

LESSONS OF LAW & LEGAL STUDIES
THROUGH LITERATURE: THE PSYCHOLOGY
OF A CRIMINAL VERSUS THE PSYCHOLOGY
OF A POLICE INVESTIGATOR AS SEEN
THROUGH THE LENSES OF *CRIME AND
PUNISHMENT*: PORFIRY V. RASKOLNIKOV

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I. INTRODUCTION

Fyodor Dostoevsky's landmark work *Crime and Punishment*¹ addresses numerous timeless legal, moral, and criminal law issues. The relevancy of the work is amply illustrated by the fact that Dostoevsky's main character, Rodion Romanovitch Raskolnikov ("Raskolnikov"),² has been referenced in reported judicial opinions at both the state and federal level. References to the character of Raskolnikov have been made in the reported decisions of federal courts at the U.S. District Court level,³ the U.S.

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1. FYODOR DOSTOEVSKY, *CRIME AND PUNISHMENT*, Barnes and Noble Classics (Priscila Meyer trans., 2007). This is the edition that will be referenced throughout this Article and the book that the author of this Article relied upon in writing this Article.

2. The full given name of the culprit and main suspect in the novel is Rodion Romanovitch Raskolnikov, but will be referred to in the remainder of this Article by how he is most commonly referred to in the book, "Raskolnikov."

3. Gov't of Virgin Is. v. Downey, 396 F. Supp. 349, 359 n.6 (D.V.I. 1975); Delgadillo v. McEwen, No. ED CV 12-41-FMO (PJW), 2015 WL 10793478, at *6 (C.D. Cal., Aug. 24, 2015).

Court of Appeals level,⁴ and even by Supreme Court Justice Samuel Alito in his concurring opinion in a 2011 Supreme Court case.⁵ State courts in New York,⁶ California,⁷ and Massachusetts⁸ have also made reference to Raskolnikov in some way as part of a reported judicial decision by judges in each of these states.

Further, as of September 2017, there have been fifty published scholarly law review and law journal articles that discuss or reference Dostoevsky's character Raskolnikov.⁹ Indeed, six of these articles contain analyses dedicated solely to the issue of what Dostoevsky's characters, such as Raskolnikov or Raskolnikov's main antagonist, police detective Porfiry Petrovitch ("Porfiry"),¹⁰ can tell readers about modern American law. Those six full length articles deal with a range of different topics, as follows: [1] an article defending the behavior of the chief detective Porfiry in his interactions with Raskolnikov and arguing that Porfiry was acting

4. *Morris v. United States*, 728 A.2d 1210, 1220 (D.C. 1999).

5. *Brown v. Entm't Merch. Ass'n*, 564 U.S. 786, 820 (2011) (Alito, J., concurring).

6. *N.Y. v. Wright*, 343 N.Y.S.2d 944, 950 (N.Y. Sup. Ct. 1973).

7. *People v. Andersen*, 101 Cal. App. 3d 563, 584 n.3 (Cal. Ct. App. 1980).

8. *Commonwealth v. Mahnke*, 368 Mass. 662, 713 n.8 (1975).

9. Of these fifty journal articles, forty-four make only passing references to Raskolnikov to illustrate a principle of law, but the reference to Raskolnikov is not the main topic or point of the discussion in the articles. That is, these forty-four articles deal with broader legal topics and do not deal primarily with an analysis of Dostoevsky's character Raskolnikov. These articles run the gamut of a wide spectrum of contemporary legal issues, such as using economic analysis to analyze abandoned criminal attempts. Murat C. Mungan, *Abandoned Criminal Attempts: An Economic Analysis*, 67 ALA. L. REV. 1, 17–21 (2015) (using Raskolnikov as an example of the marginal deterrence effect); B. Douglas Robbins, *Resurrection From a Death Sentence: Why Capital Sentences Should Be Commuted Upon the Occasion of an Authentic Ethical Transformation*, 149 U. PA. L. REV. 1115, 1160–62 (2001) (discussing the "remorseful wrongdoer"); Ricardo X. Ramos, *Crime and (Cruel and Unusual) Punishment: A Policy Recommendation*, 47 REV. DER. P.R. 205, 205–06 (2008) (using Raskolnikov as an example in the Introduction to illustrate what constitutes cruel and unusual punishment); Roscoe Porter Field, *Constitutional Law—Payne v. Tennessee: The Admissibility of Victim Impact Statements—A Move Toward Less Rational Sentencing*, 22 MEM. ST. U. L. REV. 135, 153 n.157 (Fall 1991) (illustrating the question of whether one is more deserving of punishment for killing a good person versus a bad person). Raskolnikov is even referenced in articles on the topic of terrorism and the law. See Christopher L. Blakesley, *Terrorism, Law and Our Constitutional Order*, 60 U. COLO. L. REV. 471, 497–92 (1989) (discussing whether Raskolnikov's conduct was justified); A. John Radsan, *A Better Model for Interrogating High-Level Terrorists*, 79 TEMP. L. REV. 1227, 1258 n.139 (Winter 2006) (discussing the views of members of the absolutist camp). Another three articles written for the "law and literature" genre have sections on Raskolnikov, but also cite to other literary figures. See Gregg Mayer, *Prosecutors in Books: Examining a Literary Disconnect from the Prosecution Function*, 19 LAW & LIT. 77, 82 n.50 (Spring 2007) (discussing the prosecutor in Raskolnikov's case).

10. The detective's full given name in the novel is Porfiry Petrovitch, but he will be referred to in this Article by how he is most commonly referred to the book, namely "Porfiry."

honestly and purely to Raskolnikov by the end of the novel;¹¹ [2] an analysis of the various crimes (under modern criminal laws) committed by Raskolnikov and the various available criminal defenses that would have been available to him (e.g., insanity) should a case such as his be tried in a court of law today;¹² [3] an article analyzing how Dostoevsky's book is instructive in understanding the differences between true and false confessions—by comparing the true confessions and false confessions of two characters (Raskolnikov and the painter Nikolay,¹³ respectively) in the book for the same set of crimes;¹⁴ [4] an article discussing the fictional case of “State v. Raskolnikov” and how it serves as an example for a defense plea for leniency at mitigation hearings;¹⁵ [5] an article summarizing the overall contributions and legal context of the book on American jurisprudence;¹⁶ and [6] an article that discusses the book in conjunction with the theme of crime, confessions, and the many ways a lawyer may approach his or her client in terms of possible confessions and representation.¹⁷ Thus, this century-and-a-half old work of Russian fiction has clearly found relevancy in American jurisprudence in the twenty-first century, and this relevancy has been identified by both legal scholars from various universities and judges on diverse courts at both the state and federal level. This makes the work and the character worthy of study for any burgeoning student of law, attorney, or any individual interested in the intersection of law and literature.

As might be expected, this Article does not purport to cover all the characters and subplots contained in this voluminous novel or attempt to address the myriad of various legal themes and issues

11. Robert Batey, *In Defense of Porfiry Petrovich*, 26 CARDOZO L. REV. 2283, 2300 (May 2005).

12. Vera Bergelson, *Crimes and Defenses of Rodion Raskolnikov*, 85 KY. L.J. 919 (Summer 1996–1997).

13. Nikolay was one of two painters in the apartment complex on the day the old pawnbroker was killed; Nikolay was very religious and convinced himself that he should confess to the crime in order to atone for other sins. DOSTOEVSKY, *supra* note 1, at 131–38, 337.

14. Rinat Kitai-Sangero, *Can Dostoyevsky's Crime and Punishment Help Us Distinguish Between True and False Confessions?*, 9 OHIO ST. J. CRIM. L. 231 (Fall 2011).

15. Michael A. Berch, *A Defense Plea for Leniency at the Mitigation Hearing—State v. Raskolnikov*, 38 ARIZ. ST. L.J. 469 (Summer 2006).

16. William Burnham, *The Legal Context and Contributions of Dostoyevsky's Crime and Punishment*, 100 MICH. L. REV. 1227 (May 2002).

17. Robert F. Cochran, Jr., *Crime, Confession, and the Counselor-at-Law: Lessons from Dostoyevsky*, 35 HOUS. L. REV. 327 (Summer 1998).

also contained therein. The author is operating under the assumption that those reading this Article are familiar with the novel and its characters and plots. For those who are not familiar with the book, the very brief synopsis of Raskolnikov and Porfiry should be sufficient for the purpose of this Article. Therefore, a discussion of many aspects of *Crime and Punishment* which are outside the narrow confines of the topic of this Article will be omitted, as will be an overall summary of the novel.

For the purposes of this Article, the two main characters subject to analysis are Raskolnikov and Porfiry. Raskolnikov is an indigent university student¹⁸ who conceives of a theory that certain extraordinary individuals in the world have a right to commit crimes.¹⁹ He fancies himself as one of the extraordinary individuals. He acts upon this theory very early on in the novel²⁰ by killing an old pawnbroker whom he thought preyed financially upon others and did no good for society. He also kills the pawnbroker's innocent sister, who happens to walk into the pawnbroker's flat just after Raskolnikov kills the first woman. He steals very little from the woman's apartment after the homicide (despite earlier having half-formed plans to take the old woman's horde of wealth). What little he does take from the old woman, such as a purse that is hanging around the woman's neck, he buries along with other incriminating evidence almost immediately after the crime. Thus, he gains nothing economically from the crimes. The criminal case is eventually assigned to Porfiry, a police inspector, the second major (but equally important) character of emphasis in this Article. Porfiry displays his serious suspicion and mistrust of Raskolnikov during each of the three major meetings between the two in which Porfiry asks Raskolnikov about the crimes.²¹ By the last of the three meetings, Porfiry flat out

18. Indeed, throughout the novel, he is not active in his university studies and was, in essence, on a leave of absence from the University. DOSTOEVSKY, *supra* note 1, at *passim*.

19. *Id.* at 246–53.

20. Raskolnikov commits the crimes of double homicide and theft in Part I, Chapter Seven, of the novel. *Id.* at 75–86. It is interesting to note that the rest of the novel is composed of five additional parts and an Epilogue. Thus, the crimes themselves, and the planning leading up to the crimes, only take up a small portion of the overall novel. Of the six parts and Epilogue, only Part I deals with the planning and commission of the crimes. The vast majority of the book deals with the depiction of Raskolnikov and how he struggles with his crimes and battles with his compulsion to confess to the crimes.

21. At the end of the novel, Porfiry flat out states to Raskolnikov that “it was you [who murdered her].” *Id.* at 434. In their first meeting, Porfiry displays his serious suspicion and mistrust of Raskolnikov when he asks why it was that Raskolnikov was the very last person

confronts Raskolnikov with being the murderer and committing the crimes. After this meeting, Raskolnikov confides in Sonia, a woman who becomes his confidant and then eventually wife. After Sonia convinces Raskolnikov to give himself up, Raskolnikov renders a complete confession²² and is ultimately incarcerated in a Siberian prison for eight years and begins his rehabilitation and atonement, with Sonia at his side.

This Article will therefore explore two major themes. Part I of this Article is an analysis of the police tactics employed by Porfiry against Raskolnikov in wearing Raskolnikov down, causing Raskolnikov to ultimately break down and confess towards the end of the novel. The book is often described as an analysis of the “psychology of a criminal before and after the crime,” a description that even appears in the book itself.²³ That is—the book is often studied to get a glimpse (albeit fictional) of a criminal suspect before, during, and after the commission of a heinous crime—a theme that will certainly be touched upon in this Article, as it relates to the compulsion many suspects have to confess to crime or guilt.

However, just as Dostoevsky stated, there is a certain “psychology of the criminal” before and after the crime; Dostoevsky also stated that the police “have a psychology of their own.”²⁴ The almost timeless techniques of “good cop, bad cop,” befriending an accused to encourage incriminating statements, the art of police interrogation and questioning, et cetera, is quite accurately described by Dostoevsky in his representation of chief detective Porfiry and the detective’s effective questioning of Raskolnikov. More specifically, Part I will compare Porfiry’s investigative and interrogatory techniques with the modern guidance and standards taught to law enforcement as to how to effectively interview and interrogate a suspect. The reader will hopefully agree that the techniques that Dostoevsky has Porfiry use against Raskolnikov in the book are largely the recommended tactics for modern law enforcement in trying to elicit confessions.

to come forward and retrieve his pawned items. *Id.* at 241. In this interchange, Raskolnikov already believes that Porfiry knows Raskolnikov’s crimes and then worries about evidence of which Porfiry might be aware. *Id.* at 241–43.

22. When Raskolnikov finally decides to fully confess to the police, he specifically refuses to confess to Porfiry, instead offering his confession to another police officer, showing no love lost between these two “legal” adversaries. *Id.* at 499–503.

23. *Id.* at 246.

24. *Id.* at 255.

After discussing Porfiry's conduct and interactions with Raskolnikov, Part II of this Article will turn to an analysis of Raskolnikov's ever-evolving progression of thoughts regarding confession—before, during, and after he commits his crimes. The myriad of thoughts racing through Raskolnikov's mind after the commission of a crime—ranging from remorse and guilt, to worrying about being caught and covering one's tracks, to justifying one's conduct as not being immoral—are arguably timeless inner thoughts that plague all of humanity when faced with the specter of being responsible or the culprit of unsavory deeds. At different points in the novel, all of these concerns weigh heavily on Raskolnikov as he contemplates confession, and his interactions with Porfiry certainly help lead to Raskolnikov's ultimate confession.

II. EFFECTIVE POLICE TECHNIQUES ILLUSTRATED BY PORFIRY IN HIS INTERVIEWS WITH RASKOLNIKOV

Many of the techniques Dostoevsky has his lead detective character employ in the book published over 150 years ago can be taken verbatim from police interrogation and questioning training manuals from the twenty-first century. In fact, the lead detective in the book, Porfiry, is so confident in his techniques and knowledge of a defendant's behavior that he posits that it is impossible for a criminal to abscond and flee from him, saying that a defendant is "psychologically unable to escape me."²⁵ Porfiry even compares a criminal defendant to a butterfly or insect that cannot avoid gravitating towards a bright light or flame, stating, "have you ever seen a butterfly [a]round a candle?"²⁶ Porfiry continues to assert that the defendant "will keep circling and circling round me. Freedom will lose its attractions. He'll begin to brood, he'll weave a tangle round himself, he'll worry himself to death."²⁷ Interestingly, much earlier in the book, Raskolnikov contemplates the same thing, commenting to himself that "the butterfly flies to the light."²⁸

Before turning to Raskolnikov's propensity to talk to police or people in positions of authority, an examination of police tactics as

25. *Id.* at 324.

26. *Id.*

27. *Id.*

28. *Id.* at 235.

illustrated in *Crime and Punishment* and compared to modern standards is appropriate. In comparing the behavior of Porfiry and his tactics in *Crime and Punishment* to modern standards, there are a bevy of modern books on law enforcement interrogation techniques one might reference. Many of the texts repeat the same points—as the practices are time proven. As such, one text in particular is utilized for a delineation of the modern standards set forth in numerous texts and handbooks. This text is entitled *Interviewing Interrogation for Law Enforcement* by John E. Hess.²⁹ This text was selected for several reasons.

First, the standards contained therein are sound recommendations and delineations of the best practices that appear in many other books. Second, the author (who reports having a career in law enforcement himself) draws on many case examples, as well as guidance from a variety of law enforcement experts, including experts from the Federal Bureau of Investigation (“FBI”). Just as in Dostoevsky’s time, many investigations today hinge on a successful interrogation and confession. In cases involving crimes³⁰ like those committed by Raskolnikov, the police lack strong physical evidence or independent witnesses who are able to corroborate the events. Raskolnikov had successfully hidden the stolen items from the pawnbroker’s flat and no witnesses saw him entering or exiting the crime scene. Further, Raskolnikov successfully hid or destroyed any lingering evidence connecting him to the crimes. Thus, only circumstantial evidence existed to connect Raskolnikov with the crimes.³¹ As Hess stated in his book on interrogations, “[c]onvincing criminals to provide information that will put themselves in jail represents the ultimate investigative coup, and few investigators come to the profession possessing the ability to

29. JOHN E. HESS, *INTERVIEWING INTERROGATION FOR LAW ENFORCEMENT* (2d ed. 2010).

30. A variety of crimes were committed by Raskolnikov, such as double homicide (first degree murder), larceny, and trespass. For a full analysis of various crimes committed by Raskolnikov, as well as possible criminal defenses available to him if he were not to confess, see Vera Bergelson, *Crimes and Defenses of Rodion Raskolnikov*, 85 KY. L.J. 919 (Summer 1996–1997).

31. For example, Raskolnikov was the last person to claim the items he had pawned with the pawnbroker, which seemed odd to Porfiry. Porfiry had commented to Raskolnikov that he had “been expecting [Raskolnikov] for some time” and that Porfiry knew “all who had pledges, and you are the only one who hasn’t come forward.” DOSTOEVSKY, *supra* note 1, at 240–41.

do this consistently—true artists have always been scarce.”³² Porfiry represents the perfect fictional example of such a true artist, as illustrated below.

A. Porfiry’s Establishment of Rapport with the Suspect

The first step recommended to any effective law enforcement detective/investigator is to develop rapport with the person to be questioned. Hess states that “[r]apport is a state of mind, and although most people recognize it, few can define it. Words such as empathy, liking, and comfort come close.”³³ Establishing this frame of mind in the suspect that he or she is liked and understood may come from both verbal cues and body language.

A perfect illustration of this may be seen in Porfiry’s interactions with Raskolnikov. At one point, Porfiry states to Raskolnikov that, “I don’t want you to look at me as a monster, *as I have a genuine liking for you*, you may believe me or not.”³⁴ Further, during an intense interchange between the two wherein Raskolnikov begins the conversation in a very paranoid and agitated state, Porfiry tries to defuse things a bit by saying again that “I have a *sincere liking for you and genuinely wish you good*.”³⁵ Porfiry also tries to be as intimate in conversation and body language as possible, even warmly touching Raskolnikov at several points. For example, during one interaction, Porfiry states to Raskolnikov that he owes Raskolnikov “an explanation and I must give it to you” and then immediately “continued with a slight smile, just patting Raskolnikov’s knee.”³⁶ Porfiry then either genuinely displayed or feigned “a serious and careworn look [which] came into his [face],”³⁷ surprising Raskolnikov. Raskolnikov “saw a touch of sadness in it. He had never seen and never suspected such an expression on his face.”³⁸ On yet another occasion, Porfiry attempts to reaffirm his statement that he had a “sincere liking”³⁹ for Raskolnikov and that he “genuinely wish[ed]

32. HESS, *supra* note 29, at 107.

33. *Id.* at 11.

34. DOSTOEVSKY, *supra* note 1, at 435 (emphasis added).

35. *Id.* at 330 (emphasis added).

36. *Id.* at 427.

37. *Id.*

38. *Id.*

39. *Id.* at 330.

[him] good,”⁴⁰ by saying as follows: “Yes, I do [genuinely like you],’ went on Porfiry, touching Raskolnikov’s arm genially, ‘you must take care of your illness. Besides, your mother and sister are here now; you must think of them.’”⁴¹ Porfiry also refers to Raskolnikov at various points as “dear friend,”⁴² “friend,”⁴³ “my friend,”⁴⁴ “my dear fellow,”⁴⁵ and “my dear friend”⁴⁶ at multiple points and greets an unannounced visit of Raskolnikov to Porfiry’s study “with an apparently genial and good-tempered air.”⁴⁷

On Porfiry and Raskolnikov’s second interaction, despite Porfiry’s suspicions about Raskolnikov from the onset, Porfiry expresses surprise at Raskolnikov’s suspicion that he would be questioned, saying: “Good heavens! What do you mean? What shall I question you about?”⁴⁸ Porfiry then goes on to comment as follows: “Please don’t disturb yourself. . . . There’s no hurry, there’s no hurry, it’s all nonsense. . . . And as for my accursed laughter, please excuse it, Rodion Romanovich. Rodion Romanovich? That is your name? . . . It’s my nerves, you tickled me so much with your witty observation.”⁴⁹

Much like showing hospitality to a house guest, Porfiry proceeds as follows:

“I can’t offer you coffee here; but why not spend five minutes with a friend,” Porfiry pattered on, “and you know all these official duties . . . please don’t mind my running up and down, forgive me, my dear fellow, I am very much afraid of offending you. . . . But as for my duties here, inquiries and all such formalities . . . you mentioned inquiries yourself just now . . . I assure you these interrogations are sometimes more embarrassing for the interrogator than for the interrogated . . . You made the observation yourself just now very aptly and wittily.” (Raskolnikov had made no observation of the kind).⁵⁰

40. *Id.*

41. *Id.*

42. *Id.* at 427.

43. *Id.* at 318.

44. *Id.* at 331.

45. *Id.* at 327.

46. *Id.*

47. *Id.* at 318.

48. *Id.* at 320.

49. *Id.* at 320–21.

50. *Id.* at 321–22.

Richard H. Weisberg, a famous scholar in the law and literature movement, wrote a book analyzing characters in novels of classic literature and focusing on what the characters could tell us about the role of modern lawyers and the legal system.⁵¹ In this book, in his remarks on Porfiry, Weisberg postulates that “his sincerity, while not entirely feigned, also serves his strategic purposes.”⁵² Weisberg concludes his analysis of Porfiry by stating that Porfiry utilized his position and knowledge of human nature to “totally dominate Raskolnikov in the pretrial [interviews].”⁵³

B. PORFIRY’S UTILIZATION OF FLATTERY AS A WAY TO BUILD RAPPORT WITH THE SUSPECT

Flattering the suspect on some detail will bolster the person’s self-esteem and create good will with the interrogator. As Hess states, “[m]ake people feel better about themselves and they will attribute this feeling to you.”⁵⁴ Although flattery itself does not create rapport, it does “aid in its development by providing a ‘foot in the door.’”⁵⁵ It also creates in the interviewee the impression that the questioner “will proceed fairly and competently.”⁵⁶

Porfiry makes many flattering remarks about Raskolnikov during the course of their dialogues. Without sarcasm and seemingly meant as a compliment, Porfiry refers to Raskolnikov as “clever”⁵⁷ and one who makes “very apt[]”⁵⁸ and “witty” observations.⁵⁹ Early on, Porfiry flatters Raskolnikov about an article that Raskolnikov wrote, saying at a meeting when they first discussed the article that Porfiry “read it with pleasure two months

51. RICHARD H. WEISBERG, *THE FAILURE OF THE WORD: THE PROTAGONIST AS LAWYER IN MODERN FICTION* (2d ed. 1989).

52. *Id.* at 53.

53. *Id.* at 54. It should be noted that not every scholar agrees with Weisberg’s assessment. For example, Professor of Law Robert Batey expressly disagrees with Weisberg and asserts that Porfiry is actually transformed throughout the novel, starting as a “wily inquisitor,” but by the end of the novel “has all but abandoned verbal cleverness, has overcome whatever resentment he might have felt for his suspect, and has done his best to secure a just sentence for Raskolnikov.” See Batey, *supra* note 11, at 2300.

54. See HESS, *supra* note 29, at 12.

55. *Id.*

56. *Id.*

57. DOSTOEVSKY, *supra* note 1, at 321.

58. *Id.* at 322.

59. *Id.* at 321–22. Porfiry calls Raskolnikov’s comments witty on at least two occasions, once saying that Raskolnikov “made the observation [him]self just now very aptly and wittily” *id.* at 322, and elsewhere in the conversation saying that “you tickled me so much with your witty observation.” *Id.* at 321.

ago.”⁶⁰ While Porfiry expresses disagreement about Raskolnikov’s ultimate conclusions in the article and gently mocks the theory set forth in the article that certain super elite people in society were immune from being liable for the consequences of committing criminal offenses, Porfiry nevertheless employs superficially polite language during the interchange and compliments Raskolnikov at several points. For instance, at the onset of their dialogue about the article, Porfiry compliments Raskolnikov’s ideas and writing style, calling them “very, very original.”⁶¹ It is also apparent to Raskolnikov that Porfiry is quite familiar with the ideas and details of his article. Raskolnikov confirms this by stating, “I admit that you have stated it almost correctly; perhaps even perfectly.”⁶² However, Porfiry goes on to disagree with Raskolnikov’s conclusion that certain “extraordinary people” can commit breaches of the law and morality “(sometimes, perhaps, of benefit to the whole of humanity).”⁶³

Much later, in the last of their three interviews and when Raskolnikov was close to confessing, Porfiry returns to the technique of flattery:

I thought, too, of your article in that journal, do you remember, during your first visit we talked about it? I jeered at you at the time, but that was only to lead you on. . . . I jeered at you then, but let me tell you that, as a literary amateur, I am awfully fond of such first essays, full of the heat of youth. There is mistiness and a chord vibrating in the mist. Your article is absurd and fantastic, but there’s a transparent sincerity, a youthful incorruptible pride and the daring of despair in it. It’s a gloomy article, but that’s what’s good about it.⁶⁴

Porfiry also implies that Raskolnikov is an exceptional person with much to offer society even if he committed a crime for some noble (but ill-conceived) reason, admonishing Raskolnikov not to “disdain life” and that he has “a great deal of it in front of [him].”⁶⁵ Porfiry continues, “[y]ou’ve lost faith and you think that I am grossly flattering you; but how long has your life been?”⁶⁶ Porfiry

60. *Id.* at 246.

61. *Id.*

62. *Id.* at 247.

63. *Id.*

64. *Id.* at 429.

65. *Id.* at 436.

66. *Id.*

then reinforces the point by stating that it was his opinion that he “only believe[d] that you have a long life before you.”⁶⁷ Porfiry also tries to convince Raskolnikov that he is not a bad person, despite the heinous nature of the crimes, implying that Raskolnikov was not a bad person, but one who just acted under a faulty theory and philosophy that led him to commit the crime. Porfiry states “[y]ou made up a theory and then you were ashamed that it broke down and turned out to be not at all original! It turned out to be something base, that’s true, but you are not hopelessly base. By no means so base!”⁶⁸ Porfiry then again flatters Raskolnikov by stating that he was quick to identify the errors of his ways, saying “[a]t least you didn’t deceive yourself for long, you went straight to the furthest point in one leap.”⁶⁹ Finally, Porfiry tries to get Raskolnikov to confess by stating that as an extraordinary individual, he should act as one, and show the world that Raskolnikov could admit mistake and, in essence, the folly of his crimes. Porfiry states: “*Be the sun and everyone will see you. The sun, above all, has to be the sun. . . . I bet you’re thinking that I’m trying to get round you by flattery. Well, perhaps I am, he-he-he!*”⁷⁰

Finally, honesty and openness clearly has an important role in building rapport with the suspect. At one point, Raskolnikov becomes suspicious at Porfiry’s rambling remarks, thinking that “[h]e’s playing his professional tricks again”⁷¹ and then wonders “what is he up to, what does he take me for?”⁷² But Porfiry disarms Raskolnikov with his apparent honesty, stating:

“I’ve decided openness is better between us,” Porfiry Petrovich went on, turning his head away and dropping his eyes, as though unwilling to disconcert his former victim and as though he were setting aside his former cunning. “Yes, such suspicions and such scenes cannot continue for long.”⁷³

It is unclear whether Porfiry sincerely meant the various complimentary things he said to Raskolnikov on numerous occasions or whether he was engaging in flattery to build up

67. *Id.* at 437.

68. *Id.* at 436.

69. *Id.*

70. *Id.* at 437 (emphasis added).

71. *Id.* at 426.

72. *Id.* at 427.

73. *Id.*

rapport with Raskolnikov in order to get him to confess. Regardless, the tactic works to keep Raskolnikov coming back to Porfiry (or receiving Porfiry) and engaging in conversation and Porfiry's continued subtle interviewing and probing.

C. PORFIRY'S UTILIZATION OF DISARMING DEMEANOR TO ELICIT INFORMATION

In discussing the best example a law enforcement official should adopt in conducting interrogations, Hess walks the reader through many fictional examples who employ unsuccessful techniques⁷⁴ before arriving at a fictional character Hess believes that detectives should emulate and who represents, for Hess, the "truly dominant [and successful] investigator."⁷⁵ While perhaps surprising to many readers, Hess' example of the "truly dominant investigator" is illustrated best by the character Columbo.⁷⁶ The characters and opponents Columbo interviewed and sparred with on the long running television show generally viewed him as "inept," a "bumbling detective," and a "buffoon."⁷⁷ However, these opinions were erroneous,⁷⁸ as Columbo assumed such an air and demeanor to disarm and disorient his intended target of investigation.⁷⁹

As discussed below, Porfiry employs the same techniques as Columbo. Indeed, Porfiry's techniques are consistent with the television detective Columbo⁸⁰ and even the creators of *Columbo*,

74. Hess looked at fictional detectives ranging from those detectives played by "tough guy" characters like Humphrey Bogart, to the "glib, abrasive, television detective" Kojak, to detectives that try to intimidate suspects by "dominating the situation" like the 1990s television detective Sipowicz. HESS, *supra* note 29, at 25–28.

75. *Id.* at 26.

76. *Id.*; *Columbo* (NBC television series 1968–1978) (ABC television series 1989–2003). *Columbo* was a television show (named for its lead character and detective, Columbo) that was very popular for its unique style. Unlike many detective shows today (e.g., *Law and Order: Criminal Intent*) wherein the viewer does not know who committed the crime until the detectives solve the mystery at the end of the episode, viewers of *Columbo* knew the perpetrator at the start of the episode, and the episodes entailed watching how Columbo would catch the culprit through his various detective tricks to ultimately get confessions. The show had a long successful history on television (on both NBC and ABC), with its first episode date on February 20, 1968, and running until January 30, 2003. The chief detective Columbo was played by famous actor Peter Falk. See *Columbo*, WIKIPEDIA, <https://en.wikipedia.org/wiki/Columbo> (last visited Sept. 2, 2017).

77. HESS, *supra* note 29, at 26.

78. *Id.* at 26–27.

79. *Id.* at 27.

80. Burnham, *supra* note 16, at 1244–45.

Richard Levinson and William Link, often acknowledged that part of the inspiration for *Columbo* was based on “the policeman Petrovitch in [Dostoevsky’s] *Crime and Punishment*.”⁸¹

In a typical episode, *Columbo* had a habit and intentional practice of going back to the suspect to collect additional information and clues.⁸² “After asking a few mundane questions, he would turn to leave. However, just as he got to the door, he would pause, turn, and ask ‘just one more question’⁸³ in a seemingly clueless fashion. He also put on a self-deprecating air, as illustrated in his comments to one such suspect:

I know you are a busy man, and I can always come back another time. I’ve just got a couple of loose ends to clear up for my report, and they can wait if you wish. I wouldn’t bother you at all except that I got this new captain, and he’s a nice kid and all, but he’s a real stickler for details. You know what I mean?⁸⁴

In addition to the above techniques, *Columbo* would also make seemingly irrelevant comments that had nothing to do with the true purpose of the visit. Hess gives two examples from a *Columbo* episode in his book. In this cited example, *Columbo* enters a suspect’s office and carelessly picks up a priceless piece of art, saying:

This is really lovely. You know, my wife would like something like this. She knows a lot more about sculpture than I do, but even I can see that this is a fine piece. There’s a shopping center just down the road that I passed on the way up here. It has a big department store that handles all kinds of stuff. You didn’t by any chance pick this up over there, did you?⁸⁵

This technique disarms the suspect in several respects. First, *Columbo* rambles about a topic unrelated to the investigation. Second, *Columbo* suggests that he is not sophisticated by suggesting that a priceless art object might be easily purchased at a department store just down the street. Further, while the suspect scrambles to get the priceless object out of the bumbling *Columbo*’s

81. William Link & Richard Levinson, *Link and Levinson, THE ULTIMATE COLUMBO SITE*, <http://www.columbo-site.freeuk.com> (last visited Sept. 25, 2017).

82. HESS, *supra* note 29, at 26.

83. *Id.*

84. *Id.* at 27.

85. *Id.*

hands to put the object back in its proper place, Columbo takes this opportunity to move to another part of the room and turn his attention to something completely different, like the view from a window, then saying:

Would you look at that! That is magnificent. You know, my wife paints. Did I mention to you that she paints? If she could only see this view. You don't think it might be possible sometime for her, particularly when the sun is shining just like it is now.⁸⁶

According to Hess, "Columbo will then ramble on interminably about the view, much to the irritation of the suspect, who finally will interrupt him."⁸⁷ At this point, the suspect is more aggravated and irritated due to the perception that Columbo is just wasting the suspect's time and is clueless about the case. At this point, unbeknownst to the suspect, Columbo had successfully disarmed and disoriented him, making him susceptible to making an excited utterance or comment he would not have made if Columbo came in acting seriously from the onset.

Just like the "modern" fictional character Columbo, Dostoevsky's fictional detective over a century earlier⁸⁸ utilized the same techniques. A close reading of the novel makes clear that Porfiry begins all of his interactions with Raskolnikov by discussing seemingly inconsequential things which had no bearing on the case or the suspect. Thus, during the second conversation/interview between Porfiry and Raskolnikov, Porfiry starts out the conversation complaining about his habit of smoking and its deleterious effects on his health. Porfiry states, in part:

Ah, these cigarettes! . . . They are pernicious, absolutely pernicious, and yet I can't give them up! I cough, I begin to have a tickle in my throat and difficulty breathing. You know I am a coward. I went recently to Dr. Botkin . . . "[t]obacco's bad for you," he said, "your lungs are affected." But how am I going to

86. *Id.* at 28.

87. *Id.*

88. As *Crime and Punishment* was first published in 1866 and *Columbo* first aired in 1968, Dostoevsky had his fictional detective Porfiry using the tactics of Columbo a century before *Columbo* "arrived on the scene." See DOSTOEVSKY, *supra* note 1, at xi; see also *Columbo*, *supra* note 76 and accompanying text (referencing the respective dates of publication).

give it up? What is there to take its place? I don't drink, that's the problem, he-he-he, that I don't.⁸⁹

This conversation prompted Raskolnikov to think “[h]e’s playing his professional tricks again”⁹⁰ and wonder “[w]hat is he up to, what does he take me for?”⁹¹ At another point, in a conversation between the two, Porfiry explained how he was a bachelor, socially awkward with the upper classes, “a man of no consequence and not used to company.”⁹² Porfiry went on to explain his theory why “people of the middle sort like us . . . are always tongue-tied and awkward.”⁹³ Such seemingly unrelated conversation made Raskolnikov actually wonder “[d]oes he really want to distract my attention with his silly babble?”⁹⁴

At yet another point during their second major interaction, Porfiry was rambling on about topics ranging from his personal exercise habits to the irritating formalities of lawyer questioning in legal proceedings. During this rambling, Porfiry’s behavior had struck Raskolnikov as follows:

He had simply babbled on uttering empty phrases, letting slip a few enigmatic words and again reverting to incoherence. He was almost running around the room, moving his fat little legs quicker and quicker, looking at the ground, with his right hand behind his back, while with his left making gestures that bore extraordinary little relation to his words. Raskolnikov suddenly noticed that as he ran about the room he seemed twice to stop for a moment near the door, as though he were listening. “Is he expecting anything?”⁹⁵

These techniques by Porfiry did much to disorient Raskolnikov as to what Porfiry actually knew about the case and Raskolnikov’s involvement, and opened the door to Porfiry asking, in a Columbo style, just “one more question” after a number of seemingly inconsequential remarks.

89. DOSTOEVSKY, *supra* note 1, at 426.

90. *Id.*

91. *Id.* at 427.

92. *Id.* at 321.

93. *Id.*

94. *Id.*

95. *Id.* at 322.

D. PORFIRY'S ADVOCACY IN CONVINCING THE SUSPECT THAT IT IS IN HIS BEST INTERESTS TO CONFESS

Hess has stated that “nobody confesses without having a reason to do so.”⁹⁶ Phrased another way, “[i]nvestigators can achieve this [i.e., a confession] only if they provide the suspect with an acceptable reason to confess. This sales pitch, argument, or theme must in some fashion answer the suspect’s question, ‘What’s in it for me?’”⁹⁷

Porfiry decides to employ Raskolnikov’s original theory of “extraordinary” individuals in society to convince him to confess.⁹⁸ Porfiry, in essence, argues that Raskolnikov should be above it all and seek atonement to pay for his sins. Porfiry states that he believes that Raskolnikov has the unusual ability to withstand the punishment that comes with a murder conviction. “I see you as one of those men who would stand and smile at their torturer while he cuts their entrails out, if only they have found faith or God. Find it and you will live. You have long needed a change of air. Suffering, too, is a good thing. Suffer!”⁹⁹ Also, as referenced previously, Porfiry states: “*Be the sun and everyone will see you. The sun, above all, has to be the sun.*”¹⁰⁰ Porfiry also flat out states to Raskolnikov that “surrender[ing] and confess[ing] . . . will be infinitely more to your advantage and to my advantage too, for my task will be done.”¹⁰¹ Here, Porfiry displays his honesty to Raskolnikov that Porfiry too has something to gain from the confession. This increases Raskolnikov’s trust in Porfiry, making Porfiry’s “sales pitch” to Raskolnikov that he should confess much more palatable and believable.

Porfiry’s highly effective tactics, in conjunction with Raskolnikov’s internal struggles of guilt and remorse, slowly wore down Raskolnikov. Initially, Raskolnikov felt superior to and even mocked the police and its early efforts to catch him, the murderer. However, each time he interacted with Porfiry, his nerves would

96. HESS, *supra* note 29, at 69.

97. *Id.*

98. DOSTOEVSKY, *supra* note 1, at 247.

99. *Id.* at 436–37.

100. *Id.* at 437 (emphasis added).

101. *Id.* at 435. Note also that in stating that a confession would be “infinitely more to [Raskolnikov’s] advantage,” Porfiry displays honesty in his conversation with Raskolnikov by immediately also saying that it would be in Porfiry’s best interests as well, as he could close the case and that his “task will be done.”

take over.¹⁰² For instance, Raskolnikov went to Porfiry and said, “I believe you said yesterday you would like to question me . . . formally . . . about my acquaintance with the murdered woman?”¹⁰³ Almost immediately thereafter, Raskolnikov felt extreme anxiety and distress:

And he suddenly felt that his uneasiness at the mere contact with Porfiry, at the first words, at the first looks, had grown in an instant to monstrous proportions, and that this was fearfully dangerous. His nerves were quivering, his emotion was increasing. “It’s bad, it’s bad! I shall say too much again.”¹⁰⁴

Even arriving at the police station early that day and before even meeting Porfiry, Raskolnikov is described as having a “sick and overstrained imagination”¹⁰⁵ and suffering from “overstrained nerves”¹⁰⁶ as he awaited the summons to meet with Porfiry. During his second interview, Raskolnikov demanded to know if he was under “suspicion” or not.¹⁰⁷ When Porfiry refused to answer, Raskolnikov became more furious and outraged and began to show signs of agitation.

III. COMPULSION TO JUSTIFY ONE’S BEHAVIOR AND EVEN CONFESS TO A CRIME

While dealing with a “true artist” interrogator like Porfiry would be daunting enough without legal representation and assistance, these interactions become incredibly fraught with peril when coupled with the fact that many people try to justify their behavior to others as a means of resolving the person’s inner turmoil.¹⁰⁸ For instance, after Raskolnikov first discloses to Sonia that he is the one responsible for the crimes, he explains his reason for confessing to her as follows:

“And why, why did I tell her? Why did I let her know?” he cried a minute later in despair, looking with infinite anguish at her.

102. *E.g., id.* at 159–60.

103. *Id.* at 318.

104. *Id.* at 318–19.

105. *Id.* at 317.

106. *Id.*

107. *Id.* at 331.

108. *See infra* notes 109–10 (examining the psychology of confessions)**Error! Bookmark not defined.**

“Here you expect an explanation from me, Sonia . . . [b]ut what can I tell you? . . . Because I couldn’t bear my burden and have come to throw it on another; you suffer too, and I shall feel better!”¹⁰⁹

Raskolnikov’s statement to Sonia (and his compulsion to confess) reflects two basic characteristics of human nature. First, people wish to justify their behaviors and explain why they acted the way they did to others. Second, the weight certain actions have on people can be debilitating and eat away at a person. To the extent the burden (or secret) can be shared, it alleviates, at least in part, the burden. As United States Supreme Court Justice Byron White wrote in his dissenting opinion in *Miranda v. Arizona* (a seminal case involving the legitimacy of confessions by defendants), “it is by no means certain that the process of confessing is injurious to the accused. To the contrary it may provide psychological relief and enhance the prospects for rehabilitation.”¹¹⁰ A second major theme to be analyzed is a suspect’s strong compulsion to confess or at least explain one’s self. As one scholar has written, “[i]t is natural that we wish to confess our vulnerabilities and bad deeds to someone close. It is hard to bear secrets.”¹¹¹ This same scholar, quoting Carl Jung, argues that an individual “does not feel himself accepted unless the very worst in him is accepted too.”¹¹² This scholar amplifies the point by again quoting Jung and asserting “[i]t is only with the help of confession that I am able to throw myself into the arms of humanity at last from the burden of moral exile.”¹¹³

This is the concept that Raskolnikov tries to explain to Sonia in the above passage. These two human tendencies also amplify the need to have attorneys involved with suspects at the very earliest stages, as the attorney can serve as an outlet for a suspect in satisfying these basic urges, and also help the suspect avoid the compulsion of trying to justify their actions or confess their behavior to a person who may not have the suspect’s best interests in mind.

109. DOSTOEVSKY, *supra* note 1, at 393.

110. *Miranda v. Arizona*, 384 U.S. 436, 538 (1966) (White J., dissenting).

111. Kitai-Sangero, *supra* note 14, at 236.

112. *Id.* at 236 (quoting CARL GUSTAV JUNG, *MODERN MAN IN SEARCH OF A SOUL* 270 (W.S. Dell & Cary F. Baynes trans., 1933)).

113. *Id.* at 237 (quoting JUNG, *supra* note 112, at 35–36).

Thus, it should be no surprise that one of the most recurrent themes of the novel is Raskolnikov's overwhelming desire to confess to his offenses. This explains why it is he who seeks out the police for visits on multiple occasions—hardly the behavior of an individual wishing to keep a “low profile” from the police after committing the crime. Admittedly, some of Raskolnikov's visits to the police were in attempt to see what the police knew about the crime¹¹⁴ and see if he was suspected of some complicity in the event and he worried incessantly about being caught.¹¹⁵

Yet, it will be obvious to even the most casual reader of the novel that the theme of confessions comes up repeatedly throughout the novel.¹¹⁶ Raskolnikov is constantly toying with the idea of confessing—in fact, he contemplates confessing even before he commits the crime at the very start of the novel.¹¹⁷ Then, as soon as the murders are committed, Raskolnikov's thoughts turn to confession:

He longed to run away from the place as fast as possible. And if at that moment he had been capable of seeing and reasoning more correctly . . . it is very possible that he would have abandoned everything, and would have gone to give himself up, and not from fear for himself, but from simple horror and loathing of what he had done. The feeling of loathing especially surged up within him and grew stronger every minute.¹¹⁸

Upon returning home and falling into a deep sleep, a summons is delivered by a police officer to appear at the police station.

114. DOSTOEVSKY, *supra* note 1, at 94–95. For instance, in Raskolnikov's very first visit to the police station in response to a summons about a debt he owed his landlord, he lingers voluntarily afterwards to see if he can glean information about the investigation based upon the comments of the police in the room at the same time.

115. Indeed, this author counted over thirty instances wherein Raskolnikov worried about being caught or identified as the culprit, ranging from the worrying that the police might find incriminating evidence of his crime, *see, e.g., id.* at 125 (Raskolnikov searches the room to ensure all incriminating evidence has been destroyed), to blurting out something damaging to the police. *See, e.g., id.* at 94 (he worries he “may blurt out something stupid to the police”).

116. Dostoevsky's *Crime and Punishment* is often referred to as in the genre of “confessional” literature for this reason. *See, e.g.,* PETER BROOKS, *Storytelling Without Fear? Confession in Law and Literature*, in *LAW'S STORIES: NARRATIVE AND RHETORIC IN THE LAW* 129, 131–32 (Peter Brooks & Paul Gewirtz, eds., 1996).

117. DOSTOEVSKY, *supra* note 1, at 6. On only the second page of the novel, Raskolnikov first thinks about having the feeling of compulsion to confess and say things about his intentions, even though he has yet to commit the actual offenses.

118. *Id.* at 80.

Unbeknownst to Raskolnikov, the summons is for an alleged debt with his landlady. Raskolnikov, heavy with a guilty mind, immediately assumes the police are on to him already. On the way to the police station, his mind again turns to confession, thinking that “[i]f they question me, perhaps I’ll just tell them everything . . . I’ll go in, fall on my knees, and confess everything.”¹¹⁹ Then, once at the police station, Raskolnikov feels the need to bare his soul about something and humanize himself, so he goes into a long story about his failed engagement—even when the police officer present admonishes Raskolnikov saying “[n]obody ask[ed] you for these personal details, sir, we can’t waste our time on this.”¹²⁰ But based upon an overwhelming urge to explain himself, Raskolnikov still goes into all the details, while admitting that “I agree with you . . . it is unnecessary.”¹²¹ Then, shortly thereafter, while still in the police station writing out a statement about the complaint concerning his debt, Raskolnikov, yet again, feels overwhelmed to confess—but this time to all the crimes. This is at least the fourth time in the novel that he contemplated confession, and several times in short succession immediately after committing the murders. On this occasion, while writing out his statement,

A strange idea suddenly occurred to him—to get up at once, to go up to Nikodim Fomich, and tell him everything that had happened yesterday, and then to go with him to his lodgings and to show him the things in the hole in the corner. The impulse was so strong that he got up from his seat to carry it out.¹²²

The “confession” theme remains a constant theme as the story progresses. Raskolnikov is constantly fighting the urge to confess. When Raskolnikov returns to his flat, “[h]e had decided to go to the police station; [and] soon it would be over.”¹²³ Shortly before that point, but after his first police station visit, Raskolnikov observes to himself that he would go to the police station and “put an end to it.”¹²⁴

119. *Id.* at 94.

120. *Id.* at 102.

121. *Id.*

122. *Id.* at 103–04.

123. *Id.* at 169.

124. *Id.* at 165.

In addition to the urge to confess because of self-loathing (as he felt right after the murders) or because he was rattled and confused by the police (as he felt at the police station when responding to the summons over a debt), Raskolnikov also considers confessing because of distain for the police and their investigation. For instance, at one point in the latter half of the novel, Raskolnikov expresses the desire to tangle and to struggle with Porfiry again, saying that he (Raskolnikov) was desirous of “some challenge . . . some attack.”¹²⁵ Indeed, many of Raskolnikov’s early impulses to confess are based on his desire to show the police up or out of anger at what he perceives as police ineptness.¹²⁶ Thus, one of the many reasons why Raskolnikov contemplates confessing is in anger in order to show how much he hates the police and their inept investigation (as Raskolnikov sees it).¹²⁷

Indeed, the number of times Raskolnikov vacillates between justifying his behavior¹²⁸ or contemplates confessing to the police throughout the novel (for one reason or another) is staggering and illustrates the complexity and duality contained in virtually every individual. Raskolnikov represents the battle between good and evil waging within many individuals and seeks to tell someone about this internal struggle and what was done—even if the person is still wrestling with the morality or the legality of the action internally. Thus, sporadically throughout the novel, Raskolnikov has the seemingly contradictory ability to rationalize the most brutal and heinous of crimes, namely a double homicide of two innocent individuals. In fact, in some of his moments wherein he rationalized and justified the homicides, the justifications (and how Raskolnikov’s characterizes them) are abhorrent. For instance, in one of the first instances in the novel wherein

125. *Id.* at 419.

126. At one point, Raskolnikov mocks the police for not catching the culprit. *Id.* at 159. He even goes so far as to tell them how he would have escaped the crime scene if he were the culprit. *Id.* at 159–60. At another point, as he was exiting the police station, Raskolnikov cannot help but to throw out an insult on the way out the door, telling the police officer he was a “comical one.” *Id.* at 327.

127. *Id.* at 242.

128. While the number may differ slightly with each reader of this novel (and what certain ambiguous statements might mean), this author noted over fifteen major instances throughout the novel wherein it was clear to the reader that Raskolnikov was expressly trying to justify his crimes to himself or others. Many of these instances of justification take place in a few words, such as what he did “was not a crime,” *id.* at 71, or that the person he killed was not “a human being, but a principle! [He] killed a principle.” *Id.* at 261. He even claimed his victim was most deserving of being killed in his mind, thinking that “[o]f all the lice I picked out the most useless one.” *Id.* at 261.

Raskolnikov expressly indicates that it is acceptable to kill an old pawnbroker for the betterment of society, he states to himself that such a course of conduct is “not a crime.”¹²⁹ However, as the novel progresses, his explanations for why it is not a crime become more repugnant. In the third chapter of Part Three of the novel, Raskolnikov believes that the act was a “grand and noble object”¹³⁰ and that “the old woman doesn’t matter . . . I didn’t kill a human being, but a principle!”¹³¹ He also believes the old female pawnbroker, a fellow human being, was most deserving of being killed, thinking, “of all the lice I picked out the most useless one.”¹³² Then, when Raskolnikov finally confides in Sonia about his crimes, Raskolnikov proclaims, “I’ve only killed a louse, Sonia, a useless, loathsome, harmful creature.”¹³³ And while Raskolnikov admits to Sonia a sentence later that “I know too that it wasn’t a louse,”¹³⁴ he clearly had not definitively changed his views about the value of the pawnbroker’s life. This becomes clear towards the end of the novel, and right before his confession, when Raskolnikov again denies any criminality, he says, “Crime? What crime? That I killed a vile noxious insect, an old pawnbroker woman, of no use to anyone! . . . Killing her was an *atonement* for forty sins.”¹³⁵ He further suggests that he was ultimately turning himself in not for the crime itself. Instead, he contemplates turning himself in for the shame he feels of not going through with the original plan: to plunder the pawnbroker’s hoarded wealth and return it to the poor in society.¹³⁶ Very late in the novel, Raskolnikov comments, “I am going at once to give myself up. But I don’t know why I am going to give myself up.”¹³⁷ He also indicates late in the novel that he made a mistake in confessing¹³⁸ and wonders whether he could “stop and retract it all . . . and not go?”¹³⁹ In fact, given that Raskolnikov expresses so many different reasons for confessing throughout the book, no one can definitively say what the conclusive factor was, beyond Sonia’s pleadings to him to do so.

129. *Id.* at 71.

130. *Id.* at 261.

131. *Id.*

132. *Id.*

133. *Id.* at 395.

134. *Id.*

135. *Id.* at 491 (emphasis added).

136. *Id.* at 491–92.

137. *Id.* at 491.

138. *See id.* at 515 (doubting his conviction to confess).

139. *Id.* at 496.

However, throughout the novel, there is the recurring theme of Raskolnikov's struggling with the duality of his character and soul. He is struggling with the fact that he was capable of committing acts of compassion and empathy, but at the same time he is capable of acts of great depravity, like killing two innocent women based upon a flawed theory that certain "extraordinary" people in society can kill for the greater good.¹⁴⁰ Raskolnikov's internal struggle can be seen throughout the entire book. For instance, at one point, Raskolnikov laments that "I murdered myself, not her."¹⁴¹ He also tells Sonia that he did not have the right to kill and that his philosophy that prompted him to action was flawed.¹⁴² He also indicates that he was internally tortured with what had occurred, and that he constantly struggles with remorse and guilt.¹⁴³ Yet, at the same time, as explained above, in between these bouts of regret and remorse, he continues to lapse into defending his actions.¹⁴⁴

IV. CONCLUSION

A good lawyer being involved with a suspect like Raskolnikov can ensure: [1] that the suspect is resisting the urge to confess to multiple individuals (for different reasons—when the suspect him or herself might not be entirely certain); [2] that he does not seek out the police to vaguely talk about the case as he does on multiple occasions; and [3] that if the suspect truly feels the need to alleviate the weight of the burden he or she alone is carrying, his or her lawyer can serve in that role as well. This is not to say that certain individuals should not confess to their crimes. However, the individuals should only do so after they have been properly educated as to the various legal options and consequences. That is why lawyers have been called *counselors* of law for centuries. Thus, the lessons that can be learned by modern criminal defense attorneys—in light of both solid police tactics displayed by Porfiry and a suspect's strong desire and compulsion to confess—are

140. Raskolnikov's delineation of this philosophy is best laid out in the discussion of an academic article with Porfiry that Raskolnikov had written some months before the murders. *See id.* at 246–53.

141. *Id.* at 398.

142. *Id.* at 398–99 (discussing with Sonia the error of his flawed theory and attempting to repent for his transgression).

143. *Id.* at 261–62 (showing how the guilt has tortured him and driven him to madness).

144. *Id.* at 262 (hating and blaming the pawnbroker for his actions).

many. It is a cautionary tale that the need for such legal assistance and counseling is obvious, and the book provides a list of pitfalls for the unsuspecting criminal defense client. For example, for the modern criminal defense attorney, it may be helpful to read the work to understand the strong compulsion of a defendant to justify their behavior to the police and other individuals, and to caution his or her clients to resist this urge until properly advised and legal counsel has had the opportunity to advise the client of legal options and allow the client to explain his or her versions of events. This is not to say that lawyers should never encourage clients to make confessions in any circumstance, which Pedderdine University Professor of Law Robert F. Cochran, Jr., has argued is an unfortunate default position and practice by many defense attorneys.¹⁴⁵ Rather, before the suspect makes a statement, “the lawyer should explain the evidence against the defendant, available defenses, options for pleading guilty or not guilty, and the consequences of those options.”¹⁴⁶ Of course, this knowledge should reinforce the practice of any good defense counsel, namely to ensure his client does not engage in self-incrimination (or even a false confession for attention).¹⁴⁷ As is evident in reading *Crime and Punishment*, it appears extremely important to people to justify their behavior to others, and this impulse was certainly the case with Raskolnikov in *Crime and Punishment*, and it is a central theme of the book. Indeed, “Dostoevsky’s *Crime and Punishment* is a story about confessions”¹⁴⁸ and illustrates the central “urge of the offender to confess and curative effect of the confession.”¹⁴⁹ The goal of a good criminal defense attorney is to ensure that his or her client is not trying to please too many people by trying to justify his or her behavior to everyone who crosses the person’s path before his or her lawyer.

Individuals suspected of committing a crime face great legal risk to confess, whether they are guilty or innocent, based on a combination of actors that are working against them. Some of these factors are: sophisticated police interrogation tactics, human

145. Cochran, *supra* note 17, at 348–50.

146. *Id.* at 339 n.65 (citing *State v. Holland*, 876 P.2d 357, 362 (Utah 1994) (Stewart, J., concurring)).

147. Kitai-Sangero, *supra* note 14, at 243–44 (stating that Nikolay, an innocent character in *Crime and Punishment*, made a false confession).

148. *Id.* at 231.

149. *Id.*

tendency—whether guilty or innocent—to justify one’s behavior, and the exhaustion and fatigue an individual endures due to stress and anxiety—and just to end the process, suspects are more likely to confess. These three factors create the perfect witch’s brew for the unsuspecting and unrepresented criminal defendant in today’s system, just as it was for Dostoevsky and his fictional character Raskolnikov in *Crime and Punishment* written so many years ago. It is for this reason, among many others, that the book is still relevant and resonates with legal scholars and courts over 150 years after its original publication half-way across the world in Russia.