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The Reception of Pufendorf and Leibniz in the early *école romande du droit naturel* : Jean Barbeyrac and Louis Bourguet

Sophie Bisset

The *école romande du droit naturel* – a term first coined by the scholar Alfred Dufour in the 1970s – is principally defined by the cultural mediation of seventeenth century Latin natural law to an eighteenth century Francophone audience¹. Natural law theorists in the Swiss *romande* engaged in this process of dissemination were often religious refugees of Huguenot or Italian descent. This gave the *école romande* a certain unity of purpose : to establish a coherent, persuasive account of social and political obligations independent of allegiance to a specific church or prince yet grounded in the principles of rational theology. From Jean Barbeyrac in the 1710s to Emer de Vattel in the 1740s, the rival philosophies of Samuel Pufendorf and Gottfried Wilhelm Leibniz became a core focus around which the debate over basic moral norms was conducted. The reception and interpretation of Pufendorf and Leibniz thus lies at the heart of the *école romande du droit naturel*.

The focus on this paper is the early *école romande*, in particular, the natural law teachings of Jean Barbeyrac in Lausanne and Louis Bourguet in Neuchâtel. Both were well-connected members of the Republic of Letters and belonged to the European-wide Huguenot Diaspora. Barbeyrac and Bourguet also engaged in a brief but amicable correspondence (1716-1717) shortly after meeting in person. There are eight letters remaining from this correspondence, all of which are from Barbeyrac to Bourguet². In these letters, two main topics dominate. First, Bourguet's possible candidacy as Barbeyrac's successor in the chair of law and history at the Academy of Lausanne. And second, the respective philosophies of Pufendorf and Leibniz. For Barbeyrac, these two topics were closely related and he cautioned Bourguet against being cast as a Leibnizian if he hoped to take up the chair at Lausanne.

At the time that Barbeyrac was writing these letters, he was also completing his "Jugement d'un anonyme avec des réflexions du traducteur" (written in 1716 ; first published in 1718). In this text,

¹ Alfred DUFOUR, *Le mariage dans l'école romande du droit naturel au XVIII^e siècle*, Genève : Georg & Co., 1976. This text also offers the most comprehensive account of the *école* and its defining features currently available (see esp. 1-35). Further articles by DUFOUR related to the *école* include : "Die *école romande du droit naturel* – ihre deutschen Wurzeln", in Hans Thieme *et alii* (ed.), *Humanismus und Naturrecht in Berlin-Brandenburg-Preussen*, Berlin : de Gruyter, 1979, p. 133-143 ; and "L'ambivalence politique de la figure du contrat social chez Pufendorf et chez les Fondateurs de l'Ecole romande du droit naturel au XVIII^e siècle", in Jean-François Kervégan and Heinz Mohnhaupt (ed.), *Gesellschaftliche Freiheit und vertragliche Bindung in Rechtsgeschichte und Philosophie*, [Jus commune, Sonderhefte, 120], Frankfurt am Main : Klostermann, 1999, p. 35-74. Dufour's original research has been extended and enlarged upon by Simone ZURBUCHEN, see "Zum Prinzip des Naturrechts in der *école romande du droit naturel*", *Jahrbuch für Recht und Ethik / Annual Review of Law and Ethics* 12, 2004, p. 189-211, and "Die schweizerische Debatte über die Leibniz-Wolffsche Philosophie und ihre Bedeutung für Emer von Vattels philosophischen Werdegang" in Patrick Coleman, Anne Hofmann and Simone Zurbuchen (ed.), *Reconceptualising Nature, Science and Aesthetics*, Geneva : Slatkine, 1998, p. 91-113.

² These letters are held in the archives at the Bibliothèque publique et universitaire de Neuchâtel (BPUN), Fonds Bourguet, Ms. 1226. Transcription has also been made available on the Lumières.Lausanne website as part of the ongoing project to provide full transcriptions of all Barbeyrac's correspondence : <http://lumieres.unil.ch/projets/barbeyrac/>.

Barbeyrac offers his most sustained defence of the natural law theory of Pufendorf against that of Leibniz. Bourguet also engaged in writing his own discourse on the fundamental principles of natural law, “Dissertatio de Vero atque genuino Juris Naturalis studii usu”, as he prepared his candidacy for the chair at Lausanne. Written and circulated in Lausanne and Berne before he withdrew his candidacy, it was only published in 1736³. Nonetheless, it offers a valuable insight into the broader philosophical debate in the Swiss *romande* in the 1710s and the importance of remaining attentive to the local context (in this case, the chair at Lausanne) when reading a text such as Bourguet’s.

The Teaching of Natural Law in the *école romande*

The teaching of natural law in the old Helvetic confederation was a somewhat complex affair, given that it was taught both informally in private lessons and formally in the various institutions of higher education across the French and German speaking cantons. In the late seventeenth and early eighteenth century, these institutions comprised the sole Swiss University at Basel, the *Hohe Schule* at Zurich and Berne, and the Academies at Lausanne and Geneva. Natural law was taught by professors with a specific chair of natural law, the first instance being the chair of natural law and the law of nations instituted at the University of Basel in 1695, first held by Johannes Wettstein, and those in related chairs whose teaching was shaped by natural law, for example, in Geneva, both Philip Vitriarius and Bénigne Mussard taught Grotius prior to the establishment of an explicit chair of natural law in 1723⁴.

The chair of law (comprising both natural and civil law) and history at the Academy of Lausanne was first approved by the Academic Senate and the Bernese authorities in 1708 ; prior to which natural law was taught in private courses by Jean-Pierre de Crousaz, professor of philosophy, mathematics and physics⁵. As a student in Lausanne in the 1680s, Barbeyrac himself was one of the beneficiaries of de Crousaz’s courses in natural law before he left Lausanne to continue his studies, first in Geneva and then in Berlin and Frankfurt-an-der-Oder⁶. Barbeyrac was the principal candidate for the newly created chair of law and history at Lausanne, having already established his scholarly reputation with the publication of the first editions of his two Pufendorf translations : *Le droit de la nature et des gens* (1706)

³ Barbeyrac’s “Jugement d’un anonyme avec des réflexions du traducteur” was originally appended to the 1718 edition of *Les devoirs de l’homme et du citoyen*, Amsterdam : Pierre de Coup, 1718. References in this paper to the “Jugement d’un anonyme” are from the modern reprint included within : Jean BARBEYRAC, *Ecrits de droit et de morale*, ed. Simone Goyard-Fabre, Caen : Centre de Philosophie politique et juridique, 1996, p. 195-234 ; Louis BOURGUET, “Dissertatio de Vero atque genuino Juris Naturalis studii usu”, *Tempe Helvetica*, 1738, vol. 3, p. 9-41 ; On the circulation of Bourguet’s “Dissertatio”, see also, “Suite de l’abregé historique de la vie de M. Bourguet”, *Journal helvétique*, March 1743, p. 305.

⁴ I would like to thank Professor Simone Zurbuchen at the Université de Lausanne for sharing her database comprising details of the institutions, professors and both published and manuscript sources related to the teaching of natural law in the old Helvetic confederation.

⁵ Philippe MEYLAN, *Jean Barbeyrac, 1674-1744, et les débuts de l’enseignement du droit dans l’ancienne académie de Lausanne*, Lausanne : F. Rouge, 1947, p. 18-21 and 39.

⁶ For Barbeyrac’s biography and early education, see MEYLAN 1937, p. 29-67 ; Fiammetta PALLADINI, *Die Berliner Huguenotten und der Fall Barbeyrac : Orthodoxe und Sozinianer im Refuge (1685-1720)*, Leiden : Brill, 2011 ; and Barbeyrac’s own autobiography, “Mémoire sur la Vie et sur les écrits de Mr. Jean de Barbeyrac, écrit par lui-même” [1744], in BARBEYRAC 1996, p. 77-92. For Barbeyrac’s appointment to the chair of law and history at Lausanne, see MEYLAN 1937, p. 69-84 ; Denis TAPPY, “De Barbeyrac aux premiers *Masters* en droit de la Faculté de droit et des sciences criminelles de l’Unil : 300 ans d’enseignement du droit à Lausanne”, in Denis Tappy, Bettina Kahil-Wolff and Léonard Bruchez (ed.), *300 ans d’enseignement du droit à Lausanne*, Geneva : Schulthess Verlag, 2010, p. 1-45 ; Francesco DI DONATO, “La contribution de Jean Barbeyrac au renouvellement du droit européen”, in Giovanni Busino et alii (ed.), *Genève et la Suisse dans la pensée politique : actes du colloque de Genève (14-15 septembre 2006)*, Aix-en-Provence : Presses universitaires d’Aix-Marseille, 2007, p. 409-418 ; Jean-François POUDRET, “La leçon inaugurale de Jean Barbeyrac à l’Académie de Lausanne”, in *Les grands juristes. Actes des journées internationales de la Société d’histoire du droit, Aix-en-Provence, 22-25 mai 2003*, Aix-en-Provence : Presses Universitaires d’Aix-Marseille, 2006, p. 107-112 ; Jean-François POUDRET et alii (ed.), *L’enseignement du droit à l’Académie de Lausanne aux XVIII^e et XIX^e siècles*, Lausanne : Université de Lausanne, 1987.

and *Les devoirs de l'homme et du citoyen* (1707)⁷. Negotiations over pay and conditions, as well as concerns over Barbeyrac's orthodoxy, meant that Barbeyrac did not take up the position until 1711, a post that he held until 1717 when he left to take up the chair of law at the University of Groningen.

At the time of his departure, Barbeyrac had strongly endorsed Bourguet as his preferred successor, with both Barbeyrac and de Crousaz petitioning the authorities at Berne and other influential figures on Bourguet's behalf⁸. In early 1718, Bourguet removed himself from consideration, explaining to the marquis Du Lignon, another of his supporters in Lausanne, that the bourgeoisie of Lausanne would be aggrieved if "the chair so recently occupied by Mr. Barbeyrac, were to be taken by another [foreigner] rather than one of their own"⁹. With Bourguet out of the running, the appointment of Barbeyrac's eventual successor, Charles-Guillaume Loys de Bochat, a bourgeoisie and citizen of Lausanne, was greeted favourably in Lausanne¹⁰. In his earlier letters to Bourguet, however, Barbeyrac had described Loys de Bochat, who had attended his courses, as a student who had "studied law for two years at most" with "no hint of erudition"¹¹.

There is limited manuscript material directly related to Barbeyrac's teaching activities in Lausanne, for example, no lecture notes or other specific teaching materials. Responding to Bourguet's enquiry into the conditions of the post, however, Barbeyrac confirms that he used his abridged Pufendorf translation, *Les devoirs de l'homme et du citoyen*, as the basis for his courses in natural law at Lausanne. Barbeyrac also informs Bourguet that he taught three public classes a week, two in natural law and one in history, all delivered in French¹². His class in Roman law, taught in Latin at the behest of the authorities in Berne, to whom Lausanne was politically subordinated at this time, failed to get off the ground due to a lack of students willing or able to study in Latin. His private lessons, too, only achieved a modicum of success after he abandoned efforts to teach them in Latin and provided them in French instead.

Barbeyrac had made his name as a translator and in his "Préface" to *Le droit de la nature et des gens*, he defends the importance of benefits of reading texts in the vernacular for those not well-versed in Latin¹³. Nonetheless, he insisted that any serious scholar must master the Latin language and study texts in the original. In his first Rectorial address at the Academy of Lausanne, Barbeyrac reminds his listeners that, while translations are "sufficient to put oneself in the position to acquire a degree of enlightenment" but that "a lover of the truth" would always want to read the original for himself¹⁴. The opening preamble to the discourse also reveals that Barbeyrac considered himself to be following local custom and making his discourse as accessible as possible to his audience by speaking in French¹⁵. Somewhat grudgingly, Barbeyrac thus followed and considerably expanded the Lausanne tradition to

⁷ Samuel PUFENDORF, *Le droit de la nature et des gens, ou système général des principes les plus importants de la morale, de la jurisprudence, et de la politique*, trans. and ed. Jean Barbeyrac, Amsterdam, 1706, 2 vol., and *Les devoirs de l'homme et du citoyen, tels qu'ils lui sont prescrits par la loi naturelle*, trans. and ed. Jean Barbeyrac, Amsterdam : Henri Schelte, 1707.

⁸ Bibliothèque publique et universitaire de Neuchâtel (BPUN), Fonds Bourguet, Ms. 1266, letters from Jean Barbeyrac to Louis Bourguet, 20 April 1717 and 30 April 1717. Online transcriptions have also been established by Lumières.Lausanne : <https://lumieres.unil.ch/fiches/trans/749> and <https://lumieres.unil.ch/fiches/trans/750>.

⁹ BPUN, Fonds Bourguet, Ms. 1260, letter from Louis Bourguet to Jacques Bibaud Du Lignon, 16 February 1718 : "la chaire qui venoit d'être occupée par M. Barbeyrac, le fût par un autre que par un enfant du païs".

¹⁰ For a more detailed account of the events surrounding Loys de Bochat's appointment as Barbeyrac's successor to the chair of law and history at the Academy of Lausanne, see MEYLAN 1937, p. 158-172.

¹¹ BPUN, Fonds Bourguet, Ms. 1266, letter from Jean Barbeyrac to Louis Bourguet, 28 May 1717 : "il n'a étudié que deux ans tout au plus en droit [...] au reste, ce n'est que un Ecolier, il n'a aucune teinture d'érudition". An online transcription has also been established by Lumières.Lausanne : <https://lumieres.unil.ch/fiches/trans/751>. It is notable that the Bernese authorities granted Loys de Bochat three years to continue his studies in natural and civil law abroad before taking up the chair at Lausanne.

¹² *Ibidem*, 30 April 1717.

¹³ Jean BARBEYRAC, "Préface du traducteur", §31, in PUFENDORF 1706.

¹⁴ *Idem*, "Discours sur l'utilité des lettres et des sciences par rapport au bien de l'Etat" [1714], in BARBEYRAC 1996, p. 112 : "suffisent pour mettre en état d'acquérir passablement ce degré de lumières" and "un homme, qui aime la Vérité".

¹⁵ *Ibidem*, p. 101.

teach his courses and deliver orations in the vernacular ; a tradition begun by de Crousaz in his 1706 address as Rector of the Academy¹⁶.

While Barbeyrac occupies as position as one of the founders and most prominent members of the *école romande du droit naturel*, Bourguet's contribution to the teaching and study of natural law in the Swiss *romande* has received considerably less scholarly attention¹⁷. Bourguet's philosophical interests ranged across natural science, mathematics, history and philosophy. He was deeply influenced by the philosophy of Leibniz, above all, the idea of a preestablished harmony in the natural and moral universe. In 1707, he became one of Leibniz's many correspondents, the exchange of letters continuing until Leibniz's death in 1716¹⁸. Bourguet taught private classes along with his fellow *neuchâtelois*, Frédéric Guillaume de Montmollin and Jean-Frédéric Osterwald. Neuchâtel did not have an institution of higher education but, in 1731, the town created a chair of philosophy and mathematics, funded in part by the public authorities and in part by the four principal local guilds, and it was Bourguet who occupied this post until his death in 1742. The post was not renewed, however, due to objections from the guilds about the cost of maintaining a chair¹⁹.

Initially delivering his public courses in Latin, in 1733, Bourguet began to teach instead in French, notes for which are preserved in the considerable archival sources available for Bourguet, both for his teaching activities and for his other writings and correspondence²⁰. Bourguet vigorously defended his decision to teach in the vernacular, asking in his first public lecture delivered in French that whether the custom of teaching in Latin is anything other than "some poorly-grounded ancient prejudice"²¹. Unlike Barbeyrac, Bourguet thus viewed the emerging tradition of teaching in French as a positive transformation. He introduced a further innovation in making his French courses open to women of a certain social standing, who "commonly possessing a penetrating mind", have an equal right as their male counterparts to study philosophy²². Illustrating his point, Bourguet details the contribution of female thinkers to the arts and sciences from ancient through to modern times.

In this opening French lecture, Bourguet also sets out what a complete understanding of philosophy requires, dividing it into four separate parts : namely, logics, metaphysics, physics and moral philosophy. Giving brief outlines of each of these four heads of philosophy, he tells us that natural law belongs to the province of moral philosophy, alongside the study of universal practical philosophy, ethics and civil philosophy²³. Unfortunately, Bourguet's public lectures ended in 1735 before he arrived at the final part of philosophy, where we would hope to find his mature account of natural law. Bourguet's lively exchange with Pierre Roques in the *Journal helvétique* in the late 1730s offers us some insight into Bourguet's mature thought : namely, an ardent and outspoken defender of Leibnizian philosophy,

¹⁶ TAPPY 2010, p. 12-15.

¹⁷ For details of Bourguet's background and the chair of mathematics and philosophy that he occupied at Neuchâtel, see Nathalie GUILLIOD and Delphine ACKERMAN, "Louis Bourguet et le développement des sciences et de la philosophie à Neuchâtel dans la première partie du XVIII^e siècle", Université de Neuchâtel, 2002, unpublished ; Henri PERRICHON, *Un homme du XVIII^e siècle : Louis Bourguet*, Lausanne : [s.n.], 1951 ; Pierre BOVET, "Le premier enseignement de la philosophie à Neuchâtel", *Musée neuchâtelois* 41, 1904, p. 195-210 ; Louis FAVRE, "Inauguration de l'Académie de Neuchâtel", *Musée neuchâtelois* 3, 1866, p. 288-310.

¹⁸ Louis ISELY, "Leibniz et Bourguet : correspondance scientifique et philosophique (1707-1716)", *Bulletin de la Société neuchâteloise des sciences naturelles*, 1903-1904, p. 173-214.

¹⁹ The post was not renewed after his death due to objections from the guilds. For details of the creation of the post, see FAVRE 1866.

²⁰ BPUN, Fonds Bourguet, Ms. 1244 and Ms. 1245, Louis Bourguet, "Cours de philosophie", 1731-1733.

²¹ BPUN, Fonds Bourguet, Ms. 1244, Louis Bourguet, "Cours de philosophie", 16 October 1733, : "quelque ancien préjugé peut-être mal fondé".

²² *Ibidem* : "ont généralement l'esprit pénétrant".

²³ *Ibidem*.

defending the latter's account of human freedom from charges of Spinozism and general accusations of determinism²⁴.

A more complex picture of Bourguet's contribution to the *école romande du droit naturel* emerges, however, when we look back to the late 1710s, a period in which he completed two essays on natural law: "Idée de l'histoire & du droit naturel", for which there is no surviving copy, and his Latin "Dissertatio de Vero atque genuino Juris Naturalis studii usu"²⁵. Both were written to demonstrate his suitability as a successor to Barbeyrac in the chair of law and history at Lausanne. While Barbeyrac actively promoted Bourguet as his preferred successor, in his letters, he expresses concern about Bourguet's Leibnizian sympathies, counselling his friend strongly against being associated with a philosophical system that "others" refer to as "hidden Spinozism"²⁶. In the context of Bourguet's candidacy for the chair at the Academy of Lausanne, these comments serve both as a general warning and as a particular instruction.

The question is whether Bourguet took the advice of his friend and correspondent Barbeyrac to distance himself from the dangers of being labelled a Leibnizian, or whether he remained loyal to his mentor Leibniz. Before looking more closely Bourguet's "Dissertatio" and its contribution to the reception of Pufendorf and Leibniz in the Swiss *romande*, it is important to set the broader context by first considering Barbeyrac's contribution to the debate in his "Jugement d'un anonyme".

Barbeyrac's "Jugement"

Barbeyrac's "Jugement d'un anonyme" significantly extended his defence of Pufendorf against Leibnizian philosophy found in his commentaries to earlier editions of *Le droit de la nature et des gens* and *Les devoirs de l'homme et du citoyen*²⁷. Barbeyrac's "Jugement" originates with a short letter written by Leibniz in Latin to the professor J. C. Boehmer, in which he argues that Pufendorf has failed to properly identify the end, object and efficient cause of natural law, leading Leibniz to express only disdain for Pufendorf as a jurist and philosopher²⁸. Barbeyrac received a copy of this letter in late 1715 from Jean-Alphonse Turretini, to whom Leibniz had sent his own copy after becoming engaged in a correspondence with the Genevan theologian concerning their shared ideal of a reunited Christendom²⁹. Barbeyrac translated the letter into French, interspersed with his reply to Leibniz's objections against Pufendorf, in which he sets out his Pufendorffian inspired, but still very much his own interpretation, of the origins of natural law and the foundation of moral obligation. Barbeyrac published the "Jugement" as an appendix to the 1718 edition of his Pufendorf translation, *Les devoirs*, bringing the debate to the attention of a Francophone audience, especially within the *école romande du droit naturel*.

²⁴ Louis BOURGUET, "Lettre à Monsieur Meuron [...] sur la philosophie de Mr. le Baron de Leibnitz", *Journal helvétique*, May 1738, p. 933-419; "Seconde lettre à Mr Meuron [...] sur la philosophie de Mr. le Baron de Leibnitz", *Journal helvétique*, July 1738, p. 15-36; "Lettre à Mr Meuron [...] sur les Hypothèses, concernant l'Union de l'Ame avec le Corps", *Journal helvétique*, December 1738, p. 521-556; "Lettre à Monsieur Roques [...] servant de Réponse aux quatre Lettres qui ont parû de lui, dans le *Journal Helvétique*, contre le Système de Mr. de Leibnitz", *Journal helvétique*, August 1739, p. 49-84. See also ZURBUCHEN 1998, p. 106-109.

²⁵ On the 'lost' essay "Idée de l'histoire & du droit naturel", see "Suite de l'abregé historique de la vie de M. Bourguet", *Journal helvétique*, March 1743, p. 305.

²⁶ BPUN, Fonds Bourguet, Ms. 1266, letter from Jean Barbeyrac to Louis Bourguet, 20 April 1717: "Spinozism cache".

²⁷ There were two authorised editions of *Le droit de la nature et des gens* (1706; 1712) and of *Les devoirs de l'homme et du citoyen* (1707; 1715) published prior to the 1718 edition of *Les devoirs* (to which Barbeyrac's "Jugement" was appended).

²⁸ For a modern translation of Leibniz's original letter, see Gottfried Wilhelm LEIBNIZ, "Opinion on the Principles of Pufendorf (1706)" in *Leibniz: Political Writings*, trans. and ed. Patrick Riley, Cambridge: Cambridge University Press, 1988, p. 64-75.

²⁹ In a letter to Turretini, Barbeyrac thanks him for the copy of Leibniz's letter, which he says is full of false imputations and reveals Leibniz's desire to disparage Pufendorf. Bibliothèque de Genève (BGE), Fonds Turretini, Ms. fr. 484 (n. 190), letter from Jean Barbeyrac to Jean-Alphonse Turretini, 29 September 1715. For a summary of the letter, see Maria-Cristina PITASSI, *Inventaire critique de la correspondance de Jean-Alphonse Turretini*, Paris: Champion, 2009, vol. 3, p. 125-126.

The sources of the relationship between Pufendorf's and Leibniz's arguments and of Leibniz's enmity towards Pufendorf are complex and disputed³⁰. Suffice to say that in the Swiss context Pufendorf and Leibniz represent two sharply conflicting poles concerning the debate over the origins of natural law and the obligatory character of its precepts ; a debate that we might also refer to as that between the voluntarists and the rationalists. The relationship between Barbeyrac and Leibniz was no less antagonistic than that between Pufendorf and Leibniz. In one of his letters to Bourguet, Barbeyrac suggests that Leibniz's criticisms of Pufendorf were personally motivated, claiming that Leibniz was possessed by a "secret jealousy that he held against all those who distinguished themselves in the Republic of Letters, and the desire to cast down their productions"³¹. Leibniz was no less scathing in his evaluation of Barbeyrac. In a letter to Bourguet, Leibniz says that he had heard that Barbeyrac was working on a reply to his objections to Pufendorf, but claims that like Pufendorf before him, Barbeyrac's "judgement ought not to be relied upon in this matter"³².

There are two key issues developed by Barbeyrac in his "Jugement" that reflect the core concerns within the natural law debates of the *école romande*. First, Barbeyrac's attempted "rehabilitation" of Pufendorf concerning the end and object of natural law, where in effect he conceded considerable philosophical ground to Leibniz, and second, his defence of Pufendorf's voluntarist account of the foundation of moral obligation, where he remains vociferously opposed to Leibniz. The broader conclusion that I want to look towards here is that Barbeyrac's "Jugement" not only established these issues as a key debate in the *école romande du droit naturel*, but also that it set the tone of that debate, in which the sharp contrast between Pufendorf's and Leibniz's philosophy was deliberately modified in an ongoing discussion in which at least one of the aims, in terms of the rhetoric at least, was to accommodate these two contrasting poles of thought.

Barbeyrac begins his "Jugement" by saying that he had already anticipated certain objections raised by Leibniz, by which he means, Pufendorf's restriction of natural law to the external actions of individuals in the human forum, which in effect excludes individual's inner sentiments from the moral equation and relegates the principles of natural religion to the province of moral theology³³. For Barbeyrac, whose natural law theory is driven by a desire to defend the rights of conscience, the precepts of natural law cannot be meaningfully understood distinct from the truths of natural religion, for natural law is grounded in these very truths³⁴.

However, rather than conceding the case against Pufendorf, Barbeyrac suggests, somewhat disingenuously, that Pufendorf himself did not adhere as strictly to the separation of natural law and moral theology as Leibniz had implied. He reiterates this perspective in his letter to Bourguet, claiming

³⁰ On this debate, see Ian HUNTER, "Conflicting Obligations : Pufendorf, Barbeyrac and Leibniz on Civil Authority", *History of Political Thought* 25/4, 2004, p. 670-699 ; Petter KORKMAN, *Barbeyrac and Natural Law*, Helsinki : [s.n.], 2001, p. 183-229 ; Tim HOCHSTRASSER, *Natural Law Theories in the Early Enlightenment*, Cambridge : Cambridge University Press, 2000, p. 72-110 ; Jerome B. SCHNEEWIND, *The Invention of Autonomy : A History of Modern Moral Philosophy*, Cambridge : Cambridge University Press, 1998, p. 118-140 and 236-259 ; Knud HAAKONSEN, *Natural Law and Moral Philosophy : From Grotius to the Scottish Enlightenment*, Cambridge : Cambridge University Press, 1996, p. 37-49.

³¹ BPUN, Fonds Bourguet, Ms. 1266, letter from Jean Barbeyrac to Louis Bourguet, [s.d., December 1716] : "la jalousie secrète qu'il avoit contre tous ce qui se distinguoient un peu dans la République des Lettres, & l'envie de déprimer leurs productions". An online transcription has also been established by Lumières.Lausanne : <https://lumières.unil.ch/fiches/trans/746>.

³² The letter from Leibniz to Bourguet [1716] is transcribed in ISELY 1903-1904, p. 207 : "son jugement ne doit pas être conté sur cette matiere".

³³ BARBEYRAC, "Jugement d'un anonyme", 1996, p. 197. Cf. PUFENDORF, "Préface de l'Auteur", in *Les devoirs de l'homme et du citoyen*, 1707.

³⁴ Barbeyrac develops this argument at length in his natural law commentaries, but for a brief introduction to his perspective, see his "Préface" in PUFENDORF, *Le droit de la nature et des gens*, 1706, §6 : "En effet, les principes fondamentaux de la Religion Naturelle, qui doit être la base de toutes les Religions, sont le plus ferme, ou plutôt l'unique fondement de la Science des Mœurs".

that Leibniz had ‘misunderstood’ Pufendorf with respect to certain essential principles³⁵. Barbeyrac expands upon this point in his “Jugement”, in which he claims that Pufendorf tacitly acknowledged and certainly “never denied” the principles on which considerations of the life to come are grounded³⁶. Likewise, he suggests that Pufendorf does not entirely exclude concern for internal actions of the soul but rather focuses “for the most part” on how the law of nature serves to form men’s external actions³⁷. As Ian Hunter has shown, the translation of Pufendorf that Barbeyrac presents in these passages misrepresents Pufendorf’s original meaning³⁸. Barbeyrac’s presentation of Pufendorf, both here and elsewhere, means that in speaking of the reception of Pufendorf, it is helpful to keep a distinction in mind between Pufendorf himself and Barbeyrac’s Pufendorf.

While Barbeyrac may thus concede in general terms that considerations of the life to come are essential to the foundation of natural law and moral obligation, he insists that the particular arguments advanced by Leibniz confuse “*Duty with the effects or the motives for its observation*”³⁹. For Barbeyrac, it is of utmost importance that the motivating force of utility, that is to say, the rewards and punishments anticipated in the life to come, must be kept conceptually distinct from the proper foundation of the law of nature. For Barbeyrac, the greatest weakness of Leibniz’s theory of natural law and moral obligation is that it does not successfully do this. This belief is the source of his frequent objection that Leibniz does not properly distinguish between justice and utility.

Leibniz’s third objection poses a much deeper philosophical problem, namely that in making the efficient cause – which is Leibniz’s way of saying the foundation of moral obligation proper – derive from the command of a superior, Pufendorf (and Barbeyrac in his wake) end up in a philosophical circle, whereby “the source of law is the will of a superior and, inversely, a justifying cause of law is necessary in order to have a superior”⁴⁰. For Leibniz, the problem is that even if one acknowledges that man is always subject to God and thus always subject to the requirements of justice, God cannot be both the source of justice and yet be thought of as just independent of the law that he himself prescribes⁴¹. Moreover, even if Pufendorf’s argument were true, it would mean that man would not love God for his goodness, but only fear Him for his greatness just as one fears the power of a tyrant.

While Barbeyrac does raise objections to Pufendorf’s account of moral obligation, in particular, the specific grounds on which we are obliged to submit to the will of God, he remains firmly committed to the idea that it is God’s will alone that can produce the moral necessity to compel us to follow the precepts of natural law. In his commentaries of Pufendorf’s natural law treatises, Barbeyrac argues that Pufendorf is wrong to suggest that God’s authority derives from the “considerable good” that he has rendered us in the act of Creation. This may serve to strengthen his right to impose an indispensable moral necessity, but in itself it is insufficient as the foundation of such a right. This is because, for Barbeyrac, rendering us some considerable good, even the divine creative act, constitutes an act of “Generosity” that “requires nothing other than Gratitude” and most definitely not ‘submission to the will of one’s Benefactor’⁴². Instead, Barbeyrac claims, “it is the natural dependence that we are under to the

³⁵ BPUN, Fonds Bourguet, Ms. 1266, letter from Jean Barbeyrac to Louis Bourguet, 4 December 1716. An online transcription has also been established by Lumières.Lausanne : <https://lumières.unil.ch/fiches/trans/745>.

³⁶ BARBEYRAC, “Jugement d’un anonyme”, 1996, §6 : “n’a jamais nié”.

³⁷ *Ibidem*, §7 : “EN GRANDE PARTIE”.

³⁸ HUNTER 2004, p. 692.

³⁹ BARBEYRAC, “Jugement d’un anonyme”, 1996, §6 : “le *Devoir avec les effets ou les motifs de son observation*”.

⁴⁰ LEIBNIZ 1988, p. 73.

⁴¹ *Ibidem*, p. 71.

⁴² PUFENDORF/BARBEYRAC 1707, 1.2.5, Note 3 : “Un Bienfait” and “ne demande autre chose que la Reconnoissance” and “se soumettre à la direction du Bienfacteur”.

empire of God, insofar as we owe our existence to him” that constitutes the sole, legitimate foundation of his right to command our obedience⁴³.

For Leibniz, however, this aspect of Barbeyrac’s response could only amount to splitting hairs, as it still leaves the question of how we come to know of God’s justness prior to the imposition of justice (in the precepts of natural law) as an act of will, without which we have no assurance that God will not make the unjust just and vice versa. Barbeyrac here claims that God’s right to command our obedience is “founded in reasons whose justice is immanent, such that they do not need to draw their force from elsewhere”⁴⁴. His argument rests on his belief, *pace* Leibniz, that divine and human justice are qualitatively different, as a result of which, in the postlapsarian state man cannot meaningfully speak of divine justice other than by reference to what we know of human justice. God simply *is* a legitimate superior to whom we owe obedience by virtue of our natural dependence upon Him.

Moreover, for Barbeyrac, it is Leibniz whose position is unsustainable because it is Leibniz who goes beyond the limits of human knowledge of the divine nature and thus divine justice. The danger of founding moral obligation in the eternal truths of divine wisdom and in the natural order of things, as Leibniz does, is that morality and the law of nature may exist independently of religion and thus moral obligation to possess an indispensable necessity even for atheists⁴⁵. While it is not clear that Barbeyrac managed successfully to navigate his way through all these issues to develop a coherent and sustainable theory of moral obligation, his commentaries nonetheless reveal his efforts to construct a series of arguments that would bolster his wider project of developing a theory of natural law within which the moral truths of natural religion and morality could be reconciled, and to mould Pufendorf into an ally as part of this project, along with the two other natural law theorists whose treatises he later translated, Hugo Grotius and Richard Cumberland⁴⁶.

Bourguet’s “Dissertatio”

This history behind Bourguet’s “Dissertatio” has a direct bearing on how we ought to read it, not least the fact that the text was written as part of his bid to appear a suitable candidate to replace Barbeyrac in the chair of law and history at the Academy of Lausanne. Barbeyrac was one of Bourguet’s principal allies in this endeavour and it is fair to conclude that, in preparing his reflections on the use and study of natural law, Bourguet heeded Barbeyrac’s warnings about being seen openly as a Leibnizian. In light of the genuinely amicable relationship that Bourguet and Barbeyrac enjoyed, it may also be the case that Bourguet wanted to offer a broadly favourable reading of Barbeyrac both in recognition of this friendship and also in the spirit of the Republic of Letters. That is to say, while the line that Bourguet takes in his Latin dissertation is clearly borne in part out of prudence, this does not mean to say that it was followed unwillingly, or that it is entirely unrepresentative of his early natural law theory.

⁴³ PUFENDORF/BARBEYRAC 1706, 1.6.12, Note 2 : “c’est la dépendance naturelle où l’on est de l’empire de DIEU, entant qu’il nous a donné l’être”.

⁴⁴ The translation here is taken from David Saunders’ translation of the text due to the clarity of expression that it offers : Jean BARBEYRAC, “Judgement of an Anonymous Writer”, trans. David Saunders, §19, in Samuel Pufendorf, *The Whole Duty of Man According to the Law of Nature*, ed. Ian Hunter and David Saunders, Indianapolis : Liberty Fund, 2003, p. 302. Cf. BARBEYRAC, “Jugement d’un anonyme”, 1996, §19 : “Le cercle vicieux qu’on reproche à notre Auteur” and “fondé sur des *raisons*, qui portent leur *justice* avec elles, & qui n’ont pas besoin d’emprunter d’ailleurs leur force”.

⁴⁵ BARBEYRAC, “Jugement d’un anonyme”, 1996, §16.

⁴⁶ Hugo GROTIUS, *Le droit de la guerre et de la paix*, trans. and ed. Jean Barbeyrac, Amsterdam : Pierre de Coup, 1724, 2 vol. ; Richard CUMBERLAND, *Traité philosophique des loix naturelles, ou l’on recherche et l’on établit, par la nature des choses, la forme des ces loix, leurs principaux chefs, leur ordre, leur publication & leur obligation*, trans. and ed. Jean Barbeyrac, Amsterdam : Pierre Mortier, 1744.

At the time when Bourguet was preparing his “Dissertatio”, he already knew that Barbeyrac’s “Jugement” comprised a defence of Pufendorf against Leibniz’s “unjust and dishonourable attack” on the former’s account of the foundation of moral obligation and the rules of justice⁴⁷. Barbeyrac promised to send a copy to Bourguet directly ; however, in his later correspondence with Du Lignon, Bourguet revealed that he had yet to receive a copy of Barbeyrac’s “Jugement”. In the same letter, Bourguet describes his “Dissertatio” as his own contribution to this debate, in which “I imply that there is a logomachy between Pufendorf and Mr. Leibniz”, acknowledging his own general adherence to the Leibnizian position, insofar as it “conforms to the truth”⁴⁸. Bourguet’s “Dissertatio” thus relies on Barbeyrac’s earlier natural law commentaries, as well as Barbeyrac’s exposition of his “Jugement” in his letters, to inform his understanding of Barbeyrac’s stance on Pufendorf and Leibniz. Nevertheless, Bourguet’s “Dissertatio” discusses many of the same themes as Barbeyrac’s “Jugement” and reading the texts alongside one another enriches our knowledge of the reception of Pufendorf and Leibniz in the early *école romande du droit naturel*.

In the “Dissertatio”, despite his general Leibnizian sympathies, Bourguet praises for having already shown what he himself aimed to show here : namely, that the positions of Pufendorf and Leibniz could be easily reconciled⁴⁹. This is a rather subversive turn on Bourguet’s part, for while Barbeyrac read Pufendorf in a manner that integrated natural religion into his natural law theory more fully than Pufendorf himself had allowed, he remained vigorously opposed to Leibnizian philosophy throughout his career. In the opening paragraphs of the text, Bourguet goes on to acknowledge Pufendorf’s and Grotius’ contribution to the renewal of the study of moral science in recent times, while singling Barbeyrac out for particular praise⁵⁰. The favourable attitude expressed here to Barbeyracian natural law was clearly a politically astute position to adopt, yet it cannot be read as mere prudence, given he continued to express his hopes that Barbeyrac would write his own treatise of natural law long after the question of the Lausanne chair had been resolved⁵¹.

Having defined natural law and provided a very brief sketch of some of its leading contributors, Bourguet claims that the much current dispute involves logomachy : that is to say, a dispute over how an argument is expressed rather than in the substance of that argument⁵². He applies this to the debate between Pufendorf and Leibniz, suggesting that:

These things [the foundation of natural law] having been thoroughly examined, the opinions of the illustrious Pufendorf and Leibniz can be easily reconciled. The former recognises natural law as a divine institution, not absolutely arbitrary, but in conformity with human nature. The latter derives the origin of natural law from the ideas of the divine mind, which embraces all possible things, and says that the nature of just and unjust itself is founded in its conformity to these ideas. It is thus apparent that logomachy is inherent (*in esse*) in the argument between such great men⁵³.

⁴⁷ BPUN, Fonds Bourguet, Ms. 1266, letter from Jean Barbeyrac to Louis Bourguet, [s.d., December 1716] : “attaque injustement & malhonnêtement”.

⁴⁸ BPUN, Fonds Bourguet, Ms. 1260, letter from Louis Bourguet to Jacques Bibaud Du Lignon, 16 February 1718 : “j’insinué qu’il y a une logomache entre Pufendorf et Mr. Leibnitz” and “conformes à la verité”.

⁴⁹ BOURGUET, “Dissertatio de Vero atque genuino Juris Naturalis studii usu”, 1738, §4 and §7.

⁵⁰ *Ibidem*, §2.

⁵¹ BPUN, Fonds Bourguet, Ms. 1260, letter from Louis Bourguet to Jacques Bibaud Du Lignon, 23 January 1720.

⁵² BOURGUET, “Dissertatio de Vero atque genuino Juris Naturalis studii usu”, 1738, §4.

⁵³ *Ibidem*, §7 : “His probè perspectis facile conciliari (f) possunt Cl. *Pufendorfii* & *Leibnitzii* sententiae. Primus jus naturale tanquam Divinam Institutionem agnoscit ; at non arbitrariam prorsus, sed naturae humanae convenientem. Secundus Originem Juris Naturalis ab Ideis mentis Divinae repetit, quae omnia possibilis complectitur & naturam ait justis atque injustis in ipsa Idearum convenientia fundari. Quamobrem Logomachiam in tantorum virorum disputatione inesse patet.”

Bourguet goes on to cite Barbeyrac, who he takes to share this same perspective : “the illustrious Barbeyrac explains these things with great clarity, as he usually does”⁵⁴. However, Bourguet’s claim that the dispute can be dismissed as one of words – and that Barbeyrac thought so too – is a rather specious reading of the history of this debate.

Moreover, when we look more closely, we can see that Bourguet’s account of the foundation of moral obligation owes more to Leibniz than he openly acknowledges ; and certainly more than Barbeyrac would have endorsed. In a passage that reflects his Leibnizian sympathies without altogether disavowing the voluntarist position, Bourguet claims that:

The origin of natural law must be derived from the will of God, whereby the ideas of the divine mind are brought into being, directed by eternal wisdom⁵⁵.

Here, Bourguet offers an explanation of the origins of natural law that makes explicit reference to the will of God, but that confer a secondary role on that will, insofar as the function that God’s will plays is to bring into being the eternal ideas of the divine mind, that is to say, ideas that are inherent in the natural order of things. This is further emphasized in the discourse with Bourguet referring to “eternal law” more frequently than he does to “natural law” when speaking of immutable and universal moral duties.

Bourguet’s Leibnizian sympathies, while remaining undeclared, are evident when he elaborates his account of the origin of natural law :

One cannot doubt the existence of this same eternal moral necessity or wisdom and essence in all things, whether these qualities are built on physical or moral rules. Those who say that natural law has taken its origin from a certain arbitrary will of God stray, therefore, too much, *as if the idea of the just and unjust did not exist in the nature of man himself as a being capable of reasoning*⁵⁶.

Bourguet thus tells us that the ideas of the divine mind, in Leibnizian fashion, are conceived of as inherent in the natural order of things. Implicit here too is the Leibnizian idea of a moral continuity between divine and human reason, and thus divine and human justice, by virtue of which individuals apprehend not only the precepts of natural law but also their moral necessity. This all tallies with Bourguet’s claim at the end of this passage that individuals come to know the idea of just and unjust through their capacity for reason.

Bourguet’s further develops his engagement with both Pufendorf’s and Barbeyrac’s natural law in the passages where he argues for an inexorable connection between natural religion and natural law, such that it is not possible to understand the morally binding character of natural law, nor the socially binding force of religion, without first acknowledging the necessary relationship between the two. According to Bourguet, natural religion comprises both theoretical and practical truths ; the latter refer to the external law (of nature), which specifies those duties we must fulfil, in recognition of our external debt to God. Bourguet says that he cannot agree with the arguments put forward by Grotius and Pufendorf, which separate the law of nature from natural religion in such a way that the natural liaison between these practical duties and their foundation in the truths of natural religion is not adequately accounted for⁵⁷.

⁵⁴ *Ibidem*, §7 : “Haec autem Cl. Barbeyracus in eruditissimo scripto Gallico, quod typis mandavit, multa cum perspicuitate ut solet, explicat.”

⁵⁵ *Ibidem*, §6 : “Juris Naturae origo a voluntate Dei, quae Ideas mentis Divinae sapientiâ aeterna duce in actum produxit, repetenda est.”

⁵⁶ *Ibidem*, §6 : “Ejusdem nimirum aeternitatis necessitatisque moralis seu Sapientiae est ac rerum omnium existentia, cunctarum qualitates seu Physicis seu moralibus superstructae sint Regulis. Nimis ergo aberrant, qui Jus naturale a quadam arbitraria Dei voluntate ortum duxisse ajunt, quasi vero justae atque injustae Idea, non in ipsius hominis rationis capacis natura existeret.”

⁵⁷ *Ibidem*, §8.

Moreover, he says, "I think that the natural existence of punishments and rewards, even in the afterlife, can be demonstrated by reason, despite what Pufendorf states to the contrary"⁵⁸. The only concession that Bourguet makes here is one that Barbeyrac himself also emphasizes in his commentary to Pufendorf, namely that both Pufendorf and Grotius recognise religion as the ultimate and strongest bond of human society. Emphasizing his point, Bourguet quotes both thinkers to this effect⁵⁹.

The question that Bourguet goes on to raise in response to the account of Grotius and Pufendorf that he presents here is how religion can fulfil this role in society unless the observation of the eternal (natural) law is recognised as one of its fundamental components? It is this practical part of natural religion, according to which it specifies our moral duties, that makes it the ultimate and strongest cement of human society. To this, he adds that :

The effects of the above [natural religion] on human society would be of very little or no importance, nor would it be the ultimate and strongest bond of human society, if men did not have the notion and moral demonstration of punishments and rewards in a future life⁶⁰.

These two are inexorably linked here such that, for Bourguet, the rewards and punishments in the life to come, are not merely a motive for doing one's duty, but an essential part of the "moral demonstration" by which we come to know of their necessity. In other words, knowledge of these rewards and punishments do not simply persuade us, they also inform us that a certain course of action is morally obligatory for us, as a precept of this eternal law.

The inexorable link between the truths of natural religion, above all the idea of rewards and punishment in a life to come, and the observation of the precept of natural law is a position that Bourguet also ascribes to Barbeyrac here :

The often praised Mr. Barbeyrac saw this and proved that even the ancient heathens (*Gentiles*) had recognised that foundation, in a long annotation against Bayle, and also complied various points to this effect in his very learned preface to Pufendorf⁶¹.

In his only critical interjection against Barbeyrac, Bourguet continues on from this praise to chide both Barbeyrac and his fellow savant Jean Le Clerc for the manner in which they use the ancients, citing both the Greek poets and Old Testament patriarchs for having demonstrated the conjunction between virtue and happiness ; a demonstration, Bourguet suggests, that Barbeyrac and Le Clerc either respond to critically (as in the case of the Greek poets) or entirely overlook (as in the case of the Old Testament figures).

While Bourguet's "Dissertatio" is borne out of a certain context that made it inadvisable for him to stray too far from the Barbeyracian line, the extent to which he endorses Barbeyrac's contribution to natural law is significant. However, his Leibnizian sympathies remain evident in this brief piece, even if not explicitly stated. A careful comparison of Barbeyrac's "Jugement" and Bourguet's "Dissertatio" indicates that, despite the broad philosophical commitments that these two thinkers shared as member of the

⁵⁸ *Ibidem*, §10 : "Hanc naturalis poenarum & praemiorum existentiam, etiam post mortem, ratione demonstrari posse puto, quidquid contra statuat Puffendorff."

⁵⁹ *Ibidem*, §8. Cf. GROTIUS 1724, 2.20.44-45 ; PUFENDORF 1707, 2.4.1 and 2.4.9 and for Barbeyrac's inclusion of Pufendorf's theory of natural religion in *Le droit de la nature et des gens*, 1706, 2.3.15, Note 5.

⁶⁰ BOURGUET, "Dissertatio de Vero atque genuino Juris Naturalis studii usu", 1738, §9 : "Parvi admodum vel nullius momenti essent ejusdem in Societate humana effectus, neque esset ultimum ac firmissimum humanae Societatis vinculum, si carerent homines poenarum & praemiorum vitae futurae notitiâ atque morali demonstratione."

⁶¹ *Ibidem*, §9 : "Hoc vidit saepe laudatus Dom. Barbeyracus (m) & fundamentum istud agnovisse etiam antiquos Gentiles, longa contra Baelium annotatione probavit ; varia quoque ad hanc rem conguessit in eruditissima ad Puffendorffium praefatione." Cf. PUFENDORF/BARBEYRAC 1706, 2.4.3, Note 4 and his "Préface du traducteur" to the same text.

école romande, the fundamental principles of natural law to which each ascribed were not as easily reconcilable as Bourguet had wanted to imply. If anything, Bourguet's appeal to logomachy and his attempts to position his own contribution to the debate an endorsement of Barbeyrac see him using the same kind of rhetorical strategies adopted by Barbeyrac in the "Jugement" when defending Pufendorf against Leibniz's objections.

As a case study of the relationship between two figures in the *école romande du droit naturel*, it is also clear that the practicalities of Barbeyrac's successor in the chair of law and history intersected with the philosophical debates of the time, giving rise not only to a lively and informative series of letters between Barbeyrac and Bourguet, but also to Bourguet's "Dissertatio", in which we are able to follow the development of the Swiss debate in response to the natural law theories of Pufendorf and Leibniz. Barbeyrac's "Jugement" continued to be debated by later thinkers within the *école romande du droit naturel*, where once again the attempt to reconcile opposing poles of thought runs through the debate. The Genevan professor of natural and civil law, Jean-Jacques Burlamaqui, thus appeals, in his *Principes du droit naturel*, to both voluntarist and rationalist arguments, while the Neuchâtel natural law theorist, Emer de Vattel, in his "Essai sur le fondement du droit naturel", moderates a sustained critique of Barbeyrac by suggesting that his Leibnizian account of the foundation of natural law is compatible with that of Barbeyrac, if only the latter were willing to see this⁶².

⁶²Jean-Jacques BURLAMAQUI, *Principes du droit naturel*, Genève : Barillot & Fils, 1747, esp. 2.7.13 ; Emer de VATTEL, "Essai sur le fondement du droit naturel", in *Le loisir philosophique, ou pièces diverses de philosophie, de morale et d'amusement*, Genève, 1747, sold in Dresden : George Conrad Walther, 1747, esp. 15 and 32.

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