

Reply to Michael Seidler

Roger Berkowitz, Bard College

I find it gratifying that Michael J. Seidler has seen fit to write a lengthy review of my book, *The Gift of Science: Leibniz and the Modern Legal Tradition*. What I find sad is that in writing for *The Leibniz Review*, Professor Seidler dedicates three scant paragraphs to my reading of Leibniz. Indeed, when it comes to my chapter on Leibniz's contribution to modern law—a chapter that I say in the book is the philosophical foundation of the whole—Seidler punts. He admits that my argument “links up” and “provides much information.” But he also finds himself lost in a “labyrinth.” In other words, Seidler doesn't understand the core chapter of my book. Thus he ignores it.

There is no crime in not understanding a book. Seidler's response to his non-comprehension, however, is to attack my preface and conclusion. Nearly half of his review focuses on the combined 10 pages that bookend the book proper. What he says about my intellectual frame manifests both his legitimate disagreement and his misunderstanding. I leave the matter of our disagreements and most of his misunderstandings to our readers.

I do, however, want to remind readers of the *Review* that my book argues two related theses relating to Leibniz's legal and philosophical interests. First, and most centrally, that Leibniz's legal thinking is the intellectual foundation of modern positive law. Second, that Leibniz's legal interests were influential in the development of his scientific metaphysics.

My claim that Leibniz is an unwitting founder of positive law runs counter to Leibniz's reputation as a natural lawyer. Indeed, I too understand that Leibniz is a powerful proponent of natural law. And yet, Leibniz's great innovation in legal thinking was to insist that law be a science. As a product of science, law is subject to the principle of sufficient reason. Law too must have a reason.

It is difficult today to hear the radical claim in this simple sentence. What could be more natural than that laws must, to have authority, have a reason. But this idea of law was revolutionary in Leibniz's time.

Law, as it existed for millennia, was understood as an absolute command that issues not from laws of reason, but from a transcendent source. Law, as the anthropologist Pierre Clastres writes, addresses pre-scientific man from a mythical, pre-human time. Its authority came from religion, traditions, or myths that them-

selves were given by the great ancestors, gods, or a holy father—or in our case, the founding fathers.

I want to emphasize this point: If pre-scientific law was thought to have authority simply because it is given by tradition, custom or legislation, the scientific approach to law arises precisely when and because law loses its natural claim to authority. Once law is shorn from its grounds in tradition and religion, law must be justified; Leibniz's great innovation was to recognize that the most powerful justification for modern law is its claim to scientific certainty. Law, Leibniz insists, is justified only when it exists for a reason.

At the center of my reading is the claim that Leibniz's jurisprudence imports his scientific theses—that the world is rational and that all beings in the world develop in line with formal and rationalist forces—into legal and political thinking. Whereas pre-scientific lawyers looked for law in customs, traditions, and statutory collections of these sources, modern lawyers now look past the laws themselves to their reasons and grounds. The move from insight to science turns the legal inquiry away from the law itself and towards a justification or rationalization for law.

For Leibniz, the reason of law was, ultimately, *caritas sapientas*, the charity of a wise God. I trace in my book how over the coming centuries jurists specifically held on to and relied upon Leibniz's insistence that law be a product of scientific reason, even as the understanding of legal science changed. Whereas Leibniz subordinated law to a theological science of God's charitable wisdom, jurists have gradually abandoned theology and all rational sciences so that law, today, is increasingly understood as a product of social and economic science. For both Leibniz and modern jurists, however, law is a product of science. This understanding of law as a product of science means that law can be changed to accord with scientific reason. Law is changeable, malleable, and improvable in line with the needs of reason. That the reasons behind law today are efficiency and order rather than charity and justice simply shows that when law is subordinated to the social sciences, law itself becomes useful for the pursuit of any and all social ends.

Modern lawyers and philosophers assume that law's scientific rationality is obvious. As a result, Seidler charges that any non-rational or non-scientific understanding of law is mysticism, a vague and careless epithet he throws at my attempt to point out that there was another, pre-scientific and pre-Leibnizian, way of understanding law. It is not mysticism, however, to point out that the world was not always dominated by and understood according to the scientific faith in the rationality of the world. My book is not a romantic or mystical call for a return

REPLY TO MICHAEL SEIDLER

to a pre-scientific ideal of law; such a return is neither possible nor desirable. It is an attempt to offer a deeper understanding of the intellectual roots of the fact that law today has lost its connection to justice and ethics. That torture can be illegal one day and legal the next is not an accident, but a result of a particularly modern understanding of law as a useful means to rational and scientific ends. Such a reduction of law to a handmaiden for any and every social and political end is, I argue, both historically and philosophically rooted in Leibniz's scientific understanding of the world and law.

Roger Berkowitz
Assistant Professor of Human Rights and Political Studies
Bard College
P. O. Box 5000
Annandale-on-the-Hudson, NY 12504-5000
berkowitz@bard.edu