1997

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ESSAY

Crimes and Defenses of Rodion Raskolnikov

BY VERA BERGELSON*

INTRODUCTION

In early July of 1865 in St. Petersburg, Rodion Raskolnikov killed two women, the old moneylender Alyona Ivanovna and her sister Lizaveta, and took money and valuables from their apartment. Twelve days later, he turned himself in and made a complete confession to the police. Several months after that, he went on trial.

His trial went off without any great difficulties. To the final questions — what could have made him commit the murder and what had induced him to commit the act of robbery — he answered very plainly and with most offensive accuracy that the cause of it all was his wretched maternal position, his poverty and helplessness. He had made up his mind to commit the murder, however, chiefly because of his reckless and cowardly character, exasperated, moreover, by his privations and failures.¹

Raskolnikov was found guilty and sentenced to penal servitude for the term of eight years.

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This ordinary criminal case forms the plot of Fyodor Dostoevsky’s *Crime and Punishment* (1865). One of the classics of world literature, this artistic study in the philosophy and psychology of crime continues to tantalize readers with eternal questions of human existence, and continues to attract a wide range of literary and interdisciplinary scholars to different aspects of Dostoevsky’s work.

*Crime and Punishment* presents a fascinating challenge to a scholar of law and literature interested in applying familiar legal concepts to well-known works of literature with a hope to enhance the understanding

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2 A brief description of the plot of the novel is probably provided best by Dostoevsky himself in his 1865 letter to Katkov, his prospective publisher:

This is a psychological account of a crime. A young man of middle-class origin, sent down from university, living in abject poverty, and given to unstable notions, has been entertaining some rather strange “incomplete” ideas which were floating in the air at the time. He decides to get himself out of his unhappy situation by killing a certain old money-lender. She is a stupid, deaf, sick and greedy old woman who charges exorbitant rates of interest, is evil and causes other misery

[.] He decides to kill and rob her in order to help his mother in her financial difficulties, free his sister from her degrading position, go back to university and finish his degree and then spend the rest of his life as an upright man of unswerving duty carrying out his humane debt to society, which of course will wipe out his crime. [T]his young man manages to carry out his idea quickly and successfully No one suspects him, but this is when the whole psychological process of the crime begins to unfold. The criminal decides to undergo punishment to atone for his crime.

*Quoted in* MARIA KRAVCHENKO, DOSTOEVSKY AND THE PSYCHOLOGISTS 113-14 (1978). Note that this letter describes a draft of the novel; in a later draft, Raskolnikov’s motivations became much more psychologically and philosophically complex. *Id.* at 114-15; see also JOHN JONES, DOSTOEVSKY 202-03 (1986).


4 See, e.g., NIKOLAI BERDIAEV, MIROSOZERTSANIE DOSTOEVSKOGO (1957) (a study of Dostoevsky’s philosophy by a famous Russian religious philosopher); LOUIS BREGER, DOSTOEVSKY: THE AUTHOR AS PSYCHOANALYST (1989) (a study of Dostoevsky’s works from the point of view of psychoanalysis); ROBERT LOUIS JACKSON, DOSTOEVSKY’S QUEST FOR FORM (1978) (a study of Dostoevsky’s philosophy of art); Paul Squires, Dostoevsky’s *Doctrine of Criminal Responsibility*, 27 J. CRIM. L. & CRIMINOLOGY 817 (1937) (a study in the psychology of crime, calling *Crime and Punishment* “a great cornerstone of modern criminology”).
of both. In this novel, Dostoevsky focused primarily on moral and psychological aspects of the crime providing only a sketchy description of Raskolnikov's trial, almost entirely leaving out possible legal arguments. Such brevity invites readers to judge Raskolnikov based on their own ideas of justice, assuring their complicity in the moral task of the novel. In contemporary American jurisprudence, a natural source of such ideas would be the Model Penal Code — the most systematic and widely adopted theory of criminal justice.

This Essay is an attempt to read Crime and Punishment and the Model Penal Code together, conducting a hypothetical “retrial” of Rodion Raskolnikov under the legal and moral principles reflected in the Model Penal Code. Treating the text of the novel as evidence and including “witness testimonies” of numerous literary experts, this Essay tries to take advantage of opportunities which the court in Crime and Punishment could not have had — a complete story of the crime and access to the true motives of the defendant. At the same time, the Model Penal Code is tested against the complex psychological account of a crime depicted in Crime and Punishment.

The Model Penal Code requires that a number of conditions be met before a person can be convicted of a crime. The prosecution must prove its case-in-chief, consisting of an actus reus (a voluntary act) and a mens rea (a culpable state of mind), and must overcome any possible defenses. This Essay examines whether Raskolnikov can avoid punishment by defeating the case-in-chief or successfully asserting an affirmative defense. It seeks out possible legal avenues of escape for Raskolnikov, tests them against the applicable provisions of the Model Penal Code, and finds them wanting.

For theoretical scholarship on law and literature, see, for example, THE HAPPY COUPLE: LAW AND LITERATURE (J Neville Turner & Pamela Williams eds., 1994) (discussing law and literature as an academic field); RICHARD A. POSNER, LAW AND LITERATURE: A MISUNDERSTOOD RELATION (1988) (noting that “[t]he study of law and literature seeks to use legal insights to enhance understanding of literature, not just literary insights to enhance understanding of law,” id. at 1); IAN WARD, LAW AND LITERATURE: POSSIBILITIES AND PERSPECTIVES (1995); RICHARD H. WEISBERG, POETHICS, AND OTHER STRATEGIES OF LAW AND LITERATURE (1992) (discussing two interrelated aspects of law and literature: literary values of legal writings, and treatment of lawyers, law, and justice in fiction).

The Essay consists of four parts: the first three explore various elements of Raskolnikov’s crimes and the fourth focuses on his punishment. Part I, devoted to the actus reus requirement, discusses whether Raskolnikov’s acts were, in fact, voluntary. Part II examines Raskolnikov’s mens rea and determines what crimes he should be charged with under the Model Penal Code. Part III reviews justification and excuse defenses which might be invoked in Raskolnikov’s case. Part IV discusses the sentence handed down to Raskolnikov by the court in the novel and compares it with the sentence he would have received under the Model Penal Code sentencing guidelines.

I. VOLUNTARY ACT REQUIREMENT: WAS RASKOLNIKOV’S CONDUCT CRIMINAL?

A person cannot be found guilty under the Model Penal Code unless he or she has acted with a culpable state of mind and voluntarily committed an unlawful act. The first step in building a case against Raskolnikov, therefore, is to establish actus reus — to show that he was acting voluntarily when he killed Alyona Ivanovna and Lizaveta and stole the former’s money and jewelry. At first glance, the need to prove something that obvious strikes one as ridiculous: Raskolnikov had been planning the murder and robbery for several weeks. Two days before the crime, he conducted a “rehearsal.” An hour before the murder he stole a hatchet, sewed a sling on the lining of his overcoat to hide the weapon, and prepared a fake pledge.

However, were Raskolnikov’s acts truly voluntary? The Model Penal Code defines a voluntary act as “a willed muscular contraction or bodily movement by the actor.” The comment to section 2.01 explains that the “term ‘voluntary’ does not inject into the criminal law questions about determinism and free will. Rather, it focuses upon conduct that is within the control of the actor.” Specifically excluded from the scope of voluntary acts is “conduct during hypnosis or resulting from hypnotic

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7 See infra notes 11-30 and accompanying text.
8 See infra notes 31-78 and accompanying text.
9 See infra notes 79-154 and accompanying text.
10 See infra notes 155-77 and accompanying text.
11 Defined as “purposely, knowingly, recklessly or negligently.” MODEL PENAL CODE. OFFICIAL DRAFT AND EXPLANATORY NOTES § 2.02 (1985).
12 Id. § 2.01.
13 Id. § 1.13(2).
14 Id., Comment to § 2.01 at 215 (emphasis added).
suggestion." There is nothing in the wording of or in the comment to this provision that restricts it to hypnotic suggestion by somebody other than the actor. If read literally, it may well apply to situations in which a person acts under his own hypnotic suggestion.

With this in mind, let us take a closer look at Raskolnikov’s crimes — his will does not appear to control his actions. He talks and acts like an automaton. The day before the murder, when Raskolnikov learned that the old moneylender would be entirely alone at home the next evening, he felt “like a man sentenced to death. He thought of nothing, and indeed he was quite incapable of thinking; but he suddenly felt with all his being that he no longer possessed any freedom of reasoning or of will, and that everything was suddenly and irrevocably settled.”

On the day of the actual murder Raskolnikov felt:

almost an automatic influence upon him: it was as though someone had taken him by the hand and drawn him after himself, blindly, irresistibly, with supernatural force, and without any objections on his part. As though he had been caught in the cog of a wheel by the hem of his coat and was being drawn into it.

A literary scholar, Anthony D. Nuttal, offers an appealing explanation for Raskolnikov’s condition — self-hypnosis and post-hypnotic suggestion. In a paradigmatic case of hypnosis, a hypnotist implants a suggestion in the subject’s mind to be activated later by a specific trigger. Once activated, the suggestion forces the subject to perform certain acts without the subject fully realizing why he or she is powerless to avoid the task.

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15 Id. § 2.01(2)(c) (emphasis added).
16 See DR. E.A.D.R. CARP, RODION RASKOLNIKOV (A PSYCHOPATHOLOGICAL STUDY) (I. van den Bosch trans.), cited in KRAVCHENKO, supra note 2, at 115-16 (“As soon as he learns that his victim will be alone at a certain time, Raskolnikov becomes powerless to change his fate and all delusions of self-glorification and absolute authority disappear. Raskolnikov becomes a helpless being who commits the crime in a dream-like state and later retains only a dream-like memory of it.”); see also ANTHONY DAVID NUTTAL, CRIME AND PUNISHMENT: MURDER AS PHILOSOPHIC EXPERIMENT 91-93 (1978).
17 DOSTOEVSKY, supra note 1, at 81.
18 Id. at 90.
19 See NUTTAL, supra note 16, at 91-93.
20 For descriptions of hypnotic states, see, for example, Margaret Brenman, The Phenomena of Hypnosis, in PROBLEMS OF CONSCIOUSNESS: TRANSACTIONS
No evil hypnotist exists in *Crime and Punishment*, but many signs point to Raskolnikov hypnotizing or almost hypnotizing himself. He induces in himself a trance-like state by months of self-isolation, dwelling on the hopelessness of his situation, and, most importantly, by constant and obsessive repetition of key ideas: "'extraordinary' man," "Napoleon,"21 "everything is permitted." And into this trance he thrusts a sharp and forceful command: "Dare!" which could not but have found root in his weakened and susceptible psyche.

The suggestion thus planted needed a signal to be activated, and this signal came. In a little tavern where Raskolnikov stopped for a cup of tea, he overheard a conversation about the justification of murder — specifically, the murder of Alyona Ivanovna, with whom he had just pawned his sister's ring! A student declared:

"Kill her, take her money, and with its help devote yourself to the service of humanity and the good of all. And, when you come to think of it, what does the life of a sickly, wicked old hag amount to when weighed in the scales of the general good of mankind? It amounts to no more than the life of a louse or a black beetle, if that, for the old hag is really harmful."22

This coincidentally overheard conversation23 was a shock to Raskolnikov. A connection suddenly appeared between the ideas he repeated to himself in his trance, and the real world: another person proclaimed almost exactly what he has been telling himself for months. "This idle talk at a restaurant was to exert a great influence on him. It was as though there had really been something preordained here, a kind of a sign."24

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20 See NUTTAL, supra note 16, at 44 (noting that of names of the great men of the past "the one that persistently recurs to Raskolnikov is Napoleon's, and that about Napoleon which strikes him most forcibly is that he 'forgets an army in Egypt' ").
21 DOSTOEVSKY, supra note 1, at 84-85.
22 Dostoevsky has been criticized for heavy reliance on accidentally overheard conversations, but as one writer notes correctly, the coincidence here is quite intentional, feeding into Raskolnikov's sense of determinism. See GARY COX, CRIME AND PUNISHMENT: A MIND TO MURDER 46 (1990).
23 DOSTOEVSKY, supra note 1, at 85.
Now that a channel had opened between Raskolnikov's private dream-world and real life, he found himself starting to act. In his actions, however, he resembled a pre-programmed robot much more than a man controlling his conduct. As one scholar of Dostoevsky astutely noted, the sense of determinism is carried into the murder scene through a whole series of images and grammatical constructions which suggest that Raskolnikov was acting passively, mechanically, without engagement of his will.  

Raskolnikov's state of mind indeed reminds one of a hypnotized person. But is his condition pronounced enough to cast doubt on the existence of an actus reus in his deeds? There are several reasons against finding his actions involuntary within the meaning of the Model Penal Code.

First of all, Raskolnikov's is a case of self-hypnosis. In *Crime and Punishment*, unlike in the paradigmatic case where the hypnotized commits a crime following the will of another, Raskolnikov killed following his own will. Even if we somewhat artificially distinguish Raskolnikov-hypnotist and Raskolnikov-hypnotized, Raskolnikov-the-whole-person would still be guilty as someone who both acted and exercised control over the actor's bodily movements.

Another reason to consider Raskolnikov's killing and robbery voluntary is the sense we get that although his behavior looked compulsive, he was still not completely "programmed." Up to the very last moment, Raskolnikov could have abandoned his plan had he wanted to, yet he did not want to stop. Witness his outrage and disappointment when he could not obtain the hatchet:

> He was crushed, even somehow humiliated. He felt like laughing at himself with rage. He was boiling over with blind, brutish anger.
> He did not feel like walking along the street and pretending to go for a stroll; and he felt even less like going back to his room. "And what a chance I have missed for good!"

Even after the first homicide, Raskolnikov could have stopped and avoided the second killing, for Lizaveta's murder was not planned at all, and he could hardly have "programmed" himself for it. When she unexpectedly came home he did not panic. Quickly evaluating the situation and making a fast decision, Raskolnikov hid in Alyona

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25 *See Cox, supra* note 23, at 46-47
26 *DOSTOEVSKY, supra* note 1, at 91.
Ivanovna’s bedroom, “waited, hardly daring to breathe; but suddenly he jumped to his feet, snatched up the hatchet and rushed out of the bedroom.”

More elements of conscious decision-making can be seen in the description of Raskolnikov searching for the slaughtered woman’s money. He had to consider where it might be hidden, try keys, and, in other words, make rational decisions.

Suddenly he remembered the big key with the notches in the bit which was hanging there with the other small keys, and he realized that it could not possibly belong to the chest of drawers but to some trunk or box, and that it was there that everything had most likely been hidden away.

Thus kind of rational reasoning and acting evidences that although Raskolnikov’s thinking might have been blurred, he did not completely lose the ability to control his conduct.

Finally, when distinguishing between a voluntary and involuntary act, the Model Penal Code looks not only at the “snapshot” state of the actor, but rather puts the act in question into a continuum of events and conditions that preceded it. The Explanatory Note to section 2.01 stresses that “[i]t is required only that the actor’s conduct include a voluntary act, and thus unconsciousness preceded by voluntary action may lead to liability based upon the earlier conduct.” It may be true that Raskolnikov was not acting voluntarily at all times, but his conduct at least included voluntary elements during various stages when he contemplated and prepared the crime.

For these reasons, the self-hypnosis hypothesis, although appealing on first glance, cannot form the basis of Raskolnikov’s defense. Still, the evidence presented here could be used as part of an insanity defense and this possibility is discussed later in the Essay.

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27 Id. at 98.
28 Id.
29 MODEL PENAL CODE, supra note 11, Explanatory Note to § 2.01, at 213 (citing a paradigmatic situation in which an epileptic driver who killed a pedestrian while in an epileptic seizure is deemed to have acted voluntarily because s/he voluntarily put himself/herself behind the wheel).
30 See infra notes 122-54 and accompanying text.
II. CRIMINAL CULPABILITY
WHAT ARE RASKOLNIKOV’S CRIMES?

Raskolnikov’s conduct was criminal only if, in addition to the actus
reus, his state of mind, or mens rea, was criminal as well. To deter-
mine which crimes he can be charged with, it is helpful to look one by
one into all Raskolnikov’s acts, focusing on his state of mind and
surrounding circumstances.

A. Murder of the Old Moneylender

The Model Penal Code states that, as a general rule, criminal
homicide committed purposely or knowingly constitutes murder. There
is no question that Raskolnikov killed Alyona Ivanovna acting under a
carefully thought out plan in order to reach several goals, both proximate
and remote. Raskolnikov had two immediate purposes: one, to prove to
himself that he was able to “step over the blood,” that he was indeed
an “extraordinary man” to whom “everything is permitted;” and two, to
get the old moneylender’s money. The more remote aims included
helping his mother and sister, as well as all of humankind through the use
of the murdered woman’s money.

To negate the charge of murder, Raskolnikov can raise two possible
arguments. He can either claim that he never had any intention of killing
Alyona Ivanovna and thus the homicide was not committed “purposely,”
or he can plead “extreme mental or emotional disturbance” which, under
section 210.3(1)(b) of the Model Penal Code, would reduce the charge to
manslaughter.

The first argument could be based on the theory that Raskolnikov did
not really intend to kill the old moneylender. He was only playing with

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31 MODEL PENAL CODE, supra note 11, § 1.13(5).
32 But see id. § 210.3(1)(b) (providing exception to this rule). See infra
notes 35 & 42 and accompanying text.
33 MODEL PENAL CODE, supra note 11, § 210.2(1)(a).
34 See COX, supra note 23, at 43, for an interesting suggestion that, given
Raskolnikov’s youth, this murder can be interpreted as initiation rite. “Making
the proof of manhood an experimental murder, Raskolnikov fuses questions of
personal identity and ethics in a way that has been a seminal influence on the
existentialist thinkers of the twentieth century.” Id.
35 MODEL PENAL CODE, supra note 11, § 210.3(1)(b).
a moral puzzle, entertaining himself with a completely theoretical intellectual proposition. 36 "'Listen: when I went to the old woman that evening, I only went to see. I'd like you to know that,'"37 appeals Raskolnikov to Sonya.

If we believe these words, then there is no causal connection between the homicide that eventually took place and its preceding months-long planning. It could be argued that what Raskolnikov arranged was just a mental test, an elaborate showdown with himself: "'I had to find out then, and as quickly as possible, whether I was a louse like the rest or a man. Whether I can step over or not.'"38 In that test, Raskolnikov wanted to come close to the edge of the powerful and ancient prohibition against killing another human, and maybe even look down into the abyss — but he had no intentions of taking a step off this edge. However, when faced with the situation that he himself created, Raskolnikov could not pull himself back — and killed. Drawing on this theory, an argument could be made that the homicide was committed not purposely39 or knowingly,40 but rather recklessly.41 Raskolnikov knew that the circumstances and his own emotional state were such that he could kill. Despite that knowledge of risk, he went to Alyona Ivanovna and indeed killed her. Therefore, the homicide should be viewed as a manslaughter covered


37 DOSTOEVSKY, supra note 1, at 433.

38 Id. at 433.

39 See MODEL PENAL CODE, supra note 11, § 2.02(2)(a)(i) ("A person acts purposely with respect to a material element of an offense when if the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result ").

40 See id. § 2.02(2)(b)(ii) ("A person acts knowingly with respect to a material element of an offense when if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result.").

41 See id. § 2.02(2)(c) ("A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation.").
by section 210.3(1)(a),\textsuperscript{42} but not as a murder covered by section 210.2(1)(a).\textsuperscript{43}

This line of reasoning, however, is very tenuous and to a certain degree self-contradictory. What Raskolnikov intended to test was his ability to commit a murder. He came to Alyona Ivanovna’s apartment fully intending to try to kill her. He did not know whether he would be able to — and, in fact, came very close to failing: for a moment “[h]e felt that he was losing his grip, that he was frightened — so frightened, indeed, that if she had looked at him like that without uttering a word for another thirty seconds, he would have run away from her.”\textsuperscript{44} However, even this quote, showing Raskolnikov’s sudden grip of panic because of what he was about to do, proves that he knew he came to kill, not just to tease himself with the idea of murder.

In addition, the lack-of-intent argument must fail when the extent and surrounding circumstances of Raskolnikov’s recklessness are given a closer look. Even assuming, arguendo, that Raskolnikov had no true homicidal intentions and killed Alyona Ivanovna recklessly, he would still be guilty of murder under section 210.2(1)(b), which classifies reckless homicide as a murder when it is committed “under circumstances manifesting extreme indifference to the value of human life.”\textsuperscript{45} Raskolnikov demonstrated such extreme indifference when he treated the life of another human being as means of proving or disproving his pet moral theory. Even if Raskolnikov had not intended Alyona Ivanovna to die, he created a situation in which her life was but a stake in a game of testing his extraordinariness.

Finally, the Model Penal Code notes that “[s]uch recklessness and indifference are presumed if the actor is engaged in the commission of, or an attempt to commit, or flight after committing or attempting to commit robbery.”\textsuperscript{46} It could be argued that Raskolnikov was not guilty of robbery,\textsuperscript{47} and, therefore this presumption should not be used against him. Given the facts of his case, though, it is unlikely that this argument would succeed.\textsuperscript{48} It could be further argued that, even if the presumption of extreme recklessness is used, that presumption may be.

\textsuperscript{42} Id. § 210.3(1)(a) (“Criminal homicide constitutes manslaughter when it is committed recklessly.”).
\textsuperscript{43} See id. § 210.2(1)(a).
\textsuperscript{44} DOSTOEVSKY, supra note 1, at 95.
\textsuperscript{45} MODEL PENAL CODE, supra note 11, § 210.2(1)(b).
\textsuperscript{46} Id. § 210.2(b).
\textsuperscript{47} See infra notes 71-75 and accompanying text.
\textsuperscript{48} See infra notes 75-78 and accompanying text.
rebutted by other evidence. This is true, but the novel offers no evidence in support of the proposition that Raskolnikov indeed cared about the life of the old woman moneylender and her killing was just an accident.

Another, and a more plausible, way to reduce Raskolnikov’s crime from murder to manslaughter is by using section 210.3(1)(b). This section specifically provides that “criminal homicide constitutes manslaughter when a homicide which would otherwise be murder is committed under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse.”49 There are three elements in this provision: (1) there is a homicide which in the absence of this provision would be a murder; (2) the homicide was committed under the influence of extreme mental or emotional disturbance; and (3) there is a reasonable explanation or excuse for this disturbance.

The first two elements do not present a problem: the killing which would otherwise be a murder under either 210.2(1)(a) or 210.2(1)(b), was likely to have been committed under the influence of mental or emotional disturbance. The Model Penal Code provision does not define “extreme” disturbance, but it is quite possible that Raskolnikov’s condition would qualify.50 A more serious question arises with respect to the third element: was there a reasonable explanation or excuse for such disturbance? Section 210.3(1)(b) provides that “[t]he reasonableness of such explanation or excuse shall be determined from the viewpoint of a person in the actor’s situation under the circumstances as he believes them to be.”51 Thus, this test is almost entirely subjective, allowing, among other things, a mistake or delusion to form the basis for a reasonable excuse.52

The subjective test for reasonableness under section 210.3(1)(b) is not easy to apply. First, it is necessary to determine what can be included into “the circumstances as he believes them to be.” Should they be limited to Raskolnikov’s anguish over the fact that his sister and mother were ruining their lives to help him out? Or should they include Raskolnikov’s belief that his ability to commit the murder would forever put him above the pitiful masses and prove his “extraordinariness”? And would the realization that he is about to murder another human being qualify as a reasonable explanation for Raskolnikov’s mentally and emotionally disturbed state? At least to the last two questions the

49 MODEL PENAL CODE, supra note 11, § 210.3(1)(b).
50 See infra notes 124-35 and accompanying text.
51 MODEL PENAL CODE, supra note 11, § 210.3(1)(b).
52 Id., Comment to § 210.3, at 62-63.
answer is "no." Commentaries to the Model Penal Code explain that "idiosyncratic moral values are not part of the actor's situation. Any other result would undermine the normative message of the criminal law."  

As to a possible argument of diminished capacity caused by the anguish and emotional disturbance, the Model Penal Code rejects it as a distinct category of mitigation. On the other hand, if presented as part of the actor's "situation," the same diminished capacity argument, may be more successful. As the comment to section 210.3 notes, "the Model Code takes no position on diminished responsibility in this sense of the term but leaves the issue, together with many others, as part of the generic problem of determining the extent to which the actor's individual characteristics should be taken into account in the formula."  

This generic problem is artfully illustrated in the novel itself. Dostoevsky creates a whole gallery of people "in Raskolnikov's situation," starting with a fellow student Razumikhin at one end of the spectrum and finishing with his sister's employer Svidrigailov at the other. Each of these characters personifies and develops some of Raskolnikov's possible explanations and excuses: poverty, inability to pay for the education, concern about the family's situation, and, finally, obsession with the idea that power belongs to those who dare. In a way, all these characters are Raskolnikov's alter egos and opponents at the same time. Each of them chose a different way out of  

53 Id., Comment to § 210.3, at 62.  
54 Id., Comment to § 210.3, at 72.  
55 See id., Comment to § 210.3, at 62-63 (noting that "the word 'situation' is designedly ambiguous" and that, generally, it is meant to include such circumstances as blindness, shock from traumatic injury or extreme grief, and exclude idiosyncratic moral values, but admitting that "[i]n between these two extremes, however, there are matters neither as clearly distinct from individual blameworthiness as blindness or handicap nor as integral a part of moral depravity as a belief in the rightness of killing").  
56 Id., Comment to § 210.3, at 73.  
57 See NUTTAL, supra note 16, at 88-89 (correctly noting that "Razumikhin like Raskolnikov is poor; unlike Raskolnikov he keeps himself working").  
58 For an interesting comparison of Raskolnikov and Svidrigailov, see Edward Wasielek, Raskolnikov's Motives: Love and Murder, in FYODOR DOSTOEVSKY'S CRIME AND PUNISHMENT 11, 21-22 (H. Bloom ed., 1988); NUTTAL, supra note 16, at 54 ("Svidrigailov is what is called a 'Dostoevskian double'; that is a figure deliberately paralleling that of the main character, confronting him with an answering image of his own mind.").
his or her situation. Razumikhin's was the rationalist way of hard work and strict economy. Sonya's and Dunya's way was self-sacrifice: to support her father's family, Sonya became a prostitute; to help out her mother and brother, Dunya was about to sell herself into a miserable marriage. Finally, Svidrigailov's way out of boredom, loneliness, and inherent senselessness of existence, was sexual aggressiveness and eventual suicide.\(^{59}\)

Would these characters, as "person[s] in the actor's situation," consider Raskolnikov's circumstances to be of such severity that they could lead one to commit homicide? Probably not, since all of the characters found themselves fighting with similar circumstances but none (with the possible exception of Svidrigailov whose past is suspicious) stepped over the life of another human being to reach his or her goal. As a scholar of Dostoevsky's novels correctly pointed out, "[o]ther men have suffered the torment, both economic and moral, that Raskolnikov suffers, but they have not committed murder."\(^{60}\)

Additionally, it is important to keep in mind that whatever Raskolnikov believed his circumstances to be, that belief was not the only reason for his mental state. A much more powerful reason was his desire to kill in order to prove himself an "extraordinary" man: "'I — I wanted to dare and — I committed a murder.'"\(^{61}\) Since a desire to kill clearly cannot be pleaded as a mitigating circumstance for the murder committed under this desire, section 210.3(1)(b) would not help Raskolnikov to reduce his culpability from murder to manslaughter.

**B. Murder of Lizaveta**

Lizaveta's murder is different from Alyona Ivanovna's in that it was certainly not planned. In fact, Raskolnikov decided to go forward with the killing of the moneylender only after he had learned that Lizaveta would not be at home that evening. This is how Raskolnikov (talking of himself in the third person) described to Sonya what had happened: "'He didn't mean to — to kill Lizaveta. He — he killed her accidentally. He intended to kill the old woman when — when she was alone and — and he went and — and then Lizaveta came in. So — he killed her, too.'"\(^{62}\)

\(^{59}\) BREGER, supra note 4, at 45-46 (noting that "sex is all that can give a spark of interest in his life... but, ultimately, it is an empty game and Svidrigailov has become bored to the point of death").

\(^{60}\) NUTrAL, supra note 16, at 88.

\(^{61}\) DOSTOEVSKY, supra note 1, at 431.

\(^{62}\) Id. at 424.
Even though the second homicide was "quite unexpected," this fact does not reduce Raskolnikov's culpability. The Model Penal Code does not distinguish between premeditated and unpremeditated murder. The homicide was committed knowingly, with a clear purpose of eliminating the witness of the first crime, and thus, according to section 210.2(1)(a), was a murder. In the case of Lizaveta's homicide, Raskolnikov was obviously not concerned with any intellectual puzzles. He simply killed in order not to get caught.

An attempt to reduce this murder to manslaughter by reason of extreme emotional disturbance — under section 210.3(1)(b) — is likely to fail. It could be argued that the second murder was committed in the state of such disturbance, and that this state had a reasonable explanation, namely another murder ten minutes earlier. However, it is very unlikely that, even with the help of the subjective test of section 210.3(1)(b), this argument would succeed under the Model Penal Code and help to reduce Raskolnikov's liability for Lizaveta's murder to a manslaughter.

Therefore, both Lizaveta's and Alyona Ivanovna's homicides constituted murder under the Model Penal Code. Moreover, both cases qualify as aggravated murders — under section 210.6(3)(e) (murder accompanied by robbery) and under section 210.6(c) (murder accompanied by another murder).

C. Robbery

Under the Model Penal Code, Raskolnikov's taking of the old moneylender's money and valuables may qualify as either theft or robbery. Theft is defined in section 223.2(1) as when "[a] person unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof." Raskolnikov, who took Alyona Ivanovna's money and jewelry with the intent to use them to help

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63 Id. at 99.
64 See MODEL PENAL CODE, supra note 11, § 210.2(1)(a) ("criminal homicide constitutes murder when committed purposely or knowingly").
65 See supra notes 51-52 and accompanying text.
66 See MODEL PENAL CODE, supra note 11, § 102(3).
67 See id. § 210.6(3)(e) ("The murder was committed while the defendant was engaged in the commission of or flight after committing robbery.").
68 See id. § 210.6(3)(c) ("At the time the murder was committed the defendant also committed another murder.").
69 See id. § 223.2(1).
his family as well as for his own benefit, clearly can be charged with theft. Even if the money and valuables were only a rationalization for Raskolnikov’s desire “to step over the blood,” a pretext for the killing, still at the time of the crime, Raskolnikov was acting with a clear intent to deprive the old woman of her property.

Robbery includes theft as a lesser offense and also requires that, “in the course of committing a theft, [the actor] commits any felony of the first or second degree.” The following additional elements, therefore, have to be established in order to prove robbery: (1) there has to be a felony of the first or second degree, and (2) this felony has to be committed in the course of the theft.

The first element is clearly present, because the two homicides committed by Raskolnikov are, at the very least, manslaughters; and a manslaughter is a felony of the second degree. As to the second element, section 222.1(1) explains that an act is deemed “in the course of committing a theft” if it occurs in an attempt to commit theft or in flight after the attempt or commission.

The theft was committed in the period of time between the two murders. But whether these murders were committed “in the course of the theft” may depend on the motives we assign to the murders themselves. It could be argued that the first murder was committed with the sole purpose to dare, not with the purpose to facilitate a theft and, thus, was not “in the course of the theft.” As Raskolnikov confessed later, “I only wanted to dare, Sonia, that was my only motive!”

It could be further argued that the second murder was committed in the course of a flight after the murder, not after the theft and, thus, was not “in the course of the theft” either. Therefore, Raskolnikov’s crime should be characterized as theft under section 223.2, not as robbery under section 222.1.

Depending on whether this argument succeeds, the categorization of Raskolnikov’s crime would differ significantly. If the homicides are found to be committed “in the course of theft,” Raskolnikov would be

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70 “[I]t was not money, Sonia, I was after when I did it. No, it was not so much the money I wanted as something else. I know it all now.” DOSTOEVSKY, supra note 1, at 432.
71 MODEL PENAL CODE, supra note 11, § 223.2(1).
72 Id. § 222.1(1)(c).
73 Id. § 210.3(2).
74 Id. § 222.1(1).
75 DOSTOEVSKY, supra note 1, at 431.
guilty of robbery, a felony of the first degree.\textsuperscript{76} If, on the other hand, the homicides were not "in the course of theft," then Raskolnikov's theft would be a felony of the third degree\textsuperscript{77} or even a misdemeanor.\textsuperscript{78}

The success of this line of reasoning, though, is very unlikely. The murders and the theft were closely interrelated. The fact that Raskolnikov may have had a complicated motive for the murder of Alyona Ivanovna does not negate the connection between the first killing and the theft. Moreover, when Raskolnikov killed Lizaveta, he clearly did that "in flight after the commission" of both a murder and a theft. Therefore, Raskolnikov can be charged with robbery, which is a felony of the first degree under section 222.1(2).

III. RASKOLNIKOV'S DEFENSES

A. Justification Defenses: Balance of Evils and Self-Defense

The Model Penal Code generally justifies "[c]onduct that the actor believes to be necessary to avoid a harm or evil to himself or to another,"\textsuperscript{79} if "the harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged."\textsuperscript{80} This provision, thus, combines two standards: the subjective belief of the actor in the necessity of the act, and the objective "balance of evils."

The "balance of evils," ends versus means, is one of the questions most important for Dostoevsky: do people have the right to commit vile acts for good ends; does any end, however beneficial to the many, justify inhuman treatment of the few.\textsuperscript{81} In Crime and Punishment, it is a nameless student in a restaurant who first poses the question:

\textsuperscript{76} MODEL PENAL CODE, supra note 11, § 222.1(2).
\textsuperscript{77} Id. § 223.1(2)(a).
\textsuperscript{78} Id. § 223.1(2)(b). Whether this theft is to be a felony of the third degree or a misdemeanor, depends, in a peculiar fashion, on the ruble/dollar exchange rate in 1865. Under, section 223.1(2)(a), "[t]heft constitutes a felony of the third degree if the amount involved exceeds $500. Theft not within this paragraph constitutes a misdemeanor. Raskolnikov happened to steal three hundred and seventeen rubles and sixty kopecks. He also took some jewelry. The total amount is, therefore, unclear but it could be below $500. The success or failure of the preceding argument could be the difference between first degree felony and a simple misdemeanor.
\textsuperscript{79} Id. § 3.02(1).
\textsuperscript{80} Id. § 3.02(1)(a).
\textsuperscript{81} See, e.g., KRAVCHENKO, supra note 2, at 164.
"[O]n the one hand, we have a stupid, senseless, worthless, wicked, and decrepit old hag, who is of no use to anybody and who actually does harm to everybody, a creature who does not know herself what she is living for and who will be dead soon, anyway.

On the other hand, we have a large number of young promising people who are going to rack and ruin without anyone lifting a finger to help them. Hundreds, perhaps thousands of lives could be saved, dozens of families could be rescued from a life of poverty, from decay and run, from vice and hospitals for venereal diseases—and all with her money. Kill her, take her money, and with its help devote yourself to the service of humanity and the good of all. Well, don't you think that one little crime could be expiated and wiped out by thousands of good deeds?"

Raskolnikov, who happened to listen to the conversation, "was greatly agitated" on hearing "the expression of just such ideas at the very moment when exactly the same ideas were just beginning to stir in his own mind."

The argument, put forward by the student, is a typical case of the classic utilitarian "maximization of happiness" principle, so widespread among the Russian "radical men of the 1860s." Dostoevsky was horrified by this philosophy. Occupying the opposite end of the moral spectrum, he was adamant in his answer: the ends can never justify the means.

Utilitarian ideas form the basis for Raskolnikov's justification of his murder of the old moneylender. As Dostoevsky explained in an 1865
letter to his prospective publisher: "The old woman is stupid, greedy, deaf and ill; she charges exorbitant interest on her loans; she is bad- tempered and she is running the life of her younger sister whom she keeps as a drudge. She is absolutely worthless, there seems to be no justification for her existence, etc." Dostoevsky further explained that in Raskolnikov's view, the murder is completely justified because how can one "call a crime this murder of a stupid and wicked old woman who serves no useful purpose in life and who, besides, would most probably not live for more than a few months anyhow." "

Raskolnikov, therefore, stresses two points: first, the old moneylender's life is of no value to the society, and second, there is not much of this life left anyway. Interestingly, both of these points are emphatically rebutted at the scene of the murder when Raskolnikov, caught by Lizaveta, has to kill her as well. Lizaveta's life is not approaching a natural end — she is only thirty-five years old and very healthy. She also seems to be almost unanimously liked or at least pitied; she is hardworking, "quiet, gentle, timid, and acquiescent. And she has also a very sweet smile."

Just as Raskolnikov does not think of the murder of Alyona Ivanovna as a crime, he does not view the taking of her money as a morally reprehensible act. For him, this robbery was just a redistribution of wealth, an "expropriation of the expropriator," to use the popular marxist vocabulary of his younger Russian contemporaries. Raskolnikov's personal beliefs regarding his victims and their property would not of course justify his acts either for Dostoevsky or under the Model Penal Code. As a comment to the latter explains, what is required is "that the harm or evil sought to be avoided be greater than that which would be caused by the commission of the offense, not that the defendant believe it to be so." A more challenging argument Raskolnikov might put forward is whether his acts may be justified objectively, as eventually saving more lives than taking.

Adamant to reject this argument, Dostoevsky takes an intellectual "shortcut," using the plot and composition of the novel to defeat the

88 DOSTOEVSKY, supra note 1, at 12 (Translator's Introduction quoting letter from Dostoevsky to Katkov (Sept. 1865)).
89 Id. at 13.
90 Id. at 84.
91 See KARL MARX, CAPITAL 837 (Samuel Moore & Edward Aveling trans., 1936); see also Offord, supra note 84.
92 MODEL PENAL CODE, supra note 11, Comment to § 3.02, at 12.
utilitarian moral theory. Raskolnikov, having killed the old moneylender, is forced by the chain of events to kill Lizaveta as well, with no utilitarian excuse for it. Having taken the money, the ostensible cause for the murder, he hides it under a stone and never has a chance to "benefit mankind" or even to save a single life with it.

Dostoevsky makes his point that not only can the ends not justify the means, but also that good ends cannot be produced by bad means. However, his victory is rather a pyrrhic one. In Crime and Punishment, he essentially evaded the ultimate question of justification: even had Raskolnikov helped his family, provided for the orphaned Sonya's step-siblings, and benefited mankind in various ways, would this all still justify the murder of the repulsive old moneylender?93

The Model Penal Code, at first glance, seems to answer this question in the affirmative, in accord with the utilitarian balancing approach. A comment to Section 3.02 explains that the defense of justification is not foreclosed to the defendant who killed one in order to save the lives of many.94 The comment goes on to admit that "the view is not universally held that it is ethically preferable to take one innocent life than to have many lives lost,"95 but expresses a belief that "most persons probably think a net saving of lives is ethically warranted if the choice among lives to be saved is not unfair."96 Read literally, this comment would seem to support Raskolnikov's balancing theory. Moreover, since the Model Penal Code does not require that the evil sought to be avoided be imminent,97

93 Later in his writing career, Dostoevsky unequivocally answered the question of whether there is ever a justification for sacrificing an innocent for the benefit of others. The Brothers Karamazov (1879-80) contains Dostoevsky's famous formula that even the happiness of the whole mankind would not justify a single tear of a child. See Vasili Rozanov, F.M. Dostoevsky's Legend of the Grand Inquisitor: An Essay in Critical Commentary (1924), abstracted in Vladimir Seduro, Dostoevsky in Russian Literary Criticism 1846-1956, 48-49 (E. Simmons ed., 1957) (noting that Dostoevsky abhorred murder as breaking the moral law of humanity).

94 MODEL PENAL CODE, supra note 11, Comment to § 3.02, at 14. It would be particularly unfortunate to exclude homicidal conduct from the scope of the defense. For, recognizing that the sanctity of life has a supreme place in the hierarchy of values, it is nonetheless true that conduct that results in taking life may promote the very value sought to be protected by the law of homicide.

95 Id. at 15.
96 Id.
97 Id. at 16.
Raskolnikov could argue that, in the long run, he would be able to "'save thousands of lives from corruption and decay One death in exchange for a hundred lives — why, it's a simple sum in arithmetic!'". After a closer look, however, it becomes clear that the set of circumstances envisioned by the comment differs from Raskolnikov's in a meaningful way: the comment describes a situation in which a group of people have to die and the defendant has an opportunity to save some of them by killing the rest. Raskolnikov's victims, by contrast, are not part of the endangered group — they would not have died anyway had Raskolnikov done nothing. In sum, it is doubtful that Dostoevsky would justify killing an innocent person under any circumstances; and it is clear that Raskolnikov cannot pass even the more relaxed test of the Model Penal Code to justify either the murders he committed or the accompanying robbery.

It is also highly unlikely that Raskolnikov's crimes could be justified on a theory that he himself desperately needed the money. As the comment to section 3.02 explains, "even if the defendant genuinely believes that the life of another is less valuable than his own financial security, his conduct would not be justified under Subsection (1)(a)."

Moreover, Dostoevsky eliminates any possibility of the justification defense by denying Raskolnikov true subjective belief in the necessity of his crime in order to avoid "harm or evil to himself or to another." It is true that Raskolnikov tried to persuade himself that the murder and robbery of Alyona Ivanovna were in fact necessary: to save his sister Dunya from the marriage which, in Raskolnikov's firm belief, would ruin her life; to support his old mother; to complete his studies at the university; and, finally, to benefit mankind. Dostoevsky makes clear, however, that these motives played only a secondary role in Raskolnikov's decision to kill the old moneylender. Raskolnikov

98 DOSTOEVSKY, supra note 1, at 84.
99 MODEL PENAL CODE, supra note 11, Comment to § 3.02, at 14-15 (situations described include an actor who makes a breach in a dike, knowing that this will inundate a farm and kill its inhabitants, but taking the only course available to save a whole town; or a mountaineer, roped to a companion who has fallen over the precipice, who holds on as long as possible but eventually cuts the rope).
100 See supra notes 92-98 and infra notes 102-06 and accompanying text.
101 MODEL PENAL CODE, supra note 11, Comment to § 3.02, at 12.
102 See id. ("It is not enough that the actor believes that his behavior possibly may be conducive to ameliorating certain evils; he must believe it is 'necessary' to avoid the evils.").
started planning the murder long before he learned about Dunya’s decision. He did not consider his mother’s financial situation desperate, otherwise he probably would not have accepted regular financial support from her. He could have continued his studies, as he himself admitted to Sonya:

“I told you a moment ago that I couldn’t keep myself at the university. But do you know that I might perhaps have done it? Mother would have sent me enough to pay my fees, and I could have earned enough to pay for my clothes, boots, and food. But I got bitter, and I didn’t want to work.”

Finally, a couple of minutes later, came the real truth which completely forecloses the defense of justification:

“I wanted to murder, Sonya, to murder without casuistry, to murder for my own satisfaction, for myself alone. I didn’t want to lie about it. I did not commit this murder [to help out my mother — that is nonsense]. Nor did I kill in order to become the benefactor of humanity by gaining wealth and power — that, too, is nonsense. I just did it; I did it for myself alone, and at that moment I did not care a damn whether I would become the benefactor of someone, or would spend the rest of my life like a spider catching them all in my web and sucking the living juices out of them.”

Thus Dostoevsky morally convicts Raskolnikov by denying him not only the objective necessity, but also subjective true belief in such necessity. Similarly, the Model Penal Code, which requires the actor to believe that his or her act is necessary to avoid a greater harm or evil, forecloses to Raskolnikov any possibility of justification for the murder and robbery of Alyona Ivanovna.

Would there be any possibility of the justification defense in the murder of Lizaveta? Self-defense could be attempted under the theory that Raskolnikov had to kill Lizaveta in order to save his own life. Under the Model Penal Code, though, this theory is bound to fail. Section

103 DOSTOEVSKY, supra note 1, at 430.
104 Omitted from the English translation. See F.M. DOSTOEVSKY, PRESTUPLENIE NAXAZANIE 406-07 (Fridlender & Khrapchenko eds., 1982).
105 DOSTOEVSKY, supra note 1, at 432.
106 MODEL PENAL CODE, supra note 11, § 3.02(1).
3.04(1) makes use of force upon another person "justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion." Raskolnikov knew there was no threat of the use of force on the part of Lizaveta:

[S]he did not even lift her hands to protect her face, though that was the most natural and inevitable gesture at that moment, for the hatchet was now raised straight over her face. All she did was to lift her free left hand a little, at some distance from her face, and extend it slowly towards the hatchet as though pushing it away.

This description of Lizaveta's behavior preceding her murder proves that Raskolnikov's use of force against her was totally unjustified. As to a possible claim of necessity to kill Lizaveta in order to clear the way for escape and thus protect himself from an imminent arrest, such reason is most certainly not covered by the defense of self-protection. Thus Raskolnikov would not be able to invoke justification as a defense to any of his crimes.

B. Excuse Defenses: Duress and Insanity

Justification and excuse defenses are conceptually different:

To say that someone's conduct is "justified" ordinarily connotes that the conduct is thought to be right, or at least not undesirable; to say that someone's conduct is "excused" ordinarily connotes that the conduct is thought to be undesirable but that for some reason the actor is not to be blamed for it.

Raskolnikov could try to invoke two excuse defenses: duress (or compulsion) and insanity. The duress defense can be granted to an actor who committed what otherwise would be an offense "because he was

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107 Id. § 3.04(1).
108 DOSTOEVSKY, supra note 1, at 99
109 See MODEL PENAL CODE, supra note 11, Comment to § 3.04, at 32-61 (explaining situations covered by the law of self-protection).
111 MODEL PENAL CODE, supra note 11, Introduction to Art. 3, at 3.
coerced to do so by the use of unlawful force against his person or the person of another, that a person of reasonable firmness in his situation would have been unable to resist." Raskolnikov could try to claim coercion by poverty, intolerable living conditions, or family circumstances.

In his attempt to exculpate himself in Sonya’s eyes as well as in his own, he tries all these arguments. He attempts to find excuse in his poverty and intolerable living conditions: “You’ve seen my hovel, haven’t you? And do you realize, Sonia, that low ceilings and small, poky little rooms warp both mind and soul? Oh, how I loathed that hovel of mine!” This argument is well presented by Atkin, a scholar who claims that Raskolnikov, frustrated, humiliated, and embittered by his poverty, saw no recourse but murder to enable him to survive in a society that was so lacking in its duty to the individual and so indifferent to his needs. This observation, however, even assuming it correctly reflects Raskolnikov’s subjective feelings, cannot support a claim of duress because economic or psychological hardship is not covered by section 2.09.

In addition, even were Raskolnikov able to circumvent the limitations of section 2.09(1), he would probably still be barred by section 2.09(2) which denies the defense to the actor who “recklessly placed himself in a situation in which it was probable that he would be subject to duress.” Raskolnikov’s situation is to a large degree, a result of his own free choice. It has been correctly noted that “Raskolnikov’s poverty is due to his own refusal to work. He could have earned money doing translations, as Razumikhin has done, but he chose not to.”

There is somewhat more merit to the claim that Raskolnikov was coerced to commit the crimes by the pressure from his family. It could be argued that, although he had been contemplating the murder and robbery of the old moneylender for months, it would have remained pure theory had he not received a letter from his mother describing how she and his sister were going to ruin their lives in order to help Raskolnikov out. As a scholar of Dostoevsky persuasively pointed out,

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112 Id. § 2.09(1).
113 DOSTOEVSKY, supra note 1, at 430.
115 See MODEL PENAL CODE, supra note 11, Comment to § 2.09, at 375-80 (discussing the scope of the duress defense).
116 Id. § 2.09(2).
117 BREGER, supra note 4, at 23.
The most striking and invidious of all examples of emotional blackmail is to be found in Mme Raskolnikova’s letter to her son. [She] is not trying to make her son do anything, she is simply anxious that he should appreciate the nature of the sacrifices being made for love of him. The letter is designed to make its recipient feel as strongly as possible by making him fully aware of the true extent of his sister’s sacrifice.\footnote{ALEX DE JONGE, DOSTOEVSKY AND THE AGE OF INTENSITY 198-99 (1975).}

But, even if the acute sense of guilt created by his mother’s letter was a plausible reason for Raskolnikov’s emotional disturbance, it would still not be sufficient for the duress defense, because there was nothing “unlawful”\footnote{MODEL PENAL CODE, supra note 11, § 2.09(1).} in her conduct, and it cannot be said that her pressure was such that “a person of reasonable firmness in his situation would have been unable to resist.”\footnote{Id.} As well put in a study of Crime and Punishment, “the whole ‘family pressure’ thesis has only to be stated in bald terms for its inadequacy to be plain: Raskolnikov’s family wrought upon his guilt feelings so much that he became seriously disturbed; and so he went off and cut up two old women with an axe.”\footnote{NUTTAL, supra note 16, at 88.}

This leaves Raskolnikov with a single, and probably the strongest, excuse defense left — insanity That something is wrong with him is apparent: “One is immediately struck by the severity of [Raskolnikov’s] disturbance, his isolation from people and withdrawal from reality, the lability of his moods, and the crazed quality of this thoughts.”\footnote{BREGER, supra note 4, at 22.} However, whether Raskolnikov’s emotional problems would grant him the defense of insanity under the Model Penal Code is not so self-evident.

The Model Penal Code provides that “[a] person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of law.”\footnote{MODEL PENAL CODE, supra note 11, § 4.01(1).} Thus the defense of insanity is allowed in two situations: one, in the situation of cognitive impairment sufficient to establish that the defendant lacks substantial capacity to appreciate the wrongfulness of his conduct; and two, in the situation of volitional

\begin{footnotes}
\item[119] MODEL PENAL CODE, supra note 11, § 2.09(1).
\item[120] Id.
\item[121] NUTTAL, supra note 16, at 88.
\item[122] BREGER, supra note 4, at 22.
\item[123] MODEL PENAL CODE, supra note 11, § 4.01(1).
\end{footnotes}
impairment when the defendant lacks substantial capacity to conform his conduct to the requirements of law. In both cases, this defense is available only to those whose impairment is a result of mental disease or defect.

The first question, therefore, is whether Raskolnikov was mentally ill. Raskolnikov felt sick already before the crime; after the crime, his condition deteriorated: "he was in a feverish condition, delirious and half-conscious." His friend Razumikhin was sure that Raskolnikov had a mental illness, and Raskolnikov himself agreed that he had "a tendency to madness." His mother started crying when she first saw him after her arrival in St. Petersburg, because in his look she caught a glimpse of poignant suffering and of something unbending and almost insane, too. A doctor who attended him and who was, in everyone's opinion, "good at his job" believed that Raskolnikov was "crazy, or just about."

A number of authors who studied Raskolnikov's character in the novel came to the conclusion that he was, if not insane, at least mentally ill. They are not in agreement as to the nature of his illness, though. For example, Smith and Isotoff treat Raskolnikov as a clinical case in psychiatry and classify him as demi-fou and a case of "lucid madness" as described by Grasset. They come to the conclusion that Raskolnikov was an autistic personality with manic-depressive inclinations. These factors caused his idea of becoming an "extraordinary" man to develop into a delusion, and the irresistible inner urge to test his theory forced Raskolnikov to commit his crimes.

Nuttal, speaking about Raskolnikov, points out that "clearly, he is to some extent what we today call schizophrenic," and continues: "On the one hand, [Raskolnikov] is a real systematic thinker, whose thought has brought him into strange territory and stranger company. On the other hand, he is manifestly sick, the victim rather than the controller of his mental processes, seriously cut off from reality."

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124 DOSTOEVSKY, supra note 1, at 136.
125 Id. at 430.
126 Id. at 214.
127 Id. at 150.
128 Id. at 210.
130 NUTTAL, supra note 16, at 90.
131 Id. at 95.
Burchell does not consider Raskolnikov to be a schizophrenic but thinks that the almost automatic manner in which Raskolnikov acted during the murders had all the elements of a true compulsion and is characteristic of unconsciously motivated acts — in this case, motivated by a desire for punishment stemming from Raskolnikov's deep feelings of guilt.132

The disagreement over Raskolnikov's mental problems is heightened by the fact that not everybody believed him to be mentally ill. The two characters in the novel who understood him best of all — Sonya and the police detective Porfiry — did not: "The thought flashed through Sonia's mind: 'Is he mad?' but she at once dismissed it. No, there was something else there."133 Porfiry has read the article Raskolnikov wrote about the "extraordinary man's" right to crime and understood the true motivation behind Raskolnikov's conduct. Trying to persuade Raskolnikov to confess to the police, Porfiry promised: "'We'll forget all about this psychology, and I shall not breathe a word about these suspicions, so that your crime will appear as something in the nature of a mental aberration"134 Evidently, Porfiry didn't believe Raskolnikov to be mad, but thought (correctly)135 that the Russian court would consider Raskolnikov's mental state to be a mitigating factor.

Whatever the nature of Raskolnikov's emotional or mental disturbance, it does not by itself absolve him from responsibility for his crimes. The crucial question is not what was the name of his ailment,136 but rather whether it impaired his mind and will to the extent that he could not appreciate that what he was doing was wrong, or could not conform his conduct to the requirements of law.

Did Raskolnikov appreciate the wrongfulness of his conduct? At the first glance, he did. The day before the murder, even after the "rehearsal," the very thought of the prospective murder seemed repugnant to him: "'When I was coming down the stairs yesterday I said to myself that the whole thing was foul and disgusting. Why, the thought of it actually

133 DOSTOEVSKY, supra note 1, at 427
134 Id. at 470 (emphasis added).
135 See id. at 545.
136 As Nuttal wittily pointed out, "[t]he concept 'schizophrenic,' as we have employed it, itself explains nothing. Those who think the entire matter cleared up by such language are victims of what might be called the 'give it a Greek name and consider it explained' fallacy." NUTTAL, supra note 16, at 104-05.
made me feel sick and filled me with horror!'” On a closer look, however, it becomes clear that what bothers Raskolnikov is not the wrongfulness of murder, but rather the disgusting physical experience through which he would have to go: “‘[I]s it possible that I will really take a hatchet, hit her on the head with it, crack her skull, slither about in warm, sticky blood, break the lock, steal and shake with fear, hide myself all covered in blood and with the hatchet — Good God! is it possible?’”

One way to gauge whether the actor appreciates the wrongfulness of his act is by the remorse he feels or does not feel afterwards. Raskolnikov does not feel remorse or guilt for any of his crimes, at least not by the time of his trial. He acknowledges that he violated the criminal code — but that is all. Regarding the murder of Alyona Ivanovna, he continues to think that her killing was justified, and his only concern is with himself: “‘Was it the old hag I killed? No, I killed myself, not the old hag.’” More than that, he feels sorry for himself, he feels cheated — a victim, not the perpetrator: “‘[T]he devil had dragged me there, and it was only afterwards that he explained to me that I had no right to go there because I was the same kind of louse as the rest. He made a laughing stock of me’”

Lizaveta’s murder does not bother Raskolnikov much either. For him it was just an unfortunate by-product, something that he had to do — an accident for which he feels sorry, but not guilty. Similarly, he feels no qualms about the robbery simply because it has no significance for him; deep inside he always knew the robbery was just a pretext for the opportunity to commit a murder.

It is possible thus to claim that Raskolnikov does not appreciate the wrongfulness of his acts. But the Model Penal Code is not concerned with actual feelings of the actor — just being amoral is not and could not be a defense — but rather with his or her capacity to appreciate wrongfulness. In order to utilize the insanity defense, Raskolnikov would have to

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137 DOSTOEVSKY, supra note 1, at 78.
138 Id.
139 See Squires, supra note 4 (opining that Raskolnikov confessed in order to rid himself of a burden, not because he repented; even in prison he recognized his criminality only because he had been unsuccessful and had confessed it).
140 Jackson, supra note 86, at 2.
141 See supra notes 87-89 and accompanying text.
142 DOSTOEVSKY, supra note 1, at 433.
143 Id.
show not that he did not care, but that he could not care, could not understand that what he was doing was wrong. That he cannot do.

As the comment to section 4.01 explains, “[a]ppreciating ‘wrongfulness’ may be taken to mean appreciating that the community regards the behavior as wrongful.” There is no question that Raskolnikov fully appreciated the community’s attitude regarding his behavior. Moreover, the true motive for the murder of the old moneylender was Raskolnikov’s desire to prove that he was an “extraordinary” man, that he was above the moral law of the community — and the way to prove this was to “step over blood,” or commit the ultimate moral wrong. Thus the very nature of his goal made it quite necessary for him to appreciate the wrongfulness of his actions: he committed the murder because it was evil in the eyes of “ordinary” people.

Since the cognitive impairment theory is unsustainable, Raskolnikov has to rely on volitional impairment — his inability “to conform his conduct to the requirements of law.” There is, in fact, evidence in the text of the novel that at times Raskolnikov did not quite control his actions.

A number of authors have observed that Raskolnikov committed “the crime in a dream-like state,” he was acting “under some sort of compulsion,” “as if in a delirium.” Later Raskolnikov himself invoked the classic disclaimer of responsibility for his crimes: “It was the devil who killed the old hag, not I.”

Yet all the signs of compulsive behavior in Raskolnikov’s actions do not amount to total inability to control himself. As has been discussed earlier, Raskolnikov had numerous opportunities to stop before taking the next step in the carrying out of his plan. In the process of committing the crimes he analyzed the situation, made rational decisions and implemented them. There is every reason to believe that he could have abandoned his plan of murder and robbery had he only wanted to, and that is inconsistent with a claim of volitional impairment.

It is not clear whether Raskolnikov’s mental or emotional disturbance was the source of his criminal plan or whether the causal connection was

144 Model Penal Code, supra note 11, Comment to § 4.01, at 169.
145 Id. § 401(1).
146 See supra notes 16-18 and accompanying text.
147 Kravchenko, supra note 2, at 116.
148 Nuttal, supra note 16, at 90.
150 Dostoevsky, supra note 1, at 433.
151 See supra notes 26-28 and accompanying text.
reversed: the very process of contemplating, playing out, and rehearsing the crime led Raskolnikov, who was emotionally unstable by nature, into the state of deep emotional disturbance which surrounded his criminal act. However, for someone who could appreciate the wrongfulness of his acts and conform them to the requirements of law, this distinction is insignificant under the Model Penal Code. The comment to section 4.01 denies the insanity defense to “persons who commit crimes under the motivation of beliefs or attitudes resulting from mental illness, but whose capacity for appreciating the criminality of their conduct and conforming to the law’s requirements is not seriously impaired.” It goes on to explain that “[h]olding them legally irresponsible on the ground that the mental disorder was an antecedent but for which the criminal conduct would not have occurred would seem simply unprincipl-ed.” This approach to criminal responsibility forecloses the last defense available to Raskolnikov. He is guilty of two counts of murder and a robbery, and he has no defenses which may reduce his culpability.

IV PUNISHMENT

A. Raskolnikov’s Sentence in Crime and Punishment

The sentence given to Raskolnikov by the judge in Crime and Punishment is somewhat inconsistent with Russian penal laws of that time, which Dostoevsky knew well. This is no accident, but rather a clue pointing to Dostoevsky’s position on punishment and interpretation of Raskolnikov’s crimes. For that reason, it is interesting to compare Raskolnikov’s actual sentence in the novel with the sentence he would have received if the court in Crime and Punishment had been fully

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152 This explanation is in accord with Raskolnikov’s own theory of crime as a disease:

According to his conviction, [the disease] developed gradually and reached its climax a short time before the crime was actually committed; it continued the same way at the moment of the crime and for a short time afterwards, according to each individual; then it passed off like any other disease. But the question whether the disease was the cause of the crime, or whether the crime itself, owing to some peculiarity of its nature, was always accompanied by something that is very much like a disease, he did not as yet feel able to answer.

DOSTOEVSKY, supra note 1, at 90.

153 MODEL PENAL CODE, supra note 11, Comment to § 4.01, at 173 n.24.

154 Id.
informed or decided to strictly apply the law; and then to compare these two sentences with the one Raskolnikov would have received under the Model Penal Code.

The Code of Penal Laws, effective in Russia at the time of Raskolnikov’s trial, distinguished between intentional premeditated murder and intentional murder without premeditation. According to article 1453, in case of a premeditated murder committed for the purposes of robbery or, in general, in order to get possession of some property, the convicted was to be sentenced to penal servitude or imprisonment for a minimum term of fifteen to twenty years, or a maximum term of life. If, on the other hand, a murder, committed under exactly the same circumstances, was not premeditated, article 1455 applied, and the defendant had to be sentenced to a term of fifteen to twenty years. The murder of Alyona Ivanovna, thus, is covered by article 1453, whereas the murder of Lizaveta fits under article 1455.

In case the defendant was convicted of two or more crimes, he had to be sentenced to the longest of the terms assigned to these crimes. Therefore, if the judge in Crime and Punishment strictly applied articles 1453 or 1455, Raskolnikov should have been sentenced to penal servitude for life, or at least for the minimum term of fifteen to twenty years. Raskolnikov, however, was sentenced for the “term of only eight years, the court having taken into consideration the prisoner’s own confession and a number of other extenuating circumstances.” This punishment “was much more lenient than could have been expected from the nature of the crime, and that was perhaps almost entirely due to the fact that the criminal, far from trying to justify himself, seemed to be anxious to incriminate himself more and more.”

This leniency had legal basis in the Russian Code of Penal Laws, which diminished the defendant’s culpability in case of his confession and repentance. Another mitigating circumstance, duly noted by the court,

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155 A murder committed for the purposes of robbery constituted one crime, not two (murder and robbery). See УЛОЖЕНИЕ О НАКАЗАНИЯХ УГОЛОВНЫХ И ИСПРАВИТЕЛЬНЫХ (CODE OF CRIMINAL AND CORRECTIONAL PENALTIES) art. 1453, Comment 9 (1913).
156 Id. art. 1453(4).
157 Id. art. 1455.
158 Id. art. 152.
159 DOSTOEVSKY, supra note 1, at 545.
160 Id. at 544-45.
161 See УЛОЖЕНИЕ, supra note 155, art. 134. It must be pointed out, though, that Raskolnikov had confessed, but had never repented; whatever remorse he felt
was extreme poverty which had forced the defendant to commit the crime.\textsuperscript{162} "[a]ll the strange and peculiar features of the crime were taken into consideration. There could be no doubt about the prisoner's ill-health and straitened circumstances before the crime had been committed."\textsuperscript{163} In addition, the court in \textit{Crime and Punishment} clearly believed that Raskolnikov suffered from some mental ailment. It was not serious enough to find him insane but sufficient to mitigate his culpability.

\textit{[T]he conclusion they drew from [the fact that Raskolnikov had never actually looked into the stolen purse] was that the crime itself could only have been committed during temporary insanity, or, in other words, while the accused was suffering from a monomania of murder and robbery for the sake of murder and robbery without any ulterior motive or any considerations of personal gain. That fitted in very nicely with the latest fashionable theory of temporary insanity.}\textsuperscript{164}  

Another important factor in the judge's handing down the reduced sentence was his lack of knowledge about the premeditated nature of the murder and Raskolnikov's motives. Article 129 of the Russian Penal Code increased the defendant's culpability based upon the length and rationality of defendant's premeditation, his education, and the immorality of his motive.\textsuperscript{165} Had the court taken into account the ideological background of the crime, the sentence should have been closer to the terms contained in articles 1453 and 1455.

The lenient sentence in the novel, though, is not accidental. For Dostoevsky, the \textit{real} punishment of Raskolnikov is not penal servitude, and the light sentence he received underscores this. Rather, Raskolnikov's punishment is the crime itself: he has "crossed the line" and has put himself outside of the moral community of people. In an ironic twist Raskolnikov ultimately succeeds in differentiating himself from "ordinary" people, but the end result is very unlike what he had imagined it to be — he is condemned to isolation and solitude. The "external" sentence imposed by the court is almost irrelevant to Dostoevsky in comparison with what happens inside Raskolnikov's mind and soul.\textsuperscript{166}

\textsuperscript{162} See \textit{id.}
\textsuperscript{163} DOSTOEVSKY, \textit{supra} note 1, at 545 (emphasis added).
\textsuperscript{164} \textit{Id.} at 544.
\textsuperscript{165} See \textit{ULOZHENIE, supra} note 155, art. 129.
\textsuperscript{166} Unfortunately, the effect of the novel is diluted by a "happy ending".
B. Raskolnikov's Sentence Under the Model Penal Code

The Model Penal Code's treatment of Raskolnikov's case has many points in common with Dostoevsky's, but their attitude to punishment is not the same. The difference between them reflects the centuries-old discussion of what is more important: the act itself, or the intent behind it. The Model Penal Code is a theory of law — it looks to the fact of crime, punishes it, and tries to deter it; Dostoevsky's is a moral theory — it condemns the very readiness to "step over the blood" and points to the moral and spiritual consequences of the crime as the worst punishment for the perpetrator. Since the Model Penal Code does not consider these consequences (except insofar as remorse is accepted as a mitigating factor), the sentencing of Raskolnikov under the Model Penal Code is likely to be more severe than the punishment meted out to him by the court in the novel.

To start with, Raskolnikov would be found guilty of several crimes, not one as under the Russian Penal Code. Being convicted of felonies of the first degree, he would face not only imprisonment for a minimum term of one to ten years and a maximum term of life, but a possibility of the death sentence as well. There is little likelihood, however, that the court would impose a death sentence. It would probably take into account mitigating circumstances, such as lack of any history of prior criminal activity; defendant's guilty plea to murder as felony of the first degree, consented to by prosecuting attorney and approved by the court; and finally, the consideration that "the defendant's physical or mental condition calls for leniency." On the other hand, at least some of the aggravating circumstances, listed in section 210.6(3), would

epilogue, in which Raskolnikov, serving his sentence in Siberia, repented with the help of Sonya, and returned to righteous ways. Since Raskolnikov's real punishment has been moral and spiritual, it was effectively ended by the very act of his repentance.

168 MODEL PENAL CODE, supra note 11, § 6.06.
169 Id. § 210.6.
170 Id. § 210.6(1)(b).
171 Id. § 210.6(4)(a).
172 Id. § 210.6(1)(c).
173 Id. § 210.6(1)(e).
174 See id. § 210.6(3)(c) ("[a]t the time the murder was committed the
probably increase the length of the sentence imposed under section 7.06.175

The mitigating circumstances in Raskolnikov’s case may be sufficient to save him from a death penalty; however, they are too weak to grant Raskolnikov a sentence in the minimum range. Thus, it is virtually certain that under the Model Penal Code Raskolnikov’s sentence would be harsher than the one in *Crime and Punishment*, and considering all the evidence unknown to the judge in the novel, this is not surprising. The very plot of *Crime and Punishment*, its psychological composition, language, and — above all — the presence of the omniscient witness, the author, reveal certain truths about Raskolnikov which negate the mitigating circumstances considered by the court in the novel. Raskolnikov was not trying to save his family from misery and was extremely poor largely by choice,176 his crime was meticulously planned and motivated certainly not by a simple “monomania of murder and robbery”177 Even Raskolnikov’s confession was a result not of remorse, but of disappointment. He was disappointed because the murder did not produce the desired outcome: he did not become a Napoleon. Having “failed the test” he punished himself by surrendering to the police.

Essentially, Raskolnikov was an ordinary person who desperately wanted to be extraordinary, but lacked the necessary talents, energy, or willpower. He could come up with only one way to increase his own status: by subduing another person, by reducing someone to an object by means of murder. These motives do not grant a foundation for leniency

CONCLUSION

The case of Rodion Raskolnikov is a fascinating mix of legal, moral, and psychological issues. This Essay attempted to provide a legal reading of this case, exploring the text of the Model Penal Code for possible legal

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175 Id. § 7.06 (governing multiple sentences; concurrent and consecutive terms).
176 See supra note 103 and accompanying text.
177 DOSTOEVSKY, supra note 1, at 544.
arguments and loopholes which might be used in Raskolnikov’s defense. The legal conclusion reached in the Essay is parallel to Dostoevsky’s moral judgment: as he systematically denies moral defenses to Raskolnikov, so does the Model Penal Code deny to Raskolnikov all avenues of legal escape.

The text of Crime and Punishment provides evidence of Raskolnikov’s voluntary conduct and culpable state of mind in murdering and robbing two women, and denies him any plausible defense. Raskolnikov cannot justify his acts by the balance of evils or by self-defense, he cannot invoke the excuse defense of duress, and even his best bet — defense of insanity — is extremely weak. Raskolnikov’s verdict under the Model Penal Code is clearly “guilty,” and the true motives for his crimes grant little leniency in sentencing.

The clear legal structure of the Model Penal Code allowed a systematic look at the complex and convoluted system of motivations embedded in the plot of Crime and Punishment; at the same time, the psychological and philosophical complexity of the novel put to test the moral adequacy of the Model Penal Code. By reading the two texts together, the Essay attempted to show that Crime and Punishment is a rich source of ideas for those who are interested in the theory of criminal law. Similarly, introducing the values underlying our criminal justice system into the novel’s analysis may cast Dostoevsky’s work in a new, more contrasting light.