



TO THE BAG

KANT ON EVIDENCE? A HYPOTHETICAL REPLY TO KERR

To the *Bag*:

Some years ago my colleague Orin S. Kerr concluded in these pages that “it appears very likely that [Immanuel] Kant had no influence on evidentiary approaches in 18th-century Bulgaria,” 18 *Green Bag* 2d 251, 253 (2015). This judgment has troubled me for years. Although I do not call into question Kerr’s meticulous historical research, I would propose the following Kantian thought experiment: *What if Immanuel Kant had been an 18th-century Bulgarian law professor?*

Some readers might object that my Kantian thought experiment is capricious or contrived. Be that as it may, thought experiments, especially improbable or outrageous ones, can be useful devices for detecting hidden anomalies and producing new or surprising insights. In any case, the leap of imagination required to conjure up an 18th-century Bulgarian Kant is no more implausible than a cat that is simultaneously dead and alive or a mischievous demon who manipulates microscopic molecules or an imaginary utility monster who gains an ungodly amount of pleasure from doing evil deeds.

My point being, if Kant had been an 18th-century Bulgarian law professor, it is very likely indeed that he would have made lasting contributions to the theory of evidence. Perhaps he would have developed a novel moral approach to the law of evidence or shed light on the relation between truth and hearsay. One can only begin to imagine the infinite possi-

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bilities and intriguing new ideas our Kantian thought experiment might engender.

F.E. Guerra-Pujol
University of Central Florida

AN EASTER EGG

To the *Bag*:

I'm surely not the first to discover the Easter egg hidden at the end of D. Brock Hornby's *Fables in Law, Chapter 13*, where, following the inevitable moral, appears the following text:

what are the states' Solicitor General offices? They are not (yet) an Eleventh Justice. But neither are they just another litigant before the U.S. Supreme Court. They collectively occupy a middle ground.

The passage, of course, is from the opening paragraph of Dan Schweitzer's excellent *The Modern History of State Attorneys Arguing as Amici Curiae in the U.S. Supreme Court*, 22 Green Bag 2d 143 (Winter 2019). I have reread that article and in hopes of finding the next clue in the puzzle, which, I assume, is something like the whole "Paul is dead" thing the Beatles did. I have not figured it out yet, but I thought you might like to know that another reader is on the case. I will be watching closely for more clues in future issues!

Sincerely,*
Jack Metzler
Washington, DC



* *Editors' note*: Yeah, right.