

Beyond Moral Evangelism: On the Rejection of Punishment in Late Tolstoy

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In *Job's Balances*, the Russian philosopher Leo Shestov evokes Tolstoy's 1903 short story "After the Ball" as a metaphor for Tolstoy's two worldviews.¹ The story contrasts the elegance and refinement of a splendid ball with the savage brutality of a horrific spectacle: a Tartar man made to run the gauntlet as punishment for deserting. Shestov argues that this contrast reflects the evolution of Tolstoy's own view of life. "In his youth," Shestov writes, "Tolstoy described life as a fascinating ball; and later, when he was old, it was like a running of the gauntlet" (Shestov 162).

If Shestov is right, the central image of Tolstoy's later period is brutal corporal punishment. Indeed, Tolstoy's graphic, gut-wrenching representation of violence in "After the Ball" is one of the most powerful condemnations of corporal punishment in nineteenth-century Russian literature. The internal narrator, Ivan Vasilievich, an old-fashioned man of advanced age and uncertain career, claims that witnessing this event in his youth changed his entire life overnight. He felt deep emotional anguish and physical disgust, which led him to abandon plans to join the army and to question his failure to grasp something fundamental to the profession of a military officer, or even of a civil servant. In spite of that, Ivan Vasilievich remains somewhat ambivalent about his reaction:

"Do you think that I then decided that what I had seen was a bad thing? Not in

the least. 'If this has been done with such assurance, and has been recognized by everyone as necessary, they, it stands to reason, know something I don't,' I thought to myself and tried to understand. But no matter how much I tried, I could never understand it even later. And not being able to grasp it, I could not enter military service as I had intended, or any other service, and have been of no use whatsoever, as you can see." (*PSS* 34: 124)²

What Ivan Vasilievich cannot understand is how seemingly unjustifiable violence against a human being may be regarded as justifiable, even necessary. In fact, his suggestion that this understanding is a prerequisite for any form of civil service further hints that punitive violence lies at the very core of the modern state.³ Yet, while unable to emotionally accept such punishment, Ivan Vasilievich nonetheless refrains from categorically rejecting it. That punishment is widely accepted and recognized as fundamental to the functioning of the state makes him question his responses, as much as the practice itself.

Ivan Vasilievich's more tentative view contrasts starkly with the strident response of the main character of *Resurrection*, Prince Nekhliudov. Conceived as a work "*de longue haleine*" (of long breath), this last of Tolstoy's long novels includes many of the major themes that occupied Tolstoy in the 1880s and 1890s. In the diary entry from April 30, 1889, Tolstoy identifies punishment as one of these themes

(Ломунов 38-9). Tolstoy finished *Resurrection* a decade later, concluding the last chapter by bringing Nekhliudov to a sweeping rejection of all punishment. This ending, which includes extensive quotations from the *New Testament*, has led readers to understand Nekhliudov's stance on punishment in terms of Christian forgiveness and as a reflection of Tolstoy's own position.

This interpretation is not surprising. Tolstoy expressed similar views in his own voice in numerous later works, including his 1891-1893 treatise "God's Kingdom Within You" and the 1908 pamphlet against the death penalty "I Cannot Be Silent." While Nekhliudov's final position on penal politics largely reflects Tolstoy's own, it does not come to him as a spontaneous revelation. Rather, as Tolstoy repeatedly reminds us, the radical outlook Nekhliudov adopts in the end is the result of a long evolution.⁴

Initially, as a juror in what turns out to be the trial of Ekaterina Maslova, a woman he seduced and abandoned years before, Nekhliudov feels that he is participating in a "serious and important social affair" (*PSS* 32: 30). While he quickly becomes disillusioned about the fairness, and even the rationality, of this particular trial and verdict, it is not until much later in the novel that he condemns *all* trials as "insane and criminal" (322). At first, he simply resolves to "study, analyze, clarify to himself, [and] understand all this business of courts and punishments, in which, he felt, he sees something others do not see" (223-4). Like Ivan Vasilievich in "After the Ball," he initially questions his own responses. Appalled by the irrationality and brutality of the system, he nevertheless assumes that his failure to understand what most people accept as necessary and even good may be a problem that lies with him. In search of answers, he turns at this time not to the *New Testament* but to books on law, criminology, and penology. Although he fails to find what he seeks, he reads these books "carefully," attributing his dissatisfaction to a lack of free

time and hoping to clarify his confusion through a more systematic reading (314).⁵ It is these readings on law and criminology that will be the focus of this paper.

One may wonder why we should care about something that Nekhliudov rejects in the end. I suggest at least two reasons. First, an examination of this largely neglected intellectual context can help us better see the trajectory of Nekhliudov's development. James M. Holquist has already discussed the importance of Nekhliudov's readings to his moral progress. He has argued that its stages are marked by Nekhliudov's "attempts to square *his own* experience with teachings derived from *actual* books" (Holquist 553). Like the writings of Herbert Spencer and Henry George in his younger years, or the *New Testament* at the novel's end, the books on law constitute one such stage. While Nekhliudov ultimately discards these theories, we can profit from examining his path.

This path deserves particular attention given the similarity between Nekhliudov's and Tolstoy's own views. Like his character, Tolstoy condemns punishment. Also like his character, he does not arrive at this condemnation effortlessly. By Tolstoy's own admission, it was a result of long and difficult reflections. In a 1899 letter to a correspondent of the French newspaper *Le Figaro* who had asked Tolstoy whether "society has the right to punish," Tolstoy stated that this question had occupied him for a long time and that he had tried his best to resolve it. The answer, he added, was contained in the French translation of *Resurrection* about to come out in "L'Echo de Paris" (Lomunov 271). Thus, if Nekhliudov's evolution mirrors Tolstoy's own, examining the sorts of questions that he struggles with can afford insight into Tolstoy's mind as well.

Second, if we view *Resurrection* as Tolstoy's contribution—and response—to the contemporary debate on punishment, it is helpful to understand the substance of this debate. The criminologists and penologists

whom Nekhliudov reads occupy a position in *Resurrection* similar to that of historians in *War and Peace* and materialist philosophers in *Anna Karenina*. While we know that Tolstoy repudiates the views of both groups, understanding their positions is crucial for clarifying Tolstoy's own attitudes. Furthermore, unlike the invented names of Keiss, Wurst, Knaust, and Pripasov (who in *Anna Karenina* stand as a collective caricature of materialist approaches to the mind-body problem), the criminologists referenced in *Resurrection* are real. In this regard, they are closer to the philosophers that Levin reads toward the end of *Anna Karenina* than to the make-believe materialists. These other philosophers, all of them idealists, include Plato, Spinoza, Kant, and Schopenhauer, all of whom had a profound impact on Tolstoy's own thought. Although in the end these philosophers also fail to satisfy Levin's spiritual strivings, Tolstoy treats them with considerably more care and respect than their invented materialist counterparts.

Viewed in this light, Nekhliudov's readings have an even larger claim on our attention. If the idealist philosophers read by Levin helped form Tolstoy's views on philosophical questions, the criminologists and penologists read by Nekhliudov may have played a similar role for Tolstoy's views on punishment.

What this paper seeks to accomplish, then, is to broaden the framework in which we usually regard Nekhliudov's—and Tolstoy's—stance on punishment. Traditionally, Tolstoy's repudiation of punishment as morally indefensible has been linked to his idiosyncratic understanding of Christ's teachings. According to this standard reading, criminological theories mentioned in *Resurrection* are invoked merely to be rejected summarily as incompatible with the principle of non-resistance and the imperative of forgiveness that in Tolstoy's eyes constituted the main legacy of Christ's example.

Of course, the centrality of these ideas to Nekhliudov's ultimate rejection of punish-

ment is indisputable. Yet, this reading is not without problems in that it fails to account for some important nuances of Tolstoy's position.

For instance, if various criminological theories are noted only to be rebuffed, how do we account for Tolstoy's thinking about criminality in discernibly sociological terms? Or, as another example, how do we explain Nekhliudov's and Tolstoy's persistent concern with punishment's lack of utility? Even at the novel's end, when he finally arrives at a repudiation of all punishment, Nekhliudov rejects punishment first of all as "useless and even harmful," and only then as "immoral and cruel." Nekhliudov also implies that had it been proven to his satisfaction that punishment reduces crime or corrects the criminal his conclusions might have been different.⁶

These examples suggest that the standard explanation of Nekhliudov's stance on punishment unnecessarily oversimplifies a more complex position. Nekhliudov's thinking is guided by more than moral considerations. He also ponders purely instrumental arguments. In this paper, I look beyond the principle of non-resistance and the imperative of forgiveness to account for Tolstoy's rejection of punishment in light of contemporary punishment theory and in relation to his metaphysics of the self. In doing so, I attempt to relate the sociological aspect of Tolstoy's thought to the metaphysical.

***Resurrection* and Emerging Criminological Science**

When Prince Nekhliudov resolves to abandon his life of privilege and comfort and to connect his destiny with that of Katiusha Maslova, a former prostitute, he steps into an unfamiliar world of misery, poverty, and injustice. After Maslova is wrongfully convicted, Nekhliudov does not simply act as her advocate but also assumes the role of what we might now call a prison activist. Shocked by the brutality of prison conditions, the inhumanity of prison regulations, and the outrageous indifference of the authorities, he initially attempts to

intercede on behalf of Maslova's hapless companions, who turn to him for assistance. But when he becomes overwhelmed by the number of petitioners, he shifts his attention from practical activism to theoretical inquiry.

As a true son of his positivistic age, Nekhliudov begins by trying to order the observations he has amassed. On the basis of his conversations with inmates, attorneys, priests, and guards, Nekhliudov classifies the convicts he has met into five categories ranging from innocent victims of judicial mistakes like Maslova, to the most depraved and violent individuals like the murderer Feodorov. In Nekhliudov's opinion, however, none is any more deserving of punishment than the very people who have imprisoned them. Even the most dangerous and corrupt individuals are no exception. To Nekhliudov, they are not perpetrators but victims, whose guilt before society pales in comparison with society's guilt before them (312).

Nekhliudov's taxonomy at once follows and subverts Western penology at the time, which for nearly a century had been searching for optimal principles of classifying criminals both within and outside of prison. Unlike Russia, where prisons for common criminals like Maslova did not differentiate inmate types (Гернер 353), in the West the idea of arranging convicts into classes had long been considered a key element in crime management and punishment modernization. While the debate over what to classify (offenses or offenders), and how to classify (offender's age, gender, seriousness of the offense) was never definitively settled, all proposed systems aspired to put crime management and punishment administration on a more scientific foundation. Later in the century, the drive to classify was passed on to the practitioners of the new science of criminology whose classifying principles both reflected and shaped their beliefs about the nature and origins of criminality.

In *Resurrection*, these pioneers of criminology are mentioned twice: first in the swag-

gering speech of the public prosecutor who evokes the fashionable theories to explain Maslova's "crime" (72) and later in the context of Nekhliudov's struggle to restore some sense in what now, after Maslova's absurd verdict, comes to strike him as the supremely baffling institutions of criminal courts and prisons (311). He carefully reads the works of Lombroso, Ferri, Garofalo, Tarde, von Liszt, and Maudsley and finds much that is clever, learned, and interesting. But he is still dissatisfied: He seeks the principle by which some people punish others; the authors of these books, however, simply accept the necessity of punishment as axiomatic and *a priori* (313). Nekhliudov attributes his lack of success to the unsystematic character of his studies and continues to read, hoping to get the answers he seeks.

While by no means exhaustive, this list of authors contains most leading figures in the debate on the origins of criminality within the new science of criminology. The first three names on Nekhliudov's list—the Italian psychiatrist Cesare Lombroso, the magistrate and prosecutor Baron Raffael Garofalo, and the lawyer Enrico Ferri—represent the Italian School of Criminal Anthropology. This school dominated the criminological debate from Lombroso's publication of *L'uomo delinquente* in 1876 until the early 1910s, the time when Tolstoy was working on *Resurrection*.⁷

Lombroso and his followers understood criminality as an effect of innate physiological pathology, the traces of which were imprinted on the criminal's very body in the form of anatomical aberrations. This view of criminal propensities in purely biological terms to the exclusion of social factors and the reality of free will precluded a possibility of reform in what Lombroso and his followers called "the born" criminal. According to them, the only means of containing the danger posed by such a criminal was execution and permanent removal from society.

The opposing side of the debate challenged this concept of innate criminal-type as

inconclusive and misleading. Instead of looking for the origins of criminal behavior in individual anatomy, the anti-Lombrosian school emphasized the formative influence of environmental and social factors. Crime, in their view, stemmed not from innate physiological aberrations but from poverty, ignorance, and bad example, all of which played at least as big a role as the criminal's personal disposition. On Nekhliudov's list, this side of the debate is represented by the prominent French criminologist Gabriel Tarde.

It should come as no surprise that Nekhliudov's readings would accurately reflect the current state of discourse on crime and its management. Tolstoy was intensely interested in the various issues related to the Russian justice system, and in the course of writing *Resurrection* he repeatedly sought advice on legal, procedural, and other questions from a number of experts.⁸ He visited courts and prisons in Tula and Moscow and read extensively about prisons and exile in Russia.⁹ In the last year of writing *Resurrection*, Tolstoy also reread Dostoevsky's *Notes from the House of the Dead* and praised it in his diary for the "original, moral attitude of the author to the subject" (Кузина 46). Besides Dostoevsky's portrayal of the prisoners, which left a strong imprint on *Resurrection* (Кузина 46-8), Tolstoy must have also taken note of Dostoevsky's reflections on punishment: on the incommensurability of crimes and punishments; on the disparity of pain that the same punishment entails for different people; on the inevitable failure of the law to address the incomputable variation of individual character and experience. While Dostoevsky's narrator Gorianchikov never advocates a blanket dismissal of all punishment, his view that these problems are insoluble, like the task of "squaring a circle," harmonizes with Tolstoy's later attitude (Достоевский 43).

As Nekhliudov's reading list suggests, Tolstoy also followed developments in Russian and Western criminological thought. In an early manuscript, he considered naming

Nekhliudov's attorney Fainitsyn (in the last version he is called Fanarin), a name evocative of I. Ia. Foinitskii, a famous Russian criminologist whose books Tolstoy received from Maklakov (33: 350). In August 1897, Tolstoy met personally with Cesare Lombroso at Yasnaya Polyana (Ломброзо; М. Толстой 144-5). He also had ample opportunity to follow criminological debate in the Russian press, where attention to the issue was further heightened by the flurry of international congresses in criminal anthropology and penitentiary science that took place in the last fifteen years of the century.¹⁰ *Вопросы философии и психологии*, for example, a periodical to which Tolstoy both subscribed and contributed, featured numerous articles on criminology and reviews of the proceedings of the international meetings.

One such review was dedicated to the Second Congress of Criminal Anthropology held in August 1889 in Paris.¹¹ The publication (originally delivered as a lecture at the Moscow Psychological Society on October 28, 1889) was a report by a participant, N. Bazhenov. It was followed by a response by A. K. Vulfert (Возражение). Between them, the two reports contain references to all of the authors Nekhliudov reads with the exception of von Liszt. They also outline these criminologists' positions, focusing in particular on the reports of Cesare Lombroso and Gabriel Tarde. It is in light of these two names—and the two schools of thought they represent—that I would like to return briefly to Nekhliudov's classification.

Despite Nekhliudov's apparent dismissal of all criminological theory, his position in relation to the debate can hardly be described as even-handed. The novel reflects this debate most poignantly in the context of Nekhliudov's peculiar classification of inmates. The Lombrosian notion of the "criminal type" is invoked here only to be rejected as unhelpful and misguided. Nekhliudov's attitude is fully consistent with Tolstoy's own antipathy to Lombrosian theory and dislike of Lombroso

himself. In his account of the visit to Yasnaya Polyana, Lombroso writes candidly of his failure to convince Tolstoy of the existence of the born criminal, despite what he believed to be Tolstoy's own descriptions of this type in his fictional works, including *Resurrection*.¹² But while Nekhliudov's repudiation of Lombroso seems fairly categorical, his response to the sociological school, represented in the novel by Lombroso's most prominent opponent Gabriel Tarde, seems more nuanced. For example, in painting even the most dangerous class of criminals not as villains but as victims of social inequities, Nekhliudov sides with this school on the question of crime's origins (312).

The sociological dimension of the novel's view of crime was not lost on Tolstoy's contemporaries.¹³ In a 1900 lecture devoted to the recently published *Resurrection*, the prominent lawyer A. S. Goldenveiser argued that for Tolstoy crime was not an expression of individual malevolence or ill will. Instead, crime was the result of bad example, neglect, and "mercenariness and egoism that underlie the existing economic system" (Гольденвейзер 35). Goldenveiser summarized Tolstoy's views in his lecture's title: "Crime as Punishment, and Punishment as Crime." A product of social adversity, crime is punishment to society out of whose evil and injustice crime is born. Punishment, conversely, is the most scandalous wrong, the most atrocious crime society can perpetrate against its individual members.

Goldenveiser's discussion captures accurately a tension in Tolstoy's thought. While his view of crime dovetails that of the sociological school, his view of punishment does not. Even though the proponents of this school saw crime as a consequence of social conditions beyond the individual's control, they still believed in the need for punishment within civil society. For instance, the Russian jurist Nikolai Tagantsev argued that the fear of punishment was itself a significant factor in determining our actions (Таганцев 33). V. D.

Chizh, a psychologist whose works Tolstoy read and cited in his diary, held a similar opinion (Чиж 15).¹⁴

Gabriel Tarde, a leader of sociological school whose works both Nekhliudov and Tolstoy had in their libraries, was so troubled by a strong tendency toward exoneration in French courtrooms that he produced a theoretical treatise to restore the idea of legitimate and functional punishment.¹⁴ One way in which his 1890 *Penal Philosophy* (extensively reviewed by V. D. Spasovich in *Вестник Европы*) sought to strengthen the notion of personal responsibility was by tackling the issue of the metaphysics of the self. In the following section, I examine Tolstoy's and Tarde's accounts of the self to see how, despite some striking similarities, they arrive at opposing positions on punishment.

The Self in Tolstoy and Tarde

Tarde's strategy is not to dispute either the deterministic or the idealist accounts of the self that infiltrate courtrooms and muddle the most transparent of cases. Instead, he wants to extricate the discussion from contexts that treat the self as a philosophical absolute. He thus accepts the deterministic assumption regarding the necessity of all action and even suggests that a consistent application of its postulates would demand viewing the self as a point of double convergence—not only of its past outcomes but also of its future causes: "For in truth why could you not say, *if necessity be the universal rule*, that my true cause is in the future, which is not yet, as well as in the past, which is no more" (86). By this view, it is not just our ancestors who speak through us but also our children and grandchildren. "Thus," Tarde concludes in the vein of Parmenides and Spinoza that we will also see in Tolstoy: "*I must always have existed, I must exist forever*, and I will not truly be—I am." Similarly, Tarde seems to concede the idea of the self's unfixing, mutable nature. "The mind," Tarde writes, "or to put it better, the soul, [...] is like a sky in which there is but a single star,

yet a star ever wandering as its caprice may dictate and changing its color, that which is called 'myself'" (92).

And yet to Tarde neither the deterministic nor the idealist account of the self presents a problem because he defines the self as first and foremost a social entity, a constituent of the social fabric. Society, he writes, "is a collection not of organisms exactly, nor even of souls, but of 'myselfs.' It is the 'myselfs' alone which are bound together by social and legal ties; [...] it is the 'myselfs' alone which are able to contract, to give, to make their wills and commit crimes or do virtuous acts as well" (92-3). In the world of phenomena we inhabit, the self's capacity for modification need not lead to the erosion of responsibility. According to Tarde, in this world the self displays enough conformance with itself that it endures through time to be held accountable, and punishable, for its actions.

It is interesting to compare Tarde's discussion to Tolstoy's own reflections on the self in his late writings, particularly in his treatise *On Life*, completed shortly before he began preliminary work on *Resurrection*. This comparison reveals not just a curious overlap of certain ideas about the self that we find in Tolstoy and Tarde. It also shows how, despite these overlaps, the ultimate visions they delineate lend themselves to contrasting positions on punishment.

Concerned with the questions of metaphysics and personal immortality, *On Life* conceptualizes the self in ways similar to Tarde's ideas.¹⁶ Like Tarde, Tolstoy considers the possibility that the self is a product of past effects or that "the causes of peculiarities of my 'self' lie in the peculiarities of my parents and conditions that have had influence over me and over them" (*PSS* 26: 407). And like Tarde, he finds this view unsatisfactory. Logic demands an extension of this chain of causes to infinity, rendering the concept of the past and the future inoperative. The authentic existence of the self, Tolstoy argues, is as much connected and dependent on the invis-

ble past as it is on the equally indiscernible future (*PSS* 26: 420). In contrast to the pessimistic view of life as a biological process that takes place in time and space, Tolstoy offers what he believes is a more hopeful vision"

Life is what I am being conscious of within myself. And what I am conscious of within myself is not that I have been and that I will be, but I am conscious of my life in such a way that I am—at no point in time do I have a beginning, at no point in time do I come to an end. (400).

And elsewhere, even more clearly, he writes, "The individual realizes that he will not die only when he realizes that he was never born but has always been, that he is and that he will always be" (417). Like Tarde, Tolstoy conceives of the self as existing in the everlasting present.¹⁷

Like Tarde, Tolstoy recognizes the fluidity of the self, though with an important distinction: for Tarde the self's mercurial nature (which he does concede in some other realms) becomes largely annulled in the world of time, space, and causality; for Tolstoy the proper domain where this mutability makes itself known is precisely the world of phenomena. "One of the most usual and widespread superstitions," he writes in *Resurrection*,

is that each person has his own definite qualities, that there exist kind people, intelligent people, stupid, energetic, apathetic, and so on. People are not like that. We can say of a person that he is more often kind than mean, more often intelligent than stupid, more often energetic than apathetic, and vice versa. But it will be incorrect if we say of a person that he is kind or intelligent, and about another that he is mean or stupid. And yet we always sort (делим) people in this way. This is incorrect. People are like rivers: the water in each of them is the same but each river can be sometimes narrow, or fast, or wide, or

slow, or transparent, or muddy, or warm. The same with people. Every person has seeds of all human qualities, and sometimes he displays some of them, other times others and he often may be quite unlike himself remaining in the meantime the very same person (*PSS*32: 193-4).

Just as rivers, in Heraclitean fashion, perpetually alter their characteristics, so do people change continuously, never coinciding with themselves, never becoming a stable value as they do for Tarde.¹⁸ Despite this unceasing change, however, people do retain their identity.¹⁹

Insight into how Tolstoy understands the workings of this dialectic of continuity and change is afforded by a related discussion in *On Life*, where he argues that it is incorrect to think of our consciousness as one and the same, identical to itself at any point in time. Instead, we have a “series of consecutive consciousnesses that we may subdivide (дробить) to infinity” (*PSS* 26: 403). What links these consecutive but discrete consciousnesses and ensures our sense of being “the very same person” is our predilection to like some things and dislike others. This predilection, Tolstoy explains, is often referred to as character, and we often take character to mean peculiar characteristics of an individual that have formed under the influence of particular circumstances or “conditions of time and place.” But this is incorrect, for the predilection in question does not originate from those conditions. To the contrary, those conditions affect or do not affect the individual only because the individual, upon entering this world, already possesses a predilection to like some things and dislike others. This explains why people born and raised under the same circumstances can be drastically different.

Tolstoy calls this predilection to like and dislike certain things “a particular relationship to the world” and equates it with authentic selfhood:

That which unites all the disparate consciousnesses that in turn come together within our one body, is something quite definite, although independent from the conditions of time and place, something we bring into this world from the realm that exists outside of time and space, and this something, which is my certain, particular relationship to the world, is my real and authentic self. (405)

Reading Tolstoy side by side with Tarde highlights the routes that take them to their dramatically different destinations. While they seem to share a belief in social roots of crime and recognize the dialectic of the self’s permanence and mutability, the ultimate visions of the self they develop bring them to strikingly different views on punishment. Tarde understands the (juridical) self as embedded in the world of phenomena where it holds sufficient congruence with itself to be held accountable for its actions.

For Tolstoy, the authentic self, which is ultimately responsible for how we engage with the world both through impression and action, is located outside the world of phenomena, in a realm free from the operations of cause and effect, outside time and space. It is not surprising, therefore, that whereas Tarde’s self is punishable in this world by positive law, the Tolstoyan self is not. Tolstoy’s view of the authentic self as residing outside the sphere of phenomena displaces punishment beyond its borderlines.

In Tolstoy studies, the idea of true justice as belonging to the non-phenomenal realm was introduced by Boris Eikhenbaum. In *Tolstoy in the Seventies*, he interprets Tolstoy’s epigraph to *Anna Karenina* in terms of Schopenhauer’s notion of “eternal justice,” i.e., justice that takes place “in the sphere of the thing-in-itself, which is different from that of the phenomenon” (Schopenhauer, *World* 1: 462). While Eikhenbaum’s interpretation is illuminating, it is worth pointing out that Schopenhauer himself never rejected the idea

of punishment in this world. Although in the passage cited by Eikhenbaum Schopenhauer disagrees with Kant about the nature of punishment's justification, Schopenhauer (unlike Tolstoy) never doubted that such justification exists. In fact, while both Kant and Schopenhauer divided the universe into the phenomenal and the noumenal, neither believed that "eternal justice" was a proper substitute for punishment in this world. Kant argued that punishment must be imposed in all cases because the criminal has committed a crime.²⁰ Schopenhauer, in contrast, viewed punishment not as a categorical imperative, but as the law's means to announce its own inevitability (Schopenhauer, *World* 1: 449).

Neither of these justifications appeals to Tolstoy. Instead, the self he creates from the fragments of these philosophers' metaphysics further buttresses his position on the illegitimacy of earthly punishment.²¹ In this regard, Tolstoy's strategy appears to be a reversal of Tarde's. Whereas Tarde puts aside philosophical conceptions in favor of the socially embedded self that is available for punishment, Tolstoy sidesteps the ethical and social justifications of punishment even of those thinkers on whose metaphysics he relies in other contexts.

"Resurrection" and Moral Reform

That Tolstoy contemplated the problem of punishment's justification is further evidenced by the following diary entry. On July 20, 1889, he wrote, "In America they execute in privacy and painlessly (with electricity). If this is not to threaten and not to inflict suffering, then what for? To remove from life. But who can take it upon himself to solve the question, who should be removed from life?" (*PSS* 50: 110). Tolstoy's language implies skepticism about unnamed opponents' claims that painless death was meant merely to incapacitate the criminal rather than to deter him or to avenge his crime. Given Tolstoy's well-known fear of death, it is fitting that he would be unconvinced by such claims. But

even if opponents were to acknowledge that the real purpose of the death penalty was to instill fear or to inflict pain (physical or moral), Tolstoy would still forcefully object. By his thinking, no temporal authority has the moral right to determine who deserves to live and who to die.

The above diary entry mentions only two of the three most prevalent justifications of punishment: deterrence and retribution. The third—punishment as a means of moral reform—was probably omitted because of its incompatibility with the death penalty, the original subject of Tolstoy's reflections. In this section, however, we will see that like deterrence and retribution, reformation as a rationale for punishment also gets little traction in Tolstoy's thought. I argue that the reason for this lies in Tolstoy's view of the self's inaccessibility.

One apologist of reformatory punishment was the idealist philosopher Vladimir Soloviev.²² In a series of articles that appeared in *Вестник Европы* in 1895, Soloviev outlined his ideas about law, morality, and punishment, indirectly polemicizing with Tolstoy's maximalist views. In "Morality and Law," for example, Soloviev wrote that law occupies an "intermediate sphere" between reality and the ideal and serves as merely an instrument of realizing a minimum good and limiting evil. The task of the law is not to transform the world, with all its existing evil, into heaven on earth, but to prevent its transformation into hell (446, 454). Bad laws and shortcomings in the justice system are not sufficient grounds for rejecting law *en masse*. Such comprehensive rejection, Soloviev argues, is impermissible precisely on moral grounds (444, 446).

On the question of punishment, Soloviev also represents a poignant contrast to Tolstoy. Like Tolstoy, he criticizes the principles of deterrence and retribution because he sees them as incompatible with morality. Since morality, in the Kantian formulation at least, forbids making human beings into mere means to an end external to them, we act

immorally if we see punishment only as a means of protection or satisfaction of the victim or of society. Unlike Tolstoy, however, Soloviev does not reject punishment wholesale. In "The Question of Criminal Law from the Standpoint of Ethics" (Уголовный вопрос с нравственной точки зрения), Soloviev specifically addresses the theory of non-resistance in the context of criminal law. He argues that as long as the goal of punishment includes the welfare of the offender, coercion is morally justifiable. Imprisonment, for instance, can benefit offenders by helping them curb the development of their criminal will and giving them a chance to think and to repent. Though reformation is always, in Soloviev's view, self-reformation (самоисправление), the role of the external influence is to sustain the environment conducive to this process (Соловьев 393, 395, 398, 403, 405).

For Tolstoy the idea that punishment can bring about moral reform is nothing more than a delusion. To quote from *Path of Life*:

As soon as one gives up the superstition that punishment reforms people, one sees clearly that changes in peoples' lives occur only because of the inner, spiritual change of the people themselves and not at all because of the evil that people do to other people. (PSS45: 227).

Although Tolstoy agrees with Soloviev that reformation is always self-reformation, he does not share Soloviev's optimism that institutions of punishment, when properly conceived and organized, can provide an environment conducive to such a process. While in *Resurrection* the brunt of Tolstoy's critique is directed against the brutal, dehumanizing conditions of the Russian prison, one gets a sense that for him no amount of improvement would ever suffice because his objections to punishment, even of a purportedly reformatory bent, run much deeper.

First, any (penal) institution, as Tolstoy repeatedly makes clear in *Resurrection*, in-

evitably involves objectification of people by other people. Such objectification is unlikely to change even were the goals of punishment redefined as moral reform and even were the entire penal system radically overhauled. Moreover, a penal institution can hardly create conditions conducive to "inner" change because these conditions are unique to every person. In *Resurrection*, Tolstoy's view of moral and spiritual reformation as a process that unfolds along deeply personal paths is illustrated by the twin "resurrections" of Nekhliudov and Maslova. To a great extent, both characters' moral changes are presented as a rediscovery of a better, uncorrupted self of their childhood and youth from which they had drifted away. These changes, however, are triggered by associations and memories that are deeply personal. Associations of this kind would be impossible to orchestrate in an institutional setting, no matter how modernized or improved, because of the unavoidable reliance on standardization, regimentation, and protocol.

Nekhliudov, furthermore, understands his moral revival as a closer contact with what he calls "that real (истинным), divine self that lives in each person." He attributes the awakening of that dormant "I" to the "remarkable event" of Maslova's trial, but it would be a mistake to see his accidental reencounter with Maslova as the cause of his moral regeneration (PSS32: 129). Rather, in light of Tolstoy's discussion in *On Life*, one could argue that far from determining Nekhliudov's transformation in a causal fashion, the trial and subsequent events merely afford him an opportunity to reveal that fundamental, authentic character which defines his responses to the particular circumstances of his lived experience. If Nekhliudov were another person, the event of the trial may not have caused him to change for the better, as the material conditions of this world of space, time, and causation (the only conditions that penal institutions *can* manipulate) have no real power over the inaccessible authentic self. Thus

while Tolstoy does affirm, as James Scanlan argues, our capacity for moral perfection, this capacity still depends on the indelible extratemporal and extraspatial self that shapes our responses to the world (Scanlan 58).

The emphasis on the deeply running nature of genuine moral reform is further evidenced by Tolstoy's view that reformation, when it is real, brings about not just a change in actions, but more importantly, a change in motives, intentions, and desires. Whereas corrective penal institutions aim largely at bringing the individual's behavior merely within the parameters of the law, Tolstoy wants a qualitatively different kind of change. For him, as for Schopenhauer, the measure of an action's morality lies in the morality of its intention.²³ A mere outward conformance to moral, let alone legal, norms is not sufficient. To be genuinely moral, one's action needs to be perfectly free from any trace of instrumentalizing the other person; it needs to be driven strictly by the concern about that person's welfare, or what Tolstoy calls "the law of love."²⁴ A bad thought, Nekhliudov believes, is worse than a bad act: "One may avoid repeating a bad act and repent it; bad thoughts, on the other hand, give rise (родят) to all bad acts" (290). Real reformation involves a change in the person's way of thinking and relating to the world, not just a change in his or her acts.

In the case of reformatory punishment, just as in the case of retributive or deterrent punishment, Tolstoy's stance thus dovetails not only his philosophy of non-resistance but also his metaphysics of the self. Indeed, if the authentic self is located, as Tolstoy suggests, in the realm of the noumenal, it is only fitting that this self would not be available for reformatory regiments of penal institutions no matter how well organized and well meaning. These regiments cannot reach that indestructible extratemporal self that determines our moral character and, in the end, is solely responsible not only for our actions but also for

the motives, desires, and intentions that underlie them.²⁵

Conclusion

When, at the end of *Resurrection*, Nekhliudov experiences his ultimate revelation—that no person ever has the right to punish or reform another person because both are guilty before God—the reader is invited to see this realization as an important element of his "resurrection." Like in *Death of Ivan Ilych*, the moment of enlightenment comes at the very end, in the form of a simple answer to a difficult question: "The usual objection about what to do with evil-doers—can we really leave them unpunished?—did not trouble him anymore" (442, 455-6). He realizes that society exists not because of punishment, but in spite of it. While punishment corrupts and degrades both those who punish and those who are punished, people still pity and love one another (456). What one needs to do is to forgive everybody, to forgive always, to forgive an infinite number of times, because there is no one without guilt who would have the right to punish or reform others (442-3).

This message of universal guilt resonates with the message of responsibility of all for all famously articulated by father Zosima in Dostoevsky's *The Brothers Karamazov*. Unlike Tolstoy, however, Dostoevsky, who had firsthand familiarity with the Russian prison, did not seek to abolish punishment or its institutions. Although he saw much that was wrong with Russian courts and prisons, he still believed in the possibility of a fundamentally synergetic relationship between law and morality. While morality should serve as a basis for law, a legal system, if properly organized, can and ought to promote moral attitudes and teach ethics. For Tolstoy, in contrast, law is always and necessarily antithetical to morality. This is not surprising given Tolstoy's steadfast (some say blind)²⁶ commitment to the principle of non-resistance to evil and the imperative of forgiveness into which he distilled all Christian ethics. It is in

light of these ideas that we usually make sense of Tolstoy's repudiation of punishment as morally indefensible.

While I agree that the principle of non-resistance explains much in Tolstoy's stance on punishment, in this paper I have tried to point to some other dimensions of his thought. I have discussed Tolstoy's rejection of punishment not through the prism of moral evangelism but within the context of contemporary punishment theory and the metaphysics of the self that emerges in his late writings. Reading Tolstoy side by side with such contemporaries as Tarde and Soloviev, I have sought to highlight the utter impracticability of the inaccessible Tolstoyan self for the purposes of law and its incompatibility with the available justifications of punishment not only on religious and moral grounds but also on the grounds of this self's metaphysical status.

Notes

1. Research for this paper was made possible by a National Endowment for the Humanities Summer Stipend (2007). I am grateful to Leo Zaibert and the anonymous reviewers for their excellent comments and helpful suggestions. Thanks are also due to Linda Madden of Keene State College Interlibrary Loan and to the staff of the Slavic Reference Service at the University of Illinois, Urbana-Champaign.
2. Unless otherwise indicated, all translations are mine.
3. Tolstoy expresses similar sentiments in the letter he wrote to V. P. Botkin after attending a public execution in Paris in 1857.
4. For example, Tolstoy's frequent use of the word "now" marks his character's progress and highlights changes in Nekhliudov's outlook. James M. Holquist notes that the confrontation between "a *then* and a *now*," or an old self and a new self, is central to Tolstoy's portrayal not only of Nekhliudov's life but also of the lives of all his major characters (Holquist 50).
5. That he has not yet given up this hope is indicated by Tolstoy's references to these books at various points in the novel. We know, for example, that he takes the books to his estate, Kuzminskoe, in early May (*PSS* 32: 202), and that he has them around at least as late as the eve of Maslova's departure for Siberia on July 5 (316).
6. The objection that evil-doers should not go unpunished "would have had force if it were proven that punishments reduce crime, reform the criminal; but since what is proven is the opposite, and it is clear that people do not have the power to reform other people, the only rational action you can take is to stop doing what is useless and even harmful, and on top of that immoral and cruel" (32: 442).
7. This account draws on the history of criminology presented by Leps.
8. Besides A. F. Koni, a liberal jurist and prominent public figure who introduced Tolstoy to the story of Rosaliia Oni that provided the basis for the novel, Tolstoy's consultants included the defense attorneys V. A. Maklakov and F. N. Plevako, the lawyers N. V. Davydov and S. M. Iazykov, the medical doctor P. S. Usov, the warden of the Tula prison S. I. Borodovskii, and a member of his staff I. P. Vysotskii.
9. Tolstoy's readings included V. N. Nikitin, *Тюрьма и ссылка* (1880); N. M. Iadrintsev, *Русская община в тюрьме и ссылке* (1872); D. A. Linev, *По этапу* (1886); L. Mel'shin (P. F. Iakubovich), *В мире отверженных* (1896); and the publications of the American explorer George Kennan who wrote extensively on Siberian exile. See Lomunov (116-21) and Zhdanov (335).
10. Tolstoy might have read Lombroso in S. L. Rappoport's translation under the title *Новейшие успехи науки о преступнике* (St. Petersburg, 1892). He could also read various reviews of Lombroso's works, such as E. P. Letkova's "Психиатро-зоологическая теория массовых движений" in *Отечественные записки* (1884); V. D. Spasovich's *Новые направления в науке уголовного права* in *Вестник Европы* (1891) or as a separate edition (Moscow, 1898); or V. F. Chizh's *Криминальная антропология* (Odessa, 1895), to name just a few. Spasovich's and

Chizh's publications also contained discussions of other criminological schools.

11. *Русская мысль*, another periodical that Tolstoy read regularly, also featured an extensive account of the Congress.

12. For more on Lombroso's visit to Yasnaya Polyana, see Denner's informative and amusing account.

13. That Tolstoy saw crime as socially engendered and thus inevitable in a capitalist society was also a widely accepted view in Soviet scholarship (Iachevskii 151).

14. Tolstoy mentions Chizh in his diary on March 4, 1891, in reference to his article "Нравственность сумасшедших" in *Вопросы философии и психологии* (1891).

15. Of all the criminologists referenced in the novel, Tarde is mentioned the most frequently. He is further singled out when Nekhliudov's sister finds one of his books on Nekhliudov's desk (316). Tolstoy himself owned two books by Tarde (*Библиотека* 292).

16. Andrzej Walicki calls *On Life* "the best exposition of Tolstoy's metaphysics" (332). For a recent illuminating discussion of Tolstoy's view of the self in *On Life*, see Scanlan (56-8).

17. For another discussion of the relationship between self and time in Tolstoy, see Paperno.

18. Compare this discussion with the following statement of the French anthropologist Léonce Manouvrier quoted by the Russian criminologist Dril': "One and the same individual can act in a thousand different ways under the influence of various factors which affect him without however changing his physiology or anatomy, his actions always conforming to his constitution (конструкции)" (189).

19. As critics have noted, this view, which allows Tolstoy to overcome the metaphysics of the self's sameness, as well as the metaphysics of its "continuous changeability" (Kuzina 87), also implies the impossibility of passing judgment on another person. On the one hand, we cannot judge others because we are all fundamentally the same, and on the other hand, we cannot judge because we

are subject to perpetual change. "That is why you cannot judge a person," Tolstoy writes in his diary. "Which person are you judging? You have condemned a person, and he is already different" (Опульская 332).

20. For example, Kant (158). For discussions of Tolstoy and Kant, see Orwin, Jahn.

21. On Tolstoy's debt to German idealism, see Orwin, Grant, Walsh.

22. For a discussion of Soloviev's polemic with Tolstoy's *Resurrection*, see Deutsch Kornblatt, Mintz.

23. For example, in *On the Basis of Morality*, Schopenhauer writes, "The intention alone decides the moral worth or worthlessness of a deed" (66-7).

24. Maslova's initial mistrust of Nekhliudov's motives is instructive in this regard. The idea that he wants to "make her the object of his magnanimity" and use her for his own spiritual salvation is repulsive to her (245).

25. Tolstoy's idea that repentance and moral regeneration are impossible to bring about through external coercion agrees with Schopenhauer's thought. In *The World as Will and Idea*, Schopenhauer writes, "As if the inward disposition, to which alone morality or immorality belongs, the externally free will, would allow itself to be modified from without and changed by influences exerted upon it!" (1: 445). A similar position is expressed by some Russian criminologists. According to M. Remezov, for example, "Repentance and the willingness to reform can only originate in the individual's free will and can't be the result of coercion" (118).

26. The list of Tolstoy's critics is vast. Among his contemporaries, his critics included Rozanov, Feodorov, Leontiev, Merezhkovsky, and some years later, Il'in.

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