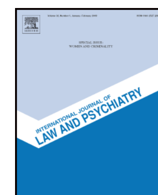
ARTICLE IN PRESS

IJLP-01209; No of Pages 8

International Journal of Law and Psychiatry xxx (2016) xxx–xxx

Contents lists available at ScienceDirect

International Journal of Law and Psychiatry




# Miscarriages of transmission: body, text, and method

P. Goodrich

*Cardozo School of Law, New York City, USA*

ARTICLE INFO

Available online xxxx

*Keywords:*
Schreber
Gender dysphoria
Translawyering
Femininity
Desire
Law

ABSTRACT

An introductory and exploratory attempt to examine the possibility of viewing the famous writings of Judge Daniel Paul Schreber as the intimations of translawyering. Volubly convinced he was becoming a woman, Judge Schreber announced that he would nail his flag to the feminine and was incarcerated as mad for his pains and his pleasures. It is time to release him and to read his work not as madness but as a unique conjunction of desire and law.

© 2016 Published by Elsevier Ltd.

> *There must be an equalizing justice and it can never be* that a morally unblemished human being with feet firmly planted in the Order of the World should have to perish as the innocent victim of other people's sins in a struggle carried on against him by hostile powers.

The remarkable late nineteenth century case of the bellowing Judge Daniel Paul Schreber is relatively well known. He has been analyzed *in absentia* by Freud and Lacan. He has been studied posthumously by psychiatrists, psychologists, intellectual historians, and cultural theorists. His own meticulously judicious record of his time in treatment, first in a university clinic and latterly incarcerated in Sonnenstein Asylum has been widely translated and the highly questionable Anglophone version of this extraordinary extra-judicial document has been through two editions with Harvard University Press and has then been reprinted as a “Classic” by the New York Review of Books (Schreber, 1998 edn). There is Schreber the movie, and more recently the mixed genre biopic *Shock Head Soul* (Hobbs, 2006; Pummell, 2011). He is the subject of a monumental defense by Zvi Lothane, justly titled the *de facto* Dean, the Doyen of Schreber studies, as well as of a recent bravura interpretation of his demonic possession (Fearnie, 2013; Lothane, 1992; Sass, 1995). His name has long stood as an emblem of anti-psychiatry (Szasz, 1976). A dual language version of the text is available on the internet. Schreber has thus, over the century and more since his demise in 1911, acquired a certain notoriety in psy-circles. He has *postmortem* been analyzed to death.

It is time to return to Schreber, and in particular to revisit and rescue his text from the various and multiple misappropriations, preclusions, and foreclosures that have been perpetrated upon it by analysts obsessed with “curing” the deceased author or more usually simply scoring disciplinary points by projecting their theories of psychosis onto the mutable body of the man imagined beyond the text. The tendency, as Lothane has ardently and exhaustively demonstrated, has been to diagnose, explain, and symptomize Schreber rather than to stay with what we have, namely, the text of the jurist and latterly senior judge who first suffered affective indisposition in 1884 when he tried to escape from the bench and the law by standing unsuccessfully for election to the Reichstag. Indicatively, that aspect of Schreber's story, its origin, the genesis, and starting point in the juridical has not been treated as important and has not been attended to, let alone interpreted. The legal subject is erased and Schreber becomes *homo sacer*, a version of bare life whose text is simply a symptom of other causes, of homosexuality for Freud, of foreclosure symptomized by the linguistic unconscious for Lacan at his most opaque, of narcissism for the post-Freudian MacCabe, and of megalomania for Elias Canetti, to name but a few (Canetti, 1984; Freud, 1958; Lacan, 1993; MacCabe, 2002).

Schreber the text needs to be saved from pre-judgment, from that species of theory that sees in advance of reading or seeks through the text the familiar and well-known categories of a discipline, and *mirabile dictu*, finds them there (Weber, 1998). This means starting with the question of law, as also with the title page of the work, with the frontispiece, the statements of intention, the project, the litigation, rather than with that curious assemblage of exterior inventions, concepts, and scribblings, with which so much of the apparatus of interpretation is generated ahead of interpreting the text. So an initial curiosity. Lawyers have not addressed the case of Schreber, and this despite his elevated status as the equivalent of a Supreme Court judge in what was then the independent dominion of Saxony. This despite the fact that his text played a crucial role in his successful *pro se* appeal of the Court Order that, unbeknownst to him, had in 1894 incarcerated him as incompetent to manage his own affairs. This, finally, despite the quite unprecedented determination of the Royal Court of Appeals that while the former Judge and erstwhile member of their own body was without question mad (*geisteskrank*), his insanity was merely religious or, as

*E-mail address:* goodrich@yu.edu.

http://dx.doi.org/10.1016/j.ijlp.2016.06.006
0160-2527/© 2016 Published by Elsevier Ltd.

Please cite this article as: Goodrich, P., Miscarriages of transmission: body, text, and method, *International Journal of Law and Psychiatry* (2016), http://dx.doi.org/10.1016/j.ijlp.2016.06.006

ARTICLE IN PRESS



they put it, a species of spiritualism, and so it was determined at the same time that he was legally competent and fit for release.

A recent study of the political history of madness notes early on that the proper term for the documentation of madness, the registers and records of the 19th century asylums, was the books of the law – *livres de la loi* – "slumbering in often empty libraries" (Murat, 2014, 9). It is against these law books, these *faux* edicts of "scientific psychiatry" that Schreber was most exercised. He was determined not to be judged and sentenced for his opinions merely on the strength of the "subjective" views of non-lawyers (Schreber, 1998, 365). He resorts to law, which in the civil law tradition is technically and explicitly *ratio scripta*, written reason, so as to successfully bring the case for his release, against the lengthily expressed views of his attending physician, Dr. Weber, Superintendent of the Asylum. Schreber eventually wins the case and in the process answers for himself Kant's *quaestio quid iuris*, namely, that as between the psychiatric books of the law, the records of the keepers of the asylum, and his law, that of the jurist and now also jurisprude and legal theorist, it is the judicial determination, the court ordering his freedom that is the appropriate jurisdiction, power, and dominion.

Clearly there is a story of law, of litigation and legality that has yet to be excised and examined. While there is substantive work on the conflict of these two laws, the competition and animosity between the two institutions and jurisdictions in the late nineteenth century, Schreber's own theory and corporeal inscription of law has gained zero recognition. Take, as the most egregious instance of this exclusion, the English translation of the Judge's treatise. It is highly symptomatic in its own right. Lacan, in his introduction to the French translation alerts us perhaps to a problem with the translation when he remarks that Ida Macalpine had been in his seminar, had needed the help of her son, and had taken her time: "a delay so scarcely justified warrants one keeping it under scrutiny for long, or else coming back to it" (Lacan, 1986). He seems to signal that something is odd, wrong, or out of joint with the translation, and that is without question the case, but the remark is elliptical and is not pursued. So consider the title page, the threshold and entrance to the work, the emblem of the book, and see what it lacks (Fig. 1).

The most striking aspect of the translation is not simply what is reproduced in English but what is omitted. Lothane makes the first salient point that the translators quite simply do not bother to translate the lengthy subtitle of the Judge's treatise. What we get is *Memoirs of My Nervous Illness* by Daniel Paul Schreber and then the names of the mother and child team that translated. What Lothane dubs the forensic essay, the title of the juristic analysis of the legal grounds upon which an individual can be incarcerated in an asylum forms the rest of the title that reads, and the translation is not here particularly complicated, *with Postscripts and an Addendum Concerning the Question*: "Under what premises can a person considered insane be detained in an asylum against his own declared will?"[1] This extraordinary aposiopesis, the simple exclusion of the longer part of the title, the unremarked and unjustified truncation of the nomination, and the excision of the appellation immediately signals translation in its older etymological sense of betrayal and of traducing of the text to be relayed. If not even the title gains more than a very partial expression in English, what hope for the rest of the work?

The misprision, or I prefer miscarriage of the title, is symptomatic of the interpretation that underpins the translation. It is one in which the author, as already designated to be a lunatic, paranoid, and delusional, is stripped of his status of authorship. It is as though the diagnosis of his psychosis, which the translators will have been very aware of from the 1995–1956 seminar of Lacan's that they attended, and from the texts that they read for that course, starting with Freud's lengthy essay on Schreber as a case of *dementia paranoides*, have already overdetermined the meaning of the work to be translated. It is not, it would seem, in any sense, a juristic text. It is taken to be the opposite of law, simple chaos, and mental disorder. As the Royal Court of Appeal, however, correctly and cautiously points out, "Because the medical expert calls the illness which is manifested by the plaintiff's delusions paranoia, one might be tempted to regard the question *sub judice* as thereby already decided" (Schreber, 1998, 496). It seems that for this reason of diagnosis prior to scrutiny of the text that the interpreters have not even been willing to address the work as being also a work on the legal criteria for incarceration against one's will for insanity, and this is despite the fact that the Royal Court of Appeals in Dresden vindicated Schreber and released him from the asylum, in large measure on the strength of this text as a judicially recognized and eminently rational pleading. It should also be noted that with the exception of Lothane's *Defense*, later works that address the case almost universally restrict themselves to citing the 5-word main title alone. The erasure of the legal essay is successfully conducted by means of leaving it off the title page, signaling not only the demotion of the subtitle to no title but also the stripping of the jurist of his office and persona, that of a lawyer and more than that, of a retired senior judge.

Continuing down the title page, matters only get worse. After Schreber's name, in the English edition, come the names of the translators. Return, however, to the German edition, and there is another and massive exclusion operative here. It is not Daniel Paul Schreber in the original, but rather and significantly, it is Dr. Jur. Daniel Paul Schreber, formerly *Senatspräsident* of the Royal Superior Appellate Court in Dresden. It was not enough, it transpires, for the translators to truncate the title of the work, they also needed to strip the Judge of his doctorate in law and remove any mention of his previous dignity and high legal office. This cannot be viewed as innocent, nor as simple translation. It is an interpretative excision and a radical exclusion of what the Judge wrote. The translators have elevated themselves into co-authors; they have rewritten the emblematic text of the title page and most significantly of all they have taken away the Judge's credentials, even to the point of refusing to translate 24 of the 27 words of the German title of the book to hand and truncating his name and credentials from 10 to 3 words. While Schreber could doubtless have withstood the insult, he was after all used to being called mad; the text suffers the greater travesty of being interpreted before it is even read. It is by implication not the work of a lawyer, not an extra-judicial publication, nor a work in any sense of doctrine and juristic principle, even though it advertises itself as such. The translators have supplanted the Judge, and they have erased both his credentials and his words.

*Aposiopesis* is by definition an histrionic figure. The removal of the end of a statement is a mode of dramatizing the message, and here the putative or presupposed insanity of the Judge is theatricalized prior to or more properly as the opening of the text itself. Schreber is stripped of titles and qualifications. He becomes a bare name, an actor without a mask so as to pave the way and also to soften the threat of the work being deemed obscene, blasphemous, improper, or unreadable because of the extremity of his views, and particularly that he wanted to become a woman, and that he imagined sex with God. The truncation and caesura of the title places the emphasis on *Nervous Illness*, which in the English edition is printed on the cover in red letters and in a bold font that is four times the size of the black typeface of the initial three words. The cover also adds three vertical red bars at the top and the bottom of the titular details, as if to signify incarceration, an author and message behind bars, confined, and dangerous. In subtle and not so subtle form, the already determined madness of the bare author is being signaled ahead, as if to say, along with the psy-professionals that he is insane, and at the same time that it is alright to read the work, as a medical case study, as an instance of insanity. It is equally legitimate, this set up suggests, to not take the work on its own terms but rather to read it as a symptom of illness rather than as an expression of legal, philosophical, or religious views.

[1] In full: *Denkwürdigkeiten eines Nervenkranken nebst Nachträgen und einem Anhang über die Frage: "Unter welchen Voraussetzungen darf eine für geisteskrank erachete Person gegen ihren erklärten Willen in einer Heilanstalt festgehalten werden?"*

Please cite this article as: Goodrich, P., Miscarriages of transmission: body, text, and method, *International Journal of Law and Psychiatry* (2016), http://dx.doi.org/10.1016/j.ijlp.2016.06.006

Download English Version:

https://daneshyari.com/en/article/4760547

Download Persian Version:

https://daneshyari.com/article/4760547

Daneshyari.com