity."¹⁵ The husbands of the ladies do not provide a more positive moral alternative to their wives. The "morbid curiosity" of the ladies is juxtaposed with the jealousy and anger of the town's husbands, most of whom hold a grudge against Dmitri (either because of jealousy or due to a past conflict). Describing the faces of the men attending the trial, the narrator says: "One saw stern, scowling faces, some quite angry, and not a few of them."¹⁶ By providing a sketch of the public's emotions, Dostoevsky projected the image of the courtroom as a place devoid of justice. *A priori* deprived of the true feeling of Christian love and compassion, Dmitri's trial opened up the floor of the courtroom to base passions: jealousy, anger, plain nosiness, desire for revenge, competition, etc.

Aside from the aforementioned base emotions, the rest of the public manifest no feelings for the defendant whatsoever. Their emotion is directed exclusively at the exciting legal spectacle. The public is excited to be in the courtroom, they want to see a show, and they want to

be a part of it. The narrator describes the mental and emotional state of these indifferent spectators as follows:

[S]ome of the visitors were even almost merry and quite indifferent to Mitya's fate in itself, although, again, not the case under consideration, everyone was concerned with its outcome, and the majority of the men decidedly wanted to see the criminal punished, except perhaps for the lawyers, who cared not about the moral aspect of the case, but only, so to speak, about its contemporary legal aspect.¹⁷

The obsessive preoccupation of these spectators with all things legal (and perhaps their unconscious infatuation with the scabrous details that spread before the trial) makes them forget about the human tragedies lingering in the background. The death of a father, chaotic childhoods of the Karamazov brothers, Dmitri's imprisonment, and disgrace brought upon Dmitri's women: these legitimate human concerns are fully absent from the minds of the public, preoccupied with the pretentious grandeur of the "case."

The lawyers form a very special group among the attendees at Dmitri's trial. As a by-product of their professional training, they are depicted as lacking any empathy. Civic clichés and the need to play a certain role in the courtroom take over their emotional selves, thus transforming the trial into a mechanism driven by political and social agendas. The prosecutor Ippolit Kirillovich, the lawyer Fetyukovich, and even the judge are preoccupied with the desire to appear modern and liberal, consequently hijacking the courtroom as the stage for their civic aspirations. From the narrator we learn, for instance, that the judge's "chief goal in life was to be a progressive man."¹⁸ Describing the feelings of the judge towards the Karamazov case,

Dostoevsky mentions that the judge took a “passionate view” of the Karamazov case, but “only in a general sense.” Dostoevsky writes:

[The judge] was concerned with the phenomenon, its classification, seeing it as a product of our social principles, as characteristic of the Russian element, and so on and so forth. [...] But his attitude towards the personal character of the case, its tragedy, as well as towards the persons of the participants, beginning with the defendant, was rather indifferent and abstract, as, by the way, it perhaps ought to have been.¹⁹

Once again, this characterization betrays Dostoevsky belief that the court of law as well as professional legal training were instrumental in extracting all human qualities from a human being, thus depriving justice of its “air”: human empathy. Indeed, nobody can experience a passion in a “general sense,” which for Dostoevsky was simply a different way of saying that even the judge was completely indifferent to Dmitri’s fate.

The novel juxtaposes the indifference of legal professionals with the expressiveness of the material evidence. Dostoevsky puts on his fictional display stand the items seized at the crime scene that invoke the bloody tragedy and appeal to the feelings of the public (and Dostoevsky’s own reader) with more urgency than either the verbal exchange between the lawyers or testimonies of witnesses. The narrator mentions that the evidence stand displayed Fyodor Pavlovich’s “blood-stained white silk dressing gown,” the silent witness of the old man’s sudden and violent death. The brass pestle that Dmitri cast away in Fyodor Pavlovich’s garden after accidentally striking his father’s old servant Grigory with it testifies about the emotional turmoil in Dmitri’s love-sick soul and speaks volumes of the unresolved issues in the Karamazov family. Mitya’s pistol that he loaded in order to kill himself and that was snatched from him after

the arrest also bears witness to the Karamazov tragedy, but it goes almost unnoticed during the trial as the public becomes more and more engrossed with the legal showmanship of the prosecutor Ippolit Kirillovich and lawyer Fetyukovich.

In contrast, the novel associates all genuine feelings and the ability to tell the truth with the characters who are unaware of legal conventions. The testimonies by these characters are fairly simple and are deprived of rhetorical adornments. The only two voices during Dmitri's trial that possess this charismatic simplicity belong to Fyodor Pavlovich's old servant Grigory and Dmitri's pious brother Alyosha. The choice of these characters as the truth-tellers is not accidental. Grigory's voice is privileged over others because Dostoevsky cherished the Russian peasant, to whom he ascribed the best national features, including the innate gift for Christian compassion. Alyosha is capable of truth-telling because of his Christian values and the habit of living a simple and spiritual life in a monastery. Precisely because Grigory cares deeply for his young master, his testimony does not stray off into irrelevant realms and provides only the most vital insights into Dmitri's life and character. The truth, told compassionately, endows Grigory with the special authority that earns him respect from the motley crowd in the courtroom. Moreover, the inner conviction that he is doing the right thing protects Grigory from feeling intimidated by the impressive legal decorum, to which other, more educated witnesses fall easy prey:

It should be noted that Grigory Vasilievich stood up in the courtroom not in the least embarrassed either by the grandeur of the court or by the presence of the huge audience listening to him, and appeared calm and all but majestic. He gave his testimony with as much assurance as if he had been talking alone with his Marfa Ignatievna, only perhaps more respectfully. It was impossible to throw him

off. The prosecutor first questioned him at length about all the details of the Karamazov family. The family picture was vividly exposed to view. One could hear, one could see that the witness was a simple-hearted and impartial man. With all his deep respect for the memory of his former master, he still declared, for example, that he had been unjust to Mitya and ‘didn’t bring the children up right. Lice would have eaten the little boy but for me,’ he added, telling of Mitya’s childhood. ‘And it wasn’t good for the father to do his son wrong over his mother’s estate.’²⁰

Grigory is an important voice during the trial. His tone is neither pretentious nor hysterical. Describing his speech, the narrator specifically stresses the essence of Grigory’s eloquence: “The old servant spoke calmly, without unnecessary words, in his own peculiar language, and it came out as terribly eloquent.”²¹ Because of his calm and unembellished manner of expressing himself, Grigory helps to focus the ethical sense of the public by directing their attention towards the important things. For instance, his speech emphasized the need to consider that Dmitri was not treated fairly by his father, and set an example of how to put aside any personal offenses: as Grigory did, when he publicly forgave Dmitri for attacking and hurting him.

Like Grigory, Dmitri’s pious brother Alyosha possesses the gift of the honest, empathetic word. The narrator describes Alyosha’s speech as follows: “Alyosha testified modestly and with reserve, but an ardent sympathy for his unfortunate brother kept obviously breaking through his testimony.”²² Once again, sincerity of feeling is paired in Dostoevsky’s novel with a simple mode of expression. Unlike the overly rhetorical lawyers and witnesses, Alyosha describes the events in a concise and reserved fashion, without drawing any attention to his own humble persona and without trying to impress anyone. Similarly to Grigory, Alyosha acknowledges his

brother's faults in all honesty, but also accounts for his brother's merits. The narrator says: "[H]e outlined his brother's character as that of a man who, if he was indeed violent and carried away by his passions, was also noble, proud, and magnanimous, ready even for any sacrifice that was wanted of him."²³ During his testimony, Alyosha does not try to cover up the facts that might compromise his brother.

The ability to attune to his brother's emotional world (not accessible to others due to their emotional distance from the defendant) provides Alyosha with the intuitive knowledge that his brother indeed did not commit the murder. Justifying his irrational belief in Dmitri's innocence, Alyosha refers to his feelings. Alyosha says to the court: "I was always convinced that at the fatal moment some higher feeling would always save him, as it did indeed save him, because it was *not he* who killed my father."²⁴ Here, the "higher feeling" (in Russian: "*vysshee chuvstvo*") refers to Alyosha's inner conviction that a Christian feeling prevented his brother from committing a murder. However, for Alyosha this Christian feeling is linked to an ability to perceive the world emotionally. Dmitri Karamazov is sinful, and he spreads a lot of drama and pain around, but he pays for the emotional pain inflicted on others with the feeling of guilt that consumes his own heart. Overall, the trial brings to the fictional forefront the turmoil within the heart of this important character, as right at the beginning of the trial Dmitri confesses to all of his sins, but denies murdering and robbing his father:

I plead guilty to drunkenness and depravity, [...], to idleness and debauchery. [...]
But of the death of the old man, my enemy and my father—I am not guilty! Of robbing him—no, no, not guilty, and I could not be guilty: Dmitri Karamazov is a scoundrel, but not a thief!²⁵

While some important evidence points against Dmitri, Dostoevsky depicts the court as unable to read the subtle psychological clues that point to Dmitri's innocence. Unlike the insensitive court, Alyosha has a strong emotional grasp of his brother's personality, which allows him to see quite clearly that his brother is not a murderer. The court, which we observe from the narrator's point of view, looks at the statements by the defendant's brother with skepticism. Nevertheless, for Dostoevsky Alyosha's brotherly feelings are like an invisible umbilical cord, connecting him to the investigation in a very personal way and making him into one of the most insightful and alert witnesses. During his court testimony, Alyosha suddenly recollects a conversation with his brother, which provides a confirmation for Dmitri's story about the origins of the money that everybody in town saw Dmitri spend after Fyodor Pavlovich's death. Contrary to the argument of the prosecution, the defendant argued that the money in question was the remainder of three thousand roubles that he received from his fiancée Katerina Ivanovna. Recollecting a strange conversation with his brother a few days prior to the murder, Alyosha suddenly realizes that when his brother pounded on his chest during the conversation, he was pointing to the amulet that contained the remainder of Katerina Ivanovna's money. Alyosha's demeanor during the testimony suggests that he tells the truth (he jumps at his sudden recollection), but the court remains immune to his simple honesty, discounting it as the natural impulse to cover up for his brother.²⁶

Dostoevsky discriminates between the types of feelings that erupt in the courtroom during the trial of Dmitri Karamazov. The deeply Christian feeling of empathy provides the intuitive access to truth: such are the feelings of Grigory and Alyosha. Saturated in the spirit of Christian forgiveness, Grigory looks easily beyond the fact that Dmitri attacked and almost killed him, and the pious Alyosha forgives his brother's debauched ways in a more conscious, but

deeply Christian way. However, the feelings that come not from a spiritual place, but instead are nurtured by sensual passions, do not have in Dostoevsky the same power to awaken truth-seeking intuition. These feelings of passion, jealousy, injured pride, fear, and excessive nosiness provoke hysteria, make all involved individuals act selfishly and drive the court further away from the correct verdict. Similarly, the public exposé of private affairs triggers the worst qualities in the public. The overabundance of scandalous details and love triangles (Fyodor Pavlovich—Dmitri—Grushenka; Dmitri—Katerina Ivanovna—Grushenka; Katerina Ivanovna—Dmitri—Ivan) transform the public into a crowd of hedonistic spectacle-seekers. When Katerina Ivanovna testifies, only Dmitri turns “white as a sheet”: either out of his sense of guilt towards the woman whom he betrayed, or in fear of the potential damage to his fiancée’s honor that a public testimony of this kind would entail. The emotion that animates the public, however, is limited to pure curiosity, as the narrator’s account of the courtroom suggests. The narrator says:

The moment she appeared, something extraordinary swept through the courtroom. The ladies snatched their lorgnettes and opera glasses, the men began to stir, some stood in order to get a better view.²⁷

This comment invokes a parody, as Dostoevsky sets up the courtroom as if it were a theatre. When observed through lorgnettes and opera glasses, even Katerina Ivanovna’s most intimate secret, revealed in front of everyone, begins to look like an act within a play, failing to incite any true sympathy for the unhappy circumstances that forced this young woman to put her private life on public display. From Katerina Ivanovna we learn that a few years back her father embezzled money, and the family had to urgently come up with five thousand roubles in order to save him from jail. Not knowing any other solution to her problem, Katerina Ivanovna came to Dmitri, begging him to help in exchange for any favor. To her surprise, Dmitri gave her the

money, and let her go without demanding “favors” in return for his generosity. Describing this young woman, the narrator mentions the strong impression that Katerina Ivanovna’s testimony left upon him: “I had chills and trembled as I listened; the courtroom was dead silent, grasping at every word.”²⁸ However, only a few sentences later the narrator points out the unpleasant consequences that this honest testimony brought upon the witness herself. The touching story of Katerina Ivanovna almost immediately after the trial turns into dirty gossip, with the “ladies” insinuating that the story was perhaps not entirely accurate, namely, at the point where Dmitri supposedly let Katerina Ivanovna go with a “respectful bow.”²⁹

As the trial progresses, Dostoevsky shows that not all genuine feelings help to illuminate the truth. The feelings of Katerina Ivanovna, Grushenka, and Dmitri’s brother Ivan border on hysteria and have nothing to do with the Christian feelings of love and compassion. These characters are incapable of grasping the truth intuitively, as all of their testimonies are driven by fickle passions. Grushenka is connected to her lover in the most carnal way, which makes her testimonies largely unreliable. She is the first to fall under the spell of the collective hysteria that ensues at the moment of Dmitri’s arrest, immediately proclaiming Dmitri’s and her own guilt: “I am guilty of it all, we’ll go to penal servitude together!”³⁰ Later she explains her frenzied confession as the impulsive response to the havoc that ensued during Dmitri’s arrest: “Everyone was shouting that he had killed his father, so I felt that I was guilty, and that he had killed him because of me.”³¹ While Grushenka voices the idea that was passionately supported by Dostoevsky himself —“Everyone is guilty”—one can barely argue against the tragic impact of her hysterical confession on the outcome of Dmitri’s trial. The same happens to Katerina Ivanovna. After Ivan, in a state of mental breakdown, claims publicly the responsibility for his father’s murder, Katerina Ivanovna panics and testifies against Dmitri, showing to the court a

letter in which the latter mentioned his desire to murder his father. Katerina Ivanovna does so in order to save Ivan, for whom she developed feelings after Dmitri's arrest. While the judge and prosecutor are aware that Katerina Ivanovna is not a reliable witness, they nevertheless take advantage of her frenzied state, thus solidifying the evidence against Dmitri:

The judge and the prosecutor tried, of course, to calm her down. I am sure that they were all, perhaps, ashamed to be taking advantage in such way of her frenzy, and to be listening to such confessions. I remember hearing them say to her: "We understand how difficult it is for you, believe us, we are not unfeeling," and so on—and yet they did extract evidence from the raving, hysterical woman.³²

Here, Dostoevsky depicts the court as lacking both, emotional intelligence to understand the witness's change of heart and the professional integrity that would make it inadmissible to interrogate a mentally and emotionally unstable witness.

However harmful passionate testimony by a raging witness might be, Dostoevsky viewed pre-meditated speech—by lawyers, professional experts, or others opportunists—as the ultimate source of untruth in the courtroom. Already during the aforementioned Kroneberg trial, Dostoevsky became deeply enraged by the staple rhetorical techniques used by lawyers in order to discredit a witness or to sway the public to their side. For instance, he lashed at the lawyers for their desire to assert themselves as elegant and witty speakers at the expense of truth and human decency:

Do you know, I think it is very difficult to remain and to preserve yourself as an honest person when you have to be so concerned about saving your sharpest witticism till the end so as to leave a burst of laughter behind you. Such concern itself is so trivial that it must finally drive out everything serious from a person.

And besides, if one has not saved a witticism for one's exit, then it has to be invented, and for the sake of a witty word, "one spares neither mother nor father."³³

Worried by the misuse of the court as a stage for one's selfish ambitions, Dostoevsky disliked the idea that the medium of literature was exploited by lawyers in order to achieve selfish goals. In the courtroom, one talked in order to create an impression of wit, to make a name within the contemporary legal milieu, or to receive immediate and selfish gratification by making one's opponent look silly or insignificant. All of these personal agendas, as Dostoevsky showed in his Kroneberg article and *The Brothers Karamazov*, had nothing to do with the search for truth. In order to arrive at the truth during the trial, one had to travel the winding road of contradictory evidence while staying open to various interpretive opportunities. A scripted professional speech by a lawyer or expert witness was an impediment on the road to justice because it ignored reality in order to deliver a specific, pre-conceived vision of events. The lawyer and his expert witnesses argued that the defendant was innocent, and the prosecutor and his witnesses argued the opposite.

Before I turn to the speeches by Dmitri's lawyer Fetyukovich and prosecutor Ippolit Kirillovich, the main targets of Dostoevsky's sharp-tongued criticism, I will address briefly his treatment of the expert testimony. In his depiction of expert witnesses (the medical celebrity from Moscow and two local doctors, the old Herzenstube and his younger colleague doctor Varvinsky), Dostoevsky focuses on how the medical experts make the familiar details of Dmitri's life almost unrecognizable by translating them into the nonsensical language of psychiatry. This "translation" is significant because it affixes to Dmitri the convenient label of madness, while Dostoevsky shows the opposite: Dmitri is stuck in his debauched ways, but he is

neither mad nor incorrigibly evil. Furthermore, the label of madness that is invoked during the trial, rather formally, by the defense, is even harmful. It allows the court to acquit the defendant without giving him the option to repent. While Dostoevsky describes the testimonies of the medical experts parodically (all three doctors make rather comical statements about Dmitri's mental health based on the fact that he entered the courtroom gazing straight ahead), the writer is especially unforgiving of the testimony by the famous Moscow doctor. In his depiction of the speech by the medical celebrity from Moscow, Dostoevsky draws attention to the thinly-veiled nonsense, which is delivered by the doctor as the last word in psychiatry:

He spoke at length and cleverly about “mania” and the “fit of passion,” and concluded from all the assembled data that the defendant, before his arrest, as much as several days before, was undoubtedly suffering from a morbid fit of passion, and if he did not commit the crime, even consciously, it was almost involuntary, being totally unable to fight the morbid moral fixation that possessed him. But, besides this fit of passion, the doctor also detected a mania that, in his words, promised to lead to complete insanity.³⁴

In his speech, the doctor transforms the familiar and emotion-laden details of Dmitri's life (his erratic day-to-day existence, drunkenness, and fatal infatuation with Grushenka) into a list of disconnected psychiatric terms. Dostoevsky exposes the human impotency of the speech by the Moscow doctor by comparing it to the emotionally gripping testimony by the local doctor Herzenstube. Herzenstube testifies twice, first as a medical expert and then as a regular witness. In his role as an ordinary witness, Herzenstube has a much deeper insight into Dmitri's life. His words become particularly powerful when the doctor speaks with empathy about Dmitri's deprived childhood. Gradually, Herzenstube's little story, which Dostoevsky nicknames almost

dismissively as an “anecdote,” acquires the narrative power of the account given to the court by Fyodor Pavlovich’s servant Grigory. Similarly to Grigory, old Herzenstube—whose name incidentally contains the German word for “heart”—speaks with great pain and endearment about Dmitri, whom he met for the first time as “a tiny boy, left alone in his father’s backyard.”³⁵ Seized by his memories and overwhelming feeling of empathy, the doctor forgets about the ominous charge lingering in the background, and shares with the court a story about a child, neither loved nor cared for by anyone, who receives the first gift in his life, a mere pound of nuts, not from his father, but from a complete stranger. The story ends in a cathartic fashion, as Herzenstube describes Dmitri’s return to town. Upon his return to town, the grownup Dmitri pays his first visit to Herzenstube, in order to thank the doctor for the pound of nuts given to him more than a decade earlier.³⁶ Although the old doctor speaks in broken Russian, the narrator mentions that his speech produced a “certain favorable impression on the public.”³⁷ Once again, the eloquence of the feeling is depicted by Dostoevsky as superior to the eloquence that stems from ability to manipulate the public with fancy rhetoric.

Among the testimonies delivered at the trial, the speeches of the prosecutor Ippolit Kirillovich and defense lawyer Fetyukovich strike the reader as pre-scripted and therefore ill-suited to address properly the quick pace of the trial, with its unexpected revelations and changes in evidence. They also contain the most untruths, precisely because the words of the lawyers do not stem from the immediate emotional response to the trial. However, the utter indifference inherent within court speech as a genre is masked by both lawyers, as they charm the public with the superficial emotionality of their literary speeches. For Dostoevsky, this reliance on the poetic word for a selfish purpose—a public victory, fame throughout Russia, vain dreams—constituted a major offence against literature and Russian society as a whole. Indeed, during an era that was

enamored by literature, literary aspiration meant something different than what it means for us today. To be a man of letters implied adherence to ideals and ethical principles, to which one was dedicated wholeheartedly. In this context, the poetic word had to be employed ethically, as a means of transmitting one's ideals to the society, thus making it into a better and more humane place. For Dostoevsky, the famed author of *Poor Folk* and *The Insulted and Injured*, the words of the lawyer lacked the necessary moral integrity, while its surface literariness tricked the public into believing that whatever was preached in the courtroom was of some universal moral significance. Thus, it was the emotionally arousing power of court rhetoric that disturbed Dostoevsky the most. For the novelist, the poetic language of legal professionals was responsible for obscuring the truth, by substituting the real circumstances of the case with verisimilar rhetorical constructs.

Dostoevsky's depiction of the court speeches by the prosecutor Ippolit Kirillovich and Dmitri's lawyer Fetyukovich comprises the most frustrating pages in the novel. Their speeches delight the public at Dmitri's trial, but simultaneously exasperate Dostoevsky's readers, who cannot help but view the courtroom rhetoric as a maddening detour from the truths about Dmitri and the Karamazovs that by this time they have learned from the novel. Although the court speeches are wittily constructed, not a single word rings true, as these speeches create an altogether different reality, filled with the unimaginable horrors, and abiding by some outlandish moral principles. In this manner, the Karamazov family acquires imaginary symbolic significance, serving as a reminder of Russia's rapid advancement towards the chaos of "moral degradation."³⁸ While one is entertained to read about the trial as it overflows with Dostoevsky's signature "scandal scenes," the main feelings that arise after the reading are disappointment and irritation. The readers cannot help but wonder what all this drama has to do with Dmitri

Karamazov, whom they have come to know as a rather ordinary Russian sinner: a man of carnal passions and a drunkard, but neither a murderer nor a villain. Remarkably, unlike his contemporary and the editor of *Moskovskie Vedomosti* Mikhail Katkov, who criticized the lawyers for hijacking the courtroom as a political stage, Dostoevsky shifted the focus from the social and political to the “eternal” aspects of justice. He posed a question that seemed more basic, but yet more urgent: Can one expect to arrive at a just verdict by following a legal script? Expectedly, the answer to this question was a definite “no.” Because of their predetermined roles, neither the prosecutor nor the lawyer were capable of offering any important insights into the heart of the criminal matter.

While Dostoevsky looked suspiciously at both the prosecutor Ippolit Kirillovich and lawyer Fetyukovich, the lawyer emerges in his novel as a presence significantly more harmful to society’s ethics. Dostoevsky depicts Fetyukovich as a soulless professional, animated not by ordinary human feelings but by rhetorical and lawyerly tricks. Dostoevsky crafted this character carefully and artfully, endowing Fetyukovich with powerful charisma, the essence of which remains an “enigma to everyone.”³⁹ In part, his enigmatic influence is due to his strange professional immunity from the tragedies of others. From the narrator we learn that the townspeople thought that Fetyukovich took over Dmitri’s case “for sport” and “for the sake of a certain juridical brilliance, in order to omit none of the conventional strategies of defense.”⁴⁰ His at times outrageous defense techniques confirm this guess. Without any moral reservation, Fetyukovich subverts all taboos, arguing, for instance, that even a murder is not a crime if a father was as bad as Fyodor Pavlovich. He says to the public, frozen in their anticipation of yet another impressive rhetorical move:

But even then the killer did not kill—I assert it, I cry it aloud—no, he merely swung the pestle in disgusted indignation, not wishing to kill, not knowing that he would kill. Had it not been for that fatal pestle in his hand, he would perhaps only have beaten his father, and not killed him. He did not know as he ran away whether the old man he had struck down was killed or not. Such a murder is not a murder. Such a murder is not a parricide, either.⁴¹

The parodic depiction of this speech belies Dostoevsky's intense alarm about the effects of such rhetoric on society. Describing the upsurge of emotion after Fetyukovich's speech, Dostoevsky rings an alarm at the fact that the public is strangely undisturbed by the moral topsyturvydom of the lawyer's ethical views:

[T]he rapture that burst from his listeners at this time was unrestrainable, like a storm. To restrain it now was unthinkable: women wept, many of the men also wept, even two of the dignitaries shed tears. The presiding judge submitted and even delayed ringing his bell: 'To trespass upon such enthusiasm would amount to trespassing upon something sacred,' as our ladies cried afterwards.⁴²

By juxtaposing the morally questionable argument of Fetyukovich with the powerful response to his rhetoric from the public, Dostoevsky cautions his readers about the potential toxicity of such views. Despite the obvious gap in Fetyukovich's reasoning—the murder remains a murder, no matter what—the public accepts his falsity as a part of the trial, thus passively collaborating with Fetyukovich in his quest to make morality subservient to legal rhetoric.

To sum up, in his novel Dostoevsky offered a critique of the new trial by jury that was directed against what he perceived as a significant lack within the new system: the emotional insensitivity encouraged by new court towards people's woes along with the courts' blind

reliance on legal formulas. In turn, the privileged position of courts, great authority of lawyers, and visibility of contemporary trials imbued Dostoevsky with the fear that in certain instances the court was responsible for teaching Russian society the wrong values, for instance, to trust more in legal procedures and to disregard feelings and intuitive sense of right and wrong. Not coincidentally, already during the Kroneberg trial, Dostoevsky lamented the damage that the new courts seemed to inflict upon the ability of his contemporaries to feel pity (*zhalost'*) for others. Trying to shock his contemporaries into a renewed awareness that their ability to “feel” right from wrong might be at stake, Dostoevsky wrote already in 1876, during the Kroneberg trial: “This pity [*zhalost'*] is our treasure, and it is a terrible thing to tear it out of our society. When a society ceases to pity its weak and oppressed, it will itself become afflicted; it will grow callous and wither; it will become depraved and sterile.”⁴³ In his understanding of the new legal system, the lawyers played a grave role in un-teaching the society to feel pity. Dostoevsky denounced the logic of the closing statement by Vladimir Spasovich, who argued that it was unreasonable to punish his client Kroneberg for beating his daughter because most Russians beat their children. Similarly, in his novel Dostoevsky exposed the inherent falsehood of Fetyukovich’s assertion that the murder of a bad father should not even be considered a murder. Dostoevsky’s last novel, which provided a fictional site for a judicial disaster, offered the worst case scenario for what can happen when, misguided by lawyers and their flowery deceptions, the participants of the trial stop trusting their feelings.

PART II: Literary Lawyers Turn the Tide in Dostoevsky’s Criticism

A word about a great artist, who knew how to access the secret and frequently silent strings of the heart in a forceful and profound way, cannot be inappropriate

among professionals, who dedicated themselves to the study of the norms that reflect people's inner need for justice and their search for the ways to enforce it.

Anatoly Koni, from a speech about Dostoevsky at the Juridical Society in Saint-Petersburg (1881)⁴⁴

Much scholarly attention has been devoted to Dostoevsky's dislike of contemporary courts, while the reception of his writings by those who formed the intellectual elite of Russia's new legal milieu remains unexplored even today. How did the legal professionals respond to Dostoevsky's anti-legalism, and what did they think of *The Brothers Karamazov*, a novel that seemed to ultimately condemn their profession? Paradoxically, despite Dostoevsky's uncompromising rejection of their profession, the literary lawyers embraced Dostoevsky's words, recasting him as an ally in their defense of the courts as sites of humane justice and re-reading his works in a way that turned the tide not only in the reception of Dostoevsky as a cultural figure, but also altered the mode in which literary critics began to approach Dostoevsky's last novel *The Brothers Karamazov*. In this section, I revisit the literary lawyers Anatoly Koni and Sergey Andreevsky in an attempt to restore the impact of these important critics on contemporary thought about Dostoevsky and his cultural significance. These two legal professionals, whose friendship was strengthened by their long-term literary collaboration, were a visible presence within the literary milieu of Saint-Petersburg. Both men were passionate readers and lovers of literature, and, despite their liberal leanings, were prone to idealize their favorite author. However, they succeeded in pushing their thinking about Dostoevsky beyond the ordinary clichés of Dostoevsky as an obscurantist, staunch enemy of all things legal, or defender of all "insulted and injured." In his speeches about Dostoevsky, Anatoly Koni promoted the image of the novelist as a holistic visionary, who, through his gift of empathic intuition, was capable to discern the continuity between legal and moral justice. Sergey Andreevsky succeeded

in shifting the criticism of *The Brothers Karamazov* from the ideology-based critique of Dostoevsky's persona to the actual literary virtues of this important novel in providing the psychological and emotive insights into characters and their environment. In the remainder of this chapter, I will discuss the criticisms directed at Dostoevsky's art before the literary lawyers Koni and Andreevsky joined the conversation about this important, but controversial author. I will also discuss how Koni and Andreevsky reinterpreted Dostoevsky's alleged rejection of legal culture as the novelist's admirable effort to look at the problem of law through the lens of universal oppositions: good vs. evil, truth vs. lies, and indifference vs. human compassion.

By the time the literary lawyers Koni and Andreevsky joined the debate about the place and significance of Dostoevsky for Russian culture, the cult of Dostoevsky had already emerged. As scholars point out, beginning with the 1870s Russian literature, culture, and intellectual and spiritual life were barely conceivable without Dostoevsky.⁴⁵ However, the death and highly publicized funeral of the great author in 1881 finalized the entrance of Dostoevsky into the realm of Russian cultural myths. Dostoevsky's funeral provoked an unprecedented outpouring of grief. A huge crowd, somewhere between thirty and forty thousand people, came to the funeral of their beloved writer, which took place at the Alexander Nevsky Lavra in Saint-Petersburg. The funeral drew a lot of attention from Russian society, which helped transform the fact of his death into an important historical event, as the figure of Dostoevsky began to signify different things for different groups of Russian society. The poem "At Dostoevsky's Coffin" [*U groba Dostoevskogo*] was penned by the literary lawyer Sergei Andreevsky in connection with this significant event, and expresses well the attitudes of *many* Russians towards their beloved deceased writer. The text of the poem went like this:

An open coffin is raised upright

And already contains the sacred remains.
Those on their knees
See his brow covered with flowers...
The children of his mind,
Who came from who knows where,
Gathered around him:
The *teacher* is asleep... they are silent.
His little daughter stands at the coffin's head,
And with a face of innocent faith,
She, in the memory of her father, gives the newcomers
Funeral wreath flowers...
Profound peace on her innocent lips!

The *sick, fallen, and faithless*,
Who will they turn to for words of love?
Who, like a *humble priest*, will help
Them to lift their eyes beyond the earth?...

A foggy day, sick and gloomy
Like the mournful disposition of his mind,
Is overtaken by his body...
And life is sad, like a prison
Where he used to bring his consolation...
Beloved friend of wretched souls,
Accept our silent worship,
For a life of suffering and service!⁴⁶

Andreevsky wrote his poem under the sentimental influence of a visit to Dostoevsky's apartment, where the body of the deceased novelist was exhibited for all those wishing to pay their last respects to the author. Despite its rather melodramatic pathos, this brief poem recounts accurately the qualities that in one facet of Russia's cultural imaginary became associated with the image of Dostoevsky: a spiritual "teacher," "humble priest" and "friend" of "wretched souls" (the souls who were "fallen, sick, and "faithless"). The flip side of this collective image of Dostoevsky was the perception that became common within Russia's radical and liberal intellectual milieus. The writers who congregated within these milieus—like the radical critic Nikolai Mikhailovsky and the liberal literary scholar Alexander Pypin, whose work I will

address in this chapter—concurred that Dostoevsky indeed possessed a great novelistic talent, but, due to his unsound ideological beliefs, his fiction inflicted more harm than good upon the minds of Russian readers.

The literary lawyers Anatoly Koni and Sergey Andreevsky were familiar with both cultural stereotypes of Dostoevsky. They were also aware that, despite Dostoevsky's great visibility as a public figure, his texts remained unstudied for the literary merits that were not immediately and obviously connected to Russia's "accursed questions." In fact, even in 1888 Sergey Andreevsky still felt that Dostoevsky's fiction has not yet been critically digested. Expressing his disdain at the state of Dostoevsky studies in Russia, Andreevsky wrote in his essay about *The Brothers Karamazov*:

Although Dostoevsky has been integrated within the literary pantheon upon some silent and universal approval, his work still remains almost without any critical commentary, and, however embarrassing it might sound, it still remains unread even by people closest to literature.⁴⁷

This opinion was not in the least a vain exaggeration of Andreevsky's own contribution to the study of Dostoevsky. Among later critics who recognized the value of Andreevsky's essay were two important literary historians, Semyon Vengerov and Dmitry Mirsky. In his *Biographical Dictionary of Russian Writers*, Vengerov wrote that Andreevsky's essay signaled a shift towards a more intellectually nuanced reading of the novel,⁴⁸ while Mirsky in his *History of Russian Literature* credited the insightful lawyer-critic with giving to Dostoevsky his due place within the canon of Russian literature.⁴⁹ While the study of Dostoevsky's works without the emphasis on either his saintly significance or ideological obscurantism was indeed slow to be taken up, literary lawyers formed a very special group among late imperial critics who early on began to

look at Dostoevsky's fiction as a rich source of invaluable insights into law and the philosophical intricacies and ironies of human existence. Going against the stubborn stereotype of Dostoevsky as a mystic and obscurantist, the literary lawyers Anatoly Koni and Sergey Andreevsky re-interpreted the image of Dostoevsky as a staunch enemy of courts and lawyers into an image of Dostoevsky as a feeling individual, mindful of the ways in which human life and character complicate the practical application of law, and as a writer-realist who infused the Russian Realist novel with the modernized content.

Before I turn to a discussion of the literary lawyers' contribution to the study of Dostoevsky, I would like to discuss the most common view of Russia's foremost novelist that was held by Russia's radical and liberal literary critics. In his article "The Cruel Talent" published in *Otechestvennye zapiski* [*Notes of the Fatherland*] in 1882, a year after Dostoevsky's death, the radical journalist, ideologist of *Narodnichestvo* [populism], and literary critic Nikolai Mikhailovsky challenged the idea of Dostoevsky's spiritual significance for Russia as the foremost defender of all "insulted and injured."⁵⁰ The humanism of Dostoevsky—Mikhailovsky argued—was nothing but a grand illusion. From the very beginning of his career as a writer, Dostoevsky was a "cruel talent," who drew great pleasure from making his readers watch the torture and humiliation of those incapable of resisting abuse. Mikhailovsky summed up what he perceived to be Dostoevsky's sophisticated literary sadism by likening it to the pleasure of a bloodthirsty wolf devouring a meek sheep. He wrote:

Nobody among Russian writers ever analyzed the feelings of a wolf devouring a sheep so thoroughly and with such depth and love as Dostoevsky, if one can even conceive of a loving attitude towards the feelings of a wolf. He was very little interested in the uncomplicated and crude feelings of a wolf, like hunger, for

instance. No, he dug very deeply into the soul of a wolf, searching there for refined and complex things: not a simple urge to satisfy one's appetite, but the sensuality of malice and cruelty. [...] Revisiting our metaphor once again, somebody might say that, on the contrary, Dostoevsky was interested in the feelings of a sheep devoured by a wolf: after all, he is the author of *The House of the Dead*, and he is the voice for *The Insulted and Injured*. He knew so well how to discover the best and lofty feelings in places where nobody suspected they existed. These observations are fair. [...] However, taking into consideration Dostoevsky's whole literary career, we have to conclude that he simply likes to see the wolf harass the sheep. The only difference is that during the first half of his career he was more interested in the feelings of the sheep, while during the second part he became more intrigued by the feelings of the wolf.⁵¹

Mikhailovsky also argued that Dostoevsky was not only a "cruel talent" who enjoyed watching the wolf hurting the sheep, but his literary voyeurism was inflicting damage upon the psyche of the Russian people by discouraging the "sheep" as well as Russian readers from manifesting any civic resistance to obvious abuse.

A similarly negative vision of Dostoevsky as a writer emerged from the pages of the thick liberal journal *Vestnik Evropy*. This key publishing venue for literary lawyers and their liberally-minded friends printed a detailed, but rather unusual obituary dedicated to Dostoevsky. Going against the conventional wisdom "Do not speak ill of the dead," the obituary in *Vestnik Evropy* did exactly the opposite, as the liberal intellectual and literary scholar Alexander Pypin offered a somber portrait of Dostoevsky's realism and his significance as a public figure.⁵² Unlike the fans of Dostoevsky who hailed the deceased author as a saint and prophet, Pypin

looked skeptically at Dostoevsky's ideology. According to him, the ideas of Dostoevsky were "founded on nothing more than a feeling" and "use[d] prophesy for proof."⁵³ Pypin went even so far as to nickname Dostoevsky the "unconscious talent" (*bessoznatelnyi talant*).⁵⁴ This term referred specifically to Dostoevsky's theories about the messianic role and pan-humanity of Russian people, which Pypin deemed unsound and backward:

It is still unclear what, according to Dostoevsky, would be a solution to society's contemporary situation, which he labeled a catastrophe and on account of which he attacked "liberalism" so many times. [...] Obviously, he saw a solution in what the truly liberal part of our society, passionate about our social progress, saw as the long familiar features of historical stagnation.⁵⁵

Although Dostoevsky was undoubtedly one of Russia's most significant contemporary writers, Pypin argued, his talent was merely intuitive, his ideas referred to no objective reality, and his fiction tended to describe the world fantastically.⁵⁶

In an effort to sway contemporaries to his side, Pypin called in his obituary on the authoritative opinions about Dostoevsky expressed by the prominent radical literary critics of the past decades Belinsky and Dobrolyubov. Justifying his turn to these authoritative figures of Russian literary criticism, he wrote:

We must remember these opinions in order to abstain from strange exaggerations that flourished recently in the conversations about the significance of Dostoevsky's talent and his "artistic" powers. The mistake in the assessment of the significance of Dostoevsky's artistry came along with the mistake in the assessment of his significance as a writer.⁵⁷

This “turn” to the authority of the aforementioned critics was undoubtedly related to the tremendous influence that Dostoevsky exerted over his readers during the last years of his life. Pypin reminded his readers that even Dostoevsky’s highly praised short novel *Poor Folk*, which at first delighted Belinsky with its socially conscious depiction of the poor Makar Devushkin, was not without blemishes. Even here, Belinsky noticed Dostoevsky’s mannerisms, outlandish themes, and tendency to describe events in a fantastic fashion. Dobrolyubov, Pypin reminded his readers, also sensed the imperfections in the realism of Dostoevsky. Pypin wrote: “[I]n Dobrolyubov’s opinion, Dostoevsky lacked that kind of artistic power which makes the life-like truth of social phenomena emerge from the facts and relationships depicted by the artist. His prose works require a commentary.”⁵⁸ While Pypin belittled the realism of Dostoevsky’s prose, the literary lawyers chose to look at his fiction from a distinctly different perspective. The non-obviousness of main ideas, the polyphonic nature of his writing, and the relative openness of his stories and characters to interpretation attracted the attention of literary lawyers, who found his novels eerily realistic, especially in regard to how Dostoevsky handled the junction between law, literature, and life.

Anatoly Koni on Dostoevsky: Crime, Literature, and Empathy

Anatoly Koni was the first literary critic who sensed and highlighted the realism of Dostoevsky’s legal situations. A literary critic and one of the most respected jurists and legal thinkers of his time, Anatoly Koni authored several important speeches about Dostoevsky, his fiction, and the novelist’s legal attitudes.⁵⁹ In his texts about Dostoevsky, Koni chose to view the novelist not as the enemy of Russian legal justice, but rather as a creative thinker and writer whose unconventional and intuitive take on legal topics was instrumental in educating the

reading public, but most importantly Russian jurists, about the complex relationship between law and the psychological underpinnings of crime and guilt. In 1881, Koni delivered a speech about the recently deceased Dostoevsky at the Saint-Petersburg Juridical Society. The speech was undoubtedly a eulogy. Delivered just days after Dostoevsky's funeral, it was laudatory in tone, and contained no references to the arguably more controversial *The Brothers Karamazov*. Expectedly, Koni's upbeat public statement about Dostoevsky's contribution to legal thought was not taken well by all recipients of his speech. Nikolai Mikhailovsky responded to Koni's argument in an irritated manner, criticizing the jurist for praising the man who "besmirched the new and reformed court." Mikhailovsky went so far as to suggest that Koni's speech should have said: "Here is a man who in an exciting way inculcated the juridical consciousness of society with most perverse ideas."⁶⁰ The problem was not that Koni was wrong or insincere, and Mikhailovsky was right, but that Mikhailovsky obviously misread Koni's intent. Koni did not aim to expose Dostoevsky's legal misconceptions, and, in fact, the speech was not directed to Russian society in general. The audience for this speech consisted predominantly of jurists, and Koni fashioned it as a response to the following hypothetical questions: Why should a legal professional read Dostoevsky? What kinds of insights should he gain from his novels, and which ones are worth taking to the courtroom?

Koni discovered "his" answers to this question by searching almost exclusively within Dostoevsky's *Crime and Punishment*. The fact that Koni chose the first of Dostoevsky's murder novels is not accidental. In this novel, Dostoevsky introduced Russian readers to two important crime-related concerns: the inner workings of crime and the effect of punishment as well as self-punishment upon the criminal. Among the key merits of this novel, Koni mentioned Dostoevsky's nuanced depiction of the "extensive and dark area of deeds, called crime."⁶¹

Comparing the two ways of studying the reasons for crime, Koni suggested that legal theory was incapable of yielding any valuable insights into the psychology of criminal behavior. He wrote:

The sum of influences that begets a crime, as well as the inner struggle between the individual's will and passion and his conscience and impulse, all of which takes place before a fatal step is committed, elude theory. Theory is capable of merely mapping out the stages in one's progression towards crime, [...] but it cannot unveil to us the panorama of forces, which are active in the background of each crime, and the interplay of moral elements that resist these forces.⁶²

While, according to Koni, legal theories were incapable of offering any insights into the social and psychological backgrounds of crimes, the novel had at its disposal a greater range of useful literary devices that made the inner world of characters transparent to the reader. The emotional art of Dostoevsky, with its detailed attention to matters of the heart, taught the reader to feel empathy for the criminal. Koni wrote:

[T]he artist guides the reader up the ladder of various 'lapses from virtue.' However, after forcing him to suffer through the lapses spiritually, the artist finally reconciles the reader with the fallen, in whom he finally begins to see the eternal features of an unfortunate brother. Depicted with love and compassion, these features shine from beneath the temporary sheath of crime and depravity. The characters created by Dostoevsky in his novel won't die because of their artistic power. They won't die also because of Dostoevsky's noble and lofty gift of finding the eternal soul even under the coarsest, gloomy, and disfigured appearance. Upon uncovering it, Dostoevsky finds within this soul [...] a divine

spark, which at times smolders, and at times burns brightly with the fire of reconciliation.⁶³

This synopsis emphasizes Koni's view of Dostoevsky as a writer, whose art not only illuminated crime as a phenomenon, but taught the reader how to be empathetic, and why one should practice empathy. While this is a fairly obvious observation on Koni's part, his reliance on the vocabulary of moral and religious discourse—he uses such words as “fallen,” the “unfortunate brother,” and “divine spark”—is surprising, especially since his speech addressed jurists, and thus was written for a secular context. I would like to suggest that Koni's choice to give a public speech that was a hybrid of two different “languages” was intentional. By pairing the stylistically unmarked word “the criminal” with its loftier counterpart “the unfortunate brother” and “moral character” with “the divine spark,” Koni implied the inherent affinity between the more specialized legal justice, based on laws, and justice in general, rooted in moral or religious beliefs.

In the second part of his speech, Koni turned to the topic of punishment. Specifically, Koni praised Dostoevsky for drawing the attention of the public to the vital problems of legal punishment. Koni reminded his audience that with the help of his semi-autobiographical novel *The House of the Dead* Dostoevsky enlightened educated society (and even legal professionals) about penal servitude and the life of convicts in Siberia. In front of his colleagues, Koni argued that only works of fiction could enlighten people about the effects of legal punishment. On the subject of Dostoevsky's contribution to this topic, Koni wrote:

Under Dostoevsky's pen, the walls of a Siberian prison become alive, and within these walls exist the back-breaking penal conditions, and in these conditions live the oppressed and humiliated people.⁶⁴

For Koni, a novel worked as a medium of social enlightenment and education. Unlike abstract reasoning, literary characters possessed charisma and invoked sympathy, and a sympathetic attitude forced people to listen. In order to make his point, Koni drew the attention of his audience to the less obvious meanings of exile and penal servitude for the narrator in *The House of the Dead*. For this character, exile and imprisonment implied a life without any place or time alone; however, this never-ending exposure of the self to others was accompanied by the constant and intense feeling of loneliness.⁶⁵ For Koni, private revelations of this kind were the gems of legal knowledge that one could discover only in works of literature. Such discoveries, he argued, filled the “cells of the theoretical punitive schema with live content, which aroused one’s mind and touched one’s heart.”⁶⁶ Koni makes a similar point about the arousing power of literature in connection to Dostoevsky’s idea of self-inflicted moral punishment:

Anyone who read *Crime and Punishment* [...] felt tortured by Raskolnikov’s torments. [...] This punishment, this varicolored interplay of worries, hopes, disgust with one’s self, and horror, elevates him above his moral failure. While expecting to receive his external punishment, he is already purged of sin through his moral suffering.⁶⁷

For Koni, seemingly minor details and the medley of psychological snippets that a work of literature was able to reveal to a jurist was of utmost importance. These details translated otherwise unemotional terms like “crime,” “punishment,” or “penal servitude” into something more tangible and emotionally complex, thus teaching legal professionals to develop a mind susceptible to things hidden from plain view.

In a nutshell, Anatoly Koni looked at law and literature as the two sides of the same inquiry into the nature of justice. Law existed in order to provide people with the guidelines for socially acceptable behavior. However, because of the inflexibility of legal rules and norms literature was indispensable to law as a means of expanding one's ability to read and apply laws in a humane manner and with a healthy amount of empathy for the criminal. For Koni, novels and fiction *per se* were closer to life and thus more capable of describing life and the tribulations of human existence and psychology. It was primarily this opposition between a strictly professional knowledge of laws, on the one hand, and a deeply human impulse to fictionalize social experience in order to understand it, on the other hand, that formed the core of Koni's legal ethics. In order to gain a better understanding of a crime, the jurist, Anatoly Koni argued, has to look at the criminal like a fiction writer would: attuned to the dark and horrifying consequences of the crime, but ready to pose and reflect on the hidden feelings of the criminal's soul. ⁶⁸

The "Mysteries of the Nervous System": Sergei Andreevsky and The Brothers Karamazov

Not in a single cause célèbre was so-called "intellectual guilt" for a crime established with such relentless and shattering clarity as in Smerdyakov's impeccable and chilling argumentation about Ivan's responsibility for his father's murder.

Sergei Andreevsky, from his essay on *The Brothers Karamazov*
(1888)⁶⁹

In 1888, Sergey Andreevsky wrote in his almost hundred-page long essay dedicated to *The Brothers Karamazov* the following revealing lines:

From now on, the old Karamazov should be considered the symbol of lechery in the same manner as Plyushkin is the symbol of avarice, and Othello—of jealousy. One can say that until now nobody dared to delve into sexual lust with such convulsive gastronomy. The “shy” realists like Maupassant and Zola, Boccaccio with his naïve cynicism, and even Marquis de Sade did not get around to depicting the amorous relationship with “Stinking Lizaveta,” or to the thoughtful seduction recipe suggesting that one only has to know how to “surprise, to make them feel smitten and ashamed,” or, finally, to the depiction of the scene in which the old father tells his son—the idealist about how he used to seduce his sick and suffering mother... Only a mystic and epileptic could descend into such depths of sensualism. Such mysteries of the nervous system cannot be understood through healthy and cheerful pornography.⁷⁰

With candor and extravagance, Andreevsky rendered special service to Dostoevsky and his last novel. Splitting from the majority of critics, he claimed for Dostoevsky a special position among the realist writers and writers *per se*. Unlike his predecessors, Dostoevsky not only created the evocative literary type of the old lecher Fyodor Pavlovich— Andreevsky claimed—but he also inaugurated writing about topics concerning the darker side of modern life, generally ignored by serious literature. Unlike his predecessors, Dostoevsky did not shy away from choosing for his philosophical novel the most perverse, embarrassing, and generally taboo topics, the ones that Andreevsky nicknamed wittily as the “mysteries of the nervous system.” Indeed, *The Brothers Karamazov* introduced a range of such topics. The rape that is mentioned in the novel is not “simply” a rape, but a rape of a mentally deranged woman; the sexual secrets that are exposed feel more scandalous because they are revealed by a father to a son about his own mother; even a

traditional love triangle causes more outrage because it involves a sexual competition between a father and a son. Due to the excess of sexually provocative topics, it comes as no surprise that the critics (among them the aforementioned Nikolai Mikhailovsky and Alexander Pypin) viewed *The Brothers Karamazov* as a bastard-child of Dostoevsky's sadistic or ideologically-perversed imagination rather than a successful attempt by a realist author to tease out of his readers a reaction, perhaps even a moral revolt, against contemporary society: submerged in spiritual depravity, stripped of faith and, thus, of empathy for each other, and fully consumed by egotistic and shameless sensualism.

Andreevsky's essay was the first critical work that acknowledged the literary merits of *The Brothers Karamazov*, defended this novel's realism, and provided the reader with an in-depth analysis based on the text, and not on the author's ideology. This might seem astonishing, especially considering the overwhelming importance of this novel for the subsequent century of philosophical thought, and it is rather hard to imagine that not a single critical study of this sort appeared before Andreevsky's essay.⁷¹ Writing his analysis, Andreevsky was well aware of the important role that he took upon himself in shaping the interpretive tradition and post-history of *The Brothers Karamazov*. In the opening to his essay, he lamented the pathetic state of the literary study of Dostoevsky's novels, pointing out that *The Brothers Karamazov* specifically remained "almost without any critical commentary" and "unread even by people closest to literature."⁷² Commenting on the artistic merits of the novel, Andreevsky wrote:

In my opinion, *The Brothers Karamazov* is the most significant novel by Dostoevsky. Anyone who is acquainted with all of Dostoevsky's novels knows, of course, that the beginnings of his novels are usually the best. Everything is intriguing, well set up, consistent. Then the fictional material suddenly loses its

shape, the plot weakens, and the characters begin to get themselves into increasingly less comprehensible behavior and conversations. Then, the reader undergoes a tough test. He continues to read the novel in a state of bewilderment and, infrequently, of boredom, hoping to accidentally find some new delights. In *The Brothers Karamazov*, the intrigue and rich artistic beauty do not become depleted till the very last line.⁷³

If we look at this statement through its “native” context, the significance of Andreevsky’s defense becomes very obvious. During Dostoevsky’s lifetime, his novels were not blessed with good reviews. Aside from the rebuke that he perverted reality, many contemporaries criticized the formal features of Dostoevsky’s prose. He was criticized on account of his inept depiction of psychological dramas, lack of believable background, and schematic treatment of characters. Some readers and critics went so far as to argue that the novels by Dostoevsky were simply impenetrable due to excessive digressions (longwinded philosophical dialogues, subplots, parables, and anecdotes).⁷⁴ I would like to suggest that Andreevsky’s article was instrumental in encouraging Russians to discover *The Brothers Karamazov* not as a bizarre, anti-legal, and pornographic novel, but as an insightful philosophical study about Russia’s state of spiritual affairs and a peculiar sermon on the importance of feelings (primarily, of the Christian kind) for the moral health of any society. Bringing us back to the legal aspect of this novel, Andreevsky viewed the trial (or courtroom) as a window not into Russia’s new legal system, but into the moral psyche of his society, equally affected by *karamazovshchina*.

The Brothers Karamazov as a Realist Novel, Karamazovshchina as Russia’s Reality

Andreevsky devoted a substantial part of his essay to the study of *karamazovshchina* as a cultural phenomenon.⁷⁵ For the literary critic who was also a defense lawyer by profession, Dostoevsky's *karamazovshchina* did not seem an outlandish fictional invention, but rather an accurate depiction of modern society's tendency to care more for the material and sensual rather than for the spiritual and emotive. Evidence of Andreevsky's belief that *karamazovshchina* had become a malignant presence in Russia's social and spiritual life can be found in one of his defense speeches. In 1891, Andreevsky was defending Ivanov, a Russian officer, who was tried for the murder of his fiancée Nastya. In his defense speech, Andreevsky described the jealous murderer Ivanov as "almost completely taken from the most passion-filled novels of our time," citing Dostoevsky's *The Brothers Karamazov* and Tolstoy's *The Kreutzer Sonata* as his literary examples.⁷⁶ Considering that Andreevsky adopted *The Brothers Karamazov* as a point of reference for the real life crime, it comes as no surprise that he discovered in the fictional Karamazovs a reflection of real life. Andreevsky wrote the following on the universal applicability of the term *karamazovshchina* to contemporary life:

Dostoevsky placed at the center of his novel the Karamazov family. He linked within this family the most prominent features of our time, and he even thought that gradually the word *karamazovshchina* will transform into a universally used term, like *oblomovshchina*. Through the character of the prosecutor Ippolit Kirillovich, Dostoevsky says [here Andreevsky quotes from the novel]: "Perhaps I am greatly exaggerating, but it seems to me that certain basic, general elements of our modern-day educated society shine through, as it were, in the picture of this nice little family—oh, not all the elements, and they shine only microscopically,

‘like to the sun in a small water-drop,’ yet something has been reflected, something has betrayed itself.”⁷⁷

Retrospectively, we know that Andreevsky was correct in his comparison of *karamazovshchina* to *oblomovshchina*, since the former indeed became a commonly used literary term, with a very specific meaning. To the aforementioned quote, Andreevsky adds his own definition of *karamazovshchina*: “*karamazovshchina* equals coarse materialism, and the Karamazovian question involves the struggle of faith and mysticism against the animalistic worship of the flesh.”⁷⁸

In an effort to endow Dostoevsky’s idea of *karamazovshchina*—“the animalistic worship of the flesh”—with more legitimacy, Andreevsky compared Dostoevsky to other prominent novelists of his time, suggesting that, although their fiction was less apocalyptic and contained less sex-related drama, other novelists were responding to the same materialistic spirit of the era:

The term *karamazovshchina*, which is significantly broader than *oblomovshchina*, should have become a term for our epoch all over the world. It describes the highest degree of animal egotism, which expunges everything that is touching, lovely, poetic, ethical, selfless, and sublime, for the sake of everything that is palpable, nutritious, and flavorful. By getting his lion claws into the essence of this feature of our time, Dostoevsky left a deep scratch on it. In essence, however, doesn’t Émile Zola deal with the same issue of *karamazovshchina*? [...] By dedicating himself wholeheartedly to the sermon of an almost impossible self-sacrifice, akin to that of the first Christians, does not Lev Tolstoy similarly fight against *karamazovshchina*?

Addressing the differences between Zola and Tolstoy, on the one hand, and Dostoevsky, on the other hand, Andreevsky claimed that Dostoevsky “thought to resolve the Karamazovian question simultaneously through the novel and sermon,” but in reality, he resolved it not as a writer-naturalist (*bytopisatel'*), but as a poet.”⁷⁹

In his article, Andreevsky dedicates some attention to the analysis of Dmitri Karamazov’s trial. Surprisingly, unlike many of his colleagues, Andreevsky refrains from criticizing Dostoevsky for depicting the trial parodically, but focuses instead on his successes. Below is one of the most typical passages from Andreevsky’s article:

The trial of Dmitri is described in a very lively and engaging fashion. The proceedings are accompanied by the new dramatic episodes. The testimony of each witness piques interest. Mitya’s fatal character, his pathetic outbursts and naïve gaffes constantly hurt him, but complete him as a whole and consistent type, while at the same time touching the reader, who feels empathy for the defendant and worries about the outcome of the trial. There are no deviations from the legal procedure [...].⁸⁰

Although Andreevsky acknowledges that the depiction of the court is “not deprived of caricature and satire,” he promptly adds that even in the satirical scenes one feels a “talented scene painter, whose broad brushstrokes give away a hand of a true artist.”⁸¹ Andreevsky also credits Dostoevsky with the masterful and very realistic portrayal of Ivan’s inner torment, as he comes to realize that the hatred of his father provided the main stimulus for Smerdyakov’s decision to kill Fyodor Pavlovich.⁸² “Not in a single cause célèbre,” Andreevsky argued, “was the so called “intellectual guilt” for a crime established with such relentless and shattering clarity as in Smerdyakov’s impeccable and chilling argumentation about Ivan’s responsibility for his father’s

murder.”⁸³ Once again, by juxtaposing Dostoevsky’s novel with real life, Andreevsky illustrates the realism of Dostoevsky’s novel.

Andreevsky’s analysis of the trial does not come as a separate section, but instead assorted observations about the trial are interwoven with the remainder of his analysis. This is an interesting rhetorical choice for the critic, especially because Dostoevsky dedicated a whole separate book to the trial. Andreevsky’s choice to read the trial along with other aspects of the novel suggest that the critic viewed “A Judicial Error” not as a narrative with an autonomous anti-legal agenda, but a part of the larger philosophical whole and yet another point in Dostoevsky adventure with the idea of *karamazovshchina*. The following quote from the speech by the prosecutor Ippolit Kirillovich, which Andreevsky references in full, seems to illuminate the critic’s point about the continuity of ideas in *The Brothers Karamazov*:

[T]he present case has resounded throughout all Russia. But what, one might think, is so surprising, what is so especially horrifying about it? [...] We’re so used to all that! And here is the real horror that such dark affairs have almost ceased to horrify us! It is this, and not the isolated crime of one individual or another that should horrify us: that we are so used to it. Where lie the reasons for our indifference, our lukewarm attitude towards such affairs, such signs of the times, which prophesy for us an unenviable future? In our cynicism, in an early exhaustion of mind and imagination in our society, so young and yet so prematurely decrepit? In our principles, shattered to their foundations, or, finally, in the fact that we, perhaps, are not even possessed of such moral principles at all?⁸⁴

In this speech, Ippolit Kirillovich reproaches Russian society—represented by the public and lawyers in the courtroom—for growing accustomed to horrible crimes. Assessing the merit of this important speech, Andreevsky suggested that it could have been used as the foreword to the whole novel because “[i]t contains the main motive of this novel” and “[o]ne can smell in it the aroma of the epoch.”⁸⁵ The “aroma of the epoch” obviously emanates from the typical qualities that Ippolit Kirillovich ascribes to his contemporaries: cynicism, indifference, and lack of moral principles. Incidentally, all of the aforementioned qualities describe *karamazovshchina* as well. If we follow the footsteps of Andreevsky, and read the trial from this perspective, then the courtroom becomes a miniature model of Russia itself. Similarly, the trickery of lawyers and indifference and voyeuristic hedonism of the public can be viewed not as the outcome of the new legal system, but a byproduct of *karamazovshchina*.

Interpreting a piece of literary criticism from the nineteenth century poses multiple difficulties. Much of the context is gone, and the authors of such pieces tend not to state explicitly to whom they respond, or what arguments they attempt to uphold or subvert. With Andreevsky, at least two things are clear. Firstly, he worked against the body of existing criticism that sought to undermine Dostoevsky’s ideological influence and his status as Russia’s foremost realist writer. Andreevsky disagreed. His background as a criminal lawyer must have played a role since he, unlike literary critics, was more exposed to the world of crime for which Dostoevsky had a special fondness. Andreevsky objected to the critics who doubted Dostoevsky’s realism by drawing their attention to the fact that Dostoevsky was writing in response to the world around him, while they continued to measure the realism of his writings against the old-fashioned novels by Turgenev and Goncharov. Secondly, as a lawyer he had to face the fact that *The Brothers Karamazov* was and still remains known as an anti-legal novel. It

would be an overstatement to argue that Andreevsky succeeded in persuading Russian readers that Dostoevsky, after all, was a friend of courts and lawyers. However, Andreevsky's instinct for the moral shape of Dostoevsky's novel allowed him to gain a deeper insight into the novelist's legal stance. For Andreevsky, this stance was defined by Dostoevsky's understanding of the complexity of the interplay between crime and justice, awareness that these phenomena were interlinked with his society's mores, and desire to demonstrate to his contemporaries that the shiny façade of each *cause célèbre* conceals a human tragedy. Andreevsky discovered *The Brothers Karamazov* as the novel that treated law without separating it from its social and ethical context.

Conclusion: Literary Lawyers on Dostoevsky as a Source of Legal Knowledge

Anatoly Koni and Sergey Andreevsky were seasoned critics, with many splendid literary successes to their credit. However, if one had to name a single great achievement in their handling of Dostoevsky, it would be their brave rejoinder to the accepted view of the novelist's anti-legalism. By refusing to view Dostoevsky's fiction as a means for discrediting their profession and new courts (see the epigraph to this chapter), they noticed that Dostoevsky was not as hostile to the rule of law and court justice as many of his critics and readers believed. The literary lawyers Koni and Andreevsky observed and articulated this insight in their critical analyses that Dostoevsky's fiction was a place where the novelist was undertaking the important work of thinking about his society, criminal justice, and human values in a rapidly changing society. Here we might heed the words of the scholar Caryl Emerson, who described Dostoevsky's method of awakening his contemporaries to the moral way of life. She writes:

Dostoevsky's probings into evil are merciless, but not satanic. His strategy is to show us the abyss, and then show the tormented consciousness trying to get out of it. For who can predict the effect of a work of art? As readers, we command a far larger repertory of responses than mere duplication or mimicry. Exposed to these horrendous plots, generations of readers have been inspired, purified, drawn into a love-ethic.⁸⁶

The literary lawyers were among the first Russian readers to discover the legal benefits of Dostoevsky's novels. His tendency to paint Russia's legal life in broad brushstrokes that exaggerated the courtroom drama was re-interpreted by these peculiar late imperial critics as Dostoevsky's warning against a coldhearted, unfeeling, professionalized attitude towards legal matters. By entering a posthumous dialogue with the novelist, Koni and Andreevsky showed to their public that Dostoevsky's seemingly horrendously apocalyptic plots did not have to be interpreted as a reflection of his animosity towards law. Dostoevsky's novels, filled with myriad perspectives on courts, lawyers, crime, guilt, and justice, offered numerous interpretive opportunities. Instead of narrowing the significance of Dostoevsky's vibrant prose to his parodies of courts, the literary lawyers broadened the understanding of Dostoevsky's unique impact on Russia's legal culture by advancing in their criticism the image of Dostoevsky as a literary authority on the complex matters of crime, the heart, and human psychology.

CHAPTER 4

¹ This translation comes from Fyodor Dostoyevsky, *A Writer's Diary*, Translated by Kenneth Lantz, Evanston, Ill.: Northwestern University Press, 1993. 384. *PSS* 22:73.

² If not indicated otherwise, all translations from *A Writer's Diary* are mine. *PSS* 12:52.

³ Yulii Aikhenwald, *Siluety russkikh pisatelei* [*The Silhouettes of Russian Writers*], Moskva: Terra, 1998. Originally published in 1907-1910.

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- ⁴ Gary Rosenshield, *Western Law, Russian Justice: Dostoevsky, the Jury Trial, and the Law*, Madison, Wisconsin: The University of Wisconsin Press, 2005.
- ⁵ A.G. Dostoevskaiia, *Vospominaniia [Reminiscences]*, Moskva, 1971. 170.
- ⁶ See footnote 1 on page 1.
- ⁷ This translation comes from Fyodor Dostoyevsky, *A Writer's Diary*, Translated by Kenneth Lantz, Evanston, Ill.: Northwestern University Press, 1993. 364-65. *PSS* 22:57.
- ⁸ *PSS* 22:66.
- ⁹ *PSS* 22:61.
- ¹⁰ *PSS* 22:61-62.
- ¹¹ *PSS* 22:73.
- ¹² On the problem of definition, see:
- ¹³ I would like to thank Ekaterina Mishina, a legal expert and Professor at the University of Michigan Law School, for sharing with me her invaluable insights into the meanings and implications of the term *sudebnaia oshibka*. I also would like to thank Valerie Kivelson from the University of Michigan for her suggestions about defining and clarifying the term "judicial error."
- ¹⁴ Dostoevsky, F.M. *The Brothers Karamazov*. Trans. By Richard Pevear and Larissa Volokhonsky. New York: Farrar, Straus and Giroux. P. 657 (*PSS* 15:90).
- ¹⁵ *Ibid.*, 657 [*PSS* 15:90].
- ¹⁶ *Ibid.*, 657 (*PSS* 15:90).
- ¹⁷ *Ibid.*, 658 (*PSS* 15:92).
- ¹⁸ *Ibid.*, 658 (*PSS* 15:92).
- ¹⁹ *Ibid.*, 658-59 (*PSS* 15:92).
- ²⁰ *Ibid.*, 664 (*PSS* 15:96).
- ²¹ *Ibid.*, 664 (*PSS* 15:96).
- ²² *Ibid.*, 675 (*PSS* 15: 107).
- ²³ *Ibid.*, 676 (*PSS* 15:107).
- ²⁴ *Ibid.*, 678 (*PSS* 15:108).
- ²⁵ *Ibid.*, 661 (*PSS* 15: 94).
- ²⁶ *Ibid.*, 677 (*PSS* 15:109).
- ²⁷ *Ibid.*, 679 (*PSS* 15:111).
- ²⁸ *Ibid.*, 680 (*PSS* 15:112).
- ²⁹ *Ibid.*, 681 (*PSS* 15:112).
- ³⁰ *Ibid.*, 683 (*PSS* 15:114).
- ³¹ *Ibid.*, 683 (*PSS* 15:114).
- ³² *Ibid.*, 690 (*PSS* 15:120-21).
- ³³ *A Writer's Diary*, 362.
- ³⁴ *Ibid.*, 672 [*PSS* 15:115]. In the Russian text, the two words describing Dmitri Karamazov's mental state are *affect* and *mania*.
- ³⁵ *Ibid.*, 674 [*PSS* 15:106].
- ³⁶ *Ibid.*, 674 [*PSS* 15:106-107].
- ³⁷ *Ibid.*, 674 [*PSS* 15: 107].
- ³⁸ *Ibid.*, 694 [*PSS* 15:123].
- ³⁹ *Ibid.*, 663 [*PSS* 15:96].
- ⁴⁰ *Ibid.*, 663 [*PSS* 15:96].
- ⁴¹ *Ibid.*, 746-47 [*PSS* 15:172].
- ⁴² *Ibid.*, 748 [*PSS* 15:173].
- ⁴³ *A Writer's Diary* 383 [*PSS* 22:71].
- ⁴⁴ Anatoly Koni, *Sobranie sochinenii v 8mi tomakh*, "Fedor Mikhailovich Dostoevsky," Moskva: Yuridicheskaiia literature, 1968, 6: 406. Originally, this speech was delivered at the meeting of the Saint-Petersburg Juridical Society on February 2nd, 1881; First publication: Koni, A.F. "Dostoevsky kak kriminalist." *Nedelya* # 6, 1881.
- ⁴⁵ For the significance of Dostoevsky in Russia's public life in the 1870s, see: V.A. Tvardovskaiia, *Dostoevskii v Obshchestvennoi Zhizni Rossii: 1861-1881*, Moskva: "Nauka." 1990.

⁴⁶ Andreevsky, S. A. *Stikhotvoreniya (1878-1885)*. Sankt-Peterburg, 1886. Italics are mine. In Russian:

Раскрытый гроб, на двух ступенях,
Уже хранит священный прах
И преклоненным на коленях
Чело виднеется в цветах...
Вокруг столпившиеся тесно,
Придя, откуда—неизвестно,
Питомцы дум его стоят:
Учитель спит... они молчат.
Ребенок-дочь у изголовья
С невинной верой на лице
Пришельцам всякого сословья
Дарит на память об отце
Цветы с венков его надгробных...
Глубокий мир в устах незлобных!

Но в ком найдет слова любви
Убогий, падший, маловерный?
Кто им, как жрец нелицемерный,
Подымет взоры от земли?...

Туманный день, больной и хмурой,
Как скорбный склад его ума,
Весь заслонен его фигурой...
И жизнь печальна как тюрьма,
Куда вносил он утешенье...
Прими немое поколение
За жизнь страданья и заслуг,
Разбитых душ любимый друг!...

⁴⁷ Sergey Andreevsky, “The Brothers Karamazov” 40-41.

⁴⁸ Vengerov, S.A. *Kritiko-biograficheskii slovar'* I am not sure where this essay appeared for the first time in 1888 (perhaps in Stasyulevich's *Vestnik Evropy* [*The Messenger of Europe*], but in 1891 it was republished as a part of Andreevsky's collection of literary essays. See: Andreevsky, S.A. *Literaturniya chteniya* [*Literary Readings*]. Saint-Petersburg, 189.

⁴⁹ Mirsky, D.S. *A History of Russian Literature from Its Beginnings to 1900*. Ed. Francis J. Whitfield. Evanston, Illinois: Northwestern University Press, 1999.

⁵⁰ Populists believed that the intelligentsia lost touch with the people, and they advocated the idea of getting closer with them. In many ways, populists were the forebears of socialist revolutionaries; N.K. Mikhailovsky, “Zhestokii talant” [“The Cruel Talent”], *Literaturno-kriticheskie stat'i*, Moskva: Khudozhestvennaia literatura, 1957. 181-264. [Also: N.K. Mikhailovsky, *Sochineniia*, SPb: 1897. 5:1-78). Originally published in *Otechestvennye zapiski* [*Notes of the Fatherland*] in 1882.

⁵¹ *Ibid.*, 186-87.

⁵² A.V., “F. M. Dostoevsky—A. F. Pisemsky. Negrolog.” In *Vestnik Evropy* 88:1 (March 1881), 419-436. Ironically, the date on this obituary read “March 1st”: the day of Alexander II's assassination. Alexander Pypin signed the obituary as “A. V.” See I. F. Masanov, and Iu. I Masanov, *Slovar' psevdonimov russkikh pisatelei, uchenykh i obshchestvennykh deiatelei: alfavitnyi ukazatel' psevdonimov*, 4 bols., Moskva, 1956-1960. 1:34.

⁵³ *Ibid.*, 428.

⁵⁴ *Ibid.*, 423. Pypin wrote: “Undoubtedly, the talent of Dostoevsky was one of the strongest in our newest literature, but it was partially unconscious, like Gogol's talent, and partially very uneven.”

⁵⁵ *Ibid.*, 429.

⁵⁶ A very similar point of view on Dostoevsky was expressed in *Vestnik Evropy* prior to Dostoevsky's death, but without this remarkable label. In November 1880, the prominent Russian historian and jurist Konstantin Kavelin published the refutation of Dostoevsky's Pushkin speech. In his letter, Kavelin criticized Dostoevsky for borrowing the pre-emancipation ideas of Slavophiles, and applying them anachronistically and thoughtlessly to the post-emancipation context. Kavelin also argued against Dostoevsky's sermon on the primacy of moral ideals over civic ideals. Kavelin specifically wrote: "You are not correct when you state that "there are no social, civic ideals as such, ones that are not linked organically to moral ideals but exist independently as separate halves [...] they do not exist, they never existed, and cannot exist." When you say this, you do not carry out your analysis to the end. A correct and in-depth analysis would lead one to the conclusion that the exemplary civic life is made up of good institutions and morally developed people." In this quotation, Kavelin refers to the opinions expressed by Dostoevsky in the article "Two Halves," published in his *Writer's Diary* from August 1880. K. Kavelin, "Pismo F. M. Dostoevskomu," in *Vestnik Evropy* 86:1 (November 1880), 431-56. Page 454.

⁵⁷ *Ibid.*, 425.

⁵⁸ *Ibid.*, 427.

⁵⁹ Three different articles about Dostoevsky can be found in Koni's *Sobranie sochinenii*. "Fedor Mikhailovich Dostoevsky" (6:406-27), which is based on Koni's speech delivered at the meeting of the Saint-Petersburg Juridical Society in 1881; F.M. Dostoevsky (6:428-45), which consists of Koni's brief memoir of Dostoevsky, published by *Vestnik Evropy* [Messenger of Europe] in 1908 (Issue # 5) and a short article "At the Coffin of F.M. Dostoevsky," published in the issue of the newspaper *Poryadok* [Order] from January 30th 1881; "Eshche o Dostoevskom" [More about Dostoevsky] (6:446-53) was published in the anthology *Utrenniki* [Matinees], Ed. D.A. Lutohin, Peterburg: 1922.

⁶⁰ Originally published as "The Notes of the Contemporary" in *Otechestvennyie zapiski* [Notes of the Fatherland] , 1881:2, p. 245. Qtd. in F.M. Dostoevsky, *PSS* 15:502.

⁶¹ Koni, A.F. *SS* 6: 407.

⁶² Koni, A.F. *SS* 6: 407.

⁶³ Koni, A.F. *SS* 6: 410.

⁶⁴ Koni, A.F. *SS* 6:419.

⁶⁵ Koni, A.F. *SS* 6: 420.

⁶⁶ Koni, A.F. *SS* 6: 419.

⁶⁷ Koni, A.F. *SS* 6: 415.

⁶⁸ Koni, A.F. *SS* 6: 406.

⁶⁹ Originally Andreevsky's essay about *The Brothers Karamazov* was published in 1888, but I am not sure where. I am quoting from S.A. Andreevsky, *Literaturniya chteniya* [Readings in Literature], Saint-Petersburg, 1891. Page 111.

⁷⁰ Sergey Andreevsky, "The Brothers Karamazov" 78.

⁷¹ As I noted earlier, among those who recognized the merit of Andreevsky's essay were the critics and literary historians Semyon Vengerov and Dmitry Mirsky. Vengerov claimed in his *Biographical Dictionary of Russian Writers*, that Andreevsky's essay signaled a shift towards a more intellectually nuanced reading of the novel, while Mirsky credited Andreevsky in his *History of Russian Literature* with giving to Dostoevsky his due place among the canon of Russian literature. See: S.A. Vengerov, *Kritiko-biograficheskii slovar' russkikh pisatelei i uchenykh: ot nachala russkoi obrazovannosti do nashikh dnei*, Saint-Petersburg: Efron, 1889-1904; D.S. Mirsky, *A History of Russian Literature from Its Beginnings to 1900*, Ed. Francis J. Whitfield, Evanston, Illinois: Northwestern University Press, 1999 (originally published in 1926). The studies of *The Brothers Karamazov* that we know better today—"Velikii Inkvisitor" ["The Grand Inquisitor"] by Vasily Rozanov (1890), *Tolstoy and Dostoevsky* by Dmitry Merezhkovsky (1901), and "Ivan Karamazov kak filosofskii tip" ["Ivan Karamazov as a Philosophical type"] by Sergei Bulgakov (1902)—appeared later.

⁷² Sergey Andreevsky, "The Brothers Karamazov" 40-41.

⁷³ Sergey Andreevsky, "The Brothers Karamazov" 41-42.

⁷⁴ For a summary of standard criticisms directed at Dostoevsky's fiction, see: Victor Terras, "Dostoevsky's Detractors," *Dostoevsky Studies* 6 (1985), pages 166-73.

⁷⁵ The term "Karamazovshchina" was used in the novel by one of the characters of the novel (Rakitin) during the trial of Dmitri Karamazov. While in the novel this term remains undefined, Andreevsky was the first critic who re-invented and re-defined its meaning. Only in 1913, another writer and critic—Maxim Gorky—wrote two articles

(“O karamazovshchine” and “Eshche o karamazovshchine”) that defined *karamazovshchina* as an extreme expression of irresponsibility and cynicism.

⁷⁶See my discussion of the Ivanov trial in the chapter on *cause célèbre* in Russia. Andreevsky’s defense speech can be found in: S.A. Andreevsky, “Delo Ivanova. Ubiistvo zheny,” *Izbrannyye trudy i rechi*, Tula: Avtograf, 2000, 170-85.

⁷⁷ Sergey Andreevsky, “The Brothers Karamazov” 70-71. The translation of the speech by Ippolit Kirillovich comes from Pevear and Volokhonsky’s *The Brothers Karamazov* 695 (see the footnote # 15).

⁷⁸ Sergey Andreevsky, “The Brothers Karamazov” 70-71.

⁷⁹ Sergey Andreevsky, “The Brothers Karamazov” 121-22.

⁸⁰ Sergey Andreevsky, “The Brothers Karamazov” 98.

⁸¹ Sergey Andreevsky, “The Brothers Karamazov” 99.

⁸² In Book 11 of *The Brothers Karamazov*, Smerdyakov accuses Ivan of being an accomplice to his crime. For the study of the relationship between Ivan and Smerdyakov, see: Marina Kanevskaya, “Smerdyakov and Ivan: Dostoevsky’s *The Brothers Karamazov*,” *Russian Review* 61:3 (July 2002), 358-76.

⁸³ Sergey Andreevsky, “The Brothers Karamazov” 111.

⁸⁴ Sergey Andreevsky, “The Brothers Karamazov” 45. The translation of the speech by Ippolit Kirillovich comes from Pevear and Volokhonsky’s *The Brothers Karamazov* 693 (see the footnote # 15).

⁸⁵ Sergey Andreevsky, “The Brothers Karamazov” 47.

⁸⁶ Caryl Emerson, “Tolstoy and Dostoevsky on Evil-Doing,” *All the Same The Words Don’t Go Away: Essays on Authors, Heroes, Aesthetics, and Stage Adaptations from the Russian Tradition*, Boston: Academic Studies Press, 2011, 215-221. Page 217.

CHAPTER 5

Literary Lawyers and the Appropriation of Tolstoy



Figure 5.1: Lev Tolstoy and Anatoly Koni in Iasnaia Poliana (1904).
The photograph from the archive of S. A. Tolstaya.¹

Travelers describe Sahara as a torrid desert, where all life comes to a standstill. At the dusk, the silence of death and darkness merge. Only then the lion goes out to the watering-hole, filling the desert with his roars. Other animals respond in rueful howls, and the desert comes to life. This Lev [Lev is Leo in Russian, and it also means “lion”] has done the same. He could err at times in his fiery quest for truth, but he made our thought work, disturbed our silent complacency, roused us from slumber, and kept us from drowning in the stagnating backwaters of indifference.

Anatoly Koni, from his memoir “Lev Nikolaevich Tolstoy,” 1908²

Introduction: Lev Tolstoy and Anatoly Koni’s Court Story (1887-1899)

Tolstoy’s animosity towards law is well known to anyone who has read his fiction. In two of his novels—*Anna Karenina* and *Resurrection*—Tolstoy articulates the idea that people have no right to judge others. The epigraph to *Anna Karenina* highlights Tolstoy’s attitude that people should leave the business of judgment to God: “Vengeance is mine; I shall repay” (*Romans* 12:19). Similarly, the epigraph to *Resurrection* invokes the importance of forgiveness: “Then Peter came to Jesus and asked, ‘Lord, how many times shall I forgive my brother or sister who sins against me? Up to seven times?’ Jesus answered, ‘I tell you, not seven times, but seventy-seven times’” (*Mathew* 18:21-22). As the epigraphs from both novels suggest, any type of human judgment, including court trials, contradicts the Gospel warning “Judge not, that you may not be judged” (*Matthew* 7:1).³ Despite his longstanding animosity towards law and courts, Tolstoy not only knew, but was close intellectually and spiritually to some individuals who belonged to the post-reform legal profession. Among Tolstoy’s legal connections, Anatoly Koni occupied a unique position. In 1887 (when he met and befriended Tolstoy), Koni served already as the Chief Procurator at the Civil Cassation Department of the Senate. Although Tolstoy always disliked bureaucrats, Koni was different from most of his peers of the same high social standing: he was

known as one of the most ethical court professionals of his time and a man of letters, who was genuinely in love with literature.

Tolstoy got acquainted with Koni in 1887, when Koni was already well-known and respected among Saint-Petersburg writers and legal professionals. Koni was invited to Iasnaia Poliana not by Tolstoy himself, but by his former colleague from the Saint-Petersburg Circuit Court Alexander Kuzminskii, who was a jurist, litterateur, and also Tolstoy's brother-in-law. During this first visit, Koni and Tolstoy got to know each other rather well for a short visit, and their acquaintanceship gradually evolved into additional visits, exchange of letters, personal requests from Tolstoy to Koni to help with miscellaneous legal problems (his own or those of his friends, acquaintances, and numerous supplicants), and eventually Koni's memoir about his meetings with Tolstoy. However, the meetings between Tolstoy and Koni would not have been consequential if during his first visit to Iasnaia Poliana Koni did not share with Tolstoy a story from his extensive court practice, a story that left a deep and very personal impression on Tolstoy's imagination. Koni told Tolstoy about Rozalia Onni, a Finnish prostitute who was tried for a theft of hundred roubles from a drunken "guest" at the brothel. During the trial, one of the jurors, a young man from a well-off Saint-Petersburg family, recognized in the fallen creature on the trial bench the foster-daughter of his aunts, whom he seduced at the age of sixteen, impregnated, and then abandoned. Upon seeing Rozalia's pitiful condition, the young man experienced remorse, and decided to remedy the situation by marrying her. Koni concluded his story by relating that the couple did not actually marry because shortly after her sentence Rozalia contracted typhus and died. Tolstoy felt so moved by Koni's story that he began to persuade Koni to write it up and submit for publication to *Posrednik* [*The Intermediary*], the publishing house organized on the initiative of Tolstoy himself. In a couple of months after Koni's first visit

to Iasnaia Poliana, Tolstoy wrote to Koni, inquiring whether he began to work on his short story. Koni responded by offering the plot of his story to Tolstoy, and Tolstoy happily accepted this generous offer. In a letter to Koni from 1895, Tolstoy wrote the following about his work on Rozalia Onni's story: "It is true, I am writing about the story that you shared with me, but I never know what will become of it while I am working, where the story will lead me, and, to tell you the truth, right now I do not even know *what kind of story* I am writing."⁴ For a number of years, this story, which eventually transformed into Tolstoy's most socially and politically provocative novel *Resurrection*, was mentioned in Tolstoy's diaries and letters as *Konevskaiia povest'* ["Koni's story"].⁵

In a way, *Konevskaiia povest'*—a court story-turned-novel—inaugurated the literary study of Tolstoy and his fiction by literature-loving court professionals, bringing forth four critical responses to Tolstoy penned by jurists associated with Anatoly Koni and literary lawyers. As I show in the previous chapters, literary lawyers had previously sought to appropriate other writers for the benefit of Russia's legal culture. While it was close to impossible to find any signs of amity towards law and courts in either Tolstoy's non-fiction or fiction, literature-loving court professionals found ways to employ literary analysis as a means of finding common ground with Tolstoy—both his art and ethical universe—that reinterpreted his animosity towards law as a philosophy that argued for a holistic and ethics-based approach to justice. It must be noted that in the late 1880s and 90s, the literary lawyers' need to seek support for law in literature must have increased due to the change in Russia's political and juridical environment. In the aftermath of Alexander II's assassination, the new tsar and his officials began to look at new courts with suspicion and fear, particularly because the political and social ideas that were aired in courts (for instance, during the political trials of the 1870s) posed a threat to the very foundation of

Russian monarchy. In the context of the growing condemnation of courts and court professionals, the literary lawyers took upon themselves the difficult task of fashioning a more positive history of legal attitudes in Russia. They did so by arguing that Russia's most influential and emblematic figures, among them Alexander Pushkin and Fyodor Dostoevsky, respected law. In essence, the literary lawyers relied on their skill in literary analysis as a means of persuading their contemporaries that animosity towards law was *not* a typically Russian feature. The literary lawyers argued that the masterpieces penned by Pushkin and Dostoevsky encouraged readers to look at law in a more civically, ethically, and philosophically conscious manner. While at times their arguments seemed surprising and counterintuitive, the literary lawyers continued to dig in the unpromising soil of Russian literature, seeking out further evidence in support of their belief that legal consciousness had been and remained a traditional part of Russian culture.

The appropriation of Lev Tolstoy was the last and most significant effort of literary lawyers to re-fashion a major author for the benefit of legal consciousness in Russia. In this chapter, I focus on five critical responses dedicated to Tolstoy and his fiction that were penned by legal professionals: the literary lawyers Sergey Andreevsky and Anatoly Koni, and three anonymous legal professionals, who reviewed Tolstoy's last novel *Resurrection*. Among the five responses to Tolstoy by legal professionals that I analyze in this chapter, Sergey Andreevsky's 1890 essay is particularly important because it invited the study of Tolstoy from the literary standpoint, offering along the way a number of "daring truths" (the term belongs to Andreevsky himself) about Tolstoy's fiction. Instead of joining those who eulogized or castigated Tolstoy, Andreevsky took the middle road, finding both strengths and flaws in Tolstoy's literary art. Andreevsky praised Tolstoy's techniques of realistic depiction, honesty in treating the controversial topics of sexuality and marital discord, but criticized his inability to invoke and

sustain the reader's sympathy for his literary characters. Although he was reproached by the publisher Alexey Suvorin for offering "lawyerly" (read: simplified, shallow) insights into Tolstoy, actually Andreevsky made enormous advances in literary appreciation of what made Tolstoy's work so distinctive, innovative, and brilliant. The publisher was correct, however, in pointing out Andreevsky's important work of appropriating (or misappropriating) the profoundly anti-legal Tolstoy as an inspiration for jurists in their work. For lawyers and the courtroom, Andreevsky created a "usable Tolstoy": Tolstoy, whose literary artistry could be an important model for legal storytellers. Andreevsky also established the pattern among his colleagues for reading Tolstoy as a culturally significant artist and writer instead of an ideological opponent. After Andreevsky, I look at the following three lengthy reviews of *Resurrection*, published in 1899 and 1900: "The Open Letter to L.N. Tolstoy" published in *Zhurnal ministerstva iustitsii* [*The Journal of the Ministry of Justice*] under the signature "Old Judge," "Jurists in the Novel *Resurrection* by the Count L. Tolstoy," published in *Vestnik Prava* [*The Messenger of Law*] under the signature "Former Prosecutor, now a Judge," and the anonymous review published in *Vestnik Evropy* [*The Messenger of Europe*]. Following into Andreevsky's footsteps, the two reviews of *Resurrection* from *Vestnik Prava* and *Vestnik Evropy* continued with the tradition of looking at Tolstoy from the literary standpoint. Unlike the review of *Resurrection* by the "Old Judge" that offered predominantly civic criticism of Tolstoy, reprimanding the novelist for denigrating Russia's democratic courts in his novel, the aforementioned reviews sought to normalize and appropriate Tolstoy's novel *Resurrection* for the benefit of legal culture instead of attempting to overthrow Tolstoy's cultural authority. Finally, I look at Anatoly Koni's important memoir about his friendship with Tolstoy, penned in 1908 (on the occasion of the novelist's eightieth birthday). In his memoir, Koni formulated an image of Tolstoy as a moral philosopher

who liked to philosophize about law, did not shun the company of ethically-driven jurists like Koni himself, and whose fiction was instrumental for the evolution of legal consciousness in Russia. Koni's memoir finalized the appropriation of Tolstoy among literary lawyers by suggesting that, despite their different attitudes towards law and court justice, both jurists and Tolstoy shared the same set of ethical values. To sum up, I trace the process of Tolstoy's appropriation by legal professionals. I argue that while Tolstoy's anti-legalism posed a great challenge to his admirers and readers within the legal profession, literary lawyers became instrumental in introducing additional dimensions to Tolstoy's thinking about the law and courts. For instance, their writings illuminated the important moral and philosophical underpinnings in Tolstoy's thought about court justice, making them a part of the contemporary legal debate.

Lev Tolstoy's Resurrection: From "Koni's Story" to a Critique of Post-Reform Court Professionals

It became clear to [Nekhlyudov] that all the dreadful evil he had been witnessing in prisons and jails, and the quiet self-assurance of the perpetrators of this evil, resulted from men attempting what was impossible: to correct evil while themselves evil. Vicious men were trying to reform other vicious men, and thought they could do it by using mechanical means. And the result of all this was, that needy and covetous men, having made a profession of this pretended punishment and reformation of others, themselves became utterly corrupt, and unceasingly corrupt also those whom they torment.

*Resurrection: Book III, Chapter XXVIII*⁶

In 1899, Tolstoy's last novel *Resurrection* appeared in *Niva* [*The Grain Field*], an illustrated weekly journal of "literature, politics, and modern life." The novel that took Tolstoy more than a decade to complete outgrew the original plot of the story told to him by Anatoly

Koni. From a story, or rather a moral vignette, about sexual transgression and repentance, “Koni’s story” transformed into a big social novel. For instance, Tolstoy introduced into his plot a great number of entirely new themes: Russia’s cruel and ineffective penitentiary system, the hard life of convicts, pointless political and religious repressions committed by the government, the workings of Russia’s legal bureaucracy, etc. Nevertheless, the novel preserved its court-related focus. Tolstoy opened his novel with the long depiction of the trial, specifically focusing on the professional and moral flaws of court professionals. In essence, by exposing the petty motivations of court professionals during the trial (their self-centeredness, preoccupation with external affairs, lack of independent judgment, professional feuds, and personal vices), Tolstoy raised the question about the overall effectiveness of court justice handled by paid court professionals.

While Tolstoy kept some basic elements from “Koni’s story” (seduction, repentance, etc.), he enriched it with details intended to show that there was something inherently wrong with a system of justice that relied on rigid legal rituals in order to solve intricate and ever-changing human affairs. The protagonist Prince Dmitri Nekhlyudov is summoned to court to serve as a juror in the trial of the prostitute Ekaterina Maslova, accused of poisoning and robbing her client, a wealthy Siberian merchant. It is fairly obvious from the very beginning (unlike in the trial of Rozalia Onni), that Maslova is innocent, and was framed for murder by two employees of the hotel where the merchant was staying. To his great surprise, Dmitri Nekhlyudov recognizes in the unfortunate prostitute his first love, the girl whom he seduced, impregnated, and abandoned years earlier while visiting his old aunts in the country. Upon seeing Maslova on the trial bench, Nekhlyudov experiences spiritual rebirth, guessing—and, as Tolstoy suggests, quite correctly—that Maslova’s desperate life circumstances were produced by

his vile actions. At this point, Tolstoy's novel drastically departs from the plot of Koni's original story. As Nekhlyudov ponders the irony of fate that pushed him face to face with the evil that he once committed, an unexpected legal error occurs. Bored out of their wits by long court speeches and misguided by the judge's instructions, the jurors make a mistake in their verdict and send Maslova to Siberia. The judges see the error, but, fearing the outrage of newspapers, refrain from overturning the verdict. Nekhlyudov decides to help Maslova. He hires the lawyer, files for an appeal, and turns to the help of his numerous aristocratic acquaintances. The remainder of the novel describes Nekhlyudov's pilgrimage among various legal offices and prisons, a pilgrimage that reveals the bizarre world of legal bureaucracy, overflowing with injustices, oppression, and moral barbarism.

Tolstoy's decision to transform Koni's story into a novel about a legal error is not surprising. Russia's greatest novelist and preacher, who began his life-long "romance" with law as a law student at Kazan University in the 1840s, left the University without a degree in law. However, throughout his writing career he continued to engage with plots that explored the impact of law on human life. In fact, all of Tolstoy's law-conscious fiction—his novellas *The Death Of Ivan Ilych* (1886) and *The Kreutzer Sonata* (1889) and novel *Anna Karenina* (1878)—can be easily read as cautionary tales about the law's engrained capacity to inflict damage upon people. In *Anna Karenina*, Tolstoy tells the story of a woman who became a victim of Russia's antiquated divorce laws. *The Death of Ivan Ilych* describes the life of a judge, who only on his deathbed realized the immorality of his professional activities. *The Kreutzer Sonata* introduces as one of its subplots a story about a legal error: the reader comes to realize that the jurors acquitted the protagonist Pozdnyshv, the empathy-invoking wife murderer, by mistake. Among Tolstoy's longer fictional works, *Resurrection* occupies a very special place because it formulated the

novelist's view of post-reform courts and court professionals; this opinion differed a great deal from the opinions held by people like Anatoly Koni and his colleagues, who cherished post-reform courts as Russia's only truly democratic institution. Although the judicial reform of 1864 did not transform Russia into a constitutional state, it brought the end of bureaucratic despotism in Russian courts. Russian judges were proclaimed independent and irremovable, and courts were allowed to handle matters of justice without the intervention of the government. Tolstoy disregarded these important civic accomplishments of Russian courts and court professionals. Without making a clear distinction between various legal occupations, Tolstoy's *Resurrection* represented *iuristy* (the term that Tolstoy's contemporaries applied to all legal professions) as indifferent and cruel bureaucrats, concerned only with the proper observation of legal rituals, prompt professional advancement, and self-gain. The novel cleverly and clearly suggested that the "new people" were the direct descendants of the same common prototype: the Russian bureaucrat, who was habitually perceived by Russian readers of literature as the source of all national woes and injustices.

In his novel, Tolstoy strives to show that people who are responsible for Maslova's sentence and have a professional and legal authority over her destiny—the judges, prosecutor, and lawyers—have no human feelings for the defendant, and are preoccupied either with their own role in the trial or external personal affairs. Using his usual technique that the formalist critic Victor Shklovsky labeled as *ostranenie* (defamiliarization), Tolstoy depicted the judges at Maslova's trial not as qualified and wise professionals, but as ordinary flawed people preoccupied with their personal affairs more than with their legal duties. For example, the presiding judge is distracted from the case by the arrival of a note from his lover, the former governess of his children. Unbeknownst to anyone, the seemingly insignificant piece of paper

begins to exert more influence on the outcome of the trial than any other element in the trial. Tolstoy writes that the note “made [the judge] wish to begin the sitting and get it through as soon as possible, so as to have time to call before six o’clock on the little red-haired Clara Vasilyevna, with whom he had begun a romance in the country last summer.”⁷ Tolstoy employs this trivial detail in order to show that the supposedly impartial judge is, first and foremost, an ordinary, fallible, or even not particularly virtuous man, thus raising in the mind of the reader a very legitimate question: can one trust legal professionals if their professional prestige is nothing but a mask concealing otherwise ordinary human faults and vices? By confronting the reader with the provocative image of a judge preoccupied with thoughts about his sexual exploits during the trial, Tolstoy interrogates the very notion of legal professionalism. All other legal professionals at Maslova’s trial are described in a very similar fashion. The presiding judge’s assistant broods over a financial disagreement with his wife; the prosecutor arrives at court unprepared to prosecute the case because he spent the night drinking, gambling, and frolicking in the same brothel where the defendant Maslova worked as a prostitute.

After exposing the psychological, moral, and professional incompetence of judges, Tolstoy turns his attention to the imposing décor of the courtroom. In a series of brief sketches, he focuses on the symbolic elements in the courtroom setup that are instrumental in masking the obvious fact that, like all other people, judges are fallible, and their professional training does not guarantee a just verdict. Tolstoy writes:

The court was a large, long room. At one end, with three steps leading up to it, was a raised platform, on which stood a table covered with a green cloth trimmed with fringe of a darker shade. At the table were placed three armchairs with very high, carved oak backs; and on the wall behind these hung a full-length, brightly-

colored portrait of a [general] in uniform and sash, with one foot advanced, and holding a sword. In the right corner hung a case with an icon of Christ crowned with thorns, while beneath it stood a lectern, and, on the same side, the public prosecutor's desk.⁸

While Tolstoy points out that the court was simply a “large” and “long” room, he draws the attention of his reader to the fact that the judges occupy a very special place within the symbolic space of the courtroom. They are elevated on a platform above the rest of the courtroom, and they are surrounded by the symbolic objects that invoke the ideas of power, morality, and absolute truth: the portrait of the Emperor that Tolstoy describes dismissively as the “portrait of a general” is placed behind them, and the icon of the thorn-crowned Christ is to their right (see Figure 5.2: the photograph “In a City Court” by Maxim Dmitriev shows the typical setup of a late nineteenth century courtroom). A bit further, Tolstoy describes the judges, once again drawing the attention of his reader to seemingly unimportant details in the judges’ attire and surrounding symbolic objects:

The figures of the president and the members, in their uniform with gold-embroidered collars, looked very imposing. They seemed to feel this themselves, and, as if overpowered by their own grandeur, they hurriedly sat down on the high-backed chairs behind the table with the green cloth, on which [was] a triangular article with an eagle on top [...].⁹

Tolstoy points out that the judges wear the gold-embroidered uniforms, the attire that makes even the judges feel uncomfortable, perhaps because it seems to be inappropriate for court professionals associated with the new democratic court. Tolstoy describes yet another important object in the setting of the courtroom. The so-called *zertsalo*—labeled by Tolstoy

contemptuously as the “instrument with the eagle”—stood on the desks in all Russian courts. *Zertsalo*, an object that looked like a triangular prism, was decorated with the two-headed eagle on top and three Petrine decrees on each side: the decree on the observance of civil rights, decree about honest service in court, and decree on the importance of laws. Despite the fact that this object conveys a profound message about the importance of law, Tolstoy’s dismissive label strips *zertsalo* of its significance as the emblem of law and order, thus exposing how the court and court professionals exploit and abuse symbolic objects for the sake of establishing the illusion of their professional, moral, and legal authority.

Court speeches receive from Tolstoy a very similar treatment. Instead of mocking the lawyers’ flowery rhetoric (as Dostoevsky did in his *Writer’s Diary* and *The Brothers Karamazov*), Tolstoy depicted court speaking as a meaningless exchange of uninspired and clichéd statements and trite legal arguments. His parody of the presiding judge’s speech, for example, is particularly biting. The judge’s speech, which he recites almost like a boring poem, carries no specific meaning, states the obvious, but omits some important instructions. Tolstoy writes:

As soon as the jurymen were seated, the president made speech on their rights, obligations, and responsibilities. While speaking he kept changing his position: now leaning on his right, now on his left hand, now against the back, then on the arms of his chair, now putting the papers straight, now handling his pencil, now the paper-knife.

According to his words they had the right to interrogate the prisoners through the president, to use paper and pencils, and to examine the articles put in as evidence. Their duty was to judge not falsely, but justly. Their responsibility

meant that if the secrecy of their discussion were violated or communications were established with outsiders they would be liable to be punished.¹⁰

Tolstoy's description of the jurors' rights and duties is especially satirical. Within the same sentence, Tolstoy mentions the right of the jurors to examine the evidence and to ask questions along with their so-called "right" to possess a pencil. His quick reference to the jurors' duty to judge "not falsely, but justly" also strikes a satirical cord. As one of the novel's contemporary reviewers of *Resurrection* pointed out, Tolstoy depicted the speech of the presiding judge as "clownish," i.e. too verbose, unfocused, and saturated with unnecessary details that obscure even most clear points and ideas.¹¹

In fact, the miscarriage of justice during the trial of Maslova occurs precisely because the judge, distracted by thoughts about his lover, forgets to provide the jurors with complete and accurate instructions. In the following passage, Tolstoy mocks the process of legal decision-making by listing a number of extra-legal factors that lead to the wrong verdict in Maslova's case:

Rabelais tells of a lawyer who in conducting a case quoted all sorts of laws, read twenty pages of senseless judicial Latin, and then proposed to the judges to throw the dice, and if the numbers proved odd the defendant would be right; if even, the plaintiff. It was much the same in this case. The resolution was taken not because everybody agreed upon it, but because the president, who had been summing up at such length, omitted to say what he always said on such occasions, that the answer might be, "Yes, guilty, but without the intent on taking life"; because the colonel had related the story of his brother-in-law's wife at such great length; because Nekhlyudov was too excited to notice that the proviso "without the intent

to take life” had been omitted, and thought that the words “without intent” nullified the conviction; because Peter Gerasimovich had retired from the room while the question and answers were being read, and chiefly because, being tired, and wishing to get away as soon as possible, all were ready to agree to the decision which would soonest bring matters to an end.¹²

Among the circumstances that lead to Maslova’s wrongful sentence, the excess of speech occupies a key position. The judge is carried away by his eloquence, which has been learned and practiced so much that he barely pays attention to his own words. Tolstoy also shows that the excess of speech begins to affect the jurors, who succumb to the urge to speak instead of listening and thinking. Surprisingly, although the presiding judge and assistant judges see immediately that the jurors made a mistake, they fail to intervene, and the injustice goes uncorrected due to factors that are not directly relevant to the case. While the “kind” member of the court votes to overturn the verdict, the “angry” member disagrees, reminding his colleagues that the newspapers would cause a scandal by blaming the new court for once again acquitting a criminal.¹³ The judges decide to play it “safe” and approve the faulty verdict, an act that, as Tolstoy shows, is somehow justified within the existing legal procedure. Only Nekhlyudov, a man without any professional legal training, feels revolted by this procedurally justified indifference and thinks to himself “It is impossible to leave it so” [“Нет, это не возможно так оставить”].¹⁴

As Nekhlyudov gets more insight into the workings of the new liberal court, he realizes that in many instances the new democratic court puts up useless performances that do not protect the interests of any individuals involved and waste useful resources instead. Especially forcefully this idea is articulated by Nekhlyudov when he observes the farcical trial of a young boy who

stole two old door mats. The boy stole the mats because he was hungry, and hoped to exchange the mats for bread. Neither the boy nor plaintiff wanted to proceed with the trial. In fact, the plaintiff, a busy merchant, was rather annoyed by the necessity to skip work in order to attend a useless court session. However, because the boy was detained, and the legal machinery was set in motion, neither party could prevent the trial from happening. Observing this bizarre and useless trial, Nekhlyudov makes a note to himself:

“And how much effort, what strenuous effort, this pretense costs,” Nekhlyudov went on thinking to himself as he looked round the huge court-room, seeing the portraits, the lamps, the arm-chairs, the uniforms, the thick walls, the windows, and remembering the great size of the building and the still more enormous size of the establishment, the whole army of officials, clerks, warders, messengers, not only here but throughout Russia, who received salaries for performing this farce that nobody needed.¹⁵

Essentially, Nekhlyudov views the modernized court as yet another way of wasting useful resources: court professionals pretend at serving justice by initiating the trial that could have been resolved by the parties in the dispute themselves, without any legal intervention. This, according to Nekhlyudov, rendered the whole institution of legal justice useless and even “immoral.”¹⁶

Similarly to the judges, the lawyers in *Resurrection* receive harsh treatment from Tolstoy. Contrary to the common perception of lawyers as a profession that was markedly new and situated in the opposition to the government, Tolstoy depicted Fanarin, Ekaterina Maslova’s lawyer, as an opportunist for whom the new court system provided a safe and profitable paradise. In *Resurrection*, Tolstoy shows that the lawyer does nothing beyond composing papers and

arguments that fit existing legal and bureaucratic clichés. In other words, his professionalism is circumscribed by his insight into what other legal officials want, and how to solicit a desirable legal outcome. This “outcome,” for which Fanarin charges handsomely, is neither guaranteed nor even expected. *Resurrection* delivers a dark picture of *lawyering* as a professional pursuit. After Nekhlyudov realizes that a judicial error occurred, he hires Fanarin, hoping that the famous lawyer will be able to restore justice promptly. However, Nekhlyudov realizes rather quickly that Fanarin is not in the least concerned about the injustice that happened to Maslova, and that he performs his work mechanically. Nevertheless, Fanarin fancies the idea of himself as a special human being. Nekhlyudov views the lawyer differently: Fanarin is only a wealthy man, whose luxurious life signals to Nekhlyudov wealth earned fast and without much work.

Tolstoy parodies the civic and humanitarian aspirations of Fanarin. Trying to persuade Nekhlyudov (who is trying to save Maslova from Siberia without any benefit for himself) that his work is not deprived of noble aspirations, Fanarin insists he is emotionally involved with his cases. However, Fanarin’s statement produces a satirical effect, especially because the lawyer speaks haughtily about the clients who “flock” to him, seeking his legal help. The lawyer laments to Nekhlyudov:

[I]t is said that we advocates get our money for nothing. [...] Having freed one insolvent debtor from a totally false charge, they all flock to me now. Yet every such case costs enormous labor. Do not we, too, ‘leave bits of flesh in the inkstand’? as some writer or other has said.¹⁷

The quote from the anonymous author that Fanarin employs to describe the emotional involvement that his job supposedly requires (“Do not we, too, ‘leave bits of flesh in the

inkstand?") is pretentious and awkward, and hints at Tolstoy's rejection of the lawyer's ambition to appear civic and moral.

Sergey Andreevsky's "Daring Truth": Creating a "Usable Tolstoy" (1890)

Why do you use the word "lawyer" as an abuse? Nowadays, if something is not good, they immediately say it is done in a "lawyerly fashion." You are so incorrigibly prejudiced! [...] I think I will publish my essay in *Trud* [*Labor*]. It is easier to express modest truths there.

From Sergey Andreevsky's letter to Alexey Suvorin, in response to his review of Andreevsky's essay about Tolstoy, November 6th 1890

I lied when I said "modest truth." As a matter of fact, this truth is rather daring. Tolstoy, with his boldness, will be published anywhere, but the likes of us have to be more subtle.

From Andreevsky's undated letter to Suvorin (written after November 6th 1890)¹⁸

In 1890, Sergey Andreevsky turned his attention to Lev Tolstoy, publishing a long essay titled "From My Thoughts about Lev Tolstoy" in the monthly journal *Trud: vestnik literatury i nauki* [*Labor: The Messenger of Literature and Science*].¹⁹ While his essay did not offer a global revision of Tolstoy as a writer, it was perceived by at least one of its first readers, Alexey Suvorin, a prominent book and newspaper publisher, as irreverent and "lawyerly" (see the epigraphs above). Suvorin, who was on friendly terms with Andreevsky, most likely misread the literary lawyer's intent in crafting his essay. In his response to Suvorin, Andreevsky explained that he simply tried to uncover the roots of Tolstoy's success as a realist writer instead of accepting and repeating truisms about Tolstoy's mastery. Ironically, although Andreevsky felt slightly offended by Suvorin's comment about the "lawyerly" nature of his essay, Suvorin was unintentionally close to truth. The term "lawyerly," as used by Suvorin, implied that

Andreevsky's essay offered a somewhat simplistic reading of Tolstoy. However, if taken literally—as conceived and authored by a lawyer—Andreevsky's essay undoubtedly contains a healthy “lawyerly” element: i.e. Andreevsky reads Tolstoy and his art through the prism of his experience as a court professional. Andreevsky's interest in Tolstoy was prompted by his friendship with another legal professional Anatoly Koni, who had been a longtime admirer of Tolstoy, and, after 1887, developed a very close acquaintanceship with Tolstoy. A poet himself, Andreevsky preferred Russian romantic poets Alexander Pushkin and Evgeny Baratynsky to Tolstoy, but certain aspects in Tolstoy's prose captured not only his literary, but also legal imagination. His essay about Tolstoy was conceived and published almost a decade before Tolstoy's *Resurrection* appeared in print. Nevertheless, although his essay does not discuss Tolstoy's treatment of law, Andreevsky's reading of Tolstoy is influenced by his professional curiosity about the art of a well-crafted story. In his essay, Andreevsky examines the roots of Tolstoy's persuasiveness as a writer. He attempts to unveil the secret of Tolstoy's realism, as well as the reasons that Tolstoy's characters invite less sympathy from the reader than Dostoevsky's lunatics, criminals, and fallen women. Finally, he looks at Tolstoy's fictional treatment of sexuality and marital problems, both topics of a crucial interest to a court professional.

Andreevsky opens his essay with a question that would have been of interest to any courtroom speaker or defense lawyer: What is the secret of Tolstoy's success as a storyteller? Why are his stories so compelling that even the readers who have significant ideological disagreements with the author are willing to put them aside? Andreevsky articulates the answer to this vital question almost immediately: for him, the secret of Tolstoy's impact as a storyteller lies in the author's “unusual artistic memory of impressions” [*neobychainaia khudozhestvennaia*

pamiat' vpechatlenii], i.e. Tolstoy's talent in recounting events as if they were unfolding in front of him. Andreevsky writes:

By conjuring in his imagination the life processes of the past, he can copy them as if, in reality, they were unfolding in front of him live, second after second, halting at his will in front of his mental eye, in order for him to catch the necessary details of these processes. [...] From his position of a calm observer, placed face to face with this magical and brightly lit picture, Tolstoy can duplicate this reality without any mistakes that arise from forgetting the specific details of the event.²⁰

While this lofty description of Tolstoy's storytelling is rather unilluminating as excess of detail does not necessarily guarantee realism, Andreevsky's further clarification offers a more original reading of Tolstoy's realism. Andreevsky writes:

Painting the past from the stenograph of his memory, Tolstoy freely borrows from its pages everything that everyone sees, but barely anyone remembers. Therefore, most ordinary things acquire in Tolstoy's writing the significance of artistic discoveries.²¹

Aside from his fascinating and revealing reference to stenography (the pioneering technology that at the end of the nineteenth century was used primarily in courts), Andreevsky discovered in Tolstoy's realism a trait that was frequently dismissed by critics as Tolstoy's strange stylistic quirk. In his essay, Andreevsky specifically mentioned the review of *Anna Karenina* published in the newspaper *Golos [Voice]*, in which the reviewer made a dismissive remark about Tolstoy's *War and Peace*. In the episode mentioned by the reviewer, Andrei Bolkonsky is astonished to hear the cries of a baby from the room where his dying wife is giving birth. While the unnamed reviewer found this detail comical if not outright ridiculous, Andreevsky disagreed. For him,

Tolstoy was successful as a realist precisely because he was able to resist the powerful desire to purge his fiction of strange, embarrassing, or even inappropriate details.²² This trait of Tolstoy's realism formed the core idea in Andreevsky's understanding of Tolstoy's realism.

In his essay, Andreevsky also focused on Tolstoy's psychological analysis. This topic was of great interest to Andreevsky, whose signature style as a court orator involved the depiction of his clients' psychological states. While Tolstoy was a universally acknowledged master of psychological prose, in his essay Andreevsky offered a unique take on this topic. Andreevsky suggested that Tolstoy achieved success in creating persuasive psychological portraits by employing *samonabliudenie* or self-observation, i.e. most of Tolstoy's favorite characters keep a close eye on their inner states and thoughts, informing the reader about the nuances of these states through never-ending internal soliloquies.²³ Andreevsky writes:

Bringing his psychological analysis to the attention of the public, Tolstoy ran the risk of not being properly understood because, while filling his pages with the long monologues of characters, these peculiar inner conversations that people lead with themselves when they are alone, Tolstoy was creating an absolutely new and bold device in literature. [...] Tolstoy depicted the whole range of most ordinary and healthy people—old and young, mature and naive, and in the midst of most patriarchal environments and humdrum settings—and forced them into a dream-like madness while being fully awake.²⁴

Curiously enough, this rhetorical device was also present in Andreevsky's court speeches. For instance, Andreevsky's speech in defense of Ivanov, who was tried in 1891 for stabbing his lover (see my chapter about court speech in Russia), offers a generous glimpse into Ivanov's psyche precisely by the means of Andreevsky describing the inner thoughts and feelings of his client.

While it is hard to say whether Andreevsky “discovered” and borrowed this device from Tolstoy, or his technique arose organically as a response to the challenges of courtroom storytelling, Andreevsky’s ability to discern the “psychologically feasible” elements in Tolstoy’s fiction must have been connected to his professional skill in detecting the “psychologically feasible” in his clients’ stories.

Another interesting but peculiar topic that Andreevsky addresses in his essay is the capacity of Tolstoy’s fiction to invoke sympathy. The question of sympathy—“Does Tolstoy make us sympathize with his characters?”—seems particularly appropriate in a literary essay penned by the lawyer. Andreevsky argues that, despite Tolstoy’s extraordinary talent in producing gripping stories, the author fails to make the reader love or sympathize with Tolstoy’s characters. Andreevsky then provides the reader with the fascinating list of reasons that, in his opinion, made Tolstoy’s characters “unlovable.” First, Tolstoy depicts exclusively privileged characters, whose values and behaviors are rarely tested. These characters have the financial freedom to do whatever they desire: they can live on their country estates or in the city, they can practice mysticism, or they can do nothing at all. Whatever these characters choose to do, their virtues are conditional as the reader does not see them under any circumstances that could have forced them to behave in a less dignified manner.

Second, Andreevsky argues that Tolstoy thwarts the ability of readers to sympathize with his characters by overexposing their feelings and motivations. This excessive exposure, Andreevsky suggested, conveys an impression that Tolstoy’s literary characters have no secrets beyond the page of the novel. For instance, by focusing too much on the physicality of Anna Karenina’s feelings towards Vronsky, Tolstoy subverts the ability of his reader to imagine a different, more spiritual Anna. Andreevsky writes:

[Tolstoy's characters are] depicted in a vivid, interesting, and lively fashion. Nevertheless, nobody among these people sinks deeply into your heart. And something else: the more episodic the characters, the better they are depicted. You grow alienated from all characters who underwent this more or less comprehensive dissection, and at the end they escape your budding sympathy altogether. Dostoevsky's words come to mind that "one can't love one's neighbors, but only those at a distance," i.e. one can love only those whom he hasn't had time to get to know more closely. [...] Indeed, isn't it why Tolstoy's characters do not appeal to us, precisely because they walk around with their insides illuminated? Can one person have a gift of seeing through everybody?²⁵

And a bit further, Andreevsky continues:

This coloring of Tolstoy's temperament is the coloring of a thoughtful genius, who constantly judges himself, ceaselessly analyzing and figuring out the total sum of himself, always with a hint of inner dissatisfaction. Certainly, this shadow was cast over all works by this writer, adding to the vast universe of his portraits a barely noticeable (thanks to his artistic mastery), but pervasive tinge. In most cases, these are not portraits, but veiled verdicts.²⁶

The fact that Andreevsky introduces a reference to Dostoevsky into his analysis of Tolstoy suggests that, between the two authors, Dostoevsky was Andreevsky's favorite. Indeed, in his essay from 1888 (discussed in my chapter about Dostoevsky), Andreevsky defended the type of exalted realism introduced into Russian literature by Dostoevsky's *The Brothers Karamazov*. For Andreevsky, *The Brothers Karamazov* was Russia's most realistic novel, and *karamazovshchina* (defined as the animalistic worship of fleshly desires and money) was Russia's new reality. By

placing the realism of Tolstoy below that of Dostoevsky, Andreevsky acknowledged the supremacy of Dostoevsky as a writer, whose fiction proclaimed that judging was impossible because, in the end, everybody was “guilty,” over Tolstoy, who claimed that judging was God’s chore, but continued to pen fiction that encouraged readers to be judgmental.

From among the topics explored by Tolstoy, Andreevsky chose to discuss in his essay the topics of sexuality and marital discord. It was perhaps unavoidable for Andreevsky not to respond to these topics as, first, his essay was conceived shortly after the publication of Tolstoy’s controversial novella *The Kreutzer Sonata* (1886), and, second, not infrequently bad marriages and sexual affairs led to crime, crimes of this kind led to jury trials, and jury trials led to further public exposures of sexual affairs. Describing Tolstoy’s *The Kreutzer Sonata* as an “intentional and didactic tale” [*prednamerennyi i nravouchitel’nyi rasskaz*], Andreevsky nevertheless looked at the didactic value of Tolstoy’s anti-sexual sermon with a great degree of skepticism, arguing mockingly that the novella could perhaps serve only as a temporary “hygienic measure,” designed to scare very young people into abstinence. Andreevsky wrote: “Aside from this temporary restraining influence, *The Sonata*, of course, won’t accomplish anything else because nature will always take its course.”²⁷ However, Andreevsky acknowledged *The Kreutzer Sonata* as a key literary text that inaugurated open and uncensored discussion of sexuality, drawing the attention of the public to sexuality as the foundation of marriage. Andreevsky wrote:

In *The Kreutzer Sonata*, Tolstoy approached the weakest spot of the marital union with bold frankness, so typical for him, and profound instinct for truth. He showed how a marital union is fatally bound to its lowly, carnal side, and how both parties of the union always cling to this side, suffering because of this. There

is a lot of profound truth in this, and *The Kreutzer Sonata* is most noteworthy as a sensational tract dedicated to the discussion of the marital question.²⁸

Upon expressing his take on Tolstoy's controversial opinion about sexuality, Andreevsky turns his attention to another related topic: the types of marriage and marital discord in Tolstoy's *War and Peace* and *Anna Karenina*. Andreevsky pointed out that in his fiction Tolstoy depicted three types of marital relationships. Loveless and sexless marriages of convenience constituted the first type. Tolstoy shows that such marriages (for instance, like the marriage of Anna and Alexey Karenin) usually disintegrate and lead to catastrophes. Ordinary marriages constituted another type. In ordinary marriages, the spouses loved each other at some point in the past, but at the time of depiction either one party or both cheat and lie to each other. Andreevsky cites as his example the marriage of Dolly and Stiva Oblonsky in *Anna Karenina*. Good marriages, the third type of marriage that Tolstoy explores in his fiction, are exceptionally rare: in this type of marriage, both spouses are deeply attached to each other, maintaining spiritual as well as sexual loyalty (the marriage of Levin and Kitty would be a great example of this type of a marital union).

It is obvious that Andreevsky views the issue of sexual loyalty or disloyalty as central to Tolstoy's fiction. In fact, in his essay Andreevsky draws attention adultery and its impact on family life several times, using as his examples both *Anna Karenina* and *The Kreutzer Sonata*. Andreevsky offers his philosophical synopsis (i.e. not attached to any literary examples) of adultery's impact on each person within a married couple. Andreevsky writes:

Many bitter feelings, irritation with each other, disappointments, wry glances, and bewilderment arise in a family struck by the adultery committed by one of the spouses. Now, everything that before was held tightly together falls apart as if in a

chemical reaction, creating a distance greater than the one that can potentially exist even between two total strangers.²⁹

If we look at Andreevsky's statement closely, it sounds more like an argument from a lawyer's closing statement rather than a sentence from an essay about a writer and his fiction. In other words, in his essay Andreevsky resorted to a genre of analysis that blended a literary essay with the elements of analysis based on the author's legal expertise. I would like to suggest that this type of hybridity emerged not only from Andreevsky's professional familiarity with the topic, but also from the growing visibility of such previously tabooed issues as sex and adultery. In fact, publicity about contemporary crimes placed adultery squarely within Russia's modernizing public sphere, making it into a visible part of the contemporary social imaginary.

To conclude, Andreevsky pioneered the study of Tolstoy's fiction among legal professionals, encouraging his colleagues to look at novels from the literary, and not purely ideological point of view. Moreover, writing ahead of the wave that arrived in the wake of Tolstoy's eightieth birthday, epic escape from home, and death at the train station in Astapovo, Andreevsky managed to escape the trap of eulogy, focusing on Tolstoy's art instead of his significance as a public figure. The intricate inner structure of Tolstoyan realism, interrelationship between art and sympathy, fictional treatment of important social and personal issues: all of this became the subject of Andreevsky's literary scholarship, thus opening up the door towards a more law-friendly application of Russian literature. It is through the study of Andreevsky's readings of the masterpieces of Russia literature that we can arrive at a fuller understanding of how Russia's literature, which remained hostile towards legal professionals, nevertheless continued to nurture both the members of this profession as well as Russia's legal consciousness. By studying what a lawyer like Andreevsky deemed important or lacking in

Tolstoy's fiction, we learn much about his cultural values and expectations as well as the cultural values and expectations of other literary lawyers. By stretching Andreevsky's attitudes about literature towards other members of his profession, we can better understand why even Tolstoy's most anti-legal novel *Resurrection* was reinterpreted by the representatives of this profession as something partially positive for Russia's struggling legal culture.

From Rejection to Acceptance: The "Old Judge" and "Former Prosecutor" Respond to Tolstoy's Resurrection (1899, 1900)

I don't understand how it was possible not to find a single sympathetic and honest person, a person worthy of attention, in the entire family of court professionals. I feel offended by the tendentiousness with which your novel is imbued, and by your deliberate choice of characters and events that seek to rob the court of trust that it enjoyed quite deservedly up until now. If, in the name of your principles, you reject the very idea of court justice, there are other methods at your disposal besides misrepresenting reality.

*From "An Open Letter to L.N. Tolstoy," 1899*³⁰

Some legal professionals who harbored no literary aspirations felt offended by Tolstoy's treatment of courts and court professionals in *Resurrection*. One of the first responses to Tolstoy's *Resurrection* by a legal professional appeared in October 1899 in the newspaper *Kievlianin* [*The Kievan*]. This response was written as an open letter to Lev Tolstoy, but the author of the "open letter" chose to stay anonymous, signing his letter to Tolstoy with a pseudonym that clearly suggested his professional affiliation: "Old Judge."³¹ Whether the author was indeed a judge or another type of court professional, his reading of Tolstoy's *Resurrection* betrays a person wholeheartedly dedicated to Russia's modernized courts, and thus unwilling to accede to Tolstoy's cynical vision of judges, prosecutors, and lawyers as apathetic opportunists. The Old Judge's response to *Resurrection* is also thought-provoking because it provides a

striking contrast to the interpretations of the novel that were produced by literature-loving Saint-Petersburg lawyers and other court professionals. Unlike the literary lawyers, who argued that, in a way, Tolstoy's novel was beneficial to the advancement of legal consciousness in Russia, the Old Judge's stated single-mindedly that Tolstoy's *Resurrection* was harmful because it encouraged disrespect towards law, courts, and the legal profession. The Old Judge wrote in his letter, addressing Tolstoy directly, and his readers indirectly:

Your *Resurrection* represents a mockery of contemporary courts, a mockery conducted in a calm and systematic fashion. According to your depiction, the court is nothing more than a mechanically functioning guillotine, set into motion by smug, carefree, and soulless people. This guillotine falls indiscriminately on the heads of those who accidentally turn up underneath it.³²

Although in his letter the Old Judge responds to *Resurrection* as a court professional disturbed by Tolstoy's selection of court-related facts, the manner in which the novel is described suggests the author's familiarity with Tolstoy's fiction. In this regard, his comparison of Tolstoy's depiction of court justice to a guillotine is particularly revealing. Indeed, both of Tolstoy's earlier novels, *War and Peace* and *Anna Karenina*, relied on mechanical metaphors in order to convey the novelist's negative attitude towards certain political or social phenomena. In *War and Peace*, Tolstoy used the metaphor of a clock to convey his idea of history as a complex moving mechanism, independent of political leadership. In *Anna Karenina*, the railroad and trains came to signify the negative effects of modernity on the individual, family, and marriage. Although *Resurrection* does not employ the metaphor of a guillotine, the novel unequivocally projects the image of the court as the institution that functions mechanically.

In his letter, the Old Judge reproached Tolstoy for committing two major “offenses” against the truth. First, the Old Judge questioned the realism of *Resurrection*, arguing that the novel exposed the author’s complete unfamiliarity with his subject matter. Specifically, the Old Judge accused Tolstoy of misrepresenting Russian judges as wealthy sybarites. He wrote:

On the account of satiety and sybaritism, have you heard that these alleged sybarites are almost exclusively working people, who do not dare to dream even about a more or less decent flat, even less about a nice place like Iasnaia Poliana; who do not have money for the education of their children, and even less for any kind social presentability; who sometimes, out of bitter necessity, have to accept help from private charity.³³

In this passage, the voice of the Old Judge grows remarkably personal. Indeed, in addition to subverting the argument about the judges’ alleged sybaritism, the critic projects the image of Tolstoy as a sybarite *par excellence*: a wealthy nobleman, living in a comfortable country estate, who has a very limited understanding of those who have to earn their modest income by working long hours and performing morally and intellectually challenging duties.

Second, the Old Judge reproached Tolstoy for misunderstanding the political mission of the new court. The new court, the Old Judge argued, played a key role in creating the Russian citizen, a man with a more developed sense of self-worth and legal awareness. He wrote:

I am saddened not only on account of the new court’s honor, which remains its only possession, but also on account of the idea that the new court embodies, and which you have dragged through the mud. You know what Russian society owes the courts. In addition to fulfilling its professional tasks, the courts took upon themselves a great political mission: they taught Russian people a sense of self-

worth. [...] [In the court], everybody feels like a citizen with full rights, equal to others, despite any existing differences in social standing. It seems that it is unnecessary to talk about the other achievement of courts: legally guaranteed justice. Think about the recent past: the bureaucratic courts with omnipotent secretaries, where truth was exchanged for roubles, and where any dirty deal could be whitewashed at someone's will. Now, ask any Russian citizen: does he know of anything like this taking place in new courts? And is not the greatest achievement of the new court that it has beaten out of the public's consciousness the power of that old and sinister proverb: "Do not fight against the strong, do not litigate against the rich."³⁴

The Old Judge expanded his argument about Tolstoy's inability to grasp the civic and political significance of Russian courts by suggesting that in this regard Russia's greatest novelist was lagging behind almost every social group within Russian society. In fact, Tolstoy was lagging behind ordinary people and peasants, whose moral integrity, common sense, and ability to understand the truth intuitively he worshipped in his fiction. Unlike Tolstoy—the Old Judge argued—Russian peasants understood the advantage of the new court over the old system. The Old Judge wrote:

In a short time, the new court has become the Russian people's best asset. They willingly entrust their needs and woes to the courts; more than to any other place. In our opinion, this quality alone is a major accomplishment of the new courts, and should protect them from mockery.³⁵

A bit further, the Old Judge continued: "But look: to whom, if not a justice of the peace, examining magistrate, or prosecutor, does a Russian peasant come from a remote village for

advice when he knows the truth, but cannot prove it?”³⁶ The Old Judge was correct, and Russian peasants—contrary to the common conception about their backwardness and resistance to novelties—came to view new rural courts as the best venue for settling their legal disputes. As Jane Burbank and Joan Neuberger show in their studies, rural courts and the Justice of the Peace courts in Russia’s cities and towns earned a lot of respect from peasants, who made ample use of them as a legal venue for resolving their minor economical or other minor disputes.³⁷

In January 1900, another review of *Resurrection* appeared in *Vestnik Prava* [*The Messenger of Law*], a journal published by the Juridical Society of Saint-Petersburg University. Titled “Court Professionals According to *Resurrection* by the Count L. Tolstoy,” this review appeared under the pseudonym “Former Prosecutor, now a Judge.” This response to the most provocative novel of the day could have belonged to the literary lawyer Vladimir Spasovich, who at the time played an important role in the University’s Juridical Society.³⁸ However, the precise authorship of this review is not as important as is the fact that, whoever the author of this review might have been, he was a savvier literary critic, who chose to depart from the model of social and juridical criticism provided by the Old Judge.

Although the Former Prosecutor agreed with the key idea expressed in the Old Judge’s letter, i.e. the tendentiousness of *Resurrection* that sought to discredit the courts as a platform for justice, his review provided a more literarily-based analysis of Tolstoy’s novel. Specifically, the Former Prosecutor refused to view Tolstoy’s novel as solely a vicious and unfair satire of courts and court professionals. Disagreeing with the Old Judge, he argued that *Resurrection* could not be read as only a mockery of court justice because it depicted a great number of people and stories the realism of which was hardly contestable. He wrote:

This one-sidedness runs as a red thread throughout the whole novel, and is apparent to any court professional. However, it might be not as apparent to the reader, who is less familiar with the life of courts and criminal procedures. This one-sidedness can be easily confirmed by the words that one hears quite frequently these days: “Look, how Tolstoy pulled you to pieces!” One former juror even went so far as to express a hope that *Resurrection* would provide a pedagogical and moralizing effect on court professionals, and compared them to Saltykov-Shchedrin’s Pompadours and Gogol’s literary types. But is this comparison appropriate? Saltykov-Shchedrin’s Pompadours are characters in a satire, a fantasy, while Tolstoy’s judges are real people! Gogol’s immortal types are also real people, but do they, in fact, invoke in us the same feelings as the types from *Resurrection* [...]?³⁹

While the Former Prosecutor remains ambiguous about his feelings towards Tolstoy’s “real judges,” he was certainly correct to point out the difference between Tolstoy’s court professionals and Saltykov-Shchedrin’s ridiculous and stylized bureaucrats. The word “Pompadours” (coined by Saltykov-Shchedrin to describe Russia’s proverbially inept bureaucrats, who got appointed to their high positions thanks to their societal connections, and not through any accomplishment of their own) was inapplicable to Tolstoy’s characters, whose quirks and faults were more psychologically and professionally believable.

While the Former Prosecutor dedicated a number of pages in his review to analysis of Tolstoy’s portraits of court professionals, pointing out the negativity and some factual inaccuracies in Tolstoy’s handling of the trial and its participants, he insisted that Tolstoy’s judges were not parodies. He wrote:

Everyone's heart would shudder involuntarily at the thought of the outcome of court cases entrusted to the aforementioned lawyers and court professionals. All of them are in a personal feud with somebody else, and the motives that inspire them are either of a very low kind or, even if these motives are lofty in nature, they have nothing to do with the given cases or goals of justice! However, the truth must come first! With my deepest regret, I must confess that not all of the depicted personalities are mannequins and the author's fantasies. Some of them are not only hypothetically possible, but, in fact, they can be found among court professionals and representatives of society, although not with the same aura of vulgarity and egoism ascribed to them by the author.⁴⁰

While not justifying Tolstoy's factual mistakes in depicting the trial and court professionals, the Former Prosecutor asserted the right of the novelist to make mistakes while writing about topics in which he is not an expert. He wrote: "A novelist is not an expert in trials, and a novel is not a manual for the study of the trial. Therefore, one cannot expect a novelist to write about trials as if he were an expert."⁴¹ Having said this, the Former Prosecutor was not anywhere close to acquitting Tolstoy of biased and inaccurate depiction of courts, arguing that he, Russia's most influential novelist, should have been more careful with his art and words, especially since the trial occupied a very central position in his novel.⁴²

In his review, the Former Prosecutor sought to reach several seemingly incompatible goals. On the one hand, he wanted to show to his readers (most likely, the majority of them were legal professionals) that Tolstoy's novel was not a parody, and his court professionals were at times very realistic. On the other hand, he wanted to pinpoint Tolstoy's factual mistakes in depicting the trial and its participants, while raising questions about the writer's responsibility to

control his emotions towards the topic in order to project a better, more thought-out, and fairer picture of reality. What was the intent of this anonymous reviewer, who found Tolstoy's novel to be simultaneously good and bad, truthful and misleading? The following example from the review explains the Former Prosecutor's understanding of why Tolstoy chose to depict predominantly unsympathetic court professionals and court cases illustrating the outright failure of legal justice:

Look, if a smart entrepreneur picked from one of the ethnicities that populate our vast Russia only those people who are lame, blind, and have no arm or nose, anybody who saw them would conclude that the given ethnicity consists only of cripples. A similar impression about court professionals can be taken away from reading *Resurrection*.⁴³

If Tolstoy was this "entrepreneur," then for *Resurrection* he had to pick the characters and events in a fashion that would necessitate and explain the spiritual resurrection of the protagonist Dmitri Nekhlyudov. The Former Prosecutor also suggested that Tolstoy chose his court professionals and cases in order to convey his belief that people cannot judge other people. In the novel, Tolstoy made one of the jurors at Maslova's trial, the old *artelshchik* (member of an *artel'* or workmen cooperative) into the mouthpiece of this idea. Unlike other jurors, the *artelshchik* categorically refused to acknowledge anyone's guilt, saying: "We are not saints ourselves."⁴⁴ By exposing Tolstoy's ideological motives, the Former Prosecutor strove to inculcate his readers with the idea that no novel—no matter how influential its author might be—can be used as a mirror for assessing the merits or faults of Russia's young legal culture.

In December 1899, *Vestnik Evropy* published a review of *Resurrection* that reminded the readers about the importance of reading Tolstoy's novel as a work of literature, and cautioned them against taking a novel for a programmatic statement and verdict against *all* courts and legal professionals.⁴⁵ The anonymous critic from *Vestnik Evropy* opened his review of *Resurrection* with a refutation of the opinion expressed by the Old Judge in *Zhurnal Ministerstva Iustitsii*. While the Old Judge reproached Tolstoy for failing to show a single "sympathetic" or "honest" court professionals, thus stripping the new court of the honestly earned respect that it deserved, *Vestnik Evropy* argued that a literary critic should distinguish between Tolstoy as theorist and Tolstoy as artist. While in his theoretical works Tolstoy rejected many phenomena from contemporary political and social life, the anonymous reviewer argued that, as a novelist, he offered a more nuanced, multi-dimensional, and truthful depiction of the very same phenomena.⁴⁶ The anonymous critic wrote:

There is nothing [in this novel] that is similar to a condemnation of specific judges, prosecutors, defense lawyers. Tolstoy highlighted not individual mistakes, but the errors that are the unavoidable outcome of a system that suffers from an internal, incurable defect.⁴⁷

Essentially, the reviewer argued that it was presumptuous and unjustified on the part of literary critics to read *Resurrection* as an anti-legal novel because Tolstoy's criticisms were directed, first and foremost, against the existing social and political order that was ailing from the "internal and incurable defect," and not against court professionals. Under this "internal and incurable defect," the reviewer meant the counter-reforms of the 1880s that hit Russia's judicial sphere particularly hard. In the aftermath of Alexander II's assassination, the law from August 14th 1881 allowed the administration to punish certain suspicious individuals without a trial. The judges lost a major

piece of their independence, and the government limited the attendance of the public at political trials. The reviewer's rhetoric enunciated a message of transformation: he encouraged the readers to look at *Resurrection* as a novel about law and Russia's political situation that affected the effectiveness of courts, and not as a treatise against law. Because of Tolstoy's importance as a national hero and voice of truth, it was of paramount importance for literary lawyers to persuade the readers of Tolstoy's bestselling and most scandalous novel that the great novelist did not intend it to be the means of undoing Russia's court justice.

The reviewer continued his argument about the significance of *Resurrection* as a novel about law (and not an anti-legal novel) by highlighting the role, place, and limits of literature and art in depicting social phenomena. A work of literature—he argued—offers a unique, but limited look at reality. The reader should not expect that a novel would offer an exhaustive look at a phenomenon; similarly, if some aspects of the phenomenon are not addressed in the work of literature and some characters are blatantly absent, the reader should not assume that these aspects and characters do not exist at all. The reviewer wrote:

Tolstoy expressed his theoretical thoughts about court justice many times, each time supporting his views with philosophical and sociological facts. Therefore, we do not have the slightest reason to deny his right to reproduce the same thoughts in a different form. However, the boundaries of literary art are impossible to set. If an artist is simultaneously a thinker, his worldview will be reflected in his writings. If he is also a preacher, his views will be expressed not only in images, but they will include a direct appeal to the readers' feelings or beliefs... Those, who want to transform his novel into a battering-ram directed against courts, understand Lev Tolstoy's novel even less than the "Old Judge." His complaint

that Tolstoy's novel does not show a single "sympathetic" or "honest" court professional smacks of something old and stale that sank into oblivion a while ago. This is the same complaint that the backward critics of the 1840s cited against Gogol's *The Government Inspector* or the first part of *Dead Souls*. A novel or a comedy cannot describe life completely; they do not need to depict good next to evil, or distribute light and shadows evenly. If the characters are life-like and convincing, it is ridiculous to ask whether within the same social milieu there are characters whose disposition differs from the first group. It is ridiculous to assume that everything that the author chooses not to depict simply does not exist. When *The Death of Ivan Ilych* was published, nobody thought to argue that the hero of Tolstoy's novella was the typical representative of all court professionals.⁴⁸

What is particularly remarkable about this argument is the fact that the reviewer evaluated *Resurrection* by comparing it to other fictional works. In the 1840s, Gogol was indeed attacked by some critics in a manner that was reminiscent of Tolstoy's critic, the "Old Judge." Similarly to Gogol's critics, the "Old Judge" pointed out that Tolstoy's characters were not realistic; on the contrary, they were the coarse caricatures of vulgar fools and awful rascals. In his critical essay, the reviewer did not deny that Tolstoy's court professionals did not invoke much sympathy; however, he reminded readers about the danger of mistaking a novel about a few unsympathetic legal professionals for a polemic condemning the whole profession. The reviewer's reference to Tolstoy's novella *The Death of Ivan Ilych* was also particularly relevant to his effort to remove (or, at least, to weaken) the assumption of anti-legalism that became affixed to *Resurrection*. Indeed, while Tolstoy's mesmerizing novella described the legal career of Ivan Ilych in great

detail, the critics never attempted to read it as a condemnation of legal professionals, primarily because Tolstoy did not specifically intend it to be read this way.⁴⁹

Anatoly Koni and the Appropriation of Tolstoy as a Moral Thinker

Koni published a memoir about his friendship with Tolstoy in 1908, at the time of Tolstoy's eighteenth birthday and two years before his death. While different in genre from all other writings about Tolstoy by court professionals, Koni's memoir offers a number of unexpected insights into Tolstoy as a writer, public figure, and moral voice of his epoch. Less obvious are the insights that we gain by studying the persona of the narrator himself, but these insights are instrumental in understanding the relationship that in late imperial Russia existed between two adjacent worlds: the world of law and world of literature. Koni's story of his relationship with Tolstoy makes it clear that, vis-à-vis Tolstoy, he viewed himself first as a writer and moral man, and only then as a legally trained professional.

In his memoir, Koni dedicates substantial effort to explaining his feelings towards Tolstoy before their first meeting in Iasnaia Poliana in 1887. Like with many other writers about whom he wrote, Koni viewed Tolstoy not as the author of anti-legal fictions, but an intellectual who was capable of using his literary art as a weapon against outmoded, meaningless, and oppressive traditions, laws, and social behaviors. In his memoir, Koni describes his sentiments towards Tolstoy's fiction as follows:

In his dramatic works, fairytales, short stories, and novellas, Tolstoy strives to remove the attractive veil of deception from social falsehoods. Tolstoy does not care if these falsehoods are disguised as commonly accepted theories, practices of everyday life, traditions, institutions, customs, laws, conventional morals, or types

of coercion. By appealing to people's nature and encouraging them to abandon their sinful ways, he strives to prove in his works, written passionately and with devotion, that the Kingdom of God is founded upon the eternal needs and aspirations of the soul that exist independently of, or even despite, the despicable conditions created by society.⁵⁰

This statement illustrates that even before his personal encounter with the novelist Koni had an idealized vision of Tolstoy as public figure who could exercise a great impact on his own culture by unpacking cultural stereotypes and pushing people to reconsider their social and cultural habits and behaviors. In a way, it makes sense that this aspect of Tolstoy's public presence was very important to Koni as the contemporary courtroom was a space where court professionals had to push their contemporaries to reexamine many of their own engrained social and cultural habits, behaviors, and stereotypes. Among other topics, Koni narrates in his memoir the story of his friendship with Tolstoy. This story, in my opinion, provides a powerful parable for the relationship between literature and law in late imperial Russia. While Koni felt fascinated by the famous storyteller's insights into human nature and morality, Tolstoy was intrigued and inspired by Koni's stories and experiences in court. Koni and Tolstoy met in 1887, when Koni already occupied the high position of the Chief Procurator of the Civil Cassation Department in the Senate. As a high-ranking legal official, Koni embodied everything that Tolstoy disliked, but, strangely, the relationship progressed towards friendship very quickly. Tolstoy developed a peculiar liking for Koni after both men had a few opportunities to talk about such diverse but interrelated topics as human nature, death, religious tolerance, morals, death penalty, etc. The meeting between Koni and Tolstoy was organized by Alexander Mikhailovich Kuzminskii, Koni's colleague, who took over his position as the presiding judge at Saint-Petersburg Circuit

Court. Kuzminskii was a relation of Tolstoy (he was married to the sister of Sofya Andreevna). Like Koni, Kuzminskii was a great lover of literature, and Koni frequented his house as a guest at various literary gatherings. In Kuzminskii's house, for instance, Koni read for the first time Tolstoy's *The Kreutzer Sonata*, aloud and from the author's manuscript.

Despite his respect for Tolstoy, Koni mentions in his memoir that he was anxiety-ridden before meeting Tolstoy for the first time. He writes:

The meeting with Tolstoy made me feel very anxious. He was often portrayed to me as an avid polemicist, who could not tolerate anyone who disagreed with his ethical or religious views, and I do not like to argue. I have believed for a while now that the opinions developed by people on their own are like nails: the harder you hit them, the deeper they enter.⁵¹

Surprisingly, upon meeting Tolstoy (whom Koni nicknamed "Homer of the Russian *Iliad*," referring, of course, to *War and Peace*), Koni discovers that Tolstoy is quite patient and tolerant towards the views of others. Moreover, obviously intrigued by his visitor, Tolstoy invites Koni to sleep in his study, the same study, Koni points out, where the novelist wrote his *War and Peace* and *Anna Karenina*. From the very beginning, his friendship with Tolstoy (at least, according to Koni's story) has an air of trust and intimacy, as Tolstoy strikes up a long conversation with Koni while seated at the edge of his guest's bed. Koni writes:

After dropping me off at the room, he got busy with something in the room's bigger part, while I undressed and lay down. Then he entered my part to say "good night." However, we began to chat, and our chat transformed into one of those typical and beloved conversations that people usually lead in the hallway before leaving or while sitting at the edge of someone's bed. Tolstoy did the same

thing. He sat down at the edge of my bed, and began to talk, pouring over me the warmth and light of his powerful soul.⁵²

Koni's first visit to Iasnaia Poliana lasted for five or six days, and during that time Koni and Tolstoy met up every night for their conversations at the "edge of the bed." Their discussions covered a plethora of topics: literature, various Russian authors, human nature, vice and virtues, relationship of the educated class towards peasants, marriage, family life, etc.

In his memoir, Koni dedicates some long passages to the description of his conversations with Tolstoy about moral justice. The topic of ethics was of great interest to Koni already prior to his meeting with Tolstoy. Most of Koni's literary memoirs and essays touched upon the ethical personas of Russian writers. Moreover, after the publication of his important long essay "Ethical Principles in a Criminal Trial" [*Nravstvennye nachala v ugovnom protsesse*] in 1902, Koni established himself in the public eye as the expert and founder of Russian court ethics.⁵³ While his memoir does not state this point explicitly, it appears that both Tolstoy and Koni enjoyed conversations that involved morals in some way. Koni was interested in Tolstoy's opinions, and the writer, in turn, was particularly attracted to Koni's court stories that, in his opinion, had a great didactic potential.

Koni's memoir is a great source of factual details (especially about the origins of *Resurrection*), and it also provides a powerful and surprising record of how Koni and other literary lawyers perceived Tolstoy. While many of Koni's and Tolstoy's contemporaries viewed Russia's greatest living novelist as the enemy of law and all things legal, Koni created in his memoir an image of Tolstoy as a maverick, who could not be easily pigeonholed as either the enemy or friend of the law and the legal professionals. Throughout his memoir, Koni subverts the stereotypes and rumors associated with Tolstoy as a public figure: the stereotypes about his

intolerance and impatience, pride, animosity towards legal professionals, etc. While Koni's comment that Tolstoy must have not viewed him as simply a "court official" [*sudebnyi chinovnik*] can be read as self-flattery, it also allows the author to project the image of himself as an ethically-driven jurist.⁵⁴ Koni writes:

I can explain his [friendly] feelings towards me only by the fact that in my views and professional activities he did not see any qualities that provoked his unsympathetic view of our courts and led to his harsh disapproval of certain aspects in the work of court professionals.⁵⁵

And a bit further, Koni continues:

[D]espite some unavoidable errors in my professional work, I can say with a clear conscience that I never went deliberately against the principles of Kantian ethics, i.e. I never looked at the human being as a means to an end, even if this end was a lofty one.⁵⁶

By deconstructing the notion of Tolstoy's "anti-legalism" (i.e. by showing that Tolstoy had friends among legal professionals and liked to philosophize about law-related topics), Koni-the memoirist delivered a carefully crafted portrait of Tolstoy: Tolstoy as philosopher of law and ethics. Koni also exposed an obvious, but previously overlooked detail: not infrequently, Tolstoy, the writer and thinker, shared a number of core views with his "opponents." Koni, the jurist, but also a writer and thinker, was not entirely different from Tolstoy-the novelist. While these shared views belonged predominantly to the sphere of ethics, this point of similitude became key to Koni's effort to erase the imaginary boundary between literature as an ethical pursuit and law as an "unethical pursuit" for careerists and opportunists. In other words, Koni and also the anonymous reviewers of Tolstoy's *Resurrection* rejected the polarization of the

notions of law and ethics; instead, they sought the intermediary position, one that made less of a distinction between law and morals, encouraging the late imperial reader to see Russian fiction not as a weapon against law and courts, but as a path towards better justice and ethically-driven legal consciousness.

Conclusion: From the Appropriation to Self-Fashioning

Among Russian authors, Lev Tolstoy was perhaps one of the hardest literary figures to appropriate, especially for court professionals. Not only was Tolstoy opposed to law, viewing it as a tool invented by the powerful class for the domination over the underprivileged groups of society, but most of his important fiction, except for *War and Peace*, included sustained attacks on the new courts, judges, prosecutors, and lawyers. In this context, no amount of literary criticism, however insightful or brilliant, could have made Russian readers forget about Tolstoy's caustic disparagement of legal culture. Nevertheless, in their writings about Tolstoy and his fiction court professionals attained a somewhat different, but important goal: their writings contributed a different perspective to the contemporary understanding of the role of courts and the law in Russia. Court professionals accentuated the aspects in Tolstoy's views and fiction that weren't divisive, and established a common ground between their own liberal and legally-minded way of thinking and Tolstoy's morally grounded universe. While court professionals did not try to hide Tolstoy's intolerance of courts, they found many ways in which Tolstoy's writings were beneficial for Russia's young legal consciousness. Andreevsky discovered in Tolstoy the superior master of realist description, whose narrative techniques were well worth borrowing for the purposes of courtroom storytelling. Court professionals who responded to Tolstoy's *Resurrection*

directed the attention of their readers to the novel's depiction of Russia's increasingly repressive political life; they also pointed out the fact that despite its heavily political plot and criticism of courts, *Resurrection* still remained a work of fiction, and its goal was not be used as a weapon against courts, but to improve people and to make them notice the injustices taking place in their immediate social environment. Finally, Anatoly Koni's memoir projected a complex portrait of Tolstoy as a public figure, drawing the attention of readers to the novelist's multiple, overlapping, and idiosyncratic identities. Tolstoy was a great artist, who used his art to criticize courts. Yet, at the same time he was also a moral philosopher, whose ethical insights into justice informed the important legal work of people like Koni, who wanted nothing more than to make law and legal justice in Russia serve people better. To conclude, while court professionals occupied a rather awkward position vis-à-vis Tolstoy who scorned the notion of legal professionalism, as a professional and social group they were, in a certain sense, more qualified to discuss Tolstoy than any other group in Russian society precisely because of the uneasy balance that was at the heart of their own public identity. The public identity of the late nineteenth century court professional (or the literary lawyer) was also shaped by the overlapping of at least three disparate identities. They were jurists. They were *littérateurs*. Also, as their writings and court speeches suggest, they were public intellectuals who were deeply concerned with developing a better sense of how law could better serve the goal of moral justice. As I suggested in the previous chapters of this dissertation, the literary lawyers viewed reading and analyzing literature as a means for developing and fine-tuning their moral intuition. The question of whether the literary lawyers succeeded or failed in their effort to appropriate and reinvent Tolstoy remains open as even today readers continue to view Tolstoy's fictions as anti-legal. However, their efforts,

successful or not, testify to the powerful commitment among the members of this fascinating group to find, or to forge, a more positive perception of law in Russia.

Figure 5.2: “In a City Court” by Maxim Dmitriev (circa 1890-1900). ⁵⁷



CHAPTER 5

¹ A. F. Koni, *Sobranie sochinenii v 8 tomakh*, Moskva: Yuridicheskaja literatura, 1968, tom 6. Between pages 6: 176-77. This photograph was not published in any of the pre-revolutionary editions of Koni’s works. For the first time, this photograph, along with other 119 photographs from the Tolstoy family archive, was published by Sofya Tolstaya in 1912, in order to raise money for the reconstruction of the buildings in Iasnaia Poliana that suffered damage from fire. See: *Iz zhizni L.N. Tolstogo. Snimki iskluchitel’no gr. S.A. Tolstoy. V pol’zu pogorelykh okrestnostei Iasnoi Poliany*. Moskva: Fototipiia Sherrer, Nabgolts, i Ko., 1912.

² A. F. Koni, “Lev Nikolaevich Tolstoy,” *Sobranie sochinenii v 8-mi tomakh*. Moskva: Yuridicheskaja literatura, 1968. 6:501. Originally published in *Niva*. In Russian: “Путешественники описывают Сахару как знойную пустыню, в которой замирает вся жизнь. Когда смеркается, к молчанию смерти присоединяется еще и тьма. И тогда идет на водопой лев и наполняет своим рыканьем пустыню. Ему отвечает жалобный вой зверей, крики ночных птиц идалекое эхо—и пустыня оживает. Так бывало и с этим Львом. Он мог иногда заблждаться в своем гневном искании истины, но он заставлял работать мысль, нарушал самодовольство молчания, будил окужающих от сна и не давал им утонуть в застое болотного спокойствия...”

³ The epigraph to *Anna Karenina* is “Vengeance is mine; I will repay” (the phrase belongs to God, and comes from Paul’s Epistle to the Romans 12:19). *Resurrection* has four epigraphs from the New Testament, all of them on the same topic of refusal from judgment. The first one reads: “Then came Peter to him, and said, / Lord, how oft shall

my brother / sin against me, and I forgive / him? Till seven times? / Jesus saith unto him, I say not / unto thee, Until seven times: / but, Until seventy times seven” (Matthew 18: 21-22).

⁴ A. F. Koni, “Lev Nikolaevich Tolstoy,” *Sobranie sochinenii v 8-mi tomakh*. Moskva Yuridicheskaiialiterature, 1968. 6:479. In Russian: “Пишу я, правда, тот сюжет, который вы рассказывали мне, но я так никогда не знаю, что выйдет из того, что я пишу, и куда оно меня заведет, что я сам не знаю, что я пишу теперь.” Italics are mine.

⁵ See, for instance: L. D. Opol’skaia, *Lev Nikolaevich Tolstoy: Materialy k biografii. S 1886 po 1892 god*, Moskva: Nauka, 1979; L. D. Opol’skaia, *Lev Nikolaevich Tolstoy: Materialy k biografii s 1892 po 1899 god*, Moskva: Nasledie, 1998.

⁶ PSS 32: 442 (Book III, Chapter XXVIII); *Resurrection* 511. All English translations come from the translation of *Resurrection* by Louise Maude [see: Leo Tolstoy, *Resurrection*, trans. by Louise Maude, New York: Dodd, Mead & Company Publishers, 1927.] In Russian: “Ему ясно стало теперь, что все то страшное зло, которого он был свидетелем в тюрьмах и острогах, и спокойная самоуверенность тех, которые производили это зло, произошло только от того, что люди хотели делать невозможное дело: будучи злы, исправлять зло. Порочные люди хотели исправлять порочных людей и думали достигнуть этого механическим путем. Но из этого вышло только то, что нуждающиеся и корыстные люди, сделав себе профессию из этого мнимого наказания и исправления людей, сами развратились до последней степени и не переставая развращают тех, которых мучают.”

⁷ PSS 32:21 (Part I, Chapter VI); *Resurrection* 22. In Russian: “И поэтому ему хотелось начать и кончить раньше заседание нынешнего дня с тем, чтобы до шести успеть посетить эту рыженькую Клару Васильевну, с которым у него прошлым летом на даче завязался роман.”

⁸ PSS 32:25 (Part I, Chapter VII); *Resurrection* 26. In Russian: “Зала суда была большая, длинная комната. Один конец ее был занят возвышением, к которому вели три ступеньки. На возвышении посередине стоял стол, покрытый зеленым сукном с более темной зеленой бахромой. Позади стола стояли три кресла с очень высокими дубовыми резными спинками, а за креслами висел в золотой раме яркий портрет во весь рост генерала в мундире и ленте, отставившего ногу и держащегося за саблю. В правом углу висел киот с образом Христа в терновом венке и стоял аналой, и в правой же стороне стояла конторка прокурора.” I changed one word in this translation of *Resurrection* by Louise Maude: she replaced the word “general” from the original text with the word “Emperor.”

⁹ PSS 32:26 (Part I, Chapter VII). In Russian: “Фигуры председателя и членов, вышедших на возвышение в своих расшитых золотом воротниках мундиров, были очень внушительны. Они сами чувствовали это, и все трое, как бы смущенные своим величием, поспешно и скромно опуская глаза, сели на свои резные кресла за покрытый зеленым сукном стол, на котором возвышался треугольный инструмент с орлом [...].”

¹⁰ PSS 32:30 (Part I, Chapter IX); *Resurrection* 30-31 (Chapter VIII?). In Russian: “Как только присяжные уселись, председатель сказал им речь об их правах, обязанностях и ответственности. Говоря свою речь, председатель постоянно переменил позу: то облакачивался на левую, то на правую руку, то на спинку, то на ручки кресел, то уравнивал края бумаги, то гладил резной нож, то ощупывал карандаш. Права их, по его словам, состояли в том, что они могут спрашивать подсудимых через председателя, могут иметь карандаш и бумагу и могут осматривать вещественные доказательства. Обязанность состояла в том, чтобы они судили не ложно, а справедливо. Ответственность же их состояла в том, что в случае несоблюдения тайны совещаний и установления сношения с посторонними они подвергались наказанию.”

¹¹ See: “Sudebnye deiateli po Voskreseniiu grafa L. Tolstogo” [“Court Professionals According to *Resurrection* by the Count L. Tolstoy”] in *Vestnik Prava* # 1 (January 1900), 79-93.

¹² PSS 32:82-83 (Part I, Chapter XXIII); *Resurrection* 91-92. In Russian: “Раблэ пишет, что юрист, к которому пришли судиться, после указания на всевозможные законы, по прочтении двадцати страниц юридической бессмысленной лптыни, предложил судящимся кинуть кости: чет или нечет. Если чет, то прав истец, если нечет, то прав ответчик. Так было и здесь. То, а не другое решение принято было не потому, что все согласились, а, во-первых, потому, что председательствующий, говоривший так долго свое резюме, в этот раз упустил сказать то, что он всегда говорил, а именно то, что отвечая на вопрос, они могут сказать: «да—виновна, но без намерения лишить жизни»; во-вторых, потому, что полковник очень длинно и скучно рассказывал историю жены своего шурина; в-третьих, потому, что Нехлюдов был так взволнован, что не заметил упущения оговорки об отсутствии намерения лишить жизни и думал, что оговорка: «без умысла ограбления» уничтожает обвинение; в-четвертых, потому, что Петр Герасимович не был в комнате, он

выходил в то время, как старшина прочел вопросы и ответы, и, главное, потому, что все устали и всем хотелось скорей освободиться и потому согласиться с тем решением, при котором все скорей кончается.”

¹³ PSS 32:84 (Part I, Chapter XXIII).

¹⁴ PSS 32:86 (Part I, Chapter XXIV).

¹⁵ PSS 32:123 (Part I, Chapter XXXIV). This passage is omitted in Maude’s translation of *Resurrection*. I use the English translation of this passage provided by Rosemary Edmonds. See: L.N. Tolstoy, *Resurrection*, trans. by Rosemary Edmonds, London: Penguin Books, 1966. Page 166. In Russian: “И ведь сколько и каких напряженных усилий стоит это притворство,—продолжал думать Нехлюдов, оглядывая эту огромную залу, эти портреты, лампы, кресла, мундиры, эти толстые стены, окна, вспоминая всю громадность этого здания и еще большую громадность самого учреждения, всю армию чиновников, писцов, сторожей, курьеров, не только здесь, но во всей России, получающих жалованье за эту никому не нужную комедию.”

¹⁶ PSS 32:126 (Part I, Chapter XXXV).

¹⁷ PSS 32:155-56 (Part I, Chapter XLV); *Resurrection* 175. In Russian: “Вот говорят, что адвокаты даром деньги берут [...]. Я выпростал одного несостоятельного должника из совершенно неправильного обвинения, а теперь они все ко мне лезут. А каждое такое дело стоит огромного труда. Ведь и мы тоже, как какой-то писатель говорит, оставляем кусочек мяса в чернильнице.”

¹⁸ Qtd. in S.A. Andreevsky, and I. I Podol’skaia, *Kniga o Smerti [The Book of Death]*, Moskva: Nauka, 2005, 630. Quote 1 in Russian: “И зачем Вы ругаетесь словом “адвокат”? Сейчас, чуть что скверно,—“по-адвокатски.” Какой Вы неисправимый пристрастник! [...] Думаю отдать заметку в “Труд.” Там свободнее высказывать скромную правду.” Quote 2 in Russian: “А скромную правду я сказал с хитростью. В сущности, она даже немного дерзкая. Толстого, с его дерзостью, везде напечатывают, а нашему брату надо прятаться.”

¹⁹ First publication: S.A. Andreevsky, “Iz myslei o L’ve Tolstom” [“From My Thoughts about Lev Tolstoy”], in *Trud: vestnik literatury i nauki* 8: 19-24, Sankt-Peterburg, 1890, 482-99. In 1891, this essay was published as a part of Andreevsky’s collected essays. See: S.A. Andreevsky, “Iz myslei o L’ve Tolstom,” *Literaturniya chteniya [Literary Readings]*, Sankt-Peterburg, 1891. 253-85.

²⁰ *Ibid.*, 254-55. “[В]ызывая [жизненные процессы] из прошлого в своем воображении, он их может списывать с действительности по-секундно, как если бы они развертывались перед ним живьем и во всякую минуту останавливались, по его воле, перед умственным взором, чтобы он успевал захватить из них все необходимые ему подробности. [...] [П]оставленный лицом к лицу с этой волшебной, ярко вспыхнувшей картиной, в качестве спокойного наблюдателя, Толстой может, так сказать, сотворять минувшую действительность во втором экземпляре, без всякой фальши, порождаемой забвением характерных частных событий.”

²¹ *Ibid.*, 258. In Russian: “Изображая прошлое по стенограмме своей памяти, Толстой свободно забирает из нее на свои страницы все, что видит каждый и чего почти никто не помнит. Поэтому самые обыкновенные вещи получают у Толстого характер художественных открытий.”

²² *Ibid.*, 254.

²³ *Ibid.*, 261.

²⁴ *Ibid.*, 262. In Russian: “Выступая в печати со своим психологическим анализом, Толстой рисковал быть непонятым, потому что, наполняя свои страницы длинными монологами действующих лиц—этими причудливыми, молчаливыми беседами людей ‘про себя’, наедине с собой—Толстой создавал совершенно новый, смелый прием в литературе. [...] [Толстой] выставил целый ряд самых здоровых обыкновенных людей, старых и малых, зрелых и юных, в самой патриархальной среде, в самой будничной обстановке и всех их заставил почти что бредить на яву.”

²⁵ *Ibid.*, 267-68. The imprecise quote comes from Dostoevsky’s *The Brothers Karamazov*: this idea is expressed by Ivan Karamazov in the Chapter “Rebellion” In Russian: “Все это ярко, интересно, живо, чудно изображено и однако никто из этих людей не западает в душу, как милый образ. И еще чем эпизодичнее лицо—тем оно будто лучше; но все лица, подвергнутые более или менее обстоятельному вскрытию, делаются под конец несколько чуждыми вам, уходят от вашей раскрывшейся симпатии. И вспоминаются слова Достоевского, что ‘ближних невозможно любить, а что можно любить разве лишь дальних’, т.е тех, кого не успеваешь близко рассмотреть. [...] Не потому ли нам так мало приятны, в большинстве случаев, действующие лица Толстого, что они как-то уже повсюду ходят со светящимися внутренностями? Дано ли одному человеку решительно всех и каждого понимать насквозь?”

²⁶ Ibid., 269-70. In Russian: “[Э]та окраска толстовского темперамента, окраска вдумчивого гения—непрестанного судьи над собою, вечно себя разбирающего и подводящего себе итоги, всегда с оттенком внутреннего недовольства,—эта тень легла, несомненно, на все создания писателя, покрыла иногда едва заметным (благодаря мастерству), но тем не менее общим тоном весь обширный мир выведенных им людей. В большинстве случаев это скорее замаскированные приговоры, чем портреты. Правда, что читатель Толстого поддается полнейшему оптическому обману: он видит цельных, простых, свободных, натуральных людей и не чувствует присутствия судьбы.”

²⁷ Ibid., 280. In Russian: “[К]роме этого временного сдерживающего влияния, соната конечно, ничего не сделает, потому что природа возьмет свое.”

²⁸ Ibid., 280. In Russian: “[В] «Крейцеровой сонате» Толстой, со свойственной ему безбоязненной откровенностью и с глубоким инстинктом правды, подошел к самому слабому месту брачного союза. Он показал, как этот союз роковым образом, непременно, только и держится, что на своем низменном начале и как обе стороны постоянно цепляются об это начало и страдают от него. В этом много глубокой правды и «Крейцера соната» всего более замечательна, как сенсационная брошюра для обсуждения брачного вопроса.”

²⁹ Ibid., 283. In Russian: “[В] семье, застигнутой изменой одного из супругов, поднимается столько горечи, взаимного раздражения, разочарования, косых взглядов, недоумения—что все, бывшее прежде сплоченным,—теперь, по реакции, взаимно отталкивается на такое расстояние, какого не бывает даже между совершенно незнакомыми людьми.”

³⁰ Ibid., 146. In Russian: “Я не понимаю того, как можно было в целой обширной судебной семье не найти ни одного симпатичного и честного человека, на котором отрадно было бы остановить своё внимание. Для меня обидна та тенденциозность, которою проникнут ваш роман, тот умышленный подбор личностей и случайностей, который направлен к тому, чтобы отнять у суда то доверие, которым он столь заслуженно и честно досель пользуется. Если вы, во имя вашего принципа, отрицаете суд в самой его идее, то для этого есть другие способы помимо извращения действительности.”

³¹ This letter was later republished in *Zhurnal Ministerstva Iustitsii* [*The Journal of the Ministry of Justice*]. See: “Открытое пис’мо графы L.N. Tolstomu” [“The Open Letter to the Count L.N. Tolstoy”], *Zhurnal Ministerstva Iustitsii* [*The Journal of the Ministry of Justice*], October 1899, pages 140-46.

³² Ibid., 141. In Russian: “Ваше «Воскресение» представляет собой хотя и спокойную, но тем не менее последовательно проведенную насмешку над современным судом. По вашему изображению, суд этот есть не более как механически действующая гильотина, приводимая в действие людьми сытыми, беспечными и бездушными, и бессознательно опускающаяся на голову того, кто под нее подвернется.”

³³ Ibid., 141-42. In Russian: “Слыхали ли вы, прежде всего, по поводу пресыщенности и сибаритства, что эти мнимые сибариты—почти поголовно представляют собой рабочий люд, не позволяющий себе мечтать не только о таком уголке, как Ясная Поляна, но даже о мало-мальски сносной квартирке, неимеющий средств не только для какой-либо представительности в обществе, но даже на воспитание детей, и вынужденный иногда, в силу горькой необходимости, прибегать к помощи частной благотворительности?”

³⁴ Ibid., 143. In Russian: “И мне прискорбно [...] не только за честь судебного ведомства, которая составляет единственное его достояние, но ещё больше за ту идею, носителем которой оно является и которую втоптываете в грязь. Вы сами знаете, чем обязано суду русское общество. Кроме выполнения своей специальной задачи, он выполнил и великую миссию политическую: он воспитал в русском человеке чувство собственного достоинства. [...] [В суде] каждый чувствует себя гражданином полноправным, равным другому, не смотря ни на какую разницу общественного положения. Что касается другой заслуги суда—водворения правосудия—то об этом и говорить, повидимому, излишне. Припомните недавнее прошлое,—эти кабинетные суды с их всемогущими секретарями, где правда разменивалась на рубли, где по желанию можно было обелить всякое грязное дело, и спросите любого из русских граждан, может ли он указать вам что-либо подобное в суде современном? И разве это не великая заслуга суда одолеть в общественном сознании силу старинной мрачной пословицы ‘с сильным не борись, с богатым не тягайся’?”

³⁵ Ibid., 144. In Russian: “За короткое время суд сделался лучшим достоянием русского народа: сюда он более доверчиво, чем к кому-либо другому, несет и своё горе, и свои нужды. Уже [это качество] суда представляют собою, по нашему мнению, такую серьезную заслугу, которая, повидимому, способна оградить суд от глумлений над ним.”

³⁶ Ibid., 145. In Russian: “Но посмотрите, к кому, как не к мировому судье, следователю или представителю прокурорской власти обращается в глухой провинции наш русский крестьянин за советом в тех случаях, когда он чувствует правду и между тем не умеет доказать её?”

³⁷ See: Jane Burbank, *Russian Peasants Go to Court: Legal Culture in the Countryside, 1905-1917*, Bloomington: Indiana University Press, 2004. Also: Joan Neuberger, “Popular Legal Cultures: The St. Petersburg *Mirovoi Sud*,” in *Russia's Great Reforms, 1855-1881*, eds. Ben Eklof, John Bushnell, and Larissa Zakharova, Bloomington: Indiana University Press, 1994. 231-46.

³⁸ See: “Sudebnye deiateli po *Voskreseniiu* grafa L. Tolstogo” [“Court Professionals According to Resurrection by the Count L. Tolstoy”] in *Vestnik Prava* # 1 (January 1900), 79-93. In his article “*Sud’ba Voskreseniia*,” E. G. Babaev suggests that Spasovich might have authored the review in *Vestnik Prava*. See: E. G. Babaev, “*Sud’ba Voskreseniia*,” in *Roman L.N. Tolstogo Voskresenie: istoriko-funktionalnoe issledovanie*, Moskva: Nauka, 1991. 31.

³⁹ Ibid., 79-80. In Russian: “Односторонность, проходящая красной чертой во всем романе, ясная каждому судебному деятелю, может быть, однако, непонятна читателю, мало знакомому с судебным миром и с уголовной процедурой. Что это так, подтверждается словами, которые нередко приходится слышать: «как вас отделал Толстой,» а один из бывших присяжных заседателей, высказал даже надежду, что «Воскресение» наверно окажет педагогическое и морализующее влияние на судебное сословие, и сравнивает судебных деятелей графа Толстого с помпадуром Щедрина и с типами Гоголя. Но уместно ли такое сравнение? Помпадуры Щедрина ведь сатира, фантазия, а судьи графа Толстого—живые люди! Бессмертные типы Гоголя также живые люди, но разве они внушают к себе такие же чувства, как типы Воскресения [...]?”

⁴⁰ Ibid., 84. In Russian: “Невольно дрогнет сердце у всякого, кто подумает только о возможности исхода дела, переданного на обсуждение описанных присяжных и судебных деятелей. У всех личные счеты между собой, побуждения или самого низменного свойства или хотя и высшего, но из такой области, которая ничего общего ни с данным делом, ни с задачами правосудия не имеет! Однако правда прежде всего! К крайнему прискорбию, нельзя не сознаться, что не все изображенные личности манекены и лишь фантазия автора: некоторые из них не только могут быть, но и действительно встречаются и в обществе и между представителями правосудия; хотя и не во всем приданном автором им ореоле пошлости и эгоизма.”

⁴¹ Ibid., 91. In Russian: “[P]оманист не процессуалист и роман не учебник процесса, а потому и нельзя предъявлять к романисту таких требований при изложении им процесса, как к процессуалисту.”

⁴² Ibid., 91.

⁴³ Ibid., 84. In Russian: “Ведь если бы находчивый предприниматель набрал из какой-либо народности, населяющей нашу необъятную Россию, хромых, слепых, безруких и безногих и стал их показывать, то несомненно у всякого видевшего их сложилось бы впечатление, что представляемая народность состоит только из калек. Тоже самое впечатление получается и от судебных деятелей ‘Воскресения.’”

⁴⁴ Ibid., 92.

⁴⁵ See *Vestnik Evropy* # 12 (December 1st 1899), pp. 896-900. This review (published in the section “*Iz obshchestvennoi khroniki*” [“From the Chronicles of Public Life”]) was not signed. However, the author draws in his review on the ideas of Anatoly Koni, which suggests that both writers belonged to the same literary and intellectual circle.

⁴⁶ Ibid., 897. Tolstoy expressed his anti-legal views on many occasions, and by the end of his life he developed a strong distaste for courts as one of state institutions. In 1909, Tolstoy received a letter from Krutik, a law student at Saint-Petersburg University. A self-identified Tolstoyan, Krutik wrote to his intellectual teacher because of his ambivalent feelings about Tolstoy’s rejection of law. While studying law, Krutik got acquainted with the legal views of his professor L. I. Petrazhitskii. In his book *The Theory of Law (Teoriia prava)*, Petrazhitskii argued that law was important for society because it functioned as a moral motivation for individuals, encouraging them to behave civilly towards other individuals. Petrazhitskii’s views contradicted Tolstoy’s views, but they appealed to Krutik. Unable to reconcile this contradiction, Krutik decided to inquire Tolstoy himself. Tolstoy wrote a letter to Krutik, in which he asserted once again that law was a tool, invented by the powerful class in order to dominate the underprivileged classes. Later, this letter was published in *The Journal Franco-Russe* in Geneva. For Tolstoy’s “*Pis’mo studentu o prave*” [“A Letter to a Student about Law”], see: *PSS* 38:57, 502.

⁴⁷ Ibid., 897. In Russian: “Здесь нет ничего похожего на осуждение отдельных судей, обвинителей, защитников; выставляются на вид не личные ошибки, а неизбежные результаты системы, страдающим внутренним, неизлечимым пороком.”

⁴⁸ Ibid., 897-98. In Russian: “Свои мысли о суде Л.Н. Толстой не раз высказывал в отвлеченной форме, стараясь обосновать их философскими и социологическими данными; нет ни малейшей причины отвергать его право на воспроизведение их в другом виде. Никаких рамок для искусства установить нельзя. Если художник—в то же время мыслитель,—его мирозерцание не может не отразиться в его произведениях; если он, притом, и проповедник, —оно выливается не только в образах, но и в прямых обращениях к чувству или убеждению читателей... Еще меньше, чем «Старый судья», понимают роман Л.Н. Толстого те, которые хотят сделать из него стенобитное орудие против суда, как сдержки для произвола. [...] Сетования «Старого судьи» на то, что в романе Л.Н. Толстого не выведено ни одного «симпатичного и честного» представителя судебного мира, отзываются чем-то затхлым, давно канувшим в вечность. Это—тот же упрек, которые отсталые критики сороковых годов делали Гоголю за «Ревизора» и первую часть «Мертвых Душ». Роман, как и комедия, не исчерпывает целых областей жизни; для него вовсе не обязательно изображать добро параллельно со злом, распределять равномерно свет и тени. Если действующие лица жизненны и правдивы, странно спрашивать себя, нет ли рядом с ними, в той же общественной сфере, других, обладающих совершенно иным душевным складом; странно предполагать, что все не выведенное на сцену как бы не существует для автора. Когда появилась «Смерть Ивана Ильича», никому не пришло в голову утверждать, что герой рассказа, по мысли Л.Н. Толстого—типичный представитель *всех* должностных лиц судебного ведомства.”

⁴⁹ This reviewer makes yet another minor point in his review of *Resurrection*. He points out that occasionally Tolstoy’s novel describes the new trial by jury in a positive light. The critic mentions Tolstoy’s depiction of jurors, for instance. Unlike the judges, Tolstoy’s jurors do not feel or act apathetic. All jurors—the merchant, artisan, teacher—want to find out the truth, and many of them are eager to acquit Maslova. The reviewer writes: “Jurors cannot be indifferent for a simple reason that for them the duty for which they are summoned is new, unfamiliar, and full of excitement. In their eyes, the defendant is not the tenth or hundredth specimen of the type that became familiar and therefore invokes boredom, but a live human being, who anxiously awaits their important verdict. For them, “labor and exile” are not the empty words that lost their meaning from frequent usage, but they are something very real and horrifying in its realism.” In Russian: “[P]авнодушными присяжные не могут быть уже потому, что дело, к которому они призываются, для них ново, непривычно, полно жизни. Подсудимый, в их глазах— не десятый или сотый экземпляр примелькавшегося, наскучившего типа, а живой человек, трепетно ожидающий их решающего слова; каторжная работа или тюрьма—для них не фраза, потерявшая свой смысл от частого употребления, а нечто реальное и страшное в своей реальности.” Ibid., 899.

⁵⁰ Ibid., 457. In Russian: “Бестрепетною рукою всегда стремился он—в своих драматических произведениях, сказках, рассказах и повестях, в своих философских и этико-политических сочинениях - снять обманчивые и заманчивые покровы с житейской и общественной лжи, в чем бы эта ложь ни проявлялась - в теориях и практике, в традициях и учреждениях, в обычаях и законах, в условной морали и безусловном насилии. Взывая к внутреннему человеку, призывая его “совлечь с себя ветхого Адама,” он страстными и убежденными страницами стремится доказать, что “царство божие” зиждется на вечных потребностях и запросах человеческой души, независимо и даже вопреки тем условиям, в которые хочет их поставить извратившееся в своих стремлениях человеческое общежитие.”

⁵¹ Ibid., 460. In Russian: “Особенно в последнем отношении тревожила меня встреча с Толстым. Его мне часто рисовали ярким спорщиком и человеком, не допускавшим несогласия со своими этическими или религиозными взглядами, а я не люблю спорить, давно уже разделив убеждение, что мнения людей, создавшиеся самостоятельно, похожи на гвозди: чем сильнее по ним бить, тем глубже они входят.”

⁵² Ibid., 463. In Russian: “Приведа меня в эту комнату, он над чем-то копошился в большей ее части, покуда я разделся и лег, а затем вошел ко мне проститься. Но тут между нами началась одна из тех типических русских бесед, которые с особенной любовью ведутся в передней при уходе или на краешке постели. Так поступил и Толстой. Сел на краешек, начал задушевный разговор—и обдал меня сиянием своей душевной силы.”

⁵³ A. F. Koni, *Sobranie sochinenii v 8 tomakh*, Moskva: Yuridicheskaja literatura, 1968. 4:33-69. Originally published in 1902.

⁵⁴ Ibid., 482.

⁵⁵ Ibid., 482. In Russian: “Его отношение ко мне я могу объяснить лишь тем, что он не усмотрел в моих взглядах и деятельности проявления того, что вызвало его несочувственный взгляд на наше судебное дело и суровое осуждение им некоторых сторон в деятельности служителей последнего.”

⁵⁶ Ibid., 482. In Russian: “[Н]есмотря на неизбежные ошибки в моей судебной службе, я спокойной совестью могу сказать, что в ней не нарушил сознательно одного из основных правил кантовской этики, то есть не смотрел на человека как на средство для достижения каких-либо, хотя бы даже и возвышенных, целей.”

⁵⁷“Maxim Dmitriev—fotografii tsarskoj Rossii,” 02/02/2013, <http://bigpicture.ru/?p=364246>

CONCLUSION

Literature and Respect for Law

He poisoned his father, killed a couple of aunts,
Strangled two brothers and three daughters,
And stole someone else's estate:
Now, the public must the verdict await.
With pleased faces, the jurors enter,
And say: "Although he killed,"
"He is not guilty at all, not a bit!"
At these words, from left and right,
Ladies wave kerchiefs and exclaim "All right"!

*From A.K. Tolstoy's ballad "The Hero Potok"
(1871)¹*

In the final paragraphs of his essay "In Defense of Law" (to which I refer in my introduction), Bogdan Kistiakovskii concludes: "Our courts, on the whole merely reflect the nature of our society's legal consciousness. Only from the original members of our reformed courts can one name any individual people who exerted a beneficial influence on our legal consciousness."² While Kistiakovskii does not list the names of these court professionals who, in his opinion, exerted a "beneficial influence" on the legal consciousness of his era, his conclusion is somewhat surprising because within the same essay he already asserted that nobody among Russian jurists authored anything of value that could have inculcated the intelligentsia with respect for the rule of law. Possibly, this minor contradiction derives from the fact that he did not

consider any of the literary output produced by literary lawyers (he must have referred to them since they were these “original members,” the intellectual core, the first generation of Russia’s reformed court) as marginal in literary terms. In a way, he was, of course, correct. Literary lawyers worked in the genres that were somewhat secondary to such “first-rate” literary tools as a long novel. Their output consisted of polemical journalism, court and other public speeches, literary criticism, and, finally, their very participation in the literary milieu of the time, which was a peculiar byproduct of their professional self-fashioning. While I am not sure whether Kistiakovskii viewed court speech as a literary genre, by 1909 at least some intellectuals viewed it as such, as we can see from the numerous studies of this unusual genre that appeared in print around the turn of the twentieth century. I would like to suggest that Kistiakovskii claims that these “original members” of the reformed court affected the legal consciousness of his era precisely because his own consciousness was affected by the presence of literary lawyers within, or in a close proximity, to his own intellectual world. In fact, literary lawyers practiced a peculiar type of literary criticism that, even in the absence of direct references to law, somehow conjured the ideas of legality, justice, and truth from within the beloved works of Russian literature. To sum up, despite his earlier claim to the contrary, the literary lawyers were highly visible to Russia’s writing intellectuals (like Kistiakovskii himself), and their public literary presence—that was passionately cultivated by the members of the Shakespearean circle—transformed the respect that they received as literary critics into respect for their juridical work.

In a way, the art of court speech was also a phenomenon that must have originated within the semi-conscious drive among court professionals to attract attention of the public to their pursuit of legal justice and, consequently, to gain recognition of their professional work and respect for law. Sergey Andreevsky’s explanation of the popularity of court speech and the court

profession during the first decades of the new court's existence sheds some light on this process.

He writes:

[The new court] was full of excitement, and this excitement was appealing. Therefore, most imaginative people who were born into this generation became court professionals. To tell the truth, there was more lyricism, psychology, and beauty in the court speeches at the time than in the whole body of fiction produced during the same era (except for the writers who belonged to the older generation). This was understandable: by swearing to tell the truth "under God" and confronted with their own conscience [...], the participants of the trial invested into their work their whole souls and all kindness of their hearts, while literature of this era carefully avoided all expressions of emotion, strongly insisting on the paramount importance of people's practical needs.³

This assessment of court speech by Andreevsky makes it clear that he believed that for a short time in the history of Russian literature court speech eclipsed all other literary genres. Although this view must have been a matter of his somewhat biased perception, we know that similar statements were made by his other contemporaries, Anton Chekhov among them. As I showed in the chapter about *cause célèbre* and court speech, these smartly crafted stories that were told by lawyers in courts drew a lot of public attention, became a beloved reading genre among writers and ordinary newspaper readers, exposing them to the points and legal opinions represented by literary lawyers.

While rhetorically successful court speeches transformed many lawyers into true imperial celebrities, their fame attracted a lot of negative attention and scrutiny from certain groups within Russian society. Lawyers were accused of twisting the truth and teaching improper moral values,

and they were rumored to be charging exorbitant sums of money for their services (which was not necessarily true, especially for criminal cases) and of living extravagant life styles. For the literary lawyers, a natural response to the negative publicity that their profession was receiving involved an active engagement in literary and polemical genres that, due to the peculiar configurations and areas of free and censored speech during the era of judicial counter-reforms, provided them with one of not many remaining opportunities to think publicly about their society and role of courts within it. As I show in the chapters of my dissertation, the literary lawyers remained passionate about literature throughout their legal careers. From 1874 till approximately 1900 they continued to gather in the apartments that belonged to various members of the Shakespearean circle in order to talk about literature. Senior, more accomplished jurists like Vladimir Spasovich took upon themselves the task of encouraging younger lawyers to study and write about literature. It seems that collectively they believed that court professionals needed literature for several reasons. Literature provided an escape from their challenging and at times emotionally draining legal work. It offered an opportunity to investigate truth and justice not through the inflexible medium of law, but by reading and speaking about plots of their favorite literary works. Finally, in the context in which the contemporary works of literature began to take an increasingly hostile view of legal justice, a literary hobby provided jurists with the opportunity to show to their intellectual peers (journalists, literary critics, and writers) that their values and moral beliefs were of a familiar kind: nurtured by the same kinds of books and authors, and cultivated within a community of people for whom the quest for truth was always an ethical endeavor. Furthermore, their insistence on maintaining a dual identity—that of writers and lawyers—points towards another important function of literature for the legal profession: the literary lawyers were aware that one cannot expect people to respect law if they do not respect

those to whom this law was entrusted. In this regard, their struggle for a recognition as literary critics was simultaneously a struggle for respect: toward their profession, and, ultimately, towards the rule of law.

¹ In Russian: “Он отца отравил, пару теток убил, / Взял подлогом чужое именье / Да двух братьев и трех дочерей задушил: / Ожидают присяжных решенья. / И присяжные входят с довольным лицом: / “Хоть убил, - говорят, - не виновен ни в чем!” / Тут платками им слева и справа / Машут барыни с криками: bravo!” Translation is mine.

² В.А. Кистиakovskii, “V zashchitu prava (Intelligentsiia i pravosoznanie)” [“In the Defense of Law: The Intelligentsia and Legal Consciousness”] in N.A. Berdiaev, S.N. Bulgakov, et al., *Vekhi: Sbornik Statei o Russkoi Intelligentsii : Reprintnoe Izd. 1909 goda*, Moskva: Mezhdunarodnaia assotsiatsiia deiatelei kul'tury “Novoe vremia,” 1990, 125-155. In Russian: “Каково правосознание нашего общества, таков и наш суд. Только из первых составов наших реформированных судов можно назвать единичные имена лиц, оказавших благотворное влияние на наше общественное правосознание.” Page 152.

³ S.A. Andreevsky. *Kniga o smerti*. Ed. I.I. Podolskaia. Moskva: Nauka: 2005. Page 101. In Russian: “Все это дышало возбуждением и поневоле казалось привлекательным. И потому наиболее художественные натуры из всего народившегося свежего поколения ушли в судебную деятельность. И нужно правду сказать: в судебных речах встречалось в то время более лиризма, психологии и красоты, нежели во всей беллетристике (исключая писателей старшего поколения). Оно и понятно: под сенью Бога, именем Которого клялись на суде, - под угрозой совести, [...] участники процесса влагали в свое дело весь наличный запас душевной теплоты, всю силу своей затаенной сердечности в то самое время, когда литература тщательно избегала чувствительности и только всеми силами настаивала на важности разных практических нужд.”

APPENDIX

Translation from Sergey Andreevsky's memoir

The Book of Death¹

[Andreevsky's] most important work is *The Book of Death*, which was published only posthumously, abroad. It reveals him as a delicate and refined prose writer, a diligent and intelligent pupil of Lermontov, Turgenev, and Flaubert. The first part, written about 1891, is the most remarkable. It is the history of his first experiences of death. It contains passages of singular force and sustained beauty. Such is the wonderful chapter about his elder sister Masha, his morbid affection for her, her strange mental malady and early death. This chapter deserves a high place in Russian literature.

D. S. Mirsky, A History of Russian Literature

My sister Masha was two years older than me. At the age of nine I was brought from the village back to my family. After a complete solitude I found myself in the company of three brothers and a sister. They all seemed interesting to me, strange, and at the same time somehow closely related. But I viewed them a little bit as an outsider. My sister Masha had her own room. It felt like she was entirely special. She had Kalmyk eyes, pitch-black hair, and unusually white, soft skin. Isolated from us, she was growing up in detached reverie. She loved mythology, and when she had a chance to join our games, she suggested playing "gods." Covering her head with her warm wadded dressing gown, she ran from room to room, saying that she was "floating in a cloud"... We had to wait for her to choose which one of us she would descend upon. And when she would descend upon me and on a chair completely cover me with her dressing gown, in the darkness next to her I felt the uncontrollable beating of my heart.

At the age of fourteen I devoted myself fully to the reading of poetry; everywhere I encountered love as the most deep and powerful phenomenon of life. Woman was transformed into something inexpressibly attractive. When I studied history, I could not comprehend how

there could be such cruelty against women: it seemed to me that all of them bore within themselves unexplainable beauty and happiness. In the books with which I was absorbed, love was always spoken of as something profound, deciding the fate of one's entire life. I thought that I would be insignificant until I experienced love. But who will rouse love in me? Who will infuse my life with the sense of something sacred, deep and significant? Who will make me experience this great feeling?

Recollecting those peculiar sensations which took over me in Masha's proximity, I decided that I had already, though unaware of it, loved her for a long time. This thought occurred to me suddenly one day, when after reading something I laid down onto my bed in the big room of the mezzanine, which was for us, the four boys, a study room and sleeping-quarters. In order to test myself, I decided to go downstairs and see Masha. I found her in the living room, with a book, clothed in a dark-blue quilted long dress. It was in winter. She did not notice me. I sat down and began to observe her. Her face was not interesting at that moment: she was absorbed by the book, and her features were elongated. She was completely grown up; from her looks one could easily take her for about twenty years of age. Her bust looked entirely woman-like. "And I love her", I repeated to myself, "and she does not know this!" And from that moment an absolutely special feeling for Masha finally took hold of me. I began to view myself as deeply suffering and misunderstood by everyone. My thoughts constantly returned to Masha. It felt strange to look at her and realize that she did not at all suspect what was happening to me. For some reason I enjoyed keeping away from her as much as possible. It seemed to me that someday she would at last realize how much I was filled with her, and without knowing it she would miss my presence more and more. Imitating Byron and Lermontov, I found a special happiness in this misunderstood, proud, withdrawn and bitter love. My behavior with Masha,

though I did not notice, changed dramatically. I took pains to talk to others in her presence as if not paying any attention to her, and tried to utter funny, witty, and original things. I “flirted insidiously”; I sensed that I wanted to intrigue her, and I was achieving my goal. Masha laughed, took interest in my jokes and—I saw this— found pleasure in my company. Then I doubled the hours of my absence. Masha fell in love with my opinions, my power of observation. During walks and games she preferred my company to that of other brothers. As much as I could, I avoided being her companion, and in such a way that tormented myself and her. At the same time, every tender word that came from her was to me like gold. I started a diary (because only now my life appeared worthwhile to me) and recorded in it every “mon cher,” that she used with me. She said “mon cher” to me far less frequently and completely differently than to other brothers, somehow quieter, as if furtively. I rejoiced that little by little she acquired a certain awkwardness in her behavior toward me, and the more I stayed away from her, the more I isolated myself so as not to somehow give away my “fatal” secret. I wanted her to fall in love with me and yet, at the same time, see how distant and unobtainable I was for her. A poem by Pushkin stuck in my head: “The less we love a woman / the easier 'tis to be liked by her...”² Lermontov’s cruelty toward women as a recipe for winning them over also encouraged my artificial coldness. My adoration grew with my contrived indifference. I dreamt about the impossible moment when Masha would suddenly hear my confession. And I reveled in the very impossibility of such a scene... I wrote poems in my diary. I recollect two painful lines:

Law, mutual attraction—everything revolted

Against you being mine!

It was clear to me that this love was born under the insuperable hindrances of life.

Masha took English lessons from the only English woman in town, a small, red-faced old maid, with a parting in her hair and red curls, shaped like sausages, all around her head. Coming to the lesson, she glistened from perspiration and comically shook her curls. A thin golden chain with a watch-pendant adorned her chest. She tutored Masha for an hour in a separate room.

Masha had some English books; she copied lines of English poems into a notebook. Her handwriting was fine, clean, elegant, and impeccably regular. She ran around with the folios of Byron and learned by heart his poems, “Farewell” and “A Tear” – her favorites. Very soon she mastered the language and lost herself in English literature. Her English teacher was not needed anymore. For some reason it was decided that Masha had to teach me English. In the evenings I came to her quiet quarters, consisting of two small rooms, a dressing room and a bedroom. There I recited my lessons to her, then started reading aloud, and she corrected me when I could not pronounce some word. Our heads touched under the lamp; our hands lay close on the page when we together followed the lines. One evening, when her white hand, pressed into a fist, with thin blue veins and a black enamel ring, lay on the book just before my lips, I suddenly felt as if I had run out of breath and, hardly aware of myself, as in a dream, in an unperceivable instant my lips touched her hand; just as instantly and, most importantly, at the exact same second Masha, as I remember, very hotly and just as quickly kissed my hand. Between us nothing was said, not a single word, the lesson ended as usual without a break, and I suffered for the whole night and the following day over whether it happened or not. An unprecedented fire burned in me, and I kept concentrating my whole memory on that strange, dream-like moment. It seemed to me that now, more than ever before, it was necessary not to show that this could have happened. As if by a silent agreement, Masha carried herself in the same manner. During the next lessons, not a single

word was said about what had happened. It seemed as if we agreed to prove to each other that it could not have happened. But the strangeness of our mutual feelings increased.

During spring and summer months of that year I was more than ever in love. In the words of Pushkin, the “power of unfledged passion”, was burning in me.³ My imagination was pure and innocent. I was drawn to Masha because she was a kindred spirit, because she thought like me, because she knew my mind and my nature. We never broke silence about the main question.

In the evening, we, the kids, were brought a four-seat carriage, and were allowed to ride about the streets of town. Masha sat with three other brothers inside the carriage, and I climbed the coachbox: there I was further from the rest of the company and therefore appeared more interesting. From there, I turned from time to time to the rest of our company and declared something unexpected and original from my random thoughts, and then soon congealed in my solitude next to the coachman. The boulevards of cottonwoods flew by; the earth ran under the wheels: the bell towers of churches rose to the quiet evening sky at the different edges of the town. I flirted and suffered . . . and rejoiced. Upon our return, I saw that Masha returned to her rooms unwillingly and sadly.

Both Masha and I were religious. I had in my heart faith in the Christian God, whose Son had suffered on the cross and for whom the cathedrals were erected. I loved the Pontifical Service; I went to the mass as if for a conversation with heaven; the regal glitter of pontifical dress reminded me of God Almighty depicted in icons. From the very beginning I was truthful and trusting: I never understood the purpose of any deceit and therefore always believed. The cathedral on the mountain with the velvet throne of the bishop in the middle, and the bishop’s house in the garden in the valley behind the mountain: all of this appeared to me marvelous, magical, divine. I happened to visit the bishop’s garden together with Masha and one of our

brothers. The sun was setting, and the bushes shone gold. Masha walked the paths, the sky above was dark blue...I memorized her every move, every turn, every word.

One evening she sat on the windowsill of the open window. She wore a pale yellow muslin dress with slitted Greek sleeves. A big open book of Byron lay on her lap. Her bare arms, covered with black wide bracelets made of jet which only recently started becoming fashionable, lay on the book. Light fluff set off the whiteness of these adolescent and graceful maiden arms. It was a quiet summer evening; the dust was hanging in the hot and golden air; weary and grayed cottonwoods were motionless. I don't remember ever seeing Masha more adorable before or after that evening. Her pitch-black hair, braided into two tight festoons reached below ears and connected at the back of her head with wide black bows. I was standing next to her with an absentminded look on my face and was gazing mindlessly outside. And next to this beautiful and feminine creature I could feel my heart beating with unimaginable happiness...

The minutes spent with Masha at the window, as well as the moment when I kissed her hand during the English lesson, remained indelibly in my memory. From that distant time and for the remainder of my life I preserved a special fascination with the beauty of a female hand.

The summer was going by filled with those same indescribable feelings of joy and suffering. I admired Masha, and did not know what I desired for myself, but I knew that she would never hear my confession and that she was destined to be with somebody else. I did not know jealousy and bowed to my destiny. There was one thing; it seemed to me that nobody else would be able to experience my happiness because no one would discover in Masha those joys that I had discovered. It was a happy, indefinite, and dull sadness. The time passed in vague dreams. And truly, I barely recollect any distinct thoughts from those dreamy days. I remember, though, for instance, one Sunday morning. Masha had moved from one of her two rooms

overlooking the yard to the green room in the corner of the house where she had a writing desk, a dressing table, and a bed behind a screen (her two rooms had been given to our mother who had just given a birth to the twins). I remember that Masha was leafing through a keepsake with female portraits from Walter Scott. She was dressed beautifully and looked cheerful and fresh, and I was saying something amusing to her about each of the portraits. Her room was bright, cheerful, and fragrant... The door was barely ajar. Warm wind blew softly through the window. Suddenly ear-splitting thunder came from the sunny skies. We closed the window, the air grew dark, and I left the room. And that morning remained for some reason in my memory. It felt so good to be next to the clever, fresh, and charming Masha.

Then there is also another memory. One day I was sitting alone on the small balcony of our mezzanine with a book, it was either Hoffmann's fairytales or Turgenev's *Sportsman's Sketches*. My mind was idle; printed letters lay like a thin net in front of my eyes under the strong and relaxing light of a summer sun. I kept unconsciously pulling away from the book and looked either down, into the empty and dusty street, or at the sparse grating of our balcony with two nails sticking at its edges to scare off the birds. Another empty chair was standing next to my chair. There was nobody upstairs; the door to the rooms was open. For some reason, Masha came running to the balcony, either with a question or suggestion for me. I clearly see her wearing a gray dress made of light wool with a low-cut bodice, covered by a pretty pelerine made of the same fabric, and with a narrow frill. The wind or her fast movement flung the pelerine open—I can not tell, but her shoulders or the upper part of the breasts suddenly were exposed; I remember a tiny pink spot on her milky white skin; I remember that she put my hands onto her shoulders, and I, out of breath, kissed her under the pelerine, into her hot neck, and heard the throbs of her heart... And it seems to me that that moment was even shorter, even more dream-

like than the one when my lips touched her hand. But my memory stubbornly insists that all this undoubtedly happened. I was my last “delirious” kiss.

These unintended, though intense, feelings started gradually transforming into something excessively hopeless and wearisome. By the fall Masha grew into adulthood completely. Next “season” she had to enter society. Our mother, loving her only daughter dearly, resolved to make her absolute perfection. Masha was clever, educated, and was brought up loving order; in her beautiful handwriting, she kept an account of the household expenses in ruled notebooks. She was neat, orderly, gracious, ideal; books enriched her imagination; she was prepared to become a charming “wife.” More and more she took on a look of a young woman, and gradually my adolescent heart began to view her as one of the adults. In winter she participated in amateur-plays, pageants, acquainted herself with the suitors from the best society of the province at that time, and people began to talk about her interest in a certain middle-aged gentleman from among those wealthy and respectable landowners, whose style was reminiscent of that of English lords. Another young gentleman from a respected family, with which our household had a longstanding friendly relationship, took an interest in her. And with an indistinct weariness I began to “submit to my destiny.” Besides, Masha began to look different, not worse, but she spoiled herself by beginning to take excessive care of her appearance. Her previously simple hairdo was replaced by complicated curls on the forehead. Masha began to groom her hands a lot, and for that reason, when there weren’t any guests, went about in gloves. She resorted to face powder and lipstick. And despite this, I saw that Masha, while maturing into a grown woman, was losing her previous loveliness. My passion for Masha, constantly suppressed through the painful alienation from her, now began to leave a bitter residue in my heart. Now it began to be easy to estrange myself from Masha, and our relationship began to take on the features of a quarrel, unexplainable to others.

We stopped talking with each other completely. And once, during one midday meal, when it became known to father and mother that Masha and I had not exchanged a single word for two months, father smiled, thinking it, of course, to be a trifle. But most importantly, neither I nor Masha were embarrassed: we both felt that there wasn't any abruptness, suffering, or awkwardness in our breakup, and that everything happened naturally, by itself. The entire winter passed this way.

During Lent an obvious opportunity presented itself to break this forced silence. We fasted. Before the confession I had to come up to Masha and ask her for forgiveness. It was a bright evening in March. I approached Masha calmly, with an awareness of my duty. She was at that moment in the hall, dressed in a light chintz blouse with a train. She met me as I walked in. I crossed in her path, found myself face to face with her, and muttered quietly: "Forgive me, Masha"... She pressed a sisterly kiss onto my lips and said plainly and kind-heartedly: "God will forgive." My heart skipped a beat; this was the first and the last kiss on the lips. I breathed in the scent of the powder from her face, and I felt the warmth of this still tender kiss. A friendly and gentle relationship with a touch of a cherished and inexpressible feeling established itself between us, a feeling which was reminiscent of joy after recovery from a mutual disease. There was tenderness in it, and magnanimity, and mutual politeness, without discord and agitation.

In June my brothers fell sick from whooping cough. I had it at an earlier age, when I still lived in the village, and I alone was spared. Masha was the last one to get sick. At her age (she turned seventeen in the middle of the summer) it could be a difficult and dangerous disease. The weather was very hot. The doctor ordered the sick to be in the open air as much as possible. Almost the whole day Masha sat on the porch, overlooking the yard, or, during the hottest part of the day—on the bench somewhere in the garden. Her neck was always wrapped in a linen

kerchief; her wailing cough occurred in ear-splitting bouts. She did not dress up and did not change her gray chintz blouse. In the evenings, still with the same kerchief around her neck and a black shawl over her shoulders, she would go out for a carriage ride with someone, usually with mother. Her face was swollen and yellow; her unusually apathetic eyes did not change their expression: the appearance of a sick boredom did not leave them. She scarcely spoke and during the day often slept in various corners of the house, with an expression of extreme boredom on her swollen face, with tightly closed eyes and drawn out lips. Upon awakening, she did not look refreshed and wandered lazily from one place to another, as if estranged from everyone. She always had with her some holy book: either a small prayer-book in a faded silk binding, or the Lives of the Saints, or (especially often) a book with the pictures and descriptions of all the miracle-working icons of the Holy Virgin: in the text of this book one would always come across pages divided into many squares, with all sorts of icons of the Holy Virgin printed in them, with the baby Jesus either on one arm or in the middle of the chest, with a cross in the background, with raised or folded arms, the images of the icons “Our Lady of the Three Hands” and “Our Lady of the Burning Bush” etc.⁴ Hot yellow sun shone on these black prints of religious art; and an open book lay on the lap of slouching Masha. She either looked around apathetically, or lost herself in the book with monotonous tedium, without any thought shown in the features of her bloated face; or suddenly she would start coughing, her whole body convulsively shaking and tears welling up in her eyes, undergoing the whole bout with a meekness she had by now acquired, as if she was fated to be like this forever, and it would never be otherwise. Already four weeks passed, but her coughing bouts did not lighten up or shorten, as happened to the brothers during their recovery. However, there wasn’t any concern for Masha’s health: she was on her feet and went out for rides; the weather continued to be summery, and the whooping

cough, as is known, is cured by itself in the fresh air. But her state of mind left a displeasing and unusual impression. It felt as if there was something not easily remediable in this new Masha, who annoyingly persisted in being from now on unlike the former Masha. It seemed that it was possible to cough and have a yellow face, but one should not have been so silent, and one should not have this expression, which seemed to forbid associating with Masha in the usual way and allowed no hope of making her interested in any ordinary conversation or our everyday concerns. It seemed that it was easy for Masha to do, all the more so because she could move around, go out for walks, read the books, etc. And still it felt impossible.

Once upon returning from a carriage ride to the country, mother had a conversation with father, and—as I overheard—she paced behind the half-shut door, discussing something and arguing that “Masha is strange,” that likely she read too many books and lapsed into a gloomy state of mind. I took this disturbing conversation with a fair degree of indifference, although I thought that now it will be difficult to change Masha and that events had already taken their course.

The next day, when all of us had long since risen, the shutters in Masha’s bedroom were still unopened. It was already eleven o’clock. I ran around in the garden and in the yard, and finally went inside through the back door. Upon entering the house, I heard a commotion, and somebody told to me that “Masha has lost her mind and imagines herself to be the Holy Virgin, and now she’s scaring mother by announcing to her that she is not her daughter and that she is a Saint.” I saw worry in everyone’s face, but I didn’t understand anything, and didn’t believe these words. I looked in fear at the partially shut door to Masha’s dark green room. I put myself in her place and could not imagine her madness, and I was even more afraid of what was said about it. I did not dare to step over the threshold of her bedroom, convinced that something

incomprehensible was happening, something that made my head spin and my legs give way under me. I thought that in that dark room with a partially shut door there surely was a supernatural force that took hold of Masha and did not allow her to understand everything that we understood. I was afraid to fall under the spell of that same force because in my heart I felt that Masha and I were kindred spirits, and I could not concede that such an abyss had grown between us. It seemed to me that Masha could be reasoned with, despite the unnaturalness of her thoughts, but if it was impossible, then this was something mysterious and horrible. One of my brothers brought me to the door and said: "Listen". Masha's harried voice was heard from there: you could distinguish some words, but it was impossible to understand them. I haven't yet heard such a combination of meaningless words before. "This is the intervention from on high," — I thought, — "This is God, this comes from Heaven, from the world not understandable to us." I imagined the miracle in all of its terrifying grandeur. Masha's madness, as it was called in our house, began from her hatred of our mother: she could not bear the sight of her and drove her away. Mother was in despair and did not dare to go into her room. I tried to somehow explain this hatred to myself; is it possible that the meek and kind Masha was getting even with mother for demanding perfection from her, blurring her mind with unachievable ideals, and clouding her imagination with religiosity and romanticism? I wanted to find some sensible explanation for this catastrophic change. I told myself that Masha could, for the time being, imagine herself the Mother of God, considering that all sorts of holy pictures of the Mother of God were constantly flashing before her eyes in the course of her disease. I thought that it would pass. From the sounds of Masha's speech reaching me I was able to distinguish one shrill exclamation: "Shudder-shudder, Vera-a." She repeated this absurd exclamation with a drawling ending, as if she especially liked it or as if it somehow expressed her thought well. And because "Vera" was

our mother's name, I tried to find some meaning in this incomprehensible whim of her language. I heard in it Masha's reproach to mother for her unachievable demands for perfection. However, this exclamation was repeated so randomly, and was often said in such a dull voice that my ears and my heart did not cease to suffer.

The doctor diagnosed fever. It was our family doctor, the inspector on the medical board, a smart and experienced Ukrainian, in a clean uniform, with the thin features of a pock-marked face, shaved lips, short-haired and with salt and pepper sideburns. He slouched slightly, had calm manners and a humorous smile (when he was in good spirits), this doctor knew each of us to the bone and seemed to me to be a mysteriously deep person. He always rode his narrow droshky with the raised top, pulled by a white horse, and wore a Pushkin-styled overcoat, with a cape and a velvet collar. From the very first day of Masha's sickness, the doctor's droshky with the white horse would stand in our yard, at the front door, two or three times during the day. The condition of the patient obviously became dangerous.

I remember the first three days especially well.

Masha talked ceaselessly. During the first evening, as in the morning, the same harried and uncontrollable speech was heard from the room. Now and again the exclamation "Shudder-shudder, Vera" was repeated, although in a more apathetic and weary voice. It felt as if that day drove me mad also. I could not eat my lunch, and others also ate at a different hour, reluctantly and not in the dining room, but in a different room, further away from Masha. At the usual hour I tried to go to bed, but I did not want to undress. I fell asleep for an hour or so and woke very quickly, and got up immediately. It was dark everywhere, everybody was asleep. I felt my way toward the stairs, went down and saw the dim light of a candle in the dining room which was adjoining Masha's room. Directing my steps toward this light and not hearing any sounds, I

hoped that Masha had finally fallen silent, and that after sleep, she would recover tomorrow. Everything was quiet. I had already entered the dining room and nothing could be heard; I was almost ready to go back, to undress and fall asleep, when in this silence I heard clearly Masha's talking, still the same and not ceasing even for a moment. It was even more terrifying now when nobody was listening to it anymore. In a moment a loud exclamation resounded: "Shudder-shudder, Vera-a-a." A minute later another loud phrase escaped from this lonely and incredibly tiring whispering, one of the three or four favorite and equally meaningless ones, which Masha screamed especially clearly. I was standing in front of a flickering candle, with a downcast head and with my heart growing cold. I did not dare to come up to the sick Masha, I did not know how to help her, and dreamed, as about an impossible happiness, that these painful sounds would sometime finally cease. Upon returning upstairs, I again laid down, without undressing, my body grew cold, and I thought about Masha intensely, and at times slipped into light, restless sleep.

Shortly before daybreak, I apparently fell asleep as deeply as all the rest. At least, my open eyes already made out the gray daylight, and all my brothers were already dressed. Because I was also dressed, I did not fall behind the others. All of us went downstairs.

My heart already had stopped hoping. A dull sense of grief settled in it. When walking downstairs I followed the brothers, their backs, heads, the sounds of their steps, the proximity of these healthy bodies gave me power; my head felt heavy, a sort of frozen agitation chilled my chest, but after the break, in the company of brothers, I was starting the day with the involuntary feeling of adaptation to what already had happened and what would happen next. We came to the dining room; the cups were on the table, in the usual places, for each of us at the right end of the table. We sat down. Masha's talking, still the same, continued to be heard from her bedroom... These sounds brought an already familiar chill into my heart. I noticed that the others

also were upset about what I had known from last night, that is, that Masha's condition remained the same, and that the misery of yesterday had not changed in the least.

During the third day Masha finally fell silent. It was a warm and gloomy day; the sky was covered with gray clouds. For some reason everybody felt a little bit better. A medical "concilium" was scheduled for the evening. I heard this word for the first time and expected something extraordinary from this rite. In the afternoon our doctor brought one more doctor with him. Both of them entered Masha's room and asked her questions about something, but I couldn't hear her answers. And I rejoiced already for a simple reason that Masha, thanks to God, did not intend to talk any longer. At dusk, under the candlelight, some device which looked like a coffee maker was brought to the dining room by the doctors. Regular water was boiled in it, and from it the white steam was coming out through a thin pipe. They said that Masha was to breathe in this steam. It seemed to me that it was extraordinarily important that precisely now Masha needed her incredibly tired chest soothed, and that this device, never seen by me before, had already been invented for such terrible cases long ago, and that, thanks to God, they finally thought to bring this device to us in order to lighten up our hopelessly exhausted hearts. And, I believe, that this was the first night of relatively peaceful sleep for all of us.

During the next few days (I do not remember for how many) a different trouble appeared.

Although Masha fell silent, she did not regain consciousness. She did not eat anything; the cough returned, but not like the whooping cough, but different: with the fits shorter in length. The doctors found that she developed inflammation of the lung. We weren't allowed into her room from the very beginning of her disease. Regular life disappeared completely from our disorderly, silent, and gloomy house. The rooms were standing empty; the family did not gather together; everybody was hiding from each other. The involuntary center of all our thoughts became

Masha's bedroom, with its perpetually shut, painted-brown door, behind which, on her bed, at the wall, lay Masha.

A warm fall arrived. The majority of the time I was walking the alleys of our deserted garden in order to tire myself out. It ended with a wooden fence at the bottom of the mountain, which adjoined a cemetery. The sun rose up from behind this mountain; on this mountain, or so I thought, was concealed the crossing into future life: there the dead were called up to God. I did not believe in Masha's death; I could not recall experiencing a single death. But it seemed to me as if Jesus Christ, with his long curly hair and his sad, deep, and loving eyes, was somewhere tremendously close to Masha and that the influence of His miraculous power touched our house. I thought that He alone knew what actually was happening at our house, but that He, in a way inconceivable to me, was pleased with what was happening, and that more and more He was getting a hold of Masha. And for some reason I was still very sad and frightened for Masha.

No one besides me visited the garden. The first dry leaves fell from the trees. The day light was quiet and thoughtful; dead branches crunched frequently under my feet. I continued to think about Masha and felt that my thought did not reach her and would never be able to reach her in mere words because she did not understand and did not want to know anything of our world.

Nevertheless, one day news came that Masha was significantly better and that we were allowed to enter her room. I waited until everybody else visited her, and, seeing their calm faces, finally at midday I entered Masha's room myself.

Upon crossing the threshold, I noticed our old nanny tying something to the body of the sick girl, under her robe. The blanket was thrown to the side; something pale flashed before my eyes... I halted and cast my eyes down...Masha moaned weakly and somehow mechanically.

The nanny asked: “Alright now?” Masha said, “Alright,” and I immediately felt tears well in my eyes from this simple and intelligent response. The nanny called me: “Come here, please.” The room, which always remained behind closed shutters, was now lighted; the screen was almost completely moved from the bed and folded; the blanket, tucked in under the mattress, flatly and neatly covered Masha to her chest. At first glance her face did not seem to have changed much; but Masha looked upwards and did not turn to me. I sat down onto the bed, feeling the right to speak with Masha in my old way. When our eyes met, I saw in her eyes an emptiness I had never seen before, a glassy transparency, which stung my heart. I nevertheless began to speak in a calm and tender voice about something that gladdened me, that is, about her fast recovery, about how now she would begin to recover, and after her illness was over she would be pretty again and all of us would cheer up.

I was amazed that Masha had little interest in all this. True, she answered the questions logically, she did not say anything incomprehensible, but everything that I observed in her, and everything that I heard from her, seemed painfully strange. To my predictions about the prompt recovery she responded absentmindedly: “Yes, yes, I feel fine,” and immediately said that she was going to marry and would have a church wedding soon. And because she spoke about this in connected sentences, I got confused and did not object. But my heart sank; I had to smile in a kindly way at her words, but did not know decidedly what to do, whether to agree with her or to say that this was news to me and that we didn’t know anything about her upcoming wedding. But recalling that everybody found comfort in Masha’s improvement, I also hesitantly took comfort in the fact that Masha began to talk, even about such things as this, i.e. that at least her fantasies had acquired a certain coherence and had stopped being expressed in a completely unintelligible collection of words. But it tormented me that Masha’s soul and mind remained inaccessible to

me. She constantly looked somewhere past me, and during her conversation her flat voice did not remind me of that lively expressiveness, which alone could have conveyed her live answers to my live questions... No! The earlier abyss remained. After the stories about the marriage and wedding, Masha fell silent for a while and then said indifferently: "Do you know? I will die, I know it ...". At this point the nanny interfered and began to soft-heartedly calm the sick. Of course, I said something cheerful to Masha also, with the same gentle smile, which was glued to my face like a grimace through the whole duration of the visit; but these horrifying and tranquil words killed my last hope for Masha's recovery. "She is now completely different and won't be back to her old self," my heart told me. I saw clearly that there was no reason for me to stay in the room. I said: "Well, Mashenka, you need rest after your sickness. I will leave. I am glad. You will get well." I got up from the bed and left. And Masha did not say anything to me as I was leaving.

The next day it was revealed that Masha's recovery was impossible. On the contrary, the doctors warned that Masha's condition had become extremely dangerous, and at that point everyone in the house began to talk openly about the possibility of Masha's death. This death might occur any day, at any given time. All of us were overtaken by weariness, involuntary passivity, and fear, which did not disappear from our hearts even for a moment. Father almost did not leave his study. Mother was stricken by a fit of hysteria-induced madness: she could not talk; her lips were clamped together in a spasm, and it seemed that there was no force that could have unlocked her jaw. Her eyes looked fearful and inconsolable. She was not capable of staying in the house any longer and moved to the guesthouse, to the landlady, where she sat all day long in some room, quietly and helplessly. If she needed anything, she would write it on a piece of paper. Mostly these were inquiries about Masha's condition.

Two days passed in such a manner. We did not hope anymore, but only asked: “Nothing happened yet?” And we waited. I could not imagine for myself what might and must happen at the moment of Masha’s death. I expected something extraordinary. I kept wondering about who would enter our house and how he would take Masha’s soul from her body. Would an angel descend? Would Christ enter? Would we all feel this presence connecting us to the other world?

But Masha’s room remained quiet. Only sometimes would the sound of a single cough or a faint moan reach us. The nanny sitting next to her would almost always say the same thing: “She is asleep.”

On the 15th of August, on the Day of the Assumption of the Virgin, there was a service in one of the three big churches of our town. A bishop was performing the service. The morning was sunny. All of us boys went to the day service⁵. In the past we always would go to church during church holidays, and we went this time, especially because none of us had any other important business than to pray. A pleasant and truly festive bell ringing was heard from the direction of the church of the Assumption. We walked in the streets drying from the night rain. On the dark-blue morning sky there were occasional, ragged-looking, and cheerfully white clouds. We came up to the fence, behind which small groups of colorfully dressed common people were sitting on the grass. The steps in front of the church were covered with praying people; the crowd thickened into a wall of people at the open door of the cathedral, gaping at us with its dark hole. As gentry children, we were allowed to get closer, but it was impossible to push our way through the crowd to the very front. And after we entered the church, we had to immediately turn to the left. We situated ourselves in front of the new and bright icon of the Baptism of Christ, hanging on one of the inside columns. We were standing next to each other, pressed against a cast-iron grating surrounding the base of the icon. We could not see the service

itself; we only heard from a distance the words of the priest and the prayers sung by the choir. The dense mass of people unaware of our sorrow invoked in me a painful feeling of an inability to understand their healthy contentedness and tranquility. Only one thing remained: to stand surrounded by sultry air, to tolerate being surrounded by all these impossibly happy praying people, and to look at the icon of the Baptism in front of me. This icon burnt into my memory forever; I remember its golden frame, rounded on the top and decorated with grapes and grape leaves; I see the red oil-lamp on the black iron hook and, in front of the grating, the large silver candelabrum, with many thin wax candles burning around the thick wax core and covering the paper with the ornately cut edge underneath with cooled off wax drops. I listened to the crackling of the wicks, and watched how all these thin candles became entangled after bending toward each other, dripped in the skewed flames, and melted down; I inhaled this heat and gazed at the big icon. The brown legs of the Savior, submerged in blue water, were surrounded at the calves by a white rim of ripples. John the Baptist, his even darker body covered in a sheep skin, was standing next to the Savior, holding a long cross made of plain sticks. From the bright-blue sky, a white dove radiated wide beams of light upon the baptized. I was preoccupied with the single question: “What will come out of this whole thing for our poor Masha?”

When the day service was over, and we went into the fresh air, we felt a momentary relief, and then, cheerful and unconcerned, headed back home. It seemed that we were now ready to hear any horrible news. However, upon returning home, we learned that nothing new had happened.

In the same way passed this and the next day, during which our communal forlornness and gloom increased because the doctors did not come to us any longer. On the morning of August 17th, Masha’s room became strangely accessible to everyone. The news spread that

Masha was departing. The house remained empty, as if everybody had run away from it. Nobody approached Masha's door, even though there weren't any prohibitions in effect any longer. It seemed that no amount of care would help or was needed by Masha anymore. And I went there, without any quivering, resigned to the general mood; I went to look in there, as I would have gone to any other empty place. The room indeed looked empty. The strong scent of musk poured over me; all the rugs were removed; the painted floor glistened; in the corner, on the shelf under the icon, an oil-lamp shined like a big star; the bed seemed empty, with sickly Masha lying in it exceptionally low and flat. Only the even, hoarse seething, as if coming from boiling water and not from a human chest, was heard from there. I approached. Masha's face was buried deep in the pillows, covered by a sheer kerchief, with a silver cross in the middle and a silver hem. This face appeared drained of blood, especially with its eyes closed and lips open still, from which this terrible, steady rattling came forth. I instinctively crossed myself and left. In the door I ran into nanny, who was returning to her vigil and did not say a single word to me.

During the day I involuntarily came up to Masha's door several times. At times I would arrive to a complete silence. Then the same steady, terrible, and lifeless rattling would resume. I already began to think that all of this would stretch out for Masha for a couple of days as had happened before with all of the other turns of her disease. And I thought suddenly that this was simply deep sleep, that this was precisely that "crisis," about which I had heard from the doctors and for which we had been waiting for so long, but apparently hopelessly and to no purpose.

All of us remained in a mess as before. The days already began to shorten at this time, and evening arrived earlier. I paced in the yard till it became completely dark. The first stars already began to flicker in the dark and cloudless sky, when suddenly a frantic cry came from the gallery of the house that overlooked the yard: "Come! . . . Come! . . . She's passed away! . . ."

I came rushing into the rooms. In the darkness crying was heard everywhere. Something incredible was transpiring in my heart. The nanny was steeped in bitter tears, and everybody (because all of us suddenly gathered) echoed her words. Crying away, she spoke hurriedly: “Now... right this minute ... She happened to fall silent completely... I lighted the oil-lamp... Suddenly I hear: she raised herself ... I ... went quickly to her, and she!...” And again she gave out a loud cry and sobbed, so that she could not even finish her speech...

And I sobbed without restraint, with screams, moans, and squeals, without knowing for myself which sounds, words, exclamations could express whatever was happening to me. Any attempt to say a word expressing a thought would lapse into bellowing and intense screaming, which would leave me breathless and coughing, and the new torrents of bitter and unstoppable tears came pouring out of my eyes. In a few seconds my eyes became swollen. And remarkably, during the whole time of my frantic weeping I felt that Masha was looking through my closed and wet eyes directly into my soul, and although I did not hear her words, I did not doubt that she saw through the whole of me. I imagined her now light, airy, omnipresent, and all-seeing.

After I had cried until I was exhausted and my chest ached, I ran outside.

There was a bright half-moon in the clear sky, and a small star shone next to it. I knew that Masha had flown somewhere into the sky, and I was puzzled as to where she could have been at that moment. I understood that, like our thought, she could fill the whole visible world with her essence. Did she reach God at the end of her flight, or, according to a legend, was she is still lingering somewhere which is neither here nor there—next to her own body and in the air—did she fly to the moon while at the same time still remaining on earth—or did she suffer drudgery and delays leaving—or soar high into the sky?... I felt surrounded by a mystery that tormented me and made me delirious.

I ran out of the room again. There was a bustle in Masha's bedroom. The servants came running up there. It was said that Masha's body was being bathed there. I came up to the door and heard a dull sound as if a doll fell onto the floor. "Is it possible that she is being bathed on the floor? —I asked.—"Yes, on some hay." This horrified me, and I again ran back into the yard.

Our white guesthouse, with the small glass gallery and high green roof, was showing serenely and clearly against the moonlight. A lush pear tree towered over it with two curved boughs. Two white chimneys were visible against the dark foliage. In the sky, next to the half-moon, a brilliant little star was flickering even brighter. "Masha!?"—I repeated in my madness.

I kept on walking, stumbled against stones, inhaled fresh air, looked to the sides, but mainly at the sky, and repeated to myself in horror: "However, there in the house... What am I to think?.. What am I to do?.."

Reaching the front porch, I saw that the door was ajar, and in the hall candles were burning. I entered. The door from the hall to the drawing room was locked; in the corner across from the door several tables were moved next to each other, and a fresh tablecloth was being spread over them. One of the wall mirrors was already covered with a bed sheet, and the other was still being covered. When the table was covered with a cold and clean tablecloth with the distinctive lines along which it was previously folded, a big pillow, likewise in a glaringly clean pillowcase, was put at the head of the table. All the time I peered anxiously at the dark door of the hall, through which the "deceased" had to be brought. I knew that mother was already with Masha, that she had come running to the departed from the guesthouse, that her muteness disappeared immediately, and that now she was "dressing her daughter like a bride," as the kindhearted simple people among our servants said.

Finally some movement was heard in the hall, and mother, dressed in black, was the first to enter the living room. She immediately turned toward the door adjoining the hall, through which the procession was expected to come, and after leaning against the door-jamb and holding her head up with the hand, broke into sobs and frequent moans. She covered her eyes with a kerchief in order not to see whatever was approaching. Women carried dead Masha. First from behind the door appeared her stretched little feet, laid closely to each other, dressed in white stockings and golden shoes. Then I saw the white dress and unfastened black hair. The deceased was turned with her head toward the windows and put carefully onto the table. She looked so light, pure, and prettily dressed! The ends of the pink ribbons in the waistband were falling over an absolutely new muslin dress, which was sewn for some ball and hadn't yet been worn even once. Mother, shedding ceaseless tears, screamed spontaneously her thoughts about dressing Masha in her best and untouched clothing of a bride... Meanwhile Masha's body was brought into a proper order. Her head in a black frame of smoothly combed hair sank deeper into the pillow. Two long locks of unfastened hair were slipped under her arms, which were then folded on her chest. The sides of the muslin dress were tidied up. Three dark church candles in silver candlesticks were brought in and set up around the table, two—at the head, and one—at the feet. Behind Masha's head was placed a small round table, covered with a white doily; on it, a small pile of holy books was laid out, and the golden icon of the Mother of God was leaned against this pile. On top of the books, behind her, was set a saucer with an oil-lamp. The even light of the flames was permeating in the living room. The shutters were shut. The clean tablecloths, the bed sheets on the mirror, the white wallpaper, white dress and yellow lights prevailed over this indescribably chilling picture, which now arose in my mind. I approached Masha and could not take my eyes off her. And however dreadful this event was, next to Masha, contrary to my

expectations, I was experiencing an astonishingly simple, reconciling feeling. I did not want to leave her. Her features were marvelously calm. The skin of her face and hands was still warm. “How simple is this death, about which I kept thinking horrible things!”, I was telling myself. “Is it even at all possible to doubt that Masha now lives somewhere?” I did not doubt this at all, and felt her soul touch me. I saw her for sure hovering nearby, in all corners of this room. I imagined seeing on the white wallpaper the fluttering of the mournful winged soul, circling above this pure and sad body. I peered at Masha’s forehead, and a profound thought seemed to linger above her straight eyebrows. At this moment the nanny entered the empty living room and put two copper kopecks onto Masha’s eyes. These two dark circles on the beautiful sleeping face disturbed my dreaminess in a crude and oppressive way. The natural and reconciling expression of this still warm face immediately disappeared. The eyelashes, heavy with sleep, got covered; the kopecks looked like two dark and blind holes on the delicately pale face; it lost any likeness to life, and acquired an expression of a dull and helpless amazement at this brute violence... “Is it really needed?”—I asked. “Of course! Or the eyes will open. It can’t be left like that.” I got very scared, and I suffered from the thought that Masha can’t object to anything, and that she no longer is allowed to or even needs to look at anything!... I tried not to notice these black, and, as it seemed to me, incredibly heavy spots on Masha’s face. My eyes ran over her hands and the white dress. How still, dreadfully still, this familiar, painfully mysterious body suddenly became! Abundant tears burnt my face under the influence of these unbearable thoughts. “She was so kind”, I was saying to myself, “And now she cannot answer this agony she caused with at least a hint at something joyful, something relieving. How hard it must be for her to handle this stony indifference! For what reason is this unbearable suffering sent to her and to us?!” I touched the white frill of her sleeve, adjusted it, it moved under my hand, and then its starched pleats,

pressed down by my hand for a brief moment, would straighten out and move by themselves again. The pleats moved, but Masha's cool hand, with sad, distinctly visible dark hairs would remain motionless; the hand lay flat and indifferent above the pink waistband. And anew two copper circles looked at me in a hostile and ghastly way from her motionless head. Everybody left the room. The light of the candles seemed to become brighter and sadder. The sexton with the psalm-book entered and took a place at some distance, at the separate small table. He opened the book, lighted a thin wax candle, and cleared his throat in order to start reading. Once again I ran my eyes over the white table, white dress, the eyes pressed down by the coins, and went through the front porch and into the yard.

The moon had risen high into the sky, and now was shining so brightly that in its whitish halo the little star next to it started to look entirely dim. "Where is Masha now?"—I kept asking myself. And I kept imagining that with every minute she ascended still higher and higher, and with every new moment learned still more significant and important mysteries of the spiritual world. "Has she now reached God himself? Does she see his mysterious face? Or is she still held by angels, still afraid of the new life, and with sorrow in her heart, does she want to return in order to console us? Do the angels tempt her with free heavenly life, and does she agree to abandon us forever? . . ."

The ground in our yard turned completely white from the beams of the half-moon; the stillness of the light fall night was not disturbed by anything. And in this white light I kept seeing: the white dress of the deceased, white tablecloth, white wallpaper—that whole room abandoned by our family, in which Masha was lying, separated from anything living. Through the open door of the front entrance I went again into the room. The sexton read Slavonic prayers in his lethargic and sad bass voice. I was tormented by the vision that Masha had to listen to

these prayers of the sexton, whom she had never seen before in her life, and that this sexton would stay with her in private for the whole night, with her, the beautiful and gentle girl, wearing her best ball dress! After stopping at the doorstep, I noticed that the whole table, and the deceased herself appeared still more white and lifeless than before. I saw that Masha was already covered by a clean cold sheet from the bottom edge of the table up to her arms. From under this sheet her feet pointed sharply up. I approached... The black coins sank even deeper into her closed eyelids. These coins, which replaced her eyes, it seemed to me, were astonished even more than the eyes themselves by everything what happened, and, I thought, they were especially astonished by the voice of this unfamiliar sexton... But what tortured me the most was the coldness of Masha's skin. I could never before imagine that the live skin could become as cold as, for example, a slate or a copper lock. "Now,—I thought,—the last remnants of the soul have disappeared..." I glanced at this strange, horrible spectacle once again, and I left completely, allowing the sexton to torture the senseless Masha with the fatal sounds of Slavonic prayers. I do not remember where I went, and I don't remember where I spent the rest of the night.

The next morning my first thought was drawn to the living room where the terrible and mysterious Masha lay. My empty head did not know how to think about anything else; my heart froze in a single painful feeling of hopeless grief; my eyes looked around apathetically, but the cold fear of what had happened kept rising endlessly inside of my chest. I came to the door of the living room from the side of the hallway. Even from a distance the daylight seemed more merciless than the light of the candles. The octaves of the sexton, who did not take notice of the morning bustle, tortured my ears considerably more with their dull monotony than Masha's

raving which I had heard a month ago. Nothing was heard from the direction of Masha's table...
Oh, such an insane riddle!

Different people appeared in the drawing room. I entered the room, saw everything the same as yesterday, and turned my step toward the table, closer to Masha's body, and closer her face. My God! What had happened to her! The coins were taken from the closed eyes, but the yellowish-white, bloodless face had acquired completely strange features. I thought that we would bury Masha looking the same as we knew her during her life; only yesterday I was finding comfort in this, looking at her not yet cold, calm, and thoughtful face. And now I see: no! Death must be terrible. The outline of Masha's long eyebrows lost any expression of thought; her pinched lips and chin froze into a plaster quadrangle; her sunken eyes were encircled with a cold and dark color; the smooth hair around her forehead lost its luster and began to look like dry wool; her nose lengthened and infused the face of the departed with the expression of dumb surprise; white dots appeared on the sides of the nose; and on her folded hands, on her bent fingers, I was horrified to see blue, almost black nails. I knew that Masha would have shuddered even from the thought that her beautiful, almond-shaped nails could ever turn into these black spots... Out of love to her memory I stopped glancing at the fingers and looked only at the upper sides of her hands. Their color was reminiscent of the petals of lilies. Bloodless whiteness did not spoil them. On one of the fingers there was the black enamel ring, to which my lips were drawn during that English lesson, the first kiss in my life: mother slipped this ring onto Masha's finger, so it could "rest on her". My face burned in a dull fever, and became swollen from endless tears; now these silent tears appeared every minute and kept running at any painful thought; rarely, very rarely, a quiet and hoarse sound would rise in my throat when tormenting thoughts

exhausted the last of my patience, and I wanted to say something, but I could not express anything.

Meanwhile strangers began to arrive at the drawing room. And if I happened to notice a familiar person enter, who witnessed our grief for the first time, only then, after seeing the visitor, I would sob loudly, with a new, abundant flow of tears. And so it went with everyone in our family upon seeing each familiar visitor.

The day was bright. The yellow, strong light of that day filled me with an inexpressible anxiety and yearning. A crowd grew in the drawing room, and it was constantly renewed. Everybody was unusually quiet, so that at moments the crackling of candles was clearly heard, with their flames abominable in the light of the sun. The room grew stuffy; gradually a distinct scent appeared, which was said to “come from the deceased.” In fact, this heavy, metallic scent was unlike any other scent known to me in the past. And this new terrible event offended Masha’s memory. I suffered for her, this familiar, attractive, defenseless Masha. The door leading from the drawing room to other rooms remained closed or half-closed all the time; and the drawing room with candles, with the sexton, with Masha, with the strange crowd that kept coming from the street, appeared as a frightening delirium, which remained within one’s head and chilled the heart, no matter to which corners of the house one was forced to retreat.

The procession to the cemetery church was to happen on the same day. It was scheduled for seven o’clock in the evening. During the day, we received in the mail a leaflet with a black border, in which the news about Masha’s death, the funeral procession, and burial were printed. I read this news about Masha with aversion, and was convinced that most likely somebody all-powerful and invisible knew about this all along, and only we, who lived with Masha, did not have a clue that these leaflets had most certainly to arrive today. Still a little bit later, the pink

coffin was brought, white on the inside, with a hard pillow. It was set down onto two stools, parallel to the table; the lid with the cross made of silver lace was on the porch, next to the front door. By the evening the crowd gradually increased. We were all preparing for something even more horrifying than all that had preceded. We were fussing and putting on black clothing. Carriages arrived at our gate. People were gathering along the boulevard, across from our window. . . Peasants came to our yard carrying church banners. Ladies and gentlemen of the local high society entered the drawing room. To me, they all looked so alive that it was not at all fathomable that one of them might ever be in Masha's position. Seeing them reminded me of those careless days when we visited each other: as more of them arrived, it felt like the chill in our souls slightly receded, as if the energy of someone else's life came to somewhat alleviate our madness. The clergy appeared. The choir men came. The archimandrite arrived. His dry monastic face and loud, vigorous voice, the calm expression of his eyes as he looked at Masha, whom he saw often during her life, all this gave me strength for a short while. He put on his robe and a funeral mitre. I felt some strange satisfaction from a realization that a person of the higher clerical order is praying above Masha, as if it expressed our extreme and touching care for the deceased. The first memorial service⁶ began. The crowd was dense, like in a church; everybody held thin candles in their hands; Masha, with her terrifying table, was separated from me now by the whole wall of people and clergy. The archimandrite walked around the table with a censer; the choir singer began to sing mournful prayers. Masha's body turned into a sacred thing. It seemed that suddenly everybody felt unbearably grief-stricken, and almost everyone started crying; I saw wet eyes and kerchiefs everywhere around me. There, upfront, behind the wall of people, Masha was laid in her coffin. The white dress was seen for a moment above heads of the crowd, and then the pink coffin was raised and then lowered onto the table. The choir singers

sounded louder and sadder further on into the service. The incense filled the room, the lights of candles and hundreds of breaths created such a heat that all faces were covered with the drops of sweat. When it came to the “memory eternal,” cries were heard.⁷ The choir singers chanted with abandon, covering up all cries with the reverberations of a heartbreaking melody. A commotion ensued. The coffin was raised high above the crowd. Carrying out the deceased seemed more painful than anything that happened earlier. Even our little twins—brother and sister in the hands of their nannies—broke into inconsolable crying, as if protesting against this last, intolerable cruelty. Everybody moved outside through the wide open door. The choir broke into singing the slow, loud, and dreary “Holy God!” These sounds, after breaking into the open air, rang in strong, weeping notes of altos. The coffin was turned as it was carried through the door, ducked down on the steps of the porch, and exited into the street through the open gate. The funeral procession started moving.

At that time there weren't hearses in our town yet. Workers carried the coffin on long towels, passed underneath its silver handles. Mother was led by her arms, she walked closely behind the pink casket, with downcast head, as if looking inside of the coffin. All of us children walked next to her with our heads uncovered. My eyes burned from tears, and the white, soft, and dusty streets ran under my feet. I walked with others in the middle of the crowd. The pink casket was swinging in front of me, almost touching the ground. Church banners were carried on both sides of the coffin. Through the sounds of singing and stomping of the crowd I heard the bells ring somewhere in the sky. I knew that I at that time I was at the very heart of the deepest sorrow that a person can possibly experience in his life. What happened to others in the past, happened now to us. And now I was convinced more than ever before that I was entirely right when I mourned so painfully for all those unfamiliar people who bemoaned the death of a family

member. I did not notice when we turned around the very same street corner where in the past the unfamiliar funeral processions regularly passed the windows of our previous apartment. The procession was already on the road leading directly up to the graveyard. This street, which I avoided previously, turned out to be significantly longer than I thought. The graveyard was still at some distance. Outside of town, after the last small houses, a wide empty field opened. We climbed the mountain slowly, and I already began to hear clearly the faint sounds coming from the graveyard's bell-tower. That small church on the mountain which had long since terrified me was now clearly visible against the sky, with its low cupola and pointed bell-tower, and it seemed that the delicate babbling of its bells told me that it was not as frightening as I imagined it from a distance, and that from now on we might be drawn together. I already clearly saw its white walls behind the fence. The procession headed for the small arched gate. Above this arch a dark angel was standing on one leg, holding a long trumpet; underneath him and above the gate, a Slavonic inscription arched on the white stucco: "Come to Me, all who are weary and heavy-laden, and I will give you rest."⁸ And finally I am at the threshold of the afterlife! . . . Behind the fence, a road with lush trees planted on both sides came into view. In the openings between the trees white headstones were visible. The coffin, swinging low on the towels, moved quickly along the alley; the nearby bell-ringing seemed now to be especially loud, as if the bells finally expressed their joyfulness and hospitality without embarrassment. Having proceeded along the alley past the graves that broke through the green, we followed the casket and turned to the left, walked up the low porch and through an open door into a dimly lit church. It was cold inside. With only a few candles and oil-lamps burning and accompanied by the final loud peals of the bell, the uncovered casket was set onto two stools. The choir-men entered with the same crying sounds of the solemn chant: "Holy God!" Apparently, the ceremony was over for the day.

Mother glanced at Masha, and burst into tears once again; a racket broke out, after which the lower part of Masha's face, beginning with the nostrils, was covered with cotton wool.

Meanwhile, our servants were saying that "black blood" was leaking from her nostrils. Masha's face changed horribly from transport; it seemed that the inexpressible suffering, fatigue, and exhaustion were impressed on it. This face seemed to be asking for rest and wanted to tell others that if they continue to bother it, even slightly, it will disappear completely. Masha's casket was wrapped in a thin white cloth. The service ended, and people began to leave. And we finally left, leaving Masha alone in the cold church...

It is painful to admit, but after returning home I nonetheless felt a brief relief realizing that in our house there was no longer a heart-wrenching, maddening, and horrifying room containing Masha's lifeless body. But later, when I was lying in my warm bed, I paid for this insignificant consolation with painful and upsetting thoughts. I felt Masha's reproaches for our egoism; I was tormented by the thought that we could rest under warm blankets, and think about whatever pleased us, while she was locked in the dark church and was lost to us forever... I don't remember when and how uneasy sleep interrupted this pointless torment.

In the morning, without exchanging a single word with each other, the whole family was about to go to the strangely intimate cemetery chapel, which now seemed to hold the pain of all of our hearts. During last few days, I saw my father very little. He purposely secluded himself, and grieved without allowing others to see him. I only remember that during the service, before the procession, his large head with a high and bold forehead towered above the crowd, and the lids of his bulging eyes looked horribly red from the tears swelling in them. He kept quiet and controlled himself to such a degree that only a few tears ran down his cheeks and into his

trimmed gray whiskers. And even now, sitting in the carriage next to mother, with her pale and swollen face and vacant and clouded eyes, he preserved his self-control and remained silent.

The morning was bright. The carriage climbed the mountain, drove through the cemetery gate into the alley familiar from yesterday, and approached the porch. The green iron door was still locked. The pink casket was standing as yesterday, covered with the folds of the thin white cloth. Mother walked up to the casket, pulled the white cloth away, looked for a long time with her weary eyes at Masha's face, sighed helplessly, adjusted something around the deceased, asked again for some cotton wool, and again after tidying up the body, halted contemplating the beloved face, sighed again, and walked away after covering Masha up.

The bells began to ring for the day service.

Slowly the church filled with people. Many new people, who weren't at yesterday's funeral, arrived. Midway through the service the church became as crowded as our drawing room yesterday. The rite was accompanied by the sorrowful singing of the choir. The pink box loomed cruelly in the middle of the church, with outstretched, mutilated, blue, cold, and unrecognizable Masha. Under the sun and candles, over the densely packed, silent crowd, in the increasingly sultry air, the distinct, unbearable, incomparable metallic scent of her corpse filled the room. . . I was taught that after death only the saints do not exude the scent of decomposition, but in my madness I was perplexed as to what sin good and pure Masha could have committed, that the "odor of corruption" made itself known to everyone present.⁹

The service ended. The archimandrite and priests came from the altar and began to cense vigorously around the casket. The odor wafting in the church became intolerable in the dingy air, which joined with the breath of the crowd, the fumes of the incense, and the "putrid scent" of the dead. My head refused to think. I felt nauseated to the bottom of my heart, but my eyes followed

mechanically all of this horror. We were called to the coffin in order to bid farewell to Masha. I remember that I bowed shivering above Masha's bony, cold and almost completely black hand, glanced at her face, and saw that her eyes had sunk so deep that I imagined them to be two holes in the skull... But the torture did not stop at this. The archimandrite placed a paper crown on her forehead, stuck a wax cross and a printed sheet into her hands, poured dark holy-oil onto her dress, and covered her with a white cloth. Then the lid of the casket was lowered, closed tightly, and hammered down. We carried her off to the grave. At the last minute, when the coffin was lowered into the grave, thus hiding it from us forever, the workers had to hold mother by the hands as she dashed forcefully, with an agonized shriek, for the pit. This is how we buried Masha.

¹ This translation was published in *Toronto Slavic Quarterly* 38 (Fall 2011), 183-220. Available on-line and in hard copy. I used the following Russian edition of Andreevsky: S. A. Andreevsky, *Kniga o Smerti*, ed. I.I. I. I Podol'skaia, Moskva: Nauka, 2005, pages 17-39 (1:1:2).

² The lines from Pushkin's *Eugene Onegin* (chapter IV, stanza VII). I use Nabokov's translation [note of the translator].

³ From "Egyptian Nights," at the end of chapter III.

⁴ In Russian: "Troeruchitsa" and "Neopalimaya Kupina." Note of the translator.

⁵ The Russian word *obednya* was used in the original text. Note of translator.

⁶ *Panikhida* in original text. Note of translator.

⁷ In Eastern Orthodox Christendom, it is the song at the end of every Orthodox funeral. This song is known as "Memory Eternal" (in Church Slavonic: *Vechnaya Pamyat*).

⁸ Matthew 11:28.

⁹ The title of a chapter from the novel *The Brothers Karamazov* by Fyodor Dostoevsky (Part III, Book 7, Chapter 1).