

REASON AS THE DARK SIDE OF THE LAW: A LEIBNIZIAN PERSPECTIVE

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Abstract

The article argues that reason as the hallmark of Western civilisation can indeed be considered as the dark side of law. The perspective adopted focuses on the thought of the seventeenth-century philosopher Gottfried Wilhelm Leibniz and compares it to some contemporary developments. Reinterpreting Leibniz's idea of justice and its relationship to law, the article argues that according to Leibniz 'good' law reflecting his idea of justice as the charity of the wise has to be based on three values: reason, love, and action. In other words, it has to unite within itself a cognitive/epistemological element with an affective and a practical element. However, the contemporary form of law dominant in the global North largely neglects Leibnizian insights: the contemporary dominant vision of law represents and promotes law as reasonable only. Reasonableness and objectivity of law are even its main hallmarks. The affective side of law is largely neglected. According to Leibniz, law which is devoid of its affective side is unable to fulfil or even attempt to fulfil its promise of justice. Thus, law as reason exclusively is condemned to darkness. The article argues that these Leibnizian insights are very contemporary and resonate with the latest developments in the law and emotions scholarship. Therefore, the article concludes, law and emotion scholarship could benefit from a deeper engagement with Leibniz's thought.

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Keywords

Leibniz - Law, Justice, Reason, Affect

1. Introduction

Reason is the hallmark of Western philosophical thought since at least the Enlightenment period when the belief in the superiority of reason over other ways of experiencing and knowing the world became dominant.¹ The development of modern legal systems is also closely tied to this tradition which affirms both the superiority of reason but also the possibility of achieving separation of reason as something objective and neutral from emotion as something subjective and thus biased.² Traditionally, law aims to achieve objectivity and neutrality through a recourse to

¹ This general idea represents the overall argument of Stephen Toulmin, *Cosmopolis: The Hidden Agenda of Modernity* (Chicago: The University of Chicago Press, 1990).

² See for example, Aleksander Peczenik, *On Law and Reason* (Dordrecht: Springer, 1989) or Keekok Lee, *Positivist Science of Law* (Sydney: Avebury, 1989)

reason.³ This attitude is visible in many aspects of legal procedure, in legal concepts, and other aspects of law's operation.

However, for decades the supposed objectivity and neutrality of law was revealed as a mere illusion. Such strands of legal thought as critical legal studies, feminist approaches to law or critical race scholarship exposed that behind the façade of reason exemplified by alleged objectivity and neutrality of law nothing but a biased system privileging interests of some at the expense of interests of others is hidden. Moreover, more recently a law and emotions scholarship grew in importance. These critical approaches to law and their revelation of the insufficiency of reason as a foundation of law raise series of questions: is reason perhaps that ultimate device which simply hides biases of the law? Is reason the dark side of law? If so what are the alternatives? How to move beyond reason as the dark side of law?

This contribution provides a reflection on these questions utilising an historical perspective. The concept of law was not always discussed the same way we discuss it today. Discussions of the concept of law which are situated in a different context, including in a different historical epoch, can enable us to have a renewed look at our contemporary debates. This contribution utilises the thought on the concepts of justice and law of a seventeenth-century philosopher Gottfried Wilhelm Leibniz as such a prism which enables a fresh perspective on some of the contemporary debates. The argument developed based on these insights is the following: reason on its own is indeed bound to turn law into a dark force. Just (fair) law cannot be reduced to reason only but also has to include other components. The particular vision of these other components which emerges from Leibniz's writings resonates with the contemporary debates in law and emotions scholarship and thus constitutes a contribution with valuable lessons for legal scholarship today.

This article is organised as follows. First, Leibniz and his work in context are briefly presented. Then the concept of justice as developed by Leibniz is discussed. The next section establishes relationship between law and justice as Leibniz viewed it. The final

³ Kent Greenawalt, *Law and Objectivity* (Oxford: Oxford University Press, 1995), Nicos Stavropoulos, *Objectivity in Law* (Oxford: Oxford University Press, 1996).

section discusses some of the lessons that can be drawn from Leibniz's views for contemporary debates. Conclusions are also offered.

2. Leibniz, his work, and his time.

Gottfried Wilhelm Leibniz, 'German philosopher, mathematician, and political adviser'⁴ was born in 1646 and died in 1716.⁵ He thus lived and worked mostly in the seventeenth century. The seventeenth century is the century associated with the philosophical tradition of modernity and rationalism.⁶ It is commonly imagined as an age of reason and scientific enquiry.⁷ Although this image is only partially true because religion still remained a central consideration for all thinkers of the time,⁸ the general effort of that century can still validly be described as a search for ways to deal with disagreements, including religious, in a more dispassionate and certain manner. Seventeenth century, for example witnessed growth in interest in mathematics as a science which possesses a method leading to certainty in knowledge.⁹ Many scholars inspired by mathematical methods attempted to transpose them to other areas of

⁴ Encyclopedia Britannica online.

⁵ On Leibniz's life and work, see a particularly thorough work of Antognazza: Maria Rosa Antognazza, *Leibniz: An Intellectual Biography* (Cambridge: Cambridge University Press, 2009).

⁶ See e.g. Toulmin (n 1) in general.

⁷ Association between the seventeenth century and the 'mechanical' philosophy is perhaps the most telling in this regard. See Stephen Menn, 'The Intellectual Setting' in Daniel Garber and Michael Ayers (eds.), *The Cambridge History of Seventeenth Century Philosophy*, Vol. 1 (Cambridge: Cambridge University Press, 1998) 33-86.

⁸ Very illustrative is the summary on religious toleration in Philip Milton, 'Religious Toleration' in Desmond M. Clarke and Catherine Wilson (eds) *The Oxford Handbook of Philosophy in Early Modern Europe* (Oxford: Oxford University Press, 2011) 571-590.

⁹ Peter Dear, 'Method and the Study of Nature', in Daniel Garber and Michael Ayers (eds.), *The Cambridge History of Seventeenth Century Philosophy*, Vol. 1 (Cambridge: Cambridge University Press, 1998) 147-77.

human knowledge, including law and politics. Hobbes is perhaps one of the most well-known proponents of the geometrical method in the study of politics. Leibniz was no exception to this.¹⁰ However, Leibniz's interest in method went clearly beyond a narrow focus on mathematics. He attempted to develop a comprehensive method of scientific discovery and thus was able to embrace, as this contribution will argue, not only reason, which was usual for his time, but also other aspects of human experience.¹¹

Another way in which seventeenth century is often characterised by historians is as a period of crisis in many areas. The first half of the seventeenth century is particularly turbulent and according to some historians even 'among the most uncomfortable and even frantic years in all European history'.¹² Historical research highlights that this period witnessed significant political instability and challenges to traditional structures of authority, thus creating fertile ground for the rethinking of legal and political arrangements. Similarly, in face of confessional conflicts, which produced significant misery and suffering, scholars' effort was directed at constructing concepts able to result in legal and political structures capable of preventing and avoiding future conflicts. Leibniz actively participated in this effort both through his scholarly work but also through his practical initiatives and his work as advisor to powerholders of his time. The concept of justice and its relationship to law which is discussed further in this contribution was also developed as a theoretical reflection on the ways of achieving a more just and peaceful society. In this regard it is significant that Leibniz, despite working in a century where reason was valued above anything else, proposed a concept of justice which is not exclusively based on reason and even denies that reason is enough to achieve peace and justice.

¹⁰ Berkowitz, Roger, *The Gift of Science: Leibniz and the Modern legal Tradition* (Harvard University Press, 2005).

¹¹ The reference here is mostly to his development of *scientia generalis* and *characteristica universalis*, see e.g., Arnaud Pelletier, 'The *Scientia Generalis* and the Encyclopaedia', in Maria Rosa Antognazza (ed.), *The Oxford Handbook of Leibniz* (Oxford: Oxford University Press, 2018) 162–76 and Martin Schneider, "'Leibniz" Konzeption der Characteristica universalis zwischen 1677 und 1690' (1994) 48 *Revue internationale de philosophie* 213–36.

¹² Toulmin (n 1) 16; see also Hugh Trevor-Roper, 'The General Crisis of the 17th Century' (1959) 16 *Past and Present* 31–64.

3. The Concept of Justice in Leibniz

Leibniz's widely known definition of justice is that of justice as *caritas sapientis*.¹³ In English this definition is usually rendered as 'the charity of the wise'. However, other variations also exist,¹⁴ and the deepest understanding of this definition requires a careful engagement with each of the terms of the definition. Moreover, in order to fully grasp the significance of this definition it is important to interpret the terms of the definition the way Leibniz understood them.

The first important indication for the correct understanding of this definition comes from the fact that Leibniz changed quite significantly his definition of justice over time.¹⁵ The existing scholarship locates the first instance when the final definition mentioned in the previous paragraph emerged in May 1677,¹⁶ relatively late in Leibniz's life and more than a decade after he completes his widely known treatises on law. After Leibniz arrived at this definition of justice, he never changed or deviated from it until his death in 1716. Therefore, Leibniz's definition of justice as *caritas*

¹³ This definition is from Leibniz's Preface to his *Codex juris gentium diplomaticus* (Leibniz, A.IV.5, 61; the reference here and in the majority of subsequent references to Leibniz's works is to the Academy Edition of Leibniz's works: Gottfried W. Leibniz, *Sämtliche Schriften und Briefe* (Darmstadt and Berlin: Berlin Academy, 1923-) Cited as Leibniz, A. Series. Volume). According to Horowska, *Codex juris gentium diplomaticus* is the first published text where Leibniz adopts this definition of justice (Aleksandra Horowska, 'Justitia ut caritas sapientis: The Relationship between Love and Justice in G. W. Leibniz's Philosophy of Right' (2017) 65 *Roczniki Filozoficzne* 185–204, 191).

¹⁴ In some instances, '*caritas*' is translated as 'love'; see e.g., Gregory Brown, 'Happiness and Justice', in Maria Rosa Antognazza (ed.), *The Oxford Handbook of Leibniz* (Oxford: Oxford University Press, 2018) 623–40, 623; Patrick Riley, *Leibniz's Universal Jurisprudence. Justice as the Charity of the Wise* (Cambridge, MA, and London: Harvard University Press, 1996) 144. As argued later in this section, this is a controversial translation. Neither the current meaning of charity nor that of love provide a true reflection of the meaning of '*caritas*'.

¹⁵ On the progressive development of the concept of justice in Leibniz, see Hans-Peter Schneider, 'Der Begriff der Gerechtigkeit bei Leibniz', in Manuel Medina, Roberto Mesa, and Primitivo Mariño (eds.), *Pensamiento jurídico y sociedad internacional: Libro-homenaje al profesor D. Antonio Truyol Serra*, Vol. 2 (Madrid: Centro de estudios constitucionales Universidad Complutense de Madrid, 1986) 1089–113; Werner Schneiders, 'Naturrecht und Gerechtigkeit bei Leibniz' (1996) 20 *Zeitschrift für Philosophische Forschung* 607–50.

¹⁶ *Ibid.*

sapientis is surely the final and perfect statement on the nature of justice from Leibniz's perspective. The elements of his earlier attempts at defining justice, which Leibniz changed or abandoned, are as important for interpreting his definition as the subsequent clarifications he offered. In particular, they guard us against any erroneous interpretation of its key term 'caritas'.

The term 'caritas' in Leibniz's final definition of justice came to replace another closely connected Latin term, namely 'amor' meaning 'love' (noun; the corresponding verbal form in Latin being 'amare'). In fact, in some of his earlier reflections on justice, for instance in the *Elementa Juris Naturalis*, Leibniz defines justice as 'habitus amandi omnes'.¹⁷ Therefore, it is necessary to understand the similarities and differences between the Latin terms 'caritas' and 'amor' to correctly interpret this element of Leibniz's definition of justice. Both terms possess the meaning of 'love' but do not carry the same connotations. Lewis and Short dictionary (1879) translates 'caritas' as 'regard, esteem, affection, love', while 'amor' is translated simply as 'love'.¹⁸ In explaining the difference between both terms, the dictionary states after translating 'amor' as 'love': 'to friends, parents, etc.; and also in a low sense; hence in gen., like amo, while *caritas*, like diligere, is esteem, regard, etc.; hence amor is used also of brutes, but caritas only of men.'¹⁹ Thus, both terms indicate different types of love. 'Caritas', with its connection to dearness, costliness, or high price (its first meaning) is a type of love which has more pronounced dimension of respect and value. This dimension is partly lost in the contemporary English connotations of charity. For example, apart from the meaning associated with various dimensions of Christian love, the term's contemporary usage is mostly associated with the understanding of charity as 'benevolence to one's neighbours, especially to the poor'.²⁰ Thus, if originally 'caritas' placed high value and sense of dearness into that towards which it

¹⁷ Leibniz, A.VI.1, 465.

¹⁸ Charlton T. Lewis and Charles Short, *A Latin Dictionary*. Founded on Andrews' edition of Freund's Latin dictionary. revised, enlarged, and in great part rewritten (Oxford: Clarendon Press, 1879); online edition was consulted as available at Perseus Digital Library (<https://www.perseus.tufts.edu/hopper/>).

¹⁹ Ibid.

²⁰ Oxford English Dictionary (online), term 'charity', meaning 4 which is also connected to meanings 5 and 6.

is directed, the modern meaning of charity is often condescending and patronising devaluing that towards which it is directed. This is best evidenced in the expression ‘cold as charity’ which unravels the unfeeling manner in which acts of charity are often done.²¹ Thus, any translation of ‘caritas’ into modern English with one single term cannot render justice to the richness of connotations it carried for Leibniz in his definition of justice.

Fortunately, Leibniz left us his own definition of ‘caritas’ as well as other key terms connected to his definition of ‘caritas’. Thus, In *Codex juris gentium diplomaticus* Leibniz defines charity as ‘a universal benevolence’; benevolence in turn is defined as ‘the habit of loving or willing the good’ and finally love according to Leibniz ‘signifies rejoicing in the happiness of another, or, what is the same thing, converting the happiness of another into one’s own’.²² Habit is defined in the *New Method of Teaching and Learning Jurisprudence* as ‘an acquired permanent readiness to act’.²³ This sequence of definitions reveals that ‘caritas’ as the first element of Leibniz’s definition of justice denotes for Leibniz a universal permanent readiness to act out of the joy we experience at the happiness of another, or, what is the same thing, out of converting the happiness of another into our own. Thus, fundamentally, for Leibniz ‘caritas’ as the first element of his definition of justice is an act of a particular type, not simply a feeling, a sentiment as the term ‘love’ would suggest. However, this act is motivated by a particular type of feeling. Before we consider further elements of this definition of ‘caritas’, we need to clarify the meaning of ‘sapientis’ in Leibniz’s definition of justice.

The translation of ‘sapientis’ poses fewer conundrums than that of ‘caritas’. It corresponds roughly to the idea of a wise, knowing, sensible person.²⁴ Though the question whether Leibniz means a wise person in a general sense or a person

²¹ Ibid., 9a.

²² Leibniz, A.IV.5, 61 (translation by Patrick Riley, *Leibniz: Political Writings* (Cambridge: Cambridge University Press, 1988) 171).

²³ Leibniz, A.VI.1, Part 1, para.2.1 (translation by Carmelo Massimo de Juliis (trans), *Gottfried W. Leibniz, New Method of Teaching and Learning Jurisprudence* (Clark: Talbot Publishing, 2017)).

²⁴ Lewis and Short (n 18), meaning II, 3 for ‘sapio’.

knowledgeable in a particular field arises. In this regard, Leibniz with his usual precision offered additional definitions. Thus, he states: ‘sapientia est scientia felicitatis’ (wisdom is the science of happiness).²⁵ Happiness in turn is defined as a lasting joy (‘laetitia durabilis’).²⁶ ‘Laetitia est status voluptatum in quo sensus voluptatis tantus est, ut sensus doloris prea eo non sit notabilis.’²⁷ Joy is a state of pleasure in which the feeling of pleasure is so great that in comparison to it pain is not noticeable. Pleasure in turn is defined as a sense of perfection, which can relate either to ourselves or to others.²⁸ ‘Sapientia’ as a part of definition of justice creates a necessary foundation in knowledge, something which can be called cognitive foundation of justice. However, surprisingly, it is not a foundation which appeals to some emotionless reason. To the contrary, this knowledge required for the existence of justice has necessarily to be an emotional knowledge, knowledge connected to feelings.

Leibniz’s definition of justice as the charity of the wise first establishes a double foundation for justice: it requires both cognitive (or knowledge-related) and practical (or action-related) components. If either of the two is missing, justice is impossible. Already at this stage it is obvious that although justice requires reason, justice is not reducible to reason. However, Leibniz went even further. Through his definitions of the two main terms, namely ‘caritas’ and ‘sapientia’, he introduced additional components to his definition of justice which relate to feelings or emotions of a particular type. If ‘sapientia’ is a science of happiness and ‘caritas’ is a permanent readiness to act out of joy for the happiness of the other, then happiness becomes that bridging device which connects knowledge-related and action-related components of Leibniz’s definition of justice. By the same token, happiness becomes a core affective component of justice. This interpretation challenges the traditionally dominant reading of Leibniz’s definition of justice. Thus, the author of one of the main English-language studies of Leibniz’s concept of justice Patrick Riley says that

²⁵ Leibniz, A.VI.4, 2810.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

in Leibniz ‘love is “affective”, wisdom “cognitive”’.²⁹ As already mentioned, it is wrong to translate ‘caritas’ with ‘love’ given the shift in Leibniz’s own terminological choices. This shift also indicates that in the mature definition based on charity, which replaced love, the action element in ‘charity’ part of the definition is more important to highlight than the affective element. Affective element is linked to happiness and serves as a bridging device connecting action to cognition (or reason). This becomes even more obvious if Leibniz’s position in relation to debates on disinterested love is considered.

The question of disinterested love in relation to justice emerges if one postulates love of the other as a foundation of the very possibility of justice. If justice requires disinterested love of the other, then justice becomes impossible if we cannot prove that disinterested love of the other is a natural inclination of all human beings. This latter proof was inexistent in Leibniz’s times, nor is it firmly established today. In order to avoid this vicious circle, which would force him to abandon the possibility of justice, Leibniz eschewed basing his concept of justice on disinterested love and on love as such. He then replaces love, as a standard, with happiness. He also adopts a particular view of happiness allowing him to avoid arguing for the existence of disinterested love or arguing that justice requires us to prefer the interests of others to the detriment of our own interests. As already mentioned, Leibniz defines happiness as ‘a state of permanent joy’,³⁰ while joy is ‘a pleasure which the souls feels in itself’ and pleasure ‘the feeling of a perfection or an excellence, whether in ourselves or in something else’.³¹ To illustrate his definition of pleasure Leibniz provides an example of pleasure we experience when listening to music or seeing an object of art.³² Thus, joy or happiness can be felt by human beings not only because something intrinsically internal to their interests occurs, but also produced by external factors,

²⁹ Riley (n 14) 5.

³⁰ Karl Immanuel Gerhardt (ed) *Die philosophischen Schriften von Gottfried Wilhelm Leibniz*, vol. 7 (Berlin: Weidmannische Buchhandlung, 1890) 86. See also a series of definitions at 73. This phrasing is slightly different from the previously mentioned and uses a different version of Leibniz’s definitions to demonstrate more nuances of meanings.

³¹ Ibid.

³² Ibid., 86–7.

which includes our observation of other human beings' lives. For him, this is a crucial point where justice, while being based on a personal interest (pleasure and need for happiness), at the same time includes the possibility to experience pleasure and thus happiness through others.

An additional argument supporting the interpretation advanced here can be found in the following Leibniz's statement: 'Wisdom, which is the knowledge of our own good, brings us to justice, that is to a reasonable advancement of the good of others'.³³ This formulation clearly establishes priority of our own good. Only through a particular interpretation of our own good do we arrive at the realisation that the advancement of this personal good requires us to advance the good of others too. In the paragraphs preceding this sentence, Leibniz provides ample evidence of the logical priority of our own good over the good of others but also their intimate connection. Thus, Leibniz eliminates the paradox of justice based on love for the other, demonstrating that our own interests are not necessarily opposed to interests of others.

Leibniz is well aware that achievement of this capacity to experience happiness as a feeling in our souls arising when facing perfection and excellence in others does not always come naturally and actually needs to be cultivated. In one of his works he even emphasises that wisdom as a science of happiness is what needs to be studied above anything else.³⁴ In addition he provides more specific guidelines: According to Leibniz to arrive at a happy life, which is defined as a soul entirely satisfied and quiet,³⁵ it is necessary to observe three principles in life: one related to wisdom, one related to virtue, and one concerning the right state of mind or certain tranquillity.³⁶ The link between these three elements can be summarised as follows: one has first to learn what the reason dictates (wisdom), then act according to these precepts of reason

³³ Georg Mollat (ed) *Mittheilungen aus Leibnizens ungedruckten Schriften* (Leipzig: Verlag von H. Hassel, 1893) 58–9 (translation as in Riley (n 22) 57).

³⁴ Leibniz, A.VI.5, 130200.

³⁵ Gerhardt (n 30) 90–8. Very similar content but in a much shorter form is contained in a piece written in French in the same volume at 81 and 90.

³⁶ *Ibid.*

(virtue), and finally accept what happens to us.³⁷ I suggest that Leibniz envisages here a type of a technology of the self, whereby humans, through constant striving not only of an intellectual nature but also based on particular behaviours and habits, acquire a sense of existence most conducive to the realisation of Leibniz's ideal of justice which requires cultivation of happiness in an outward direction. Thus, the feeling of happiness required for the existence of justice is not some natural inclination, but a result of a consciously directed behaviour.

The final confirmation of this interpretation resides in Leibniz's remarks on legal education. These remarks also constitute a further connection between the action-related component of Leibniz's definition of justice and its cognitive component. As mentioned above 'caritas' as a permanent readiness to act is fundamentally a habit. A habit according to Leibniz is something which is not innate in us but acquired or learned similarly to the way Leibniz affirms that happiness can be learned through a particular sequence of behaviours. In his *New Method of Teaching and Learning Jurisprudence* he elaborated in significant detail not only the subject-matter of an ideal from his point of view legal curriculum but also certain approaches that need to become part of the legal curriculum. In this connection he discussed the ways of acquiring habits. According to Leibniz a habit can be acquired in two ways: either through 'supernatural infusion or natural familiarization'.³⁸ Leibniz does not deny either divine or devilish supernatural infusion,³⁹ but for the purposes of his treatise, he focuses on familiarisation or teaching. In his discussion of habituation or familiarisation, Leibniz emphasises the necessary balance between frequency of acts (repetition or quantity) and their intensity or magnitude (quality). Thus, according to Leibniz one can learn not only happiness but also acquire readiness to act in accordance with that acquired feeling of happiness.

Having, reviewed carefully all the elements of Leibniz's definition of justice, we can clearly see how Leibniz overcomes the traditional opposition between rationality and emotion. Reason not guided by a right feeling, right emotion cannot lead to justice

³⁷ Ibid.

³⁸ Leibniz, A.VI.1, Part 1, para 8.4 (translation as in de Juliis (n23)).

³⁹ Ibid, Part 1, Para 9.4-5.

and given Leibniz's definition it is not a reason at all. Reason as a simple learned knowledge is also not conducive to justice. In order to achieve justice, reason guided by emotion, which is understood, cultivated, and internalised, has to become an action. In the definitional chains discussed above, it is impossible to imagine a wise person who is emotionless, such a person would be unjust by definition. Justice requires that the emotion in the particular form of happiness defined by Leibniz is present otherwise law becomes a dark force. For the last statement to hold, it is necessary to clarify how Leibniz articulated the relationship between law and justice because for Leibniz neither law is reducible to justice, nor justice is reducible to law.

4. Law and justice

The discussion about justice in the previous section clarified Leibniz's understanding of that concept but we cannot assume an immediate correlation between justice and law. Given the level of precision with which Leibniz developed his ideas, he also clearly articulated his view of the relationship between law and justice. The starting point for his reflection is a carefully maintained distinction between *jus* and *lex*, *Recht* und *Gesetz*, *droit* et *loi*. This distinction denotes for Leibniz a difference between the normative ideal of justice and its concrete realisation in laws and legal regulations of a particular community. The following statement reflects well the core idea:

The error of those who have made justice dependent upon power comes in part from their confusion of *Right* with *law*. Right cannot be unjust, this would be a contradiction. But law can be, for it is power which gives and maintains law; and if this power lacks wisdom or good will, it can give and maintain very bad laws. But happily for the world, the laws of God are always just.⁴⁰

The original French text reads as follows:

La faute de ceux qui ont fait dependre la justice de la puissance vient en partie de ce qu'ils ont confondu le droit et la loy. Le *droit* ne sauroit estre injuste, c'est une contradiction; mais la *loy* le peut estre. Car c'est la puissance qui donne et maintient la

⁴⁰ Gottfried W. Leibniz, *Philosophical Papers and Letters*, Loemker, Leroy E. (trans) (The Hague: Kluwer, 1969) 564.

loy; et si cette puissance manqué de sagesse ou de bonne volonté, elle peut donner et maintenir de fort mechantes loix: mais heureusement pour l'univers, les loix de dieu sont toujours justes.⁴¹

In the original text, there are two concepts clearly marked by two different terms: 'droit', translated into English as 'right', and 'loi', translated as 'law'. This translation can be partly misleading to a native English language speaker. In particular, there is a danger of reading the term 'right' in a more familiar sense of personal legal entitlements, which obviously is not what Leibniz had in mind. For a person familiar with the linguistic usage of the two distinct terms in such languages as German, French, or Latin, it is obvious that Leibniz aimed to distinguish the absolute ideal of the perfectly just law (*droit*) from fallible and imperfect human laws (*loi*), or justice and law.

Another way in which Leibniz addresses the relationship between law and justice is his vision of the distinction and link between *jus civile* and *jus naturale*. Leibniz affirms that all positive law (*jus civile*) is a factual rather than a legal question because in positive law the proof comes not from the nature of things, but from history or facts.⁴² This idea is even more clearly expressed in a letter to Conring where he highlights that judicial knowledge (*prudentia dicastica*) has two parts: science and experience, whereby science refers to the science of natural law which is the expression of precepts of justice and experience to the experiential basis of positive law. He adds that positive law is more a fact than law.⁴³

The emphasis Leibniz places on the scientific nature of *jus naturale* is connected to his belief in the scientific discoverability of the precepts of justice or natural law. It will not be possible to go into detail of Leibniz's position on the question of truth and knowledge but it is necessary to mention that he argued that certain types of truths which are called eternal and necessary truths exist objectively and are discoverable by

⁴¹ Mollat (n 33) 47.

⁴² Leibniz, A.VI.2, 525.

⁴³ Leibniz, A.II.1, 45.

human reason.⁴⁴ According to Leibniz, justice and goodness belong to the necessary and eternal truths like numbers and proportions.⁴⁵ Thus, knowledge and understanding of justice is accessible to human reason in the same way as the truths of mathematics or geometry. Leibniz emphasised that the word ‘justice’ has ‘some definition or some intelligible notion’.⁴⁶ Therefore, the science of justice belongs to those sciences that Leibniz calls necessary and demonstrative science, which do not depend on facts but rather ‘give reasons for facts’.⁴⁷ In order to be able to discover precepts of justice, humans have to develop and apply correct methodological devices. One of the major preoccupations which accompanied Leibniz through his life concerns precisely the development of these methodological devices. In general, they are known as *scientia generalis* and *characteristics universalis*.⁴⁸ More specifically, his method in this regard is based on the idea of transferability of certain logical procedures of invention or discovery in geometry and algebra to other areas of human knowledge, including jurisprudence.⁴⁹ Leibniz never completed his work in this area, but we have several drafts in various languages on a variety of topics including the chains of definitions in relation to justice presented in the previous section.

Once humans know these precepts of justice, Leibniz was persuaded, they will be able to make law reflective of these precepts of justice. Leibniz’s interest in law is strongly motivated by his belief in the human capacity to discover eternal and universal truths, as well as the possibility to develop ways of making these eternal truths part of human life.

⁴⁴ His views on this matter are most clearly explained in *New Essays on Human Understanding*: Leibniz, A.VI.6. For the importance of these views for Leibniz’s vision of law and connections between these two fields of study see Ekaterina Yahyaoui Krivenko, *Space and Fates of International Law: Between Leibniz and Hobbes* (Cambridge: Cambridge University Press, 2020) chapters 3 and 4 in particular.

⁴⁵ Mollat (n 33), 45.

⁴⁶ *Ibid.*, 49.

⁴⁷ *Ibid.*, 50.

⁴⁸ For some references on these concepts see note 11.

⁴⁹ A very detailed discussion of this project from the perspective of logic as a project of uniting general logic with local logic of specific disciplines is contained in Arnaud Pelletier, ‘Logica est scientia generalis. Leibniz et l’unité de la logique’ (2013) 76 *Archives de philosophie* 271–94.

Therefore, although Leibniz clearly distinguishes *ius* and *lex*, justice and law, his own conceptualisation of law is closely linked to his conceptualisation of justice: Leibniz's concept of law is an attempt to articulate how to ensure that law is as much as possible compliant with precepts of justice. One interesting element from a practical perspective of application of law concerns Leibniz's remark on decision making. Leibniz suggested that in any decision as a balancing act, one should consider any given situation from the point of view of the other.⁵⁰ 'The place of the other is the true perspective point in politics as well as morals.'⁵¹ Its functionality is explained as follows: 'Thus, we can say that the place of the other in morals as well as in politics is a place for discovering considerations, which without it would not appear to us: that everything we would find unjust if we were in the place of the other shall appear to us as suspected of injustice.'⁵² This particular position – considering any given situation from the perspective of the other – enables the emergence of reflexions which can lead to the feeling of happiness in the other, which, as discussed in the previous section, is the foundation of justice. Another interesting practical observation by Leibniz concerns voting as a form of decision making. Leibniz was very articulate regarding the need to control unreasonable decision-making in different assemblies. He proposed to make any vote, even a secret vote, always accompanied by written reasons. Control of voting results will then, according to Leibniz, include a stage where reasons for voting are examined. He also contemplated a separate mechanism for holding those voting accountable for their votes, especially if they unreasonably refuse to vote for a measure, which is evidently necessary.⁵³

Based on these observations about the relationship between law and justice, it is possible to affirm that just like emotion – more precisely happiness as defined by Leibniz – is part of justice, so it is part of the functioning legal system. Similarly to

⁵⁰ Leibniz, A.IV.3, 903–4. See also the analysis of this idea in Fernando Gil, 'Leibniz: La place d'autrui, le principe du pire et la politique de la monadologie' (1984) 3 *Passé Présent* 147–64 and Quintin Racionero, 'El principio de la "place d'autrui" y la racionalidad de la política', in Ildelfonso Murillo (ed.), *La filosofía ante la encrucijada de la nueva Europa* (Colmenar Viejo: Diálogo filosófico, 1994) 583–611.

⁵¹ Leibniz, A.IV.3, 903.

⁵² *Ibid.*, 904.

⁵³ Leibniz, A.I.20, 285.

justice, law which is simply a neutral emotionless reason is not a good law but a dark force. This is also visible in the two practical examples. First, when adopting the perspective of the other, one is not simply receiving information from the other party, but actively attempting to situate him- or herself in the position of the other, which is not reducible to a purified disinterested knowledge about the other and his or her situation but represents a complete emersion in the other's perspective which of course includes knowledge of the objective elements of this situation but also an ability to share other's feelings. Otherwise, it would be unnecessary for Leibniz to talk about 'the place of the other' as the true perspective point. He could simply suggest collection of information, hearing of the other and similar standard procedures. Leibniz's insistence on knowing reasons for voting highlights his realism and his understanding of inseparability of reason and emotion. Since Leibniz knows that emotions, attitudes, and feelings are integral part of human lives and inseparable from reason, he tries to envisage a decision-making mechanism which enables taking these emotions into account. From his definition of justice, he knows that emotions required for justice to become part of reality have to be learned, he also knows that not all people will learn them equally well. Giving reasons for decisions, even in secret voting, becomes a control mechanism ensuring that only decisions based on right reason are taken into account and that the intimate dependency between reason and emotion is somehow accountable and controllable. Of course, these proposals raise many interrogations especially if we consider concrete unfolding of this type of measures in courts, parliaments or other institutions today. To the best of my knowledge, Leibniz also did not elaborate all the details of his proposal even for the institutions of his time. However, these examples to demonstrate that for Leibniz neither justice nor law can be viewed in a positive light if a dispassionate and thus indifferent reason is their foundation. The example relating to voting as a decision-making mechanism also demonstrates that Leibniz's thought resonates with insights of critical legal studies and other streams of contemporary legal thought that reveal the artificiality of law's claim to reasonableness and objectivity. Thus, pure reason is indeed the dark side of law for Leibniz, as it is the dark side of justice because law and emotion are inseparable. Law in fact has to learn how to deal with emotion instead of hiding behind the false claim of neutral objectivity based on reason.

5. Leibniz's view of law and justice within the context of contemporary debates

As mentioned in the introduction, law's self-portrayal as an objective and neutral discipline based on some pure reason devoid of emotion has a long pedigree. It is connected to the history of ideas in the West. This picture, which includes a binary oppositional vision of the relationship between law and emotion, was challenged for quite some time. However, the emergence of a distinct law and emotions scholarship is a relatively recent occurrence. Thus, writing in 2015 one author affirms: 'During the last two decades, a small group of legal scholars has begun to probe the scope of emotions in law.'⁵⁴ So if critical attitudes towards reasonableness and objectivity of law are largely a 20th century phenomenon, development of the law and emotions scholarship occurred mostly in the 21st century. Against this backdrop Leibniz's work on justice and law can be regarded as prefiguring some of the central developments not only in the critical thinking about law but also in the law and emotions scholarship.

Law and emotions scholarship has various approaches and phases. Leibniz's work does not have a direct correspondence to all the contemporary approaches to the study of law and emotions, which over years became quite diverse. However, if we follow the development of interrogations in the law and emotions scholarship, it becomes obvious that Leibniz's reflections are relevant to all these interrogations. Abrams and Keren in their seminal article identify three stages in the historical development of law and emotions scholarship: challenging legal rationality, studying the emotions, and making a normative turn.⁵⁵ By placing emotions at the heart of his definition of justice and avoiding the dilemma of disinterested love Leibniz, without expressly challenging legal rationality, made obvious that emotions are inseparable from legal reasoning, and that, as argued in the section on justice, reason without emotion is simply a dark force. The examples provided in the section discussing how Leibniz envisaged integration of justice in concrete legal systems further reinforce this position. Due to the size of this contribution, it was impossible to discuss Leibniz's thoughts which fall under the umbrella of 'studying emotions'. Such an endeavour in the seventeenth century cannot compete with contemporary advancement in the area.

⁵⁴ Renata Grossi, 'Understanding Law and Emotion' (2015) 7 *Emotion Review* 55-60, 56.

⁵⁵ Kathryn Abrams and Hila Keren, 'Who is Afraid of Law and the Emotions?' (2010) 94 *Minnesota Law Review* 1997-2074, 2003-2013.

Moreover, Leibniz's efforts in this regard are distributed across numerous contributions without being presented in a systematic way. However, some of the remarks made in this article about legal education or practical implementation of law mentioned in the previous sections demonstrate that Leibniz attempted to understand how emotions operate and influence humans including in legal processes. The most significant importance of Leibniz's thought resides in relation to the last stage of law and emotions scholarship, namely its normative turn.

Abrams and Keren affirm in relation to the normative turn: 'Most recently, law and emotions work has taken a normative turn, using the fruits of interdisciplinary exploration to argue for changes in legal conceptualization, policy, and doctrine.'⁵⁶ First, Leibniz clearly outlined a role of happiness for the conceptualisation and practical application of law. Discussing role of emotions in law is one of the earliest manifestations of normative turn.⁵⁷ Leibniz did not simply discuss emotions in relation to a specific legal field as is customary in law and emotions scholarship, but in relation to the concept of law as such something, which to the best of my knowledge remains only rudimentarily present in contemporary scholarship. Moreover, Leibniz reflected not only on the role emotions in law but also on the type of emotions that have to be part of law in order to arrive at a more just society. He also emphasised the need to cultivate certain emotions in legal education. This latter set of approaches and questions significantly enriches and illuminates even the most recent law and emotions scholarship.

While reason without emotions remains the dark side of law, how law and emotions should relate to each other remains a contested issue. This exploration into the views of a seventeenth century philosopher Gottfried Wilhelm Leibniz demonstrates the importance of looking into the past, even very distant past, for inspiration since the questions law and emotions scholarship raises are not as new as many suppose.

⁵⁶ Ibid., 2003.

⁵⁷ Ibid., 2011.

Conclusions

Leibniz lived and worked in the seventeenth century, the century that produced reason as a hallmark of modernity. He was also a scholar who aimed through his theoretical and practical work to contribute to ensuring peaceful and prosperous life for all. In his own work he demonstrated incessant effort to utilise the best elements of science, especially mathematics as methodological tools to guide his enquiries in other areas, including in relation to justice. In this environment and within these conditions he came up with a definition of justice that incorporated emotions, feelings as its central element. From his reflections on the concept of justice and law it becomes abundantly clear that reason alone cannot achieve justice; moreover, it cannot even appropriately aim to achieve it. Reason without action guided by right feelings, sentiments is simply a dark force. By omitting to consider feelings and focusing only on reason contemporary legal systems create a façade behind which they hide their inability to deal with emotions. This was abundantly clear to Leibniz already in the seventeenth century. Of course, reason is indispensable for justice and law to fulfil their promise, but they have to be underpinned by a certain emotional state which guides it. This approach to justice and law resonates with many themes of the contemporary law and emotions scholarship. Surprisingly, it even raises some of the questions that law and emotions scholarship started addressing only recently. Further exploration of Leibniz's work from the perspective of law and emotions scholarship could perhaps bring even further new insights.

