

PAPER DETAILS

TITLE: SOME CONSEQUENCES CONCERNING LAW WITH REFERENCE TO KANT'S ARTICLE
ENTITLED "AN ANSWER TO THE QUESTION 'WHAT IS ENLIGHTENMENT?'"

AUTHORS: Oğün ÜREK

PAGES: 249-258

ORIGINAL PDF URL: <https://dergipark.org.tr/tr/download/article-file/804042>

SOME CONSEQUENCES CONCERNING LAW WITH REFERENCE TO KANT'S ARTICLE ENTITLED "AN ANSWER TO THE QUESTION 'WHAT IS ENLIGHTENMENT?'"

Ogün ÜREK*

ABSTRACT

When Kant's article entitled "An Answer to the Question 'What is Enlightenment?'" is considered, it can be said that the article incorporates some thoughts as a clue for some solution offers to the question what are the conditions that a law system may not exist without. I believe that what can be concluded from this may be addressed in three headings: Firstly, what should the basic rule in law be? Kant considered free use of reason in public, when expressed in today's language freedom of expression, as the most fundamental condition required for enlightenment. When considered from this point of view, it can be alleged that this standard of Kant should establish the content of the basic norm which all law systems should be based on. Secondly, how can we change laws? Changing of the norm by the norm maker and where to focus upon for in which direction this change should be done becomes clarified in Kant's article. This is nothing more than the thoughts of a person who adopted it a life style to obey these norms, revealed within the frame of freedom of expression. Finally, from Kant's article we can learn that law should be deterrence.

Keywords: Law, Enlightenment, Obedience, Rule, Freedom, Deterrence

(Kant'ın 'Aydınlanma Nedir? Sorununa Yanıt' Başlıklı Makalesinden Hareketle Hukuka İlişkin Birkaç Sonuç)

ÖZET

Kant'ın 'Aydınlanma Nedir? Sorununa Yanıt' başlıklı makalesine bakıldığında, makalenin bir hukuk sisteminin varlığı için onsuz olamayacağı koşullar neler olmalıdır sorusuna verilecek kimi çözüm önerileri için ipuçları niteliğinde düşünceler barındırdığı söylenebilir. Buradan çıkarılacak sonuçlar kanımca üç başlık altında ele alınabilir: ilk olarak, hukukun temelini oluşturan temel yasa ne olmalıdır? Kant aklın özgür bir şekilde kamuda kullanılmasını, bugünkü dile getirilişle ifade özgürlüğünü, aydınlanmanın en temeldeki koşulu olarak düşünür. Bu bakış açısından bakıldığında, Kant'ın bu ölçüsünün bütün hukuk sistemlerinin dayanması gereken temel normun içeriğini oluşturması gerektiği ileri sürülebilir. İkinci olarak, hukuk yasalarını nasıl değiştirebiliriz? İşte tam bu noktada, Kant'ın makalesinde norm koyucunun normu değiştirmesi ve bu değişikliğin ne yönde yapılması gerektiği konusunda nereye bakılacağı açıklığa kavuşmuş oluyor. Bu da, normlara itaati bir yaşam tarzı haline getirmiş kişinin ifade özgürlüğü çerçevesinde ortaya koyduğu düşüncelerinden başka bir şey değildir. Son olarak, Kant'ın makalesi aracılığıyla hukuka itaat etmenin gerekliliğini de öğreniyoruz.

Anahtar Kelimeler: Hukuk, Aydınlanma, İtaat, Yasa, Özgürlük, Caydırıcılık

* Uludağ Üniversitesi Felsefe Bölümü öğretim üyesi

I. Introduction

Very few articles was so influential in the history of thought as the article titled *An Answer to the Question 'What is Enlightenment'* written by Kant in 1784. As in the past, also today this article of Kant becomes the subject of many positive or negative critics in many aspects and it seems that it will continue to be so in the future. I guess it should not be so difficult to estimate that the interest in this article began particularly after the French Revolution that took place in 1789. Since in this article, Kant, makes a remarkable and a significant determination between social enlightenment and revolutions at the point where he mentioned the prerequisites for a social enlightenment. According to his determination;

A public can achieve enlightenment only slowly. A revolution may well bring about a falling off of personal despotism and of avaricious or tyrannical oppression, but never a true reform in one's way of thinking; instead new prejudices will serve just as well as old ones to harness the great unthinking masses¹.

When considered from this point of view, it can be supposed that there is an interest for what the idea of Kant, a respectable philosopher of that era, is related with the revolutions in order to presume the impacts of the revolution, just after the French Revolution, may be on the future of mankind. In particular, considering that this thought was depicted before the French Revolution yet took place, a remark can be made that this stimulated the interest on the article more.

On the other hand, today the critics on the article appear on a more unfavourable way. It is seen that some philosophers of today especially the ones designating themselves as postmodern reduce the modernity to some certain sense of reason and this sense of reason to the reason which is one of the main concepts in this article of Kant and which they characterize as conception of enlightened reason and criticize during their efforts to distinguish between postmodern and modern while trying to define the concept "postmodern"².

Most strident critics among those raised today on this article are for the concept of "obedience" which Kant in his article considers as a condition which an enlightened society cannot be without. According to some philosophers, such an understanding of obedience led many unfavourable events in particular those events that resulted in concentration camps and death of millions of humans during the World War II³.

¹ Immanuel Kant, Immanuel Kant. *Practical Philosophy*, Translated and edited by Mary J. Gregor (Cambridge University Press, 1996) pp 12.

² In my opinion the first name that comes to one's mind as an example would be Zygmunt Bauman.

³ At this point the philosophers at issue are Adorno and Horkheimer, philosophers of Frankfurt School. Especially the ideas of the school based on *The Dialectics of Enlightenment* form the foundations of the fact at hand.

At this point, I will try to demonstrate with this presentation, that these critics against the concept of obedience are highly unjust critics and let alone creating such kind of unfavourable circumstances, this obedience mentioned of by Kant is the basis of law, the only instrument readily available to us to convert this world into a more liveable place. Moreover, I will put forth that Kant gives many clues on this issue by some of his other thoughts in this article other than his approach towards the concept of obedience to determine the conditions those cannot be done without for a law which should exist. Now, I wish to summarize some thoughts of Kant in this article which I believe you very well know.

II. What is Enlightenment in Kant?

The article with title “An Answer to the Question ‘What is Enlightenment’ ” by Kant is his answer to the question “do you also think, as many others express, the age we live in is an Age of Enlightenment?” raised in a monthly magazine published during that time in Berlin to be answered by many thinkers including Kant. Kant, with an aim to give a reply to that question, defines enlightenment at the very beginning of his article as:

Enlightenment is the human being’s emergence from his self-incurred minority. Minority is inability to make use of one’s own understanding without direction from another. This minority is self-incurred when its cause lies not in lack of understanding but in lack of resolution and courage to use it without direction from another. *Sapere aude!* [dare to be wise] Have courage to make use of your *own* understanding! is thus the motto of enlightenment⁴.

According to Kant who defines enlightenment this way “for this enlightenment, however, nothing is required but freedom, and indeed the least harmful of anything that could even be called freedom: namely, freedom to make public use of one’s reason in all matters”⁵. Based on those expressions it could be said that what Kant makes of enlightenment is the process of liberation of reason in its most basic meaning. Secondly, Kant tries to depict that the reason has a structure tending towards freedom by its nature. Since, as Kant states, at the beginning of this article, it is not the fault of reason that a person is in minority. This is another way of telling that the reason has a structure that produces freedom inherently. The result revealed here is parallel to the general philosophy of Kant. According to this philosophy, reason, as a pure structure, is a structure producing ideas. The idea of freedom is one of those ideas⁶. Therefore, it should be taken into account that the freedom mentioned here by Kant corresponds to the understanding of freedom as an idea in his philosophy.

⁴ Kant, *Immanuel Kant. Practical Philosophy*, p 11.

⁵ *Ibid*, p 13.

⁶ Immanuel Kant, *Kant’s Critique of practical reason and other works on the theory of ethics*, Translated by Thomas Kingsmill Abbott, (Longmans, Green, and Co, London, New York and Bombay1898) pp 88.

Some Consequences Concerning Law with Reference to Kant's Article Entitled "An Answer to the Question 'What is Enlightenment?'"

Kant afterwards continues to his article: "But I hear from all sides the cry: Do *not argue!* The officer says: Do not argue but drill! The tax official: Do not argue but pay! The clergyman: Do not argue but believe! Everywhere there are restrictions on freedom"⁷. Against this contrariety, Kant feels that it is necessary to ask this question: "But what sort of restriction hinders enlightenment and what sort does not hinder but instead promotes it?"⁸ Then he gives the following answer:

The public use of one's reason must always be free, and it alone can bring about enlightenment among human beings; the private use of one's reason may, however, often be very narrowly restricted without this particularly hindering the progress of enlightenment⁹.

The distinction of public and private use of reason here by Kant corresponds on one hand to the understanding of freedom in its dual meaning in his philosophy (freedom as an idea of pure reason or freedom in its negative meaning and freedom of the will or freedom in its positive meaning) and on the other hand the distinction concerning the dual side of human being¹⁰. According to Kant,

Now, for many affairs conducted in the interest of a commonwealth a certain mechanism is necessary, by means of which some members of the commonwealth must behave merely passively, so as to be directed by the government, through an artful unanimity, to public ends (or at least prevented from destroying such ends). Here it is, certainly, impermissible to argue; instead, one must obey. But insofar as this part of the machine also regards himself as a member of a whole commonwealth, even of the society of citizens of the world, and so in his capacity of a scholar who by his writings addresses a public in the proper sense of the word, he can certainly argue without thereby harming the affairs assigned to him in part as a passive member¹¹.

In other words, while a person, as a citizen of a country, performing his responsibilities assumed to him in the private use of reason with some sort of an understanding of freedom within defined boundaries, on the other hand he should, as a citizen of the world, make knowledge, experiences namely his reason available for use by other members of his species with an infinite understanding of freedom. What Kant tries to express here may be

⁷ Kant, *Immanuel Kant. Practical Philosophy*, pp 13.

⁸ *Ibid*, p 13.

⁹ *Ibid*,

¹⁰ Kant, *Kant's Critique of practical reason and other works on the theory of ethics*, p 65.

¹¹ Kant, *Immanuel Kant. Practical Philosophy*, p 14

summarized by the words of Frederick II which he cited in his article: “*Argue as much as you will and about whatever you will, but obey!*”¹².

After all these, Kant gives examples of how an enlightened scholar, an enlightened military officer, an enlightened citizen and finally an enlightened pastor should be. According to him, an enlightened military officer should fulfil the orders he receives from his superiors without getting into an argument of using his reason. However, on the other hand, no one can impede him to explain his opinions after he has fulfilled the order. Moreover, a citizen while paying his taxes should not hesitate to use his reason in public area on injustice of taxes. Same as this, a pastor while leading his community on performing their religious prayers within defined rules shall have freedom to use his reason against the public related with his work without pricking his conscience¹³.

From Kant’s point of view, for an enlightened society, it is not sufficient that each individual is enlightened but the rulers should also be enlightened rulers. Even if all the individuals in a society are enlightened, the society cannot be enlightened as long as the ruler is not. However, if the ruler of a society is enlightened, that society is more likely to become enlightened even if the other citizens are not enlightened. Then who, according to Kant, is an enlightened ruler and what are his duties that need responsibility? According to him “what a people may never decide upon for itself, a monarch may still less decide upon for a people; for his legislative authority rests precisely on this, that he unites in his will the collective will of the people”¹⁴. At this point, Kant addresses the two supplementary duties which an enlightened ruler should perform:

As long as he sees to it that any true or supposed improvement is consistent with civil order, he can for the rest leave it to his subjects to do what they find it necessary to do for the sake of their salvation; that is no concern of his, but it is indeed his concern to prevent any one of them from forcibly hindering others from working to the best of their ability to determine and promote their salvation...but much more so if he demeans his supreme authority so far as to support the spiritual despotism of a few tyrants within his state against the rest of his subjects¹⁵.

An enlightened ruler, according to Kant, shall make a call to his citizens just as Frederick II, the emperor of Prussia where Kant lived, and say “*Argue as much as you will and about whatever you will, but obey*” however he should have a living style where he treats each of them equally in his relations with them so that such a call may be reciprocated by his public. In other words, a ruler should be obligated to live in a manner to obey the rules that are requisites of his living style which proposes him to stay in equal distance to everyone in the private use of reason after he makes such a call to his society for the public use of reason. Because, when a

¹² *Ibid*, p 13.

¹³ *Ibid*, p 15.

¹⁴ *Ibid*,

¹⁵ *Ibid*,

governor fails to live according to this living style, namely when he stands closer to some of his citizens whereas he stands far from some of them, no one will be frank enough to tell what they think about those persons to whom the ruler stands closer and thus they will not regard the call he has made. In particular, according to Kant, a ruler should be highly careful when expressing his thoughts on religious matters. Because in such a case everything he says will make an impression of him being closer to a part of his citizens and this will tarnish his reputation¹⁶. At this point, it can be seen that Kant attributes the characteristics he had attributed to God in his philosophy, to an enlightened ruler. Namely, God, in the entire philosophy of Kant, has a characteristic available in the entity of reason as an idea which a reason, even the most ordinary one, produces¹⁷. In other words, the God is at an equal distance to any being which has reason.

Consequently, Kant replies to the question addressed to him "are we living in an enlightened age" as follows:

No, but we do live in an *age of enlightenment*. As matters now stand, a good deal more is required for people on the whole to be in the position, or even able to be put into the position, of using their own understanding confidently and well in religious matters, without another's guidance. But we do have distinct intimations that the field is now being opened for them to work freely in this direction and that the hindrances to universal enlightenment or to humankind's emergence from its self-incurred minority are gradually becoming fewer. In this regard this age is the age of enlightenment or the century of Frederick¹⁸.

III. Conclusion

A. The main principle of Law: the freedom of expression

Popper, in his article *In Search of a Better World* states that in his entire life he was in search to make his conditions he lived in more habitable¹⁹. According to him, such search will never be interrupted and come to an end. Therefore, all living organisms are continuously active. Now, in light of this thought of Popper, when we look into the history of humanity, from one aspect the history of man can be considered as the search to build a certain order to make the conditions he lives in more liveable. Establishing the order through some certain rules was the point mostly emphasized throughout this search. Therefore, law as the whole of written rules today, as it was in the past, stands as the single mechanism in

¹⁶ *Ibid*, p 16.

¹⁷ Immanuel Kant, *Critique of pure reason*, translated by Norman Kemp Smith, (The Macmillan Press LTD, London, 1992) pp 493

¹⁸ Kant, *Immanuel Kant. Practical Philosophy*, p 15

¹⁹ Karl R. Popper, *In Search of a better World (Lectures and essays from thirty years)* Translated by Laura J, Bennett, With additional material by Melitta Mew. Translation revised by Karl Popper and Melitta Mew. (British Library Cataloguing in Publication Data, West Yorkshire, 2000) pp 7.

front of humanity in search for a better world. And there is no slightest sign that this could change in the future. While all the humanity is like-minded on the requirement of law as a means for order, it is seen that there is no agreement at all in this area on what kind of law may establish the order in better conditions and on many similar issues. And, to a great extent, the reason for that is the necessity to change the law norm in a formal structure established with taking account of a certain moment in life should be shifted according to the new circumstances arising in life which has a sophisticated structure due to its continuous change. Law, in this sense, is a field of entity consisting of this issue which is fundamentally addressed and many other issues articulated to this issue. Many solution offers were generated in this field in the past and today and no doubt in the future such offers will be revealed as well. From this point of view, when the article of Kant is considered, it can be said that the article incorporates some thoughts as a clue for some solution offers to the question what are the conditions that a law system may not exist without. I believe that what can be concluded from this may be addressed in three headings:

First of all, it can be said that when law is mentioned the thing that the people in our time understands is the hierarchy of norms consisting of norms of the courts at the bottom, statutes above them and through the constitution on the top. Today it can be seen that the legal systems of the countries are established based on this rationale as well as the international law. According to this norms' systematic when considered from one aspect which looks like a pyramid and formed according to Kelsen's sense of law, each norm captures its validity from the norm on its top. According to such rationale, the constitution embodies itself, most concretely, with the norms generated by the courts. Now, when considered from this point of view, there appears a serious problem. What will be the content of the basic norm at the top on which all other norms in the norms hierarchy will base its validity? I guess we could find a clue for the solution on this matter in the article of Kant which we address. Namely, it was mentioned in the above citations that Kant considered free use of reason in public, when expressed in today's language freedom of expression, as the most fundamental condition required for enlightenment. When considered from this point of view, it can be alleged that this standard of Kant should establish the content of the basic norm which all law systems should be based on. According to that opinion, all norms taking place in a law system shall be structured intended for a principle which would not contradict with the content of this fundamental norm namely the principle of protecting the freedom of expression of the persons.

B. The Obedience rules in law

Secondly, taking into consideration that the basic purpose of all law systems is to make arrangements intended for the concrete reality that humans live in, some other issues are raised at this point. Even though a system of norms fashioned by determination of the content of the basic norm in a manner to protect the freedom of expression is available, while updating the norms according to the new circumstances by maintaining the

fundamental constants in the structure of law in conformity with the changing social living conditions, we encounter a significant problem as where to focus our sights upon during this updating. At this point, the second principle "obedience" which Kant involved as a basis for enlightenment in his article may function. However this is possible only provided that the obedience is understood correctly in its Kantian meaning given here. "Obedience" in Kantian philosophy may be discussed only when there is a situation where humans may with their free will choose to be involved and quit. At the point where Kant mentions about an enlightened pastor in his article being obligated to obey the rules that must be complied with within the frame of his duty and responsibilities, after a while asserting that he may quit his duty voluntarily in case he loses his belief that there will no improvement in this respect although he feels free to express his ideas as to the incorrect rules in the frame of his duty are required to be altered,²⁰ demonstrates the most significant characteristics of his perception on obedience.

The Obedience correctly understood in its Kantian meaning is an obedience of compliance with the predefined rules. The persons are responsible to obey the duties and responsibilities of their job as part of a machine. It is mandatory not to make any concessions at this point. While obeying these rules the persons should express their opinions because, while they are at the centre of the implementation of these rules, they have the most correct thoughts as to how those rules lose their effectiveness in the frame of that job and in what manner they should be changed. According to Kant, only by this way, there may be a permanent reformation in the structure of the society. Right at this point, changing of the norm by the norm maker and where to focus upon for in which direction this change should be done becomes clarified. And this is nothing more than the thoughts of a person who adopted it a life style to obey these norms, revealed within the frame of freedom of expression. This, in a sense, is the thought introduced by Plato in *Laws*. According to him the man who mostly obeys the rules should also be the man making such rules²¹. And further the obedience of Socrates for his loyalty on the rules of Athens mentioned in the *Crito* dialogue of Plato may be given as an example of such obedience.

C. The Deterrence in Law

I guess the third and the last thought that could be associated with law that is necessary which can be derived from the article are the thoughts of Kant he introduced in this article concerning the duties of an enlightened ruler which such rules qualifies as his primary duty. According to such thought, the main duty of an enlightened ruler that necessitates responsibility is, after making a call to his citizens to use their minds openly in public, to eliminate the attempts coming internally and externally which intend to forcefully hinder such citizens using such freedom. However, according to Kant, the ruler should keep same distance to all the citizens in

²⁰ Kant, *Immanuel Kant. Practical Philosophy*, p 14.

²¹ Plato, *Laws*, By R.G Bury, Litt. D. (Harvard University Press, 1961) 715c, 762e

order to prevent such occurrence. Because an action taken solely by this way, may be deterrent for the disobedient malevolent citizens. In other words, when a ruler fails to be deterrent against such type of persons with his standing and position he holds, it should become impossible for him to maintain his position as a ruler. From this point of view it can be said that the law being deterrent is the single provision for talking about the existence of a legal order. Deterrence, in this sense, is the essence of law. A non-deterrent law may become more harmful and dangerous than a lawless environment. Because a non-deterrent law may deteriorate the equality among the citizens who at all times should be equal before the law and this ruined equality may lead loss of faith in law, which is more important. No matter how competent law norms are made in an environment where faith in law is lost, a liveable environment may never be established for the mankind.

REFERENCES

- Kant Immanuel, *Kant's Critique of practical reason and other works on the theory of ethics*, Translated by Thomas Kingsmill Abbott, Longmans, Green, and Co, London, New York and Bombay 1898
- Kant Immanuel, *Critique of pure reason*, translated by Norman Kemp Smith, The Macmillan Press LTD, London, 1992
- Kant Immanuel, *Immanuel Kant Practical Philosophy*, Translated and edited by Mary J. Gregor Cambridge University Press, 1996
- Karl R. Popper, *In Search of a better World (Lectures and essays from thirty years)* Translated by Laura J, Bennett, With additional material by Melitta Mew. Translation revised by Karl Popper and Melitta Mew. British Library Cataloguing in Publication Data, West Yorkshire, 2000
- Plato, *Laws*, By R.G Bury, Litt. D. Harvard University Press, 1961