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The Court-Martial of Private Vasily Shabunin: An Obscure Trial and its Lasting Impact on Novelist Leo Tolstoy

BY MAJOR R. SCOTT ADAMS

By the summer of 1866, Leo Tolstoy had been working on his titanic novel, *War and Peace*, for three years.[1] Its completion would come three years later, near Tolstoy's fortieth birthday.[2] During that midpoint of his work, Tolstoy's masterpiece was briefly distracted by two men who visited his family estate and asked for his assistance.[3] The men were junior officers from the 65th Moscow Infantry Regiment, temporarily stationed nearby.[4] One was Alexander Stasyulevich, an ensign and old friend of Tolstoy from his time in the army.[5] The other was Grigori Kolokoltsov, a first lieutenant and close friend to Tolstoy's brother-in-law. The men explained that a young soldier in their regiment was accused of assaulting an officer.[6] This private was facing possible death by firing squad.[7] The men asked Tolstoy to serve as defense counsel at the court-martial.[8] With little more than sympathy on his side, Tolstoy accepted the task.[9] After Tolstoy's bumbling attempt at a defense, Private Vasily Shabunin was convicted and sentenced to death. Within two weeks soldiers from the regiment brought the pitiful looking young man to a post where he was shot to the sound of drums.[10]

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Tolstoy stayed at his estate throughout the rest of that year, writing feverishly through the winter, and creating what is often considered the greatest novel of all time.[11] Scholars have debated the court-martial's effect on Tolstoy's writing and life.[12] The debate persists in obscure academic corners largely because Tolstoy rarely discussed the experience.[13] He frequently told strangers of his experience watching a man lose his head to the guillotine in France.[14] But Tolstoy almost never described his client's execution; a curious and rare silence. In 1908, after Tolstoy's dedicated biographer, Pavel Biryukov, had already completed the first and second volumes of Tolstoy's life, he first learned of the Shabunin trial when he stumbled across an old file. The discovery agitated Biryukov, who had worked closely with Tolstoy for the past

24 years. Biryukov confronted Tolstoy and demanded an account.[15] Reluctantly, Tolstoy agreed to provide a narrative.[16] In May, 42 years after the court-martial, Tolstoy wept as he described his failure as defense counsel, a story that began with him saying the court-martial "had much more influence [on me]…than all the seemingly more important events of life; the loss of or recovery of wealth, successes or failures in literature, even the loss of people close to me."[17]

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This article will not provide information of immediate tactical value; rather, it seeks to bring to light an obscure court-martial of profound historical and literary significance. It operates under an assumption that there is truth, wisdom, and intangible value in literature. The article also operates under the hope that understanding courts of the past will draw a common emotional experience with today's military justice practitioners.

THE COURT-MARTIAL

Private Vasily Shabunin was a 24-year-old alcoholic with a red face and red hair.[18] He was overweight and literate, both unusual characteristics for a young enlisted soldier in the Russian army.[19] He also volunteered to enlist at a time when enlisted men suffered in a culture of hardship, made harder by their often cruel and demanding officers.[20] Shabunin spent most of his free time alone, drinking a local brandy and muttering psalms he had memorized.[21] The 65th Moscow Regiment was his second assignment, where he served as a clerk to his company commander, Captain Yasevich, a graduate of Russia's General Staff Academy and a man of Polish descent.[22] Shabunin promoted to sergeant early in his military career, but soon after his transfer to the 65th Moscow Regiment he began to experience discipline problems. Captain Yasevich was not impressed by the literate Sergeant Shabunin, and soon had him stripped of his sergeant rank after Shabunin stole a uniform item from a fellow soldier. Apparently Shabunin intended to sell the item so he could buy vodka. Shabunin was scheduled to have the morning off on Monday, 6 June 1866. He went to the local liquor store and bought over a quart of vodka. He spent the rest of that morning drinking, and reported for duty at 1200.[23] Captain Yasevich asked Shabunin to copy a report for the battalion commander. Shabunin accomplished the task, but took his time and drank more vodka while doing it. Upon completion, Shabunin believed it was done well and provided it to Yasevich at 1700. Yasevich crumpled up the paper and, without explanation, threw it in Shabunin's face.[24] Whether it was the alcohol or accumulated anger bursting out, Shabunin snapped. He insulted Captain Yasevich, though the exact words are not recorded.[25] Captain Yasevich then said to his sergeant major, "He is drunk again. Lock him up, and when the day's work is done, get the birch rods ready."[26] Yasevich then slowly began to pull on his white suede gloves and walk away.[27] But Shabunin followed and shouted, "Why do you torment me?"[28] Captain Yasevich looked calmly at Shabunin but did not speak. Shabunin then screamed, "Silence! You'll beat me with birch rods?"[29] He then clenched his fist and struck Yasevich in the face while shouting, "Take that in your ugly Polish mug!"[30] Captain Yasevich was knocked down and blood dripped from his nose.[31] Shabunin was promptly locked in a guarded hut and a report of the incident was prepared for Colonel Yunosha, the commander of the regiment. Colonel Yunosha ordered an investigation that lasted all of one day and included a full signed confession by Shabunin. The investigation was sent to the adjutant general. A few weeks later orders returned stating Shabunin was to be charged with violating Article 604 of the draconian Russian code of military regulations, which read "Raising a hand or weapon against a superior is to be punished by death."[32]

Article 604 of the draconian Russian code of military regulations: Raising a hand or weapon against a superior is to be **punished by death**.

Within a few days Tolstoy accepted the task of serving as defense counsel and set out from his home to meet with the young Shabunin a few miles down the road.[33] When Tolstoy entered the small brick hut, Shabunin stood at attention.[34] Tolstoy later noted, however, that Shabunin had a plain face, was dull and unresponsive, and seemed bored and uninterested in the entire process.[35] Whether Shabunin's attitude reflected defeat or indifference is unclear, but he would not speak, except to complain that Captain Yasevich "leaned on me."[36] Tolstoy had no experience and no qualifications. Instead he had a client who was obviously guilty of the charged offense, who had already confessed and was not willing to participate in his own defense. Tolstoy was also outmatched by the special prosecutor sent from Moscow.[37] Nonetheless, the trial continued a few short days later, on 16 July.[38] The court's officers were Colonel Yunosha, Ensign Alexander Stasyulevich, and Lieutenant Grigori Kolokoltsov.[39] A conviction merely required a majority vote of the officers.[40] Contrary to the claims of some Tolstoy enthusiasts, his argument before the court was not impressive. [41] The argument reveals a defense counsel that was both inexperienced and in a difficult position. "There he stands before you with downcast eyes. His countenance is indifferent, composed, and dull. He expects the death penalty, yet not a muscle of his face trembles," he argued.[42] The principal point of Tolstoy's repetitive and disorganized argument was that Shabunin must be suicidal, and therefore insane, because no sane person would sign a confession of such a crime.[43] Tolstoy awkwardly tried to place this argument primarily within the frame of Article 116, which provided an acquittal on a showing of insanity, and secondarily within Article 109, which allowed for a mitigated punishment where the soldier had a dull, or slow mind.[44] It is unclear if Tolstoy understood that Article 109 did not apply where the accused acted out of anger, as Shabunin had admitted.[45] Further, Article 116 only applied where a physician diagnosed the accused with insanity, and the army had already accomplished an examination that concluded Shabunin was sane.[46]

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During Tolstoy's strained argument, the pragmatically minded officers were surely thinking the obvious; that Shabunin signed the confession not because he was suicidal, but because it was true and because he was stupid. Shabunin was, therefore, promptly convicted and sentenced to death by firing squad.[47] Yet Tolstoy's argument was not a complete failure. Tolstoy's close friend Stasyulevich voted against his regiment commander for acquittal.[48]

The lack of unanimity, owing to Stasyulevich, permitted an appeal of the court's decision.[49] Consequently, Tolstoy submitted a request for pardon to St. Petersburg.[50] Unfamiliar with the appeal process, he simply sent the case to his cousin, Alexandra Tolstoy, who was a tutor to the Tsar's children.[51] Alexandra took the appeal to General Dmitri Milyutin, the minister of war, who stated he could not act on the case because Shabunin's regiment number was omitted from the request.[52]

Less than one month following the trial, Captain Yasevich had his men place a black stake in the ground near the regiment camp, and dig a pit behind the stake.[53] The soldiers of Yasevich's company formed a square around Shabunin and shaved his red hair off half of his head as a mark of shame following the conviction. On this day the half-shaved Shabunin was led inside the square along with a black clad priest. Shabunin kissed a cross extended to him by the priest.[54] The soldiers then dressed Shabunin in a shroud, blindfolded him, and tied him to the stake with his hands behind his back.[55] Yasevich then voiced a command and 12 sharp shooters took their place fifteen paces from Shabunin and fired.

Two bullets penetrated Shabunin's head and four struck his heart.[56] A local doctor inspected Shabunin to ensure the sagging body was dead.[57] Shabunin was then released from the stake and his limp body thrown into the pit. Several men shoveled dirt onto the body. When all was done the band played and the regiment marched past the grave. The men of the 65th had seen military justice in action. Tolstoy stood and watched.[58] At the time, he could not know how profoundly the experience would affect his life's greatest work, *War and Peace*.[59]

TOLSTOY:

Tolstoy was not a lawyer. He had studied law in his youth at the University of Kazan, but fell just short of a degree.[60] Additionally, a decade before writing *War and Peace*, and long before becoming an eccentric, uncompromising pacifist, he fought for Russia in Crimea against Turkish, French, and British forces.[61] Indeed, Tolstoy commanded a light battery of an artillery brigade through some of the most intense fighting the world had witnessed since Waterloo.[62] His journal and his superior officers described his performance in a way that reminds not of glory seeking Prince Andrey, from *War and Peace*, but of the novel's bumbling Pierre Bezukhov, who wanders his way to Borodino and watches as a fascinated and horrified tourist.[63] He was also a prolific author, publishing several works that dealt with broad subjects such as the nature of courage and the morality of war.[64] A frequent theme of his work was that war reveals the best and worst of men.[65]

After Russia surrendered in 1855, Tolstoy immediately went to St. Petersburg to begin his full-time writing career.[66] He took up the pen in 1863 to write *War and Peace*.[67]

WAR AND PEACE

War and Peace is difficult to summarize. The novel is perhaps best known for its size. An unabridged audiobook of *War and Peace* runs over 61 hours, causing many readers to feel as the great American novelist Henry James did when he described it as a "baggy monster."[68] But despite the length and complexity that keeps most of us away, we know that *War and Peace* is a literary achievement. A story that is quintessentially Russian and yet compelling to people all over the world today.[69]

War and Peace contains broad lessons that remain relevant today: the triumph of patience over brute force; the strength of national solidarity; the supreme importance of domestic love. One main character provides a cautionary tale of chivalry through mutual respect.[70] Another shows a man to whom the highest virtue is simply to do his duty.[71] Tolstoy's masterpiece is often considered the greatest of all time because, as one contemporary scholar stated, it "is surely the greatest attempt in the history of the genre to represent and embody the branching infinity of human relations."[72] Admirers of *War and Peace* often say it feels more like real life than their own lives.[73] Aside from Tolstoy's gift to describe human experience, his work is largely admired because it is autobiographical.[74]

Generally, the work covers the lives of several wealthy Russian families from 1805 until 1812.[75] This necessarily acquaints the reader with the lives and relationships of Russian aristocrats. The story also discusses Russian conflict with France, especially at the battles of Austerlitz and Borodino, the latter being the deadliest day of all Napoleonic Wars.[76] The book later describes the French occupation and subsequent retreat from Moscow.

During the French occupation of Moscow, the eccentric protagonist Pierre Bezukhov forms a ridiculous plan to assassinate Napoleon.[77] Pierre, the awkward civilian, is wandering the streets when he is arrested by the French for arson, though he was not guilty of that charge.[78] Pierre's subsequent court-martial and punishment are given three full chapters in the book.[79] These chapters are critical to the book and transparently reflect Tolstoy's personal experience with Shabunin.

The officer organizing Pierre's court looks on him and his fellow prisoners with indifference and indolence.[80] Though Pierre is confused by the process, he notes the officers act with "unhesitating assurance," leading him to conclude he was "an insignificant chip fallen among the wheels of a machine whose action he did not understand but which was working well."[81] At length, Pierre is brought before a French general officer.[82] At first the general does not look up, but after Pierre stands in silence, the general looks at him intently and says "I know that man."[83] Pierre responds,

"You cannot know me, general, I have never seen you."[84] The general interrupts, "he is a Russian spy."[85]

> Through Pierre, Tolstoy honors the ordinary soldier—men like Private Shabunin.

Pierre pleads for his life, pitifully calling the general "Mousier," but is taken away to a field.[86] Pierre is sixth in a line of prisoners who are executed by firing squad, two at a time.[87] After Pierre watches in horror as the first four are killed, the soldiers then take just the fifth prisoner and not Pierre.[88] The fifth prisoner is a young man and Tolstoy describes his execution with such detail that many believe it is not the narrative of an execution in the abstract, but of Private Shabunin.[89] The helpless Pierre watches as the French soldiers awkwardly drag the body away.[90] Pierre is then taken as prisoner with the retreating French and rescued much later.[91] The court-martial and firing squad introduce Pierre to a journey of suffering that becomes a major theme of the book.

Pierre is an intellectual. A clumsy, self-contradicting intellectual, but one that nonetheless seeks answers to life's highest questions. Pierre is one of the wealthiest men in Russia, but finds himself without purpose. Before the Battle of Borodino, he travels to the battlefield to watch as a spectator.[92] On seeing the Russian infantry, Pierre finds himself envying the enlisted soldiers—young men like Private Shabunin. As he fell asleep Pierre thought to himself, "To be a soldier, just a soldier!…[t]o enter communal life so completely, to be imbued by what makes them what they are."[93] These men have purpose. They are men of action who know what it means to live. Pierre envies the enlisted soldiers for casting "off all the superfluous."[94] Thus, Pierre shows reverence for the honor of military service, not out of a sense of hyper-machismo or a heightened sense of patriotism born of fear or hatred of the enemy, but rather from what we feel at the tomb of an unknown soldier. The anonymity of sacrifice; the absorption of the individual into a communal whole. Pierre's thoughts remind of George Eliot's hero Dorothea, who acknowledged she is the beneficiary of countless unhistorical acts and individuals "who lived faithfully a hidden life, and rest in unvisited tombs."[95] Through Pierre, Tolstoy honors the ordinary soldier—men like Private Shabunin.

CONCLUSION

Throughout the 1890s Tolstoy wrote one of his last novels, *Resurrection*.[96] The story concerns Dimitri Nekhlyudov, a gentleman serving as a juror in a criminal case.[97] Nekhlyudov recognized the accused, Katusha, as a woman he seduced many years earlier, but Nekhlyudov is too ashamed to tell the judge of his personal connection and the woman is convicted and sentenced to penal servitude.[98] After the trial Nekhlyudov experiences a moral awakening and, unlike Tolstoy's lacking performance for Shabunin, Nekhlyudov becomes relentless in his attempts to release Katusha. Nekhlyudov confronts the judge to urge delay of the sentence.[99] He hires an experienced lawyer to assist in an appeal for clemency; he personally takes the case to St. Petersburg to present an appeal to the courts, to the senate, to influential bureaucrats, and to the tsar himself.[100] Each is an example of what Tolstoy perhaps should have done for Shabunin, but did not. Nekhlyudov's attempts end in failure, but he presses on. He is an undeterred man of action. Finally, Nekhlyudov follows Katusha to Siberia where he learns by letter that one of his petitions succeeded and Katusha's sentence has been commuted.[101]

As the title implies, *Resurrection* is a story of redemption. Like Van Gogh painting himself as Lazarus while confined in an insane asylum, Tolstoy paints himself as Nekhlyudov. This vicarious expiation, attempted 30 years after the fact, astonishes us today just as Tolstoy's weeping over the case to his biographer 40 years later. While we do not have the moral energy for Tolstoy's profound sorrow, Tolstoy was cut from a different cloth and this difference is why we admire him. His work is so profound because he felt so deeply, and no experience in his long and extraordinary life was more influential than his brief time as counsel before a court-martial. [102]

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- **Biography:** Leo Tolstoy, https://www.biography.com/scholar/leo-tolstoy
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- **TED Ed Video:** Why should you read Tolstoy's "War and Peace"? – Brendan Pelsue, https://youtu.be/4dn7TEjnbPY
- **Washington Post:** Tolstoy's Turning Point: The Death of Vasili Shabunin (Nov 7, 1982), https://www.washingtonpost.com/archive/entertainment/books/1982/11/07/tolstoys-turning-point-the-death-of-vasili-shabunin/fc9f89ca-82a1-4189-8cc4-f3b1604ae06c/

ENDNOTES

[1] *See* Henri Troyat, Tolstoy 272-73 (Nancy Amphoux trans., Grove Press 1st ed. 1968) (1965).

[2] *Id.*

[3] Walter Kerr, The Shabunin Affair 23 (1982).

[4] *Id.*

[5] *Id.* The two men would have known Tolstoy had some training in the law and experience in the Army, but more importantly, they knew Tolstoy to be man of deep compassion.

[6] A.N. Wilson, Tolstoy 241 (1988).

[7] *Id.* at 242.

[8] Wilson, *supra* note 6, at 241-42.

[9] *See* Kerr, *supra* note 3, at 25-26. *See also* Wilson, *supra* note 6, at 242 (A.N. Wilson suggests in his novel that Tolstoy was, at least partially, motivated to accept the case by a desire to reacquaint himself with the "breed" of soldiers while deep in writing War and Peace).

[10] Wilson, *supra* note 6, at 243.

[11] *See, e.g.*, Virginia Woolf, The Common Reader 253 (Harcourt ed., 1st ed. 1948).

[12] *Compare* Wilson, *supra* note 6, at 243-44 (A.N. Wilson dismissed any idea of the court-martial having a lasting effect on Tolstoy), *with* Troyat, *supra* note 1, at 305 (Henri Troyat argued that Tolstoy was "thoroughly demoralized" by the event).

[13] Kerr, *supra* note 3, at 76.

[14] *Id*.

[15] *Id*. at 166.

[16] *See id*. at 166-67.

[17] 2 Pavel Biryukov, Lev Nikolayevich Tolstoi 93 (1911); Kerr, *supra* note 3, at 168. *See also* Kerr, *supra* note 3, at 12, 166 (While the aged Tolstoy was prone to exaggeration, many scholars, including Walter Kerr, opined that the Shabunin case was the primary cause of Tolstoy's regrettable transformation from Tolstoy the artist to Tolstoy the preacher).

[18] Wilson, *supra* note 6, at 242.

[19] Kerr, *supra* note 3, at 27, 74.

[20] *Id*. at 27-28.

[21] Wilson, *supra* note 6, at 242.

[22] Kerr, *supra* note 3, at 28.

[23] *Id*. at 29.

[24] Wilson, *supra* note 6, at 242.

[25] Kerr, *supra* note 3, at 29.

[26] *Id*.

[27] Kerr, *supra* note 3, at 30.

[28] *Id*.

[29] *Id*.

[30] Wilson, *supra* note 6, at 242.

[31] Kerr, *supra* note 3, at 30.

[32] Wilson, *supra* note 6, at 242.

[33] *See* Kerr, *supra* note 3, at 31-34.

[34] 2 Biryukov, *supra* note 17, at 96.

[35] *Id*. at 96-97.

[36] *Id*.

[37] Kerr, *supra* note 3, at 45.

[38] *See id*. at 39.

[39] *Id*. at 46. It is worth noting here that the court-martial panel consisted of the same men who sought Tolstoy's appointment as defense counsel. The historical sources provide little explanation for this, except that the panel was appointed by the regiment commander among officers in the regiment. *See generally* Wikipedia, *Judicial Reform of Alexander II*, https://en.wikipedia.org/wiki/Judicial_reform_of_Alexander_II (as of Apr. 3, 2018). It has been suggested that Tolstoy felt confident about his case, in part, because he was friends with two of the three officers on the panel. It has been further suggested that Kolokoltsov voted together with his commander to further his career. *See* Kerr, *supra* note 3, at 57. However, the historical record is too thin to provide satisfactory explanation of these details.

[40] *See* Kerr, *supra* note 3, at 57.

[41] *See* James Lieber, *Tolstoy's Turning Point: The Death of Vasili Shabunin,* The Washington Post, (Nov. 7, 1982), https://www.washingtonpost.com/archive/entertainment/books/1982/11/07/tolstoys-turning-point-the-death-of-vasili-shabunin/fc9f89ca-82a1-4189-8cc4-f3b1604ae06c/?utm_term=.d5bdfcf1b1a8.

[42] Kerr, *supra* note 3, at 49.

[43] Although Tolstoy's defense was weak, it is worth noting that some scholars have bolstered Tolstoy's claim of insanity. Specifically, the 1911 Encyclopaedia Britannica entry on Tolstoy states that Shabunin likely sought death to escape his miserable life, noting that he was "persuaded that death was better than the living agony of exile." XXVI The Encyclopaedia Britannica 1056 (11th ed. 1911).

[44] Kerr, *supra* note 3, at 48-49.

[45] *Id*. at 48.

[46] *See* Wilson, *supra* note 6, at 242-43. Article 604 of the code had only one permissible punishment: death.

[47] Kerr, *supra* note 3, at 56.

[48] *Id*. at 57. There is no surviving record to explain the decision of Kolokoltsov in voting to convict, after seeking Tolstoy's assistance. Similarly, Stasyulevich did not record his reason to vote for acquittal. It seems likely that both men desired procedural fairness, and that there may have been substantial pressure to vote together with the regiment commander. Just one year after the Shabunin trial, Stasyulevich committed suicide by drowning himself. One evening he put on a thick fur coat and walked into a deep river, never to be seen again. It is not known whether his involvement in the Shabunin trial is related to his later suicide. *Id*. at 87.

[49] *Id.* at 87.

[50] *See* Wilson, *supra* note 6, at 243.

[51] Kerr, *supra* note 3, at 58.

[52] *Id*. at 69. Some scholars, including Walter Kerr, argue that a systematic conspiracy was in place to ensure poor Shabunin's death and Tolstoy's defeat. The argument is unconvincing. Kerr primarily points to minor errors in the case file and infers nefarious intent from these simple mistakes. No doubt the military justice system of 1866 in Russia was imperfect, but the argument for conspiracy is strained. The process ran its course and it was unlikely Tolstoy could have done anything to change the outcome.

[53] Kerr, *supra* note 3, at 72.

[54] *Id*.

[55] A shroud is a formal white shirt.

[56] 2 Biryukov, *supra* note 17, at 93.

[57] Kerr, *supra* note 3, at 73.

[58] There is some scholarly debate about whether Tolstoy was actually present to watch the execution. *See* Kerr, *supra* note 3, at 73. Very little evidence exists either way, but Tolstoy's friend and biographer, Pavel Biryukov, expressly states in the first authoritative biography of Tolstoy that Tolstoy was present. *See* 2 Biryukov, *supra* note 17, at 93.

[59] Leo Tolstoy, War and Peace (Louise and Aylmer Maude trans., Oxford University Press, 1932) (1867) [hereinafter War and Peace].

[60] *See* Wilson, *supra* note 6, at 48.

[61] *Id*.

[62] *See id*. at 104, 117

[63] *Id*. at 117.

[64] *Id*. at 81.

[65] Tolstoy's diary from the Crimean War also reveals a fascination with military discipline. He wrote lengthy descriptions of punishments he witnessed: running the gauntlet, thrashing with an iron ramrod and other physical violence. Wilson, *supra* note 6, at 111-12.

[66] *Id*. at 125.

[67] *Id.* at 217-18.

[68] Henry James, The Tragic Muse 93 (1921).

[69] A.N. Wilson explains that War and Peace is such a significant part of the Russians' "emotional fabric" that even Stalin would not suppress it. Wilson, *supra* note 6, at 234. Russians mysteriously continued to read and celebrate War and Peace while all other literary works, including Dostoyevsky's, were ignored or suppressed by Bolsheviks. *Id*. Wilson further suggests that "for everyone who has enjoyed the experience of being completely lost in the world of War and Peace, [the] scenes are real life. Putting down the novel and returning to the everyday concerns of 'real life' is, in the experience of almost all readers of the book, a turning to something paler, less true than Tolstoy's art itself." *Id*. at 209. When it was published, Tolstoy knew, just as Dante and Shakespeare knew in their own time, that he had created a masterpiece. *Id*. at 208.

[70] The fictionalized Napoleon admires Prince Andrey's courageous behavior in battle at Austerlitz. After watching Andrey fall during an aggressive charge, Napoleon later finds Andrey and orders the highest medical care. Once Andrey is recovered, Napoleon releases him in a demonstration of chivalry. Chivalry is a fundamental principle of the law of war, but chivalry is based on a mutual respect among combatants. Napoleon respects Andrey, but Andrey does not respect the French. Indeed, Andrey challenges the very idea of chivalry when, just before the Battle of Borodino and seven years after his wound, he argues that Russians should not take any French prisoners. He mocks chivalry by saying it turns war into a game. By this time Andrey has lost his father and his estate to the French advance. His anger causes him to forget he was rescued by the French, and blinds him to any sense of reciprocal humanitarian treatment.

[71] Through Nikolay's experiences, War and Peace contains several examples of military discipline, including Nikolay's friend and commander, Major Denisov. While at a ruined German village, Denisov's men are dying of disease and hunger, so Denisov steals food from another regiment. Denisov is threatened with court-martial and then admits himself to the infirmary. In pitiful circumstances, Denisov composes a request for pardon and asks Nikolay to present his request to Tsar Alexander. After

significant trouble, Nicolay reaches the tsar, but Tsar Alexander says he cannot grant the request because "the law is mightier than I." Nikolay accepts the tsar's decision and admires him for it.

[72] James Wood, *War and Peace: Many Stories, Many Lives*, The Guardian (Aug. 1, 2014, 12:00 PM), https://www.theguardian.com/books/2014/aug/01/war-and-peace-stories-lives-leo-tolstoy-james-wood.

[73] Wilson, *supra* note 6, at 209. A.N. Wilson describes the writing of Tolstoy by saying: "We all know that there is such a thing as life, that we are alive, that the world is there, full of sights and sounds. But, when we read Tolstoy for the first time, it is as if, until that moment, we had been looking at the world through a dusty window. He flings open the shutters, and we see everything sharp and clear for the first time." *Id*. at 19.

[74] Nowhere is the relation between Tolstoy's life and his fiction more transparent than it is in War and Peace. Prince Andrey's cold feelings toward his wife, Nikolay's foolish gambling, Pierre's inconsistent principles; these are not fictional characters, they are Tolstoy himself.

[75] *See* Wilson, *supra* note 6, at 244.

[76] *Id*. at 21. Napoleon himself described Borodino as the "most terrible of all his battles." *Id.*

[77] *See* 3 War and Peace, *supra* note 59, at 138.

[78] *Id*. at 148.

[79] *See generally id.* at 185-96.

[80] *Id*. at 188.

[81] *Id*. at 189.

[82] *Id*. at 190.

[83] *Id*.

[84] *Id*.

[85] *Id*.

[86] *Id*. at 190, 192.

[87] *Id*. at 192-93.

[88] *Id*. at 193-94.

[89] *See* Wilson, *supra* note 6, at 243.

[90] The narrator explains that Pierre is saved by the general because while speaking with the general the two men then looked at each other's eyes, not as an indifferent prosecutor and defiant prisoner, but as humans.

[91] *See* War and Peace, *supra* note 59, at 196.

[92] *Id.*

[93] *Id*.

[94] *Id*.

[95] 4 George Eliot, Middlemarch: A Study of Provincial Life 371 (Harper & Brothers 1873) (1871).

[96] Kerr, *supra* note 3, at 116-118.

[97] Leo Tolstoy, Resurrection Book 1, Chapter V (Louise Maude, trans. 1999) (1899).

[98] *Id*. at Book 1, Chapter IX. The similarities between the Shabunin trial and Resurrection are unmistakable. Among other similarities, the woman accused is in the same social status as Shabunin and is a heavy drinker. Further, there are three judges at the court, and one of them is gloomy, just as Stasyulevich. These and other similarities caused Walter Kerr to conclude the connection was unmistakable. Kerr, *supra* note 3, at 118.

[99] Resurrection, *supra* note 116, at Book 1, Chapter XXIV.

[100] *Id*. at Book 1, Chapter XXV.

[101] *Id*. at Book 3, Chapter XXIII.

[102] Tolstoy's deep feeling may, in part, be explained by the suffering he experienced in life. Tolstoy had no memory of the face of his mother. She died while Tolstoy was an infant, without a photograph or painting. Tolstoy also lost children, fought in bloody combat, and was constantly absorbed in anxiety over his own sinful nature.