



# THE INFLUENCE OF IMMANUEL KANT ON EVIDENTIARY APPROACHES IN 18TH-CENTURY BULGARIA

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**C**HIEF JUSTICE ROBERTS has drawn attention to the influence of Immanuel Kant on evidentiary approaches in 18th-century Bulgaria.<sup>1</sup> No scholarship has analyzed Kant's influence in that context.<sup>2</sup> This Article fills the gap in the literature by exploring Kant's influence on evidentiary approaches in 18th-century Bulgaria. It concludes that Kant's influence, in all likelihood, was none.

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<sup>1</sup> See Chief Justice of the United States John G. Roberts, Jr., Interview at Fourth Circuit Court of Appeals Annual Conference, available at [www.c-span.org/video/?300203-1/conversation-chief-justice-roberts](http://www.c-span.org/video/?300203-1/conversation-chief-justice-roberts) at approx. 30:40 (June 25, 2011) (“Pick up a copy of any law review that you see and the first article is likely to be, you know, the influence of Immanuel Kant on evidentiary approaches in 18th-century Bulgaria, or something, which I’m sure was of great interest to the academic that wrote it, but isn’t of much help to the bar.”).

<sup>2</sup> See Ross Davies, *In Search of Helpful Legal Scholarship*, 2 J.L.: PERIODICAL LABORATORY OF LEG. SCHOLARSHIP 1, 1 n.3 (2012) (noting the absence of such a work).

Immanuel Kant was born in 1724 and died in 1804.<sup>3</sup> He lived most of his life in Königsberg, Prussia, a city on the Baltic Sea on the northern tip of Europe.<sup>4</sup> Kant's influence did not extend to Bulgaria, a thousand miles to the south, until long after Kant's death. Kant first became influential in Bulgarian philosophy circles in the second half of the 19th century.<sup>5</sup> The earliest reference to Kant's work in a Bulgarian journal appeared in 1859.<sup>6</sup> That reference dismissed Kant's ideas as "obscure and awkward."<sup>7</sup>

Even if Kant had influenced Bulgarian philosophers in the 18th century, it seems unlikely that such influence could have extended to the legal system. During the 18th century, Bulgaria was part of the Ottoman Empire. Its legal system derived from a mixture of Sharia law, feudal practices, and the customary law of local ethnicities permitted by the Ottomans.<sup>8</sup> European thought in general had little influence on the Bulgarian legal system until Bulgaria became an independent state in 1908.<sup>9</sup>

The likelihood of Kantian influence on evidence law is particularly remote. Kant's legal views are difficult to summarize, as they bear no direct relationship to the Categorical Imperative for which he is best known in philosophy.<sup>10</sup> But however one assesses Kant's writings about law, they primarily concern matters of legal philosophy rather than trial procedure. Kant's work addresses topics such as the nature

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<sup>3</sup> See JEFFRIE G. MURPHY, *KANT: THE PHILOSOPHY OF RIGHT* 1 (1994).

<sup>4</sup> See *id.*

<sup>5</sup> See Dimitar Tsatsov, *The Critical Tradition in Bulgaria*, 53 *STUD. IN E. EUR. THOUGHT* 41 (2001).

<sup>6</sup> See *id.*

<sup>7</sup> *Id.*

<sup>8</sup> See M. ANDREEV & D. ANGELOV, *ISTORIA NA BLGARSKATA DRZHAVA I PRAVO* [HISTORY OF THE BULGARIAN STATE AND LAW] 358-59 (1959) (in Bulgarian).

<sup>9</sup> See Daniel Smilov, *Constitutional Culture and the Theory of Adjudication: Ulysses as a Constitutional Justice*, in ALBERTO FEBBRAJO & WOJCIECH SADURSKI EDs., *CENTRAL AND EASTERN EUROPE AFTER TRANSITION: TOWARDS A NEW SOCIO-LEGAL SEMANTICS* 121 (2010).

<sup>10</sup> See Stuart M. Brown, *Has Kant A Philosophy of Law?*, 71 *PHILOSOPHICAL REVIEW* 33, 36 (1962).

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of property, contracts, and the proper limits of punishment.<sup>11</sup> He also wrote about the proper conditions of a republican constitution and democratic government.<sup>12</sup> It appears that Kant never wrote about evidence law, which concerns the procedures for establishing facts in a legal proceeding.

Finally, a study of Bulgarian evidence law in the 18th century suggests no Kantian influence. According to a treatise on the Bulgarian law of procedure in the Ottoman period, eyewitness testimony taken under oath was the primary form of trial testimony.<sup>13</sup> Confessions were considered the best evidence of guilt in criminal cases, even though it was common for confessions to be obtained under torture or threat of violence.<sup>14</sup> Relatives of the accused were not permitted to testify.<sup>15</sup> Women could testify, although children were allowed to testify only in cases involving border disputes involving land plots.<sup>16</sup> According to one account, the custom was to bring children to the relevant plot and then painfully pull their hair to ensure that they would remember the borders and be able to testify about them in court.<sup>17</sup>

There is no apparent connection between these rules and Immanuel Kant. For all of these reasons, it appears very likely that Kant had no influence on evidentiary approaches in 18th-century Bulgaria.



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<sup>11</sup> See generally ARTHUR RIPSTEIN, *FORCE AND FREEDOM: KANT'S LEGAL AND POLITICAL PHILOSOPHY* (2009).

<sup>12</sup> See Wolfgang Kersting, 'The Civil Constitution in Every State Shall Be a Republican One,' in KARL AMERIKS, OTFRIED HÖFFE, AND NICHOLAS WALKER, EDS., *KANT'S MORAL AND LEGAL PHILOSOPHY* 246-63 (2009).

<sup>13</sup> See STEFAN BOBCEV, *BLGARSKO OBICHAINO SDEBNO PRAVO [BULGARIAN CUSTOMARY PROCEDURAL LAW]* 83 (1927) (in Bulgarian).

<sup>14</sup> See M. ANDREEV & D. ANGELOV, *ISTORIJA NA BLGARSKATA DRZHAVA I PRAVO [HISTORY OF THE BULGARIAN STATE AND LAW]* 449-50 (1959) (in Bulgarian).

<sup>15</sup> See BOBCEV, *supra* note 13, at 13.

<sup>16</sup> See *id.*

<sup>17</sup> See *id.* at 91.

# ACKNOWLEDGMENTS

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