

CRIMES AGAINST THE STATE (*VERBRECHEN GEGEN DEN STAAT*)

NOTE: This manuscript was found in records concerning US foreign correspondents in Europe in the late nineteenth and early twentieth centuries. The manuscript may be a memoir, as there was a case alluded to within the same set of records, the news of which the Imperial German government was quick to suppress. This leads some credence to the view that this article presents a true account of a single trial or perhaps a composite of a number of cases from the same period. The manuscript, apparently for a German audience, can be dated to about 1900, given its reference to Herzberg Hospital. The authorship is clearly attributable to Edward Breck, a liberal German-American who wrote for The New York Tribune in the 1890s [see Gillmeister, Heiner, Edward Breck: "Anglo-Saxon Scholar, Golf Champion, and Master Spy", in, Sawada, Mayumi, L. Walker, and Shizuya T., Language and Beyond: Festschrift for Hiroshi Yonekura on the Occasion of His 65th Birthday (Tokyo: Eichosha, 2007), pp. 33-56], and also used "F.F. van de Water" as a pseudonym (the name of the narrator in this case). Breck was an accomplished writer, both in English and German, both of fiction and nonfiction. This long manuscript was apparently originally in German and sequestered in the archives of the conservative Tribune. It was translated into English by an unknown translator, identified only with the initials "A. H. R" and who appears to have preferred leaving certain parts un-translated, perhaps to lend a feel of authenticity. This translation came with a number of footnotes; the translator seems to have added a few notes where clarification seemed appropriate. The original title has been retained. This manuscript was received from an unnamed source who found it in the Tribune archives, and thought it should be published as it had obvious relevance to the Thai situation.

Otto von Schelling, the Senior State Attorney, cut an impressive figure. His civil service uniform was immaculate. Before when I had seen him, he looked to be of average build. But seeing him before us, wearing his red imperial sash, his chest now seemed immense, seemingly swollen with pride for the recognition conferred him by the Kaiser. His whiskers were immense, and had they been on a less dignified mien, might have appeared startling, but for von Schelling they made him appear almost majestic. Removing his pince-nez, he looked out at those present and smiled.

"Gentlemen, I want to thank you for coming to the Reichsjustizamt¹ this afternoon. We realize there has been some concern among you, our honoured foreign correspondents, about the use of the *lese majeste* law, and I want to clearly explain the government's position on this matter."

"As you may know, German law recognises the importance of honour and reputation. Everyone—from the Kaiser to the most humble citizen—is protected from libel and slander. Of course one whose reputation is besmirched may resort to seeking civil damages, but here the integrity of each person's reputation is what ensures peace and order in society, and so the German state makes such violations criminal."

"There has been concern in the local and foreign press that there is a perceived lack of discretion in the use of the *lese majeste* law. I say 'perceived' because I believe that there is a misunderstanding about the *lese majeste* law, particularly amongst our foreign guests. You may prize freedom of expression above all else. And we might say that we cherish protections of our good names. You should realise that the *lese majeste* provision is a deep expression of Teutonic, of German culture. I might even hazard saying that it is part of what makes us German, just as our love of monarchy is a central impulse of all true Germans. I might even go so far as to say that it is impossible to have a true German who entertains republic thoughts."

¹ Reich Justice Office

“It is true that there have been an average of some 500 *lese majeste* cases annually over the past decade throughout our empire. What does that show? The intolerance of the German government? Its lack of respect for right to free expression? No, I would argue—and we have solid evidence to back up this view—that the reason for the expansion of *lese majeste* offences is best explained by what is most obvious: there is an organised, sustained movement dedicated to overthrowing the monarchy. This conspiracy has reached into every circle of society and government. We are committed to rooting it out.”

“And that’s why we’ve invited you all here today,” von Schelling said, grandly sweeping his arm outward to us all. “His Excellency the Secretary of State believes that the best way for German society, indeed, for the world, to understand what is happening, is for us to conduct our *lese majeste* cases publicly and here in Berlin. We believe that by allowing these conspirators to openly contest their cases, they will also expose their own deception and artifice to the general public. We are, therefore, inviting you to attend these sessions, and to let the world know how unafraid and gracious the imperial government is.”

After von Schelling opened up the floor to questions from the foreign press, I simply had to ask the question: “Herr von Schelling, you have said there is a conspiracy. Are we then to believe that the recent jailing of a nine-year-old boy, or the 14-year-old girl who chose to take a picture of the Kaiser down in her own bedroom—and was then found guilty of *lese majeste*—also part of the conspiracy?”

Von Schelling, who had been stroking his side whiskers, stiffened for a moment, and then smiled a bit too indulgently: “This is exactly the problem. You in the foreign press like to focus on the few exceptions, rather than the rule. But, all right, I’ll take your question, Herr Van de Water. One of the reasons we would like to centralise these sorts of cases in Berlin is so that at the Reich Justice Office can better monitor them. Without a doubt, these cases are prone to abuse, and there are, to be frank, some patently absurd cases that have come before and been decided by our local courts. We are confident that our new policy will address these problems.”

The foreign correspondent from *Le Monde* asked, “Herr von Schelling, while it is true that most of those convicted of *lese majeste* are given sentences of less than a year, and a few as many as three years, do you think that the maximum sentence of five years for verbal offences against the emperor nonetheless excessive?”

“On the contrary, M. Morant,” answered the Senior State Attorney. “I said that every German citizen is protected from insult and slander, but I did not say that they are equally protected, nor should they be. Offences against the Kaiser are naturally more serious than offences against a private citizen, given that the Kaiser is a most revered and sacred person within the empire. Offences against him are offences against the state. In light of this fact, there has been serious discussion here at the Reichsjustizamt to increase the maximum penalty to eight, or even ten years. How else can we underscore its importance? But even if the law is not amended, we fully intend to seek the maximum of five years imprisonment for any violation of the law which may be of a conspiratorial nature.”

I arranged to meet with Professor Wunderlich of the University of Göttingen who was a well-regarded authority on libel and slander.² We met for coffee on the Breitscheidplatz. As he sipped from his cup, he explained that libel and slander are

² The reference no doubt refers to Friedrich Georg Wunderlich (1812-1899) who was arguably the foremost German legal jurist on criminal law of the nineteenth century. His *Wunderlich auf Defamation, üble Nachrede und Verleumdung* went into a number of editions.

laws designed to protect reputations. “Even if one can prove what was said is true,” said the professor, “one has nonetheless committed libel if reputations have been sullied.” But, he went on, there are exclusions—such as speaking for the benefit of the commonweal. “With regular defamation,” he instructed, “there are three considerations—the intention of the defamer, the effect of the words on a third party, and some interplay between opinion, fact, and truth. After all, you can always make the case that what was said was true, and that may make a difference.”

As the professor spoke, a military parade sponsored by the Junker party marched by. “Ach! There’s a show of military power every day,” groaned Prof. Wunderlich. “Whenever they want to distract our attention, they start speaking of a strong unified Germany and they always end with attacking the Jews! ‘Germany’ will be doomed from the very start!”

Returning from his dark musings, the good professor remembered suddenly why we were talking. “Oh, yes, what was I saying? *Lese majeste cases*, yes. But these *lese majeste cases*,” he said raising his finger, “are most peculiar from a legal point of view. Only the first two considerations hold: intention and effect. These cases can be very, very tricky!” he laughed, wagging his finger at me as if I wouldn’t believe him. “Everything is upside-down and backwards first. It’s impossible to prove without someone confessing to further *lese majeste*. And of course, no one in their right mind would ever do that!” The old professor tried to explain further, but I couldn’t follow what he was saying. When I protested, Professor Wunderlich considered me a moment and said, “Let me just say this then: Beware to anyone who wields this law! Anyone who thinks they know this law well enough to use it against their enemies may one day find themselves its victim.” The professor stopped for a moment, then said, “Ah, yes. I could explain it, but seeing is believing. I heard that the Senior State Attorney will be trying a *lese majeste* case himself.” “Von Schelling himself?” “Oh, yes. They’re bringing a case up from Munich, a most interesting case, I may say. Watch that trial and you’ll understand what I mean.”

The professor was right. The very next day it was reported in the papers that Herr Dierl, a well known socialist whose primary job was editing the weekly magazine, *Die Berlin-wöchentliche Zusammenfassung*,³ was being transported to Berlin to stand trial. His arrival at the Berlin station seemed overly dramatic, as he was actually in handcuffs when escorted off the train. The German government might have wanted to make an example out of Dierl, but the liberals and socialists in the Reichstag were ready to make him a *cause célèbre*.

The facts of the case were as follows: Dierl was an editor of a number of other lesser known journals. One was a new satirical literary magazine, *Der beschmutzte Hund*⁴ which featured a German translation of a purported Czech short story that Dierl claimed had appeared in some Bohemian journal. Ten copies of *The Spotted Dog* were delivered to Dierl, while the remaining 490 copies were taken to the train station and loaded onto the mail coach which quite mysteriously was destroyed when it was struck by a freight locomotive and somehow caught on fire.

The saga of *The Spotted Dog* would have ended there had not the magazine’s printer, in accordance with the publishing law, sent two copies to the Bavarian State Library. The Head Librarian there just happened to skim through the journal and chanced upon this fictional story. As a precaution—the Director of a library in Aix-la-

³ *The Berlin Weekly Review*

⁴ *The Spotted Dog* [Only one external reference could be found to this obscure Bavarian periodical, indicating the likelihood that after this case, no further issues were published, *comp.*]

Chapelle had himself been charged for allowing a serial with *lese majeste* content to remain open to the public—he alerted the authorities who arrested Dierl.

A few weeks later, while I was hosting a small party at Monique’s on the Kurfürstendamm, I chanced to overhear the Secretary of State, with von Schelling by his side, speaking before a small group in the smoking parlour. I heard the name “Dierl” and eager to hear more, casually stepped into the small circle just as the Secretary of State’s commanding voice compelled respect by his listeners. Holding a cigar in one hand and a glass of wine in the other, he was saying, solemnly: “I truly believe that God is acting in history as He lays out our future as a nation. I believe also that our future is in peril. The Socialists do not want to dispense just with God, but with His representative, the Kaiser. They threaten the very life of the German soul. It is in our blood to love the emperor, part of what makes us German. And Heaven forbid that these Socialists, these godless republicans, are allowed to have a hand in determining our future, for the future they portend is one of utter ruin!”

I gasped at such words, which von Schelling caught and might have thought as one of awe, and called out, “Herr Van de Water, please join us,” he said. The Secretary of State stepped forward, thrusting his hand out. “Ah, it’s a pleasure to see you again, Herr Van de Water!”

“I didn’t mean to eavesdrop, Your Excellency. It’s just that I thought I heard mention of Dierl. May I ask you, Hrs. Secretary and Senior State Attorney, about his case? No doubt you’ve heard the case has attracted a great deal of interest abroad.”

“Herr Van de Water, you know that we cannot speak of the case here,” said the Secretary of State in a friendly but stern tone.

“Then perhaps you can give me some insight as to why you’ve moved these *lese majeste* cases to Berlin?” I saw that von Schelling had been a bit too free with the wine by the way he was taking great gulps of air and exhaling through his mouth, sending a tremor out over his meaty face. I just then noticed (and perhaps I was getting a bit too drunk myself) that the way von Schelling kept his whiskers made it appear that he had pinned a limp long weasel on his upper lip, which then hung down following his jaw bone before looping upward and looking as if the weasel’s ends were hooked up behind his ears.

“You’re a good German-American, Herr Van de Water, and so I can trust you to understand certain things,” von Schelling said confidently, lowering his voice. “These courts allow traitors to the empire to nearly escape punishment entirely! It’s this treason against the emperor—the insidious crime of *lese majeste*, the defaming and insult of our revered Kaiser Wilhelm II, His Imperial and Royal Majesty, The German Emperor and King of Prussia—that threatens our dream of a unified Germany. These local courts, scattered throughout the empire in this impossible patchwork of duchies, grand duchies, kingdoms, republics, and free cities, inflict an average of three to six months for this greatest of crimes! Yes, three to six months, while the law allows up to five years’ imprisonment. I need not tell you, the esteemed representatives of the Crown, that there is no such thing as a trifling incident of *lese majeste*.”

“His Excellency, the Imperial Secretary of State,” von Schelling said, acknowledging his superior with a scrape of the boot and bow, “has empowered my office to shift the jurisdiction of *lese majeste* cases from local courts to our federal courts here in Berlin. We will tirelessly root out this stain, mercilessly pursue the perpetrators, and secure maximum sentences. For a time, perhaps, there will be an outcry, but the situation will also become crystal clear: offences against his Majesty will no longer be tolerated. As you know, in the past many of our *lese majeste* cases

were tried *in camera*, but now the hearings will be open to the public. We believe that with more involvement of the public, who loves and cherishes the monarchy, the more support we will receive.”

The Secretary of State apparently read my thoughts and asked, “So, you are not keen on the use of this law, I am guessing. Tell me, then, what do you think of it? Please be frank!”

“To be frank, your Excellency,” I said, “I think the use of the law is verging on madness. In the end, the law may lead to the destruction of what it promises to protect.”

“Thank you,” he said, “for your frankness. But I should have remembered you are more American than German. I can’t really expect you to truly understand what it means to the German soul.” He shrugged his shoulders, and then looked at me smiling. “As for Dierl,” he concluded with a laugh, “you will have to wait for the trial. But rest assured that you shall encounter a most unique prosecution. Had we left the matter in the hands of the incompetent local prosecutors, the case would have been bungled or Dierl left with a mere pittance of a punishment. But that won’t happen here in Berlin!”

“Yes,” enjoined the Secretary of State, “please do come and see Herr von Schelling at work, and report it to the world!”

On the day the trial began, I arrived to court early, as had Herr von Schelling. As the Senior State Attorney, he was in full uniform. He stood at attention, facing the still empty bench, and I imagined he was picturing how the trial would proceed. From time to time he regarded his uniform. He brushed off a piece of lint from his right epaulette, and pulled straight down on his vest to ensure no creasing. He fastidiously stroked his whiskers and toyed with his pince-nez. I had first thought he was nervous, but I realized as I watched him that he was rehearsing each step of his prosecution. He finally caught sight of me off to the side, bowed his head in acknowledgment, and then went back to his business.

Special attention to the trial made sense as it had attracted a great deal of interest amongst the public. The *lese majeste* cases of the Holy Roman Empire⁵ had become a subject of derision by the more liberal European governments and something of an embarrassment for other constitutional monarchies who as a whole had reason to fear a general uprising that might lead to abolishment of the monarchy altogether. The German government wanted to show that these cases make sense to the German public and to the world.

While it was von Schelling’s strategy to make an example of Dierl and to remind the public of the monarchy’s importance, Dierl and his lawyer, Franz Liebermann, became darlings of the radical press. The Socialist publication *Vorwaerts* featured the heroic struggle of Herren Dierl and Liebermann against the dark forces of feudalism.

It was in the first few days of the trial that von Schelling laid out the state’s case against Dierl, all within a framework for what would certainly be a series of *lese majeste* cases tried in the federal court. It was not so much a question of securing a verdict of guilty against Dierl that was von Schelling’s purpose: very few cases resulted in acquittal, which is not surprising given that judges are, after all, representatives of the Crown. Von Schelling and his team had more fundamental purposes in mind, to wit, to provide a model prosecution for *lese majeste* cases, and to make defendants truly pay for *lese majeste* cases, and to provide a model prosecution.

⁵ Another term for the German Empire

Most observers following the trial agreed that von Schelling was stunning in achieving the first goal. He started off by questioning Dierl's intentions, always the core of a defamation-like charge such as *lese majeste*. When the defendant took the stand, von Schelling rose from his table and approached. "Herr Dierl, before we say anything else, I would like your opinion on one matter: if the story in question had been written in German and placed in Germany, would the content in your opinion constituted *lese majeste*?"

"I don't know," answered Dierl, "I hadn't thought about it." After being prompted again by von Schelling to hazard an answer, Dierl said, haltingly, "I suppose some might have construed it as such, however, I am of—"

"No, thank you, Herr Dierl," von Schelling quickly interrupted. "So, by your own assessment as an editor, you agree that the content of the story was in fact suspect. Now, then, would you please tell us your intention in choosing to print this story."

"Well, although the story was placed in a mythical past and the characters in the story were apparently Czech, as they all spoke perfect Czech—" (there was some laughter from the audience) "—I felt the story was well composed and of a relevant topic to my readers."

"Tell me, Herr Dierl," said von Schelling, approaching the witness and moving so close as to seem he wanted to hear some secret from Dierl, "do you speak or read Czech?"

"No."

"Did you actually see the story printed in Czech?"

"No."

"What Czech magazine had it first been published in?"

"I believe the magazine is called *The Bohemian Spectator*."

"Ah, so you saw it in this magazine?"

"No, I did not see the magazine itself. I was told the story was published there."

"So when did you see the story first?"

"After it had been translated into German."

"And how did you get it?"

"It was sent to me."

"How do you know it was translated from Czech?"

"I assumed it was translated because there were a number of 'translator's notes' scattered throughout the text."

"When did you receive this translation?"

Dierl froze for a moment and then stuttered, "I-I-I got it...in the mail."

"When was that?"

"In September, or perhaps it was early October of last year."

"September or October, you say? You are absolutely sure, it was during these months?"

Dierl uttered what sounded like an affirmation.

"Would it surprise you then to learn that according to imperial authorities, you received nothing in the post from Prague, or from anywhere in the Hungarian-Austrian Empire during those two months? Yes, we have, in fact, postal officials from Bavaria to attest to this. Shall I call them up to testify?"

Von Schelling attacked again. "So, do you still maintain that you got the translation by post?"

“I must have forgotten. I must have gotten it from a Czech friend who visited from Prague during that period. Yes, I’m almost sure of it.” When challenged on this point, Dierl retreated even farther: “Or maybe it was earlier, or maybe it was given to me by hand...I really don’t remem—”

“That’s fine, Herr Dierl,” quickly interjected von Schelling who then called as witness Josef Kollár, a leading authority on Czech literature that von Schelling had brought from Prague. Kollár testified that there were no journal named *The Bohemian Spectator*, nor had he read anything like the story, “The Wrong Heir-Apparent.” Simply speaking, the testimony showed that not only had the story not been published; it had never existed!

Prosecutor von Schelling came before the judges, shaking his head and apparently in thought. He suddenly put a finger to his forehead as if all at once understanding something. “Ah, so let me understand this, Herr Dierl. You are saying that a story was written in Czech, and yet you do not know the author. You say it was translated, and yet you do not seem to know who translated it. You say it was published, and yet you can’t name the journal. You say you one day found yourself with the translation, and yet cannot say where you go it. So many little mysteries we have here. And yet, as they say, the most obvious explanation is also often the truest: There was no Czech journal or translation.”

Turning suddenly toward the defendant who sat with Liebermann at their table, von Schelling declared, “What if you, Herr Dierl, were the one who wrote the story? Yes, it was a bit of fun for you to think that you could fool the authorities. You placed a few phoney translator notes in the story to give it some authenticity. You gave all the characters Czech names, and gave Czech names to the places the Czech characters visited. Oh, yes, you did your homework, Herr Dierl! The story’s setting could have plausibly passed for Bohemia. But it was not! No, you used Czech-ness as a cover for your little attack on our monarchy! And you yourself, Herr Dierl, said that if the story had been set in Germany, the content would have been serious enough to warrant *lese majeste* charges. Your intention was not to edify your readers with a foreign story, but to defame this revered institution of the Holy German Empire and besmirch ridicule Kaiser Wilhelm II, His Imperial and Royal Majesty, The German Emperor and King of Prussia!”

A group in the audience cheered at the end of von Schelling’s scathing attack on Dierl. Alarmed, Liebermann, his lawyer was digging frantically through his bag for something. The chief justice once again warned the crowd against outbursts, and adjourned for the day. As von Schelling left the courtroom, he came before Liebermann and nearly shouted, “And a good day to you, Herr Liebermann!”

It had been years since von Schelling had himself prosecuted a trial case, and many prosecutors had come to watch the Senior State Attorney’s performance. They crowded around von Schelling. “Brilliant job,” one called out. “The work today was decisive,” said another.

On the next day of the trial, Von Schelling’s initiated his second line of attack. Von Schelling eloquently made the point that to conclusively prove libel, it must be convincingly shown that the effect of the libellous content on the mind of a third party was to cause him or her to look down on or disparage the one libelled. Von Schelling called as his first witness of the day a member of Herrenhaus⁶, who showed sufficient amounts of outrage for what the story had said. Von Schelling asked, having read the short story, do you feel disparaging of the emperor? The Herrenhaus member said, no,

⁶ The Prussian House of Lords

not himself personally. But for those with less education who were particularly gullible, it would certainly have such an effect. “For our common *volk*, the slightest of slights against the emperor is simply not tolerated. Our *volk* love His Majesty, and would lay down their lives for him!”

The second witness for the prosecution, a professor of philology, testified that to the untrained eye, the artifices may not be apparent. And so it was quite possible, he testified, that one reading the short story could “possibly walk away feeling disdainful of the emperor, the monarchy, and our very German-ness.”

The other witnesses—a general, the head of the Imperial Household, and a high-ranking civil servant—all testified that reading the scandalous story would indeed cause another to feel contemptuous of the emperor.

Von Schelling had laid out a perfect case. When Dierl could not answer the question of where the translation came from and strong suspicion of his authorship fell on him, the question of intention was more or less proved; if he had indeed penned the short story and then lied about it, then his intention must have been to insult the monarchy.

The third line of attack by von Schelling was to question why a *lese majeste* incident must always be considered as a single count, as had been the case up to the present. He argued that in defamation cases, it has sometimes been the practice of courts to consider separate incidents or sections as separate counts. In the case of Dierl, von Schelling argued that there were actually three separate counts of *lese majeste* in the short story, in the following blocks of text:

King Victor and his palace advisors, in the dark of night, ordered the arrest and secret detention of Public Good, who was to languish in the dungeons of the castle. By capturing Public Good” and hiding it, King Victor could parade about masquerading as Public Good himself. King Victor and his ministers taught a very simple lesson: to wield power was such a virtuous act when driven by purity of mind that it should not be thought of as power at all. But when elected politicians exercised power, it was by definition self-interested, corrupting, and not concerned with the public good. The King and his family became fabulously wealthy while not exercising any “political” power, while the politicians and other citizens who tried to free Public Good were arrested for treason and imprisoned.

It had become a tedious practice: when the palace became nervous of certain democratic movements amongst the people, it was intimated that the military generals should pretend to take over power momentarily and then hand it back to the King. But it was all an absurd drama: the palace always help the power. When Tomáš Janáček could no longer take it, he dashed across *Karlův most* [Charles Bridge] to the centre of *Staroměstské náměstí* [Old Town Square] and screamed, “Our motto as a people is ‘Truth prevails!’ but to this I laugh! Truth does not prevail! This is not a constitutional monarchy, but an absolute monarchy with extensive but ultimately meaningless democratic trappings!”

Cyril Brokoff, head of the royal household, was at wit’s end. The Heir-Apparent’s many liaisons were getting out of control. *Pan* [Mr.] Brokoff, who was not too bad a mathematician, did some quick calculations. “At this rate,” he said, his voice trembling, “the libidinous activities of our king-to-be, by the time he is likely to come to the throne, over 82,000 persons in the kingdom will have some claim to the crown’s wealth—what with the costs of damages for

lost virginity, support of the consorts and their immediate and near-immediate families. We've got to do something about his royal *klobása* [wurst, wiener].”

It should be noted that in making this point, Herr von Schelling did not in fact read out loud all of the text from the third selection which he instead summarised. He solemnly stepped out from his desk so that he could address both those in attendance as well as the judges. “I would doubt, my fellow Germans, whether any of us would be so bold, so arrogant, to suggest that these three selections, if they in fact were intended by their author to mean His Majesty the Emperor and the Heir-Apparent, were not grave violations of *lese majeste*.” He paused a moment to emphasize his point. No, none of us, none of us true Germans would deny it. And neither would the good German ever say that there was a trifling case of *lese majeste*. No, I appeal to our courts to reconsider the short tradition of giving short sentences to violators of this insidious crime. Indeed, I believe that the maximum sentence of five years does not truly mark the importance of the monarchy to Germany, to our national existence and survival!”

If there was ever a prosecutor who could be absolutely confident about his case, it could well have been von Schelling at that moment. And that's why the next moment came as such a shock to everyone. Von Schelling had continued. He thrust a single finger upward and said in a voice that trembled with utter conviction. “We have all been asked to join in the heroic task of unifying Germany. It is our laws and courts that provide the basis of that unity. And it is the *lese majeste* law that gives that most distinct voice to that spirit that drives our effort forward.” Von Schelling's mood changed from jubilation and pride to a seething anger as he turned and pointed at Dierl. “And Herr Dierl would have these clear insults to our emperor be ignored. Who knows? He may prevail. But let me say here, loud and clear and with the German nation as my witness, that His Majesty the Emperor King Wilhelm II does not engage in the dirty business of politics, he does not support military overthrows of the government, and his son most certainly does not need any help with his wiener!”

There was an almost imperceptible moment of shocked silence. I had never seen it before, but it was in that moment that I witnessed the complete collapse—psychological, social, spiritual, professional—of a human being. Von Schelling still standing in his triumphant pose and finger raised in the air, seemed to collapse. I am certain nothing moved in the entire courtroom except von Schelling's whiskers, which positively leapt. In the split second afterward, the entire room erupted into laughter. Everyone quickly perceived that laughing right then could not reasonably construed as *lese majeste*. I myself was so convulsed with laughter once I got started that I cannot attest with much certainty about what happened after. There was the sound of the gavel thumping, screams of hysterical laughter, the tearing open of the doors and a great wave of sound and people pouring out, rushing, running madly as it were, to relate what had just happened.

Last I saw von Schelling there in the courtroom, he was still standing, as if frozen. I don't know if he was trying to review what just happened and had pledged to himself not to move before his sequencing of events led to a different outcome, but there he stood. I would not have been surprised if he had been carried off by court officials and delivered right to the Reichsjustizamt and up to the third floor to the

Secretary of State who I was told responded to the incident with an outburst that von Schelling was “dumm wie eine Gans.”⁷

I heard later from an assistant senior state attorney that the meeting was short and to the point. The Secretary of State pointedly said to von Schelling: “*Number One*. There will be no acquittal for Dierl. *Number Two*. There is some concern about one of the judges presiding over the Dierl trial. You will address that concern with your professionalism and dedication. *Number Three*. If you win the case, we will forget the incident today, and I will recommend you for the General Honour Cross. If you lose, I will take that sash off you myself and give it back to His Majesty, and I will bury you so deep in the bureaucracy that Berlin will be but a distant memory for you. Understood?”

Von Schelling had apparently been struck speechless in the courtroom, and reportedly only answered the Secretary of State with a nod.

At the next session in court, the defence began by making the case that the journal had in fact never become public. In cases of *lese majeste* or libel, Liebermann argued, the crime only happens when the allegedly defamatory words are communicated in some way to a third party. Ten copies of the journal had been delivered to Dierl himself, all of which were still in his possession. Almost 500 copies had perished in the railway accident. That left only the question of two copies that went out to the public. But was the Head Librarian of the Bavarian State Library “the public” or “a third party” as such? No, the head librarian of a state library was as little “the public” or a “third party” as if Dierl had sent the journal in question to the police. The police, the library, are state agencies. If, however, the librarian had received the journal as a private citizen, or had he actually put the journal out on the shelves in the reading room—had made it “public”—well, then, perhaps the prosecution could make something of a case on this point. “I can recall no case,” concluded Liebermann, “in which the contents of a document that was sent to the state ever resulting in a defamation case.”

Von Schelling sat erect and perfectly still as he listened to Liebermann. Only his eyes shifted, oscillating from Liebermann to the panel of judges. A segment of the members of the public in attendance in the courtroom clapped upon hearing Liebermann’s argument. Dourly, the head judge warned the audience of any disruptive behaviour. The courtroom emptied as the morning session ended. I lingered for a moment, seeing that von Schelling had yet to move. I came up from the side and saw that his whiskers in convulsions. When the trial reconvened that afternoon, von Schelling was still sitting there.

Herr Liebermann presented his second argument which stated in effect that as the original story was written in Czech and never referred to the German Emperor by name, his client was innocent. When the defence pushed this point, its purpose became clear. Liebermann commented that none should be surprised that there are cases like this. Why wouldn’t there be, he said, when the *lese majeste* law was so much abused, and when its jurisdiction had encompassed so much of German political society? And it will always be so, he emphasized, until rights are guaranteed to the citizens for free speech. As Liebermann was beginning to conclude his case, he said, “Let’s for a moment suppose that the prosecution’s argument were true—that Herr Dierl employed a cheap trick to conceal the true authorship of a story that purports to defame the Kaiser. Let us also suppose for the moment that the story in question was read by persons outside Herr Dierl’s circle, and beyond the head librarian who admits

⁷ *Ger. idiom*, “dumb as a goose”

he did not quite read the story. Even if we were to say these two ‘facts’ were true, Prosecutor von Schelling could not prove conclusively that a crime had happened at all.”

Herr Liebermann then quite unexpectedly, asked that with the court’s permission, that he recall a number of the prosecution’s witnesses. Liebermann pursued the same strategy each time:

Defence: You’ve read the allegedly defamatory material, correct?

Prosecution Witness: Yes, I have.

Defence: Tell me, after having read it, do you esteem the German monarchy any less?

Prosecution Witness: Of course not.

Defence: So the piece was not really defamatory, is that what you’re saying?

Prosecution Witness: No, it *was* defamatory.

Defence: In your case, since it caused you to feel disparagingly of the monarchy?

Prosecution Witness: No, no! The piece was defamatory, but it did not cause me to feel contemptuous of the monarchy.

Defence: So in your own case, it was not complete.

Prosecution Witness: No, it *was* defamatory in a general sense. Other people, people with less education and understanding of the world, might read the piece as real, and then have according feelings.

Defence: So these other people are people you know? You have actually met with persons who read the short story and felt hatred toward the monarchy?

Prosecution Witness: No.

Defence: So you don’t really know if it’s defamatory or not.

The general, the member of Herrenhaus, the philologist, the civil servant, the head of the royal household all affirmed that the piece was defamatory and would cause others to look down on the monarchy, although none could say that they had ever met such a person.

Did this make an impression on the judges? I can’t say, but it certainly had an effect on von Schelling. I was sitting almost straight behind him, and I could see that the testimony being given created rancour within the Senior State Attorney. It began as tiny shivers coursing down through his body and by the end of the last witness of the day an hour later, von Schelling was shaking so much I feared he was taking ill, or worse, near convulsions. His head stayed perfectly pointed toward the witness stand. Never did he turn around to see those in attendance, nor did he even glance toward the defence table. But every time there was an outbreak of laughter (and it was a bit hard not to laugh as Liebermann went through the same routine with each prosecution witness), it appeared that von Schelling’s body was jolted. On the whole, it almost seemed that von Schelling was being physically beaten by some invisible, implacable, malicious force.

I assume that it was the testimony and his reaction to it that moved him to ask permission to approach the bench to consult with the judges. Herr Liebermann joined in the discussion. After a moment, some agreement had apparently been reached. Von Schelling called together his assistants and by the looks of the encounter, he was describing some plan for the next session. Given what he had been through during the day, he seemed focused and calm.

Liebermann was smiling confidently as he left the courtroom and approached the waiting reporters. “I think it can fairly be said,” said he, “that the prosecution has shown everything but actual proof that *lese majeste* occurred. It is time to muzzle this troublesome law which has always been an easily available weapon to use against one’s enemies. It is time that it is amended so that it falls within the laws of the civilised world, and that it be abolished completely. Then we will be able to see things as they are, for perhaps the first time!”

Just as proceedings were getting under way on what most observers assumed would be the last day of the trial, I saw von Schelling conferring with the Secretary of State in front of the courtroom. The latter seemed to have given some instructions, and as he left von Schelling’s company, he pointed his finger at von Schelling as if to confirm something for the last time. Von Schelling nodded. He seemed remarkably relaxed and in control. His wild whiskers were perfectly at peace on his face. The court called on Herr Liebermann to make his final argument.

“Prosecutor von Schelling has contended that the *fictional* story in question is a form of defamation, which, properly defined is an action or words that lead a third party to look down upon or feel contempt for the person targeted by such words. The prosecution, though, has failed to produce any witnesses, any representative of the public, who in fact did read such story and did look down upon our august sovereign. In fact, all of the prosecution’s witnesses have testified that the offending words did not in any way cause them to feel such contempt for the sovereign.”

“Your Honours, the prosecution has failed to show that any crime had been committed. Proof of defamation is not based on any objective factor, but on the sensation that it creates within a reader. For *lese majeste*, the words—and we might say well beyond whatever the intentions of the writer or publisher might have been—the words upon being read must turn the heart of a good citizen into that of a traitor, one who despises or feels contempt for the sovereign. Without this key piece of evidence, the crime has literally yet to happen. The prosecution could not bring a single witness who could testify that the words had caused them to look down upon the Kaiser.”

“We would like to say that while we have not proven the defendant innocent, neither has the prosecution proven him guilty. Even with *lese majeste* cases, our laws still presume innocence of the accused. We ask then that the Court acquit Herr Dierl.

The chief judge addressed the litigants. “Herr von Schelling, is the Crown ready to conclude its argument?”

“Yes, we are, your Honours,” said von Schelling as he removed his pince-nez and rose from his table. His gestures, facial expressions, and turns of phrase were even and eloquent. He went through each point of his argument, and as a whole, at least compared to other *lese majeste* cases I had seen, it seemed that the Crown would prevail and Dierl would go to jail. I am even sure that Dierl believed this as well. The point of their defence was to expose the absurd aspects of the *lese majeste* law. But I have to admit that up to that point I had completely misread von Schelling. I assumed he was confident of winning the case as stated. But he apparently had one more manoeuvre to carry out. He stopped at one point and laughed gently. “Ah, yes, we have seen this darling little act that Herr Liebermann has put on, by inferring that as good German citizens, and for fear of breaking the law themselves, virtually anyone brought to testify will say that the story was defamatory, but that they themselves were not moved by it to look down upon the emperor themselves. Like a crafty conjurer, Herr Liebermann has created the illusion that all is well in Germany, that

lese majeste is impossible for any German to commit, and that there might be some dumb *volk* who could be deceived by pieces like Dierl's to believe it was real, and then to actually feel contemptuous of the German monarchy. Ah, but here we run into the problem again: apparently the prosecution has been unable to locate any of these *volk*. I am sure that Liebermann feels he has won the Crown over with this trickery."

With that, von Schelling stopped for a moment. He rested his upper body on his outstretched arms on the table. He went through some sort of transformation. He slowly looked up at those in attendance and he said slowly, "But Herr Liebermann, and his Jewish client, shall not have their day in court. Not this court! And not this trial!"

It was as he said this that the glint of madness in his eyes became obvious. He called his assistant, Herr Schmidt, the assistant senior state attorney, to take over. Herr Schmidt's voice rang out. "I call at state witness Herr Otto von Schelling to the stand!" It was procedurally suspect to hear further testimony at this final stage of the trial, but as Herr Liebermann made no protest, and the judges did not stop it, von Schelling did in fact approach the witness stand. After taking an oath, he comfortably sat down and waited for the questioning from Herr Schmidt. There was nothing to suggest that he was stark-raving mad other than the fact that as he gave his testimony, he developed what seemed to be a permanent twitch in his face, which made it also appear that a weasel was running upon his face.

Prosecution: Before we cover anything else, Herr von Schelling, I would like to make sure of your nationality.

Hr. von Schelling: I am a full German citizen and subject of His Majesty the Emperor King Wilhelm II.

Prosecution: And you are, as a German citizen, attuned to the sentiments and sensibilities of the German people?

Hr. von Schelling: Yes.

Prosecution: Good. Thank you. Now, could you tell the court the nature of your position, Herr von Schelling?

Hr. von Schelling: I am the Senior State Attorney. I am responsible for all the prosecutions that are pursued in the German Empire.

Prosecution: Compared to the other witnesses for the prosecution, how would you rate your knowledge of the law?

Hr. von Schelling: I believe that by far I have the greatest knowledge. Indeed, I was a key member on the committee that drafted the revised

*Reichsstrafgesetzbuch*⁸ and I am currently the chairman of the committee overseeing the creation of the nearly completed *Bürgerliches Gesetzbuch*.⁹

Prosecution: What familiarity do you have with the *lese majeste* law, Herr von Schelling?

Hr. von Schelling: As I stated, it was the committee I served on that reconsidered all of the *lese majeste* laws throughout the empire and came up with a single provision. In doing so, I had to have familiarity with this law in all of the states in unified Germany, and I also had to investigate how the law was written and used elsewhere.

Prosecution: So you believe that you could easily recognise violations of *lese majeste*?

⁸ The German criminal code

⁹ The German civil code

Hr. von Schelling: Without a doubt. In my three years as Senior State Attorney, I have approved the prosecutions of more than 1,700 cases of *lese majeste*.

Prosecution: Then have you read the short story entitled “The Wrong Heir-Apparent” that was published in Herr Dierl’s journal *The Spotted Dog*.

Hr. von Schelling: Yes, I have.

Prosecution: What is your opinion of the piece? Is there *lese majeste* content therein?

Hr. von Schelling: Most definitely.

Prosecution: Well, Herr von Schelling, how can you be sure? After all, Herr Liebermann seems to have shown that the piece was not at all defamatory of the monarch, as no one who read it then felt contemptuous of the king.

Hr. von Schelling: I can be sure because I am a full-blooded German who loves his king and Emperor!

Prosecution: And so you are saying, sir (Here Herr Schmidt struck a dramatic pose) that you have read the piece that appeared in Herr Dierl’s journal and you can prove it was *lese majeste*?

At this point, von Schelling suddenly stood up and proclaimed, or rather screamed, “Or I did! But once I read the story and believed it to be true, in me there developed a deep and abiding hatred in me for the monarchy!” His whiskers quivered as if truly alive, and, as if all of a sudden aware of an animal attached to his face, von Schelling began tearing wildly away at his whiskers, while continuing to scream, “Yes, the story caused me to feel such contempt! The Emperor, so greedy for power and manipulative, and pretending to be a democrat! Pshaw! *Quatsch!*¹⁰ And his lewd and licentious son! Roving the empire for lustful entanglements! I hate the monarchy! I hate the emperor! Down with the monarchy!”

Dramatically, Herr Schmidt pointed at von Schelling and said in a deep, commanding tone: “Bailiff! Arrest this man on the charges of *lese majeste* and treason!”

No one had seen this coming, so everyone had sat utterly dumbfounded, even the judges. Von Schelling had gone out of his mind and was raving on and on, whiskers flying in the air, gnashing his teeth, laughing with utter delight, sobbing, and the like, all at once, so to speak. He had become Stevenson’s Mr. Hyde, right before everyone’s eyes.

One of the judges finally began pounding the gavel and pointing at von Schelling, but the courtroom was in a pandemonium. There were screams, and mad outbursts of shrill laughter, and women fainting. The two court bailiffs seemed at a loss at what to do, now looking toward the judges, now looking at each other. It was only when the head judge pointed with his gavel and said, “Well, arrest the man!” that finally one of them seized von Schelling, who by that time was screaming, “Ha! Ha! Herr Liebermann, I proved it, didn’t I? You see, the story did have an effect on the reader! I’ve proved it! My arrest guarantees I’ll win my case against Dierl! Ha! Ha! Ha! HAAAA!”

It took at least another quarter of an hour after von Schelling had been carried out of the courtroom before the judges could reestablish order. The three of them conferred excitedly at the bench, unclear as to what to do next.

¹⁰ “Nonsense!”

Finally, the head judge said, as if nothing had happened at all, “Yes, please go on Herr Schmidt.”

Herr Schmidt, it turns out, was ready, and he resumed the prosecution’s closing argument. “There can be little doubt, then, that Herr Dierl did commit *lese majeste* as the three basic conditions of defamation have clearly been met: the content was distributed to a third party (in this case, to the head librarian), the malicious intent of Herr Dierl has been conclusively shown through his inconsistent and what we judge as untruthful testimony, and most importantly, the published material had the effect of causing *volk*—in this case, our very own Herr von Schelling—to look down upon and feel contempt for the German monarchy. Von Schelling’s subsequent arrest confirms the subversive nature of Dierl’s story, which of course clinches our case! We call on the court to sentence Herr Dierl to the maximum of five years imprisonment for each of the three counts of *lese majeste*. It is time that we as an empire hold fast to the law of *lese majeste* as what best defines us as a people. Thank you, your Honours. The prosecution rests.”

Herr Liebermann waved the right to add further statement, given the court’s granting von Schelling the right to testify at that point in the trial. And thus ended the most memorable case of *lese majeste* ever tried up to that point in the German Empire. As predicted, Herr Dierl was found guilty and sentenced to three years imprisonment. Herr Liebermann continues to represent those accused of this crime. As for poor von Schelling, he himself was found guilty of *lese majeste* and given the maximum five years imprisonment. The verdict was subsequently overturned on the grounds that von Schelling was certifiably mad. He had indeed won his case, but had lost his mind doing it. He was declared criminally insane for his ravings against the monarchy, and placed in the psychiatric ward of the newly built Herzberg Hospital where he will reside for the foreseeable future.

And the German Empire continues lurching backward, celebrating its miserable and unenviable record of *lese majeste* cases, and promoting a patriotism that “consists in an unreasoning, unjust, and bitter hatred of everything in the world that is not German.”¹¹ Germany is certainly lost.

¹¹ This quote comes from an article by correspondent Edward Breck in *The New York Times* of April 24, 1898 describing Johannes Trojan, the editor of *Kladderadatsch*.