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The Law and the Line: The Literary Mirroring of a Paradigm

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Abstract: The essay deals with the topic of “border” in the light of the conceptual and etymological link between ideas of Law and Line. Starting from the mythological origins of Rome, passing through Kafka and Shakespeare, Defoe and Dostoyevsky, both the multiform and ancestral need of drawing juridical lines and the consequences of their overcoming are highlighted. The line, seen as both a territorial and a metaphorical border, as a boundary between “what is mine” from “what is yours,” as a separation between what is allowed and what is not, is described as a well-marked sign, reminding Kandinsky’s paintings, but also as a concept sometimes indeterminate, especially when we consider certain “foggy issues” of the contemporary times, such as the proprietary relationship between a person and its body.

Keywords: line, foundation of Rome, *dominium*, law and literature, art and law

1 Romulus’s furrow

The combination of the concepts of “Law” and “Line” is a deep-seated paradigm of the Roman Legal Tradition.

The etymology of the Romance words *diritto*, *droit*, *derecho*, *direito* – all of them deriving from the late Latin word *directum* – reminds us of the line’s shape, and more precisely to its being *diritta*, *i. e.* straight. A straight line is the proper image of the Law, like the furrow left on a field by the pass of a plough.

This is a linguistic story which, maybe due to its simplicity, has received less attention than the term *ius*, whose origins are steeped in magic-religious elements and thus remain largely shrouded in mystery.

Anyway, the words’ story often has a surprising path and the trivial idea of the Law as something *directum* comes to us through the Medieval Latin language, together with all the terms – such as *jurisprudence*, *jurisprudencia*, *giurisprudenza* – having their semantic roots in the word *ius* which subsequently became *jus* and then *giure* (by means of the conversion of the vowel “i” in “j”).

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Archetypically, the Law is therefore a straight line. First of all, it is a dividing line, because the Law's line always divides "what is inside" from "what is outside;" "what is mine" from "what is yours," what is *iure* done from what is *non iure* done.

Just like the Latin term *directum*, also the Greek word *nomos* is known to encompass the concept of the dividing line: the verb *nemein* originally hints to the dividing (and therefore to the partitioning) of the pastures, so to let the mankind adequately split the cosmos: anyone is entitled to receive a space portion, according to a general idea of fair apportioning.¹

As we have noticed, the Law is a straight line; what is more – in the herein suggested chthonic perspective – it is a deeply ploughed furrow. The *directum* therefore recalls the initial furrow ploughed by Romulus while tracing the first boundaries of Rome, of the *quadrata Roma*. A mythic gesture then, out of time, but at the origin of time at once: Romulus is the *conditor*.

From that early gesture originated the city of Rome and its system of rules: the *civitas* is formed by the inhabitants and by their rules.

We can find here another evocative etymologic link between the line, *i. e.* the *directum*, and the rule, since the Latin word for rule is *regula*, whose first meaning is "ruler." Hence, the *regula* is the tool which allows to draw straight lines, or – if we want to keep on punning – to "make," to "draw" the Law. But then our play on words comes to an end if we stress that the *norma* is the "set-square": so, the Law lines are drawn by using a ruler and a set-square, *i. e.* by using a *regula* and a *norma*.

The Law's geometry – or, if you prefer, the Law as geometry, "geos" – "metron," *i. e.* the measurement of land – does not refer to a flat, Euclidean space: the Romulus' line was a furrow which ploughed the soil, which deeply cut through the earth, with all the undeserved violence that humans have always used on the *iustissima tellus* to make it germinate, to make the land bestow its fruits to the same humans.

Farming is carried out thanks to the humans' furrow on the land: here is the culture's primacy over nature. Thanks to the strength which breaks up the clumps of dirt, humans gain their nourishment.

The same gesture of deeply ploughing the soil marks the city's founding, which represents an even more evident primacy of the culture over nature: from a deep scar on the mother earth the *civitas* is born. And, furthermore, from the ruled group of humans called *civitas* the *ius civitatis* is born, *i. e.* the *ius civile*, the *ius* which rules the relationships among the *cives*.

¹ See Carl Schmitt, *Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum* (Berlin: Duncker & Humblot, 1950); Id., *Land und Meer. Eine weltgeschichtliche Betrachtung* [1942] (Köln-Löwenich: Hohenheim, 1981), 71–75.

The violence characterizes not only the gesture of drawing the line, but it also flares up directly on the line itself: the blood of Remus, killed by his brother Romulus, flows on the furrow of the *pomerium*. It was strictly forbidden to cross the line during the founding rite; nevertheless, a maybe even armed Remus (but the tradition is ambiguous thereupon) incautiously dares to do so.

Irrespective of the circumstances, Remus' desecration appears so repugnant to justify Romulus' conduct, so that it does not even tarnish the city founding. Quite on the contrary, the message to be learnt is terrible and reassuring at the same time: everybody has to know that anyone jeopardizing the city, and crossing its line, is walking into certain death.

The trespassing of the line by Remus engenders the cruelest violence: pitting brother against brother, spilling the blood of one's blood. Still, in the fratricide the city finds its powerful "nurturing" force. The origin of Rome's civilization is therefore born under the most offensive crime, just like in the story of Cain and Abel of the Jewish culture.

Romulus' violent crime takes place over the lines of the *pomerium*'s square, a four-sided shape needed for the founding of the *urbs*² in accordance with the *ritus Etruscus* (a rite which always marks the alignment with a prior divine system): a complex rite, fully covered with symbols, which entailed the ploughing by a cow and a bull.³

The "space-making" of the moment in which the new life of the *populus Romanus Quirites* is born, *i. e.* the origin of a people's biography, is allowed by *Iuppiter* thanks to the *rex augur* Romulus, who identifies the right place on the Palatine Hill.⁴ The *pomerium*' square⁵ is but a holy precinct lacking which a city cannot be qualified as *urbs*; it can rather be an *oppidum*, a fortified site mostly with military purposes.⁶

Inside that square there could be no impurities, which were hence expelled, buried in a frame of land set around the same square and marked by a second parallel furrow. In that strip of land all the negative entities were confined: phantoms, ghosts, disembodied spirits, demons, specters of the war and of the

2 On *pomerium*, see Liv. 1,44,3–5; Gell. 13,14,1–3.

3 See Varro *ling.* 5,143; Plut., *Rom.* 11; Cato *orig.* 18.

4 Pierangelo Catalano, "Aspetti spaziali del sistema giuridico-religioso romano. 'Mundus', 'templum', 'urbs', 'ager', 'Latium', 'Italia'," in *ANRW* 216.1 (Berlin-New York: De Gruyter, 1978): 440–553, 479–491. About the legendary foundation of the *Urbs*, see Id., *Contributi allo studio del diritto augurale* 1 (Torino: Giappichelli, 1960), 575–585.

5 On the structure and the function of the *pomerium*, see André Magdelain, "Le *pomerium* archaïque et le *mundus*," in '*Jus imperium auctoritas*'. *Études de droit romain* (Rome: École Française de Rome, 1990): 155–191.

6 Varro *ling.* 5,143; see Pap. 10 *quaest.* D. 18,7,5.

famine, briefly said all that needed to be cleansed (and *mundus*, i. e. “clean,” was likely the name of the “cleansed” land⁷) in order to safeguard the city.

By plowing the furrow, the Roman *civitas* had taken the geometrical shape which originates from four orthogonal straight lines: the perfect, seamless shape of the square (*quadratio* in Latin language): Festus says that *quadrata Roma in Palatio ante templum Apollinis dicitur* (L. 310). It was inside that squared area that the Romans – who, as many other ancient peoples, were eager to get an *umbilicus terrae* (*Omphalosedanke*⁸) – finally found their (time and) space frontiers.

So, the shape is the shape of a square, as one can see for instance in a Malevich’s painting: like the triangle and the circle, the square is a primary and also “generative” geometric shape as it can be seen in a Mondrian’s painting, where the square originates other shapes, always thanks to the intersection of orthogonal straight lines.

The square offers shelter: what lies inside the square, i. e. the city itself, is protected; and the lines which mark the boundaries, along which the city walls are built, are impassable, except for the points in which the city gates are located: in those points, it is as if the plough had been lifted, as if the line had not been drawn.

Quite often the walls are erected on that very frame of land in which what has been “cleansed” has been buried, so that nobody tramples on that ground. The interchange between what lies “inside” and what lies “outside” the city is allowed only through the gates: the passage can be only there. Hence, it is a regulated passage, as for the Tiber’s waterway, which – for its crucial importance – was controlled by a sacerdotal figure, i. e. the *pontifex*. Any communication is indispensable and risky at the same time (the meaning of this ambivalence is encompassed in the Greek verb *dia-ballein*).

We have just mentioned the *quadrata Roma* and the gates which are like interruptions in the dashed line bounding the city. The gate is the absence of the wall: but, if Heraclitus held that the *nomos* was needed by the *polis* such as the city walls are needed,⁹ then the gate is the *nomos* suspension, even if decided and required by the *nomos* itself.

Among the many literary references on this topic, one comes to mind and it is to be found in Kafka’s short story “Vor dem Gesetz.” A man from the country

⁷ About *mundus* or *fossa*, see Plut. *Rom.* 11; Lyd. *mens.* 4,73; Ov. *fast.* 4,821–824.

⁸ Wilhelm Heinrich Roscher, “Der Omphalosedanke bei verschiedenen Völkern, besonders den semitischen,” *Berichte über die verhandlungen der Sächsischen Gesellschaft der Wissenschaften zu Leipzig Philologisch-historische Klasse* 70.2 (1918).

⁹ Fr. 44 Diels - Kranz.

stands in front of the open door and asks to enter it, but what he gets is just this answer: “*Es ist möglich, jetzt aber nicht.*”¹⁰

Thus, the Law is nothing but an empty order, a command without any contents, a mere show of force.

The doorways can be entered, but the Law orders just for the sake of ordering, pure form without content.

Here the Law does not require the countryman anything else, despite being open. The Law is deprived of any contents and it is reduced to a mere announcement: this shows “*la forma pura della legge in cui essa si afferma con più forza proprio nel punto in cui non prescrive più nulla cioè come puro bando.*”¹¹

Kafka’s scene – whose gloominess and terribleness stem from the Law’s inexplicability – is well depicted in the film “The Trial,” directed by Orson Welles in 1962, where the scenes of “Before the Law” have been made by Alexejev, who perhaps was more endowed than the same Welles for realizing such a misty and silent screenplay.

Let us now go back to the line: we have said that the Law is made up by a group of *regulae* and *normae*, like dashes drawn with a ruler and a set-square.

It is not but a mere coincidence if the vivid mind of Kandinsky – who not only had studied Roman Law,¹² but had also deepened his legal knowledge throughout his artistic and intellectual career (also due to his circle of acquaintances and his meetings, such as the one he had with Carl Schmitt¹³) – had encompassed the *summa* of his aesthetical reflections in a treaty (whose style and contents were also very “normative”) titled *Point and Line to Plane*.¹⁴ While reading the great Kandinsky’s words, we have almost the impression to glimpse the original line drawn by Romulus, sublimated and enshrined in a broader reasoning which combines many other reflections ripened after a long artistic experience (such as the teaching at the well-known Bauhaus, first established in Weimar, later in Dessau, until its closing in 1933).

10 See the parable *Vor dem Gesetz* included in Franz Kafka, *Der Prozess* [1925] (Frankfurt am Main: Stroemfeld, 2008), 375–378, 375–376.

11 Giorgio Agamben, *‘Homo sacer’: il potere sovrano e la nuda vita* (Torino: Piccola biblioteca Einaudi, 2005), 57.

12 See Luigi Garofalo, “Kandinsky e il diritto romano,” *LABEO* 49 (2003): 49–60.

13 See Luigi Garofalo, “Carl Schmitt e Wassily Kandinsky: a Monaco fra diritto e arte,” *Anuario da Faculdade de Direito da Universidade da Coruña* 13 (2009): 261–281.

14 Wassily Kandinsky, *Point and Line to Plane* (New York: Dover, 1926).

2 The line's sacredness

A line was the element which divided what lied “inside” from what lied “outside” the ancient *quadrata Roma* demarcated by Romulus; and a line was the element which, in the following centuries, divided the (more and more expanding) Roman territory from the rest of the world. Beyond the line, the Gauls, the Teutons were to be found and, beyond the line of the sea, the Carthaginians.

The idea of the *limes* characterizes the geometrical shape of the Roman territory, subdued to a given system of rules, even if we know that, for the Romans, the main criterion for the application of the *ius civile* was the one that nowadays we would define of the “nationality” of Law, *i. e.* the criterion which identifies the applicable Law in accordance with the nationality of the subject. We can therefore perceive the strength of the connection between the *civis* and the *ius civile*.

Nevertheless, the line is essential also when focusing, inside the Roman territory, on the distinction between the *res*, and esp. between the lands. Here the line divides what is “legally mine” from what is “legally yours.”

The Roman sense of belonging is very strong: it is plastically expressed by the *vindicatio*, which was carried out by abiding to the ritual forms of the *legis actio sacramenti in rem*. The *vindicator* had to touch the claimed object with a stick (the *vindicta* is actually simply a stick), or a stylized depiction of it, such as when – in order to indicate an entire plot – a clump was brought in front of the court (a wonderful synecdoche) and the claimant uttered the words “*meum esse aio*,” *i. e.* “I say that this is mine.”

By shifting from the private context to the public domain, the idea of power, of dominance, became the basis for the State's *dominium* on its territories.

The *dominium* of the *civis* was a *dominium ex iure Quiritium*: only the *Quirites* – the male and armed citizens, certainly the *viri* – were empowered to have it. The legal power extends over a space, for the State as well as for the single citizen, and in that space, everything is encompassed since the very beginning.

Initially what is “legally mine” – well expressed by the *dominium ex iure Quiritium* – was likely purported by the *pater's* indistinct dominance over things and individuals. The *dominus* is the sovereign of his space: thus, he has the dominance over his house, which actually is the *domus*. The concatenated sequence is: *dominium, dominus, domus*.

The sources, esp. Festus and Dionysius, report that the control over the boundaries was entrusted to a deity: *Terminus*.¹⁵ The latter was in charge of

¹⁵ See Gianluca De Sanctis, *La logica del confine. Per un'antropologia dello spazio nel mondo romano* (Roma: Carocci editore, 2015), 19–90.

punishing any impious wrongdoer who dared to delete the sacred line: and the sanction, provided for by *Lex Numae*, was the most serious ever, *i. e.* the *sacertas* of the wrongdoer who had jeopardized the established order.¹⁶

The well-known effect of being sentenced of *sacertas* was that of being freely killable by anyone, who could have remained unpunished. An atrocious punishment, then, for those attacking the boundaries: the Law would have totally disregarded them. This indifference stemming from the *sacertas* did not imply that the wrongdoer had to be necessarily murdered: quite on the contrary, the effect was simply that the murderer would have remained pure and unpunished.¹⁷

Who tackles the line is jeopardizing the order: Remus' sacrifice was exemplary.

3 A diced legal system

Another match right on the boundary was the one played by Caesar against the Senate when, coming back from a successful campaign in the Gaul, he refused to renounce his proconsular *imperium* for the Gaul.

The facts are so well-known to be surrounded by an almost mythical-symbolic aura. After having obtained the proconsular powers for the second time in 55 bc., Caesar was unwilling to renounce those powers, unless being elected as consul. Both Pompey's and the *nobilitas*' opposition anyway led to a standstill when, at the end of the year 50 bc., Caesar was requested to step down from his proconsular *imperium* for the Gaul and called back to Rome. Lacking a clear refusal by Caesar, who wanted also Pompey to be deprived of the proconsular *imperium* for Africa and Spain, the Senate forced the situation: the *consules* were asked to order Caesar to immediately get back to Rome, or he could have been declared a public enemy.

The fight between Caesar and the Senate came to its acme in the year 49 bc. and it is brilliantly described by Caesar himself, who theatrically stresses the

¹⁶ Fest., s.v. *Terminus* (L. 505); Dion. Hal. 2,74,3.

¹⁷ See Hannah Arendt, *Quaderni e diari, 1950–1973* (Vicenza: Neri Pozza, 2007); Giorgio Agamben, *Stato di eccezione: Homo sacer, II, I* (Torino: Bollati Boringhieri, 2003); Luigi Garofalo, *Biopolitica e diritto romano* (Napoli: Jovene, 2009); Id., “‘Homo liber’ e ‘homo sacer’: due archetipi dell’appartenenza,” in *Fondamenti e svolgimenti della scienza giuridica. Nuovi saggi* (Torino: Giappichelli, 2015): 15–38; Id., *Studi sulla sacertà* (Padova: Cedam, 2005); Id., “Suggerimenti per il giurista dai ‘Quaderni e diari’ di Hannah Arendt,” *TSDP* 1 (2008): 2–56, 35–45.

dramatic crossing of the Rubicon. Since the very moment in which he crosses the river by wearing weapons, Caesar becomes a *hostis rei publicae*.

The river is the line. And the line, in this case, is the boundary of the territory which Caesar – due to the Senate’s will – could have never entered while wearing weapons. But, once again, the line is the line of the *ius*.

The moment of the line’s crossing is a key moment because, by becoming a *hostis rei publicae*, Caesar overturns the Law: all of a sudden, the hero of the Gaul becomes an enemy for the State’s order.

Notwithstanding the above, it must be added that – thanks to his same strength – Caesar was then able to transform that overturning in a pure, founding act: the setting of a new order. We are facing the old paradox of the violence which becomes Law, as for Pindar’s teaching according to which Law and violence can end up in merging.¹⁸ A paradox which leaves the lawyer speechless, due to the latter’s incapability of giving answers.

The line is as sharp as a blade and it divides, but also joins at the same time, the two semantic fields which are encompassed in the German word *Gewalt*.

So, in the light of the end of Caesar’s story, we could say that what was *contra ius* is absorbed by the new sphere of the *ius*: the scenario is an increasing concentration of the powers upon one single individual, the *princeps*, thus a slow erosion – though not a clear demolition – of the republican constitutional order. What comes after validates the past.

But Caesar’s “play” is plainly revealed in the famous sentence *alea iacta est*. *Alea* are the dice, but also – in a figurative sense – the risk.

As a matter of fact, Caesar “puts the legal system at risk,” or – even better said – he “dices the legal system;” thus, Caesar is like a gambler, or even maybe like a cheater, who jeopardizes the line of the Law and therefore is aware of imperiling all his life.

In Shakespeare’s *Julius Caesar*, the ambivalence of the story is easily to be noticed; at some point, it even seems that Brutus’ point of view prevails, *i. e.* the point of view of Caesar’s murderer. In any case, there is a sort of humane compassion for the murderer, whose terrible behavior was not totally unreasonable: and the reason why Brutus has killed Caesar, his friend Caesar, is explained by powerful words:

If there be any in this assembly, any dear
friend of Caesar’s, to him I say, that Brutus’ love
to Caesar was no less than his. If then that friend
demand why Brutus rose against Caesar, this is my

18 Pind. 169.

answer: Not that I loved Caesar less, but that I loved Rome more.¹⁹

Brutus is not a traitor, because he acts in favor of Rome: “Rome more.”

Undoubtedly, Brutus’ tragedy entails a great suffering; however, he prefers keeping his loyalty towards Rome: but what is Rome? Here the reference is to the “old” legal system of the city: the republican order to which Caesar’s murderer could not give up.

Brutus had remained “on the inner side” of the line.

4 Robinson’s need of the line

In modern times, certainly the need of drawing lines is as strong as in ancient Roman times. The literary main champion of the new mercantile and bourgeois era is Robinson Crusoe, an imaginary character created by Daniel Defoe, who lived in England between the seventeenth and the eighteenth century.²⁰

Robinson represents an almost pedagogical model of the booming capitalistic society. Placed in-between the protestant activism and that European cultural supremacy which anticipated the prevaricating and violent colonialism still to come, the “civilized man” shipwrecked on a desert island is but a character to be compositely framed from a juridical perspective.

When Defoe writes his *Robinson Crusoe* novel, around 1719, the Glorious Revolution is still well remembered; the flourishing of the international trade has imposed the middle-class cultural model, thus the centrality of the individual, of the *homo faber fortunae suae* and of his capability to climb the social ladder. What is more, the individual bears some “natural” rights, *i. e.* insuppressible rights.

Robinson’s story is typical of a young man of those times: he has been raised in a traditional way and his father has chosen the legal profession for him, still he welcomes a sort of inner voice urging him to sea voyage.

The initial pages sound:

My Father, who was very ancient, had given me a component Share of Learning [...] and design’d me for the Law; but I would be satisfied with nothing but going to Sea, and my Inclination to this led me so strongly against the Will, nay the Commands of my Father [...]

¹⁹ William Shakespeare, *Julius Caesar*, in *Complete Works*, ed. Jonathan Bate and Eric Rasmussen (Basingstoke: Palgrave Macmillan, 2007), 3.2.17–20.

²⁰ Daniel Defoe, *Robinson Crusoe* [1719] (London: Macmillan and co., 1868): further references in the text, abbreviated as DD.

that there seem'd to be something fatal in that Propension of Nature tending directly to the Life of Misery which was to befall me. (DD, 1–2)

Therefore, Robinson is driven by powerful pioneering proclivity, which prompts him to comply with his calling. Clearly the novel pivots on the themes of “vocation,” of “predestination,” which can also be interpreted from a religious perspective, esp. by keeping Defoe’s protestant education in mind.

The end of Robinson’s voyage is well-known. Due to the shipwrecking, the protagonist is forced to re-invent (also in the etymological sense of “finding again”) himself and his entire life. But here lies the paradox.

On the island, every gesture of Robinson is driven by the intention to rebuild the same lifestyle he had left behind, clashing with the burning desire to evade that had compelled him to sea voyage. Most importantly, on the desert island the paradox is fully revealed by the blooming of Robinson’s faith in the power of Law.

The palingenetic shipwrecking on the desert island, which carries also the risk of sinking (as well as the immersion in the purifying waters), puts the protagonist in self-repeating conditions.

The myth of the palingenesis is therefore curved in a cyclic form. On the island, Robinson devotes all his efforts in recreating a legal system, but without any need for it; mostly, he acts so in a dramatic and undeniable lacking of any society.

By reading Defoe’s novel, the well-known Latin motto *ubi societas, ibi ius* seems to become questionable: immediately after his arrival on the island, the young man – born and raised in that same England of the eighteenth century which was characterized by an optimistic vision of life and which had rooted its faith in a new, prosperous and well-ordered world – becomes a legislator. Robinson even crowns himself as “king of the island.”

The legal system shaped by the conqueror refers both to the public and to the private dimensions. Towards the end of the novel, Robinson states: “First of all, the whole Country was my own mere Property; so that I had an undoubted Right of Dominion” (DD, 245). Undisputedly, he is therefore the lord of the island.

The need for the line is back, as it can be seen: and it is a totally urgent need if we consider that – in front of the indistinct and anarchic world of the island made up of sands, trees and animals – Robinson makes every possible effort to catalogue its parts. Everything must have a name, everything must be classified:

Je voudrais que chaque plante fût étiquetée, chaque oiseau bagué, chaque mammifère marqué au feu. Je n'aurai de cesse que cette île opaque, impénétrable, pleine de sourdes

*fermentations et de remous maléfiques, ne soit métamorphosée en une construction abstraite, transparente, intelligible jusqu'à l'os.*²¹

There is no desire for knowledge. The desire, instead, is for putting the shapeless reality of the island inside a cage, a cage made up of many lines. The legal order, made up of well-defined grids, is functional to the control of the resources: here Robinson's utilitarianism pops out.

When the island starts to be populated by some inhabitants, *i. e.* Friday (such a name is given by Robinson, because the christening of the things is for the lord), his father and the Spanish man, the shipwrecked protagonist can fierily hold himself as "absolute lord and legislator," having authority on those subjects, who are perfectly abiding to his will.

Anyway, it has to be noticed that the appearing of Friday and of the other men – placed in an absolutely subordinate position – does not alter the scenario. Particularly, Defoe insists in depicting the pacific – we could say "natural" – serval condition of Friday. He is never considered as a person next to another person, but rather a slave serving to a person. According to the three-partition of Gaius (*personae, res, actiones*), Friday cannot be but caged in the *res*. Being a *res*, not even Friday contributes to build up a society; and the proof thereof is the complete silence in which he remains: he does not utter a word because he is not part of the social relationships, in reality because he is silenced by Robinson's banishment.²² In a nutshell, the island's people is made up only by him.

The shipwrecked lord of the island, however, is not satisfied by simply gaining dominant positions, under different perspectives which we could consider as both pertaining to the public and private sphere (even though, as we have mentioned, he is a king with no people and a sole lord surrounded by no other lords). He also orders himself and his own work; and so, he creates a Labour Law system, precisely fixing the activities' timing and shifts. The employer and the worker, of course, are always Robinson, but this is somehow comforting and it constitutes a considerable little step in the progress of the wild island's life. And so, Robinson not only accurately determines the activities' shifts, but also the garments to be worn in each occasion and he decides to keep a diary; he also sets the boundaries of his land and he splits it into sections.

The line is here not only drawn on the ground: as a matter of fact, it has entered the mind of the protagonist, who uses it to rule even himself.

²¹ See Michel Tournier, *Vendredi ou les Limbes du Pacifique* (Paris: Gallimard, 1967), 57.

²² See John Maxwell Coetzee, *Foe*, trans. Franca Cavagnoli (Torino: Einaudi, 2005).

5 The crime's line: Dostoyevsky's question

In the nineteenth century's literature, the attention seems to be mainly drawn to the line which encompasses and identifies the crime; by leaving the crime's details apart, it is possible to conduct an inquiry into the human soul, into the tearing choice between good and evil, but also on the social influences upon the human behaviour.

A Darwinian-positivistic line of thought lies behind the idea that the wrongdoer – the attention is mainly focused on the subject – has become a criminal due to the condition in which he was born and raised (on this side, the social critique and also the Marxist critique are evident) or due to his psychosomatic structure (and on his side, we can notice the elaboration of the criminal anthropology theorized esp. by Cesare Lombroso in his famous book *L'uomo delinquente*²³). Notwithstanding the reasons for his conduct, if the criminal has committed a crime, by trespassing the line of the Law, this is provoked by some causes which are noticed (or even understood) by the literature in delving into the human soul.

Partly inside and partly outside this frame, lies the monumental *Crime and Punishment*.

In Dostoyevsky's opinion, the social background is primarily important, but not essential: his care for the poor, for the suffering people, for the miseries of a gloomy and suffocating Saint Petersburg does not end up in surrendering to the "statistic" view according to which human beings are criminals. The Christian faith – which imposes the possibility of a different conclusion – counters this view. What matters is above all the subjective liability of the criminal. The individual's personal features offset the estimate (and thus the predictability) of the undefeatable social determinism.

Dostoyevsky carries out an experimental inquiry into his character, the young Raskólnikov, on the line which marks the crime's boundary and on the size of his consequences. The main question, the most undermining question from the legal perspective, is: can the murder be licit?

May that extremely grave conduct (the "Thou shalt not kill" of the Ten Commandments), in which a man is armed against another man, be justified?

We must specify that Dostoyevsky's inquiry is not into the murder provoked by another murder. The revenge – and his justification or limitation – is a completely different inquest.

Just for clarity's sake, here we are not taking into consideration the theme already deeply examined by Aeschylus in his *Oresteia*: in that tragedy, Clytemnestra's decision to murder Agamemnon had nurtured the revenge of

²³ Cesare Lombroso, *L'uomo delinquente* (Milano: Hoepli, 1876).

their children Electra and Orestes and such a revenge had been declared as “lawful” by the court set by Athena, the goddess who had granted protection to Orestes. The rational and harmonizing goddess Athena had instituted a court of wise men in the city named after her and they had decided that Orestes was not guilty. The murder of his mother Clytemnestra was therefore “legalized.”

What is more, the limitation of the revenge could be considered as the basis for the elaboration of the entire Roman Law: the possibility of entering into an agreement as an alternative to the application of the Law of retaliation (*talio esto, i. e.* shall the punishment be the same) was provided for by the Law of the Twelve Tables and it was held by the Roman jurists as the basis of the concept of *pacisci*, thus with of all the following concepts of *pactio, pactum*, which would have led to the elaboration of the idea of *contractus*.

The inquiry underlying *Crime and Punishment*²⁴ has nothing to do with the theme of the revenge.

Quite differently, Raskòlnikov – who is also a character who lives underground, due to the financial difficulties affecting a young Law student – designs and conceives the murder with the lucid rationality of a surgeon, without having suffered any injustice by the designated victim.

The old usurer, Alyona Ivanovna, is certainly depicted as a sordid and greedy character, but in any case, she has never had anything to do with Raskòlnikov. The true reason for the murder must be searched in a pure speculation, clarified by the protagonist to his friend Razumihin and in which the right to commit a crime is theorized and well-focused.

The pages where the theme is elaborated are so famous that we can here simply mention them: in Raskòlnikov’s “doctrine,” the social environment plays a fundamental role in creating a criminal. On the contrary, Raskòlnikov’s idea was just

that men are “in general” divided by a law of nature into two categories, inferior (ordinary), that is, so to say, material that serves only to reproduce its kind, and men who have the gift or the talent to utter a “new word.” The first category, generally speaking, are men conservative in temperament and law-abiding; they live under control and love to be controlled. To my thinking it is their duty to be controlled, because that’s their vocation, and there is nothing humiliating in it for them. The second category all transgress the law; they are destroyers or disposed to destruction according to their capacity. (FD, 236)

In Saint Petersburg, the Western cultural (and esp. Nietzschean) turmoil was proliferating and the young Law student had outlined in an article – titled “The Crime” and published in a review – his ideas on the suppression of “irrelevant”

²⁴ Fyodor Dostoyevsky, *Crime and Punishment* [1866], trans. Constance Garnett (London-New York: Dent Dutton, 1973): further references in the text, abbreviated as FD.

lives, such as the one of the old usurer, nothing but biological existences: due to the publication of that article, Raskòlnikov had been expelled from University.

Anyway, this had not had any impact on the certainties of the protagonist, who saw his theory confirmed in the past times:

Lycurgus, Solon, Mahomet, Napoleon, and so on, were all without exceptions criminals, from the very fact that, making a new law, they transgressed the ancient one, handed down from their ancestors and held sacred by the people, and they did not stop short at bloodshed either, if that bloodshed – often of innocent persons fighting bravely in defence of ancient law – were of use to their cause. It is remarkable, in fact, the majority, indeed, of these benefactors and leaders of humanity were guilty of terrible carnage. (FD, 236)

The trespassing of the Law's line, or – more precisely in this context – of the crime's line, is allowed to those who – as it is repeatedly stated in the novel – have “new words” to utter. Hadn't the greatest man on earth, Napoleon, committed any kind of crimes?

The real “Master” to whom all is permitted storms Toulon, makes a massacre in Paris, “forgets” an army in Egypt, “wastes” half a million men in the Moscow expedition and gets off with a jest at Vilna. And altars are set up for him after his death, and so “all” is permitted. No, such people, it seems, are not of flesh but of bronze! (FD, 248)

It is worth stressing that the question set by Dostoyevsky at the heart of the novel is insistently formulated in juridical terms. In general, the writer's attention is drawn towards the legal world (first of all, a polemical argument against lawyers can be read in the novel) and he frequently seems to make reference to juridical elements (for instance, the dodge used to enter into the house of the old usurer is to deliver the “promised pledge” (FD, 70)); when Raskòlnikov sums up for Razumihin the meaning of his article (and thus of his theory), the terms are similar to those used in the general theory of Law. Moreover, it is the same Raskòlnikov to stress: “You remember it began with the legal question” (FD, 236).

The core of the discussion is about the right to commit crime of the extraordinary men: “The crimes of these men are of course relative and varied; for the most part, they seek in very varied ways the destruction of the present for the sake of the better” (FD, 236).

The transgression of the extraordinary men is the licit trespassing (*transgredior*) of the line. Their mission cannot be limited in any manner whatsoever.

The preposition “through” is insistently and evocatively used to better explain the concept:

But if such a one is forced for the sake of his idea to step over a corpse or wade through blood, he can, I maintain, find within himself, in his conscience, a sanction for wading through blood – that depends on the idea and its dimension, note that. (FD, 236)

A line over which some people authorize themselves to go, and however this authorization must be proportional to the “dimension” of the project. When the transgression is ruled, it is no more transgression.

The Law’s line, here mentioned by Raskòlnikov in general and abstract terms, had already been concretely trespassed when the young man – full of fear and trembling, but still determined and almost driven by the facts – had entered the door of the old usurer’s house.

The scene is prolonged and almost suspended, in the narration: the young man arrived at the fourth floor, “here was the door” (FD, 69). That would have become the road to perdition and, inevitably, to punishment. So “the door was opened” (FD, 70). The writer lingers on Raskòlnikov “being at the door.” The scene in which Raskòlnikov opens the door and the old woman clutches it represents the slow, silently unavoidable, trespassing of the line.

The consequences of the trespassing are well-known. The punishment, which Dostoyevsky himself had suffered in the penal colony, is a radical process which gets a meaning only in the Christian perspective.

In *The Brothers Karamazov* Dostoyevsky writes:

If anything does preserve society, even in our time, and does regenerate and transform the criminal, it is only the law of Christ speaking in his conscience. It is only by recognizing his wrongdoing as a son of a Christian society – that is, of the Church – that he recognizes his sin against society – that is, against the Church.²⁵

But this, which refers to what happens after the trespassing of the line, is another point.

6 The indistinguishableness in contemporary times

In contemporary times, people seem to be resistant to lines, even far away from perceiving them.

²⁵ Fyodor Dostoyevsky, *The Brothers Karamazov* [1878–1880], trans. Constance Garnett (Chicago-London-Toronto: Encyclopaedia Britannica, 1952), 31.

We think about the irrational and self-destructive vortex depicted in Ellis' book *American Psycho*.²⁶ In the well-known initial pages, the abjection and the perversion of a society – the New York City society in the Eighties, without any line left to clutch to – surface ruthlessly and without restraint, like a cut on an infection.

From the beginning to the end, the book describes a paroxysmal sequence of facts which, for their unconscionable and surreal violence, are hardly defined as “criminal”: effectively, the same perception of the crime, of the violence, is lacking.

In the book, there are no references to the legal issue (and, obviously, not even to the moral issue) to be found. The protagonists, obsessed by their appearance, driven – in their behaviour – by the wish to create an aesthetic work, do not perceive the limit. In the entire novel, there is only one moment in which a legal question is asked: is it *legal* or not for the retailer to replace the original label with his own? Note that “*illegal*” is in italics throughout the text.

Contemporary times are marked by the absence of lines.

Recent neuro-scientific studies have shown that, in our brain, the boundary of the Ego depends on a little part of it: it is this little part of the brain which marks the limit between the Ego and the Super-Ego.²⁷

But, if this is the Ego, is it something which can be owned? Do I own myself? This question is legally destabilizing, because it implies a number of issues which are nowadays encompassed by the Bio-Law, hence by that field in which Law and life meet and sometimes collide: a field in which it is often hard to say which of the two shapes the other one. A simple question is sufficient for rising the gravest bioethical issues: are the human beings the lords of themselves? In the positive, would they have the right to fully and exclusively enjoy of themselves?

There are questions which evoke the limit between the Ego and what lies beyond the Ego, between life and death: am I entitled to use my body? If so, what are the limits of this right?

If the general idea of owning the body remain undisputed, nevertheless it is also clear that the “owning” remains but a foggy²⁸ concept wherein the usable legal forms are vague.

The Law's lines fall into an indistinguishable twister, carrying with them also the meaning of the words: it is unclear if the meaning of the “owning” is

²⁶ Bret Easton Ellis, *American Psycho* (London: Picador, 1991).

²⁷ Paolo Zatti, *Maschere del diritto volti della vita* (Milano: Giuffrè, 2009), 59–64.

²⁸ Paolo Zatti, “Il corpo e la nebulosa dell'appartenenza: dalla sovranità alla proprietà,” in *Per uno statuto del corpo*, ed. Cosimo Marco Mazzoni (Milano: Giuffrè, 2008), 69–108.

better expressed by the verb “to have” or by the verb “to be,” in order to underline that something “is” in a certain way instead that somebody “has” something.²⁹ It is not just a matter of tight-roping walking on words, if we think that under the archaic Roman Law the “owning” was expressed by the verb “to be”: *in mancipio esse* was the phrase used to express that somebody has the *dominium* over a given thing.

The lines are blurry or are completely lacking: there is a sense of implosion, and the sound of the metallic and more and more undefined voice of Hal – the computer of “2001 Space Odyssey” – is echoing: “My mind is going ...”³⁰

It is therefore possible to come to a conclusion in signs.

The Romulus’ line of the *quadrata Roma* had reminded me of a sort of Kandinsky’s painting made by well-marked signs, meditated lines, even if already crossed with other signs on the canvas of the Russian painter. There it is still seemed possible to see a well-focused and well-limited world, it would say a “land-divided” (*centuriatus*) world.

The world in which we live can no more be bridled by those lines. Maybe the same idea of line has been lost: it has divided itself in the infinity of points which compose it. The point is the result of the dis-order of the line.

If we were asked to indicate a paradigmatic representation of the contemporary times, perhaps we could hint to the dripping of Pollock: there are swarms of dots, some approximate regularities, assonances, but what prevails is the general sense of indistinguishableness.

Incipit in lines, conclusion in points.

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²⁹ See Paolo Grossi, *La proprietà e le proprietà nell’officina dello storico* (Napoli: Editoriale scientifica: 2006), 92; Cosimo Marco Mazzoni, ed., *Per uno statuto del corpo* (Milano: Giuffrè, 2008); Zatti, *Maschere*, 64–69, 74–84.

³⁰ See Zatti, *Maschere*, 76.