

# DOSTOEVSKY — THE TRIAL IN *BROTHERS KARAMAZOV*

by

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## 1. INTRODUCTION

Of all the trial scenes in literature, that in *Brothers Karamazov* is the fullest and perhaps the finest. It forms the whole of Part Four, the climax of the last novel of the greatest novelist of the nineteenth century. It remains as dramatic and as pertinent today as it was in 1878, when it was written. Moreover, although Dostoevsky was a fanatical slavophile, and indeed professed a distaste for European ways, his novels and the issues raised in them have a universality and timelessness which transcends their Russian setting. This is particularly true of the trial scene in *Brothers Karamazov*, which raises both profound jurisprudential issues and important queries into the nature of the judicial process, and especially the efficacy of rules of evidence.

Dostoevsky shows an appreciation of juristic problems which might appear surprising. For unlike many other *literati* who have featured trial scenes in their work, (e.g. Galsworthy, Balzac, Von Kleist), Dostoevsky had no legal training. He was, however, by no means unfamiliar with the legal process, having been at the receiving end of some most unpleasant actions. He was constantly in debt, and also had indulged in some family litigation. His most famous involvement with the law, however, was in 1849, when he was sentenced to death for his complicity in the *Petrashovski* conspiracy. He was reprieved by a letter from the Tsar only when the firing squad was about to take aim, a vicious Romanov jest. He was exiled to Siberia, where he underwent a fearful punishment. Much of the material from his Siberian experience he used in his novels, especially *Notes from the Underground*.

His great contemporary, Tolstoy, again not legally trained, also used his Siberian experiences to launch a violent attack on the Russian Legal System in the last of his novels, *The Resurrection*. Both Dostoevsky and Tolstoy, in their different styles, typify the Russian's distrust of the courts and the legal processes in Tsarist Russia. Yet, ironically, the scenes of both are set in courts which had adopted the liberalization effected by Alexander II's 1864 reforms. These much-vaunted measures had revolutioned judicial procedures, which until then had been incredibly archaic.

The major reform was the introduction of juries, and the adoption, or rather adaptation of a procedure borrowed partly from the French

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system and partly from the English. It was this Westernisation of the Russian system which so excited the scorn of Dostoevsky. And it is this that makes the trial of Dmitry Karamazov so meaningful to English-speaking readers. For the Russian procedure was more akin to that of the common law than that of other continental countries. The 1864 reforms were abandoned in the Soviet system, but during the period in which Dostoevsky and Tolstoy wrote, they operated in most of Russia. The trial scenes in *Brothers Karamazov* and *The Resurrection* are not very different from those that obtain in present day England and America.

## 2. THE BRIEF FACTS

Fyodor Karamazov has one son, Dmitry, by his first wife and two sons, Ivan and Alyosha, by his second. None of them is brought up by the father. Dmitry has four changes of home. Ivan has a turbulent childhood, and turns into a cynic. Alyosha, the gentlest and most saintly of Dostoevsky's heroes, becomes a voluntary monk. The father and the eldest son, Dmitry, are enchanted by the same woman, a strange, voluptuous girl of twenty-two, Grushenka. The rivalry between them exacerbates the hatred that Dmitry already feels for his father. Dmitry, however, has also had a liaison with another enigmatic woman, Katerina Ivanovna. Dmitry at one time borrowed 3000 roubles from Katerina Ivanovna and never paid them back. He is also desperate for money with which to tempt Grushenka to marry him, for he feels certain that his father will, with his own money, seek to tempt Grushenka into marriage. It appears that Dmitry has been cheated by his father of a portion of his mother's estate due to him.

After several unavailing attempts to borrow money from various sources, Dmitry goes with murder in his heart to try to rob his father. He takes a pestle. He has learned from Smerdyakov, Fyodor's illegitimate son and valet, that Grushenka has a special knock, and intends to simulate that knock, so as to gain entry into his father's house. As he lies waiting under the window, he is surprised by the old family servant, Grigory, and attempts to flee. In trying to escape, he hits Grigory with the pestle. He goes back to inspect him, and finds, to his horror, that Grigory's skull is bleeding profusely. He tries to wipe the blood from Grigory. He then throws away the pestle, and pursues an erratic course of action, spending money freely on a debauch and meeting Grushenka in a village inn some miles away. While carousing with Grushenka and her friends, he is apprehended for murder, and presumes that it is for the murder of Grigory. But Grigory has recovered and has sworn that the door to Fyodor's room from the garden was open so that the murderer must have entered the house.

The preliminary investigation is conducted by the police and the prosecutor. The guilt of Dmitry looks overwhelming. He is committed for trial. There is, however, another suspect, Smerdyakov. Later, we

learn that it was indeed he who did the deed. He had convinced the police that he was in an epileptic fit at the fatal moment, but confesses to Ivan that the fit was simulated. On the day before the trial, Smerdyakov commits suicide.

### 3. THE TRIAL

The trial scene in *Brothers Karamazov* is one of the most dramatic of its kind in the whole of literature. The drama is consummately heightened by Dostoevsky who succeeds in blending a realistic description of the setting with a provocative, philosophical enquiry into profound jurisprudential issues. The prosecution has a very strong case, although it is founded upon circumstantial evidence. But this is very powerful. There is evidence of motive, opportunity, possession of an appropriate weapon, an attempt at flight, a quasi-confession and blood on the clothes of the accused.

There are two flaws in the prosecution's case. First, there was the confession of Smerdyakov. Secondly, there was some doubt whether Dmitry's spending spree after the event had been to the extent of 3000 roubles by robbery of his father. But his defence was that only 1500 roubles had been spent which he claimed was the *balance* of the 3000 roubles owed to Katerina, and which he had been keeping in a purse tied round his neck. He argued that he had intended to return it to Katerina Ivanovna in due course, but had changed his mind after his escapade with Grigory and decided to spend it as a 'last fling' with Grushenka and her friends.

If Dmitry's counsel were able to convince the jury on either of these two points, the case against him could not have been established, even on the balance of probabilities.

At any rate, the case goes well for Dmitry, as the credit of the prosecution witnesses is, one by one, impugned by the skilful cross-examination of Fetyukovich, counsel for the defence. He manages to throw doubt on the veracity of Grigory by suggesting that he was a heavy drinker and did not even know what year he was in. The same technique is employed with the witnesses to Dmitry's excesses in the inn with Grushenka. Every witness of this event is systematically made to appear unreliable. The respected Alyosha gives very powerful evidence for his brother, especially on the rather improbable existence of the purse round Dmitry's neck. So indeed does Katerina Ivanovna, who emphasizes Dmitry's previous generosity to save her father, thus giving the lie to the likelihood that he would murder his own father for a mere 3000 roubles.

Dostoevsky at this point has consummately captured the fluctuating nature of a trial — the way the balance shifts, first in favour then against the accused. The dénouement, however, follows, presaged by the dramatic title to Chapter 5 of Part IV, 'A Sudden Catastrophe'.

Unfortunately, Ivan from the start appears unwell. He answers reluctantly. To many questions he answers that he does not know. The crowning paradox of Ivan's testimony is his statement, 'I have nothing particular to tell the court', when in fact he is *the* vital witness for the defence. He claims that it was he who murdered his father, by inciting Smerdyakov to do the act. Ultimately, even the President himself, who plays a surprisingly low-key role in the trial, is moved to say, 'Witness, your words are incomprehensible'. Ivan then proceeds to make himself even more incredible by referring to the devil as the perpetrator of the crime.

The court is thrown into confusion by Ivan's bizarre performance, and this triggers off an hysterical outburst from Katerina Ivanovna, which in effect is the *coup de grâce* of the defence. Katerina Ivanovna produces a damning document from the body of the court. It is not clear whether she is called as a witness, but at any rate she manages to retract her previous story, and destroys the evidence that she had given for the defence. For the document is none other than a letter written to her by Dmitry, in which he admits his debt to her, and promises to repay it by murdering his father. Katerina Ivanovna then goes on to accuse Dmitry of murder, and states that her previous evidence was untrue, that she was then lying from a misguided desire to save Dmitry. It is obvious that Katerina Ivanovna, the apparently cool, aristocratic, well-bred girl has been seized by a fit of jealousy because of Dmitry's preference for Grushenka. It is difficult not to agree with the narrator who states that, but for that latter, 'Mitya might have escaped his doom, or at least, that doom would have been less terrible'. The evidence of Katerina Ivanovna seals Dmitry's fate. In the telling words of her rival, Grushenka, 'Mitya, your serpent has destroyed you !'

Apart from the medical evidence, which will be dealt with later, the remainder of the trial is devoted to the speeches of counsel for the prosecution and for the defence, both remarkably skilful in their ability to draw the best conclusion from the evidence, and for their minute reproduction of that evidence.

The speech of the prosecutor is particularly effective in that it is temperate, clinical and objective, and of sufficient simplicity and clarity to attract a jury. That of counsel for the defence has been criticized on two counts: (a) that it is at times condescending; (b) that by saying that (1) my client did not do it; but (2) that if he did, he was not mentally responsible for his action, counsel virtually concedes that he believes in his client's guilt. Indeed, even before the trial, Dmitry himself has suspected this to be the case. The prosecuting counsel's speech is more effective than that of the defence counsel, because it is less abstruse. At any rate it wins the day. The jury, after only one hour's consideration, find Dmitry guilty, and do not make any recommendation to mercy. The result is truly a 'miscarriage of justice' ('Syudebnaya Oschoba'), the title of Book 4 of *Brothers Karamazov*.

#### 4. THE CAUSES OF A MISCARRIAGE OF JUSTICE

My interest in the trial in *Brothers Karamazov* was enhanced by the publication of a remarkable book by a colleague, Sir Richard Eggleston, a former distinguished Australian Judge.<sup>1</sup> Far removed from the trite homilies on the judicial process that one expects from former judges, this book throws great doubts on the efficacy of the trial process on elucidating the truth. The common law's hallowed procedure and evidentiary rules come under the most penetrative scrutiny. But quite the most striking observation of Eggleston is that in his experience miscarriages of justice are often due to false testimony. This may be unwitting, but often is intended. Eggleston's most startling observation is that:

Most witnesses will lie if the motive is strong enough and many will lie merely to save lengthy explanations about matters which they think have nothing to do with case.

*Brothers Karamazov* is a striking example of a verdict which on its face appears reasonable, but which is misguided. Dmitry himself magnanimously acknowledges that the verdict was not inherently unreasonable, in words reminiscent of those of the wrongly convicted Buckingham in Shakespeare's *Henry VIII*:

The law I bear no malice for my death, 'T has done, upon the premises, but justice.

What is striking is that there are present in the trial a great number of factors cited by Eggleston and others as liable to lead to injustice. The novel is thus highly relevant to scholars of modern criminal procedure. It is also important for the influence that it has had on many other writers who have analyzed the law. Dostoevsky's profound influence on European literature is well documented. Camus, who wrote studies on Dostoevsky, must surely have followed *Brothers Karamazov* closely as a model for the chilling trial in *L'Etranger*. Meursault, Camus' absurd 'anti-hero', seems to possess characteristics of both the nihilistic, impassioned Dmitry and the sceptical, but unbalanced, Ivan. Meursault's crime is matricide, Dmitry's parricide. But the nature of Camus's enquiry is essentially the same.

Kafka in *Der Prozess* is another famous novelist clearly influenced by Dostoevsky. But there are many other notable works, of legal fiction, lesser known perhaps in the English speaking world, which show unmistakable Dostoevsky traits. In German literature, the quest for the attainment of justice is a preoccupation of Thomas Mann, Hermann Hesse, the Swiss playwright, Durrenmatt, and the modern German novelist, Heinrich Boll. In French literature Anatole France, Roger Martin de Gards, Gide (cf. *Les Caves du Vatican*) and Sartre are examples of writers who have delved into the nature of the judicial process, and its

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1 R. Eggleston, *Evidence, Proof and Probability* (1978).

effect on the pathology of the individual. In modern English literature, perhaps the best example is C. P. Snow, another acknowledged admirer of Dostoevsky.

*Brothers Karamazov* can thus be seen as the progenitor of the *genre* of forensic novel whose climax is a trial. It merits study by modern scholars of criminal procedure as well as all those who are occupied by the law's search to ascertain the truth.

## 5. THE REASONS FOR THE ERROR

In the course of a trial, there are several factors that may lead to an error of justice. Almost all of these were present in *Brothers Karamazov*. It is remarkable that Dostoevsky was able to pinpoint them with great perspicacity.

### (a) *Lack of Legal Representation*

When a party is not legally represented, so that the presentation of his case lies in his own hands, this may well lead to injustice. Several writers have taken up this theme, notably Anatole France, in *L'Affaire Crainquebille* and John Galsworthy, in the play, *Justice*.

Now it is true that in *Brothers Karamazov* Dmitry is represented at the trial itself. But Dostoevsky points to the potential injustice that can arise, by emphasizing what a piece of good fortune brought this about — the impulsive generosity of the possessive Katerina Ivanovna, who brought the defence counsel, Fetyukovich, from St Petersburg.

What is more significant is that Dmitry was not represented at the all-important preliminary examination. In some countries today, the right to counsel is regarded as so important that it is incumbent on the *police* to advise an accused person of his right to a lawyer during the interrogation by them. In *Brothers Karamazov*, the damage was done at this stage, when Dmitry clearly acted inadvisedly and virtually incriminated himself.

### (b) *Unequal Legal Representation*

It has often been said that bad representation is worse than no representation at all.

The potential disparity between the skills of the lawyers is highlighted in a paradoxical way in *Brothers Karamazov*. For, as is common, the prosecuting barrister is of a lesser quality than counsel for the defence. At least that is so on first appearance. The prosecutor does not present a prepossessing appearance. We are told that he is a local man, '... rather a peculiar man, inclined to be consumptive, that he has a rather better opinion of himself than his ability warrants — and that made him seem constantly uneasy. He cherished a grievance that he had not been properly appreciated.'

On the contrary, 'counsel for the defence excited everyone by his presence'. His talent was well known. He had defended notorious criminal cases, which became celebrated throughout Russia.

The odds here are in favour of the defence, and this is a paradigm.

But in fact, there is more to it. It has been pointed out that the name Fetyukovich means, in Russian, 'fool'.<sup>2</sup> In contrast to the prosecutor, who is always referred to by his first name and patronymic, Ippolit Kirillovich, Fetyukovich is known only by his surname. Perhaps Dostoevsky intended this to refer to the half-completeness of each man. Fetyukovich is the embodiment of scepticism. He is intrigued by the unreason of events. He is, above all, a stranger. The jury may have had an inbuilt prejudice against the 'city slicker'.

Ippolit Kirillovich, on the contrary, is concerned with rationality. He sets out the objective meaning of events, paying attention to their causal determinism. Dmitry's previous history inevitably must lead to crime. He develops a logically coherent picture. In effect, he says, 'Put aside psychology, let us look at the facts'.

One cannot resist the impression that Ippolit Kirillovich's speech was more effective advocacy in the particular circumstances than that of Fetyukovich. So, typically with Dostoevsky, first impressions have deceived. He introduces Ippolit Kirillovich as a second-rater, Fetyukovich as a master. Events do not confirm this.

### (c) *The Rôle of the Judge*

In most countries, however, the judge is a less eminent figure than in English-speaking communities. Judging is a public service career. In fact, the Judicial Reforms of 1864 had raised the status of the judge, but it is unlikely that the Presiding Judge in the trial of Dmitry Karamazov would have attained the same status as the defence counsel. He probably was not a lawyer.

Nevertheless, the lack of influence that the judge has on the trial is surprising. He is a passive figure throughout. He seems to have permitted a good deal of indecorous behaviour in his court. And finally, his address to the jury consists of a tepid, but biased, homily: 'Be impartial, don't be influenced by the eloquence of the defence, but yet weigh the arguments. Remember that there is a great responsibility laid upon you.' The narrator says he was tired, so that his charge to the jury was rather feeble.

Feeble it was indeed, but it was also prejudicial. Indeed, Fetyukovich might have been advised to apply for a re-trial on the grounds of bias! For the judge adverted only to the deceptive eloquence of the defence. This could be interpreted as a direction, or at least a hint, to convict, which is outside his province.

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2 W. W. Holdheim, *'Der Justizirrtum als Literarische Problematik'* (1969).

(d) *The Jury*

Another potential source of injustice is the jury, who ultimately have the decision to make. It is apparent that Dostoevsky perceived this clearly. The rationale of using juries is that they constitute the ordinary conscience of society, as opposed to lawyer/judges, who may be technically minded, remote and untrustworthy characters. That is the theory. In practice, the jury may be confronted with a case which is beyond its intellectual capacity.

In *Brothers Karamazov*, we are told that of the twelve jurymen, four are petty officials of the town, two are merchants and six are peasants and artisans of the town. Of them Dostoevsky says:

I remember, long before the trial, questions were continually asked with some surprise, especially by ladies. 'Can such a delicate, complex and psychological case be submitted for decision to petty officials and even peasants' ?

It is of interest to note that trial by jury was introduced into Russian jurisprudence only by the reforms of 1864.

He emphasises the fallibility of the jury as an institution by choosing the very type of person who earlier in the book had been ludicrously superstitious over the decomposition of the body of the elder Zossima. *Brothers Karamazov* is an 'arched' novel. The novel begins in a monastery and ends in a court. The dichotomy between religion and law is emphasised by Ivan's article on church and state jurisdiction and the contrast between the prescience of Father Zossima, who was able to foretell the future, and the fallibility of the court, which could not even reconstruct the past. This is the great irony which Dostoevsky relentlessly dwells on in *Brothers Karamazov*.

(e) *The Evidence of Experts*

At the trial, three doctors gave evidence on the sanity of Dmitry. Dostoevsky says that there was a touch of comedy about the proceedings, for two of them declared him mentally disturbed at the time he committed the crime, one indeed saying that his condition was that of 'mania', which promised to lead to complete 'insanity in the future'. The basis for this observation is that Dmitry looked left instead of right on entering the court! The other found him completely sane.

Dostoevsky has anticipated a problem that is troubling modern scholars of court procedure, the role of the expert witness, and especially the psychiatrist. The fact that psychiatry and psychology are not exact sciences is indeed emphasised by Dostoevsky himself later in the book, when Fetyukovich says that psychology is a two-edged weapon and should be used sparingly.

Sir Richard Eggleston deals at length with expert evidence in his book. His conclusion is that '... the courts do not encourage the calling of experts, at least where the tribunal has a reasonable chance of making



a decision for itself'. This reluctance is in large part a product of the adversary system which compels the expert to be a partisan for the side that calls him as a witness. Nevertheless, says Eggleston, '... there have been examples of the intelligent use of impartial experts, and it is hardly to the credit of the judges that so little has been done to overcome the defects of the adversary approach in this regard'.<sup>3</sup>

It will be seen that Dostoevsky anticipated this problem over a hundred years ago. It has not been solved — the solution may be to have independent psychiatric evidence. Nevertheless one feels that Fetyukovich was mistaken in calling this evidence, which he did so, apparently, rather against his will, being persuaded by, of all people, Katerina Ivanovna. It seems that the jury might have thought that Fetyukovich was trying to deceive by diverting them from the real issue, whether or not Dmitry committed the act.

(f) *The Possibility of Documentary Evidence being Improperly Admitted*

Now there is an excellent example of doubtful admission of a document in *Brothers Karamazov*, when Katerina Ivanovna produces the dramatic letter allegedly signed by Dmitry, confessing his guilt. There are two aspects of this dramatic evidence that are of concern. First, it is doubtful that such a late production of a document would have been permitted in Anglo-American courts without notice to the other side. It is generally only permissible to produce documents or other corporeal evidence as exhibits. The letter formed in no way part of the protocol in this case, and its late production prevented Fetyukovich from challenging its authenticity.

Secondly, it is unlikely that Anglo-American courts would have permitted the letter to be read out without expert evidence that it was in fact written by Dmitry. As Eggleston writes, 'Unless a prior agreement is reached, every document (with very limited exceptions) that is to be used in an English trial has to be "proved" by the testimony of some person who can vouch for its authenticity'.<sup>4</sup>

In allowing the admission of this letter, without challenging its authenticity, Fetyukovich was surely at fault. Indeed, Dostoevsky expressly states that, 'Fetyukovich was obviously shaken by Katerina Ivanovna's evidence'.<sup>5</sup>

(g) *The Admission of Inadmissible Oral Evidence*

In *Brothers Karamazov*, the evidence of Katerina Ivanovna made a great impact. Yet much of what she said was not related to the circumstances of the crime. She declared that Dmitry despised her, that he only wanted to marry her because of her fortune, that 'he is a brute',

3 *Op. cit.*, at p. 135.

4 *Ibid.*, at p. 34.

5 (1978) 12 *Canadian-American Slavic Studies* 353, at p. 370. This article is a fascinating study of the evidentiary problems in *Crime and Punishment*, *The Possessed* and *The Brothers Karamazov*.

all items which really had nothing to do directly with any aspects of the murder, but blackened Dmitry's character. Yet Fetyukovich did not object to her giving this evidence.

Another rule of exclusion is the important one that hearsay evidence is inadmissible. This rule prevents a witness from giving evidence as to what some other person said to him. The reason for it is that that person is not able to be cross-examined, and that the alleged statement is likely to be accorded too much weight.

Again there are many exceptions to this rule, the most relevant being that a dying declaration is admissible because a dying man is highly likely to speak the truth, and that a statement against interest is admissible. On the latter of these grounds, the confession of Smerdyakov was perhaps admissible, although it is a matter of some doubt whether his confession to Ivan was truly a dying declaration — it would depend on whether he had a settled intention to commit suicide at the time.

#### (h) *The Failure to Produce Admissible Evidence*

This is the converse situation. A trial can go astray because highly important evidence is not produced.

There is a classic instance of this in *Brothers Karamazov*. The one person who could have given the truth unequivocally dies before the date of the trial. Thus, the guilt of Dmitry hangs on this chance, that a key witness is not available. Smerdyakov might of course have lied in court, but how much would Dmitry's chances of acquittal have been improved if Smerdyakov had been there to be cross-examined?

It is also to be noted that evidence vital to a prosecution today was conspicuous by its absence — namely, scientific evidence. Neither the pestle nor any other alleged murder weapon had been examined. Nor had the blood on Dmitry's shirt (a very vital part of the evidence for the prosecution) been examined to check whether it accorded with Fyodor Karamazov's blood group or with that of Grigory. Unfortunately for Dmitry, neither blood grouping evidence nor the science of finger-printing was developed until the twentieth century.

#### (i) *The Artificiality of the Trial Setting*

There is a further possible source of error which is strongly hinted at in *Brothers Karamazov*, that the court is so intimidating and unnatural that people in that setting behave in an artificial way. The result may be that truthful witnesses appear to be untrustworthy, or, conversely, that liars appear to be convincing.

The setting of a court is, as a general rule, one where it is much easier for counsel to make a witness look foolish than *vice versa*.

Now the artificiality of the court setting is vividly portrayed by Dostoevsky. Virtually every witness behaves in a way which is out of character. The most striking example is Ivan, the key witness, the

cynical, rational, atheistic son, who might have been expected to be an excellent witness. Katerina Ivanovna's performance is also bizarre. And about Alyosha, it is said that, 'The impression left by Alyosha's evidence on the public was most disappointing', although this remark was passed before his cross-examination. One may infer that all these important witnesses were overawed by the excitement and artificiality of the proceedings, and did themselves less than justice. And yet, on the contrary, we are told that Rakitin, through most of the book portrayed as a disreputable and odious character, 'made a speech that fascinated the public by its independence and the extraordinary nobility of its ideas'.

(j) *The Impossibility of Reconstructing the Truth*

One is led inexorably to the final query, which for most readers of Dostoevsky represents the key question about the judging of human affairs. Is it ever possible to know the truth? Can a human court ever be justified in coming to a conclusion?

This problem may be discussed on two levels. First, on a mundane, factual plane — that the practical difficulty of reconstructing past events is so great that it makes the search for truth illusory. And, secondly, on a more metaphysical plane, that absolute, objective truth is an illusion anyway, a chimera. Pontius Pilate's equivocation stemmed from a genuine apperception of the impossibility of delineating material reality.

Now one of the techniques of cross-examining counsel to try to discredit damning testimony is to test the witness's memory or powers of observation. If he shows himself to be erroneous on some events, this might convince the jury of the witness's general unreliability. This is sometimes expressed in the maxim, *falsus in uno, falsus in omnibus*.

There are several good examples of this technique in *Brothers Karamazov*, but perhaps the best is the doubt thrown on the testimony of Trifon Borissovitch. Some witnesses have far better memories than others, and often it must be a matter of chance as to whether an incident was witnessed by one with a good memory or one with a poor one. If the prosecution's case had depended only on the recollections of Trifon Borissovitch, Captain Snegoryov and the two Poles, all of whom were unreliable witnesses and eccentric, then it would have been hard to sustain.

But, in addition to the vagaries of human powers of recollection, there is a further factor militating against the establishment of the truth, the fact that witnesses may, consciously or unconsciously, lie. I have already adverted to the view of Eggleston that a person will lie if the motive is strong enough, despite the sanctity of the oath. The reason for it may have nothing to do with the case, or may only be peripherally relevant. There is an excellent example of this in *Brothers Karamazov*, when Katerina Ivanovna, having most convincingly lied in the witness-box, later retracts her testimony and explains that she concealed the

vital letter 'against my honour and my conscience, but [because] I wanted to save him'. Yet no-one in the court had believed that her first evidence was false, so convincingly had she lied.

## 6. CONCLUSION

Sufficient doubts on the court process have been cited to lead the reader perhaps to the view that it is an imperfect method of ascertaining truth. What social purposes does the court trial have? Is it necessary to maintain it, when it is so imperfect an instrument of justice?

The essence of this enquiry is very much a concern of Dostoevsky. Dr Vladiv sums it up well in her monograph, *The Use of Circumstantial Evidence in Dostoevsky's Works*: 'Unlike the modern legal system, Dostoevsky's model of meaning does not admit material evidence (that is, evidence based on facts belonging to material reality) as proof'.<sup>5</sup> Dostoevsky himself threw doubts on the retributive justification of the judicial process in a letter to M. N. Katkov: 'Judicial punishment meted out for a crime frightens the criminal rather less than the lawgivers suppose, partly because he himself demands it morally'.<sup>6</sup> And early in *Brothers Karamazov*, Ivan says to Alyosha, that he does not want the justice that attributes blame to some individual, but he wants a justice which rests on the assumption that 'everywhere there is suffering, and that there are none guilty'.

*Brothers Karamazov*, written in 1878, was set in 1867, three years after the great Judicial Reforms.<sup>7</sup> Dostoevsky, a great Russian nationalist, was sceptical about these, borrowed as they were from Western Europe. His scepticism was justified, for gradually the guarantees that they introduced were removed by the Tsars.

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6 M. N. Katkov, *Pis'ma*, Vol I, at pp. 418-419.

7 For a summary of the major reforms, see E. L. Johnson, *An Introduction to the Soviet Legal System* (1969), at pp. 15-16.