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The Light of Conscience:
Jean Barbeyrac on Moral, Civil and Religious Authority

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PhD Thesis in Intellectual History
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Thesis Summary

Jean Barbeyrac (1674-1744) is best known for his annotated French translations of the natural law treatises of Hugo Grotius, Samuel Pufendorf and Richard Cumberland and has generally been understood through the prism of his interpretations of these. However, not only was he in fact an independent natural law thinker, who drew eclectically from a vast array of authors, synthesising their ideas to construct his own distinct theory; he also wrote extensively on morals and politics in other genres, works that have received very little attention and never been seen in their coherence with his natural law ideas. This thesis considers Barbeyrac as a thinker in his own right, drawing together all of his major and many of his minor works and situating them within a number of the wider contexts Barbeyrac inhabited: namely, as a Huguenot *refugié*, a member of the Republic of Letters and a professional academician.

Barbeyrac's central concern was the relationship between moral, civil and religious authority, and the core of his solution was a comprehensive concept of conscience that unified and naturalised man's moral and religious duties and served as the source of authoritative moral judgement. The first three chapters of the dissertation focus on the structure of his natural law theory, arguing that the attempt to establish conscience as a comprehensive faculty of moral judgement caused intractable philosophical tensions, reflected in his innovative but inchoate theory of permissive natural law. The final two chapters extend this analysis beyond Barbeyrac's natural law, arguing that despite his efforts to balance the potentially competing demands that arise when the authority of conscience comes into conflict with other sources of moral authority, namely ecclesiastical and civil, Barbeyrac had to insist that, ultimately, individuals must uphold the first and principal duty of natural law to follow the light of conscience.

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Abbreviations

DGP	Hugo Grotius, <i>Le droit de la guerre et de la paix</i> , trans. and ed. J. Barbeyrac, 2 Volumes, (Amsterdam, 1724; facsimilie, Caen, 1984).
DHC	Samuel Pufendorf, <i>Les devoirs de l'homme et du citoyen, tels qu'ils lui sont prescrits par la loi naturelle</i> , trans. and ed. J. Barbeyrac, 2 Volumes, (London, 1741; facsimilie, Caen, 1989).
DNG	Samuel Pufendorf, <i>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</i> , trans. and ed. J. Barbeyrac, 3 Volumes, (London, 1740).
TJ	Jean Barbeyrac, <i>Traité du jeu, où l'on examine les principales questions de droit naturel et de morale qui on rapport à cette matiere</i> , 3 Volumes, (Amsterdam, 1737).
TMP	Jean Barbeyrac, <i>Traité de la morale des peres de l'eglise: où en défendant un article de la préface sur Pufendorf, contre l'apologie de la morale des pères du P. Ceillier... on fait diverses reflexions sur plusieurs matieres importantes</i> , (Amsterdam, 1728).
TPLN	Richard Cumberland, <i>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: on y refute aussi les élémens de la morale & de la politique de Thomas Hobbes</i> , trans. and ed. J. Barbeyrac, (Amsterdam, 1744; facsimilie, Caen, 1989).

A Note on References

The research presented in this thesis is based on the original French editions of Barbeyrac's works. For that reason, even where English translations are available, all references are taken from the relevant French edition. For works that Barbeyrac revised and augmented during his scholarly career, an edition has been used that includes all final revisions. The use of earlier editions of these texts is indicated in the footnotes where appropriate.

All English translations included within this thesis are my own, unless otherwise stated. The intention has been to stay as faithful as possible to Barbeyrac's original French, both in his own notes and writings and in the translations of his principal natural law authors: Pufendorf, Grotius and Cumberland. Barbeyrac's notes and other works were translated into English – if at all – during the early modern period and these translations reflect the particular interests of the translators. A study of these interests is a serious scholarly desideratum, but it cannot be met in the present work.¹ For the sake of consistency, I make my own translations even where modern ones are available.²

Barbeyrac's 'Préface' to *Le droit de la nature et des gens* is referred to as his Pufendorf 'Préface' in order to stress that all references are taken from the original French. The commonly used English title was invented by the English translators, who renamed the work 'An Historical and Critical Account of the Science of Morality'.³

The spelling, punctuation and presentation of the text (including all capitalisation and italics) are preserved in quotations from the original French texts. Minor modifications have been made in some of the English translations for ease of reading.

Full bibliographical details, including title, for all references, both primary and secondary, are given in the first instance that a work is cited within the main body of the thesis and in the bibliography at the end. All subsequent references use a shortened title. Finally, individuals are generally referred to by their full name in the first instance and their surname thereafter.

¹ David Saunders and Ian Hunter address this issue in 'Bringing the State to England: Andrew Tooke's Translation of Samuel Pufendorf's *De Officio Hominis et Civis*' in *History of Political Thought* 24:2 (2003).

² The only modern translations of Barbeyrac's works are David Saunders's translations – 'The Judgement of an Anonymous Writer on the Original of this Abridgement', 'Discourse on What is Permitted by the Laws' and 'Discourse on the Benefits Conferred by the Laws' – in *The Whole Duty of Man, According to the Law of Nature*, ed. I. Hunter and D. Saunders, (Indianapolis, IN, 2003).

³ Cf. Barbeyrac, 'Préface du traducteur' [hereafter simply 'Préface'], *DNG*, and Barbeyrac, 'An Historical and Critical Account of the Science of Morality', trans. G. Carew, in *The Law of Nature and Nations: or, a General System of the most important Principles of Morality, Jurisprudence, and Politics... To which is prefix'd M. Barbeyrac's Prefatory Discourse... To which are now added, all the large Notes of M. Barbeyrac*, trans. B. Kennet, (London, 1749).

Introduction

I

Barbeyrac: Contexts of Study

Jean Barbeyrac (1674-1744) claimed that all individuals are subject to an indispensable moral duty to follow the light of conscience. His theory of natural law is an attempt to vindicate the truth of this maxim. To this end, he imbued individual conscience with considerable moral authority commensurate with the moral authority possessed by civil and ecclesiastical powers. Convinced that these potentially competing sources of moral authority could be harmonised within a properly conceived juridical framework, throughout his scholarly career Barbeyrac remained preoccupied with the task of establishing the legitimate bounds of these different sources of moral authority. The intention of the present thesis is to determine how far this central concern confers a coherency on Barbeyrac's thought across his different texts and to consider Barbeyrac's response to the philosophical tensions that arise in the development of his thought, above all, those that follow from the unity of religious belief and moral knowledge that grounds his concept of conscience. It will be argued that this unity of purpose shapes his response to these tensions. It may not resolve the philosophical issues at stake, but it does express a rationale that follows from his wider theory of natural law.

The dissertation adds to current scholarship in two specific ways. First, it focuses on Barbeyrac's theory of natural law in its own right and in distinction from the those of the more famous authors on whom he comments at length in his great translations of their works. In order to do so, it situates his thought in a number of different intellectual contexts. Although by no means an exhaustive study, in these regards the thesis goes beyond the existing literature, where most studies are brief and concentrate on particular issues, mostly relating to the major thinkers. Second, the study goes beyond Barbeyrac's natural law work in order to show an overall coherence in his intellectual enterprise as a whole, something that has not been attempted on a serious scale before. The key to this attempt at a comprehensive interpretation of his thought is a distinctive reading of his idea of a permissive natural law. Barbeyrac's contribution to the early modern debate on permissive natural law has been treated as marginal in previous

scholarship on the topic.¹ However, it is notable for the clarity with which he faces up to its inherent problems, and, of particular importance to the current interpretation, for the manner in which it connects natural law with ecclesiology and political theory.

Barbeyrac's theory of permissive natural law is essential to assessing the coherence of his overall thought and, by virtue of the importance that he ascribes to the concept, it also represents a worthy case study within the history of the topic.

One reason why scholarship on Barbeyrac – with a few exceptions to be acknowledged – is limited to brief studies of particular topics, proceeds from the nature of the man himself and his works. An erudite academician and well-connected man of letters, Barbeyrac inhabited a number of overlapping intellectual and physical contexts from the shifting geographical localities of the Huguenot communities in Berlin, Lausanne and Groningen to the continuity offered by the intellectual fellowship of the Republic of Letters. His works cover a number of different genres from the natural law translations and commentaries that made his name, to his own independent writings which range from short public discourses to substantial moral and historical treatises. Despite this diffusion of both works and situations, it seems clear that Barbeyrac himself had a basic unity of practical purpose and intellectual means. The present study undoubtedly privileges the latter, the intellectual coherence, but it is hoped that it pays sufficient attention to the different contexts to make Barbeyrac's purposes clear. And it provides a framework for answering further questions surrounding the development of his thought across the course of his scholarly career.

Interest in Barbeyrac's thought in recent decades has primarily focused on his role within the post-Grotian early modern natural law tradition and the history of moral philosophy more generally.² Scholars in the field have debated two questions in particular. First, whether there is a core set of beliefs or ideas that brings together a diverse group of early modern natural law theorists within a reasonably coherent school

¹ Cf. Chapter 3, pp. 80-81.

² Major contributions to this field of study include: Richard Tuck, *Natural Rights Theories: Their Origins and Development*, (Cambridge, 1979); Knud Haakonssen, *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment*, (Cambridge, 1996); J. B. Schneewind, *The Invention of Autonomy: A History of Modern Moral Philosophy*, (Cambridge, 1998); Tim Hochstrasser, *Natural Law Theories in the Early Enlightenment*, (Cambridge, 2000); Ian Hunter, *Rival Enlightenments: Civil and Metaphysical Philosophy in Early Modern Germany*, (Cambridge, 2001). The arguments presented in these texts are discussed in more detail where relevant within the main body of this thesis. The same is true of other works referred to in this overview.

of thought. Second, how to interpret the various lines of influence that run between different natural law theorists, above all, the relationship between major thinkers such as Hugo Grotius (1583-1645), Thomas Hobbes (1588-1679), Samuel Pufendorf (1632-1694) and John Locke (1632-1704). Within these debates, Barbeyrac emerges as minor figure in the history of early modern natural law but, as the translator and interpreter of both Grotius and Pufendorf, he has in fact had an influence beyond what he is credited with. Through his self-conscious efforts to construct his own vision of the beliefs and ideas that defined the early modern school of natural law in his Pufendorf 'Préface', Barbeyrac has exerted considerable influence on how his authors, above all Pufendorf, were perceived by future generations, including modern scholars.³

More recently, the interpretation of early modern natural law bequeathed, in part, by Barbeyrac's activities as a translator and commentator has come under close scrutiny. Fiammetta Palladini has emphasised the intellectual affinities between Hobbes and Pufendorf, insisting that the latter obscured his Epicurean heritage for prudential reasons, preferring instead to ally himself to Grotius, an effort that was reinforced by Barbeyrac.⁴ While scholarship such as this helps to reinvigorate the study of Pufendorf and other prominent thinkers within the history of early modern natural law, it also reveals, indirectly at least, the difficulties that arise from approaching Barbeyrac's thought through the prism of his authors. Much of the recent work focusing on Barbeyrac from within the natural law tradition has viewed him as inexorably tied to his authors, with his thought labelled as Pufendorfian or Grotian by turns and the coherence of his own theory of natural law standing or falling with that of his authors.⁵ The present thesis, while building on previous scholarship, seeks to go beyond it by establishing the extent to which Barbeyrac constructs a theory of natural law in his own right, one that is illuminated by but not derived from his authors.

³ On the influence of Barbeyrac's Pufendorf 'Préface' in shaping the history of early modern natural law, cf. Chapter 1, p. 26, esp. fn. 10-11.

⁴ Fiammetta Palladini, 'Pufendorf Disciple of Hobbes: The Nature of Man and the State of Nature: The Doctrine of *Socialitas*', in *History of European Ideas* 34 (2008), see esp. pp. 59-60.

⁵ For example, in the only monograph dedicated to the study of Barbeyrac, apart from an older biography, Petter Korkman interprets his theory as an attempt to transform Grotian and Pufendorfian natural law into a coherent rights-based theory: *Barbeyrac and Natural Law*, (Helsinki, 2001). This study represents an important step forward in the study of Barbeyrac's place within the history of natural law, but it does not disentangle Barbeyrac's own theory of natural law from that of his authors, nor did it aim to do so.

Barbeyrac has also attracted the interest of scholars from other quarters, most notably as a *refugié* within the Huguenot Diaspora. The relatively few studies that mention him at all take him to represent a late contribution to the post-Revocation debates that reached their pinnacle in the heated exchange between the Huguenot philosophers Pierre Bayle (1647-1706) and Pierre Jurieu (1673-1713). The exceptions here are Tim Hochstrasser's two articles on the political thought of the Huguenot Diaspora. In 'The Claims of Conscience', Hochstrasser establishes the close relationship between the development of Huguenot political thought and the early modern natural law school from the time of Bayle and Jurieu to that of Barbeyrac and Jean-Jacques Burlamaqui (1694-1748).⁶ Barbeyrac emerges here as an influential figure in the mediation and disseminating of natural law ideas shaped in response to the concerns of 'second' generation refugees.⁷ In 'Conscience and Reason', Hochstrasser focuses exclusively on Barbeyrac's natural law theory, arguing that its distinctive character comes from its amalgam of Pufendorffian foundations, Lockean epistemology and a Huguenot inspired concept of conscience.⁸ This thesis extends Hochstrasser's argument through a more comprehensive study of Barbeyrac's natural law theory that remains indebted to the analysis of some of Barbeyrac's most important concepts, above all, his concept of conscience.

By focusing on Barbeyrac not only as natural law theorist but also as a thinker located within the wider Huguenot Diaspora, this study responds to the growing literature on the relationship between enlightenment ideas and religious beliefs. In a series of case studies, David Sorkin challenges the traditional idea, often attributed to Peter Gay in his seminal study of the Enlightenment, that the building blocks of modern secular thought and the roots of orthodox religious belief are necessarily antithetical to one another.⁹ Barbeyrac presents an interesting – although not unusual – character within this picture. Wary of the dangers of bestowing an undue authority on the church and its ministers, whether Catholic or Reformed, Barbeyrac insists upon the separation of church and

⁶ Tim Hochstrasser, 'The Claims of Conscience: Natural Law Theory, Obligation and Resistance in the Huguenot Diaspora', in *New Essays on the Political Thought of the Huguenots of the Refuge*, ed. J.C. Laursen, (Leiden, 1995).

⁷ Hochstrasser, 'The Claims of Conscience', pp. 38-39.

⁸ Tim Hochstrasser, 'Conscience and Reason: The Natural Law Theory of Jean Barbeyrac', in *Historical Journal* 36:2, (1993).

⁹ David Sorkin, *The Religious Enlightenment: Protestants, Jews, and Catholics from London to Vienna*, (Princeton, 2008). For a critique of Gay's thesis and a review of the wider literature, see also: Knud Haakonssen, *Enlightenments and Religions*, (Athens, 2010) and Jonathan Sheehan, 'Enlightenment, Religion and the Enigma of Secularization: A Review Essay', in *American Historical Review* 108:4 (2003). Cf. Peter Gay, *The Enlightenment: An Interpretation* [1966], 2 Volumes, (New York, 1995).

state. But his purpose in doing so is not to uphold modern, secular ideals. Instead, possessed of a latitudinarian but nonetheless distinctly Calvinist faith, Barbeyrac's theory of natural law constitutes a genuine effort to establish the authority of individual conscience as a moral and religious faculty. Barbeyrac's rationalist religious convictions and his experiences of religious persecution may have made him into a critic of orthodox theology but he was undoubtedly a man of faith; a context of upmost importance to any interpretation of his thought.

Other works have singled out Barbeyrac for particular mention with respect to specific topics. John Dunkley's study on the history of gambling and Alfred Dufour's analysis of the idea of marriage within the Swiss 'Romande' school of natural law are good examples of the insights that may be garnered from situating Barbeyrac's thought within the history and development of a specific set of ideas.¹⁰ Likewise, Joris van Eijnatten's articles on Barbeyrac, mostly concentrating on his anticlerical critique but offering a rare insight into Barbeyrac within the Dutch context, in particular emphasising his role as an academician, must also be acknowledged for the contribution that they make to the wider field of study.¹¹ The Barbeyrac that emerges from these studies, whether focusing on his thought from within the early modern school of natural law, as a contribution to the life of the Huguenot Diaspora, or in relation to a particular subject matter is a figure who straddles a number of different contexts. He may not be of the same stature as his authors and better known contemporaries, but as an erudite and eclectic thinker his particular significance lies in the novelty of his synthesis of different traditions of thought and styles of argument.

Barbeyrac operated in several cultural and academic locales, as his biography shows; he published in a variety of genres, as we have seen; and he was an avid correspondent on a European scale; in short, he was a prominent citizen of the Republic of Letters. Several of the scholarly contributions already mentioned take up this theme, and it is developed at some length by Anne Goldgar, who takes Barbeyrac as an example of

¹⁰ John Dunkley, *Gambling: A Social and Moral Problem in France (1685-1792)*, (Oxford, 1985); Alfred Dufour, *Le mariage dans l'école romande du droit naturel au XVIIIe siècle*, (Geneva, 1976).

¹¹ Joris van Eijnatten, 'Gerard Noodt's Standing in the Eighteenth-Century Dutch Debate on Religious Freedom', in *Dutch Review of Church History* 79:1 (1999), 'Swiss Anticlericalism in the United Provinces: Jean Barbeyrac's *Oratio De Magistratu, Forte Peccante, E Pulpitis Sacris Non Traducendo* (1721)', in *La Formazione Storica Della Alterità. Studi Di Storia Della Tolleranza Nell'età Moderna Offerti a Antonio Rotondò*, ed. H. Méchoulan et. al., (Florence, 2001) and 'The Church Fathers Assessed. Nature, Bible and Morality in Jean Barbeyrac', in *De Achttiende Eeuw* 35 (2003).

proper scholarly conduct within the Republic, noting the praise he received for the style of his Grotius commentary.¹² There is scope for more work on Barbeyrac along these lines, but although this cannot be the main focus of the present thesis, it does contribute to these considerations by, wherever required, outlining the important aspects of individual relationships. The individuals concerned may be divided into four broad groups: (i) senior figures within the Republic or Diaspora whose works had a formative influence on the development of Barbeyrac's own ideas, above all, Locke and Bayle; (ii) fellow translators and commentators with whom Barbeyrac engages in his natural law commentaries, in particular here, Gottlieb Gerhard Titius (1661-1714) and Gershom Carmichael (1672-1729); (iii) immediate contemporaries that Barbeyrac considered close friends and intellectual allies, figures such as the latitudinarian theologian and scholar Jean Le Clerc (1657-1736) and the Genevan theologian and scholar Jean-Alphonse Turretini (1671-1737) but many more besides; (iv) major opponents with whom Barbeyrac entered into heated intellectual debates, in particular here, Gottfried Wilhelm Leibniz (1646-1716) and Father Rémi Ceillier (1688-1763).¹³

¹² Anne Goldgar, *Impolite Learning: Conduct and Community in the Republic of Letters, 1680-1750*, (New Haven, CT, 1995), pp. 161-162 and 167-168. Goldgar's work offers the most detailed insight available into the social composition of the Republic of Letters and the unwritten rules that governed proper conduct within it.

¹³ (i) The relationship between Barbeyrac and the intellectual heavyweights that preceded him, Locke and Bayle, is a central theme of the two articles by Tim Hochstrasser cited above. Ross Hutchison has also offered an account of the influence of Locke on Barbeyrac, but his study focuses on specific references to Locke within Barbeyrac's works rather than offering the kind of contextualised study proposed here. It must also be noted that while Hutchison's list of Lockean references is strong in some areas, it is not comprehensive: Ross Hutchison, *Locke in France 1688-1734*, (Oxford, 1991); (ii) Barbeyrac engages with his fellow commentators in all of his natural law translations, but it is most illuminating in his Pufendorf translations, often providing insights into the development of his own thought. The literature on natural law commentaries is only used to the extent demanded by the specific discussion in this thesis, especially Barbeyrac's relationship with the Scottish Pufendorf commentator Carmichael, which has received some attention recently. See Chapter 2, p. 76, fn. 121; (iii) There are few studies that discuss Barbeyrac in relation to his immediate contemporaries in detail. The two general studies of importance are Goldgar's analysis of the social composition of the Republic of Letters in *Impolite Learning* and Philippe Meylan's biographical study *Jean Barbeyrac (1674-1744) et les débuts de l'enseignement du droit dans l'ancienne académie de Lausanne*, (Lausanne, 1937). Meylan provides an overview of the whole of Barbeyrac's career, but takes particular interest in the periods spent in Lausanne and Barbeyrac's relationship with his various correspondents, including Turretini. For a near comprehensive list of Barbeyrac's correspondence, see Meylan, *Jean Barbeyrac*, pp. 6-8. Barbeyrac's letters to Turretini remain the best source of information regarding the relationship between the two. The literature on the relationship between Barbeyrac and Le Clerc is even more scant, despite their close links: both were engaged in disseminating Lockean ideas within the Republic, with Le Clerc being responsible for Barbeyrac's introduction to Locke himself. The principal study of Le Clerc's thought remains Annie Barnes's *Jean Le Clerc (1657-1736) et la République des Lettres*, (Paris, 1938) where direct reference to Barbeyrac is made only briefly; (iv) The relationship between Barbeyrac, Leibniz and Pufendorf has received considerable attention within recent scholarship. See Chapter 2, p. 73, fn. 108. Barbeyrac's exchange with Ceillier focuses on the moral philosophy of the church fathers, a less well documented aspect of his thought. It is taken up briefly by Eijnatten in his article, 'The Church Fathers Assessed'.

The present study has been limited in other regards so as to keep it manageable. In order to keep the focus on Barbeyrac's own theory of natural law, as distinct from that of his authors, attention has only been paid to Barbeyrac's performance as a translator where directly relevant to the subject under discussion. The purpose here has not been to evaluate the accuracy of his particular reading of his authors, Grotius, Pufendorf and Cumberland, but rather to consider how he makes use of his interpretation of these thinkers to build his own theory of natural law. I fully accept the point made by David Saunders in his article on Barbeyrac as translator, that 'adjustment via translation can be a strategic art', and that Barbeyrac exploited the full potential of this art.¹⁴ My concern is with the resulting work of art.

As Meri Päivärinne points out, Barbeyrac saw his task of translation as essential to the dissemination of knowledge, making his translations the cornerstone of his pedagogic enterprise.¹⁵ As Barbeyrac himself says in the Pufendorf 'Préface', the purpose of these translations was to open the texts up to a learned but non-Latinate audience.¹⁶ This activity was also important in establishing his reputation as a scholar within the Republic of Letters. As recent scholarship on the translation of Locke's works into French during the early modern period has emphasised, it was a task that was taken up with particular enthusiasm by members of the Huguenot Diaspora, many of whom were keen not only to make texts available to the wider reading public but also to draw out aspects of these texts that were relevant to the Huguenot cultural and political experience.¹⁷

In pursuing the coherence that Barbeyrac himself strove for I am trying to avoid reducing it to the question of what label his thought deserves, for example, whether he is a 'liberal' thinker or a 'rights' theorist and measuring the success of his ideas in these terms. As a man of his times, Barbeyrac's thought is eclectic in nature rather than

¹⁴ David Saunders, 'The Natural Jurisprudence of Jean Barbeyrac: Translation as an Art of Political Adjustment', in *Eighteenth-Century Studies* 36:4 (2003), p. 473.

¹⁵ Meri Päivärinne is currently undertaking a PhD at Helsinki University that focuses on Barbeyrac as a translator. An early article stemming from that research is 'Enlightened Translations: Knowledge Mediation and Jean Barbeyrac', in *Translation and the (Trans)formation of Identities: Selected Papers of the CETRA Research Seminar in Translation Studies 2008*, ed. D. de Crom, (2009). Accessed via: www.arts.kuleuven.be/info/bestanden-div/Paivarinne.pdf.

¹⁶ Barbeyrac, 'Préface', *DNG*, §32.

¹⁷ See: S.-J. Savonius, 'Locke in French: The *Du Gouvernement Civil* of 1691 and its Readers', in *The Historical Journal* 47:1 (2004) and Delphine Soulard, 'Anglo-French Cultural Transmission: The Case of John Locke and the Huguenots', in *Historical Research* 85:227 (2012).

systematic. Moreover, some of its most interesting aspects are those with which he may be furthest out on a limb in the eyes of contemporary philosophy. He is certainly grappling with innovative and complex concepts that he does not always satisfactorily resolve, as indicated in the amendments that he makes across different editions of his texts. I do not always shy away from raising issues about the validity of Barbeyrac's reasoning that may be seen as anachronistic, but I do so mainly in an attempt to keep faith with the modern reader. My main concern has been to read Barbeyrac on the premises of his own life and time – to which we now turn for a brief overview.

II

Barbeyrac: Life and Works¹⁸

Barbeyrac was born on the 15th March 1674 in Beziers, a small French town in the Languedoc region of the country. The son of a pastor in the Reformed church, Antoine Barbeyrac, the young Jean was 'destined for study' from infancy and, in keeping with 'the ordinary custom', intended for the church like his father before him.¹⁹ His life, however, did not follow this traditional path. Repeatedly coming up against the forces of religious intransigence, instead of joining the church, Barbeyrac became a lifelong critic of unbridled ecclesiastical authority and religious dogmatism. Ever the erudite scholar, however, he elected to become an academician, dedicating himself to the study and dissemination of both natural law and moral philosophy. The pedagogic nature of his enterprise is evident not only in his project to translate some of the most important natural law treatises of his day and in his various other writings, a number of which were first delivered as academic orations, but also in the broad desire to educate the young men in his charge in their basic moral, religious and civil duties.

Barbeyrac's first experience of religious intolerance came in October 1685, when the fortunes of the Barbeyrac family were irreversibly altered following the Edict of Fointainebleau, usually referred to as the Revocation of the Edict of Nantes, which

¹⁸ The two principal sources of information on the biographical and bibliographical details of Barbeyrac's life are his own, relatively short, 'Mémoire sur la vie et sur les écrits de Mr. Jean de Barbeyrac, écrit par lui-même', in *Écrits de droit et de morale*, ed. Simone Goyard-Fabre, (Caen, 1996) and the longer account provided in Philippe Meylan, *Jean Barbeyrac*. Meylan also offers a comprehensive list of Barbeyrac's published works: pp. 244-248. The brief account presented here draws on both these sources, emphasising those aspects of his life and works of particular relevance to my analysis.

¹⁹ Jean Barbeyrac, 'Mémoire sur la vie', p. 81: 'destiné aux Lettres' and 'la Coutume ordinaire'.

officially ended the limited toleration granted by that Edict to the French Reformed, or Huguenots, in 1598. Under the terms of the new Edict, Reformed ministers (unlike lay persons) were legally allowed to go into exile rather than recant their faith, but had to leave behind all property and children over the age of seven.²⁰ Like many of his Huguenot compatriots, this forced the eleven-year-old Jean to take a clandestine route out of the country to join his exiled family in Lausanne. A journey, he claimed, that was ‘not without great danger’.²¹

Once settled, Barbeyrac enrolled at the local lower school, later going on to become a student at the *Académie de Lausanne*, where he ‘devoted himself to the study of Greek, Hebrew, philosophy and, finally, theology’.²² It was also during this period that he lost both his mother and father, leaving him to care for his younger brother and two sisters at a young age. Initially leaving Lausanne in early 1693 to study theology at Geneva, the instability of the Huguenot situation in Lausanne and the lack of prospects for the young Barbeyrac, led him to move to Berlin at the end of the year, taking his siblings with him, in the hope of securing a more favourable stipend for himself.²³ With his siblings safely settled in the *Maison des orphelins* in Berlin, Barbeyrac continued his studies at the university in Frankfurt-an-der-Oder, returning to Berlin in 1694 and taking up a post teaching ancient languages at the *Collège français* in 1697.

During his time in Berlin, Barbeyrac again experienced the effects of religious intolerance, this time at the hands of his own Reformed church. In 1699, still harbouring hopes of following in his father’s footsteps, a decree from the Elector Frederick presented Barbeyrac with the opportunity to be examined for ordination by the consistory of the French church in Berlin.²⁴ However, drawing their evidence from Barbeyrac’s early writings, his detractors within the consistory accused him of Socinianism; a charge often levied against those advocating a minimalist religious creed and emphasising the authority of natural reason. John Marshall describes the charge of Socinianism as ‘one of the most commonly used accusations in the seventeenth

²⁰ Elisabeth Labrousse, ‘Calvinism in France, 1598-1685’, in *International Calvinism, 1541-1715*, ed. M. Prestwich, (Oxford, 1985), p. 311.

²¹ Barbeyrac, ‘Mémoire sur la vie’, p. 82: ‘non sans de grand dangers’.

²² Barbeyrac, ‘Mémoire sur la vie’, p. 82: ‘s’attacha à l’Etude du *Grec*, de l’*Hebreu*, de la Philosophie, & enfin à celle de la Theologie.

²³ Meylan, *Jean Barbeyrac*, pp. 40-45.

²⁴ Meylan, *Jean Barbeyrac*, p. 48.

century... employed polemically to associate many thinkers with heresy, or to identify heretical tendencies in their thought'.²⁵ Forced to abandon his long held aspirations, Barbeyrac became a lifelong opponent of religious dogmatism.

With one door closed to him, Barbeyrac concentrated his efforts on opening another by devoting himself to jurisprudence; a field of study that he claimed to 'have had a strong interest in since his more tender years' and, more importantly, a field of study that attracted a high degree of interest amongst the leading intellectuals of the Huguenot community in Berlin.²⁶ The result of these endeavours were his early natural law translations, characterised by an ongoing commentary in his notes to the text, a development of the preceding commentator literature in the genre. Published in short succession, Barbeyrac's translations of Pufendorf's two natural law treatises appeared in 1706 and 1707 under the French titles, *Le droit de la nature et des gens* and *Les devoirs de l'homme et du citoyen*.²⁷ The former work also included his Pufendorf 'Préface', a substantial history of moral thought, renowned in its own right. The year 1707 also saw the publication of his translations of two discourses written by the Dutch academician and jurist Gerard Noodt (1647-1725): 'Des droits de la puissance souveraine' and 'Discours sur la liberté de conscience'.²⁸

²⁵ John Marshall, 'Locke, Socinianism, "Socinianism", and Unitarianism', in *English Philosophy in the Age of Locke*, ed. M.A. Stewart, (Oxford, 2000), p. 112. Although this article focuses almost exclusively on Locke and the British context, it provides a valuable analysis of the subtleties of the different theological positions available to thinkers such as Locke and Barbeyrac and the genuine concern felt surrounding charges of religious unorthodoxy.

²⁶ Barbeyrac, 'Mémoire sur la vie', p. 82: 'en pleine liberté de suivre son penchant' and 'avoit fort aimé dès sa plus tendre jeunesse'. On the Huguenot interest in natural law within the Berlin context, see Sandra Pott, "'Gentle, Refined, Cultivated, Witty People": Comments on the Intellectual History of the Berlin Refuge and on Relevant Research', in *The Berlin Refuge 1680-1780: Learning and Science in European Context*, ed. S. Pott et. al., (Leiden, 2003), p. 16. Fiammetta Palladini's monumental study of Barbeyrac in the Berlin Refuge came too late to be considered in this dissertation: *Die Berliner Huguenotten und der Fall Barbeyrac: Orthodoxe und Sozinianer im Refuge (1685-1720)*, (Leiden, 2011).

²⁷ There were a number of different editions of both texts produced during Barbeyrac's lifetime. *Le droit de la nature et des gens* first appeared in 1706 (Amsterdam), a revised and augmented edition followed in 1712 (Amsterdam), two pirated editions in 1712 and 1732 (Amsterdam and Basle, respectively) and a final revised and augmented edition in 1734 (Amsterdam), subject of a further reprint in 1740 (London). *Les devoirs de l'homme et du citoyen* first appeared in 1707 (Amsterdam), a pirated edition followed in 1708 (Luxembourg) and revised and augmented third, fourth and fifth editions in 1715, 1718 and 1734-1735 respectively (all Amsterdam), and a final amended sixth edition in 1741 (London). For full bibliographical details of the principal edition of each text used here, see 'A Note on References' and 'Abbreviations'.

²⁸ Gerard Noodt, 'Des droits de la puissance souveraine, & du vrai sens de la loi roiale du peuple Romain' and 'Discours sur la liberté de conscience: où l'on fait voir, que, par le droit de la nature, & des gens, la religion n'est point soumise à l'autorité humaine'. First published in 1707 (Amsterdam), revised and augmented in 1714 (Amsterdam) and later included within Barbeyrac's 1731 *Recueil de discours*, Vol. 1. (see fn. 38 below for full bibliographical details). All references in this thesis are taken from this latter edition.

Barbeyrac followed these early translations with his own treatise on the subject of gaming, the *Traité du jeu*, a text that he proudly declared to be held in high esteem by Prince Eugene of Savoye.²⁹ It was also during his Berlin period that Barbeyrac began on his enterprise to translate the sermons of the late Archbishop of Canterbury, John Tillotson (1630-1694), after having learnt the English language from an English Bible and dictionary gifted to him by Locke.³⁰ However, having always constituted ‘an exception, rather than the rule, of the Berlin Refugees’ and considering himself underappreciated as a man of letters, Barbeyrac decided to bid farewell to Berlin in 1710, accompanied by his wife Hélène Chauvin, whom he had married in 1702. He had been offered the chair of law and history at the *Académie de Lausanne*, a position that he officially took up in early 1711.³¹ For Barbeyrac, the move represented something of a homecoming to a place where he always considered himself among kindred spirits.³²

During his time in Lausanne, Barbeyrac produced only a handful of new publications. These were mostly short discourses, originally delivered as academic orations, intended for the edification of both public officials and young students. Of these, it is his public addresses as Rector of the *Académie* that are of greatest interest to this thesis: namely, his 1714 ‘Discours sur l’utilité des lettres et des sciences par rapport au bien de l’état’, his 1715 ‘Discours sur la permission des loix’ and his 1716 ‘Discours sur la bénéfice des loix’.³³ This period also saw Barbeyrac produce his 1716 ‘Jugement d’un anonyme

²⁹ Barbeyrac, ‘Mémoire sur la vie’, p. 83. Barbeyrac’s *Traité du jeu* first appeared in 1709 (Amsterdam), later revised and augmented, including the addition of a number of important appendices, in 1737 (Amsterdam). For full bibliographical details of the edition used here, see the ‘A Note on References’ and ‘Abbreviations’.

³⁰ Barbeyrac’s enthusiasm for the task of translating Tillotson’s sermons – the last volume of which he merely supervised – waned over the years. John Tillotson, *Sermons sur diverses matieres importantes, par feu Mr. Tillotson*, 6 Volumes, (Amsterdam, 1708-1744). Barbeyrac conducted a brief correspondence with Locke towards the end of the latter’s life. In the second of three surviving letters, Barbeyrac thanks Locke for the offer of an English Bible and dictionary. Barbeyrac to Locke (Berlin 06.01.1703). Accessed via: The Electronic Enlightenment (www.e-enlightenment.com), ID: lockjoOU0070727_1key001cor.

³¹ Martin Muslow, ‘Views of the Berlin Refuge: Scholarly Projects, Literary Interests, Marginal Fields’, in *The Berlin Refuge 1680-1780*, p. 27; Fiammetta Palladini, ‘Farewell to Berlin: Two Newly Discovered Letters by Jean Barbeyrac (1674–1744)’, in *History of European Ideas* 33 (2007), p. 309.

³² Barbeyrac, ‘Mémoire sur la vie’, p. 84.

³³ The former discourse, first published in 1714 (Geneva), was subsequently reprinted in 1715 (Amsterdam) and in the 1731 *Recueil de discours*, Vol. 2. The latter two discourses were first published (respectively) in 1715 and 1716 (Geneva) and reprinted in 1715 and 1716 (Amsterdam). Both discourses were included in an appendix to the 1718 edition of *Les devoirs* (and all subsequent editions thereafter). This thesis refers to the modern reprints available in Barbeyrac, *Écrits de droit et de morale*.

avec des réflexions du traducteur', a critical engagement with Leibniz in defence of the Pufendorf's theory of natural law.³⁴

In Lausanne, Barbeyrac once again fell foul of the ecclesiastical authorities, becoming entangled in the affair over the signing of the Formula Consensus. The Formula Consensus, a confession of faith that all members of the *Académie* were required to subscribe to, had long been a point of controversy. As Rector of the *Académie*, Barbeyrac allowed those in his charge to qualify their signature with the words 'quantenus Scripturae consentit', that is to say, 'insofar as Scripture agrees'. Once again, Barbeyrac came under fire from powerful opponents, this time for licensing religious heterodoxy. Writing to Turretini, his long time friend and one of the most significant opponents to the Formula Consensus in this period, Barbeyrac defended his decision, claiming that 'unless one renounces Protestantism, every signature, to whatever Human Document that it may be, carries this restriction'.³⁵ For Barbeyrac, at stake was 'the honest liberty to follow the light of one's Conscience' free from the 'tyrannical reign' of orthodox theologians.³⁶ In 1717, frustrated by the doctrinal intransigence he came up against in Lausanne, Barbeyrac decided to leave a town for which he professed a great love in order to take up the chair of law at the University of Groningen in the Netherlands.

Settled in Groningen, Barbeyrac resumed the labour that he had begun in Lausanne, his translation of Grotius's seminal natural law treatise. Entitled *Le droit de la guerre et de*

³⁴ Barbeyrac's 'Jugement d'un anonyme' was originally appended to the 1718 edition of *Les devoirs*, together with the two discourses on laws mentioned in the previous footnote. References to Barbeyrac's commentary are to the reprint in *Écrits de droit et de morale*. For the sake of clarity and consistency within the footnotes and the main body of the text, all references to Leibniz's 'Opinion on the Principles of Pufendorf (1706)', as well as other relevant works by Leibniz, are taken from the English translations in *Leibniz: Political Writings*, ed. and trans. P. Riley, (Cambridge, 1988). For further context to the publication and reception of this essay, see Chapter 2, pp. 68-70.

³⁵ Barbeyrac to Turretini, (Lausanne, 24.11.1715), Ms. 484 (n. 192), in the archives at the Bibliothèque de Genève: 'à moins que de renoncer au Protestantisme, toute signature, de quelque Ecrit Humain que ce soit, emporte cette restriction'. For a detailed summary of the contents of the letter see: Maria-Cristina Pitassi, *Inventaire critique de la correspondance de Jean-Alphonse Turretini*, Volume III: Inventaire Chronologique 1714-1726, (Paris, 2009), pp. 130-131. On Barbeyrac's involvement with the affair of the Formula Consensus and its effects on his prospects in Lausanne, see Meylan, *Jean Barbeyrac*, pp. 104-108. On the wider Swiss debate over the Formula Consensus and Turretini's role as one of its key opponents, see Martin I. Klauber, *Between Reformed Scholasticism and Pan-Protestantism: Jean-Alphonse Turretin (1671-1737) and Enlightened Orthodoxy at the Academy of Geneva* (Selinsgrove, 1994), Chapter 5, pp. 143-164.

³⁶ Barbeyrac to Jean-Pierre de Crousaz, (Groningen, 15.01.1718), Ms. IS 2024/XIV/7, in the archives of the Bibliothèque Cantonale et Universitaire Lausanne: 'honnête liberté de suivre les lum. de sa Conscience' and 'régne tyranniquement'.

la paix, it was published in 1724, shortly after his annotated Latin edition of Grotius's original text, published in 1720.³⁷ Barbeyrac produced a number of other translations during this period, mostly at the behest of influential personages. A number of these translations were collated together with several of his own works and his earlier translations of Noodt's two discourses in the 1731 *Recueil de discours*.³⁸ In 1744, these efforts were followed by his last major natural law translation, Cumberland's *Traité philosophique des loix naturelles*, although Barbeyrac's own commentary to the text was far sparser than in his previous natural law translations.³⁹

In Groningen, just as in Lausanne and in Berlin, Barbeyrac remained a vociferous opponent of ecclesiastical intolerance and religious dogmatism. Intervening in a debate over the baptism ceremony, Barbeyrac opposed both the Groningen civil authorities and the consistory of the Flemish church by insisting on the respect owed by public ministers of religion to civil magistrates.⁴⁰ He chose to take up this topic in his first public address as Rector of the University in 1721; an address originally delivered and published in Latin as 'Oratio de magistratu forte peccante', later translated into French and included in his *Recueil de discours* as 'Discours sur la question, s'il est permis d'échaffauder en chaire le magistrat, qui a commis quelque faute?'.⁴¹ It was also during his Groningen period that Barbeyrac wrote a systematic account of his objections to the authority wielded by intolerant and avaricious ecclesiastics, both through history and in his own time. The resulting work, *Traité de la morale des peres de l'église* (1728), provided his most extensive treatment of the dangers of doctrinal intransigence and the imposition of a strict orthodoxy by the dominant church, whether Reformed or Catholic.

Barbeyrac's Groningen years also marked an upsurge in his activities as a journalist. He wrote a considerable number of reviews and commentaries, submitted anonymously, on

³⁷ For full bibliographical details of Barbeyrac's French translation of Grotius, *Le droit de la guerre et de la paix*, see 'Abbreviations'. The Latin edition was *Hugo Grotii de Jure belli ac pacis libri tres*, (Amsterdam, 1720).

³⁸ Jean Barbeyrac, *Recueil de discours sur diverses matieres importantes; traduits ou composez par Jean Barbeyrac*, 2 Volumes, (Amsterdam, 1731).

³⁹ For full bibliographical details of Barbeyrac's translation of Cumberland, *Traité philosophique des loix naturelles*, see 'Abbreviations'.

⁴⁰ Meylan, *Jean Barbeyrac*, p. 131

⁴¹ Jean Barbeyrac, 'Discours sur la question, s'il est permis d'échaffauder en chaire le magistrat, qui a commis quelque faute?', in *Recueil de discours*, Vol. 2. The Latin 'Oratio de magistratu forte peccante, e pulpitis sacris non traducendo' was first published in 1721 (Groningen), reprinted in 1723 (Erfurt) and 1724 (Tubingen), and finally appended to the fifth edition of *Le droit de la nature et des gens* (1734).

both his own works and those of his contemporaries for various European journals, above all, for the *Bibliothèque raisonnée des ouvrages des savants de l'Europe*. Bruno Lagarrigue has recently documented Barbeyrac's involvement as one of the most prolific journalists of this journal in its early phase.⁴²

Although Barbeyrac spent the longest period of his career in Groningen – 27 years – it is probably the least well known part of his life. Philippe Meylan tells us that Barbeyrac was an isolated figure in the Netherlands, refusing to learn Dutch and making few friends amongst his colleagues or within the local Huguenot community. During the later years, Barbeyrac lost some of his oldest and closest colleagues within the Republic of Letters, in particular Turretini, Noodt and Le Clerc. The esteem and affection that Barbeyrac felt for all three scholars is evident in his letter 'A Monsieur Turretin' and his 'Eloges historiques' of Noodt and Le Clerc.⁴³

Withdrawing into the safe haven provided by his private library, a collection that he had lovingly built since his early days in Berlin, his final years became a 'long and dreary effort to write'.⁴⁴ He also lost his wife, his son Antoine and his daughter Esther during this period, leaving only his granddaughter Henriette-Hélène when he himself passed away on the 3rd May 1744.

⁴² Bruno Lagarrigue, *Un temple de la culture européenne (1728-1753): l'histoire externe de la Bibliothèque raisonnée des ouvrages des savants de l'Europe*, (Nijmegen, 1993), esp. pp. 49-59. For Meylan's list of Barbeyrac's journal articles, including journals other than the *Bibliothèque raisonnée*, see Jean Barbeyrac, pp. 247-248.

⁴³ Jean Barbeyrac, 'A Monsieur Turretin', in *Sermons sur diverses matieres importantes*, Vol 1; 'Eloge historique de Mr. Noodt', in *Recueil de discours*, Vol. 2; 'Eloge historique de feu Mr. Jean Le Clerc', (Amsterdam, 1736) [published anonymously].

⁴⁴ Meylan, *Jean Barbeyrac*, p. 152: 'un long et morne effort de plume'.

Chapter One

The Foundation of Natural Law

I

Introduction

‘The most common experience of Life, and a little reflection on ourselves and the objects that surround us on all sides, are sufficient to furnish even the most simple people with the general ideas of Natural Law and the true foundations of all our Duties’.¹ For those of learning and insight, natural morality should be studied as a science whose principles ‘may be readily deduced by following a series of inferences in a demonstrative manner’.² This basic idea, that morality is self-evident and consists of basic duties accessible to every individual capable of reasoned reflection, lies at the heart of Barbeyrac’s theory of natural law. There is no need, he claims, for any individual to ‘seek after the impenetrable secrets of nature’, nor to ‘descend into Metaphysical speculations’, nor to ‘consult any other Master than his own Heart’.³ Alluding here to the Pauline idea of the moral law written on the heart and borne witness to by conscience, Barbeyrac sets out to establish that not only is morality self-evident but it also goes hand in hand with true religion.⁴ To this end, quoting the words of the neo-Stoic classicist translators M. and Mme. Dacier (1651-1722; 1647-1720), Barbeyrac claims that: ‘It is certain *that Morality is the daughter of Religion, that one follows the same path as the other, and that the perfection of the former is the measure of the perfection of the latter*’.⁵ The second basic idea of Barbeyrac’s theory of natural law, therefore, is that an essential harmony exists between the truths of morality and religion; a harmony that an attentive conscience cannot fail to apprehend.

¹ Barbeyrac, ‘Préface’, *DNG*, §1: ‘L’expérience le plus commune de la Vie, & un peu de réflexion sur soi-même & sur les objets qui nous environnent de toutes parts, suffisent pour fournir aux personnes les plus simples, les idées de la Loi Naturelle, & les vrais fondemens de tous nos Devoirs’.

² Barbeyrac, ‘Préface’, *DNG*, §2: ‘on en déduira aisément, par des consequences liées les unes avec les autres d’une manière démonstrative’.

³ Barbeyrac, ‘Préface’, *DNG*, §1: ‘de rechercher les secrets impénétrables de la Nature’ and ‘de s’enfoncer dans les spéculations Métaphysiques’ and ‘consulter d’autre Maître que son propre Coeur’.

⁴ Barbeyrac alludes here to Romans 2.15, a passage that he frequently cites in his writings. See, for example, Barbeyrac, *DHC*, 1.1.4, Note 2. Cf. Chapter 4, pp. 120-121.

⁵ Barbeyrac, ‘Préface’, *DNG*, §6: ‘Il est certain, que la MORALE est la fille de la RELIGION, que elle marche d’un pas égal avec elle, & que la perfection de celle-ci est la mesure de la perfection de celle-là’. Cf. M. and Mme. Dacier, ‘Préface’, in *Reflexions morales de l’Empereur Marc Antonin*, 2nd Edition, 2 Volumes, (Amsterdam, 1691), Vol. 1, p. 2. M. and Mme. Dacier claim that this principle follows from the idea of natural law as an immutable, divine law.

Taking these ideas as a starting point, the current chapter elucidates the premises and structure of Barbeyrac's theory of natural law: namely, (i) that these basic ideas had been obfuscated in the history of moral teaching; (ii) that the principles of natural religion underpin both natural law and revealed religion; (iii) that individual conscience is the moral conduit between man and God and the source of authoritative moral judgements; (iv) that natural law has three parts, one of which brings individual duties to God to the fore. Barbeyrac develops these arguments mainly in the commentaries to his two Pufendorf translations, *Le droit de la nature et des gens* and *Les devoirs de l'homme et du citoyen*, together with his Pufendorf 'Préface', a substantial work in its own right where he establishes the principles necessary for his own theory of natural law and offers an account of the history of morality.

It was these works that originally established his reputation as a 'savant' within both the Huguenot Diaspora and the Republic of Letters. But what prompted the young *refugié* to launch his scholarly career and present his own theory of natural law by translating an author whose own natural law theory purposefully excluded the fundamental ideas that Barbeyrac himself was so keen to establish? A number of circumstantial reasons may have contributed to his early interest in Pufendorf: his engagement with Pufendorf's texts as a young student in Lausanne; his residence in Berlin, where Pufendorf's influence was already well-established among Germanic and Latinate audiences; the enduring interest in natural law among the leading intellectuals of the wider Huguenot Diaspora; the perceived need for an 'enlightened' Pufendorf translation for a Francophone audience; and finally and no doubt most importantly, Barbeyrac's personal conviction that 'Pufendorf had taken the right path in his explication of natural law, and one could hardly do better than building on his principles'.⁶

The appeal of Pufendorf's natural law theory for Barbeyrac, and the Huguenot Diaspora more generally, lay in Pufendorf's powerful statement of a desacrilised civil authority, the latter having no right or need to interfere in individual religious belief beyond the

⁶ Meylan, *Jean Barbeyrac*, p. 39; Hochstrasser, 'The Claims of Conscience', p. 17; Sandra Pott, 'Préface', in *The Berlin Refuge 1680-1780: Learning and Science in European Context*, ed. S. Pott et. al. (Leiden, 2003), p. x; Barbeyrac in a letter to Desmaizeaux, Berlin 7th May 1707, in *Bulletin historique et littéraire*, Vol. 15, (Paris, 1866), p. 244: 'Pufendorf a pris le bon chemin dans l'explication de droit naturel, et qu'on pourra guère que bâtir sur ses principes'.

requirements of social peace. In effect, for Barbeyrac, Pufendorf had disentangled the different spheres of human authority: civil, religious and moral. Barbeyrac seizes on the basic structure offered by Pufendorf in this regard, but argues for a very different balance between these potentially competing spheres of authority, above all in granting more extensive rights and duties to individual conscience than Pufendorf's original theory allowed for. Thus, from the very outset, within his Pufendorf commentaries and in the 'Préface' Barbeyrac 'builds' a theory of natural law quite different from the one that he was originally bequeathed; and it is this Barbeyracian vision of natural law that is subsequently developed across the different genres of his scholarly writings. His stated intention to 'build' on Pufendorf's principles and his claims that he is merely drawing out implications already present in Pufendorf's texts are thus quite disingenuous. It is these differences, however, that demand that we look at Barbeyrac as more than just an interpreter of Pufendorf, that is, as a theorist of natural law in his own right.

II

Barbeyrac's History of Morality

Barbeyrac's theory of natural law begins with the history of morality in his Pufendorf 'Préface'. 'It must be admitted', Barbeyrac claims there, 'that, to the shame of Mankind, this [Moral] Science, which ought to be the utmost concern of Men, and the object of all their studies, has found itself, in all times, very much neglected'.⁷ Barbeyrac considers this state of affairs to be all the more reprehensible given that the basic principles of morality are 'easy to discover, and proportionate to the capabilities of all sorts of Intellects', evidenced by the fact that even the most simple minded people show in their daily conduct that they possess 'sufficiently just and sufficiently extended ideas in matters of Morality'.⁸ Drawing heavily on Lockean epistemology, Barbeyrac argues that these self-evident moral precepts are capable of demonstration by virtue of the necessary correlation between certain ideas, for example, property and injustice, that in turn gives rise to certain rules, e.g., that 'there can be no injustice where there is no

⁷ Barbeyrac, 'Préface', *DNG*, §5: 'Il faut l'avouer, à la honte du Genre Humain, cette Science qui devoit être la grande affaire des Hommes, & l'objet de toutes leurs recherches, se trouve de tout tems extrêmement negligée'.

⁸ Barbeyrac, 'Préface', *DNG*, §1: 'faciles à découvrir, & proportionnez à la portée de toutes sortes d'Esprits' and 'des idées assez droites & assez étenduës en matiere de Morale'.

property’.⁹ Individual moral reasoning, in turn, establishes the relationship that necessarily arises between these moral precepts and particular human actions. For those of greater learning and insight, it should therefore be easy to deduce all the duties of man through demonstrative reasoning.

Rejecting what he takes to be the principal sceptical challenges to this idea of morality as a demonstrative science, Barbeyrac argues that, on the contrary, the reason why the proper study of morality has floundered so much through the ages does not come from the uncertainty or obscurity of moral science itself, but rather is the result of the prejudice of engrained customs, poor education and the passions.¹⁰ Yet the demonstrative character of morality ensures that it may also be recovered. The possibility for its recovery consists in the reforming power of a proper education, the institution of proper customs and temperance of the passions. The idea that lies behind this claim is that the natural light of morality may be corrupted or obscured but in itself it is always clear and true. The task that Barbeyrac sets himself is to elucidate the proper foundations of this natural morality, in part by laying bare the reasons for its obfuscation at the hands of others through history. As Tim Hochstrasser has shown, by the time that Barbeyrac composed his Pufendorf ‘Préface’, the use of histories of morality as polemical interjections in arguments about ‘true’ morality was already well-established within the natural law tradition.¹¹

⁹ Barbeyrac, ‘Préface’, *DNG*, §2: ‘Il ne sauroit y avoir de l’Injure où il n’y a point de Propriété’. Cf. John Locke, *An Essay concerning Human Understanding* [hereafter *Essay*], ed. P. Nidditch, (Oxford, 1975), 4.3.18. The discussion here owes a considerable debt to Tim Hochstrasser’s argument concerning Barbeyrac’s use of Lockean epistemological premises and the connection in Barbeyrac’s thought between these premises and his concept of conscience: ‘Conscience and Reason’, p. 294.

¹⁰ Barbeyrac, ‘Préface’, *DNG*, §3-5. It is important to note here that the question of whether the attempt to rebut ethical scepticism constituted the defining feature of Barbeyrac’s history of morality – and modern natural law in general – has been hotly debated in recent scholarship. See, on the one hand, James Moore, ‘Natural Law and the Pyrrhonian Controversy’, in *Philosophy and Science in the Scottish Enlightenment*, ed. P. Jones, (Edinburgh, 1988) and Richard Tuck, ‘The ‘Modern’ Theory of Natural Law’, in *The Languages of Political Theory in Early-Modern Europe*, ed. A. Pagden, (Cambridge, 1990) and, on the other hand, Knud Haakonssen, ‘The Moral Conservatism of Natural Rights’, in *Natural Law and Civil Sovereignty*, ed. I. Hunter and D. Saunders, (Basingstoke, 2002) and Petter Korkman, *Barbeyrac and Natural Law*, Chapter 1, pp. 81-115. Haakonssen’s rejection of Tuck’s interpretation of Grotius and the foundation of ‘modern’ theory of natural law represents a development in his own thought on the matter. Cf. Haakonssen, *Natural Law and Moral Philosophy*, pp. 61-62.

¹¹ Tim Hochstrasser, *Natural Law Theories*, Chapter 1, esp. pp. 14-23. On the self-conscious creation of histories of morality in the early modern period, see also J. B. Schneewind, ‘No Discipline, No History: The Case of Moral Philosophy’, in *History and the Disciplines: The Reclassification of Knowledge in Early Modern Europe*, ed. D.R. Kelley, (Rochester, 1997) and Martin Muslow, ‘Gundling vs. Buddeus: Competing Models of the History of Philosophy’, trans. C. Metheun, also in *History and the Disciplines*.

Barbeyrac identifies public ministers of religion and laic savants as lying under a particular duty to devote themselves to the study of morality and to educate others in its basic principles.¹² Yet the basic idea that runs through his history of morality is that while some small kernel of truth may be found in the writings of almost all moral philosophers through the ages, for the most part, both lay and ecclesiastical thinkers alike have proved to be poor moral guides in this vital enterprise. He reserves his strongest invectives for the early church fathers. However, even where he finds much that is praiseworthy, his survey of the moral teachings of many lay pagan philosophers of both the Orient and Occident also sees him take up a critical stance to those ideas that he considers to contribute to the corruption and obfuscation of morality: for example, the abstract metaphysics that are mixed in amongst the many excellent precepts found in Plato's writings, the absence of religion in Aristotle's nonetheless commendably systematic moral philosophy and the abhorrent materialist principles of Epicurus that made utility the cornerstone of his morality.¹³

In constructing the narrative for both his own and for Pufendorf's 'recovery' of 'true' morality, Barbeyrac retains this critical stance and refrains from wholly subscribing to the moral system of particular lay philosophers, both pagan and modern. Nonetheless, Barbeyrac draws a trajectory within which he commends Socrates's method of inquiry, 'the wisest Philosopher of all Pagan Antiquity'; the Stoic school in general, of whom he says that 'nothing is more beautiful than their Morality, considered in itself'; Cicero, whose *Offices* is 'the best Moral Treatise left to us from the whole of Antiquity', along with the writings of the other Roman 'Stoics' and Roman jurisconsults; Francis Bacon, who initiated 'the re-establishment of the Sciences'; Grotius, who 'broke the ice' as the first modern natural lawyer worthy of repute; and Pufendorf, who finally succeeded in 'shaking off the tyrannical yoke' of Scholasticism to provide a systematic account of the fundamental principles of natural morality, lauded by all men of learning and penetration, above all the 'illustrious' Locke and the 'enlightened' Le Clerc.¹⁴ Yet

¹² Barbeyrac, 'Préface, *DNG*, §6.

¹³ Barbeyrac, 'Préface, *DNG*, §9-10, §21, §24, §26. For an extended discussion of Barbeyrac's critique of the early church fathers, in which he lays responsibility for the corruption of both 'true' religion and 'true' morality at their door, see Chapter 4 of this thesis.

¹⁴ Barbeyrac, 'Préface, *DNG*, §20 'le plus sage Philosophe de toute l'Antiquité Payenne'; §27 'rien n'est plus beau que leur Morale, considérée en elle-même'; §28 'le meilleur Traité de Morale que nous ayions de toute l'Antiquité'; §29 'le rétablissement des Sciences' and 'a rompu la glace'; §30 'secouer le joug tyrannique'. For the influence of Stoicism on Barbeyrac's thought and his interpretation of Stoic thought, see Christopher Brooke, 'How the Stoics became Atheists', in *The Historical Journal* 49:2 (2006). This

Barbeyrac reserves his highest esteem for the ‘purity’ of the moral philosophy of Jesus Christ, which stands alone as the sole moral system ‘wholly conformed to Reason, and the true interests of Mankind’.¹⁵ At the heart of Barbeyrac’s system of natural morality is thus the idea that morality and religion, reason and revelation, stand together in perfect harmony and reciprocity.¹⁶

III

Natural Religion

The perfect harmony that Barbeyrac argues for between morality and religion, specifically the Christianity of the Gospel, rests upon his system of natural religion: ‘In essence, the fundamental principles of Natural Religion, which ought to be the basis of all Religions, are also the most solid, or rather the sole foundation of the Science of Morality’.¹⁷ For Barbeyrac, doctrinal religion in all its diverse instantiations and true morality, i.e., natural law, share the same foundation and thus, to a certain extent, the same purpose; namely, to inspire men to virtue and lead them away from vice.¹⁸ By explicitly grounding his theory of natural law in the principles of natural religion, Barbeyrac was indicating his adherence to the Stoic belief that there are a certain number of common beliefs, comprising the essentials of religion, that may be found at the heart of the vast number of diverse – and *prima facie* conflicting – religious doctrines.¹⁹ For Barbeyrac, it follows from this that the truths of natural religion must be accessible to human reason and thus capable of rational demonstration. Since the principles of natural religion provide the foundation for both morality and revealed religion, reason gives individuals access to both, an unorthodox belief closely associated, in Barbeyrac’s times, with the charge of Socinianism.

article, following minor revisions, has been recently reprinted in Brooke’s more extensive survey of Stoic thought in the early modern period: *Philosophic Pride: Stoicism and Political Thought from Lipsius to Rousseau*, (Princeton, 2012).

¹⁵ Barbeyrac, ‘Préface’ *DNG*, §8: ‘entièrement conformes à la Raison & aux véritables intérêts du Genre Humain’.

¹⁶ Cf. Chapter 4, p. 119.

¹⁷ Barbeyrac, ‘Préface’, *DNG*, §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’.

¹⁸ Barbeyrac, *DNG*, 2.4.3, Note 4.

¹⁹ B. A. Gerish, ‘Natural and Revealed Religion’, in *The Cambridge History of Eighteenth-Century Philosophy*, ed. K. Haakonssen, (Cambridge, 2006), p. 647.

For Barbeyrac, the principles of natural religion may be discovered by ‘sincere lovers of the Truth’ who seek ‘a just medium between the simple minded presumption of a resolute Dogmatist... and the false modesty of an excessive Pyrrhonian’.²⁰ First amongst these truths is the knowledge that all rational persons have of ‘a Creator infinite in Power, Wisdom and Goodness’.²¹ This is a necessary truth, Barbeyrac claims, because ‘without the Divinity, there would be nothing that could impose the indispensable necessity of acting or not acting in a certain manner’, that is to say, there could be no genuine moral obligation without which, in turn, there could be no morality and no religion.²² To establish that this is also a self-evident truth, Barbeyrac turns to Locke, who he credits, together with Le Clerc, with offering ‘the strongest and most natural proofs’ that God exists and that He is a providential God.²³ The Lockean argument that Barbeyrac refers to here is the claim that the existence of cogitative beings, such as man, logically entails the ‘necessary Existence of an eternal Mind’ upon whom ‘all other knowing Beings that have a beginning’ necessarily depend, both for their power and their knowledge; thus establishing the omniscience, power and providence of God.²⁴

The claim that the idea of a providential God is self-evident, i.e., a demonstrative truth accessible to reason because of its logical necessity, is indicative of its common acceptance at the time. A much more hotly contested issue was the limit of natural knowledge of God, that is to say, how extensive is the distance between God and man in the postlapsarian state? In this debate, Barbeyrac wanted to position himself between, on one hand, Pufendorf’s claim – and thus implicitly Hobbes’s – that this is a gulf which precludes any certain natural knowledge of God beyond the fact of his existence and, on the other, Leibniz’s claim that man and God form a moral community such that the difference between human and divine reason is one of degree not kind. Rejecting the idea that man and God form a moral community, Barbeyrac nonetheless wants to argue that human reason is capable of securing a more comprehensive idea of the divine nature than Pufendorf allows for; a move that is essential for his subsequent arguments

²⁰ Barbeyrac, ‘Préface’, *DNG*, §3: ‘Les amateurs sinceres de la Vérite’ and ‘un juste milieu entre la sottise présomption d’un Dogmatique decisive... & la fausse modestie d’un Pyrrhonien outré’.

²¹ Barbeyrac, ‘Préface’, *DNG*, §3: ‘un Créateur infini en Puissance, en Sagesse & en Bonté’.

²² Barbeyrac, ‘Préface’, *DNG*, §6: ‘Sans la Divinité, on ne voit rien qui impose une nécessité indispensable d’agir ou de ne pas agir d’une certaine maniere’. This argument is developed at length in the subsequent chapter.

²³ Barbeyrac, *DNG*, 2.3.20, Note 1: ‘les preuves les plus fortes & les plus naturelles’.

²⁴ Locke, *Essay*, 4.10.12.

concerning the authority of conscience and thus a theory of natural law that comprises duties to God as well as to oneself and others.²⁵

Barbeyrac takes it for granted that, in speaking of the divine nature, it is impossible knowingly to attribute the slightest imperfection to God. Yet, he adds, this is ‘relative to the lights of each individual’.²⁶ People often lack the penetration necessary to appreciate the profundity of divine nature, even those of greatest learning, who apply themselves with the greatest care to this question; a state of affairs exacerbated by the imperfections of human language, which make it poorly suited to the task of expressing the divine nature.²⁷ Moreover, all efforts to understand the divine nature derive from reasoned reflection on God’s actions within the human forum, thus the essential, profound nature of God necessarily remains beyond human cognition. Setting aside such subtleties, Barbeyrac alleges that there are certain gross imperfections that it is always reprehensible to attribute to God: namely, pagan superstitions that attribute ‘to God, not only the needs, but also the Weaknesses and even the Vices of Men’, and those contemporaries that ‘make God the author of Sin... or those who suppose that He requires them to do things that they cannot do without sin, such as being party to Persecution in the name of Religion’.²⁸ For Barbeyrac, the former is a fault of ignorance, arising from a lack of penetration and the absence of any special revelation, whereas the latter constitutes a vincible error, contrary to both natural law and Christian revelation.

In his most considerable departure from Pufendorf, Barbeyrac also claims that, while Pufendorf is right that the certain hope of salvation and the distinct knowledge of the means that God has establish to achieve it may only be known through special revelation, human reason alone is sufficient to establish ‘an indefinite persuasion of a

²⁵ On debates over the nature of God in the early modern period, see Thomas M. Lennon, ‘Theology and the God of the Philosophers’, in *The Cambridge Companion to Early Modern Philosophy*, ed. D. Rutherford, (Cambridge, 2006); on the implications of these debates for theories of natural law in the early modern period, see Knud Haakonssen, ‘Divine/Natural Law Theories in Ethics’, in *The Cambridge History of Seventeenth Century Philosophy*, ed. M. Ayers and D. Garber, (Cambridge, 2003).

²⁶ Barbeyrac, *DHC*, 1.4.5, Note 1: ‘relative aux lumieres de chacun’.

²⁷ Barbeyrac, *DHC*, 1.4.5, Note 1; *DNG*, 2.1.3, Note 3.

²⁸ Barbeyrac, *DHC*, 1.4.5, Note 1: ‘à la Divinité non seulement les besoins, mais encore les Foiblesses & les Vices mêmes des Hommes’ and ‘font DIEU auteur du Peché... ou de ceux qui le conçoivent comme voulant que les Hommes fassent des choses qu’ils ne peuvent faire sans peché, tels que sont les partisans de la Persécution pour cause de Religion’.

Life to come, where the Good will be rewarded, and the wicked punished'.²⁹ For Barbeyrac, Pufendorf is guilty of improperly excluding the latter 'indefinite persuasion' from the province of natural law, where the high probability of divine judgement is an essential motive for fulfilling one's duty.³⁰ The authority of reason is supplemented here by the testimony of the historical record. For, Barbeyrac alleges, the widespread recognition not only of the existence of a providential divinity, or divinities, amongst the pagans, but also a belief in the rewards and punishments of an afterlife indicate that these truths constitute the universal principles of natural religion. In one of his most extensive notes to *Le droit de la nature*, Barbeyrac argues against Bayle, therefore, that a society of idolaters, for example the pagans, who recognised 'the true principles of Natural Religion, despite mixing them with many falsities', is always preferable to a society of atheists.³¹ This is because without these basic principles of natural religion, there can be no morality and thus no compelling reason to observe one's moral duties.

In emphasising and considerably expanding upon the principles of natural religion that Barbeyrac found already established in Pufendorf's original texts, Barbeyrac intended to show that natural law could not be restricted to the human forum alone, as Pufendorf had claimed. Barbeyrac had thus brought the divine forum back in to the picture. The consequences of this for his own system of natural law were far-reaching. For one, it allowed him to insist that natural law cannot be restricted to exterior actions alone, but that it also necessarily comprises the internal movements of the soul.³² Of these, God alone is judge, just as He is judge of the observance or non-observance of all duties of natural law within the divine forum. It was also from this augmented perspective of natural law that Barbeyrac was able to develop his comprehensive concept of conscience as a naturalised moral link between man and God and thus as the source of authoritative moral judgement within the human forum.

²⁹ Barbeyrac, *DHC*, 1.4.8, Note 1: 'une persuasion vague qu'il y a une Vie à venir, où les Gens-de-bien seront récompensez, & les Méchans punis'.

³⁰ Barbeyrac, 'Préface de l'auteur', *DHC*, §6. Cf. Chapter 2, pp. 66-67.

³¹ Barbeyrac, *DNG*, 2.4.3, Note 4: 'principes véritables de la Religion Naturelle, tout mêlez qu'ils étoient parmi bien des faussetez'.

³² Barbeyrac, *DHC*, 1.1.2, Note 2.

IV

Conscience

It is generally acknowledged that the distinctive character of Barbeyrac's natural law theory derives from the central role that he accords to the concept of conscience as a comprehensive moral faculty. Yet precisely because of the extensive and varied use of it throughout his writings, it is a complex concept, at times difficult to clearly and fully elucidate. Conscience was one of the defining ideas of the Protestant Reformation and came to occupy a place of particular prominence not only as a theological concept but also as a moral and political one amongst the leading intellectuals of the Huguenot Diaspora both before and after the Revocation of the Edict of Nantes.³³ The role that Barbeyrac ascribes to conscience is thus deeply rooted in his intellectual and religious heritage as a member of the Huguenot Diaspora, where conscience, as the voice of God in the heart of each individual, was commonly looked upon as a direct moral bond between the man and God; hence the potential for conscience to act as an independent and, if attentively followed immutable, faculty of moral judgement.

The position that Barbeyrac adopted in the debate over the nature of conscience represents a particular, sustained effort at naturalising the concept, that is to say, establishing its veridical character without recourse to the theological principles of confessional religion. He does this, as Tim Hochstrasser has shown, by treating conscience as coterminous with reason, attributing the same authority to right conscience that was traditionally attributed to right reason.³⁴ Conscience is thus both a form of knowledge or truth, i.e., natural law itself, and the means of acquiring that same knowledge or truth, i.e., a deliberative faculty by virtue of which certain truths become known to us and once known become ineluctable principles of action.³⁵ But while conscience may be a natural 'light' with the immutable principles of natural law

³³ For the development of the concept of conscience amongst the Huguenot Diaspora, with particular attention paid to the influence of natural law on this development, see Tim Hochstrasser, 'The Claims of Conscience'. For a more general overview of the concept of conscience in the Protestant Reformation, albeit with a particular focus on the British context, see Edward G. Andrew, *Conscience and its Critics: Protestant Conscience, Enlightenment Reason and Modern Subjectivity*, (Toronto, 2001) and Kevin T. Kelly, *Conscience: Dictator or Guide A Study in Seventeenth-Century English Protestant Moral Theology*, (London, 1967).

³⁴ Hochstrasser, 'Conscience and Reason', p. 290.

³⁵ On the complexities surrounding the concept of reason, see Michel Malherbe, 'Reason', in *The Cambridge History of Eighteenth-Century Philosophy*.

constituting its content, for Barbeyrac, each individual must acquire this content as a form of knowledge or truth through rational reflection. At every turn, Barbeyrac therefore vehemently rejects the idea that conscience possesses innately given moral knowledge.³⁶

This ties in closely to Barbeyrac's insistence that morality, i.e., natural law, is a demonstrative science. For conscience to be the source of authoritative moral judgements, but for the moral principles that these judgements are grounded in to be naturally acquired, these truths must be both necessary and self-evident in order that they may both be acquired in the first place and will also be recognised by others as morally legitimate (and actually be so in the eyes of God too). While reason fulfils this same role to a certain point, conscience differs from reason because of the direct moral continuity that it implies between man and God; evidenced by the fact that it is God not man who remains the master of individual conscience.³⁷ In this way, Barbeyrac imparts to conscience a special kind of authority that derives from the divine authority of God's will, expressed in the precepts of natural law. This is conceptually quite distinct from the idea of conscience as a self-sufficient faculty of moral judgement subject to the will of the individual alone. Hence conscience is only right conscience insofar as it unerringly apprehends and adheres to the laws of nature, understood as precepts of the divine will. Its purpose is to ensure obedience to these precepts.

There is an important distinction that needs to be made here, however, between the idea of right conscience as a criterion of truth and the actual manifestations of individual conscience where the veridical character of right conscience must necessarily accommodate the fact of human fallibility. Barbeyrac thus identifies the faculty of conscience within the individual first and foremost as a faculty of properly reasoned moral judgement:

Conscience is the judgement that each individual forms concerning his own actions, compared with the idea that he has of a certain Rule, namely Law; so that he may determine whether the former are or are not in conformity to the latter. I say: compared to the idea that he has of the Law,

³⁶ Barbeyrac, 'Préface', *DNG*, §3-4 and *DNG*, 2.3.13, Note 3-5; 'Discours Préliminaire de l'Auteur', *TPLN*, §2, Notes 1-3 and §5, Notes 1-2

³⁷ Cf. Chapter 4, p. 140, fn. 105.

and not *with the Law* itself; because Law can only be the Rule of our actions insofar as it is known.³⁸

As Barbeyrac makes clear here, individuals primarily experience conscience through their own moral deliberations about whether a particular action accords with the general precepts of natural law, that is to say, for individuals, conscience concerns the application of the precepts of natural law to the diverse circumstances of individual life. Hence, Barbeyrac claims, *pace* Pufendorf, that while law alone may determine what constitutes rightful action, ‘this does not prevent Conscience from being the immediate rule of our Actions’.³⁹

In recognising within his definition of conscience the imperfect or incomplete knowledge that individuals may possess of the law of nature, where the law is only the rule of action insofar as it is known, Barbeyrac implicitly recognises that the judgements of individual conscience are always susceptible to the effects of human ignorance and fallibility. This is no license, however, for moral imprudence. To guard against the danger of such imprudence, Barbeyrac establishes two principles that all individuals ought to take into consideration before following what they believe to be the determinations of right conscience. First, individuals must consider whether they possess ‘the necessary lights and assistance to judge the matter in hand’ and, secondly, supposing that they do, whether they have actually made use of them in this instance ‘so that one may follow what one’s Conscience suggests without further deliberations’.⁴⁰ The individuals that most often fall foul of these conditions in Barbeyrac’s mind are men of religion and politics, above all the perpetrators of religious persecution, whose judgement is clouded in such matters by their worldly interests. Yet it also seems clear that, generally speaking, few individuals beyond a small number of wise and judicious moral philosophers such as Barbeyrac and his compatriots in the Republic of Letters

³⁸ Barbeyrac, *DHC*, 1.1.5, Note 1: ‘la CONSCIENCE est le jugement que chacun porte de ses propres actions, comparées avec les idées qu’il a d’une certaine Règle nommé Loi; ensorte qu’il conclut en lui même que les premières sont ou ne sont pas conformes aux dernières. Je dis: comparées avec les idées qu’il a de la Loi, & non pas avec la Loi même; parceque la Loi ne sçauroit être la Règle de nos actions, qu’autant qu’on la connoît’.

³⁹ Barbeyrac, *DNG*, 1.3.4, Note 3: ‘cela n’empêche pas que la Conscience ne soit la règle immediate de nos Actions’.

⁴⁰ Barbeyrac, *DHC*, 1.1.5, Note 1: ‘les lumieres & les secours nécessaires pour juger de la chose dont il s’agit’ and ‘ensorte qu’on puisse se porter sans autre examen à ce que la Conscience suggère’. Barbeyrac offers a nearly identical definition of these principles in *DNG*, 1.3.4, Note 3.

would fulfil these conditions. The principles of natural law may be universally applicable and self-evident to all, but moral reasoning itself remains a rarefied art.

Barbeyrac acknowledges the complexities surrounding individual moral judgement, above all how closely such judgements approach the criterion of right conscience, in his classification of the different forms that these judgements may take, whether prior to or subsequent to particular actions. For Barbeyrac, conscience must first be divided into decisive or doubtful ‘according to the degree of persuasion that one possesses regarding the quality of the proposed action’. Decisive conscience may be further divided into demonstrative and probable; demonstrative conscience is founded on demonstrative reasoning and thus is ‘*always right*, or conformed to the Law’, whereas probable conscience is founded on credible reasoning, frequently drawn from authority or example, that may be ‘either *right*, or *erroneous*’ depending on its conformity to the law.⁴¹ Moreover, Barbeyrac claims that following the movements of decisive conscience is a mark of good conscience, and acting against them, bad conscience, regardless of whether the moral reasoning itself is right or erroneous; following bad conscience always constitutes a sin and ‘indicates a great depth of *malice*’. Finally, doubtful conscience may be either hesitant or scrupulous, both of which require considerable caution before any action may be legitimately carried out.⁴²

What we see here in Barbeyrac’s classification of conscience, therefore, is him emphasising the idea that it is not erroneous judgement as such that is condemnable in the eyes of God but rather an indefensible failure to observe the moral judgements of conscience, once apprehended. Erroneous conscience is thus qualitatively different from bad conscience. For, while errors in the judgements of conscience may be either ‘vincible’ or ‘invincible’, both may still reflect a sincere effort to determine the truth. It follows from Barbeyrac’s claim that morality is a demonstrative science that individuals cannot fall into invincible error about the basic precepts of the law of nature because of their self-evident and necessary character. But when the question at hand requires a long chain of reasoning, Barbeyrac claims that most people, whether from lack of insight or

⁴¹ On the different forms of credible evidence for determining justified probabilities in the early modern period, see Lorraine Daston, ‘Probability and Evidence’, in *The Cambridge History of Seventeenth Century Philosophy*, esp. pp. 1116-1122.

⁴² Barbeyrac, *DHC*, 1.1.5, Note 3: ‘selon le degré de persuasion où l’on est au sujet de la qualité de l’action à faire’ and ‘*toijours droite*, ou conforme à la Loi’ and ‘ou *droite*, ou *erronée*’ and ‘marque un grand fonds de *malice*’.

education, will ‘fall without doubt into invincible error; and if they do alight on the truth, it is only by chance’. Insofar as it concerns the human forum, however, it does not matter whether the error is vincible or invincible because, either way, each individual is obliged to follow the light of his (erroneous) conscience, or else ‘directly violate the respect owed to the Legislator’, i.e., God. Yet, Barbeyrac says by way of clarification, while an individual may be *obliged* to follow an erroneous conscience, ‘it does not follow from this, that it is always *excusable* to follow the movements of an erroneous conscience’ in the eyes of God.⁴³

The conclusion that Barbeyrac is driving towards here is that the moral deliberations of conscience, including those of erroneous conscience, can only truly be subject to judgement in the divine forum. To this end, Barbeyrac claims that while each individual labours under a particular duty to avoid falling into vincible error and to suspend all proposed action until greater certainty can be achieved, other individuals, including those possessed of religious or civil authority, may only intervene in the moral deliberations of conscience through peaceful and solid moral instruction, unless some direct harm to society is threatened. This is because the knowledge that any man has of the inner moral deliberations of another individual is necessarily limited: ‘It belongs to God alone properly and directly to punish vincible error or ignorance, as He alone may truly know it’.⁴⁴ Behind Barbeyrac’s argument here lies the claim that the moral judgements of individual conscience, even when erroneous, constitute authoritative moral acts within the human forum. This idea is essential to his subsequent defence of the rights of erroneous conscience, particularly in matters of religious belief within the civil sphere, a contribution to the ongoing debate recently reignited within the Huguenot Diaspora by Pierre Bayle.⁴⁵

⁴³ Barbeyrac, *DHC*, 1.1.7, Note 1: ‘tombent sans doute dans l’erreur invinciblement; & s’ils rencontrent la vérité, ce n’est que par hazard’ and ‘viole directement le respect dû au Législateur’ and ‘il n’ensuit pas de là, que l’on soit toujours *excusable* en suivant les mouvemens d’une Conscience erronée’.

⁴⁴ Barbeyrac, *DHC*, 1.1.7, Note 1: ‘Il n’appartient qu’à DIEU de punir proprement & directement l’erreur ou l’ignorance vincible, comme il n’y a que lui qui puisse la bien connoître’.

⁴⁵ For a brief overview of both Bayle’s original defence of the rights of erroneous conscience and the debate that ensued, see G. Cerny, *Theology, Politics and Letters at the Crossroads of European Civilization: Jacques Basnage and the Baylean Huguenot Refugees in the Dutch Republic*, (Dordrecht, 1987), pp. 297-306. For the further development of this argument, see Chapter 4, Sections V-VI, esp. pp. 141-142 on Barbeyrac’s response to Bayle.

By establishing the faculty of conscience as the source of authoritative moral judgements, Barbeyrac rejects the Pufendorffian idea that natural law ought to be treated purely as the moral precursor to civil law. Instead, bringing conscience to the fore, he indicates his intention to develop a theory of natural law that puts as much emphasis on considerations relating to the divine forum as the human forum. For Barbeyrac, this means that the quality of an individual's inner moral deliberations becomes one of the principal concerns of natural law: 'for intention... is the most essential circumstance' before God, i.e., in the divine forum.⁴⁶ To this end, individuals are required to demonstrate an inner conformity to the law of nature through sincere fidelity to the moral judgements of conscience. Barbeyrac thus constructs a moral framework in which the authority of individual judgements of conscience, even erroneous ones, may be defended within the human forum as duties to God.

The difficulty that Barbeyrac faced was to ensure that the authority that he wanted to attribute to the moral judgements of conscience could not subsequently be used to justify judgements arising from individual caprice, above all religious enthusiasm and unjustified political dissent. By ascribing to conscience considerable moral authority, Barbeyrac asserted the primacy of man's relationship to God; but by insisting that conscience must always be constrained by the dictates of natural law, Barbeyrac emphasised man's dependence on God. In the end, the judgements of conscience take on a morally authoritative character if and only if they are true expressions of the divine will, i.e., natural law. Barbeyrac assumed here that only the foolhardy would risk showing contempt for the divine will and putting their hopes for the life to come in jeopardy by knowingly disobeying or perverting the dictates of conscience. Hence, also, Barbeyrac's emphasis on moral education and instruction for those without the necessary lights to undertake complex moral reasoning. Barbeyrac considered the development of his own theory of natural law as a part of this vital pedagogic enterprise, helping to enlighten his readers and prevent them falling into error or ignorance with respect to their moral rights and duties, apprehended and acted upon according to the judgements of conscience.

⁴⁶ Barbeyrac, *DNG*, 1.7.4, Note 1: 'Car l'intention... est la circonstance la plus essentielle'.

V

The Three Principles of Natural Law

The preceding discussion has sought to elucidate the foundations of Barbeyrac's claim that morality and religion necessarily unfold together within the framework of natural law. From this perspective, natural law becomes a comprehensive moral framework that specifies the necessary rights and duties both for individuals' terrestrial existence in this life and in the hope of salvation in the life to come. His idea of conscience, as a moral conduit between man and God and the source of authoritative moral judgements, establishes natural law as a moral theory concerned with individuals' inner conduct as much as their external acts. Despite his protestations to the contrary, Barbeyrac's reformation of the foundations of natural law marks a clear departure from Pufendorf. Barbeyrac's own theory of natural law arises from his rejection of Pufendorf's single principle of sociability in favour of a triumvirate of principles with the duties owed to God – rather than to others – as the primary one.

Barbeyrac's three principles of natural law follow from the purpose and character of natural law itself. For Barbeyrac, natural law may be distinguished from all forms of positive law, both human and divine, because it alone is comprised of immutable moral principles. This means that natural law must be 'agreeable to the interests of all Men, in all times and in all places, applicable to the infinite difference of individual genius, situation and circumstance' and thus conform 'to the constitution of human Nature in general'. Rebutting Grotius's claim that there is a separate universal, positive divine law revealed to mankind on three separate occasions (immediately after the Creation, after the flood and under the Gospel), Barbeyrac argues that any divine law laying claim to a universal (and thus immutable) character must, first, fulfil the condition of being applicable to all and, second, must be either discoverable by the light of reason alone or have been clearly revealed to all peoples. Yet, he argues, however great the moral truth contained within the Christian revelation may be, it is an empirical fact that 'many Peoples still do not have knowledge of that Revelation'.⁴⁷

⁴⁷ Barbeyrac, *DNG*, 1.8.6, Note 1: 'convenable aux intérêts de tous les Hommes, en tout tems & en tout lieu, vû la différence infinie de ce que demandent la génie, la situation, & les circonstances particulieres' and 'conforme à la constitution de la Nature Humaine' and 'un grand nombre de Peuples n'ont encore aucune connoissance de la Revelation'. See also Grotius, *DGP*, 1.1.15 and Barbeyrac, *DGP*, 1.1.15, Notes 3-5.

Natural law thus occupies the unique role of specifying the rights and duties incumbent on all individuals and applicable to all individuals. It must include all rights and duties that are universal, immutable and discoverable by reason alone. It follows from this that it must include not only duties owed to others, but also duties to oneself and to God. Barbeyrac develops this argument in response to Pufendorf's claim that all duties of natural law can be reduced to a single principle, the sociability principle, according to which 'each individual ought to endeavour to form and to preserve, insofar as it depends on him, a peaceful Society with all others'.⁴⁸ Barbeyrac claims that for Pufendorf the duties owed to God and to oneself only enter into the sphere of natural law as derivatives of the sociability principle; in the case of the former, as the 'the most firm cement of Human Society'.⁴⁹ Barbeyrac amended his interpretation of Pufendorf's sociability principle in each of his revised editions of *Le droit de la nature*, only fully parting company with his fellow Pufendorf commentator Titius in the 1734 edition. Titius had claimed that lying behind Pufendorf's sociability principle was an antecedent principle of self-love, with Barbeyrac eventually adopting the contrary position and defending Pufendorf against an interpretation that would have brought the latter's natural law theory dangerously close to Hobbesian individualism.⁵⁰

Barbeyrac's principal concern, however, is to rebut Pufendorf's claim that there is a separate field of natural theology comprised of duties to God, distinct from the field of natural law. To this end, Barbeyrac claims that natural law is more extensive than Pufendorf allowed for in *Le droit de la nature*; a truth, he argues, implicitly recognised by Pufendorf in other works, above all in *Les devoirs*, where he devoted a whole chapter to the duties of natural religion.⁵¹ Barbeyrac's argument is based on the idea, previously established, that natural law comprises all duties discoverable by the light of natural reason alone and applicable to all individuals in all particular circumstances. This requires not one but three fundamental principles: religion, enlightened self-love and sociability. For Barbeyrac, this triumvirate of natural law principles is not only more

⁴⁸ Pufendorf, *DNG*, 2.3.15: 'chacun doit etre porté a former et entretenir, autant qu'il dépend de lui, une Société paisible avec tous les autres'.

⁴⁹ Barbeyrac, *DNG*, 2.3.15, Note 5: 'le plus ferme ciment de la Société Humaine'.

⁵⁰ Cf. Barbeyrac, *DNG*, 2.3.15, Notes 1 & 5 and Barbeyrac, *DNG* [1706] & *DNG* [1712], 2.3.15, Notes 1 & 5. Barbeyrac refers to Titius' *Observationes in Samuelis L. B. de Pufendorfi De officio hominis et civis juxta legem naturalem libros duo*, (Leipzig, 1703). All references to Titius in this thesis relate to this text.

⁵¹ Barbeyrac, *DNG*, 2.3.15, Note 5.

proper and more natural than Pufendorf's lone principle of sociability, but it is also more ancient. Barbeyrac traces the history of this triumvirate of natural law principles back to the Roman Stoics, Cicero and Mark Anthony, and to the teachings of St Paul as recorded in the Gospel.⁵²

First and foremost, Barbeyrac supposes, man must be considered 'as a creature of God', by virtue of which every individual ought to acknowledge that a perpetual moral relation exists between himself and God. This relation, he states, 'is the proper source of all Duties of Natural Law, which have God as their object, and which are comprised under the name Religion'. Second, whether an individual lives in complete isolation from his fellow humans or not, as a creature 'endowed by his Creator with certain *Faculties*', he thus lies under certain duties with respect to himself; namely to make use of these faculties in accordance with the natural ends for which they were intended. Derived directly from the principle of enlightened self-love, these duties comprise, first, the duty of self-preservation and, second, the duty to cultivate and perfect one's faculties. Finally, as a creature 'inclined and even required by his natural condition to live in *Society* with others', every individual is obliged to do whatever is necessary to preserve this society with others and render himself agreeable to them, as stated by the principle of sociability. This principle, Barbeyrac claims, may be 'the most extensive and the most fecund', but in itself, it cannot be regarded as the foundation of all the duties of natural law.⁵³ These three principles also give rise, respectively, to the three principal virtues: piety, moderation or temperance, and justice.⁵⁴

The conclusion that Barbeyrac is driving towards here, having laid the necessary foundation with his three separate principles of natural law, is precisely the one that Pufendorf was trying to forestall with his lone sociability principle: namely, that 'the Duties that Man owes to God always take precedence over all other duties' and thus constitute the 'first and fundamental part of Morality'.⁵⁵ In the event of a conflict of duties, individuals are thus obliged to fulfil their duties to God before all other duties,

⁵² Barbeyrac, *DNG*, 2.3.24, Note 1.

⁵³ Barbeyrac, *DNG*, 2.3.15, Note 5: 'comme *créature* de DIEU' and 'est la source propre de tous les Devoirs de la Loi Naturelle, qui ont DIEU pour objet, & qui sont compris sous le nom de RELIGION' and 'doué par son Créateur de certaines *Facultez*' and 'porté & nécessité même par sa condition naturelle à vivre en *Société* avec ses semblables' and 'le plus étendu & le plus fécond'.

⁵⁴ Barbeyrac, *DHC*, 1.2.13, Note 1.

⁵⁵ Barbeyrac, *DNG*, 2.3.15, Note 5: '*Les Devoirs de l'Homme envers Dieu l'emportent toujours sur tous les autres*'; Barbeyrac, *TMP*, 5.3: 'la première & fondamentale partie de la Morale'.

both to oneself and to others. Thereafter, the duties of enlightened self-love take precedence over those of sociability, unless the latter accrue greater utility. Barbeyrac thus constructs a moral framework for his theory of natural law within which he is able to assert that ‘the greatest of all interests, and the strongest of all Obligations, or rather the one that is the foundation and source of all others’, that is to say, the first and fundamental duty of natural law, consists in ‘the indispensable necessity that each person is under to follow the light of their conscience’.⁵⁶ Barbeyrac’s naturalised concept of conscience, defined as a faculty of moral judgement, thus comprehends within its sphere of judgement a comprehensive field of natural law duties, both internal and external, with those related to a sincere belief in and worship of God at the forefront.

While Barbeyrac surely intended his argument as a response to the Huguenot experience of religious persecution, it must be remembered that he also conceived of his own project as a pedagogic enterprise. Barbeyrac thus grappled with the question of what it would mean in practical terms to insist on the primacy of an individual’s duties to God and when, if ever, these duties may be dispensed with. For Barbeyrac, the duties of natural religion principally consist in worship of God, as both an interior and an exterior practice, as well as assent to certain speculative truths; that is to say, the principles of natural religion, the most significant of which were elucidated earlier in this chapter.⁵⁷ Worship of God includes the duties of honouring and serving God; obedience to His commands; rendering Him homage through prayer and in acts of grace; admiring and celebrating His greatness; faithfulness in swearing oaths; and so forth.

Specifying the nature of the relationship between interior and exterior worship, Barbeyrac states that ‘*exterior worship* in general is nothing other than a demonstration

⁵⁶ Barbeyrac, *DNG*, 7.8.5, Note 5: ‘le plus grand de tous les intérêts, & la plus forte de toutes les Obligations, ou plutôt celle qui est le fondement & la source de toutes les autres’ and ‘la nécessité indispensable où chacun est de suivre les lumières de sa Conscience’. Cf. Chapter 5, p. 178, fn. 119 for the full passage quoted from here.

⁵⁷ Barbeyrac adopts Pufendorf’s classification of the duties of natural religion here, summarising the duties listed in *DHC* within his notes to *DNG* [1706] and *DNG* [1712], only removing this summary and replacing it with a reference to *DHC*, along with his notes thereof, in the 1734 edition of *DNG* in order to allow greater space for the development on his response to Christian Thomasius regarding the necessity of exterior worship: Barbeyrac, *DNG* [1706] and *DNG* [1712], 2.4.3, Note 2. Cf. Barbeyrac, *DNG*, 2.4.3, Note 2.

of *interior worship*, without which the latter is to no avail'.⁵⁸ Individuals are thus obliged to worship God, externally as well as internally, as witness of their submission to Him. Moreover, he claims, they cannot easily help doing so, given that 'once something has made a vivid impression on our Heart, it cannot easily be hidden'.⁵⁹ Arguing against his fellow Pufendorf commentator Christian Thomasius (1655-1728), Barbeyrac says that exterior worship is also absolutely necessary for the good of society, where it has an educative role to play.⁶⁰ Most people are not capable of acquiring knowledge of and sincerely practising their duties to God without the assistance of moral instruction and the example of others.⁶¹ Exterior worship schools 'the Ignorant and the common people, that is to say... the greater part of Mankind' in their duties to God, 'without which the People would readily forget the Divinity'.⁶² Barbeyrac thus lays the foundation for a defence of the practice of exterior worship of God as a binding obligation intrinsically linked to sincere interior worship.

The difficulty that Barbeyrac faced was that duties such as the exterior worship of God were the same duties that could easily put individuals in grave danger of persecution. Barbeyrac thus concedes that in cases of extreme necessity, 'to avoid some great harm immediately threatened by an unjust Aggressor', individuals may dispense with the duty of exterior worship of God; but even then, only if they can do so 'without their omission thereby constituting any abnegation of the Religion that they believe to be true, or any other mark of contempt for the Divine Majesty'.⁶³ In such cases, Barbeyrac acknowledges, duty gives way to necessity. Necessity, however, does not absolve individuals from all their duties to God. For Barbeyrac, individuals cannot preserve their lives 'to the prejudice of the Glory of God'. To this end, he instructs his readers that it is necessary to suffer all harm, even death, 'rather than to *blaspheme*, or to

⁵⁸ Barbeyrac, *DHC*, 1.4.7, Note 1: 'Le *Culte extérieur* en général n'est autre chose, qu'une demonstration du *Culte Intérieur*, sans lequel il ne sert de rien'.

⁵⁹ Barbeyrac, *DNG*, 2.4.3, Note 2: 'lorsqu'une chose a fait vives impressions sur nôtre Coeur, on ne peut gueres l'y tenir cachée'.

⁶⁰ For the wider context behind Thomasius's claim that exterior worship is not necessary according to the principles of natural religion, see Ian Hunter, *The Secularisation of the Confessional State: The Political Thought of Christian Thomasius*, (Cambridge, 2011), p. 124.

⁶¹ On the moral edification of the people as the principal duty of public ministers of religion, cf. Chapter 4, pp. 137-138 and pp. 145-146.

⁶² Barbeyrac, *DNG*, 2.4.3, Note 2: 'aux Ignorants & aux gens de commun, c'est-à-dire... la plus grande partie de Genre Humain' and 'sans quoi le Peuple oublieront aisement la Divinité'.

⁶³ Barbeyrac, *DNG*, 2.6.2, Note 5: 'pour éviter un grand mal dont on est menacé de près pas un injuste Agresseur' and 'sans que d'ailleurs leur omission emporte aucune abnégation de la Religion qu'on croit bonne, ou aucune autre marque de mépris pour la Majesté Divine'.

commit some act of *Idolatry*, or to renounce *profession of the Religion* that one believe to be true, in order to embrace a religion that one considers to be false'. These duties can never be renounced, or otherwise omitted, no matter what the circumstances. The purpose of individual conscience, with its natural moral light, is to ensure that this does not happen.

The principles analysed in this chapter form the basic moral framework within which Barbeyrac develops his theory of natural law. This theory considers both the divine and the human forum with its idea of the faculty of conscience as a moral link between man and God. It also constitutes an attempt to resolve moral and political problems arising from Barbeyrac's experience as a Huguenot *refugié*, and the needs of the Huguenot Diaspora more generally. Whether or not the theory is satisfactory in philosophical terms, there is a sustained effort to make sense of the role of individual conscience as a moral arbiter and the source of authoritative moral judgements. The purpose of this chapter has been to show how this concern is deeply rooted within the foundations of his natural law. The purpose of the next two chapters, on moral obligation and moral permission respectively, is to argue that this same concern determines the nature of his response to the perennial issue of moral obligation and inspires him to develop his own distinctive theory of moral permission.

Chapter Two

Barbeyrac on Moral Obligation

I

Introduction

‘The proper and direct reason why Men are *obliged* to follow the Rules of Justice, that which imposes upon them the moral *necessity* to conform to these rules, is the will of God, who as their Sovereign Master has a full right to constrain their natural Liberty, as he deems appropriate’.¹ The statement encompasses the basic line of argument developed by Barbeyrac in his theory of moral obligation, namely that the only possible legitimate foundation of moral obligation is the will of God. It is also the view that he wants to ascribe to all three of his principal authors – Pufendorf, Grotius and Cumberland – as part of his project to forge a coalescent and authoritative school of natural law. In his natural law commentaries, Barbeyrac engages not only with his authors but also with other thinkers whose positions he intended to rebut, above all, Bayle and Leibniz. Pufendorf’s critic Leibniz sums up the principal issue at stake: ‘It is agreed that whatever God wills is good and just. But there remains the question of whether it is good and just because God wills it or whether God wills it because it is good and just’.² In modern terms, this is traditionally cast as the debate between voluntarism, where law is an act of will by the divine legislator, and rationalism, where law exists as eternal truths in the understanding of the divinity, with each argument drawing on a different set of moral and theological assumptions; however, as with most typologies, the majority of early modern natural law theorists drew their arguments from both sides of the divide.³

¹ Barbeyrac, ‘Jugement d’un anonyme sur l’original de cet abrégé: avec des réflexions du traducteur, qui serviront à éclaircir quelques principes de l’auteur’, §15: ‘la raison propre & directe pourquoi les Hommes sont *obligés* de suivre les Règles de la Justice, ce qui leur impose la *nécessité* morale de s’y conformer, c’est la volonté de DIEU, qui en qualité de leur Maître Souverain a plein droit de gêner leur Liberté naturelle, comme il le juge à propos’.

² Leibniz, ‘Meditation on the Common Conception of Justice’, in *Leibniz: Political Writings*, p. 45.

³ Several introductions take up the issue of moral obligation from different perspectives, that together provide a detailed account of the historical and philosophical parameters of the debate: John Chandler, ‘Divine Command Theories and the Appeal to Love’, in *American Philosophical Quarterly* 22 (1985); J. B. Schneewind, *The Invention of Autonomy*; Knud Haakonssen, ‘Protestant Natural Law Theory: A General Interpretation’ in *New Essays on the History of Autonomy*, ed. N. Brender and L. Krasnoff, (Cambridge, 2004); Stephen Darwall, ‘The Foundations of Morality: Virtue, Law and Obligation’, in *The Cambridge Companion to Early Modern Philosophy*.

The current chapter elucidates Barbeyrac's theory of moral obligation through a contextualised study of his natural law commentaries. Each section focuses on Barbeyrac's engagement with a different thinker in order to draw out issues that were essential to the development of his own theory of moral obligation, from Grotius, Pufendorf and Cumberland, to Leibniz. This chapter will also provide an opportunity to consider how the different dynamic that existed between Barbeyrac and each of his authors was reflected in the commentaries that accompanied his translations of their texts. In short, Barbeyrac's Grotius translation, *Le droit de la guerre*, throws up the question of whether human reason or human consent can ever provide a solid foundation for moral obligation, whereas in his Pufendorf translation, *Le droit de la nature*, it is the role of conscience that comes to the fore. Likewise, Barbeyrac's Cumberland translation, *Traité philosophique*, provides us with an important insight into Barbeyrac's response to the issue of sanctions and, finally, in his engagement with Leibniz's critique of Pufendorf, the 'Jugement d'un anonyme', Barbeyrac attempts to provide a coherent defence of the proper foundations of divine authority. The central thread that runs through these sections is the development of Barbeyrac's own theory of moral obligation and its relationship to his wider theory of natural law, thereby building on the foundations laid in the previous chapter.

II

Barbeyrac on Grotius: Reason and Consent

Grotius was a compelling figure for early modern natural law theorists, the appeal of his thought lying in the adaptability of his arguments to an array of different perspectives and contexts. Many theorists, therefore, were keen to see themselves as the legitimate successors of the Grotian school of thought, including not only Barbeyrac and Pufendorf, but also theorists that Barbeyrac often identified as his natural opponents, namely Bayle and Leibniz.⁴ His claim, in the Grotius 'Préface', that the works of Pufendorf and Grotius were 'inseparable in themselves and in the manner in which I

⁴ Tim Hochstrasser elucidates Grotius's appeal amongst the leading political theorists of the Huguenot Diaspora and competing claims to be the natural successor to Grotius: 'The Claims of Conscience', esp. pp. 28-37. Fiammetta Palladini provides a powerful refutation of both Barbeyrac's and Pufendorf's own claim that the latter was the natural successor to Grotius, emphasising instead the continuity between Pufendorf and Hobbes (and the reasons for its obfuscation): 'Pufendorf disciple of Hobbes', p. 60.

have undertaken to translate and comment upon them' is thus a polemical ploy designed to underscore the thesis originally presented in his Pufendorf 'Préface' that Pufendorf (and by implication Barbeyrac himself) was the only one to have truly taken on the Grotian mantle in the modern period.⁵ Moulding both in his own image, Barbeyrac thus sought to use Pufendorf's arguments to remedy the defects that he perceived in Grotius's texts and, in turn, Grotian arguments as a corrective to Pufendorffian ones; thereby weaving the two authors together as a means of substantiating his particular reading of both.

In many ways, there was a far greater natural affinity between Barbeyrac and Grotius than there was between Barbeyrac and Pufendorf, above all with respect to the fundamental role that the principles of natural religion have to play in a system of moral philosophy and his general tolerationist outlook. It is reasonable to suppose that Grotius's well-known Arminian sympathies led Barbeyrac to remain relatively silent on the issues of natural religion and conscience in his Grotius commentary, principally because these were not issues on which he considered Grotius to stand in need of remedy. With respect to the foundation of moral obligation, however, Barbeyrac clearly felt that Grotius had opened himself up to misinterpretation. He thus took up the task of ironing out these ambiguities and establishing what he took Grotius's thought to be; namely, like Barbeyrac himself and Pufendorf, that the foundation of moral obligation – its indispensable necessity as Barbeyrac characterises it – derives from the will of God alone. To this end, Barbeyrac sets out both to rebut the arguments found within Grotius's texts that suppose that either human consent or human reason could serve as the foundation of moral obligation, and also any reading of Grotius that takes these arguments to be central (rather than merely supplementary) to the latter's theory of moral obligation.

In early modern theories of moral obligation, a clear distinction is not always made between the moral necessity that gives rise to moral obligation proper and the reasons for fulfilling an obligation in general, i.e., certain motivating factors occurring posterior to the original moral obligation. For Barbeyrac, Grotius's claim for a consent-based, morally obligatory law of nations distinct from the law of nature leads us into just this

⁵ Barbeyrac, 'Préface', *DGP*, p. ii: inséparables & en eux-mêmes, & par la manière dont je m'y suis pris en les traduisant & les commentant'. Cf. Chapter 1, p. 27.

kind of philosophical confusion. Grotius's law of nations, like the law of nature, consists of a right common to all nations, but unlike the law of nature, takes perpetual practice and the testimony of experts as its source.⁶ For Grotius, the law of nations, presenting us with more comprehensible and 'highly probable' proofs of our moral duties, supplements the more 'abstract and subtle' proofs of the immutable law of nature; both forms of law taken together thus form a comprehensive system of international law that mutually support and overlay one another.⁷

Barbeyrac, however, comprehensively rejects consent – or its derivative, custom – as the foundation of either the law of nations or of nature each time that Grotius attributes some field of natural morality, such as the rights of postliminy or burial, to the law of nations.⁸ While individuals may commonly speak of a law of nations to designate those laws that reflect the shared customs or common agreements between nations, Barbeyrac insists that this law of nations is 'a pure chimera' comprised of moral duties that are 'at heart the same as those of *Natural Law*, properly so called: all difference consisting only in the application'.⁹ In short, the precepts do not possess the necessary obligatory force distinct from the law of nature. Barbeyrac claims, therefore, that Pufendorf is right to dismiss Grotius's argument here as a species of ill-founded mutual obligation that would be liable to be disregarded by nations according to their own convenience.¹⁰ Moreover, Barbeyrac adds, a species of moral obligation that rests on the tacit consent of the sovereign would no longer bind the new sovereign in the event of a change of government precipitated by a revolution.¹¹

For Barbeyrac, the basic problem at hand is that both consent and custom are variable, according to changing circumstances and particular utility. Thus any law established on these foundations alone cannot properly account for the moral necessity entailed by a binding obligation. Consent serves as the foundation of a genuine obligation only in the

⁶ Grotius, *DGP*, 1.1.14.

⁷ Grotius, *DGP*, 1.1.12.

⁸ Barbeyrac records his principal objections to Grotius's law of nations in an early note (*DGP* 1.1.14, Note 3), referring his readers back to this note on numerous occasions, as well as to a further note from his earlier Pufendorf commentary (*DNG* 2.3.23, Note 3). See, for example, 'Discours préliminaire', *DGP*, §1 Note 1, §18 Notes 1-2, §41 Notes 5-6 and §55 Note 1 and in *DGP* 1.1.12 Note 1; 1.2.4 Note 5; 2.3.10 Note 8; 2.8.1 Note 1; 2.18.1 Note 1; 2.19.1 Note 1; 2.19.6 Note 1; 3.2.2 Note 1; 3.4.4 Note 1.

⁹ Barbeyrac, *DGP*, 1.1.14, Note 3: 'une pure chimère' and 'au fond les mêmes que celles du *Droit Naturel*, proprement ainsi nomme : toute le différence qu'il y a, consiste dans l'application'.

¹⁰ Pufendorf, *DNG*, 2.3.23.

¹¹ Barbeyrac, *DNG*, 2.3.23, Note 6.

more limited sense that one is obliged by the law of nature to be true to one's word; it is in this way only that nations may enter into formal conventions with one another.¹² But for Barbeyrac this does not change the essential point that while consent and custom may present individuals with a compelling reason for undertaking a particular action, it is only as evidence of a pre-existing moral obligation, or as a general motive for obedience. Not only does Barbeyrac seek to establish this opinion for himself, but also, *pace* Cumberland's interpretation of Grotius, to argue that Grotius also shared this point of view.¹³

In his interpretation of Grotius, therefore, Barbeyrac argues that Grotius himself implicitly recognises that the indispensable character of moral obligation is grounded in the will of God alone. However, the problem here, as Barbeyrac knew all too well, was that his interpretation of Grotius was not the only plausible one available to him and his contemporaries. Much of the ambiguity arose from Grotius's controversial statement that the maxims of reason, i.e., the duties of sociability, would hold true 'even if one were to concede, that which one cannot be conceded without considerable sin, that there is no God, or if there is a God, that He does not take any interest in human affairs'.¹⁴ Grotius makes this statement in the context of his own rebuttal of scepticism, where he is arguing that the knowledge that individuals possess of the maxims of reason, i.e., the law of nature comprising the principle of sociability alone, would hold true, insofar as it is derived from natural reason and empirical observation.¹⁵ In light of this, Knud Haakonssen argues that Grotius is not speaking here of the foundation of moral obligation as such, but rather the separation of the foundation of moral obligation within the sphere of natural law from that of the Christian religion.¹⁶ This argument is supported by the fact that, in the passages following Grotius's 'even if' statement, he states that from the natural knowledge that individuals possess of God, it is clear that the free will of God constitutes an equal source of the law of nature.¹⁷

The danger that Barbeyrac perceives in Grotius's thought here is that it opens the door

¹² Barbeyrac, *DNG*, 2.3.23, Note 2.

¹³ Barbeyrac, 'Discours préliminaire', *TPLN*, §1, Note 3.

¹⁴ Grotius, 'Discours préliminaire', *DGP*, §11: 'quand même on accorderoit, ce qui ne se peut sans un crime horrible, qu'il n'y a point de DIEU, ou s'il y en a un, qu'il ne s'intéresse point aux choses humaines'.

¹⁵ Grotius, 'Discours préliminaire', *DGP*, §5-10.

¹⁶ Knud Haakonssen, *Natural Law and Moral Philosophy*, p. 29.

¹⁷ Grotius, 'Discours préliminaire', *DGP*, §11-12.

to a theory of moral obligation where God is rendered superfluous; a danger realised in Bayle's alternative reading of Grotius as a thinker for whom the law of nature may be derived from purely naturalistic premises.¹⁸ Bayle, also positioning himself as the natural successor to the Grotian school of thought, cites Grotius in support of his argument that the constitution of man and the nature of justice are eternal essences; hence, by virtue of reason alone, all individuals may discern the moral good that is inherent within what is naturally virtuous and so conform their ideas and actions to a moral rule independent of considerations of utility. Consequently, the law of nature is morally obligatory for both the God-fearing and atheists alike.¹⁹ Once again, Barbeyrac is keen to rebut Bayle's claim that natural morality can exist in all its force for atheists, claiming instead that the idea of morality grounded in natural virtue and reason lacks both the original obligatory moral necessity founded in the will of God and the accompanying motivating force provided by our natural knowledge of the strong likelihood of divine sanctions.²⁰

In his commentary to Grotius's 'even if' statement, Barbeyrac therefore chooses to bring the issue of the proper foundation of moral obligation to the fore. It is true, he argues, that the maxims of natural law are founded 'in the nature of things, in the constitution of Man himself, whereby there arise certain relations between certain actions and the state of a Reasonable and Sociable Animal'.²¹ Hence, Grotius's statement may be admitted only insofar as it expresses the immutable character of the laws of nature founded in a necessary conformity to the constitution of man. But to speak exactly, Barbeyrac continues,

Duty and Obligation, or the indispensable necessity to conform one's actions to these ideas and these maxims, necessarily supposes a Superior, a Sovereign Master of Men, that is to say, the Creator or Supreme Divinity.²²

For Barbeyrac, while natural reason may reveal to us the content of the law of nature, it

¹⁸ Barbeyrac, *DNG*, 2.3.19, Note 2; see also *DNG*, 2.3.4, Note 2.

¹⁹ Pierre Bayle, *Continuation des pensées diverses, écrites à un Docteur de Sorbonne, à l'occasion de la comète qui parut au mois de Decembre 1680*, 2 Volumes, (Rotterdam, 1705), Vol. 2, §152.

²⁰ Barbeyrac, *DNG*, 2.3.19, Note 2.

²¹ Barbeyrac, 'Discours préliminaire', *DGP*, §11, Note 1: 'dans la nature des choses, dans la constitution même des Hommes, d'où il résulte certaines relations entre telles ou telles actions & l'état d'un Animal Raisonnable & Sociable'.

²² Barbeyrac, 'Discours préliminaire', *DGP*, §11, Note 1: 'le *Devoir* & l'*Obligation*, ou la nécessité indispensable de se conformer à ces idées & ces maximes, suppose nécessairement un Supérieur, un Maître Souverain des Hommes, qui ne peut être que le Créateur ou la Divinité Suprême'.

cannot itself be the source of the indispensable necessity entailed by a moral obligation. That requires God, whose will is the original source of the law of nature. If reason were to be the foundation of obligation itself, Barbeyrac supposes, individuals would be both the source and the object of an obligation with no external authority capable of preventing the human passions – an equally strong and natural source of the determinations of the will – superseding the demands of reason. Thus, while it is true that God cannot command anything contrary to the natural order of things, his act of will as lawgiver is essential to the obligatory force that accompanies the natural maxims of reason and gives them the proper character of law.²³

The problem for Barbeyrac is that it is not at all clear that Grotius shares his perspective on the foundation of moral obligation. In his discussion of moral obligation proper, Grotius again maintains that the precepts of the law of nature specify certain actions as morally honourable or dishonourable according to their necessary conformity to the rational and sociable nature of man. These actions, he claims, are ‘obligatory or illicit in themselves’. Thus it is only by virtue of their intrinsic natural rectitude that ‘one may conceive of them as necessarily commanded or forbidden by God’.²⁴ In short, reason comprehends the content of the laws of nature in such a way that the knowledge itself of these precepts and their natural rectitude entails a binding moral obligation. God – if not superfluous – certainly occupies an ancillary role for Grotius in the foundation of moral obligation. The issue at hand here is whether morality is an eternal and essential feature of the natural order or whether it is instituted by God within the human world by an act of his will. Grotius’s account of moral obligation – and his general definition of law as what is good and praiseworthy – suggests a reading of him that places him in the former camp. But Grotius’s claim that these obligatory maxims of reason must also be understood to be commanded by God as an act of his will creates an ambiguity that Barbeyrac is keen to turn to his advantage.

In his commentary to *Le droit de la nature*, Barbeyrac claims that Grotius did in fact perceive, albeit faintly, the true foundation of the law of nature and thus moral obligation. Not only did Grotius provide an independent standard to determine the

²³ Barbeyrac, *DGP*, 1.1.10, Note 4.

²⁴ Grotius, *DGP*, 1.1.10: ‘obligatoires ou illicites par elles-mêmes’ and ‘on les conçoit comme nécessairement ordonnées ou défendues de DIEU’.

necessary honesty and turpitude of actions in light of their conformity to a rational and social nature, Barbeyrac claims, but he also recognised, like Pufendorf, that ‘this necessity is not a necessity absolutely independent of the Divine Will’. All that separates Grotius from himself and from Pufendorf, Barbeyrac alleges, is ‘a dispute of words’. From this perspective, he dismisses Grotius’s other commentators for having poorly understood his thought, claiming instead that it is much closer to Pufendorf’s than is readily acknowledged.²⁵

As well as emphasising a voluntarist reading of Grotius here, Barbeyrac is also allying Grotius to Pufendorf in order to allow for a reading of Pufendorf that blurs his sharp distinction between natural and moral good. This amalgam of Grotius and Pufendorf not only serves Barbeyrac in his project to establish these two thinkers as the founders of modern natural law, but also reflects a position that is much closer to his own thought than either thinker in isolation. In short, for Barbeyrac, Grotius is right to say that certain actions possess a natural and intrinsic honesty, but wrong to conclude from this that this natural honesty can be the foundation of moral obligation proper.

Barbeyrac’s interpretation of Grotius on the issue of moral obligation is typical of his attempts to establish a natural concurrence between both Grotius’s and Pufendorf’s theory of natural law. With respect to the issue of moral obligation, his commentary also reveals his own concern, namely, that the indispensable necessity that characterises moral obligation proper has its sole foundation in the will of God. Barbeyrac thus rejects out of hand the possibility that moral obligation can stem from our own selves, whether in the form of reason’s awareness of the nature of things or as a product of custom and consent. The danger that he perceived here is that purely naturalistic premises could ultimately render God superfluous and – without God as the foundation of morality – one cannot meaningfully speak of man’s duties to God as the first part of natural morality nor liberty of conscience as the first duty thereof.

²⁵ Barbeyrac, *DNG*, 2.3.4, Note 5: ‘cette nécessité n’est pas une nécessité absolument indépendante de la Volonté Divine’ and ‘une dispute des mots’.

III

Barbeyrac on Pufendorf: Will and Conscience

As we have seen, Barbeyrac established his scholarly reputation with his translations of Pufendorf, considering the latter's original treatises of natural law worthy of high esteem but in need of extensive restoration.²⁶ In the case of his theory of moral obligation, Barbeyrac draws heavily on the Pufendorf's conceptual framework, above all the claim that law is instituted by a superior, whose act of will in this regard creates a moral obligation. However, Barbeyrac extends this original framework, arguing that individual conscience is indispensable as the origin of the 'sentiment' of moral obligation within the individual. In so doing, Barbeyrac invests individual conscience with considerable moral authority. He is thereby able to claim, *pace* Pufendorf, that the obligatory force of natural law rests on a secure foundation that every individual is capable of recognising by means of the sentiments that naturally arise within his own person, i.e., the interior movements of a properly calibrated conscience.

Broadly speaking, Barbeyrac endorses the arguments that Pufendorf put forward concerning the original source (and thus foundation) of human morality. As we saw in his response to Grotius, Barbeyrac, like Pufendorf, insists that the character of natural law is not that of prescribing or forbidding things that are naturally honest or illicit in themselves, agreeing instead with Pufendorf that 'the *Morality* of Human Actions depends on Law'.²⁷ For Pufendorf, this consists of a radical separation of natural and moral good, that is, his theory of moral entities.²⁸ While Barbeyrac does not insist upon quite such a sharp distinction between natural and moral good, he does indicate his general assent to Pufendorf's line of argument here, above all, the idea that prior to law

²⁶ Cf. Chapter 1, pp. 24-25. See also, Barbeyrac, 'Jugement d'un anonyme', §2.

²⁷ Pufendorf, *DNG*, 2.3.4: 'la *Moralité* des Actions Humaines dépend de la Loi'.

²⁸ Pufendorf, *DNG*, 1.1. Michael Seidler argues that Pufendorf rejected both the teleological and consequentialist accounts of the relationship between natural and moral good, i.e., the claim that the law of nature is directly linked either to the intrinsic nature of things or to the outcomes of actions: 'Pufendorf's Moral and Political Philosophy' in the *Stanford Encyclopaedia of Philosophy*, ed. E.N. Zalta, (2010). Accessed via: <http://plato.stanford.edu/archives/fall2010/entries/pufendorf-moral>. The extent to which Pufendorf succeeded in establishing a non-metaphysical foundation for natural law and moral obligation has been the subject of debate in recent scholarship. J.B. Schneewind considers Leibniz's objections to reveal the inherent weaknesses of Pufendorf's non-metaphysical theory of moral obligation. See J.B. Schneewind, 'Pufendorf's Place in the History of Ethics', in *Synthese* 72 (1987) and more recently *The Invention of Autonomy*. In *Rival Enlightenments*, Ian Hunter claims that Leibniz's objections to Pufendorf must be placed within the context of the wider philosophical struggle at hand with Pufendorf's and later Thomasius's civil philosophy offering a viable alternative vision of the foundation of moral obligation to that of Leibniz and later Kant.

all human actions are morally indifferent.²⁹ The claim that Barbeyrac wants to establish, following Pufendorf, is that morality is not coeval with God or the natural world. It is coeval with man. For Barbeyrac, morality and thus certain moral obligations ‘are attached to Man from the moment of Creation itself’.³⁰ From this perspective, natural good serves as the foundation for morality only insofar as it provides *reasons for* the laws of nature. Natural law is thus consistent with naturally acquired benefits and harms but neither natural rectitude nor natural utility can be the source of moral obligation itself.

For Barbeyrac, as for Pufendorf, ideas of will, law and obligation are conceptually linked. Preferring to build on Pufendorf’s definition of law as ‘the will of a superior, by which he imposes on those dependent upon him the obligation to act in the manner that he prescribes’ rather than Grotius’s alternative formulation of law as ‘a Rule of Moral Actions that obliges us to that which is good and praiseworthy’, Barbeyrac himself defines law as:

the will of a Superior, sufficiently notified in some manner or other, by virtue of which he directs either all the actions in general of those who depend on him, or at least those of a certain genre; consequently, with respect to these actions, that superior either imposes an absolute necessity to act or not act in a certain manner, or leaves a liberty to act or not act, as one deems appropriate.³¹

Barbeyrac’s definition of law lays the foundation for his claim that there are two distinct categories of natural law, namely obligatory natural law and permissive natural law. The liberty left by the latter concept of law creates a moral permission, whereas the absolute necessity imposed by the former concept of law creates a moral obligation. Both forms of natural law, however, have as their origin the commanding authority of the divine will. The remaining discussion will focus purely on obligatory natural law, leaving the issues surrounding permissive natural law to the following chapter.

²⁹ Barbeyrac, *DNG*, 1.2.6, Note 1.

³⁰ Barbeyrac, *DNG*, 1.1.4, Note 3: ‘sont attachez à l’Homme des le moment même de la Création’.

³¹ Pufendorf, *DNG*, 1.6.4: ‘une Volonté d’un Supérieur, par laquelle il impose à ceux qui dépendent de lui l’obligation d’agir d’une certaine manniere qu’il leur prescrit’; Grotius, *DGP*, 1.1.9: ‘, une Règle des Actions Morales, qui oblige à ce qui est bon & louable’; Barbeyrac, *DHC*, 1.2.2, Note 1: ‘une volonté d’un Supérieur, suffisamment notifiée d’une maniere ou d’autre, par laquelle volonté il dirige ou toutes les actions généralement de ceux qui dépendent de lui, ou du moins toutes celles d’un certain genre; ensorte que, par rapport à ces actions, ou il leur impose la nécessité d’agir ou de ne pas agir d’une certain maniere, ou il leur laisse la liberté d’agir ou de ne point agir, comme il juge à propos’.

For Barbeyrac, as his definition of law indicates, the moral necessity required by moral obligation is created by the formal act of *willing* on the part of a legitimate superior. There may be other means by which we come to possess moral knowledge and other reasons for acceding to our moral duties, but the obligation itself derives from the will of a superior. Thus, while every obligatory law contains both a precept and a sanction, it is the precept, as the distillation of a superior's act of will (rather than the sanctions that accompany it) that gives rise to moral obligation proper. Insofar as it relates to obligatory natural law, Barbeyrac thus agrees with Pufendorf that obligation itself is 'a Morally Operative Quality, by virtue of which one is constrained to do or to suffer a certain thing'.³² Moral obligation is distinguished from mere external constraint because moral obligation affects the will inwardly by laying it under a moral bond. A true obligation must thus act morally on the heart of an individual and thereby directly influence the determinations of his will.

In building his theory of law and obligation on Pufendorfian foundations, Barbeyrac was faced with the same objections that Pufendorf had faced. First amongst these, for his contemporary critics, was that the will of a superior is arbitrary.³³ If there is no morality prior to its institution by an act of God's will, nothing prevents God from freely altering the content of the law of nature so that the just becomes unjust and the unjust becomes just. The issue at stake for Barbeyrac – and for his interpretation of Pufendorf – is whether he can establish that individuals possess sufficient knowledge of the divine nature to see that God's legislative will is not arbitrary and free from all constraint by virtue of His omnipotence.³⁴

In arguing against this objection, Barbeyrac makes use of Pufendorf's analogy of the architect who is free to build a palace or a hut but necessarily has to use the appropriate materials for the construction that he does in fact build. God was free to create man as an animal with whatever nature pleased him, but once he settled on man as a rational and sociable creature, it was necessary for him to form the law as he did. Natural law is thus not arbitrary, but conforms to the nature of man and the order of the natural world.

³² Barbeyrac, *DNG*, 1.6.5, Note 1; Pufendorf, *DNG*, 1.6.5: 'une Qualité Morale Operative, par laquelle on est tenu de faire ou de souffrir quelque chose'.

³³ Leibniz, 'Mediation on the Common Conception of Justice', p. 46

³⁴ Cf. Chapter 1, Section III.

In this sense there is congruity between natural and moral good. Moreover, Barbeyrac alleges, it would be a fundamental mistake to assume the will of God is arbitrary in this respect, for it is never possible to separate ‘the Will of God from his Goodness and Wisdom’. God exercises his authority through acts of will not merely as omnipotent but also as all-good and all-wise. Attributing the same view to Pufendorf, Barbeyrac claims that the law of nature is an act of divine will because ‘this Will is the principle of God’s actions’ and furthermore ‘his Wisdom and his Goodness are attributes, the exercise of which is sovereignly free, by virtue of which they could not be conceived of independent of his Will’.³⁵

The traditional difficulty that arises from this argument is that it supposes that God himself is subject to some kind of necessity, by virtue of which he is constrained from acting in a certain manner. Taking a stronger line than Pufendorf, although still not fully resolving this difficulty, Barbeyrac claims that, in God, this is ‘a glorious necessity, and a happy impotency, which follows from the perfections of his own infinite essence’. This argument rests on the idea that the exercise of divine omnipotence is always tempered by the other necessary attributes of the divine nature in such a manner that this necessity does not constitute a constraint to the divine will in the same way that man’s will is constrained by the indispensable necessity of moral obligation. Rather the entirety of God’s perfections are realised in this very necessity. For Barbeyrac, therefore, ‘there is nothing repugnant to the independence of an All-Perfect Being, to say, that he *necessarily* proscribes or forbids things that possess a necessary conformity or disconformity with the constitution of our Nature, of which he is himself the Author’. As well as setting out his own position here, Barbeyrac also intends to defend Pufendorf against charges of Hobbesianism. In the latter respect, however, his argument presupposes a more comprehensive knowledge of God and the divine nature than Pufendorf generally allows for in his natural law treatises.³⁶

³⁵ Barbeyrac, *DNG*, 1.1.4, Note 4: ‘la Volonté de Dieu d’avec sa Bonté & sa Sagesse’ and ‘cette Volonté est le principe des actions de Dieu’ and sa Sagesse & sa Bonté sont des attributs dont l’exercice est souverainement libre & par conséquent qui ne sçauroient être conçus sans la Volonté’.

³⁶ Barbeyrac, *DNG*, 2.3.4, Note 2: ‘une nécessité glorieuse, & une heureuse impuissance, qui suit des perfections de son essence infinie’ and ‘il n’y a rien qui répugne à l’indépendance de l’Être Tout-Parfait, de dire, qu’il veut *nécessairement* prescrire ou défendre les choses qui ont une convenance ou disconvenance nécessaire avec la constitution de nôtre Nature, dont il est lui-même l’Auteur’.

For Barbeyrac, having rejected the idea that God's will is an arbitrary foundation for natural law in general and moral obligation in particular, it follows that the law of nature does not need to be expressly published from the mouth of God in order to be properly obligatory.³⁷ Here, Barbeyrac takes up the Pufendorffian line of argument, *pace* Hobbes, that knowledge of God's will as a law exists independently of its promulgation in Holy Scripture, i.e., by virtue of divine Revelation. It need not be supposed, Pufendorf claims, that 'all Law ought necessarily be published either spoken aloud or in writing', rather all that is necessary to apprehend the laws of nature is that 'the will of the Legislator is known in some manner, even by Natural Light alone'.³⁸ Reasoned reflection provides the content of the law of nature and, once known, the moral necessity that accompanies its precepts; both of which embody the natural conformity that exists between these obligatory precepts and the constitution of divinely created human nature.

Pufendorf's argument here rests on the idea that the training of reason and the learning of language are simultaneous, thus knowledge of the law of nature necessarily depends on some prior linguistic convention.³⁹ Law and obligation cannot exist independently of language. As we shall see in the following chapter, Pufendorf believes that linguistic conventions depend on the prior existence of purposive social interaction.⁴⁰ Hence, within Pufendorf's theory of natural law, language and thus some form of society must be presupposed in order for individuals to acquire knowledge of the laws of nature independently of divine revelation. This argument is in keeping with Pufendorf's general concern to restrict the scope of natural law to a purely social function.

Taking the argument beyond Pufendorf, Barbeyrac argues, on the contrary, that language is only necessary for knowledge of the law of nature in order to communicate one's thoughts to others. With respect to each individual, Barbeyrac claims that 'the sentiments of conscience, which convince us of the obligation that we are under to act

³⁷ Barbeyrac, *DNG*, 1.6.4, Note 2.

³⁸ Pufendorf, *DNG*, 1.6.4: 'toute la Loi doit nécessairement être publiée ou de vive voix, ou par écrit' and 'l'on connoisse la volonté du Législateur de quelque maniere que ce soit, même par la Lumiere Naturelle toute seule'.

³⁹ Hochstrasser, *Natural Law Theories*, pp. 89-91.

⁴⁰ Cf. Chapter 3, Sections IV-VI.

according to these maxims, are also independent of language'.⁴¹ For Barbeyrac, individuals may thus come to possess knowledge of natural law independently of the existence of either language or society, theoretically speaking, by means of the sentiments of obligation arising within each individual's conscience. With respect to obligation, conscience is the locus for two distinct sentiments. First, there is the 'sentiment of the *conformity* or *disconformity* of acting or not acting in a certain manner, such that in acting otherwise, one would be guilty of not having followed the light of Reason, and judge oneself worthy of blame'. From this, there necessarily follows a further sentiment of '*fear*, whether distinct or uncertain, of some *harm* that one may incur in acting or not acting in a certain manner'.⁴²

Barbeyrac's description of the sentiments of obligation here bears a strong similarity to his original definition of conscience itself; both rest on the idea that conscience is the source of authoritative moral judgements concerning the conformity of human actions to the precepts of natural law, i.e., the commands of the divine will.⁴³ It is in this sense, therefore, that Barbeyrac conceives of conscience as the immediate rule of action. Defending himself against the objections raised by his fellow Pufendorf commentator Gottlieb Samuel Treuer (1683-1743), Barbeyrac claims however that conscience, as the locus for this sentiment of obligation, is not the source of the obligation itself, but rather it is 'the impression that the idea of obligation makes' on those who already possess knowledge of the law of nature. While Barbeyrac wants to ascribe considerable moral authority to conscience, he rejects the idea of conscience as a self-legislating authority. In essence, conscience apprehends and evaluates particular human acts after the fact of the law, whereas an indispensable moral necessity 'can only be imposed by an exterior principle, by a Being who has the *right* to compel us to follow certain rules, and to make us suffer some harm, if we fail to do so'.⁴⁴

⁴¹ Barbeyrac, *DNG*, 1.6.4, Note 2: 'Les sentimens de la Conscience, qui nous convainquent de l'obligation ou nous sommes d'agir, selon ces maximes, sont aussi indépendans du langage'.

⁴² Barbeyrac, *DHC*, 1.2.3, Note 1: 'un sentiment de la *convenance* ou de la *disconvenance* qu'il y a à agir ou ne pas agir de telle ou telle maniere; ensorte que si l'on se conduit autrement, on se reproche de n'avoir pas suivi les lumieres de la Raison, & l'on se juge digne de blame' and 'une *crainte* ou distincte, ou confuse, de quelque *mal* que l'on pourra s'attirer en agissant ou n'agissant pas de telle maniere'.

⁴³ Cf. Chapter 1, pp. 33-34.

⁴⁴ Barbeyrac, *DHC*, 1.2.3, Note 1: 'l'impression que fait l'idée de l'*Obligation*' and 'ne peut être imposée que par un principe extérieur, par un Etre qui ait *droit* de nous assujettir à suivre certaines règles, & de nous faire souffrir quelque mal, si nous y manquons'. Barbeyrac refers to Treuer's *Sam. L. B. de Pufendorf De officio hominis et civis secundum legem naturalem libri duo*, (Leipzig, 1726).

In this way, Barbeyrac's theory of conscience explains how the externally imposed law-based moral norms are consonant with our inner moral experience. Yet whatever conscience adds to the original moral obligation, this still only constitutes a *reason for* acting in conformity with the law, however compelling this inner sentiment may be. For Barbeyrac, the laws of nature always impose a moral obligation upon an individual regardless of whether that individual himself experiences the inner sentiment of obligation. Conscience thus serves to strengthen and assure us of our moral duties and rights, but it is not in itself the foundation of these moral duties and rights. It is in the role that Barbeyrac ascribes to conscience that he departs most clearly from Pufendorf, for in this way Barbeyrac brings in the divine forum, namely, the necessity of inner conformity to the law of nature and the motivating force produced by the inner sentiment of obligation. For Pufendorf, these considerations must be excluded from natural law in the interests of preserving stable social relations. For Barbeyrac, however, naturally acquired knowledge of the divine judicature is essential to explaining the true force of our moral motivations, that is to say, the second of the two sentiments of obligation identified above: the fear of sanctions.

IV

Barbeyrac on Cumberland: Natural and Divine Sanctions

Barbeyrac's Cumberland translation, his *Traité philosophique*, is certainly not a labour of love crafted in the same way as his earlier translations of Pufendorf and Grotius. This much is evident from his willingness to supplement his own notes, which are more scant than in his other major translations, with the notes of the English editor John Maxwell (1705-1784?), despite his heavy criticisms of the latter.⁴⁵ Barbeyrac's muted engagement with Cumberland's thought raises the question of what kind of intellectual project he was pursuing through his translation of the text.

⁴⁵ A simple reading of Barbeyrac here would be that Maxwell's notes provide an additional commentary on Cumberland's text without requiring too much work of Barbeyrac himself. Yet it may also be significant that Barbeyrac chooses his notes from the English translation selectively and, with respect to the notes that he does include, he either remains silent or is highly critical of Maxwell's grasp of Cumberland's natural law theory. In short, Barbeyrac shows little esteem for Maxwell either as a fellow commentator or translator. However, this issue has more bearing on Barbeyrac as a translator than as a natural law theorist. For Maxwell's original notes, see Richard Cumberland, *A Treatise of the Law of Nature* [1727], trans. J. Maxwell, (Indianapolis, IN, 2005). For a more detailed summary of this text and Barbeyrac's use thereof, see Linda Kirk, *Richard Cumberland and Natural Law: Secularisation of Thought in the Seventeenth-Century*, (Cambridge, 1987), pp. 105-112.

The answer lies in Cumberland's renown as a critic of Hobbes, a fact that Barbeyrac attests to in his Preface when he refers to Cumberland as the first and the best to have refuted the false but seductive principles of Hobbes.⁴⁶ This view of Cumberland's work is reiterated in modern scholarship by Jon Parkin, who describes Cumberland as 'one of the most perceptive and innovative critics of Hobbes' political theory'. As such, Parkin claims, one of the text's most significant legacies was its use by later authors to defend themselves or others against charges of Hobbesianism; notably, James Tyrell (1642-1718) on behalf of Locke and Pufendorf himself in the second edition of his *De Jure Naturae*.⁴⁷ Barbeyrac's Cumberland translation follows in this tradition by restating the idea of Pufendorf and Cumberland as natural allies, as well as implicitly extending this same defence against the charge of Hobbesianism to his own theory of natural law. With respect to moral obligation, Barbeyrac's engagement with Cumberland is most pertinent on the issue of the sanctions that necessarily accompany the obligatory precepts of natural law.

Cumberland's original objective was to answer Hobbes in his own terms by providing a theory of natural law that stemmed from the same naturalistic premises as Hobbes but that reached different conclusions concerning the obligatory character of natural law. He does so by using what he considers the same mechanistic natural philosophy, that is, the science of cause and effect, to demonstrate that God is the first cause and author of all natural and moral phenomena.⁴⁸ Crucially, this allows Cumberland to claim that the regularities of nature provide the necessary objective evidence to anchor the maxims of reason as both natural and moral truths and to prove that these maxims possess the force of law by drawing on the evidence of their natural effects. In response to Hobbes's sceptical claim of a radical gulf between man and God, Cumberland asserts that man and God together form a moral community by virtue of the fact that God possesses reason and must be ranked among rational beings.⁴⁹ In this moral community, God is conceived of as the principal part and humans as the subordinate part of an integrated

⁴⁶ Barbeyrac, 'Préface du traducteur', *TPLN*, p. iv

⁴⁷ Parkin, *Science, Religion and Politics in Restoration England: Richard Cumberland's De Legibus Naturae*, (Bury St Edmonds, 1999), p. 4 and pp. 205-222. Cf. Kirk, *Richard Cumberland and Natural Law*, pp. 78-99.

⁴⁸ Cumberland, 'Discours préliminaire', *TPLN*, §4

⁴⁹ Cumberland, 'Discours préliminaire', *TPLN*, §10 and *TPLN*, 1.4.

moral system.⁵⁰ For Cumberland, it follows from this that the ultimate moral end, or the common good, applies to both God and man within this moral community.⁵¹

The moral world is a system governed by the care for the common good rather than the anti-system resulting from the unbridled egoism of Hobbes's self-preserving individuals. Thus the fundamental proposition to which all other laws of nature may be reduced is to promote 'the common Good of the whole System of rational Agents' in pursuit of our ultimate moral end, namely moral happiness.⁵² The evidence lies in the natural effects that accompany both morally good and morally bad actions, namely, happiness and misery respectively. Cumberland claims that these natural effects serve as evidence that the laws of nature are enjoined upon us by God, for the natural effects are the sanctions that accompany the creation of the law of nature.⁵³ But while natural sanctions may serve as evidence of the laws of nature and as natural motives to observe such laws, they are not the origin of the moral obligation to obey such laws.⁵⁴

By grounding his argument in the idea of a moral community between man and God, however, Cumberland brings to the fore the question of whether human justice is modelled on divine justice; a position more commonly associated with rationalists such as Leibniz. In a somewhat ambiguous manner, Cumberland argues that we come to know the maxims of justice through observation of natural cause and effect but that, in attributing this justice to God, we must necessarily 'take his model as our own'.⁵⁵ In short, human justice provides the epistemic model for divine justice. Individuals can only come to know divine justice through the knowledge that they possess of human justice, for it is the foundations of human justice alone that may be observed through the use of our senses and experiences. However, Cumberland also claims here that divine justice provides the moral model that human justice must strive to emulate. This latter claim – seemingly at odds with the former claim – implies that there is a natural continuity between divine and human justice.

⁵⁰ Cumberland, 'Discours préliminaire', *TPLN*, §15

⁵¹ Cumberland, *TPLN*, 5.8 and 5.13.

⁵² Cumberland, 'Discours préliminaire', *TPLN*, §9: 'le Bien commun de tout le Système des Agens Raisonables'.

⁵³ Cumberland, 'Discours préliminaire', *TPLN*, §14.

⁵⁴ For a concise account of Cumberland's theory of moral obligation, see Knud Haakonssen, 'The Character and Obligation of Natural Law According to Richard Cumberland', in *English Philosophy in the Age of Locke*.

⁵⁵ Cumberland, 'Discours préliminaire', *TPLN*, §6: 'prendre pour modele de la nôtre'.

For Barbeyrac, human and divine justice, insofar as the latter may be known, are qualitatively different. He responds to Cumberland by referring to a passage of *Le droit de la nature* where Pufendorf rejects the argument that human justice is modelled on divine justice. For Pufendorf, this is because the justice exercised by a God, who is himself free of all obligation and all law, cannot be the model for a justice between naturally equal beings subject to mutual obligations. Interestingly, Pufendorf cites Cumberland here in support of his argument.⁵⁶ Barbeyrac, likewise, reads Cumberland as an advocate of the opinion that because we only know God by his effects, we have greater knowledge of human than of divine justice, and so divine justice cannot serve as the foundation of human justice: ‘It would be ridiculous to establish Divine Justice as the foundation of Human Justice, since the latter is more exactly known than the former; as Cumberland recognises’.⁵⁷ Removing the ambiguities of Cumberland’s original position, Barbeyrac takes it as read that the logical conclusion of the former’s epistemic model is that divine justice cannot therefore be the moral model for human justice. He adds to this the claim that what limited knowledge we do have of divine justice assures us of the veracity of this conclusion, citing certain duties from human justice that cannot be applied to God on account of the excellence of his nature, for example the duty to pay one’s debts.

While Cumberland adopted elements of rationalist arguments concerning the relationship between man and God, he does not pursue the rationalist line of argument when it comes to the foundation of moral obligation. For Cumberland, although God and man make up one moral community, it is not by virtue of human insight into divine reason that individuals come to know that they are subject to a moral obligation. This would be to make a claim that cannot be substantiated on purely naturalistic premises. Rather the will of God, comprehended by individuals through the exercise of human reason in making sense of created nature, is the foundation of moral obligations entailed by the law of nature.

⁵⁶ Pufendorf, *DNG*, 2.3.5.

⁵⁷ Barbeyrac, *DNG*, 2.3.5, Note 5: ‘Il seroit donc ridicule d’établir la Justice Divine pour fondement de la Justice Humaine, puisque celle-ci est plutôt connue que la premiere; comme le reconnoît Cumberland’.

Cumberland's particular amalgam of rationalist and voluntarist arguments leads Barbeyrac to respond forcefully to the curious case of Cumberland's two definitions of the law of nature at the beginning of his fifth chapter. Cumberland amended his definition of the law of nature after his text had originally gone to print meaning that there were two different published versions of his thought. According to Barbeyrac, the revised – and to his mind correct – version of Cumberland's definition of natural law may be easily distinguished from the original version because the printers have had to squeeze an extra eight lines onto the page in order to make it fit.⁵⁸ Broadly speaking, both versions define the law of nature as a 'proposition presented to or impressed upon our minds clearly enough by the nature of things from the will of the first cause'.⁵⁹ The difference comes from the fact that only the revised version mentions the idea of sanctions, whether rewards for obedience or punishments for disobedience. Here, Cumberland goes on to specify that by 'sufficient' rewards and punishments he means those that are 'so great and so certain' that it is clear that the happiness of each individual depends upon perpetually promoting the public good rather than doing the slightest thing that would detract from it.⁶⁰ In short, Cumberland's late addition makes it clear that sanctions have an important role to play in promoting the observation of the law of nature.

Barbeyrac assures his readers that the reason why Cumberland would go to all the trouble of amending this original definition is obvious, namely that the omission of any mention of sanctions – 'which the entire world considers to be an essential part of whatever kind of law it may be' – would prove too much of a hindrance in the exposition of the proceeding chapter on natural law and moral obligation.⁶¹ Here, Barbeyrac expresses absolute certainty that Cumberland always meant to include sanctions within his definition of the law of nature on the basis that it is a readily acknowledged truth that no law may be called a law, properly speaking, unless it

⁵⁸ Barbeyrac, *TPLN*, 5.1, Note 1. According to Linda Kirk, Barbeyrac's own edition of Cumberland's original Latin text was the 1694 third edition published in Luebeck and Frankfurt by Samuel Otto and Johann Wieder (an edition that followed the original rather than the revised definition of natural law): *Richard Cumberland and Natural Law*, p. 95. Nonetheless, in his own translation, Barbeyrac gives the revised definition in the main body of the text and the original definition in a separate note.

⁵⁹ Cumberland, *TPLN*, 5.1: 'une Proposition assez clairement présentée ou imprimée dans nos Esprits par la Nature des Choses, en conséquence de la Volonté de la Cause première'.

⁶⁰ Cumberland, *TPLN*, 5.1: 'si grandes & si certaines'.

⁶¹ Barbeyrac, *TPLN*, 5.1, Note 1: 'tout le monde regarde comme une partie essentielle de quelle *Loi* que ce soit'.

includes certain sanctions. The perceived danger of the original definition for Barbeyrac, is that in the absence of any specific reference to sanctions, Cumberland's original definition of the law of nature opened the door to the idea that moral necessity may be derived from the utility accrued by its observation rather than from the command of a superior.⁶²

Barbeyrac develops his thinking on this matter in *Le droit de la nature*, where he responds not only to Cumberland but also to Pufendorf's claim that 'the idea of good and Evil' produced by our actions creates within the individual an impression of the necessity of doing or not doing that particular action.⁶³ For Barbeyrac, both Pufendorf and Cumberland are in danger of straying into the same dubious territory as Cumberland's fellow English author Francis Gastrell (1662-1725) – a figure who Barbeyrac implicitly but disingenuously takes as representative of Cumberland's way of thinking – in reducing obligation to its reason or motive, namely, the avoidance of misery and the attainment of happiness.⁶⁴ In short, if the law is not properly understood as the command of a superior accompanied by sanctions, the danger is that the common good becomes the foundation of obligation rather than simply the outcome of observance of the law. This would be to confound, Barbeyrac argues, 'the *motive* of *Obligation*, or that which most effectively carries us to submit to it' with 'the *foundation* of *Obligation*, or the reason why each person is indispensably held to do a certain thing'.⁶⁵ While these two things are often inseparably joined together within the duties of natural law, for Barbeyrac it is of upmost importance that utility does not enter directly into the foundation of moral obligation. The sole legitimate foundation of moral

⁶² Linda Kirk argues that Barbeyrac is right to consider these two versions of the law of nature as expressing a different sentiment: *Richard Cumberland and Natural Law*, pp. 24-45. However, both Jon Parkin and Knud Haakonssen have subsequently challenged this reading: Parkin, *Science, Religion and Politics*, p. 108 and Haakonssen, 'The Character and Obligation of Natural Law According to Richard Cumberland', pp. 37-39.

⁶³ Pufendorf, *DNG*, 1.6.5: 'l'idée du bien ou de Mal'.

⁶⁴ Barbeyrac, *DNG*, 1.6.5, Note 4. Cf. Jacques Bernard's review of Francis Gastrell's *The Certainty and Necessity of Religion in general: Or the first Grounds and Principles of Humane Duty establish'd*, where Bernard claims that Gastrell admits no other form of obligation than the power of a superior to render those subject to him happier or more miserable and the motivation for obedience that this inspires in individuals: *Nouvelles de la République des Lettres*, (Amsterdam, [Avril] 1700), p. 408.

⁶⁵ Barbeyrac, *DNG*, 1.6.5, Note 4: 'on confond ici le motif de l'*Obligation*, ou ce qui porte le plus efficacement à s'y soumettre, avec le *fondement* de l'*Obligation*, ou la raison pourquoi on est tenu indispensiblement de faire telle ou telle chose'.

obligation is thus ‘the Will of a Superior, whose power with respect to our Happiness or Misery consequently serves to move our Will’ and lead us to our duty.⁶⁶

Barbeyrac’s interpretation of Cumberland is somewhat problematic here. He means to take the opportunity that he sees in both Pufendorf’s and Cumberland’s texts to make it clear that while sanctions are essential to the idea of law, with respect to the moral obligation, they can only ever constitute a *motive* for obedience by virtue of the utility that is thereby accrued. The difficulty arising from Barbeyrac’s commentary here is that Cumberland also rejects the idea that sanctions could be ‘the cause of Obligation, which comes wholly from the Law and the Legislator’, conceiving of them instead as ‘evidence’ of the law of nature or as a ‘motive’ for obeying its precepts.⁶⁷ In this instance, then, Barbeyrac makes something of a straw man out of Cumberland in the service of his own wider argument. This is all the more perplexing given that in the later *Traité philosophique*, Barbeyrac takes his interpretation in the opposite direction and offers a picture of Cumberland that makes him an ally of his own way of thinking, that is to say, with God as ‘the original foundation of *Obligation*’ and natural sanctions as nothing other than ‘powerful motives to carry us to perform’ our duties.⁶⁸ While this is closer to Cumberland’s actual position, in both cases, Barbeyrac reveals more about his own thought than he does about that of his author.

Up to this point, the idea of sanctions has been treated as a single unified concept when, in truth, the issue of sanctions was much more complex. First, there was the question of whether reward or punishment would be most efficacious in motivating individuals to obey the precepts of natural law. Second, there was the question of whether natural sanctions alone provided sufficient evidence of or motive for obedience independent of divine sanctions and, if not, in what sense it was possible to make use of the idea of divine sanctions insofar as they could be known independently of divine revelation. The arch sceptic in this exchange was Hobbes, whose principal objection to the obligatory force of the laws of nature was that no sanctions, natural or divine, were clearly demonstrable. In response to Hobbes, Cumberland argued for a theory of natural

⁶⁶ Barbeyrac, *DNG*, 1.6.5, Note 4: ‘la Volonté d’un Supérieur, dont le pouvoir par rapport à notre Bonheur ou notre Malheur sert ensuite à mouvoir notre Volonté’.

⁶⁷ Cumberland, *TPLN*, 5.22: ‘la cause de l’Obligation, qui vient uniquement de la Loi & du Législateur’.

⁶⁸ Barbeyrac, *TPLN*, 2.35, Note 3: ‘le premier fondement de l’*Obligation*’ and ‘puissans *motifs*, pour nous porter à faire’.

sanctions that accompany the observation or violation of the law of nature. For Cumberland, it is natural rewards rather than natural punishments that may be observed with the greatest regularity, thereby overcoming the Hobbesian claim that natural punishments for the wicked are not sufficiently consistent to be certain evidence of natural sanctions.⁶⁹

For Barbeyrac, however, while natural rewards may provide *evidence* of the laws of nature, they remain an insufficient *motive* for obedience. In his response to Cumberland's theory of natural rewards, Barbeyrac thus refers readers to a passage in *Le droit de la nature* where Pufendorf rebukes Cumberland for having assumed that the will is more readily moved by the possibility of rewards than by penalties, that is to say, that reward alone, such as promoting the common good, is a sufficient motive to compel individuals to obey the law of nature.⁷⁰ Pufendorf claims that on the contrary it is the penal sanction that makes us sensible of the need to conform our will to the law.⁷¹ Pufendorf's point is that natural rewards, such as the rewards of a tranquil conscience and the benefits of honestly conducted social relations with other individuals, do not motivate us to action with the same force as fear of penal sanctions.⁷²

In his Pufendorf notes, Barbeyrac agrees that punishment rather than reward is the greater motive for action, but he adopts the Lockean explanation of why this is so. In short, this is the claim that the will is more readily moved by uneasiness than by the desire for the greatest good or some other pleasure. This is because, for Locke, as long as 'we desire to be rid of any present Evil... we find ourselves not capable of any the least degree of Happiness'.⁷³ In making use of Locke's argument here, Barbeyrac intends to rebut not only Pufendorf and Cumberland but also Bayle, with whom he associates the argument that immediate and greatest pleasure is the primary motive for action. To this end, Barbeyrac claims that overwhelming immediate passions are the motive for action only insofar as they create a sense of uneasiness in the will, i.e., anticipated pleasure is not the true motive for action in such cases but rather delivery

⁶⁹ Cumberland, 'Discours préliminaire', *TPLN*, §14-23.

⁷⁰ Barbeyrac, 'Discours préliminaire', *TPLN*, §4, Note 1 and §14, Note (where Barbeyrac refers his readers to *DNG*, 1.6.14).

⁷¹ Pufendorf, *DNG*, 1.6.14

⁷² Pufendorf, *DNG*, 2.3.21. Barbeyrac refers readers of his Cumberland translation to this passage twice: Barbeyrac, 'Discours préliminaire', *TPLN*, §4, Note 1 and §17 Note 1.

⁷³ Locke, *Essay*, 2.21.64. Cf. Barbeyrac, *DNG*, 1.6.14, Note 4.

‘from the *uneasiness* or pressing affliction’ that it provokes.⁷⁴ It follows from this account that, for the most part, Barbeyrac considers the uneasiness produced by fear of penal sanctions to provide a stronger motive for obedience to the law of nature than the hope of anticipated rewards.

Barbeyrac also takes issue with the position, common to both Cumberland and Pufendorf, that because natural knowledge of divine sanctions does not rest on a sufficiently secure foundation independently of divine revelation, only natural sanctions can be admitted within the sphere of natural law. For Pufendorf, this follows from his strict separation of the human and divine forum. But having rejected Cumberland’s argument that natural rewards, such as the rewards of a tranquil conscience and benefits of honestly conducted social relations with other individuals, may motivate us to action, only the motivating force of natural punishments, such as the perturbations of conscience, remain.⁷⁵ This leaves Pufendorf faced with the problem that Cumberland hoped to avoid, that is, the inconsistency and hence insufficiency of natural penal sanctions as evidence of or motive for obedience. The most that Pufendorf can say in light of the insufficiency of the perturbations of conscience is that it is highly probable that ‘God will punish the wickedness of such persons in some other manner’. But, he supposes, these punishments are the product of the arbitrary determinations of God’s positive will, as a result of which, ‘there remains some obscurity in this matter, insofar as it may be determined by the light of Reason alone’.⁷⁶

For Barbeyrac, what needs to be remedied here is not so much the substance of Pufendorf’s argument but rather the degree of probability concerning divine sanctions that ought to be admitted within the sphere of natural law. Quoting Locke, Barbeyrac argues that highly probable natural knowledge of divine sanctions rests on the fact that

⁷⁴ Barbeyrac, *DNG*, 1.6.14, Note 4: ‘d’une *inquiétude* ou d’une douleur pressante’.

⁷⁵ Pufendorf, *DNG*, 2.3.21. Barbeyrac refers readers to this passage twice: Barbeyrac, ‘Discours préliminaire’, *TPLN*, §4, Note 1 and §17 Note 1.

⁷⁶ Pufendorf, *DNG*, 2.3.21: ‘DIEU punira la malice de ces gens-là d’une autre maniere’ and ‘il reste quelque obscurité dans cette question, tant qu’on ne la décide que par les lumieres de la Rasion toute seule’.

It would be in vain for an Intelligent Being to presume to subject another's actions to a certain Rule, if it was not also in his power to reward him for conforming to this rule, and punishing him for deviating from it.⁷⁷

Moreover, this power to punish and reward cannot simply comprise the natural rewards and punishments that follow from the action itself because 'that which is naturally agreeable, or disagreeable would arise in itself without the help of any Law'.⁷⁸ In short, Barbeyrac takes it as read that God, as author of the law of nature, necessarily exercises his authority to do more than uphold natural utility, thereby ensuring that ultimately the good are rewarded and the wicked punished. In making use of Locke here, Barbeyrac ties natural religion and natural morality more closely together than either Cumberland or Pufendorf allowed.⁷⁹

Again following the Lockean line, Barbeyrac takes the argument further by claiming that given the high probability of the rewards of eternal happiness and the punishments of eternal misery, only a foolish individual would risk infinite misery in the life to come for the sake of the pleasures of vicious action in this life. Better instead, for the well-reasoned individual, to live a virtuous life of misery and pain here on earth with the prospect of infinite happiness in the life to come. Divine sanctions thus enter into our moral reasonings by virtue not only of their high probability but also because of the stakes involved.⁸⁰ The problem for Barbeyrac is that in allying himself so strongly to Locke in the development of his argument that natural reason gives us sufficient knowledge of the divine nature and divine sanctions, his argument consequently depends upon the coherence of Locke's original argument and yet it is not clear that Barbeyrac's Lockean reply successfully overcomes the same objections that could be levied against either himself, Locke or even Pufendorf's original argument.⁸¹

⁷⁷ Barbeyrac, *DNG*, 1.6.9, Note 3: 'Ce seroit aussi en vain qu'un Etre Intelligent prétendroit soumettre les actions d'un autre à une certain Règle, s'il n'est pas en son pouvoir de le récompenser lorsqu'il se conforme à cette règle, & de le punir lorsqu'il s'en éloigne'. Cf. Locke, *Essay*, 2.28.6.

⁷⁸ Barbeyrac, *DNG*, 1.6.9, Note 3: 'ce qui est naturellement commode ou incommode agiroit de lui-même sans le secours d'aucune Loi'. Cf. Locke, *Essay*, 2.28.6.

⁷⁹ For an account of Locke's theory of moral obligation in the final edition of the *Essay*, also situated within its immediate historical context, see Stephen Darwall, *The British Moralists and the Internal 'Ought' 1640-1740*, (Cambridge, 1995), pp. 149-175. For a detailed analysis of the various arguments related to Locke's account of moral obligation, including his arguments concerning belief, probability and moral judgement, see James Tully, *An Approach to Political Philosophy: Locke in Contexts*, (Cambridge, 1993).

⁸⁰ Barbeyrac, *DNG*, 2.3.21, Note 7. Here Barbeyrac quotes from Locke, *Essay*, 2.21.70.

⁸¹ On the limitations of Locke's argument see K. Haakonssen, *Natural Law and Moral Philosophy*, pp. 51-58 and more critically J.B. Schneewind, *The Invention of Autonomy*, pp. 142-152.

V

Barbeyrac on Leibniz: Human and Divine Justice

As we have seen, Barbeyrac and his chosen interlocutors draw elements of their arguments for the foundation of the law of nature and moral obligation from both sides of the alleged rationalist-voluntarist divide. Leibniz shares this characteristic inasmuch as his comprehensive Platonic ideal of justice as ‘charity of the wise’ retains the voluntarist idea that the precepts of this justice necessitate *voluntary* acts of charity, i.e., justice is not purely relational.⁸² Like so many other early modern natural law theorists, Leibniz also has high praise for ‘the incomparable’ Grotius for what he considers to be Grotius’s recognition that God is not the ‘cause’ of goodness and justice.⁸³ However, in his ‘Opinion on the Principles of Pufendorf’, originally written as a letter to the Helmstadt professor J. C. Boehmer, Leibniz expressed nothing but disdain for Pufendorf both as a jurist and a philosopher.⁸⁴

The sources of the relationship between Pufendorf’s and Leibniz’s arguments and of the latter’s enmity towards the former are complex, disputed and far beyond the brief of the present work. Both were deeply concerned with the relationship between church and state and with the condition of the German empire as a political unit. But despite overlapping educational paths, they deployed very different philosophical ideas to deal with these matters. Pufendorf has generally been seen as drawing on neo-Stoic ideas, though his Hobbesian leanings have seen him allied with Epicurean elements.⁸⁵ First of all, he has been interpreted as developing a distinctly ‘civil’ concept of philosophy as concerned with the nature and possibility of social living organised by political means for the sake of peace.⁸⁶ In sharp contrast, there is general agreement that Leibniz was the great metaphysician of individual and communal life, drawing above all on Platonic inspiration. Another way of looking at this divergence is that it represents two different

⁸² Riley, Patrick, ‘Introduction’, in *Leibniz: Political Writings*, pp. 2-7.

⁸³ Leibniz, G. W. F., ‘An Unpublished Manuscript of Leibniz on the Allegiance Due to Sovereign Powers (1695)’ in *Leibniz: Political Writings*, p. 210. Likewise, Leibniz commends Grotius for his insight that natural obligation would subsist even if there were no God: ‘Opinion on the Principles of Pufendorf (1706)’, in *Leibniz: Political Writings*, p. 71.

⁸⁴ Leibniz, ‘Opinion on the Principles of Pufendorf’, p. 65

⁸⁵ Hochstrasser explains the Stoic side of Pufendorf’s argument, see *Natural Law Theories*, pp. 72-83. For the Hobbesian features, see Palladini, ‘Pufendorf disciple of Hobbes’, pp. 49-59. Cf. Barbeyrac’s remarks on the relationship between Pufendorf and Leibniz: Barbeyrac, ‘Avis postérieur, sur la quatrième édition’ [originally dated Groningen, 15th November 1717], *DHC* [1718], pp. xxix-xxx.

⁸⁶ Hunter, *Rival Enlightenments*, pp. 148-196.

forms of Lutheranism. In any case, Leibniz and Pufendorf reached conflicting conclusions about the relationship between God and man within the sphere of natural law and thus the foundation of moral obligation.⁸⁷

Barbeyrac himself received a copy of Leibniz's letter from 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 Christendom.⁸⁸ It was Barbeyrac's translation of Leibniz's Latin letter into French, together with his own commentary thereupon – both appended to the 1718 edition of *Les devoirs* under the joint title 'Jugement d'un anonyme avec des réflexions du traducteur' – that first brought the text to the attention of a Francophone audience.

Barbeyrac's interjection in the debate is notable for the depth of his disdain both for Leibniz's philosophy and the philosopher himself. In a letter to the Leibnizian natural philosopher and fellow Huguenot Louis Bourguet (1678-1742), Barbeyrac claims that Leibniz's 'attack' on Pufendorf was personally motivated:

It was the secret jealousy that he held against all those who distinguished themselves in the Republic of Letters, and the desire to cast down their productions. I have been witness to it many times, amongst others with respect to Mr. Locke, who was by contrast a judicious philosopher.⁸⁹

Barbeyrac goes on to castigate Leibniz for not being as useful to the Republic of Letters as he should have been, largely because of his preoccupation to 'exert a kind of Despotism, above all in his own country'.⁹⁰ The charge of impropriety of conduct within the Republic of Letters was intended as a damning judgement in an intellectual milieu

⁸⁷ Knud Haakonssen suggests that Pufendorf drew on Lutheran theology in a way that subverted Luther's original intention in arguing for a radical gulf between man and God. In this way, Pufendorf challenged the dominant tradition of Lutheran scholasticism adopted by Leibniz: *Natural Law and Moral Philosophy*, pp. 36-49 but especially pp. 36-37.

⁸⁸ 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. Barbeyrac to Turretini (Lausanne, 29.09.1715), Ms. 484 (n. 190), in the archives at the Bibliothèque de Genève. For a detailed summary of the contents of the letter see: Pitassi, *Inventaire critique*, Vol. III, pp. 125-126.

⁸⁹ Barbeyrac to Bourguet, Lausanne [undated but chronologically identifiable as December 1716], Ms. 1226 (n.2), in the archives at the Bibliothèque universitaire et publique de Neuchâtel: 'C'est 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. J'en ai été témoin plusieurs fois, & entr'autres, à l'égard de Mr. Locke, qui étoit un philosophe tout autrement judicieux'. For an account of Leibniz's exchange with Locke see: Maria Rosa Antognazza, *Leibniz: An Intellectual Biography*, (Cambridge, 2008), pp. 406-418.

⁹⁰ Barbeyrac to Bourguet, Lausanne, [undated but chronologically identifiable as December 1716]. Ms. 1226 (n.2): 'execer une espèce de Despotisme, sur tout dans son païs'.

where the unspoken rules of discourse constituted a binding social code.⁹¹ This emphasis on proper conduct is further reflected in Barbeyrac's own anxiety following Leibniz's death in between Barbeyrac's 'Jugement d'un anonyme' going to print and being published; in preventing Leibniz from taking up the right of reply, the publication could have been misconstrued as intentionally disrespectful.⁹²

Leibniz did not write a treatise on natural law but, in his various essays on the subject, he argued for the idea of universal justice, or the 'charity of the wise', comprised not only of strict justice but also of all that is good and virtuous.⁹³ In contrast to Pufendorf's strict separation of natural and moral good, Leibniz claims that 'by moral I mean that which is equivalent to 'natural' for a good man' who acts from a principle of love rather than duty.⁹⁴ Love here is understood as a feeling of moral perfection that in itself gives rise to moral necessity: 'One cannot know God as one ought without loving him above all things, and one cannot love him thus without willing what he wills'.⁹⁵ Thus love rather than will is the foundation of the law of nature and moral obligation. Moral necessity does not derive from the command of a superior but rather from the 'light of eternal reason, kindled in us by the divinity'.⁹⁶ For Leibniz, knowledge of the nature of things and properly constituted right reason are sufficient to impress upon individuals not only the content of natural law but also the obligatory character of its precepts.

At the heart of Leibniz's claim that reason alone is proper foundation of moral obligation is the belief that there is a moral community between God and man, such that the difference between divine and human justice is one of degree not kind. Justice thus construed is one of the 'eternal truths, objects of the divine intellect, which constitute, so to speak, the essence of the divinity itself'.⁹⁷ God is the example of true moral perfection and the task of human justice is to imitate, insofar as possible, divine justice. From this perspective, morality is thought to be more than simply obedience to divine commands: 'he who acts well, not out of hope or fear, but by an inclination of the soul,

⁹¹ In *Impolite Learning*, Anne Goldgar investigates the complex nature of the relationships that sustained the Republic of Letters as an intellectual community of equals within which there were nonetheless established hierarchies and unspoken rules of conduct, see Chapter 3, pp. 115-173 in particular.

⁹² Barbeyrac, 'Avis posterieur, sur la quatrième édition', pp. xxvi-xxix.

⁹³ Leibniz, 'Codex Iuris Gentium (Praefatio) (1693)', in *Leibniz: Political Writings*, p. 171.

⁹⁴ Leibniz, 'Codex Iuris Gentium', p. 171.

⁹⁵ Leibniz, 'Meditation on the Common Conception of Justice', p. 59.

⁹⁶ Leibniz, 'Opinion on the Principles of Pufendorf', p. 75.

⁹⁷ Leibniz, 'Opinion on the Principles of Pufendorf', p. 71.

is so far from behaving justly that, on the contrary, he acts more justly than all others'.⁹⁸ In short, law constrains a man to act in accordance with justice but what really counts for true justice is acting from the principle of love of God, who is 'so worthy of love that it is happiness [itself] to serve such a master'.⁹⁹

In his 'Opinion on the Principles of Pufendorf', Leibniz wants to distinguish his own position from that of Hobbes and Pufendorf, who in his eyes both make justice depend solely on power, thus 'confounding right and law', the latter understood here as the *de facto* exercise of power.¹⁰⁰ This claim lies at the heart of his critique of Pufendorf, who he argues has improperly identified the end, the object and the efficient cause of natural law. By this, Leibniz means to say that Pufendorf should not have limited the end of natural law to the human forum alone for both the idea of immortality of the soul and of the life hereafter may be established in all probability by right reason. Likewise, the object of natural law should not be restricted to external action because what constitutes just actions, for Leibniz, is the intention more so than the physical performance.¹⁰¹

As we have already seen in his own response to Pufendorf, Barbeyrac himself does not adhere to Pufendorf's stipulation that natural law must be limited to considerations of external actions within the human forum. 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 claims instead that Pufendorf tacitly acknowledged and certainly 'never denied' the principles on which considerations of the life to come are grounded.¹⁰² Likewise, Barbeyrac 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 actions.¹⁰³ Ian Hunter draws attention to the subversive nature of Barbeyrac's translation of Pufendorf in these passages, where he wilfully misrepresents Pufendorf's original and quite explicit rejection of the same ideas

⁹⁸ Leibniz, 'Opinion on the Principles of Pufendorf', p. 72.

⁹⁹ Leibniz, 'Codex Iuris Gentium', p. 173.

¹⁰⁰ Leibniz, 'Meditation on the Common Conception of Justice', p. 50.

¹⁰¹ Leibniz, 'Opinion on the Principles of Pufendorf', p. 69.

¹⁰² Barbeyrac, 'Jugement d'un anonyme', §6: 'n'a jamais nié'

¹⁰³ Barbeyrac, 'Jugement d'un anonyme', §7: 'EN GRANDE PARTIE'.

that Barbeyrac subsequently wants to ascribe to him.¹⁰⁴ To a large extent, therefore, Barbeyrac's defence of Pufendorf is more adequate as a representation of his own thought than that of his author.

Nonetheless, while Barbeyrac may agree in general terms with Leibniz that considerations of the life to come are essential to the foundation of natural law and moral obligation, he alleges that the particular arguments advanced by Leibniz confuse 'Duty with the *effects* or the *motives for its observation*'.¹⁰⁵ For Barbeyrac, as we saw above, 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. In his opinion, the greatest weakness of Leibniz's theory of natural law and moral obligation is that it does not successfully do this, frequently claiming instead 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'.¹⁰⁶ 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 prescribes.¹⁰⁷ 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.

This particular objection has attracted considerable attention among modern scholars; on the one hand, those who claim that Leibniz identified the core philosophical problem at the heart of 'voluntarist' natural law and, on the other hand, those who argue for a

¹⁰⁴ Ian Hunter, 'Conflicting Obligations: Pufendorf, Barbeyrac and Leibniz on Civil Authority', in *History of Political Thought* 25:4 (2004), p. 692.

¹⁰⁵ Barbeyrac, 'Jugement d'un anonyme', §6: 'le *Devoir* avec les *effets* ou les *motifs de son observation*'.

¹⁰⁶ Leibniz, 'Opinion on the Principles of Pufendorf', p. 73.

¹⁰⁷ Leibniz, 'Opinion on the Principles of Pufendorf', p. 71.

contextual reading of Pufendorf that defends his attempt to establish binding moral obligation without recourse to transcendental moral norms.¹⁰⁸ Most agree, however, that Barbeyrac's defence of Pufendorf strayed too far from his author's original – and innovative – proposal without successfully overcoming the Leibnizian objection. Rather than reiterate the substance of past debates about how 'successful' Barbeyrac's reply to Leibniz was, the present discussion will focus on Barbeyrac's response within the context of his own natural law project.

Leibniz's basic objection is that Pufendorf fails to provide independent moral grounds for God as a legitimate superior and thus for what makes the law just and moral obligation morally necessary. Pufendorf's original argument rests on the idea that neither force nor excellence of nature alone confer the right to impose an obligation but rather both are needed in order to produce 'in the mind of a Rational Creature, the sentiments of fear accompanying those of respect'.¹⁰⁹ To this end, Pufendorf claims that a legitimate superior must possess both sufficient force and just reasons to compel our obedience. While force is essential to assert one's right, the legitimacy of the superior also depends on the just reasons for his authority, of which there are two:

one is because he has rendered me some considerable good, especially if – being clearly well-intentioned towards me and more capable of managing my interests than myself – he actually means to govern my conduct; the other is because I have voluntarily submitted to his direction.¹¹⁰

In short, for Pufendorf, the foundation of the right to impose an indispensable moral obligation on individuals derives either from the extraordinary good rendered by the superior or from the voluntary consent of those subject to him.

Barbeyrac raises several objections to Pufendorf's argument here, offering what he believes to be a more satisfactory account of the nature of divine authority and the

¹⁰⁸ See the different interpretations offered by J. B. Schneewind, *The Invention of Autonomy*, pp. 250-259, Hunter, 'Conflicting Obligations', esp. pp. 675-681 and Hochstrasser, *Natural Law Theories*, pp. 72-110. Another important discussion of this debate that takes Barbeyrac as its principal focus is Petter Korkman, *Barbeyrac and Natural Law*, Chapter 4, pp. 183-229.

¹⁰⁹ Pufendorf, *DNG*, 1.6.9: 'dans l'ame d'une Créature Raisonnable des sentimens de crainte accompagnez de sentimens de respect'.

¹¹⁰ Pufendorf, *DHC*, 1.2.5: 'l'une est, parcequ'il m'a fait quelque bien considerable; surtout si étant manifestement bien intentionné en ma faveur, & plus capable de ménager mes intérêts que moi-même, il veut actuellement prendre soin de ma conduite; l'autre, c'est parceque je me suis volontairement soumis à sa direction'.

foundation of moral obligation that he believed could withstand Leibniz's critique. In response to Pufendorf's statement of the just reasons for legitimate authority, Barbeyrac claims first that Pufendorf ought to have distinguished more clearly between God's right to command and that of the civil sovereign. The foundation of God's authority, as the 'King of Kings', is qualitatively different from that of the civil sovereign, whose authority is founded in reasons 'the justice of which depends on some Precept of Natural Law'.¹¹¹ In short, the latter presupposes and necessarily depends upon the former, that is to say, it rests on the implicit contract created by voluntary submission to the civil authority.¹¹² Of the just reasons alleged by Pufendorf, therefore, only the first could be thought to pertain to the foundation of God's authority and consequently to the obligation to submit to the precepts of natural law.¹¹³

Second, the reason alleged by Pufendorf to establish God's authority, namely the 'considerable good' that he has rendered us in the act of Creation, 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'.¹¹⁴ Instead, Barbeyrac claims, 'it is the natural dependence that we are under to the empire of God, insofar as we owe our existence to him' that constitutes the sole, legitimate foundation of his right to command our obedience.¹¹⁵ God the Creator forms the faculties of man's body and soul; thus he has the right to prescribe the limits of their usage. This is why, Barbeyrac tells us, the most frequently and forcefully articulated dogma in Revelation is that of the Creation of the universe and of man.¹¹⁶ In short, Barbeyrac basically agrees with Pufendorf that it is God's act of Creation that is the foundation of God's right to rule but, for Barbeyrac, this is because that act of Creation reveals to us our natural

¹¹¹ Barbeyrac, 'Jugement d'un anonyme', §19: 'du *Roi des Rois*' and 'dont la *justice* dépend de quelque Loi de Droit Naturel'.

¹¹² Cf. Chapter 5, pp. 162-165. For an interpretation of the debate between Pufendorf, Leibniz and Barbeyrac that focuses principally on the question of moral obligation with respect to civil authority, see Hunter, 'Conflicting Obligations'.

¹¹³ Barbeyrac, *DHC*, 1.2.5, Note 1.

¹¹⁴ Barbeyrac, *DHC*, 1.2.5, Note 3: 'Un Bienfait' and 'ne demande autre chose que la Reconnaissance' and 'se soumettre à la direction du Bienfacteur'.

¹¹⁵ Barbeyrac, *DNG*, 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'.

¹¹⁶ Barbeyrac, *DHC*, 1.2.5, Note 1.

dependence on God rather than inculcating in us a sense of gratitude and thus obligation.

Finally, in response to both Pufendorf himself and Leibniz's critique, Barbeyrac wants to establish that it is just reasons alone that confer legitimate moral authority on a superior. 'Force', he says, 'does not, properly speaking, enter into the foundation of obligation; it serves only to put a Superior in the proper state to make use of his right'.¹¹⁷ He makes his criticisms of Pufendorf here on the assumption that the latter shared the same viewpoint but merely left some ambiguity in his manner of expressing himself. This much is evident from his claim that 'the vicious circle imputed to our author' disappears once it is acknowledged 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'.¹¹⁸ Barbeyrac's argument here 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.

For Barbeyrac, this follows from his belief that human justice is posterior to an act of God's will but the justness of God himself does not depend upon human justice. Barbeyrac thus replies to the Leibniz's claim that we obey God as a tyrant by stating that 'whoever has a true idea of God knows that he is Good, as well as Great, and that his will necessarily conforms with his Perfections'. Again taking up the Lockean line of argument, Barbeyrac claims that it necessarily follows from this that God is wise and holy as well as mighty, thus what He wills is 'not only just, but also for our own good'.¹¹⁹ Moreover, as creatures who depend upon Him, the limits of human knowledge of God are the limits that He himself places upon man. Here, philosophically speaking, Barbeyrac fails to address Leibniz's objection. However, in terms of his own

¹¹⁷ Barbeyrac, *DNG*, 1.6.9, Notes 1-2. For an extended discussion of this issue, see the section below on Barbeyrac's reply to Leibniz.

¹¹⁸ The translation here is taken from David Saunders translation of the text due to the clarity of expression that it offers: 'Judgement of an Anonymous Writer', §19. Cf. Barbeyrac, 'Jugement d'un anonyme', §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'.

¹¹⁹ Barbeyrac, 'Jugement d'un anonyme', §16: 'Quiconque a une véritable idée de DIEU, sait qu'il est Bon aussibien que Grand, & que sa volonté est nécessairement conforme à ses Perfections' and 'non seulement que de juste, mais encore qui ne soit pour notre bien'. Cf. Chapter 1, pp. 29-30.

philosophical and theological position – in keeping with the Lockean dictum that God himself determines the limits of human knowledge of the divine – Barbeyrac believes himself limited to but nonetheless well-founded in asserting that a ‘true’ idea of God is necessarily an idea of God as just and good. It is, says Barbeyrac, the knowledge that we have of God as an infinitely perfect Being that assures us of the veracity of this idea of God. All that we know of divine justice is that the will of God is ‘always in accord with every perfection of the Divine Nature’.¹²⁰ Barbeyrac was not alone in treating this basic assumption as well justified; his fellow Pufendorf commentator Carmichael followed a similar line of argument, in this respect at least, in his defence of Pufendorf against Leibniz’s objections.¹²¹

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 in his arguments. Barbeyrac considers his own position to avoid the ‘extremes’ of making justice depend entirely on the arbitrary will of God as he considers Hobbes to have done or of making justice independent of the will of God as he considers Leibniz (or Bayle for quite different reasons) to have done.¹²² The danger of the former position is that it opens the possibility that God could make what is unjust just and of the latter that morality and the law of nature may exist independently of religion and thus moral obligation to possess an indispensable necessity even for atheists.¹²³ In short, Barbeyrac’s main concern is not the same as Leibniz’s concern. For Barbeyrac, one need not – and cannot – do more than assert that God is just in virtue of

¹²⁰ Barbeyrac, ‘Jugement d’un anonyme’, §15: ‘toujours d’accord avec toutes les perfections de la Nature Divine’.

¹²¹ Despite clear differences between these two Pufendorf commentators, like Barbeyrac, Carmichael’s reply to Leibniz focuses on Pufendorf’s restriction of natural law to external actions within the human forum with a similar concern to re-assert the tripartite distinction of natural law duties to God, others and oneself in order to reinstate the primacy of one’s duties to God. On the issue of divine authority, Carmichael argues that it is ‘unnecessary to give a lengthy argument for the divine authority of these precepts’ because the legitimacy of divine authority is evident from the very nature of the precepts themselves and their method of deduction: *Natural Rights on the Threshold of the Scottish Enlightenment*, ed. J. Moore, trans. M. Silverthorne, (Indianapolis, IN, 2002), esp. p. 17 on his intention to offer a reply to Leibniz’s critique and pp. 21-29, 46-53 for the substance of that reply. For the relationship between Barbeyrac and Carmichael, see James Moore and Michael Silverthorne, ‘Gershom Carmichael and the Natural Jurisprudence Tradition in Eighteenth-Century Scotland’, in *Wealth and Virtue: The Shaping of Political Economy in the Scottish Enlightenment*, ed. I. Hont and M. Ignatieff, (Cambridge, 1983) and ‘Natural Sociability and Natural Rights in the Moral Philosophy of Gershom Carmichael’, in *Philosophers of the Scottish Enlightenment*, ed. V. Hope, (Edinburgh, 1984); Thomas Mautner, ‘Carmichael and Barbeyrac: The Lost Correspondence’ in ed. F. Palladini and G. Hartung, *Samuel Pufendorf und die Europäische Frühaufklärung*, (Berlin, 1996).

¹²² Barbeyrac, ‘Jugement d’un anonyme’, §15.

¹²³ Barbeyrac, ‘Jugement d’un anonyme’, §16.

his infinite perfections. God is thus a legitimate superior in the sense that the just reasons for his law lie beyond our comprehension in the unknowable forum of divine justice. For Barbeyrac, the fact that this is a pertinent question for Leibniz reveals the extent of the difference between his understanding of the relationship between God and man in the postlapsarian state and ‘voluntarists’ such as himself, Pufendorf and Locke.

In seeking to establish (i) that divine authority is inherently just (and therefore legitimate) and (ii) that the will of God is the foundation of indispensable moral obligation knowable by natural reason alone, Barbeyrac therefore abandons Pufendorf’s commitment to avoid metaphysical considerations. For Barbeyrac, considerations of the life to come cannot be excluded from the field of natural law. Natural reason must be able to provide us with evidence of and motive for obedience to these indispensable moral obligations independent of either revealed divine law or civil law. This is because the way in which one conceives of the relationship between God and man must be able to account for all the duties of natural law, that is to say, Barbeyrac’s restatement of the classical tripartite classification of the duties of natural law as those owed to God, to others and to oneself.¹²⁴ The first duty of natural law is thus to follow the light of one’s conscience, that is, to fulfil one’s duties to God; hence also his concern for the role of conscience and the inward sentiment of moral obligation in his response to Pufendorf’s theory of moral obligation.

Moreover, as this chapter has attempted to make clear, Barbeyrac’s theory of moral obligation makes most sense in the context of the various authors to whom he responds both as a translator and as an intellectual within the Republic of Letters. To a large extent, this is a consequence of his constant efforts to arrange a whole series of natural law theorists into their proper place within his map of the science of morality; a project that runs concurrently with the development of his own theory of natural law. What we see here is Barbeyrac the eclectic, drawing on and responding to his authors whenever he deemed their original arguments to be in need of amelioration. The bigger picture that emerges, however, is the extent to which his own theory of natural law and obligation attempted to combine Pufendorf and Locke.

¹²⁴ Barbeyrac, *DNG*, 2.3.15, Note 5.

In this way, Barbeyrac believes himself able to answer both his own and his authors' critics, in particular the charges of Hobbesianism levied by Leibniz and the alternative vision of natural morality offered by Bayle. 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. This argument, in turn, serves as the foundation for his claim that individual conscience acts as the source of authoritative moral judgement. For Barbeyrac, conscience always has a fundamental role to play in apprehending and executing one's moral rights and duties, whether with respect to obligatory natural law or permissive natural law. Thus while this chapter has focused on how Barbeyrac's own thought was often deeply entwined with that of his authors, in the following chapter, we shall see how he made a considerable departure from his authors in an attempt to establish his innovative but ultimately inchoate concept of permissive natural law.

Chapter Three

Permissive Natural Law

I

Introduction

‘*Permission* is as real an effect of the *Law*, taken in all its extension, as the strongest and most indispensable *Obligation*’.¹ With these words, Barbeyrac indicates that natural law should not be restricted solely to the obligatory precepts that determine the strict rights and duties, that is to say, precepts that lay individuals under an indispensable moral necessity. In this, he differs from his principal authors Grotius and Pufendorf for whom permission denotes ‘a pure inaction’ of the law.² Arguing against this perspective, Barbeyrac wants to establish that the liberty that ‘the Law leaves to do or not do certain things, comprises something more than a negative permission’.³ Barbeyrac thus rejects Pufendorf’s basic line of argument that all things not explicitly commanded or prohibited by natural law come under the province of rights only in the sense that one has a negative permission to make use of one’s natural liberty according to one’s will.⁴ Instead Barbeyrac argues that there is a special category of rights governed by the natural law of simple permission by virtue of which individuals are granted the ‘right or the moral power to assuredly and legitimately possess certain things, or to do or to require from others certain actions, as one deems appropriate’.⁵

In the reciprocal relationship that Barbeyrac insists obtains between rights and obligations, what is distinctive about the rights accorded by the natural law of simple

¹ Barbeyrac, *DGP*, 1.1.9, Note 5: ‘La *Permission* est un effet aussi réel de la *Loi*, prise dans toute son étendue, que l’*Obligation* la plus forte & la plus indispensable’.

² Both Pufendorf and Grotius use the phrase ‘une pure inaction’ to describe the relationship of permission to law: Grotius, *DGP*, 1.1.9 and Pufendorf, *DNG*, 1.6.15. Despite these explicit disavowals of the concept of permissive natural law, Barbeyrac indicates that both authors refer to the concept of permission within their treatises (*DNG*, 1.6.15, Note 2). While this claim is more persuasive in Grotius’s case than in Pufendorf’s, neither author accords to permissive natural law anything like the role that Barbeyrac wants to ascribe to it. Grotius’s use of the concept of permissive natural law across his natural law writings is discussed by Brian Tierney in *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150-1625*, (Michigan, 1997), Chapter 13, especially pp. 328-333.

³ Barbeyrac, *DNG*, 1.6.3, Note 1: ‘les Loix laissent de faire ou de ne pas faire certaines choses, renferme quelque chose de plus qu’une permission négative’.

⁴ Pufendorf, *DNG*, 1.6.3; Barbeyrac, *DNG*, 1.6.3, Note 2.

⁵ Barbeyrac, *DNG*, 1.6.15, Note 2: ‘le droit ou le pouvoir moral d’avoir surement & légitimement certaines choses, ou de faire & d’exiger même d’autrui certaines actions, s’ils le jugent à propos’.

permission is that the corresponding obligation only arises after individuals take up these rights. However, once individuals legitimately make use of the rights accorded by permissive natural law, it is incumbent on all others not to hinder them in the enjoyment of these rights. To this end, Barbeyrac claims that ‘it is not because one is obliged to do a certain thing, that somebody else has a right to require it, but on the contrary, it is because somebody has a right to require a certain thing, that one is obliged to do it’.⁶ This is in contrast to obligatory natural law, which specifies certain rights, for example, the right to have others uphold the duties of sociability towards you just as you have the same duty towards them. The rights of permissive natural law, on the other hand, possess a different kind of potential for Barbeyrac within his wider moral theory. In short, permissive natural law opens up the possibility for a concept of natural rights that are claimable by individuals possessed of the moral judgement to make proper use of them, and yet that may also be relinquished, as circumstances require.

In making use of the concept of permissive natural law, Barbeyrac is drawing on a specific language of natural rights that Brian Tierney argues originates in the Roman law tradition and is subsequently employed within both the medieval and the early modern natural law tradition.⁷ Barbeyrac himself mentions both John Selden (1584-1654) and his fellow Pufendorf commentator Titius as natural law theorists in whose footsteps he follows in making use of the concept of permissive natural law.⁸ For Tierney, what makes permissive natural law distinctive is that it defines ‘an area of human freedom where a judgement of reason could decide, according to circumstances, among actions that were morally valid in themselves’.⁹ That is to say, Tierney emphasises the freedom granted by permissive natural law to undertake and follow one’s individual moral judgement. Yet it must also be borne in mind that in the early modern period, permissive natural law did not have the character of being a ‘power conferring norm’ as Joachim Hruschka describes it in the critical philosophy of

⁶ Barbeyrac, *DGP*, 1.1.9, Note 5: ‘ce n’est point parce qu’on est obligé de faire telle ou telle chose, que quelcun a droit de l’exiger, mais au contraire, c’est parce que quelcun a droit d’exiger telle ou telle chose, qu’on est obligé de la faire’.

⁷ Scholarship on permissive natural law is fairly limited. Brian Tierney gives an overview of permissive natural law from the Roman law jurisconsults to Kant in his article ‘Permissive Natural Law and Property: Gratian to Kant’, in *Journal of the History of Ideas* 62:3 (2001). Permissive natural law is also an important theme in Tierney’s earlier book *Natural Rights*.

⁸ Barbeyrac, *DNG*, 1.6.15, Note 2.

⁹ Tierney, ‘Permissive Natural Law and Property’, p. 398.

Immanuel Kant (1724-1804).¹⁰ The shift that had occurred by the time that Kant is writing is the shift towards rights as fully claimable within both the natural and civil state.

For both Tierney and Hruschka, the primary focus of permissive natural rights in the texts that they focus on is as a ground for the institution of property rights. It is with this focus in mind that Tierney dismisses Barbeyrac as not having discussed either permissive natural law in general or permissive law as the ground of individual property rights.¹¹ The purpose of this chapter is to argue that permissive natural law was in fact a central feature of Barbeyrac's wider natural law theory and that it is intrinsically linked not only to the foundation of property rights but also to the extensive role that he wants to ascribe to the faculty of conscience. The first half of the discussion in this chapter will focus on how Barbeyrac defined and developed his concept of permissive natural law where it will be argued that his *Traité du jeu* is his most explicit attempt to make sense of how permissive natural law opened up the possibility for a private sphere of judgement. The second half of this chapter will demonstrate that Barbeyrac's concept of permissive natural law is fundamental to his claims about how speech, property and commerce come to be instituted within the natural, i.e., pre-civil, state.

II

Barbeyrac's Natural Law of Simple Permission

As we saw in the previous chapter, for Barbeyrac, all law derives from the will of a legitimate superior. But in contrast to obligatory natural law, where the will of a legitimate superior 'imposes the necessity to act or not act in a certain manner', Barbeyrac's law of simple permission, by virtue of the silence of the same legislator, 'leaves the liberty to act or not act as one deems appropriate'.¹² What makes the special category of rights accorded by permissive natural law distinctive is that the liberty granted is better understood as a moral liberty rather than a natural liberty. This is

¹⁰ Joachim Hruschka focuses on the development of permissive law within the German context citing Gottfried Achenwall and Christian Thomasius as particularly important precursors to Kant: 'The Permissive Law of Practical Reason in Kant's *Metaphysics of Morals*', in *Law and Philosophy* 23 (2004), especially pp. 56-61.

¹¹ Tierney, 'Permissive Natural Law and Property', p. 393, fn. 55. Hruschka also considers Barbeyrac in only the briefest terms: 'The Permissive Law of Practical Reason', p. 61, fn. 45.

¹² Barbeyrac, *DHC*, 1.2.2, Note 1: 'leur impose la nécessité d'agir ou de ne pas agir d'une certaine maniere' and 'laisse la liberté d'agir ou de ne point agir, comme il juge à propos'.

because the ensuing rights are derived from and thus in Barbeyrac's own words are 'positively regulated by the Law'.¹³ Yet for this liberty to be meaningful it cannot be solely determined by the law that gives rise to it. It must also include some element of individual moral judgement. Barbeyrac's concept of permissive natural law should therefore be read as his attempt to grapple with the question of what role the moral judgements of conscience have to play in a moral philosophy grounded in law.

This attempt links back to the idea that for conscience to be the source of authoritative moral judgements, it cannot simply be the voice of God within an individual as is the case with mere enthusiasm.¹⁴ Law thus provides the necessary structure to guide its determinations. By making use of the concept of permissive natural law, Barbeyrac has a framework for defending the judgements of conscience as legislative by analogy not only with respect to the obligatory precepts of natural law but rather all moral judgements made by individuals. The liberty accorded to individuals by permissive natural law is the liberty to make what are essentially private moral judgements about whether to do or forbear from certain actions 'as one deems appropriate', circumscribed by the precepts of both obligatory and permissive natural law. The faculty of conscience, as 'the immediate rule of our Actions' and thus the source of these judgements, can consequently be considered to operate within a legally, that is to say morally, defined sphere of action.¹⁵ Thus Barbeyrac's definition of conscience as '*the judgement that each individual forms concerning his own actions, compared with the idea that he has of a certain Rule, namely Law*' takes as its guiding 'rule' permissive as well as obligatory natural law.¹⁶ The only difference here, insofar as there is one, is the extent to which each form of law accords conscience a genuine power to act as a moral arbiter in coming to such judgement, as opposed to merely apprehending and acceding to pre-existing moral precepts.

Barbeyrac's argument that the liberty to act or not act as one deems appropriate is a positive rather than negative permission rests on his claim that God's silence, as divine legislator, implies positive approbation. God alone, Barbeyrac tells us, 'has the power to

¹³ Barbeyrac, *DGP*, 1.1.9, Note 5: 'positivement réglées par la Loi'.

¹⁴ Barbeyrac, *DNG*, 1.3.4, Note 3.

¹⁵ Barbeyrac, *DNG*, 1.3.4, Note 3: 'la règle immediate de nos Actions'.

¹⁶ Barbeyrac, *DHC*, 1.1.5, Note 1: '*le jugement que chacun porte de ses propres actions, comparées avec les idées qu'il a d'une certaine Règle, nommé Loi*'. Cf. Chapter 1, pp. 33-34 and Chapter 2, p. 53.

direct all Actions in general of those who depend upon him’ but because He does not actually impose the necessity to act or not act in all things under His direction, those things not directly prescribed or prohibited can be said to be positively – though tacitly – permitted.¹⁷ Silence can be taken as a certain mark of God’s approbation precisely because in the capacity of divine legislator He ‘designed to forbid all that he judged to be evil’.¹⁸ Barbeyrac’s reasoning is simply that anything not expressly prescribed or prohibited by natural law must be positively permissible in the eyes of God because God has both the right and the intention of ‘exhorting Men to Virtue’ in whatever capacity he acts.¹⁹

Lurking in the background to Barbeyrac’s claim that God’s silence implies positive approbation is his own response to his Calvinist theological heritage. Traditional Calvinist theology was significantly shaped by the doctrine of predestination. However, by the time that Barbeyrac was writing, few moral theorists – Barbeyrac included – subscribed to the idea of direct and particular acts of providence in daily human life.²⁰ In his ‘Discours sur la nature du sort’, Barbeyrac argues that all events, even those that depend upon chance, are determined either by the determinations of human will or the unchanging laws of movement.²¹ In short, unless there is overwhelming evidence to the contrary, ‘there is no reason to assume a particular and immediate providence, which acts *alone*’.²² This is because ‘His infinite wisdom has so well foreseen all things that he does not often need to make exception to the general Laws’.²³ Instead, we must praise God in his general providence, for we receive all that we have from Him, both as the architect of the mechanical laws of nature, and also the legislator of the moral laws of nature.²⁴ The fact that God does not intervene in the world and thus determine the outcome of all arbitrary mechanical acts, as well as human moral acts, is essential to

¹⁷ Barbeyrac, *DHC*, 1.2.2, Note 1: ‘le pouvoir de diriger toutes les Actions généralement de ceux qui dépendent de lui’.

¹⁸ Barbeyrac, *DGP*, 1.1.17, Note 1: ‘a prétendu defender tout ce qu’il jugeoit mauvais’.

¹⁹ Barbeyrac, *DGP*, 1.1.17, Note 3: ‘de porter les Hommes à la Vertu’. Even as temporal monarch of the Judaic nation, i.e., as a civil legislator, God cannot positively permit anything that is bad in itself because to do so would violate the sanctity of His own nature. Cf. Chapter 4, Section IV for Barbeyrac’s distinction between the divine permissions of natural and positive divine law.

²⁰ Thomas M. Lennon, *Reading Bayle*, (Toronto, 1999), p. 150.

²¹ Barbeyrac, ‘Discours de l’auteur sur la nature du sort’, §12-13.

²² Barbeyrac, ‘Discours sur la nature du sort’, §13: ‘on n’aucune raison de supposer une Providence particulière & immédiate, qui agisse *seule*’.

²³ Barbeyrac, ‘Discours sur l’utilité des lettres et des sciences’, p. 114: ‘Son infinie Sagesse a si bien prévu toutes choses, qu’il n’a pas souvent besoin de faire des exceptions aux Loix générales’.

²⁴ Barbeyrac, ‘Discours sur la nature du sort’, §19.

Barbeyrac's idea of moral permission. In short, there must be a sphere of intentional human actions within which God lays down certain laws, either as obligatory or permissible, and yet leaves the moral responsibility with human beings, who ought to determine their own wills in accordance with the injunctions laid down by God.

By virtue of his natural law of simple permission, Barbeyrac effectively distinguished two spheres of human moral action: the sphere of obligatory moral action and the sphere of permissible moral action. Notably both spheres are governed by law, that is to say, under the direction of the will of God. The real difference is that the former is a sphere of authority in which individuals are subject to an indispensable necessity to conform to the will of God and the latter is a sphere of private judgement in which individuals are authorised to make moral judgements consonant with the light of conscience. In effect, Barbeyrac is trying to square the circle by making all human action moral and thus subject to the will of God without sacrificing the thing that makes such action essentially moral, i.e., its imputivity. To do so, Barbeyrac considers it necessary to explain how all action may be subject to a moral law without insisting that all actions encompassed within a moral law are necessarily prescriptive.

To this end, Barbeyrac argues that human actions may be divided into three categories: good, bad and indifferent.²⁵ Morally good and bad actions are those that positively conform to or deviate from the prescriptions and prohibitions of obligatory natural law. These are, however, relatively few in number. In contrast to Barbeyrac, Pufendorf's theory of natural law principally focuses on morally good and bad actions, in particular their application within the civil sphere. For Pufendorf, morally indifferent actions are those where individuals possess a natural liberty to act independently of any specific norms, that is to say, a negative permission where the legislator and thus the moral law do not directly intervene. Barbeyrac chides Pufendorf for failing to grasp the true character of morally indifferent actions. It is these actions, Barbeyrac tells us, that 'everyone may legitimately do or not do, as he deems appropriate, by virtue of the *Law of simple Permission*'.²⁶ This comprises a much larger field of action, namely all actions not already determined by obligatory natural law.

²⁵ Barbeyrac, *DNG*, 1.7.1, Note 1.

²⁶ Barbeyrac, *DNG*, 1.7.5, Note 5: 'chaque peut légitimement faire ou ne pas faire, selon qu'il le juge à propos, en vertu d'une *Loi de simple Permission*'.

With reference to his fellow Pufendorf commentator Titius, Barbeyrac thus defines morally indifferent actions as those actions that ‘one may also call *Good* in a negative sense, that is to say, not-bad’.²⁷ Morally indifferent actions are actions that concern the doing of certain things that have the potential to be morally licit insofar as their actual practice stems from a good intention and in pursuit of a legitimate end. By tying together his concept of moral indifference and permissive natural law, however, Barbeyrac is presented with the problem of whether the actions encompassed within this category of moral indifference can properly be thought of as indifferent when they are in fact governed by a moral law, albeit a rather peculiar one. As we shall see, this is a tension that Barbeyrac does not fully resolve. This inherent tension may go some way to explaining why the section of text quoted above, along with a number of other notes that set the groundwork for the relationship between morally indifferent actions and permissive natural law, are edited out of Barbeyrac’s final revision for his 1734 edition of *Le droit de la nature*.²⁸

In light of this, the evolution of Barbeyrac’s natural law of simple permission across his different works throws up a rather interesting intellectual puzzle. Both in his original 1706 edition and his subsequent revised 1712 edition of *Le droit de la nature* and in his 1724 Grotius edition *Le droit de la guerre*, the natural law of simple permission retains its prominent role. In 1734 edition of *Le droit de la nature*, Barbeyrac makes extensive revisions including a number of notable alterations to his concept of permissive natural law. In effect, these revisions are indicative of the difficulty inherent within a concept of permissive natural law as extensive as Barbeyrac’s where all action not determined by obligatory natural law falls within its scope. That is to say, if all non-obligatory action is morally indifferent and thus determined by permissive natural law, in what sense does the language of permission retain the meaning that Barbeyrac wants to ascribe to it?

²⁷ Barbeyrac, *DNG* [1706], 1.7.5, Note 5: ‘l’on peut aussi appeller *Bonne* en un sens négatif, c’est-à-dire, non-mauvaise’.

²⁸ There is a distinct shift in emphasis from the original 1706 note by the time of the 1734 edition. Cf. Barbeyrac, *DNG* [1706], 1.7.5, Note 5 and *DNG*, 1.7.5, Note 5. Another revision relevant to the current issue of indifferent actions and permissive natural law occurs in Note 1 to *DNG* 1.6.16. While there is an extent to which this shift in emphasis is consistent with his gradual reduction of references drawn from Titius, for example in the note quoted above, the fact that other revisions are simply amendments to his own comments indicates that Barbeyrac’s natural law of simple permission was causing him some philosophical difficulties. Cf. fn. 77 below on Barbeyrac’s revisions to his notes on permissive natural law and property.

Barbeyrac's innovative turn in his concept of permissive natural law thus sees him grappling later in his scholarly career to retain some of the sharpness of its intended meaning.

III

Moral Indifference

At the outset of his scholarly career, however, it is clear that Barbeyrac intended his concept of permissive natural law to create the necessary moral framework to govern individual moral deliberations within a private sphere of judgement. Barbeyrac's attempt to create this framework finds its fullest exposition in his *Traité du jeu*, where he focuses on the morality of gaming, a common pastime, and the perceived need for a proper moral framework to govern its practice, which had already attracted the attention of a number of Barbeyrac's contemporary moral theorists.²⁹

Barbeyrac's own treatise on gaming is of particular interest to the present discussion because he defines gaming, interchangeable with its close correlative gambling, as an activity that is morally indifferent in itself but liable to abuse in its actual practice. The task, as Barbeyrac sees it, is to show clearly how the liberty to do or forbear from things indifferent in themselves, i.e., those things governed by permissive natural law, is structured according to specific moral considerations: 'There is nothing more difficult than convincing men of their aberrations, when it concerns things indifferent in themselves, and that are only harmful in the abuse of them'.³⁰ Barbeyrac's treatise on gaming, then, is principally about the limits of the liberty granted by permissive natural law.

Barbeyrac infers the status of games as indifferent from the silence on the matter of God as divine legislator. To this end, Barbeyrac claims that gaming is not explicitly condemned by the dictates of obligatory natural law nor within the express commands

²⁹ There is relatively little modern scholarship focused on Barbeyrac's *Traité du jeu*. Dunkley, *Gambling*, Chapters 3-4, pp. 57-123 provides an overview of the various intellectual cross currents between the moral theorists of Barbeyrac's day on the subject of games and gambling; Lennon, *Reading Bayle*, Chapter 6, pp. 143-182, discusses the relationship between the practice of gambling and ideas of providence in both Bayle's texts and those of his time, including Barbeyrac.

³⁰ Barbeyrac, 'Préface', *TJ*, p. xlvii: 'il n'y a rien de plus difficile que de convaincre les Hommes de leurs égaremens, lorsqu'il s'agit de choses indifférentes en elles-mêmes, & qui ne sont mauvais que par l'abus qu'on en fait'.

of Scripture.³¹ All further reflections on the morality of gaming must therefore be drawn from the general moral teachings of the law of nature (and the Gospel) applied to the specific nature of gaming. Here Barbeyrac defines gaming as:

a recreational combat, in which two or more individuals, after having agreed upon certain laws, establish who will be the more skilful or the more fortunate in relation to certain movements of which the effect either does not depend at all on their direction, or which depends upon it only in part.³²

This definition presents us with the two core issues that arise in relation to the morality of gaming: its contractual foundation and its recreational function. Both of these aspects of gaming must be shown by Barbeyrac to be morally licit in order for him to uphold his basic contention that gaming is not in itself a moral evil.

First, games usually comprise ‘a self-seeking convention on both sides’ that involves an exchange of goods, normally monetary wagers but sometimes simply the rewards of honour. This transaction must meet certain conditions in order to be deemed valid.³³ As all commercial society rests upon such self-seeking behaviour and yet individuals within society are obliged to do more than simply seek their own advantage without limits, the general laws of contract intervene in order to determine what conditions are necessary for any such convention to be deemed valid: namely, ‘*liberty* in the engagement; *equality* in the conditions; and *fidelity* in the execution’.³⁴ In essence, this means that (i) all those who engage in the gaming contract must possess sufficient reason to understand the obligation that they place themselves under, and that (ii) there must be a high degree of parity in both skills and means between players, and finally that (iii) one must play as honestly as possible to the extent that one must not even take advantage of mistakes and distractions that befall other players.³⁵ All stakes must also be freely wagered and morally licit in themselves.³⁶

³¹ Barbeyrac, *TJ*, 1.1.9.

³² Barbeyrac, *TJ*, 2.1.1: ‘une espèce de combat récréatif, dans lequel deux ou plusieurs personnes, après être convenues de certaines loix, font à qui sera plus adroit ou plus heureux par rapport à certains mouvements dont l’effet ou ne dépend point du tout de leur direction, ou en dépend, du moins en partie’.

³³ Barbeyrac, *TJ*, 2.1.4: ‘une Convention intéressée de part & d’autre’.

³⁴ Barbeyrac, *TJ*, 2.1.4: ‘la *liberté* dans l’engagement; l’*égalité* dans les conditions; & la *fidélité* dans l’exécution’.

³⁵ Barbeyrac, *TJ*, 2.1.4-6.

³⁶ Barbeyrac, *TJ*, 2.1.7.

Barbeyrac's position here on the validity of contracts within the sphere of natural law saw him enter into a heated exchange with Jean Frain Du Tremblay (1641-1724). Tremblay had argued that contracts require that something is positively beneficial to society in order to be deemed valid, but Barbeyrac vehemently opposed this idea, arguing instead that to be valid a contract must simply cause no harm to society or the individuals within it rather than produce some positive good. Barbeyrac alleges that if the position held by Tremblay was put into practice, it would render 'the majority of our everyday business, where the rules of justice and fidelity are observed with great exactitude... as null' given that most transactions are driven more by greed, pride and vanity than by charity and other laudable sentiments.³⁷

For Barbeyrac, the key point is that a distinction needs to be held between the valid and the licit.³⁸ The external circumstances that may render gaming morally illicit do not invalidate the contract provided that the basic conditions of contract have been met; otherwise the natural law foundations of all social and commercial interactions between individuals would be jeopardised.³⁹ In short, the balance that is struck between the requirement of morally obligatory and morally permissible natural law must always serve to uphold the duties of sociability. But while Barbeyrac allows considerable scope with respect to the validity of gaming contracts in keeping with the good of society in general, he does not allow nearly as much scope when it comes to the question of how far individuals may licitly pursue the liberty to game.

Secondly, then, Barbeyrac insists that the purpose of all recreational activities is to restore the mind and body so that individuals may return to the serious occupations of work with renewed vigour. This constitutes the first stricture that Barbeyrac places on the permission to game, namely that the sole legitimate end of gaming is to 'relax oneself, in order to be in a state to resume one's work and to employ oneself with greater ardour'.⁴⁰ To be permissible, gaming must serve some moral purpose, i.e., to strengthen the practice of the strict duties of natural law, e.g., industrious labour.⁴¹ In

³⁷ Barbeyrac, 'Premiere et derniere replique de l'auteur. À ce que M. Tremblai avoit dit dans les *Mémoires de trevoux* au mois de Juillet 1713. Artic. 102', *TJ*, p. 763.

³⁸ Barbeyrac, 'Premiere et derniere replique', *TJ*, p. 760.

³⁹ Barbeyrac, 'Premiere et derniere replique', *TJ*, p. 759.

⁴⁰ Barbeyrac, *TJ*, 3.2.4: 'de se délasser, pour être en état de reprendre son ouvrage & d'y travailler avec plus d'ardeur'. See also §5-12.

⁴¹ On Barbeyrac's theory of work and labour, see pp. 105-109 below, inc. fn. 93.

other words, both the intention and the action itself must, at the every least, be morally licit and, preferably, be morally praiseworthy too. Hence there arises a tension in Barbeyrac's thought between the idea of moral indifference and moral virtue.

On the face of it, Barbeyrac's natural law of simple permission appears to accord a positive moral liberty to undertake to do those things that lie beyond the bounds of the strict duties of natural law. The implication here is that moral indifference defines a private sphere of judgement in which individuals make use of the permission to do or forbear from such things as they deem appropriate. Thus morally indifferent actions are all equally morally neutral. However, in practical terms, Barbeyrac suggests that the case may be otherwise with respect to gaming:

Let us suppose nevertheless that one has employed sufficient time in serious Occupations, both leisured and necessary; I maintain that even in this case one may still find a way to relax and divert oneself in some manner, without giving oneself over entirely to Gaming.⁴²

Included among the more edifying activities that Barbeyrac proposes are conversing, reading, the arts, walking and other physical activities.⁴³ Taken in this light, while gaming may be morally indifferent in the sense that it is morally licit, it is far from being morally praiseworthy. Individuals are mistaken, Barbeyrac says, if they think that after fulfilling their public duties and private acts of devotion, they are free to determine their actions according to their inclinations. Instead, individuals must 'occupy themselves in a manner that may proffer some utility either to the State or to Human Society in general'.⁴⁴ The scope of Barbeyrac's concept of permission governing morally indifferent things is again subordinated to the higher demands of human social and commercial interaction.

In fact, Barbeyrac's *Traité du jeu* is an extended survey of all the different circumstances, both internal and external to gaming, that transform it from something

⁴² Barbeyrac, *TJ*, 4.6.7: 'Supposon néanmoins qu'on aît employé assez de tems à des Occupations sérieuses, tant libres que nécessaires; je soutiens qu'en ce cas-là même on trouvera d'ailleurs dequoi se délasser & se divertir en plusieurs manières, sans se donner presque tout entier au Jeu'.

⁴³ Barbeyrac, *TJ*, 4.6.7-15.

⁴⁴ Barbeyrac, *TJ*, 4.6.6: 's'occuper d'une manière d'où il puisse revenir quelque utilité ou à l'Etat ou à la Société Humaine en général'.

that it is indifferent in itself into something that transgresses the limits of the moral permission. He thus argues that:

while there is nothing more innocent than Gaming considered in itself and reduced to its legitimate use, there are few things more dangerous and more criminal, when the abuse is carried to the point that we see it.⁴⁵

But the exhaustive account that Barbeyrac gives of the various circumstances in which harm should be considered to be caused either to ourselves or others leaves little scope for gaming in a manner that is morally licit. It is difficult to see, therefore, in what sense, gaming could be thought of as morally indifferent other than simply by virtue of the fact that it is not explicitly prohibited by obligatory natural law.

This all begs the question of how far Barbeyrac's concept of permissive natural law and the concomitant idea of moral indifference actually specifies a sphere of genuine individual moral judgement in which individuals possess the liberty to judge whether to take up a moral permission as they deem appropriate? In practice, this liberty would appear to be so heavily circumscribed that Barbeyrac's concept of permissive natural law would be more accurately read as a sphere in which individual moral judgements are authoritative insofar as they successfully identify and uphold the requirements of the strict duties of natural law. Individuals are permitted, if you like, to be willing to do what they ought to do. For Barbeyrac, this much is frequently taken for granted. His bigger concern is that poor education and ingrained customs often leave individuals bereft of the inner moral compass necessary for determining when they ought to refrain from making use of a specific moral permission.⁴⁶

But while Barbeyrac identifies poor education and harmful customs as the cause of the corruption of morals within human society, the morally transformative power of good education and proper customs are also the surest means to rectify these moral ills. Of all the possible forces of moral edification, education and custom stand alone as the best means to reform our moral sensibilities and make us better able to judge the merit or harm brought about by a particular course of action, both to ourselves and to others with

⁴⁵ Barbeyrac, *TJ*, 4.7.9: 'comme il n'y a rien de plus innocent que le Jeu considéré en lui-même & réduit à son légitime usage, il y a aussi peu de choses plus dangereuses & plus criminelles, quand l'abus est monté au point où nous le voyons'.

⁴⁶ Barbeyrac, *TJ*, 3.5-7.

whom we are in society. Although civil laws may also legitimately intervene to the same purpose, the most effective means to inspire individuals to fulfil, for example, the duty of industrious labour is through keeping ‘a careful watch over the Education of the Young’ and encouraging ‘through recompenses those who distinguish themselves in the Arts, in the Sciences, in a word in all honest Occupations from which some utility may recur’.⁴⁷ Individual moral judgements concerning morally indifferent things thus depend upon a solid social morality expressed through education and custom by virtue of which individuals may be instilled with a proper understanding of true morality, itself a necessary prerequisite to undertake such moral deliberations.

Insofar as Barbeyrac advances a theory about the relationship between social and individual morality, this idea seems to be at its heart. Thus when he depicts gaming kept within its proper limits, that is, when it can be deemed to contain nothing morally illicit either within itself or in the attendant circumstances, the scene that he envisages is the very model of proper social interaction:

Let us imagine first a company of wise people, where, without any other purpose than agreeable amusement, one proposes to make a games party. An amiable gaiety is painted on their faces... Everything presents itself in good order: no disputes, no bizarre and superstitious affections for a certain place or a certain game: each submits equally to the Rules of the Game, and to those of a Civility without constraint, the majority voice decides cases of doubt, and no one complains about a law that applies equally to all... finally, they separate still as good friends as they had come.⁴⁸

Here, the moral probity of the individuals who engage in gaming for pleasant amusement fulfil all of the strictures that Barbeyrac would lay upon the legitimate use of gaming. Significantly, individuals are assumed to submit not only to the rules of the game, that is, to the ‘legal’ requirement of the situation, but also to the more extensive idea of civility, that is, the demand of virtue in one’s relations with others. Just as important is the apparent absence of any passions so great as to render those engaged in

⁴⁷ Barbeyrac, *TJ*, 3.9.21: ‘de veiller soigneusement à l’Education de la Jeunesse’ and ‘d’encourager par des récompenses ceux qui se distinguent dans les Arts, dans les Sciences, en un mot dans toutes les Occupations honnêtes & d’où il peut revenir quelque utilité’.

⁴⁸ Barbeyrac, *TJ*, 4.3.2: ‘Imaginons-nous donc d’abord une compagnie de quelques personnes sages, où, sans autre vûe que de s’amuser agréablement, on propose de faire une partie de Jeu. Une aimable gaieté est peinte sur leur visage... Tout se fait dans l’ordre: point de dispute, point d’affection bizarre & superstitieuse d’une certaine place ou d’un certain jeu: on se soumet également & aux Règles du Jeu, & à celles d’une Civilité sans contrainte, la pluralité des voix décide des cas douteux, & personne ne se plaint d’une loi qui est également pour chacun... ils se séparent enfin aussi bons amis qu’ils étoient venus’.

gaming to have relinquished their wisdom, i.e., the rational aspect of their natures through which they are sensible of the requirements of the rules and of civility. Properly conducted gaming becomes, so to speak, a schooling in the requirements of sociability. This is in strong contrast to those whose abuse of games thereby renders them ‘denatured’ by the overwhelming passions that carry them there.

The question that it leaves us with, however, is the precise relationship that Barbeyrac envisages between obligatory and permissive natural law. In sum, it is clear that for Barbeyrac moral indifference does not always denote moral neutrality. Likewise, the permission granted is limited by the demands of individual moral probity, the requirements of civility and the duties that one owes to God, to oneself and to others as specified by obligatory natural law. In light of this, Barbeyrac concludes that: ‘one must completely renounce the most innocent and most legitimate, indeed, the most necessary things, when there is no way of making use of them without prejudice to one’s duty’.⁴⁹ The idea here is that morally indifferent things may be licit by virtue of the law of simple permission but that this permission is heavily circumscribed by the requirements of the strict duties of natural law.

Nonetheless, it should also be clear from the present discussion that Barbeyrac’s concept of permissive natural law cannot simply be subsumed within his theory of obligatory natural law. Instead it reflects a sustained effort to show how moral judgements enter into almost all spheres of human activity and thus the importance for each individual to cultivate within himself the necessary moral lights to navigate the vast array of moral predicaments faced in the course of everyday social practice. Thus, in reading Barbeyrac’s *Traité du jeu* as an extended study of morally indifferent actions, it would seem that the framework that Barbeyrac creates to govern the sphere of permissible actions, that is to say, morally neutral actions, is far more extensive than his original definition of permissive natural law may have suggested.

⁴⁹ Barbeyrac, *TJ*, 4.7.9: ‘il faut renoncer entièrement aux choses les plus innocentes, les plus légitimes, que dis-je ? les plus nécessaires, quand il n’y a pas moyen d’en user sans préjudice de son devoir’.

IV

Conditional Duties

The discussion of Barbeyrac's permissive natural law has hitherto focused on how far it determines the moral liberty that individuals possess to undertake certain social practices, exemplified by gaming but more widely applicable. Yet there is a further series of challenges that Barbeyrac encounters in the application of his conception of permissive law arising from the sheer extent of actions and of things encompassed within the idea of moral indifference and thus requiring his concept of permissive natural law to operate at different levels of normativity. In short, the moral norms that govern gaming and similar social practices already presuppose the institution of a comprehensive social morality, whether natural or civil, on which to draw in order to determine the parameters of proper moral conduct. This social morality depends (to some extent) on the prior creation of certain basic social institutions, themselves morally indifferent. Hence, some explanation of the moral norms that determine their institution is needed. This includes the moral norms governing speech, property, commerce and political governance. The present discussion will focus on Barbeyrac's discussion of speech, property and commerce whereas political governance will be dealt with at greater length in the final chapter of this thesis. Once again, Barbeyrac develops his own argument through his response to the Pufendorfian framework that he has inherited.

As we saw in the previous two chapters, for both Barbeyrac and Pufendorf before him, the strict duties of natural law obtain at all times and in all places prior to any act of human will. These duties are derived directly from the fundamental principles of natural law, as the unmediated will of God. Pufendorf restricts these duties to the principle of sociability alone, where Barbeyrac argues for three separate principles – religion, enlightened self-love and sociability – that correspond to the three objects of our duties, namely God, oneself and others. By extending the scope of the strict duties of natural law in order to emphasise the natural relationship between man and God independent of socially formed spheres of authority, Barbeyrac lays the foundation for his concept of conscience as the source of authoritative moral judgement. With respect to his theory of permissive natural law, the authority of conscience is crucial to explaining how the natural rights bequeathed by the silence of the divine legislator can be the foundation of

the basic institutions of speech, property and commerce and thus the conditional, or socially dependent, rights and duties that are thereby created.⁵⁰

Barbeyrac agrees with Pufendorf that the conditional duties of natural law may be differentiated from the strict duties of natural law insofar as the former ‘suppose a certain state, or a certain establishment, formed or received by the will of Men’.⁵¹ In short, some act of human will must bring them into being. For Pufendorf, with respect to the institutions of speech, property and commerce, this act of human will takes the form of a mediating contract or convention between individuals. These conditional duties therefore become binding on all individuals by virtue of the strict duty to keep one’s word, i.e., to honour one’s act of will. Barbeyrac, however, disagrees. ‘All the establishments, which our Author will treat of here’, he claims, ‘are not founded in some convention’.⁵² Having already extended the scope and reach of natural law, Barbeyrac believes that his theory of permissive law is able to provide an authoritative foundation for these conditional duties without recourse to the Pufendorfian idea of an intervening contract between social beings and so overcome the objections levied against his author in this regard.

For Barbeyrac, there is no moral necessity for a convention to intervene in order to create binding duties and claimable rights for such conditional institutions because ‘it is upon this *Natural Law of Simple Permission*, that all *Rights* are founded, whether natural or acquired’.⁵³ The strict duties of obligatory natural law and the rights accorded by permissive natural law are sufficient, when acting in concert, to serve as the foundation of the rights and duties of speech, property and commerce. In the original 1706 edition of the text, Barbeyrac suggests that this framework also encompassed ‘Liberty, the right to not suffer harm at the hands of another, Empire or authority over other persons, and other similar things, which are commonly subject to diverse changes

⁵⁰ Barbeyrac, *DNG*, 2.3.24, Note 1.

⁵¹ Pufendorf, *DNG*, 2.3.24: ‘supposent un certain état, ou un certain établissement, formé ou reçu par la volonté des Hommes.

⁵² Barbeyrac, *DNG*, 3.9.8, Note 1: ‘Tous les établissemens, dont nôtre Auteur va traiter, ne sont pas fondez sur quelque Convention’.

⁵³ Barbeyrac, *DNG*, 2.3.24, Note 5: ‘C’est sur cette *Loi Naturelle de simple Permission* que sont fondez tous les *Droits*, soit naturels ou acquis’.

by the will of men'.⁵⁴ This was deleted in the 1734 edition of the text, and we may speculate that this excision was made precisely because the blurring of the boundaries between obligatory and permissive natural law had resulted in Barbeyrac conflating the idea of permissive rights to things that originally were morally indifferent with rights that are derived directly from the strict duties of natural law.

Across the different editions of his text, however, Barbeyrac consistently maintains that what characterises things determined by permissive natural law is their quality of becoming obligatory when the permissive right is taken up but being equally capable of subsequently returning to their state of natural indifference. This is because the rights accorded by permissive natural law 'are of such a nature, that one may make use of them or not, as one deems appropriate, or even renounce them, whether *for a time, or for good*'.⁵⁵ These rights are therefore characterised both by the liberty to do or forbear from certain things and by the liberty to renounce them where appropriate; that is to say, these are rights that may be fully claimable in certain circumstances but not necessarily enduring in *all* circumstances. Here, Barbeyrac takes up the distinction proposed by his fellow Huguenot and moral theorist Jean la Placette (1629-1718) between alienable and inalienable natural rights.⁵⁶ Inalienable natural rights cannot be renounced, even willingly, because 'a superior Law prohibits it'. Alienable rights, on the other hand, are natural rights 'of which we are so much the master that we may dispose of as we please'. The examples that Barbeyrac gives here are the rights that we have over our material possessions, i.e., the rights accorded by permissive natural law. These rights, arising from an original act of human will, may consequently be alienated or otherwise altered by a subsequent act of human will.⁵⁷

As always, the strict duties of natural law specify the necessary bounds that these natural permissive rights must operate within. In light of the social character of most

⁵⁴ Barbeyrac, *DNG* [1706], 2.3.4, Note 5: 'la Liberté, le droit de ne pas souffrir du mal de la part d'autrui, l'Empire ou l'autorité sur les personnes, & autres choses semblables, qui ordinaire reçoivent divers changemens selon la volonté des hommes'.

⁵⁵ Barbeyrac, *DNG*, 2.3.24, Note 5: 'sont de telle nature, qu'on peut en faire on n'en pas faire usage, comme on le juge à propos, ou même y renoncer, soit *pour un tems ou pour toujours* [my italics].

⁵⁶ Barbeyrac, *DNG*, 1.7.17, Note 2. Cf. Jean la Placette, *Traité de la restitution*, (Amsterdam, 1696), pp. 76-78. For a brief overview of La Placette's works and thought, see Auguste Schaffner, *Essai sur la vie et l'oeuvre de Jean de la Placette*, (Paris, 1885).

⁵⁷ Barbeyrac, *DNG*, 1.7.17, Note 2: 'une Loi supérieure nous le défend' and 'dont nous sommes tellement les maîtres, que nous pouvons en disposer comme il nous plaît'. Cf. Chapter 5, p. 154 and pp. 162-163.

permissive natural rights, the strict duties that usually circumscribe their exercise, Barbeyrac tells us, are for the most part the duties entailed by the principle of sociability: namely, not to harm others, to prevent any harm that they are threatened by whenever possible and to do them positive good.⁵⁸ Nonetheless, by conceiving of the foundation of the conditional duties of natural law in this manner, Barbeyrac is in effect arguing that the authoritative moral judgements of individuals are sufficient to serve as the foundation for the fundamental institutions of speech, property and commerce. As we shall see in the following two sections, however, while he expends great energy setting out the theoretical framework necessary to make this argument, there remains considerable ambiguity with respect to its practical application within the development of his actual arguments concerning speech, property and commerce.

V

Speech and Language

Language may be described as indifferent in two conceptually distinct ways. On the one hand, there is the ontological question of the origins of language. In this respect, both Pufendorf and Barbeyrac agree that the origins of language itself and the meanings of words are arbitrary not naturally or divinely instituted.⁵⁹ Language is indifferent here in the sense that the meanings of words are determined by acts of human will rather than the nature of the thing itself. On the other hand, there is the moral question of how individuals make use of language, for example, how far individuals have a duty to disclose their thoughts to others. In this sense language may be described as indifferent insofar as individuals are not bound by any specific duties constraining its use. It is the latter form of moral indifference that is pertinent to the present discussion, but the two often overlap within Barbeyrac's engagement with the subject.

Barbeyrac broadly agrees with Pufendorf that it is language, specifically speech as the most effective way of signalling one's thoughts to others, that makes society possible. In short, language provides individuals with the means to engage in all forms of

⁵⁸ Barbeyrac, *DNG*, 3.1.1, Note 3. Cf. Barbeyrac, *DNG*, 3.9.8, Note 1.

⁵⁹ Neither Pufendorf nor Barbeyrac completely rejects the Scriptural account of the origins of language, but rather they claim that the Scriptural account may be interpreted in a manner consistent with the idea of language as having an arbitrary foundation by historicising its development. See Pufendorf, *DNG*, 4.1.3-4 and Barbeyrac, *DNG*, 4.1.3, Notes 3-4.

commerce, establish peace and erect civil discipline.⁶⁰ To ensure that this necessary end of language is upheld, Pufendorf claims that the first duty in making use of language is ‘to never deceive anyone by the use of speech, nor by the use of any other signs established in order to express our thoughts’.⁶¹ Barbeyrac enters into a disagreement with his author, however, over Pufendorf’s claim that both this principal duty and all subsequent duties are established by virtue of a convention between individuals to settle both the meanings and proper use of words. This is because, for Pufendorf, once the meanings of words are settled by this convention, individuals are obliged to use them in conformity with their established meanings and for the purpose that they were intended. Hence all forms of dissimulation are condemnable.⁶²

Barbeyrac claims that any such instituted convention entails a strict obligation that limits individuals in the proper use of the rights and duties attached to language, specifically speech.⁶³ This objection rests on the belief that if the meanings of words were established by an obligatory convention, any change in the instituted usage of words would not be permissible.⁶⁴ Thus it is more reasonable to propose ‘that the establishment of the meaning of Words arises from simple consent, where nothing obligatory enters, when considered in itself’.⁶⁵ While Barbeyrac’s slight modification to the claim that simple consent rather than a convention may settle the ontological question of the origin of the meaning of words, it leaves open the moral question of how the duties attached to the use of language, specifically speech, are to be determined.

Given that Barbeyrac identifies speech as something indifferent in itself, it should follow that the rights and duties attached to the use of speech are determined by permissive natural law, previously identified as the moral law that governs all morally indifferent things. Throughout his commentary on the rights and duties of language, however, there is no explicit mention of the concept of permissive natural law. Instead,

⁶⁰ Pufendorf, *DNG*, 4.1.1. Cf. Chapter 2, p. 56, and Hochstrasser, *Natural Law Theories*, pp. 89-91.

⁶¹ Pufendorf, *DNG*, 4.1.1: ‘DE NE TROMPER JAMAIS PERSONNE PAR DES PAROLES, NI PAR AUCUN AUTRE SIGNE ÉTABLI POUR EXPRIMER NOS PENSÉES’.

⁶² Pufendorf, *DNG*, 3.4.2.

⁶³ Barbeyrac, *DNG*, 4.1.10, Note 3.

⁶⁴ This is a conclusion that Barbeyrac draws from Pufendorf’s principles. It runs contrary to Pufendorf’s own assumption that a convention would not prevent the meanings of words evolving even when a further obligation requires us to make known our thoughts. Cf. Pufendorf, *DNG*, 4.1.5, and Barbeyrac, *DNG*, 4.1.5, Note 1.

⁶⁵ Barbeyrac, *DNG*, 4.1.5, Note 1: ‘que l’établissement de la signification des Mots s’est fait par un simple consentement, où il n’entre rien d’obligatoire, à le considerer en lui-même’.

Barbeyrac frames the discussion somewhat differently: ‘*Speech*, like all other actions indifferent in their nature, is directed by the three great principles of our Duties... I mean *Religion*, *Enlightened self-love*, and *Sociability*’.⁶⁶ On this basis, individuals are obliged always to speak the truth to God and, with respect to the requirements of the strict duties that they owe to others or to themselves, ‘either to speak the exact truth, or to keep quiet, or to feign and dissimulate’.⁶⁷ In short, the use of speech must not involve anything contrary to obligatory natural law but rather must positively uphold it.

By virtue of including among the duties attached to the use of speech not only the duty to faithfully reveal one’s thoughts to others when required but also the duty to conceal those thoughts when required, Barbeyrac also enters into a discussion of whether it is ever permissible to lie and under what circumstance such lies would, in fact, be innocent rather than criminal.⁶⁸ The kind of permissible lies that he has in mind are those debated by the early modern Catholic casuists and subsequently taken up and reformulated by Protestant natural law theorists, for example, whether it is permissible to lie to save one’s own life and thus uphold the duty of self-preservation and, in a similar vein, whether it is permissible to conceal the whereabouts of a would-be murderer’s intended victim and thus uphold the duty to prevent harm to others.⁶⁹ In both cases, Barbeyrac answers in the affirmative, that is to say, lying is not always, strictly speaking, morally bad.

As Barbeyrac sees it, the problem with appropriately defining cases where telling a lie is permissible, and thus morally good in the sense of being ‘not-bad’, is that the ‘imperfections’ of language do not allow us to distinguish between conceptually distinct ideas:

The word *Lie* [*Mensonge*], and corresponding words in other languages, usually occur in an odious sense; because in effect most of those who speak or act contrary to their thoughts, do so with a wicked design, or contrary to

⁶⁶ Barbeyrac, *DNG*, 4.1.7, Note 1: ‘la *Parole*, comme toutes autres actions indifferentes de leur nature, est dirigée par les trois grands principes de nos Devoirs... je veux dire la *Religion*, l’*Amour de soi-même* & la *Sociabilité*’.

⁶⁷ Barbeyrac, *DNG*, 4.1.7, Note 1: ‘ou à dire exactement la verité, ou à nous taire, ou à feindre & à dissimuler’.

⁶⁸ Barbeyrac, *DNG*, 4.1.7, Note 1.

⁶⁹ For a broad context of these issues, see Johann P. Sommerville, ‘The ‘New Art of Lying’: Equivocation, Mental Reservation, and Casuistry’, in *Conscience and Casuistry in Early Modern Europe*, ed. Edmund Leites, (Cambridge, 1998), pp. 159-184.

what duty requires: there is no other term, that may be applied to cases where feigned discourse contains nothing vicious, nor harmful to whomever it may be.⁷⁰

The same is true of words like ‘homicide, murder, kill’ that all suppose, by their very definition, that it is never permissible to take the life of another person. In both cases, Barbeyrac wants to argue that the general – and strict – duty not to deceive nor to take the life of others is subject to certain conditions. Here, Barbeyrac argues that a particular permission takes precedence over a general prescriptive duty against Pufendorf’s original assertion that a prescriptive duty must always override a permission.⁷¹ In the case of the exceptions to the prescription against lying, Barbeyrac’s argument depends upon the idea of language as arbitrarily instituted, i.e., not expressing the nature of the thing itself, in order for him to take up the Lockean idea that the physical action and the moral relation must always be distinguished when judging the moral rectitude of actions.⁷²

At the beginning of his principal note on the rights and duties determining the legitimate use of language, including for the purpose of dissimulation, Barbeyrac frames his discussion in terms of the strict duties of natural law. But as he develops his argument through the note, the emphasis on individual judgement in determining the proper limits of the permission to deceive others constitutes a near direct reference to the language of permissive natural law: ‘Besides, it is not necessary to determine when and how often one is permitted to lie. It depends on the circumstances, which are infinite, and *on the discernment of each individual*’.⁷³ In this particular part of the note, Barbeyrac subsequently argues that whenever the person to whom one speaks does not have a particular right to require the truth from us, we cause no harm [*tort*] by disguising the

⁷⁰ Barbeyrac, *DHC*, 1.10.8, Note 1: ‘Le mot de *Mensonge*, & ceux qui y répondent en d’autres Langues, se prennent d’ordinaire en un sens odieux; parcequ’effectivement la plupart de ceux qui parlent ou agissent contre leur pensée, le font à mauvais dessein, ou contre ce qu’exige quelque Devoir: on n’a point d’autre terme, qui seul puisse être appliqué aux cas où les discours feints n’ont rien de vicieux, ne de nuisible à qui que ce soit’.

⁷¹ Barbeyrac, *DNG*, 5.12.23, Note 1.

⁷² Barbeyrac, *DHC*, 1.10.8, Note 1. Barbeyrac gives a reference to Locke’s *Essay* 2.28.16 where Locke says that ‘because, very frequently, the positive *Idea* of the Action and its Moral Relation, are comprehended together under one Name, and the same Word made use of, to express both the Mode or Action, and its Moral Rectitude or Obliquity: therefore the Relation it self is less taken notice of; and there is no *distinction* made *between the positive Idea* of the Action, *and the reference it has to a Rule*’. Barbeyrac makes the same point but more briefly, again citing Locke, in *DNG*, 1.2.6, Note 9.

⁷³ Barbeyrac, *DNG*, 4.1.7, Note 1: ‘Au reste, il n’est nullement nécessaire de déterminer quand & combien de fois il est permis de mentir. Cela dépend des circonstances, qui sont infinies, & *du discernement de chacun*’ [my italics].

truth. That is to say, our obligation is assumed to depend on the existence of another individual's right to require something of us. Barbeyrac implies here that the scope of the permission is determined by what lies outside the strict duties of obligatory natural law (the violation of which would constitute a 'harm'). However, individuals must be careful not to stray from legitimate use of such a permission to abuse of that permission by taking 'too great a liberty' in making use of the rights that it confers.⁷⁴

This discussion presents us with a good example of the different ways in which Barbeyrac uses the idea of permission in his natural law theory. On the one hand, there is the idea of a permission that is grounded in the strict duties of obligatory natural law, exemplified by Barbeyrac's claim that all the duties attached to the use of speech may be derived from the three principles of natural law. In this vein, Barbeyrac discusses the permission to conceal the truth, whether by explicitly lying or merely keeping silent, as a permission entailed by the strict duties themselves, rather than as a permission that lies beyond their bounds. On the other hand, as the preceding paragraph makes clear, there is also the idea of moral permission that concerns morally indifferent actions and things, which lie beyond the bounds of obligatory natural law and are codified within the concept of permissive natural law.

The conflation of these two different ideas of permission is something that Barbeyrac neither acknowledges nor resolves. With respect to the permission to disguise the truth, Barbeyrac thus concludes that 'the wise man does not make recourse to the slightest disguise without a certain *necessity*'.⁷⁵ Individuals 'of discernment' thus will refrain from pushing 'the permission to feign or dissimulate beyond its just limits, so long as they solemnly undertake to regulate all their conduct by the light of right Reason'.⁷⁶ Right reason here signifying the same thing as the light of conscience. In short, Barbeyrac's general concept of permission appears to suffer from some blurring of the boundaries with respect to the question of whether it is a distinct form of natural law or rather a derivation from obligatory natural law. It is thus not always clear whether Barbeyrac intends for the strict duties of natural law to give rise to certain permissions

⁷⁴ Barbeyrac, *DNG*, 4.1.7, Note 1: 'une trop grand liberte'.

⁷⁵ Barbeyrac, *DNG*, 4.1.7, Note 1: 'il n'est pas d'un homme sage d'avoir recours sans quelque *nécessité* au moindre déguisement' [my italics].

⁷⁶ Barbeyrac, *DNG*, 4.1.7, Note 1: 'la permission de feindre ou dissimuler au-delà de ses justes bornes, pourvû qu'ils travaillent serieusement à régler toute leur conduite sur les lumieres de la droite Raison'.

by virtue of some prevailing obligation, such as legitimate self-defence, or whether these strict duties simply determine the limits of the legitimate use of a permission derived from the conceptually distinct framework of permissive natural law.

This is not a question that it is possible to resolve on Barbeyrac's behalf. Rather, it is indicative of the difficulties with which Barbeyrac's concept of permissive natural law presented him when it was employed to the full extent entailed by its definition as the rule that governs all things indifferent in themselves. From a modern perspective, if all moral permissions, however they may be derived, remain heavily circumscribed by the strict duties of obligatory natural law in their use, then it begs the question of whether Barbeyrac needed a distinct concept of permissive natural law in order to regulate morally indifferent actions and things. However, the question of whether the concept of permissive natural law was necessary to Barbeyrac's general theory of natural law is, of course, quite different from whether he thought that it was necessary – he evidently did – and where he thought that it found its most effective purchase within his theory, namely in grounding the rights of individuals to make authoritative moral judgements in certain matters. In effect, upholding and extending the rights of individual conscience.

What must also be borne in mind here is that this concept of permissive natural law was developed against the backdrop of Pufendorf's intentionally restrictive theory of natural law. Thus in a simple sense, Barbeyrac is also trying to reinstate the full gamut of rights and duties excluded by Pufendorf. Above all, this includes creating a new framework that serves as the ground for the authoritative moral judgements of individuals capable of discerning the rights and duties encompassed within a more extensive theory of natural law. Before turning to these issues in more detail in the two remaining chapters, it is necessary first to enquire how the difficulties that he faced in developing his concept of moral permission played out within his discussion of the foundation of individual property rights.

VI

Property

Just as in his discussion of the foundation of language, so too in his discussion of the foundation of individual property rights, Barbeyrac rarely makes any direct reference to

his theory of permissive natural law.⁷⁷ However, even more so than in the case of language, in offering an interpretation of Barbeyrac's argument concerning the foundation of individual property rights, it is necessary to consider how he draws upon assumptions that are implicit within his wider theory of permissive natural law. This also helps answer the question of whether Barbeyrac considers the foundation of individual property rights to derive from an individual act of will alone or whether he subscribes to the Lockean theory of labour as the foundation of individual property rights. Once again, Barbeyrac's objections to Pufendorf's argument that an instituted convention is the original foundation of property rights provide the best context in which to consider Barbeyrac's own arguments.⁷⁸

The institution of property goes to the heart of Barbeyrac's disagreement with Pufendorf over the proper relationship between rights and obligations. Pufendorf's rejection of natural rights that are claimable against others forms the central tenet of his repudiation of the Hobbesian thesis of a natural right to all things: 'For it is ridiculous to give the name of right to a power that we could not avail ourselves of, without all others having an equal right to prevent us from doing so'.⁷⁹ This is because for Pufendorf the right to do certain things – into which category Hobbes's right to all things falls – is not a true right that produces a corresponding obligation.⁸⁰ When Pufendorf speaks of an original negative community of goods arising from the divine permission to make use of the things of the natural world insofar as the needs and wants of life require it, we must therefore understand this permission as a purely negative permission that bestows a liberty to do or forbear but no claimable right.⁸¹

⁷⁷ One of the rare notes where Barbeyrac refers explicitly to his concept of permissive natural law in relation to individual property rights is modified in the final revised edition of the text so that the reference is to permission in general rather than permissive natural law in particular. Cf. Barbeyrac, *DNG* [1706], 4.10.7, Note 1 and *DNG*, 4.10.7, Note 1.

⁷⁸ In both his Grotius and Cumberland translations, Barbeyrac claims that his notes to his Pufendorf translations contain the definitive account of his theory of property rights. Cf. Barbeyrac, *DGP*, 2.2.1, Note 1 and Barbeyrac, *TPLN*, 8.11, Note 3.

⁷⁹ Pufendorf, *DNG*, 3.5.3: 'Car il est ridicule de donner le nom de droit à un pouvoir dont on ne sauroit faire usage, sans que tous les autres ayent du droit égal de nous en empêcher'. For clarifying my understanding of the relationship between Pufendorf, Hobbes, Locke and Barbeyrac on the issue of property rights, I am indebted to James Tully's reconstruction of the arguments in *A Discourse on Property: John Locke and his Adversaries*, (Cambridge, 1980), especially here pp. 72-77. For further valuable discussions on the general context and issues surrounding property rights in the early modern period, see also: Stephen Buckle, *Natural Law and the Theory of Property: Grotius to Hume*, (Oxford, 1991) and Peter Garnsey, *Thinking about Property: From Antiquity to the Age of Revolution*, (Cambridge, 2007), esp. pp. 136-146.

⁸⁰ Pufendorf, *DNG*, 3.5.1.

⁸¹ Pufendorf, *DNG*, 4.4.4.

For Pufendorf, the transition from the original negative community of goods to the institution of individual property rights thus requires something additional to create a particular right to things that others are morally obliged to recognise. Having rejected God and nature as the immediate foundation of such rights, Pufendorf claims instead that individual property rights depend upon the tacit or express consent of all others, whereby all individuals voluntarily renounce their natural liberty in order to acquire particular moral rights and duties.⁸² Premised on the idea of an intervening human convention, these rights properly belong to obligatory natural law in the sense that this obligatory natural law ‘advises us’ of the need to institute such rights insofar as the duty to procure and promote peaceful society with others demands it.⁸³

Like Pufendorf, Barbeyrac is also concerned to repudiate what he takes to be the Hobbesian thesis of open-ended natural rights but he considers Pufendorf’s alternative line of argument equally problematic. Instead, Barbeyrac’s response to both Hobbes and Pufendorf is to insist upon a strict 1:1 correlation between rights and obligations. Right and obligation, Barbeyrac tells us, are ‘two relative ideas, which almost always go hand in hand’.⁸⁴ To be sure, Barbeyrac says, in certain circumstances these natural rights lose their utility when they come into conflict with an equal right possessed by someone else, such as in the case of two men in conflict over a plank of wood in a shipwreck where neither has a prior or particular right to it.⁸⁵ Barbeyrac’s claim here is that the rights themselves do not cease to exist but rather that it is no longer possible to exercise them effectively. As we have already seen, Barbeyrac’s law of simple permission is his attempt to explain what he takes to be the proper foundation and the limits to this idea of natural rights. Deriving from positive divine permissions, the actual exercise of one’s natural rights produces a corresponding obligation in others. Yet, the exercise of these

⁸² Pufendorf, *DNG*, 3.5.4.

⁸³ Pufendorf, *DNG*, 4.4.4: ‘elle nous conseille’. Peter Birks and Grant McLeod argue that Pufendorf’s theory of the foundation of property rights here owes its origin to the Roman concept of quasi-contracts and implied consent and that Barbeyrac both identified and rejected Pufendorf’s use of quasi-contractual reasoning: ‘The Implied Contract Theory of Quasi-Contracts’, in *Oxford Journal of Legal Studies* 6:1 (1986), pp. 65-68.

⁸⁴ Barbeyrac, *DNG*, 1.6.5, Note 2: ‘deux idées relatives, qui marchent presque toujours d’un pas égal’. The phrase ‘hand in hand’ used here is adopted from the early modern translation: *The Law of Nature and Nations*, 1.6.15, Note 6, p. 70.

⁸⁵ Barbeyrac, *DNG*, 3.5.1, Note 1. Barbeyrac cites Thomasius for the example.

rights is circumscribed by the wider framework of one's general duties to oneself, to others and to God.

In Barbeyrac's own account of the original negative community of goods, he claims therefore that the divine permission upon which this community is founded 'naturally accords a full power' to use things as individuals deem appropriate.⁸⁶ In the natural state, Barbeyrac delimits the exercise of this 'natural' right as follows: 'that as long as a man does not abandon something that he has seized with the design of making use of it, thus far it belongs to him, such that no one may dispossess him of it', after which point it is once again left to the right of first occupancy.⁸⁷ For Barbeyrac, this limited right of first occupancy is a necessary consequence of God's intention in having accorded His permission in the first place. As we saw above, it is also characteristic of the rights accorded by permissive natural law that they may be taken up for a time and then cease to pertain or even be renounced.

Moreover, Barbeyrac claims that the principal difference between this original limited right of possession and a full individual right of property is that the former only lasts as long as an individual is actually in possession of something, whereas the latter does not cease with possession, except for when an individual explicitly or tacitly abandons his right of property.⁸⁸ That is to say, for Barbeyrac, the foundation of property rights ultimately derives from a natural right accorded by the original divine permission rather than from human consent. But how does Barbeyrac envisage the transition from a natural right to legitimately possess and use goods held in common to individual property rights?

In the 1706 edition of his Pufendorf translation, Barbeyrac refers to Titius's Pufendorf-glosses to claim that the essence of an individual property right lies in the thing itself fully belonging to an individual for him to enjoy and dispose of as he pleases, rather than in the exclusion of the presumptions of all others to it.⁸⁹ In short, for Barbeyrac, the divine permission establishes a relation of right that does not require the consent of

⁸⁶ Barbeyrac, *DNG*, 4.4.1, Note 2: 'ont naturellement plein-pouvoir'.

⁸⁷ Barbeyrac, *DNG*, 3.5.4, Note 3: 'que tant qu'un homme n'abandonnoit pas une chose dont il s'étoit emparé à dessein de s'en servir, elle étoit à lui jusques-là, ensorte que personne ne pouvoit l'en depousseder'.

⁸⁸ Barbeyrac, *DHC*, 1.12.2, Note 1.

⁸⁹ Barbeyrac, *DNG* [1706], 4.4.1, Note 2.

others for its exercise. Individual property rights are thus not introduced by any general convention between individuals but rather ‘by the sole intention whereby each individual indicates his design to keep *for all time* what he has appropriated, especially when the things have taken a new form in his hands as the fruit of his industry and labour’.⁹⁰ Pufendorf’s consent-based theory of property rights, even the idea of presumed consent, Barbeyrac argues, is a chimerical and ahistorical supposition that is not only improbable but also unnecessary to the foundation of property rights so conceived.⁹¹

Barbeyrac’s account of the foundation of property rights, however, is far from straightforward. On the face of it, the definition of property rights just given draws directly on the Lockean idea that it is by virtue of mixing one’s labour with the goods of the earth – which all individuals have a natural right to use and consume – that individuals come to possess a particular right of property.⁹² This ties in closely with Barbeyrac’s wider argument that what distinguishes humans from animals is an awareness of the obligation to undertake honest (and often strenuous) labour in order to provide the necessary goods for, first, the preservation of human society and, second, its advancement.⁹³ For Barbeyrac, this is evident from God’s purpose in constituting man and the natural world as he did, that is, to inspire in them a rationally motivated will to work: ‘the Creator himself, in giving the Earth to Men in common, has commanded them to work, and has placed upon them, by virtue of their natural condition, the

⁹⁰ Barbeyrac, *DHC*, 1.12.2, Note 1: ‘par la seule intention que chacun temoignoit de garder *pour toujours* ce dont il s’étoit saisi, surtout quand les choses avoient pris entre ses mains une nouvelle forme, qui étoit le fruit de son industrie & de son travail’.

⁹¹ Barbeyrac, *DNG*, 4.4.9, Note 3. It is important to note that a consent-based theory of property and a theory of permissive natural law are not mutually exclusive. In fact, Francisco de Vitoria combined both in his natural law works: see Brian Tierney, ‘Permissive Natural Law and Property’, pp. 389-390. Tierney rejects the idea that Barbeyrac had anything to contribute to the debate on permissive natural law and property, viewing him as only concerned with the relationship between permissive civil law and the duties of natural law, see p. 393, fn. 55.

⁹² Barbeyrac, *DNG*, 4.4.4, Note 4.

⁹³ For Barbeyrac, both labour and rest are necessary to human society and thus both have an inherent dignity insofar as they uphold the purpose for which they were instituted: *TJ*, 1.1.3-4. In viewing rest and labour in this way, he was very much a man of his time and his religion, sitting between the original Reformation idea of work as a spiritual vocation and the emerging idea that linked labour to its utility: Leland Ryken, *Work and Leisure in Christian Perspective*, (Colorado Springs, CO, 1987), pp. 69-71 and pp. 92-100. However, it should be noted that Ryken places Locke firmly in the ‘Enlightenment’ tradition of valuing work in terms of utility procured, whereas a more careful reading of Locke should place him in the period of transition alongside Barbeyrac. Christopher Hill also charts the changing attitudes to work and labour in the period after the Reformation, arguing that the radical potential of the original English Puritan ideas had diminished by the time that Locke came to put labour at the heart of his theory of property: *Society and Puritanism in Pre-Revolutionary England*, (London, 1964), Chapter 4, esp. p. 144 on Locke.

necessity not to remain idle'.⁹⁴ In short, by labouring on something we fulfil our individual and social duty to provide for the necessary goods in life.

What makes Barbeyrac's argument decidedly Lockean is that the property rights in the goods that we produce through our labour derive directly from the property that each individual has in his own person:

each being sole master of his own person and his actions; the work of his Body and the labour of his Hands, are entirely and uniquely his, as his own and particular good.⁹⁵

This echoes Locke's claim that:

every Man has a *Property* in his own *Person*. This no Body has any Right to but himself. The *Labour* of his Body, and the *Work* of his Hands, we may say, are properly his.⁹⁶

It is important to note here that while both Barbeyrac and Locke usually are thinking of strenuous labour, they also include the kind of actions that might be thought of as merely taking possession, for example, gathering fruits that have fallen from trees within the shared community of goods. In light of this, it would seem that Barbeyrac adopts the Lockean thesis that individuals come to possess property rights in things through their labour by virtue of the property that they already possess in their own person.

But despite Barbeyrac's professed – and at times apparent – fidelity to the essence of the Lockean argument, it was Carmichael who first questioned whether Barbeyrac was as faithful to Locke as he claimed to be. Carmichael argued that Barbeyrac departs substantially from the essential Lockean idea that taking possession of something and labouring upon it is the original and proper foundation of property rights. Instead, he pointed out, Barbeyrac allows that 'a declaration of the will alone suffices for acquiring

⁹⁴ Barbeyrac, *DNG*, 4.4.4, Note 4: 'le Créateur lui-même, en donnant le Terre en commun aux Hommes, leur a commandé de travailler, & les a mis, par leur condition naturelle, dans la nécessité de ne pas demeurer oisifs'.

⁹⁵ Barbeyrac, *DNG*, 4.4.4, Note 4: 'chacun étant seul maître de sa personne & de ses actions; le travail de son Corps, & l'ouvrage de ses Mains, sont entièrement & uniquement à lui, comme son bien propre & particulier'.

⁹⁶ Locke, *Second Treatise of Government*, in *Two Treatises of Government*, ed. P. Laslett, (Cambridge, 1988), 5.27.

ownership of a thing which belongs to no one, without any taking whether direct or indirect'.⁹⁷ What Carmichael has in mind here is the passage where Barbeyrac says that 'taking actual possession is not always absolutely necessary to acquire a thing that does not belong to anybody'.⁹⁸ For Carmichael, it necessarily follows that property rights cannot derive directly from individual action, i.e., labour, and thus Barbeyrac's account is not wholly Lockean.

In his final revisions to the Pufendorf translation, Barbeyrac replies directly to Carmichael. He states here that will alone does not confer the full rights of property, but rather the right acquired by the act of will can only be maintained by actually taking possession of the thing itself. Labour is thus a necessary condition for acquiring a property right, that it is to say, by labouring on something or even simply taking possession of it, individuals make good their initial act of will and thus legitimately take ownership of a certain thing. In this, Barbeyrac claims that he has established nothing contrary to Locke's original theory of property as he understands it.⁹⁹ Yet, in light of the fact that Barbeyrac was one of the first to take up and popularise Locke's theory of property, his reading of Locke cannot merely be dismissed as a rhetorical ploy to lend weight to his own arguments through a little early modern name dropping.¹⁰⁰ Instead, Barbeyrac considers himself to be drawing out the implications that, *pace* Carmichael, he believes to be implicit with the original Lockean theory of property rights.

To this end, Barbeyrac clearly considers himself faithful to Locke by virtue of his claim that taking possession of a thing and mixing one's labour with it is necessary to make good this original act of will. Barbeyrac declares that taking 'possession counts for nothing here, except inasmuch as it is an incontestable mark of the will to retain what one has seized'.¹⁰¹ In effect, what Barbeyrac indicates here is that taking possession, especially in labouring on something, is absolutely necessary insofar as it is an effective

⁹⁷ Carmichael, *Natural Rights*, p. 99. For further context to Carmichael's objection to Barbeyrac on this issue see also Mautner, 'Carmichael and Barbeyrac', pp. 198-99.

⁹⁸ Barbeyrac, *DNG* [1706], 4.6.2, Note 2: 'la prise de possession actuelle n'est pas toujours absolument nécessaire pour acquérir une chose qui n'appartenoit à personne'.

⁹⁹ Barbeyrac, *DNG*, 4.6.2, Note 2.

¹⁰⁰ Tully identifies Barbeyrac as 'the first to agree in print with Locke's claim that his is the best available explanation of property' in his *Discourse on Property*, p. 5.

¹⁰¹ Barbeyrac, *DNG*, 4.6.1, Note 1: 'la possession ne fait rien-là, qu'autant qu'elle est une marque incontestable de la volonté qu'on a de retenir ce dont on s'est emparé'. See also Barbeyrac's remarks in *DHC*, 1.12.6, Note 1: 'Ce qui fonde proprement le droit du *Premier Occupant*, c'est qu'il a donné à connoître avant toute autre le dessein qu'il avoit de s'emparer de telle ou telle chose'.

sign to others of one's will, that is to say, as a form of communication. Implicit within Barbeyrac's concept of permissive natural law is the idea that individuals have certain dormant rights that others are obliged to respect once individuals take up these rights. But to do so, some form of communication, whether in words or actions, is necessary in order for these rights to become part of the fabric of individuals' linguistically constructed social reality. Thus, for Barbeyrac, an undeclared or unexpressed act of will to retain something without any corresponding effective sign, such as actually taking possession, cannot produce a true property right because the original act of will is not real insofar as the absence of an effective sign of one's will means that the ensuing right lacks social reality.

For Barbeyrac, Locke's great insight therefore is that labour is especially fitted to the task of being an effective sign. This is, in part, because the strenuous effort involved means that others cannot easily dispute that an individual has made good their original act of will and that a property right has thereby been created. The individual act of will expressed in the form of one's act of labouring takes what is effectively a dormant natural right and makes it vital by indicating to all other individuals that they are now under a corresponding obligation. The individual will is thus an essential moment in making natural rights genuinely claimable in some meaningful sense of the word. The reason that an act of individual will is able to establish these permissive natural rights is closely connected to the point made earlier that, by labouring on something, individuals bequeath to the object laboured upon some part of the property that they already possess in their own person.

This is crucial for Barbeyrac because it connects the kind of rights that individuals possess in the goods that they labour upon, i.e., individual property rights in general, to Locke's much wider concept of naturally acquired property rights. For Barbeyrac, the Lockean property rights encompass 'not only the right that one has to one's goods and possession; but also those to one's action, to one's Liberty, to one's Life, to one's Body, &c., in a word to all sorts of right'.¹⁰² It is these latter rights to life, liberty and body that are the bedrock of one's property in one's own person, that is to say, they are

¹⁰² Barbeyrac, 'Préface', *DNG*, §2, Note (c): 'non seulement le droit qu'on a sur ses biens ou ses possessions; mais encore sur ses actions, sur sa Liberté, sur sa Vie, sur son Corps, &c., en un mot toute sorte de droits'.

inalienable rather than permissive rights. Moreover, as the subsequent two chapters will make clear, this idea of property in our own person (insofar as our relations with others are concerned) depends on the concomitant idea of God's enduring mastery of our person.¹⁰³ The implication here is that the authoritative character of an individual act of will, by virtue of which certain permissive natural rights are brought into being, depends on certain antecedent and inalienable natural rights. It is in this sense that Barbeyrac is able to speak of property rights (understood in the narrower sense of goods and possessions) being claimable and thus enforceable by individuals within the natural state.¹⁰⁴

It is important, however, not to read into Barbeyrac's commentary a fully developed theory of natural rights that were claimable or enforceable in all circumstances. This much is apparent from the fact that throughout his texts the idea of permissive natural law often remains in the shadows, as for example in the discussion of the institution of both language and property. Thus what modern commentators might consider the full potential for a comprehensive theory of natural rights – both permissive and inalienable – is not exploited by Barbeyrac and, more significantly, may not even have been apparent to him. In an immediate sense, this may be because the spectre of Hobbesian open-ended rights is always looming for Barbeyrac, and for this reason he is always cautious about how much power he ascribes to the individual will in determining the exercise of these natural rights.

In fact, Barbeyrac builds certain restrictions into his theory of naturally acquired individual property rights in keeping with what he deems to be the proper use that one ought to make of the original divine permission. Following Titius, Barbeyrac claims that the bearers of property rights are obliged to observe the law of nature in the use of these rights, first, 'to procure the glory of God properly understood, and to put his Laws in practice' and, subsequently, 'to procure an innocent advantage to other Men, as well as to his own self'.¹⁰⁵ This means making use of one's property for the purpose intended by God, that is to say, labouring upon things in order to provide for the necessities and

¹⁰³ Cf. Chapter 4, p. 140 and Chapter 5, p. 154.

¹⁰⁴ Barbeyrac, *DNG*, 8.3.4, Note 3. Cf. Chapter 5, p. 158.

¹⁰⁵ Barbeyrac, *DNG*, 4.13.1, Note 1: 'à procurer le gloire de DIEU bien entenduë, & à mettre ses Loix en pratique' and 'à procurer l'avantage innocent des autres Hommes, aussi-bien que le sien propre'.

comforts of life and the advancement of human society.¹⁰⁶ In effect, individuals fulfil their individual and social duties by making use of their rights of property in a manner that conforms to the original purpose for which such rights were instituted. Like all rights grounded in Barbeyrac's concept of permissive natural law, the actual exercise of the natural right that individual property rights are derived from is circumscribed by the strict duties of obligatory natural law that all individuals are indispensably bound to observe.

For Barbeyrac, the institution of individual property rights has a further purpose in that it enables individuals to enter into commercial life with others.¹⁰⁷ In the example of how far the right of prescription extends according to the principles of natural law, Barbeyrac states that this issue must be judged according to the proper ends of property, namely making good use of things and establishing commerce for the good of society. Thus any person that had not made good their original right to property in conformity with these principles may consequently be deprived of this property right in favour of the putative owner who has possessed the thing in question in good faith and in conformity with these principles.¹⁰⁸ Naturally acquired individual property rights may be claimable in the natural state but this is not to say that they are enduring if the individual in question ceases to uphold their wider duties in the maintenance of these rights. To claim a legitimate right of property, therefore, means taking up and continuing to use that property in a manner conformable to the duties entailed by the original divine permission.

Finally, it is notable that Barbeyrac argues that commerce, like property, is both innocent in itself and necessary to human life, given the natural constitution of man. Yet, just as with the use of the permissions accorded to individuals to game (itself a form of commerce), the institution of both property and commerce may also open the way to vice and corrupted morals.¹⁰⁹ What we find in Barbeyrac's theory of property therefore are two mutually dependent claims: (i) individuals have a natural right to acquire property rights in things by virtue of the original positive divine permission, and such a right is established in practice by an act of will made express by labouring upon

¹⁰⁶ Barbeyrac, *DNG*, 4.4.4, Note 4.

¹⁰⁷ Barbeyrac, *DNG*, 4.13.3, Note 1.

¹⁰⁸ Barbeyrac, *DNG*, 4.12.8, Note 3.

¹⁰⁹ Barbeyrac, *DNG*, 5.1.1, Note 1.

something; and (ii) this natural right to acquire and retain property in things is limited by the duties of natural law taken in their full extension and the purpose of property itself, namely, to make proper use of the natural goods of the earth and to establish commerce between men for the benefit of society. These claims must be understood within Barbeyrac's wider theory of permissive natural law, because it is here that he develops the language of naturally acquired rights circumscribed by natural law duties.

In conclusion, the purpose of the present chapter has been to consider the internal tensions between Barbeyrac's innovative and, at times, elusive concept of permissive natural law as the sphere of individual natural rights and authoritative moral judgement and his concomitant concept of obligatory natural law as the sphere of natural divine authority and the resulting strict duties to God, to others and to oneself. While Barbeyrac often blurs the boundaries between these two spheres of natural law, the present chapter has sought to show that it is not possible simply to dismiss Barbeyrac's concept of permissive natural law or to subsume it within his wider theory of obligatory natural law. Instead, the concept of permissive natural law plays a fundamental role both in terms of the moral deliberation individuals make with respect to common social practices and in the establishment of the very social institutions that make such interactions possible, i.e., speech, property and commerce.

The question that remains unresolved at the end of this chapter is one that goes to the heart of Barbeyrac's theory of natural law. That is to say, the extent to which individuals possess a genuine moral liberty to make use, as they deem appropriate, of the natural rights accorded by permissive natural law. Or, in other words, how far individuals themselves are the source of authoritative moral judgements informed by the light of conscience. Thus far, we have only sought to answer this question with reference to the tensions between obligatory and permissive natural law. The purpose of the two subsequent chapters is to extend this discussion by focusing on the relationship that Barbeyrac envisaged between the authority of natural law – both obligatory and permissive – and other spheres of authority, namely ecclesiastical authority (in chapter 4) and civil authority (in chapter 5).

Chapter Four

Natural Law and the Limits of Ecclesiastical Authority

I

Introduction

‘Who is not aware that the ordinary Preachers of the Gospel soon forgot the title of *Servants* that the Apostles themselves conferred upon their Disciples so that they would consider themselves only as *Ambassadors of the Heavens*, and instead imperiously raised themselves up above other Men, under the pretext of a metaphorical commission, from which they handed down their orders to so many?’¹ Barbeyrac’s rhetorical question served to emphasise his conviction that ecclesiastics, both Catholic and Reformed, arrogated undue power to themselves. In his history of the Christian religion, he argued that the perfection of Christ’s moral and religious teachings, embodied in the Apostolic church, gave way to the appropriation of improper authority by ecclesiastical powers through the ages, establishing the tyranny of ambitious and avaricious ecclesiastics as the greatest threat to true morality. The roots of this corruption were laid with the early church fathers; theologians and moral teachers who ‘readily confuse their own glory with the glory of God’.²

Establishing the proper limits of ecclesiastical authority was central to Barbeyrac’s thought, as it developed from his early, avowedly anticlerical, Pufendorf ‘Préface’ in 1706 to his 1728 *Traité de la morale des peres de l’église*; remaining a constant theme throughout his works, both in his natural law commentaries and public discourses. However, Barbeyrac’s critique of ecclesiastical authority constitutes more than mere anticlerical polemic stemming from his personal experiences of ecclesiastical intolerance.³ The sharp polemic edges of his critique are tempered by his broader

¹ Barbeyrac posed this rhetorical question to his audience during his public address – subsequently published as a short discourse – upon taking up the office of Rector of the *Académie de Lausanne* in 1714: ‘Discours sur l’utilité des lettres et des sciences’, p. 123: ‘Qui ne sait que les Prédicateurs ordinaires de l’Evangile oublièrent bientôt le titre de *Serviteurs*, que les Apôtres eux-mêmes se donnoient à l’égard de leurs Disciples, pour ne se considérer que comme les *Ambassadeurs du Ciel*, & pour s’élever fièrement au dessus des autres Hommes, sous prétexte d’une commission métaphorique, où ils passaient de beaucoup leurs ordres?’.

² Barbeyrac, ‘Discours sur l’utilité des lettres et des sciences’, p. 124: ‘confond aisément sa propre gloire avec la gloire de Dieu’.

³ For more on this context, see ‘Introduction’, pp. 16-22.

pedagogic concerns as an academician and natural law theorist. To this end, he seeks not only to determine the limits of ecclesiastical authority, but also to identify what he takes to be the purpose of and the duties incumbent on public ministers of religion, namely to follow the example of Christ the moral teacher.

This chapter brings together a number of different arguments that Barbeyrac developed in support of his basic contention that ecclesiastics have stepped beyond the bounds of their authority in seeking to constrain the legitimate exercise of individual conscience. The discussion presented here may be divided, broadly speaking, into two parts. First, in the following three sections, arguments relating to the relationship between natural law and the history of Christian morality are explored: namely, (i) the consonance between natural law and Christian moral law; (ii) the obfuscation of this principle by the early church fathers; (iii) the importance of both obligatory and permissive law in determining the moral limits of ecclesiastical authority. Secondly, the final two sections take up the question of toleration, both ecclesiastical and civil.

The picture that emerges is a defence of the duty incumbent on every individual to follow the light of conscience, above all with respect to sincere religious belief, free from interference by meddlesome and misguided ecclesiastics and from civil intolerance. Here, we see how Barbeyrac embraces the idea of a strong civil sovereign capable of keeping the exercise of ecclesiastical authority within its proper bounds. Some of the themes addressed in the final sections are closely linked to the argument that will be developed in the following chapter regarding the nature and limits of civil authority.

II

Christian Morality Corrupted

In his Pufendorf ‘Préface’, Barbeyrac presents his readers with a historical narrative of the evolution and corruption of Christian morality. At the heart of his narrative is the ministry of Jesus Christ and his immediate disciples, the Apostles. Barbeyrac alleges that Jesus’s ministry followed in the wake of the corruption of morality at the hands of the early Jewish priests, who were ‘solely occupied with Civil Law, or the study of

Ceremonies' and failed to perceive the true moral principles in the Mosaic revelation.⁴ Barbeyrac thus casts Christ's divine mission as the restoration of the purity of divinely revealed moral law:

He [Christ] re-established Morality in its utmost purity, he fully disclosed the true sources thereof, and he gave, regarding the whole Duty of Man in general and of each individual in particular, Rules general indeed, but perfect, entirely conformed to Reason and to the true interests of Mankind'.⁵

Here, Barbeyrac depicts Christ as a moral teacher whose principal intention was to dispel the confusion wrought by the lack of penetration into the spirit of the legislator, i.e., God, rather than simply taking up the letter of the law as had the Jewish public ministers of religion. Taking on Christ's mantle, the Apostles are credited with 'everywhere preaching this most-holy doctrine' by virtue of which individuals could determine the proper moral action 'in every imaginable case'.⁶

For Barbeyrac, Christ's ministry peeled away all false moral doctrine to reveal the true principles of Christian morality, characterised as clear and conformable to natural reason and thus accessible to all rational beings. He perceives the greatest threat to true Christian morality to come from the obfuscation of these general moral principles, a development that first occurred in the time of the Apostles when other 'false doctors' tried to reinstate Mosaic ceremonies as essential religious duties for all Christians.⁷ In effect, Barbeyrac makes the essence of the Christian faith reside in the knowledge and practice of the moral law as revealed by Christ and preached by the Apostles.

Barbeyrac reserves his greatest censure for the early church fathers, theologians whom he holds almost solely responsible for the corruption of the true message of Christianity, both moral and religious. The church fathers, Barbeyrac alleges, were,

⁴ Barbeyrac, 'Préface', *DNG*, §7: 'Uniquement occupez au Droit Civil, ou à l'étude des Cérémonies'.

⁵ Barbeyrac, 'Préface', *DNG*, §8: 'Il rétablit la Morale dans toute sa pureté, il en découvrit pleinement les véritables sources, & il donna, sur tous Les devoirs des Hommes en général & de chacun en particulier, des Règles générales, mais parfaits, entièrement conformes à la Raison & aux véritables intérêts du Genre Humain'. Some turns of phrase are borrowed from the 1749 edition *The Law of Nature and Nations*.

⁶ Barbeyrac, 'Préface', *DNG*, §8: 'prêcherent partout cette doctrine très-sainte' and 'de tous les cas imaginables'.

⁷ Barbeyrac, 'Préface', *DNG*, §8.

more jealous of their rights, and more attached to the discussion of points of Discipline, or various abstract Questions, than the careful study of Morality, and its dissemination among the people.⁸

He chastises them for failing to follow the example of Christ and the Apostles, that is to say, acting as diligent and attentive public teachers of the moral law. As such, they failed to uphold the duty incumbent of all public ministers of religion to make the study and teaching of morality their principal concern.⁹

Barbeyrac makes recourse here to a line of argument particularly popular among his Huguenot contemporaries, according to which the purity and simplicity of primitive Christianity stands in contrast to the corrupted and intolerant spirit that emerged during the patristic period.¹⁰ The recovery of the true morality of the primitive church is thus necessary to confront the erroneous and dogmatic moral philosophy of the early church fathers and the unjustified stranglehold on moral authority held by subsequent generations of ecclesiastics. Barbeyrac praises the ‘light of the Reformation’ for the considerable progress made towards the reestablishment of ‘the purity of doctrine and practice’, though at the same time condemns ‘the abhorrent dogma of Intolerance, or Persecution in the name of Religion’ that was nonetheless preserved.¹¹ Barbeyrac commends the ministry of a number of his contemporaries for upholding the true spirit of Christian faith, above all, those of latitudinarian sympathies: in particular, the ministries of Turretini, Tillotson and the former Bishop of Salisbury, Gilbert Burnet (1643-1715).¹² For the most part, however, Barbeyrac intends his arguments as a critique of overly zealous and dogmatic Reformed ministers and their Catholic counterparts.

Barbeyrac’s history of Christian morality in the original Pufendorf ‘Préface’ drew much attention from his contemporaries, with his avowedly anticlerical article on the church

⁸ Barbeyrac, ‘Préface’, *DNG*, §9: ‘plus jaloux de leurs droits, & plus attachez à discuter quelque point de Discipline, ou quelques Questions abstraites, que soigneux d’étudier la Morale, & d’en instruire le Peuple’.

⁹ Barbeyrac, ‘Préface’, *DNG*, §6.

¹⁰ John Marshall, *John Locke, Toleration and Early Enlightenment Culture: Religious Intolerance and Arguments for Religious Toleration in Early Modern and ‘Early Enlightenment’ Europe*, (Cambridge, 2006), pp. 200-212.

¹¹ Barbeyrac, ‘Préface’, *DNG*, §11: ‘les lumieres de la RÉFORMATION’ and ‘la pureté de la doctrine & de la pratique’ and ‘Le dogme affreux de l’Intolérance, ou de la persecution pour cause de Religion’.

¹² Barbeyrac, ‘Epître Dedicatoire [1722]’, in *Sermons sur diverses matieres importantes, par feu Mr. Tillotson*, 6 Volumes, (Amsterdam: Pierre Humbert, 1744), Vol. 6.

fathers even being independently translated and published in English.¹³ Amongst his most notable respondents was the Benedictine monk and ecclesiastical historian, Rémi Ceillier. Inspired to take up his pen in reply to Barbeyrac's 'unjust accusations' against the early church fathers, Ceillier wrote a vehement defence of the moral teachings of the fathers, entitled *Apologie de la Morale des Pères* (1718).¹⁴ Ceillier reasserted the orthodox Catholic argument that the church fathers were depositories of a written and non-written tradition received directly from the Apostles, arguing that the 'fact' of apostolic succession conferred upon the church fathers an infallibility commensurate with the infallibility of Christ and the Apostles.¹⁵

Responding to Ceillier's argument, Barbeyrac rejects the idea that the person and the ministry of Christ was characterised by his infallibility. In light of this, he also disputes the claim that both the Apostles and subsequent ecclesiastics in their stead may lay claim to a 'supposed' infallibility. This is important for Barbeyrac because the moral example set by Christ in his person and his ministry represents the perfection of true Christian morality. He furthers this argument in response to what he takes to be the moral teachings of the second century theologian, Clement of Alexandria. Here, Barbeyrac claims that the moral example that Christ offers us in his own person is the example of the perfect harmony of his divine and human nature. In contrast, Clement draws on 'either entirely false, or extremely excessive' Stoic principles, depicting Christ as the example of moral perfection, exempt from all human passions and suffering.¹⁶ Here, the idea of Christ's perfection lies in his insensibility to all human passions, including not only the renunciation of all emotions and desires, but also the absence even of hunger, thirst or any other form of physical suffering.¹⁷ Christ alone is sustained solely by the Holy Spirit 'from the beginning'.¹⁸ For Clement, as Barbeyrac interpreted him, while Christ naturally possessed such divine perfection, the perfect Christian,

¹³ The translator Thomas Gordon, however, altered the text significantly in his translation to strengthen its anticlerical message: *The Spirit of the Ecclesiasticks of all Sects and Ages, as to the Doctrines of Morality, and more particularly the Spirit of the Ancient Fathers of the Church, examin'd ... Translated from the French by a gentleman of Gray's-Inn*, (London, 1722).

¹⁴ Rémi Ceillier, *Apologie de la morale des pères de l'Eglise: contre les injustes accusations du sieur Jean Barbeyrac*, (Paris, 1718).

¹⁵ For an overview of Ceillier's position, see the whole of his 'Dissertation préliminaire sur l'autorité des pères de l'Eglise', pp. i-xl.

¹⁶ Barbeyrac, *TMP*, 5.39: 'ou entièrement faux, ou extrêmement outrez'. Here, Barbeyrac reproaches Clement for his uncritical use of Stoic philosophy. However, in general terms, Barbeyrac is broadly sympathetic to Stoic moral philosophy. Cf. Chapter 1, p. 27, fn. 14.

¹⁷ Barbeyrac, *TMP*, 5.54.

¹⁸ Barbeyrac, quoting Clement, *TMP*, 5.52: 'DES LE COMMENCEMENT'.

epitomised by the Apostles, purposefully became insensible to all human passions. The perfect Christian thus has no intemperate or immoderate passions left to conquer, he has no need of the virtues of temperance and moderation: that is to say, he is free from sin.¹⁹

In contrast to Clement, Barbeyrac argues that far from being insensible to human passions and so free from temptation, Christ's redemptive power and thus his moral example depends upon his humanity. Citing a passage of Scripture that explicitly states that Christ suffered from the same temptations and human infirmities as all humanity, Barbeyrac argues that Christ was 'wholly like us, except without sin'.²⁰ The perfection of his nature is not the absence of passion or temptation to sin, that is, his insensible divine nature, but rather the true moral example that he provides for all other moral beings arises from the perfection of his sensible, human nature. Barbeyrac uses Scripture to argue that not only was Christ susceptible to human passions and human weakness, but also that, even if he so wished, he could not exempt himself from his own human nature.²¹ It is Christ's divine mission rather than his divine nature that Barbeyrac emphasises. In arguing that Christ's moral example does not derive from transcending his human nature but rather through the embodiment of his humanity in his own person, Barbeyrac leaves a certain degree of ambiguity, presumably to guard against the charge of Socinianism, having already lived through the damage caused by such accusations, which effectively ended his early aspirations to join the ministry.²²

Barbeyrac extends his argument further by rejecting the claim that the church fathers and subsequent generations of ecclesiastics themselves possess an infallible moral authority in the image of Christ and the Apostles. For Barbeyrac, the Apostles alone, as the immediate disciples of Christ, were possessed 'of knowledge and of authority' that

¹⁹ Barbeyrac, *TMP*, 5.50.

²⁰ Barbeyrac, *TMP*, 5.56. The quote is from Hebrews 4.15, which Barbeyrac renders as '*semble à nous en tout, hormis le Pêché*'.

²¹ Barbeyrac, *TMP*, 5.56.

²² J.G.A. Pocock argues that in the *Morale des peres* Barbeyrac is suggesting that 'Jesus taught nothing but morality and that all accounts of his divinity, incarnation, miracles and resurrection were subsequently invented' with the Fathers as the source of this confusion in Christian belief. The difficulty with this thesis is that Barbeyrac is reticent about explicitly developing this line of argument because of the difficulties that he had already experienced on account of his perceived theological unorthodoxy. What it is fair to say, however, is that Barbeyrac considers Christ first and foremost as a moral teacher, deliberately refusing to address what he refers to as 'theological controversies'. See J.G.A Pocock, *Barbarism and Religion*, Volume Two: *Narratives of Civil Government*, (Cambridge, 1999), p. 69. Cf. Introduction, p. 18.

‘none after them had’.²³ Barbeyrac’s evidence rests on his claim that the Apostles were ‘invested with the gift of Miracles by the Holy Spirit’ whereas the ministers of the Gospel who succeeded them were ‘without any extraordinary power, and [hence had] infinitely less authority’.²⁴ Together with Christ, the Apostles alone are thus understood as faithful propagators of Christ’s divine mission, uniquely subject to divine insight. In effect, it is not from any claim to infallibility that the moral authority of the Apostles derives as founders of the primitive church but rather from their fidelity to his divine mission as moral teachers.

Both in his original Pufendorf ‘Préface’ and in the subsequent *Morale des peres*, Barbeyrac argues that the moral authority possessed by ecclesiastics cannot rest on a claim to an infallibility shared with Christ and his Apostles, but rather through fidelity to Christ’s original message, both in one’s person and in one’s ministry. The restoration of true Christian morality rests on the recovery of the true spirit of Christ’s revelation. By divesting the fathers of their claim to moral authority as depositories of both written and non-written truths, Barbeyrac clears the way to reassert the fundamental Reformation principles that Scripture ought to be the sole rule of faith. Christ’s moral teaching, that is to say, all principles of ‘this Holy Religion’, Barbeyrac claims, ‘are founded in that which Jesus-Christ either said himself, or taught to his Apostles, with the order to announce it in his name’.²⁵ The purpose of the following section is to set out his argument in this respect.

III

Interpreting Scripture

Barbeyrac opens his *Morale des peres* with the declaration that he intends to combat the pernicious ‘Prejudice of Authority, [and] Prejudice of Religion’.²⁶ To this end, he states his fidelity to the Reformation principle of Scripture as the sole rule of faith (*sola scriptura*), arguing that he himself ‘does not take account of any Human Authority,

²³ Barbeyrac, *TMP*, 7.2: ‘d’une Connoissance & d’une Autorité’ and ‘aucun n’a euë après eux’.

²⁴ Barbeyrac, ‘Préface’, *DNG*, §10: ‘le St. Esprit avoit revêtus du don des Miracles’ and ‘sans aucun pouvoir extraordinaire & avec une autorité infiniment moindre’.

²⁵ Barbeyrac, *TMP*, 8.12: ‘cette Sainte Religion’ and ‘fondez sur ce que JESUS-CHRIST ou a dit lui-même, ou a enseigné à ses Apôtres, avec ordre de l’annoncer en son nom’.

²⁶ Barbeyrac, *TMP*, 1.2: ‘Préjugez d’Autorité, Préjugez de Religion’.

except inasmuch as it conforms to Holy Scripture and to Reason'.²⁷ This includes not only Catholic authorities but also Reformed theologians, books and synods. For Barbeyrac, Scripture is capable of standing alone as the rule of faith because of its natural consonance with reason. This argument rests on the claim that both religion, specifically here the Christian faith, and morality, i.e., natural law, have their foundation in the truths of natural religion.²⁸ Hence, the truths of natural religion are first and foremost moral truths, epitomised in Christ's moral law as recorded in the Gospel. For Barbeyrac, natural morality and the Christian faith become, in effect, two different forms of the same moral law.

Barbeyrac is cautious, however, to ensure that his claim for the consonance of natural and Christian moral law does not collapse certain necessary distinctions between the two. Each has an independent foundation: namely, natural reason and divine revelation. Nonetheless, he argues that despite these separate foundations, the moral truths that they arrive at are coterminous:

The Principles and Precepts of the Morality of Jesus-Christ, if one excepts a small number that suppose the quality of a Christian considered as such, are at their core the same as those of Natural Morality, or the Duties that Reason alone may teach all Men.²⁹

Authoritative interpretation of Scripture thus rests on its conformity to natural reason and, likewise, no interpretation of Scripture may be admitted that is contrary to reason. Scripture and reason, Barbeyrac asserts, are the 'two infallible Guides of our conduct'.³⁰ He takes it as read here that recourse to the principle of natural reason is sufficient to guard against charges of religious enthusiasm and individual caprice.³¹ His argument

²⁷ Barbeyrac, *TMP*, 1.9: 'ne compte pour rien aucun Autorité Humaine, qu'autant qu'elle est conforme à l'Ecriture Sainte & à la Raison'. On the development of different approaches to Biblical interpretation that follow from the principle of *Sola Scriptura*, see the brief overview in Jonathan Sheehan, *The Enlightenment Bible: Translation, Scholarship and Culture*, (Princeton, 2005), pp. 1-4.

²⁸ Cf. Chapter 1, p. 28.

²⁹ Barbeyrac, *TJ*, 1.3: 'les Principes & les Préceptes de la Morale de JESUS-CHRIST, si l'on en excepte un petit nombre qui supposent la qualité de Chrétien considéré précisément comme tel, sont au fond les meme que ceux de la Morale Naturelle, ou des Devoirs que la Raison seule peut apprendre à tous les Hommes'.

³⁰ Barbeyrac, *TJ*, 1.3: 'deux Guides infallibles de tout notre conduite'.

³¹ For example, Ceillier objects that making Scripture the rule of faith is to invite schism and heresy because each individual may flatter himself that he has 'received a particular gift from God to interpret the Scriptures' and to ascribe meaning to it 'as he deems appropriate'. It is notable here that Ceillier's language mimics the language that Barbeyrac uses to describe the individual's liberty to determine his proper moral conduct 'as he deems appropriate' within the sphere of permissive natural law according to

rests on the idea that it is possible for individuals to be possessed of rightly constituted reason, that is to say, for individual judgements of reason and by implication the deliberations of conscience to be ‘right’ in the sense that they are properly attuned to the moral truths of both natural law and Christian moral law.

Barbeyrac’s insistence upon a natural consonance between the truths of natural law and natural religion epitomised in Christ’s moral law was integral to his rejection of Pufendorf’s claim that natural law concerns only the temporal duties that we owe to others in our external conduct. As we saw in Chapter 1, he significantly extended the purview of natural law duties, insisting on the primacy of individual conscience and duties owed to God. In the context of the present discussion, this same argument is developed in a different direction. In light of his claim that there is a fundamental consonance between the duties of Christian moral law and natural law – except for a small number of duties ‘that suppose the quality of a Christian considered as such’ – it follows that the scope and application of Christian moral law must accord with that of natural law. In effect, ‘the Gospel does not destroy Nature’. This means that just as the principles of natural law must demonstrate a fidelity to those of Scripture, likewise, for Barbeyrac, the moral principles adduced from Scripture must be in accord with the natural law framework depicted in the previous three chapters.

For Barbeyrac, it follows from this that the moral authority possessed by ecclesiastics depends upon their fidelity to teachings of a Christian moral law. Such a law is characterised by its purity and simplicity, that is to say, its conformity to natural reason. It is on this footing that Barbeyrac censures the church fathers for being excessively attached to allegorical interpretation of Scripture. Barbeyrac claims that the use of allegory in the teachings of Christ is rare and inasmuch as it exists, it only serves as an accommodation to truths that have already been established on proper natural, or rational, foundations.³² In matters of morality, the most direct source of these properly founded truths is the law that ‘God has engraved on the hearts of all Men’, by which Barbeyrac means the law of nature.³³ The excessive use of allegory by the church

the light of conscience. Ceillier, *Apologie de la morale des pères*, p. viii: ‘reçu de Dieu le don particulier d’interpréter les Ecritures’ and ‘comme il le juge à propos’.

³² Barbeyrac, *TMP*, 7.10.

³³ Barbeyrac, *TMP*, 7.13: ‘DIEU a gravée dans le cœur de tous les Hommes’. There is an implicit reference to Romans 2:15 here.

fathers thus exemplifies their corruption of the Christian message.³⁴ Barbeyrac cites the injunction recounted by St Paul, in which Christ warns against an allegorical spirit that carries one away from the truth and promotes only disputes.³⁵ All those who are sensible of the true and proper foundation of the teachings of Christ can have nothing but ‘distaste and contempt for Allegory’ and the confusions that enter morality on account of its use.³⁶

In short, Barbeyrac argues that the preoccupation with an imagined Christian moral perfection leads the church fathers to make a false distinction between natural and Christian duties that is subsequently bolstered by their erroneous principles of Scriptural interpretation based on a search for allegorical meanings. This alone makes them ‘bad Masters and poor Guides in matters of Morality’.³⁷ Having presented the position of the church fathers, Barbeyrac opposes it. As we shall see in the following discussion, the consonance between natural and Christian moral law means that these principles of Scriptural interpretation effectively uphold the framework of natural law rights and duties discussed in the previous three chapters.

IV

Moral Permission and Christ’s Moral Law

At the heart of Barbeyrac’s critique of the moral teachings of the church fathers is his belief that the church fathers drove a wedge between natural and Christian duties, falsely insisting that Scripture was too obscure to act as a rule of faith without an intervening, and supposedly infallible, human authority, capable of discerning the true Christian duties contained therein. Barbeyrac thus accused the church fathers of improperly setting themselves up as the bearers of an exclusive moral authority. For Barbeyrac, the most pernicious consequence of this arrogation of undue moral authority was its exercise in those spheres of moral action that properly belong to the judgements of individual conscience, not only within the sphere of obligatory moral duties but also the sphere of moral permission. In effect, conformity to the moral teachings of both Scripture and reason sets the limits to ecclesiastical authority and preserves an extensive

³⁴ Barbeyrac, *TMP*, 7.9.

³⁵ Barbeyrac, *TMP*, 7.8.

³⁶ Barbeyrac, *TMP*, 7.13: ‘du dégoût & du mépris pour l’Allégorie’

³⁷ Barbeyrac, ‘Préface’, *TMP*, p. xx: ‘de mauvais Maîtres & de pauvres Guides en matière de Morale’.

sphere of individual moral judgement free from the overweening and unnecessary interference of any human authority acting beyond its proper limits.

Barbeyrac's argument for the consonance of natural and Christian moral law leads on to the claim that just as natural law comprises of a number of general maxims from which all particular moral judgements derive, so too does Christian moral law recorded in Scripture:

It is for each individual to enquire with care into the true foundations of general Precepts; to develop them, as much as it is possible for him; to draw from them, by virtue of just consequences, particular Rules, applicable to the diverse states of Life, and the infinite number of cases that present themselves to us every day.³⁸

In short, the obligatory precepts of Christian moral law, like those of natural law, are maxims that still require individuals to make use of their reason in applying them to their own particular circumstances.³⁹ These kinds of moral judgements are the principal activity of individual conscience. What distinguishes Christian moral law recorded in Scripture from natural law, Barbeyrac claims, is neither the content nor the scope of its moral precepts. Rather Christian moral teaching 'compensates for the lack of attentiveness of Men, and furnishes them with much more powerful motives to practise their Duties' by virtue of its medium as direct divine revelation containing all the truths necessary for salvation.⁴⁰

Barbeyrac also carves out a comparable sphere for permissible moral action within Christian moral law as in his account of natural law. Rejecting the claim of the fourth century theologian, St Ambrose, that only those things expressly commended or permitted by Scripture may be thought of as morally permissible in general, Barbeyrac cites instead St Paul's injunction that all that is not expressly forbidden by Holy Scripture is therefore tacitly permitted. In effect, this is the argument from divine silence we encountered in the previous chapter.

³⁸ Barbeyrac, *TMP*, 1.5: 'C'est à chacun à chercher avec soin le vrai fondement des Préceptes généraux; à les développer, autant qu'il lui est possible; à en tirer, par de justes conséquences, des Règles particulières, applicables aux divers états de la Vie, & à une infinité de cas qui se présentent tous les jours'.

³⁹ Barbeyrac, *TJ*, 1.3.2.

⁴⁰ Barbeyrac, *TMP*, 1.5: 'suppléer au peu d'attention des Hommes, & fournir des motifs beaucoup plus puissans à la pratique de ces Devoirs'.

With St Paul's words as a foundation, Barbeyrac establishes the fundamental principle that anything not strictly prohibited by Scripture, understood as the sole authoritative record of Christian moral law, is tacitly permitted:

It suffices that a thing is not prohibited in Scripture, and that moreover one does not perceive within it anything harmful, considered in itself, nor anything contrary to some other clear and indispensable Duty.⁴¹

Christian moral law is thus comprised of the same spheres of obligatory moral precepts and moral permissions as natural law. The permissions of Christian moral law are subject to the same restrictions as those of permissive natural law, namely that the permission does not refer to something harmful in itself and that taking up the permission does not contravene a presiding moral duty.

While this basic framework may hold true for the interpretation of Christ's moral teachings in the Gospel, as the expression of Christian moral law in all its purity and simplicity, there remains the question of how to interpret divine permissions within Mosaic law recorded in the Old Testament. Here, the importance of clearly upholding the distinction between the letter and the spirit of the law becomes apparent for Barbeyrac's argument. For Barbeyrac, God's design as legislator of both natural and Christian moral law is to forbid all that is evil; hence the silence of the laws implies a positive permission. Mosaic law, however, is shaped by God's design as temporal legislator of the Jewish nation. It is comprised of ceremonial, civil and moral law for the purpose of governing the conduct of a particular people at a particular point in history. Yet, Barbeyrac claims in *Le droit de la guerre*, that even as temporal legislator, God always proposes to bring men to greater virtue.⁴²

Barbeyrac thus argues that with respect to Mosaic law the silence of the laws and even certain express permissions do not necessarily imply positive approbation. All that may be inferred is that:

⁴¹ Barbeyrac, *TMP*, 13.22: 'qu'il suffit qu'une chose ne soit pas défendue dans l'Ecriture, & qu'on n'y voie d'ailleurs ni rien de mauvais, à la considerer en elle-même, ni rien de contraire à quelque autre Devoir clair & indispensable'.

⁴² Barbeyrac, *DGP*, 1.1.17, Note 3.

When God permits a thing in certain cases, or to certain persons, or with respect to certain nations; it ought be inferred from that, that the thing permitted is not evil in its own nature.⁴³

Nothing permitted in the Old Testament, whether explicitly or tacitly, can therefore be considered as evil in its own nature, that is to say, subject to divine condemnation. Although not positively permitted, such things must therefore be, at the very least, indifferent in their own nature. The examples that Barbeyrac gives here are the permission to kill a thief in the night time, that is to say, a permissible exception to a general rule, and the permissions governing divorce and polygamy, that is to say, general permissions about morally indifferent things. In both cases, Barbeyrac's reasoning rests on his belief that, no matter the capacity in which He acts, God cannot permit anything that is contrary to natural law 'without destroying the essence of this law, and without doing injury to [His] Holiness, as well as [His] Wisdom'.⁴⁴ He claims that the only exception to this rule concerns the direct commands of God to certain individuals recorded within the Old Testament, that is to say, where the divine permission refers to the specific instance of an act rather than its continual practice.⁴⁵

The church fathers, in contrast, come in for censure for fundamentally misunderstanding the nature of moral permission. Barbeyrac maintains that moral permission is not a mere tolerance borne by God because of the depravity of human nature:

Here is the nub of the matter. They [the Fathers] conceive of the most natural Pleasures, as possessing something harmful in themselves; and the permission, that God gives to enjoy them, as a kind of *tolerance*, and an *indulgence*, that He has been forced into to by *human infirmity*, in order to avoid a *greater harm*.⁴⁶

⁴³ Barbeyrac, *DGP*, 1.1.17, Note 3: 'Quand DIEU permet une chose en certains cas, ou à certaines personnes, ou par rapport à certaines gens; on doit inférer de là, que cette chose permise n'est point mauvaise de sa nature'.

⁴⁴ Barbeyrac, *DNG*, 6.1.24, Note 3: 'sans détruire l'essence de ce Droit, & sans faire injure à la Sainteté, aussi-bien qu'à la Sagesse [de Dieu]'.

⁴⁵ The example that Barbeyrac gives of the former exception to the rule is the civil immunity granted under Mosaic law to close relatives who seek blood revenge against a murderer. Barbeyrac, *DGP*, 1.1.17, Note 3.

⁴⁶ Barbeyrac, *TMP*, 4.34: 'Voilà le noeud de l'affaire. On se figuroit les Plaisirs les plus naturels, comme aiant quelque chose de mauvais en eux-mêmes; & la permission, que Dieu donnoit de les goûter; comme une espèce de *tolerance*, & d'*indulgence*, à laquelle l'*infirmité humaine* l'avoit forcé en quelque manière, pour éviter un *plus grand mal*'.

Far from being a species of divine concession to human weakness, for Barbeyrac moral permission denotes an extensive area of positive moral liberty to be exercised in accordance with the dictates of conscience insofar as the exercise of this liberty does not constitute an abuse of the thing itself. As Barbeyrac's statement makes clear, he considers the church fathers' faulty reasoning to rest on the assumption that Christian virtue requires the renunciation of one's natural humanity and thus all permissions related to its fulfilment must necessarily be a kind of tolerance. Once again, at the heart of Barbeyrac's critique of the church fathers is their alleged adherence to the principle that 'the more that they depart from common practice and maxims, the more they conform to the Morality of Jesus-Christ'.⁴⁷

The contrast that Barbeyrac creates between his own position and the position that he ascribes to the church fathers is not merely an exercise in abstract moral reasoning but rather serves to establish what he takes to be the proper limits of ecclesiastical authority. Ecclesiastics of all ages have sought to exercise moral authority beyond these proper limits precisely because of their failure to understand the true nature of moral permission, that is to say, as a sphere of moral actions determined by the judgements of individual conscience. The church fathers and those who follow in their wake extend the scope of their authority beyond its proper limits in seeking to heavily circumscribe individuals' liberty to determine the proper course of moral action free from interference. Barbeyrac argues that this corruption of true Christian moral teachings concerning things indifferent in themselves – and thus governed by the law of moral permission – arose in the time of the Apostles when the distinction was first made between divine precepts and divine counsels.

Divine precepts are the obligatory prescriptions of the moral law taught by Christ and recorded by the Apostles in his name in the Gospel. Differing in scope but not form from obligatory natural law, these precepts are obligatory for all Christians at all times and in all places. Divine counsels, however, refer to the interpretation of Christ's moral teaching offered by the Apostles with respect to the specific circumstances that they were asked to pass judgement upon. Barbeyrac claims that these divine counsels, insofar as they truly exist, concern those things 'either indifferent in themselves, or

⁴⁷ Barbeyrac, *TMP*, 6.9: 'plus ils s'éloignoient de la pratique & maximes communes, & plus ils se conforment à la Morale de Jésus-Christ'

about which there is no particular order of Jesus-Christ, nor any general Law of the Gospel' that imposes a particular obligation upon individuals.⁴⁸ Divine counsels specify things that may be praiseworthy in the eyes of God, but it follows from their character as morally indifferent that they refer to those things that are morally permissible. Hence, the Apostles left it 'to the judgement and the conscience' of each individual to determine how these counsels applied to their particular circumstances.⁴⁹

Having misunderstood the foundation of divine counsels, however, the church fathers subsequently used the distinction between precepts and counsels to condemn as immoral certain practices that are indifferent in themselves and confer upon others a special holiness. Hence, Barbeyrac claims, the church fathers falsely condemned a great many practices relating to marriage, criminal trial, trading and seeking profit, swearing of oaths, taking up public offices and other public honours, profiting from one's labours in general, lending at interest and so forth. Likewise, they confer a special holiness on celibacy and other forms of abstinence from human passions, including in some cases, Barbeyrac points out derisively, the practice of becoming a eunuch.⁵⁰ In effect, Barbeyrac's objection to the church fathers' teachings on these matters is that they make a vast wealth of moral practices subject to duties that they improperly claim are specific to Christians and, in doing so, extend the scope of their moral authority beyond its proper bounds into a sphere of moral actions that ought to be left to the moral deliberations of individual conscience.

The moral precepts and permissions governing the state of marriage and the converse state of celibacy form one of the core examples through which Barbeyrac develops his critique of the church fathers' moral teachings. He identifies the source of their teachings on marriage and celibacy as St Paul's counsels to the Corinthians. St Paul's counsels, particularly those against entering the marriage state, ought not to be interpreted as universal obligations for all Christians, but rather 'for Christians at that time, and with respect to the present situation of things'.⁵¹ These counsels thus represent the interpretation of St Paul 'as a faith Minister' advising on what may be permissible

⁴⁸ Barbeyrac, *DGP*, 1.2.9, Note 19: 'ou indifférentes en elles-mêmes, ou sur lesquelles il n'y avoit aucun ordre particulier de JESUS-CHRIST, ni aucune Loi générale de l'Evangile'.

⁴⁹ Barbeyrac, *DGP*, 1.2.9, Note 19: 'au jugement & à la conscience de chacun'.

⁵⁰ Barbeyrac, *TMP*, 5.12.

⁵¹ Barbeyrac, *TMP*, 8.11: 'pour les Chrétiens de ce tems-là, & eû égard à la situation présente des choses'.

for the Corinthians, according to the general precepts of the Gospel ‘without prejudice to their Duty’.⁵² To interpret these counsels properly, it is necessary to be attentive to the particular circumstances in which the Corinthians found themselves and to which St Paul was directly responding. That is, the danger of frequent persecution that threatened both their individual and collective security and that prevented married persons from living together in peace and tranquillity. Such circumstances are rare and so these counsels cannot serve as the foundation for general Christian moral teachings on marriage and celibacy.

Instead, Barbeyrac argues that marriage and the natural sexual desires that lead individuals to enter the state of marriage conform entirely to both Christian and natural moral law. God’s purpose in constituting the human passions as He did was to ensure the propagation of the species. Marriage and conjugal intimacy must, therefore, be permissible in the eyes of God. For Barbeyrac, marriage is essentially a contractual arrangement that best serves the purpose of creating a peaceful and enduring union in which to produce and educate offspring. This broadly concurs with his argument in *Le droit de la nature* that the marriage contract is binding on both parties as long as the duty to raise and educate any children endures, or as long as the specific terms of the contract specify, or as the two persons wish.⁵³ Moreover, Barbeyrac argues that even those no longer able to propagate do not violate any natural or Christian divine permissions in continuing to enjoy conjugal intimacy within the marriage state. In short, while the nature of the contract may differ, both natural and Christian moral law uphold the principle that marriage is permissible for the purposes of propagation of the species and enjoyment of conjugal intimacy.

Likewise, Barbeyrac maintains that the state of celibacy does not confer any greater holiness on individuals than the state of marriage. Rather it is for each individual to determine whether it is the state of marriage or the state of celibacy that puts them in the position to fulfil their general moral duties, i.e., to God, to others and to themselves.

⁵² Barbeyrac, *TMP*, 8.12: ‘comme fidèle Ministre’ and ‘sans préjudice de leur Devoir’.

⁵³ Barbeyrac, *DNG*, 6.1.20, Note 3. For a far more comprehensive account of how Barbeyrac’s position on marriage must be understood within the wider context of his natural law theory, see Dufour, *Le mariage dans l’école romande du droit naturel au XVIIIe siècle*, pp. 39-64. Dufour traces the development of Barbeyrac’s views on marriage across his texts, arguing that by the end of his career, he had adopted a contractualist position on marriage influenced by his contemporaries Christian Thomasius and John Locke but developed in his own innovative fashion. For the purpose of the present discussion, it is not necessary to look in any detail at the development of his views, only his basic principles.

Celibacy, therefore, may be preferable when a particular vocation requires it, or more simply when an individual lacks the temperament or inclination for marriage, but the church fathers are wrong to raise it above the state of marriage as a general rule.⁵⁴ Here, we also see a further strand of Barbeyrac's critique of the church fathers emerge.

Having depicted the church fathers as improperly wresting apart natural and Christian duties and subsequently seeking to exercise the exclusive moral authority that they have appropriated to themselves beyond its proper bounds, Barbeyrac argues that their aim in doing so was the arrogation of undue temporal powers. Hence, for Barbeyrac, it was the desire of the Pope and his church to dominate individual conscience and their avidity to acquire worldly riches that lead the Catholic church to insist upon the practice of celibacy by all members of the ecclesiastical orders.⁵⁵ The latter practice enabled the church to prevent accumulated wealth being dispersed amongst any legitimate progeny.

The state of marriage and the issues of remarriage, divorce and polygamy bring to the fore not only the proper interpretation of the Gospel, but also of Mosaic law as recorded in the Old Testament. In keeping with his principles of Scriptural interpretation, Barbeyrac claims that both divorce and polygamy are morally permissible according to Mosaic law and thus cannot contain anything evil in themselves.⁵⁶ Likewise, Christ, who came to perfect rather than replace the moral law of the Old Testament, does not condemn either divorce or polygamy as illicit but rather condemns the abuse of these moral permissions.⁵⁷ Here, we may see a direct analogy with Barbeyrac's argument about gaming in the *Traité du jeu*, where he argued that gaming was permissible in theory but frequently subject to abuse in practice.⁵⁸ It is because of the likely abuse of such permissions and the many inconveniences that may arise for the wider society, especially in the use of the permission to practise polygamy, rather than any inherent harmfulness, that has lead a great number of civil legislators to prohibit or restrict these permissions.⁵⁹

Here, Barbeyrac is again engaged in defending the sphere of indifferent moral action governed by the law of permission and the determinations of individual conscience in

⁵⁴ Barbeyrac speaks at length about celibacy, see for example, *TMP*, 5.14-26.

⁵⁵ Barbeyrac, *TMP*, 5.27-29.

⁵⁶ Barbeyrac, *DNG*, 6.1.18, Note 2.

⁵⁷ Barbeyrac, *DNG*, 6.1.21, Note 1 and 6.1.24, Notes 1 and 3.

⁵⁸ See Chapter 3, Section III.

⁵⁹ Barbeyrac, *DNG*, 6.1.16, Notes 1 and 6.

accordance with the general precepts of Christian and natural morality. The moral teachings of the church fathers on all aspects of marriage, divorce, celibacy and so forth thus demonstrate not only the extent to which, for Barbeyrac, their principles rest on a false foundation but also the arrogation and exercise of undue moral authority within this sphere of indifferent actions by virtue of the unsupportable distinction between precepts and counsels.

Whilst the present discussion has focused on the moral precepts and permissions that govern the marriage contract and associated social practices, such as remarriage, divorce and polygamy, throughout his *Morale des peres* and in many of his other texts, Barbeyrac identifies numerous further examples of social practices that are sufficiently determined by the moral precepts and permissions of natural and Christian moral law without requiring the imposition of erroneous and excessively restrictive moral precepts. In effect, the natural law framework that Barbeyrac establishes, taken together with his insistence on the consonance between natural and Christian moral law, determines the limits to the legitimate exercise of ecclesiastical authority. The remainder of the chapter takes up the question of toleration and liberty of conscience with respect to sincerely held religious belief.

V

Ecclesiastical Toleration

At the time that Barbeyrac was writing, the arguments justifying intolerance were as varied and as sophisticated as those for toleration. Moreover, as much as Barbeyrac insisted that Protestantism was fundamentally a tolerant religion, he duly recognised that the Reformation itself had not originated in a call for greater toleration but rather in the imposition of an alternative orthodoxy. Barbeyrac was consciously disputing at least two arguments justifying intolerance, deployed by Catholics and Protestants alike. First, the argument that the Gospel had placed its ministers under an obligation to coercively correct all erroneous beliefs injurious to individuals' hopes of salvation, based on Augustine's interpretation of Jesus's injunction to 'compel them to enter' and, second, the necessity for a single, unified religion to protect the peace and security of the civil

state from the effects of tolerating heretics, who were, by their very nature, seditious subjects.⁶⁰

Like many of his contemporaries, Barbeyrac met this challenge by developing a series of interlocking arguments for the recognition of the duty of religious toleration by both church and state. Taken together, these arguments form the body of his defence of individual liberty of conscience free from domination by external spheres of human authority. Barbeyrac's call for religious toleration follows in the footsteps of thinkers such as Locke and Bayle. There is very little novelty in the specific details of his arguments, which, however, provide a greater insight into how he conceives of the right to liberty of conscience as a moral and religious duty within his theory of natural law.⁶¹

Barbeyrac's most comprehensive discussion concerning toleration is found in Chapter 12 of his *Morale des peres*. Here, he insists upon a strict separation between church and state. Civil society is instituted for the preservation and security of all its members. Obedience to its laws may be coercively enforced by penal sanctions for the general good of that society. Ecclesiastical societies, on the other hand, are instituted 'to diligently seek the Truth, and to convince the ignorant of it'.⁶² In this, they are like other voluntary private societies, for example, those dedicated to the study of the human sciences. The authority possessed by ecclesiastical societies comes 'either from the manifest consent of the Members of each Ecclesiastical Society, or the good will and the permission of the Sovereign Power'.⁶³ In contrast to the laws of civil society, whatever laws that an ecclesiastical society may establish, they cannot use violence or force to uphold them. Any attempt to do so would conflict both with the origin of their authority and the sole legitimate end for which this authority was instituted.

⁶⁰ For an overview of arguments for intolerance within the British context, above all, the Augustinian inspired argument that coercion is justified and Locke's rejection thereof, see Mark Goldie, 'The Theory of Religious Intolerance in Restoration England', in *From Persecution to Toleration: The Glorious Revolution and Religion in England*, ed. O. Grell et. al., (Oxford, 1991).

⁶¹ For an overview of the common arguments deployed in favour of toleration that Barbeyrac draws upon and moulds to his own purposes, see Marshall, *John Locke, Toleration and Early Enlightenment Culture*, Chapter 21, pp. 647-679.

⁶² Barbeyrac, *TMP*, 12.10: 'de chercher soigneusement la Vérite, & d'en convaincre ceux qui l'ignorent'.

⁶³ Barbeyrac, 'Discours sur la question, s'il est permis d'échaffauder en chaire le magistrat, qui a commis quelque faute?', in *Recueil de discours*, Vol. 2, p. 292: 'ou d'un consentement manifeste des Membres de chaque Société Ecclésiastique, ou bien de la volonté & de la permission des Puissances Souverains'.

Barbeyrac distinguishes between two different forms of religious tolerance in order to uphold the separation of church and state: namely, ecclesiastical and civil toleration. He argues that the former ‘consists in suffering in the same Ecclesiastical Society those who possess some particular sentiment’, in contrast to the latter, which concerns ‘granting, in the State, liberty of conscience, to those who do not subscribe to the Dominant Religion, or who have separated from it, or have been excluded from it, because of certain particular opinions’.⁶⁴ The purview of ecclesiastics to interfere in matters of toleration is restricted to ecclesiastical toleration alone. And even here, Barbeyrac advocates that ecclesiastics should accept some degree of variance of belief within their own church. For those whose unorthodox beliefs cannot be borne, Barbeyrac says that ecclesiastical societies have the right to exclude them, but not the right to persecute them: ‘it is one thing not to receive within a Society, or to exclude from it those who are not of a certain authorised Opinion; it is another thing, to persecute them’.⁶⁵

Barbeyrac also addresses the question of how far different Protestant sects have a duty to be tolerant of one another. Here, Barbeyrac claims that divisions between Christians concern the specific details of divine mysteries that, because of the lack of human penetration into such mysteries, ‘wholly surpass the feeble reach of our Minds here-below’.⁶⁶ Setting aside such theological mysteries, Barbeyrac argues that there are certain fundamental articles of faith ‘so clearly contained in Scripture, and so often repeated’ upon which all reasonable Christians may be in agreement.⁶⁷ By extending ecclesiastical toleration to all those who also recognise these fundamental articles of faith by means of a simple common communion, ecclesiastical societies thereby uphold the principal Christian duties of charity and modesty, as well as the general duty to seek peace.⁶⁸ This simple communion does not imply approbation but rather the recognition that an ecclesiastical society does not consider the principles of the other injurious to salvation. While Barbeyrac remains silent on what he takes the fundamental articles of

⁶⁴ Barbeyrac, *TMP*, 5.9: ‘consiste à souffrir dans une même Société Ecclésiastique ceux qui ont quelque sentiment particulier’ and ‘à laisser, dans un Etat, la liberté de Conscience, à ceux qui ne sont pas de la Religion Dominante, ou qui s’en sont separez, ou en ont été exclus, à cause de certaines opinions particuliers’.

⁶⁵ Barbeyrac, *TMP*, 12.21: ‘Autre chose est, de ne pas recevoir dans une Société, ou d’en exclure ceux qui ne sont pas de telle ou telle Opinion autorisée; autre chose, de les persécuter’

⁶⁶ Barbeyrac, *TMP*, 12.18: ‘surpassent entièrement la foible portée de nos Esprits ici-bas’.

⁶⁷ Barbeyrac, *TMP*, 12.22: ‘si clairement continues dans l’Ecriture, & si souvent repetées’.

⁶⁸ Barbeyrac, *TMP*, 12.24.

faith to be, this duty of ecclesiastical toleration does not extend to the Catholic church, with whom all attempts at communion or reconciliation have already failed and will necessarily fail.⁶⁹

At the time that Barbeyrac was writing, the argument that there are certain fundamental articles of faith was closely associated with the call for Christian reunification. This ecumenical movement, championed by his close acquaintances, Turretini and Le Clerc, sought union rather than mere tolerance between different religious denominations; usually but not always limited to Protestant reunion. While Barbeyrac was not actively engaged in this movement, in a letter to Turretini, he expressed his sympathy for the latter's position.⁷⁰ Turretini, like Barbeyrac, placed sincere religious belief and proper moral conduct at the core of all true religion and emphasised the idea of fundamental articles that accorded with reason as well as Scripture.⁷¹ Barbeyrac does no more here than allude, implicitly at least, to these debates in taking up the idea of fundamental articles of faith. He does, however, make use of the idea of certain fundamental articles of faith in support of his own project to carve out a substantial sphere of indifferent things within the Christian faith, over which ecclesiastical societies therefore have no right to exercise an exclusive authority. For Barbeyrac, however, the core issue here is tolerance not union. Ecclesiastical toleration thus constitutes suffering both within and between ecclesiastical societies all things not injurious to salvation, that is to say, moral and religious *adiaphora*.

As we saw in Barbeyrac's argument concerning gaming in his *Traité du jeu* and in his wider argument concerning permission, however, there is a inherent tension between his insistence, on the one hand, that things indifferent in themselves ought to be left to the liberty of individual conscience to determine, and on the other hand, that there is the moral framework that necessarily governs the judgements of conscience. In short, while he insists upon the necessity of sincere search for the truth, whether moral or religious, according to the light of conscience, the underlying assumption is that, in the end, there is one, sole moral and religious truth to be discerned. It follows from this that

⁶⁹ Barbeyrac, *TMP*, 12.23.

⁷⁰ Barbeyrac to Turretini (Lausanne, 03.01.1722), Ms. 484. Cf. Pitassi, *Inventaire critique*, Vol. III, pp. 491-492.

⁷¹ For an account of Turretini's arguments on this issue, see Klauber, *Between Reformed Scholasticism and Pan-Protestantism*, pp. 165-187.

Barbeyrac's argument for ecclesiastical toleration is not a call for a broad based religious liberalism, that is to say, a general acceptance of discordant religious beliefs. Instead it is a specific argument targeted against rigorous doctrinalism, both in his own Reformed church, as evidenced by his resistance to the imposition of the Formula Consensus without the subscription 'insofar as Holy Scripture allows', and more generally within all Christian churches.⁷² In short, it is an argument for non-interference by religious ministers in matters properly belonging to the judgements of individual conscience.

Barbeyrac's silence with respect to what he takes to be the fundamental articles of faith necessary to salvation and for ecclesiastical tolerance may well stem from his stated intention, overtly at least, to leave aside 'theological controversies' and focus exclusively on moral philosophy.⁷³ What Barbeyrac does make clear is that these fundamental truths are contained in the Gospel. Further to this, it is possible to surmise from Barbeyrac's wider arguments that these fundamental articles require, at the very least, fulfilling the moral duties specified by Christian moral law, both those that accord with natural law and those duties that are described as specifically Christian.⁷⁴ Considered purely from its moral dimension, Barbeyrac makes sincere and voluntary religious belief, that is to say, sincere and voluntary faith in God, necessary to salvation: 'the most essential principle of all Religion' is the duty 'to serve God according to the light of Conscience'.⁷⁵ It is therefore in the interest of each individual's salvation that he is accorded a genuine liberty of conscience so that he may fully and properly fulfil his 'first and fundamental' duty to God.⁷⁶ This is of course, for Barbeyrac, the same as the first and principal duty of natural law.⁷⁷

⁷² Philippe Meylan attributes the intolerance that Barbeyrac met with over the proper signing of the Formula Consensus as the principal reason for his resignation as Rector of the Academy of Lausanne in 1715, see *Jean Barbeyrac*, pp. 104-108: the Latin phrase that Barbeyrac originally permitted alongside all subscriptions was '*quatenus Sanctae Scripturae consentit*'. Cf. Introduction, p. 20. For an analysis of how the subscription debates shaped arguments for toleration in this period, see Knud Haakonssen, 'Toleration and Subscription: An Early Enlightenment Debate', [Unpublished].

⁷³ Barbeyrac, 'Préface', *TMP*, p. viii: 'Controverses Théologiques'

⁷⁴ See fn. 29 above.

⁷⁵ Barbeyrac, *TMP*, 12.30: le principe le plus essentiel de toute Religion' and 'de servir DIEU selon les lumières de sa Conscience'.

⁷⁶ Barbeyrac, *TMP*, 5.3: 'première & fondamentale'.

⁷⁷ Cf. Chapter 1, p. 41.

To this end, Barbeyrac argues that ‘rigorous methods are neither proper for procuring the Salvation of Men, nor conformable to the genius of the Gospel, still less to the character of its Ministers’.⁷⁸ This tallies with the claim that Barbeyrac makes in his original definition of conscience that every individual has a right to follow the light of his conscience ‘except in those cases where it would mean doing some violence to the Conscience of others’.⁷⁹ This holds true even if an individual professes beliefs that one deems to be erroneous. Barbeyrac thus establishes the principle that:

An individual sins far more in committing, against the light of his Conscience, an action that is good in itself, than in doing something that is genuinely bad, in order to follow the movements of an erroneous Conscience. The reason for this is that in the first case the individual is required to directly and deliberately disobey God.⁸⁰

Barbeyrac reiterates the same basic principle in his *Morale des peres*, where he adds that with respect to the question of individual salvation: ‘God will always pardon negligence or faults that one is thrown into by Error more easily, than open contempt for his Will and his Authority, which necessarily accompanies all actions committed against the light of Conscience’.⁸¹ In short, Barbeyrac alleges that the sin of hypocrisy is greater than the sin of ignorance or error and thus that enforced religious belief or persecution in the name of religion is injurious rather than instrumental to individual salvation.

But what are the consequences of following what one erroneously believes to be the light of conscience for one’s salvation? In *Le droit de la guerre*, Barbeyrac discusses the salvation of ancient pagans: namely, persons ignorant of the particular law that God had given to the Jewish nation or persons whom God had not commanded to take heed of the Mosaic law and so share in its advantages. He claims that God would not condemn these ancient pagans for not submitting to a law that they could not have possessed

⁷⁸ Barbeyrac, *TMP*, 12.8: ‘Les voies de Rigueur ne sont donc ni propres à procurer le Salut des Hommes, ni un moien conforme au genie de l’Evangile, moins encore au caractère de ses Ministres’.

⁷⁹ Barbeyrac, *DNG*, 1.3.11, Note 1: ‘hors les cas où il s’agiroit de faire violence à la Conscience d’autrui’.

⁸⁰ Barbeyrac, *DNG*, 1.3.13, Note 1: ‘On pèche même davantage en faisant contre les lumieres de sa Conscience une action bonner en elle-même, qu’en faisant une chose véritablement mauvaise, pour suivre les mouvemens d’une Conscience erronée. La raison en est, que dans le premier cas on veut directement & de propos délibéré désobéir à Dieu’.

⁸¹ Barbeyrac, *TMP*, 12.55: ‘DIEU pardonnera toujours plus aisément la negligence ou les fautes qui ont jetté dans l’Erreur, que le mépris ouvert de sa Volonté & de son Autorité, qui accompagne essentiellement les actions faites contre les lumières de la Conscience’.

knowledge of or that they were not obliged to follow: ‘the absence of such a means to Salvation, which God was not obliged to furnish them with, will be for them a misfortune, and not a crime’.⁸² While salvation depends on knowledge of Christ and the efficacy of his sacrifice, without the assistance of God’s supernatural revelation, there is no fault and thus no sin. Individuals are only obliged to follow a law that is known, or rather revealed, to them. To recall, Barbeyrac insists that natural law alone constitutes a universally applicable moral law.⁸³

Divine revelation ‘diminished the force of the causes and the occasions of Error, but it did not remove them altogether, because it did not change the nature of Men’.⁸⁴ As a consequence, no ecclesiastical society, and no individual, may flatter themselves that they are completely free of ignorance, prejudice and passions resulting from poor education, poor customs or deference to an undeserving authority. Not all such errors, Barbeyrac claims, are excusable before the divine tribunal, especially for those with the assistance of supernatural revelation. Nonetheless what matters most in the human forum is sincere endeavour in seeking the truth. In this respect, Barbeyrac’s argument for individual liberty of conscience does not rest upon the idea of conscience necessarily being right, but rather on the necessity of exercising one’s liberty of conscience sincerely and diligently as one’s principal duty to God. Hence, the right to liberty of conscience that Barbeyrac wants to defend in the human forum depends on ‘leaving each individual to believe and to profess that which *appears* true to him in matters of Religion’.⁸⁵ ‘No one’, Barbeyrac alleges, ‘may infringe upon this liberty, without visibly encroaching upon the rights of God, who is the sole master of our Consciences’.⁸⁶ In the end, individuals are responsible both for their own salvation and for God’s judgements of their errors in this regard.

Barbeyrac develops two further arguments to bolster his claims here. First, he maintains that diversity of religious belief is both inevitable and legitimate in the eyes of God.

⁸² Barbeyrac, *DGP*, 1.1.16, Note 1: ‘La privation d’un tel moien de Salut, que Dieu n’étoit pas obligé de leur fournir, sera pour eux un malheur, & non pas un crime’.

⁸³ Cf. Chapter 1, p. 38.

⁸⁴ Barbeyrac, *TMP*, 12.16: ‘diminué la force des causes & des occasions d’Erreur, mais elle ne leur a pas ôté toute prise, parce qu’elle n’a point change le naturel des Hommes’.

⁸⁵ Barbeyrac, *TMP*, 12.20: ‘laisser à chacun la liberté de croire & de professer ce qui lui *parôit* vrai en matière de Religion’ [my italics].

⁸⁶ Barbeyrac, *TMP*, 12.20: ‘Personne ne peut donner atteinte à cette liberté, sans empieter visiblement sur les droits de DIEU, qui est seul maître de nos Consciences’.

Diversity of religious belief must be permitted by God because He ‘has not given here-below a visible Judge’ to settle religious disputes, the resulting diversity of beliefs and sects being recognised by St Paul in his letter to the Corinthians.⁸⁷ In the absence of a visible judge and thus certainty in religious knowledge, God’s purpose, Barbeyrac supposes, is to encourage men to practice the two most important Christian virtues, namely moderation and charity.⁸⁸ With this in mind, Barbeyrac claims that an ‘all-wise and all-good Being’ would not permit violence in order to maintain or advance religious truth as this would lead to the destruction of all human society:

Since everyone believes himself to be *Orthodox*, to give to *Orthodoxy* the right to persecute, is to give it also to *Heretics* and *Schismatics*; it is to put it into the hands of all the different Parties, and to make Christianity into a perpetual Theatre of Wars, where Truth will succumb more often than it will be victorious.⁸⁹

This is not merely a theoretical proposition for Barbeyrac but rather reflects the empirical reality of the recent history of Europe for both himself and his contemporaries. The theoretical point that underpins this observation, however, is that to permit the constraint or persecution of others in the name of religion would be to equate religious truth with physical superiority, whether of number or strength.

Second, Barbeyrac argues for the inefficacy of force in changing individual’s sincerely held religious beliefs. On the contrary, force makes individuals cling more obstinately than before to their original prejudices. Force is also more likely to make ‘Proselytes for Error, than for Truth’ because of the sympathy that individuals feel for those who suffer persecution.⁹⁰ Barbeyrac thus claims that erroneous beliefs can only be legitimately and efficaciously combated by the means of persuasion alone: ‘by covert ways, by indirect, imperceptible, and engaging means’.⁹¹ To be sure, there is always an inherent tension between the idea of voluntary belief being necessary to salvation and the legitimacy of persuasion as a means to compel, internally speaking, a change in an individual’s

⁸⁷ Barbeyrac, *TMP*, 12.14: ‘DIEU n’a point donné ici-bas de Juge visible’. See also *TMP* 12.37.

⁸⁸ Barbeyrac, *TMP*, 12.41.

⁸⁹ Barbeyrac, *TMP*, 12.41: ‘Car, chacun se croiant lui-même *Orthodoxe*, donner à l’*Orthodoxie* le droit de persécuter, c’est le donner aussi aux *Hérétiques* & aux *Schismatiques*; c’est mettre aux mains tous différents Partis, & faire du Christianisme un Théâtre de Guerres perpétuelles, où la Vérité succombera plus souvent, qu’elle ne sera victorieuse’.

⁹⁰ Barbeyrac, *TMP*, 12.22: ‘Prosélytes pour l’Erreur, comme pour la Verité’.

⁹¹ Barbeyrac, *TMP*, 12.12: ‘par des chemins couverts, par des manières indirectes, imperceptibles, & engageants’.

religious belief.⁹² Mindful of this, to some degree at least, Barbeyrac insists that where persuasion proves impotent, ‘it is necessary to abandon them [the errant] to the Judgement of God’.⁹³ As we saw above, in the end it is better to leave an erroneous conscience to its own prejudices than to force it to submit to the sin of hypocrisy.

In effect, Barbeyrac’s argument for liberty of conscience heavily circumscribes the authority possessed by ecclesiastics to scrutinise, judge or coerce individual conscience both within and beyond a particular ecclesiastical society. In this respect, ecclesiastics ought always to remain faithful to the title of ‘servants’ conferred upon them in the times of the apostolic church. This means that the duties incumbent on ecclesiastics are limited by the origin and purpose of the ecclesiastical societies that they administer, namely the study and preaching of religious and moral truth, taking the humility of Christ and the Apostles as their example.⁹⁴ For Barbeyrac, this occupation ‘consists solely in being the *Dispensers of the Mysteries of God*, and in seeking to inspire in their Listeners all kinds of Virtue, the most considerable of which is to take care over *fostering peace with all other Men*’.⁹⁵

The duty to inspire virtue in others is fulfilled by, and restricted to, setting a good moral example in their own conduct rather than in specifying ecclesiastical laws that seek to constrain individual liberty of conscience, both in those things necessary to salvation and in things indifferent in themselves. In his *Traité du jeu*, for example, Barbeyrac is critical of ecclesiastics who allege that gaming is contrary to Christian moral law. However, he also argues that ecclesiastics are under a more strenuous duty than most to set a good example and refrain from gaming in their own conduct: ‘it is certain that whoever embraces such a profession ought to resolve to deprive themselves of things that are most innocent in themselves’.⁹⁶ The purpose of their ministry is to inspire virtue

⁹² William Walker dissects the fine line between force and persuasion in his article ‘Force, Metaphor and Persuasion in Locke’s *Letter Concerning Toleration*’, in *Difference and Dissent*, ed. C.J. Nederman and J.C. Laursen, (Maryland, 1996), pp. 205-229.

⁹³ Barbeyrac, *TMP*, 12.46: ‘il faut les abandonner au Jugement de DIEU’.

⁹⁴ Barbeyrac, *TMP*, 1.5.

⁹⁵ Barbeyrac, ‘S’il est permis d’échaffauder en chaire le magistrat’, p. 259: ‘consiste uniquement à être les *Dispensateurs des mystères de DIEU*, & à tâcher d’inspirer à leurs Auditeurs toute sorte de Vertus, dont une des plus considérables est le soin *d’entretenir la paix avec tous les Hommes*’.

⁹⁶ Barbeyrac, *TJ*, 3.6.19: ‘il est certain que quiconque embrasse une telle profession doit se résoudre ou à se priver absolument de bien des choses très-innocentes en elles-mêmes’.

in others and ‘nothing is more contagious than a bad Example’.⁹⁷ The duty of ecclesiastics as moral educators and moral examples coincides with the only effective and legitimate means of correcting the erroneous determinations of conscience.

In sum, ecclesiastical authority is limited by both the origin and purpose of religious organisations, namely the sincere and diligent search for truth and the education of others in this truth. This authority entails neither a right nor a duty to dominate individual conscience, not even to correct an erroneous conscience. Not only would such conduct extend beyond the legitimate sphere of ecclesiastical authority, but it is also injurious to individual salvation. This is because God alone exercises a mastery over individual conscience and He requires the same thing of individuals as he does of the ecclesiastical societies that guide them, namely the sincere and diligent search for the truth. Barbeyrac thus constructs an argument for liberty of conscience that bestows moral authority on the determinations of conscience not for being right but for genuine, sincere and careful effort in seeking after truth, both moral and religious. This does not licence all error but rather restricts judgements on such error to the divine tribunal, for only God has the necessary insight to be the ‘Scrutiniser of Hearts’.⁹⁸

VI

Civil Toleration

Turning to civil toleration, I will seek to show that Barbeyrac’s claims for such toleration ought to be understood in two mutually supportive way. First, as his response to his experiences of religious persecution and intolerance as a *refugié* and, second, as a pedagogic enterprise aimed at instructing the young men in his charge. In both cases, Barbeyrac’s argument rests on a belief that the defence of liberty of conscience requires a strong sovereign capable of keeping the authority wielded by ecclesiastics within its proper bounds.

Like many of his contemporaries, Barbeyrac’s argument for civil toleration is justified by the demands of peace and the good of the state. It is Locke who decisively

⁹⁷ Barbeyrac, ‘S’il est permis d’échaffauder en chaire le magistrat’, p. 246: ‘Rien n’est plus contagieux qu’un mauvais Exemple’.

⁹⁸ Barbeyrac, *TMP*, 12.20: ‘Scrutateur des Coeurs’.

demonstrated the truth of this argument in his *A Letter Concerning Toleration*, arguing that civil authorities may only concern themselves with religious affairs insofar as direct harm is caused or threatened to the authority and good order of the civil state.⁹⁹

Barbeyrac extends the argument further in his *Morale des peres*, where he claims that the greatest threat to civil peace comes from ecclesiastical authorities. It is ecclesiastics who are most apt to arrogate to themselves powers legitimately possessed by the civil authorities and to use them for the illegitimate cause of enforcing religious belief. In this way, Barbeyrac's argument for civil toleration constitutes a late contribution to the fierce debate that raged within the Huguenot Diaspora, not least between Bayle and Jurieu.¹⁰⁰

Barbeyrac identifies St Augustine as the 'great Patriarch of Christian Persecutors'.¹⁰¹ For Barbeyrac, it was Augustine who first developed the argument necessary to establish and defend not only the doctrine of ecclesiastical intolerance but also that of civil intolerance. But, he argues, whatever ecclesiastics may say to try and beguile civil authorities into using the coercive force at their disposal in the interests of the church, 'this [Civil] Power, reduced to its just limits, has no more right here, than the Governors of an Ecclesiastical Society'.¹⁰² Barbeyrac's argument on the limits of civil power with respect to individual conscience in religious matters is thus intrinsically linked to his argument on the limits of ecclesiastical authority. Just as in the case of ecclesiastical societies, the origin and purpose of civil society specifies the just limits of the exercise of its power. These limits are determined by the natural law duties that give rise to its institution, namely the preservation of peace, security and, if at all possible, the prosperity of its members. Religion, Barbeyrac claims, does not and cannot enter into

⁹⁹ Barbeyrac, *DNG*, 7.4.11, Note 2. Cf. John Locke, *Epistola de Tolerantia: A Letter on Toleration*, ed. R. Klibansky and J.W. Gough, (Oxford, 1968), p. 131.

¹⁰⁰ There is insufficient space to explore Barbeyrac's relationship to previous Huguenot thinkers in greater depth here. It is important to note, however, that Huguenot thought is characterised by a set of shared concerns in response to the experience of religious persecution rather than a unified series of conclusions: Elisabeth Labrousse, 'The Political Ideas of the Huguenot Diaspora (Bayle and Jurieu)', in *Church, State and Society under the Bourbon Kings*, ed. R. Golden, (Kansas, 1982); Luisa Simonutti, 'Between Political Loyalty and Religious Liberty: Political Theory and Toleration in Huguenot Thought in the Epoch of Bayle', in *History of Political Thought* 17:4 (2006) and 'Absolute not Arbitrary Power': Monarchism and Politics in the Thought of the Huguenots and Pierre Bayle', in *Monarchisms and the Age of Enlightenment*, ed. H. Blom et. al., (Toronto, 2007). For further references specifically related to Huguenot resistance theory, see Chapter 5, p. 150, fn. 3.

¹⁰¹ Barbeyrac, *TMP*, 16.29: 'grand Patriarche des Persécuteurs Chrétiens'.

¹⁰² Barbeyrac, *TMP*, 12.26: 'cette Puissance, réduite à ses justes bornes, n'a pas plus de droit ici, que les Conducteurs de la Société Ecclésiastique'.

the terms of the original civil contract. Hence, religion necessarily lies beyond the sovereign's jurisdiction.¹⁰³

Barbeyrac's principal argument against religion entering into the civil contract comes from his belief that individual conscience is an inalienable part of one's person. Here, Barbeyrac clarifies his argument on the foundation of the natural right that individuals possess to liberty of conscience. Significantly expanding the original Lockean argument for an inalienable property right in oneself, Barbeyrac argues that the natural right to liberty of conscience is derived from the corresponding duty to serve God according to the light of one's conscience; further, that this is the direct and necessary consequence of the mastery that God retains over individual conscience, which is an aspect of His mastery over one's person in general:

A Man can never give to another Man an arbitrary power over his life, of which he is not himself the master. But he is even less the master of his Conscience, of which the empire belongs to God to such an extent, that other Men, whatever they may require, whatever they may do, could not truly exert any [empire] over it.¹⁰⁴

In short, Barbeyrac argues that individuals possess an inalienable right to liberty of conscience not by virtue of a mastery over their own individual conscience but rather because of the exclusive mastery exercised by God. Individuals cannot dispose of this liberty in instituting civil society, even if they may want to, because it is not in their gift to dispose of.

But, as Barbeyrac duly recognises, if an individual is not truly master of his own conscience, then in what sense is religious belief voluntary? Once again disputing the efficacy of enforced religious belief, Barbeyrac says that whatever desire one may have to acquiesce in a certain belief, individuals are not free to persuade themselves of anything that is contrary to whatever seems true to them.¹⁰⁵ Belief, in this sense, is not voluntary. God, however, does not exercise His mastery to its full extent in matters of

¹⁰³ Barbeyrac, *TMP*, 12.27-31. Cf. Chapter 5, pp. 177-178.

¹⁰⁴ Barbeyrac, *TMP*, 12.29: 'Un Homme ne peut jamais donner à un autre Homme un pouvoir arbitraire sur sa vie, dont il n'est pas maître lui-même. Mais il est encore moins maître de sa Conscience, dont l'empire appartient tellement à DIEU, que les Autres Hommes, quoi qu'ils veuillent, quoi qu'ils fassent, ne sauroient véritablement y en exercer aucun'. On Barbeyrac's debt to Locke in this regard, cf. Chapter 3, p. 106 and Chapter 5, p. 157.

¹⁰⁵ Barbeyrac, *TMP*, 12.29.

religion because while belief may not be wholly voluntary when considered in terms of the relationship between man and God, it is of the utmost importance that each individual voluntarily submits to what he perceives to be true within the human forum. It is precisely because belief is not voluntary in the former sense that enforced religious belief only opens individuals up to the sin of hypocrisy rather than the possibility of salvation. Barbeyrac reiterates his original argument that salvation is a private affair between man and God and ‘not the affair of the sovereign’.¹⁰⁶ Besides, he observes, to submit to the religion of one’s sovereign is to reduce salvation to being ‘the plaything of Sovereign ignorance or caprice’.¹⁰⁷ Every sovereign upholds whatever religion he believes to be true, but in this he possesses no greater insight than any other fallible human individual.

While authority over religious belief does not enter into the institution of civil society, it would be wrong to infer from this that Barbeyrac considers religion to have no relevance for the foundation and continued good order of civil society. Rather he is concerned with distinguishing different spheres of authority and, in this vein, insists that religious authority neither originates with nor ought to be wedded to civil authority. As we have previously seen, Barbeyrac maintains that religion is necessary to bring men to recognise and uphold their principal Christian and natural law duties. As such, he argues, *pace* Bayle, that a society of infidels, i.e., those who possess some form of religion but do not recognise the Christian God, would be more just and peaceful than a society of atheists.¹⁰⁸ In his discussion of civil toleration, he adds a further layer to this debate. Here he maintains that for religion to produce effects fully and properly advantageous to society, it is necessary that individuals possess ‘rightful ideas of the Divinity’. By this he means the beliefs possessed by those of the Reformed religion.¹⁰⁹ Otherwise, he adds, moral indulgences may become widespread, as was the case in pagan societies where true ideas of the divinity were always mixed with error.

Barbeyrac’s argument, however, takes an interesting turn when it comes to the question of toleration for atheists. Citing Bayle with approval this time, Barbeyrac alleges, *pace* Pufendorf, that atheists must be tolerated by the civil authorities insofar as they do not

¹⁰⁶ Barbeyrac, *TMP*, 12.28: ‘non pas l’affaire du Souverain’.

¹⁰⁷ Barbeyrac, *TMP*, 12.30: ‘le jouet de l’ignorance ou du caprice des Souverains’.

¹⁰⁸ Cf. Chapter 1, p. 31.

¹⁰⁹ Barbeyrac, *DNG*, 1.6.12, Note 8: ‘idées droites de la Divinité’.

commit any exterior acts harmful to civil society, such as preaching their erroneous beliefs to the public and seeking to convert others to their irreligion.¹¹⁰ However abhorrent Barbeyrac may find atheism, he nonetheless maintains that inner sentiment always lies beyond the legitimate jurisdiction of the sovereign. The coercive force of the state, therefore, cannot be brought to bear against those who lack religious belief any more so than it can against those who hold beliefs deemed to be erroneous because of their positive content. By extending toleration to atheists, Barbeyrac preserves the overall coherence of his own argument. In doing so, he makes a notable departure not only from Pufendorf, with whom he is often at odds with respect to religious liberty, but also from Locke, to whom he is more frequently concerned to profess fidelity.

For Barbeyrac, despite what certain ecclesiastics may allege to the contrary, no threat is posed to the peace and security of the civil state through upholding, in practice, the principle of civil toleration required by the inalienable natural right to liberty of conscience. Moreover, Barbeyrac claims, this holds true even if diversity of religious belief follows in its wake:

Nothing is more false than the wholly disagreeable maxim of Politics, with which Ecclesiastics dazzle Sovereigns, for the purpose of dominating Consciences, and advancing their temporal interests. They declare most forcefully, That the good of the State requires that there is only one Religion, because, they say, a diversity of Religions produces only divisions and troubles.¹¹¹

Barbeyrac thus directly equates the false principles of civil intolerance with the desire of certain ecclesiastics to illegitimately extend the exercise of their authority beyond its proper limits under the guise of protecting the interests of the civil state. It is in this way, Barbeyrac claims that ecclesiastics arrogate to themselves unwarranted and unnecessary powers over individual conscience and other temporal affairs. He consistently asserts, across all his texts, that the moral culpability for instituting the principles of civil intolerance and instigating specific acts of persecution lies with rapacious ecclesiastics rather than, in his view at least, gullible sovereigns. This takes the form of both a historical commentary, especially with respect to the persecution

¹¹⁰ Barbeyrac, *DNG*, 3.4.4, Note 2.

¹¹¹ Barbeyrac, *TMP*, 12.32: ‘Rien n’est plus faux, qu’une maxime de Politique toute contraire, dont les Ecclésiastiques éblouissent les Souverains, pour domineer eux-mêmes sur les Consciences, & pour avancer d’ailleurs leur intérêts temporels. Ils font sonner fort haut, Que le bien d’un Etat veut qu’il n’y ait qu’une Religion, parce, disent-ils, que la diversité de Religions produit des divisions & des troubles’.

experienced by the Huguenots, and a pedagogic exercise, where he warns civil sovereigns of the dangers posed by ‘giving an ear to Ecclesiastics’ who possess ‘such confused, such limited and such false ideas, of the most evident principles of Justice and Equity’.¹¹²

Barbeyrac claims instead that it is not diversity of religion that causes civil disorder but rather the practice of civil intolerance. He insists upon the argument common among his Huguenot contemporaries that religious dissension and peaceful obedience to the sovereign are not incompatible.¹¹³ In his pedagogic ‘Discours sur l’utilité des lettres et des sciences’, Barbeyrac argues that truth and liberty are natural bedfellows. Hence, the sovereign advances the interest of the civil state by permitting free enquiry not only in matters of religious belief but in all the arts and sciences: ‘the Liberal Arts and refined Knowledge are one of the best defences of Liberty... [whereas] Ignorance abases the Spirit’ and opens the door to religious tyranny.¹¹⁴ Moreover, Barbeyrac claims, civil tolerance serves the cause of religious truth. The evidence for this lies in the ‘fact’ that the number of different sects in the state diminishes rather than increases as freedom in religious belief leads to genuine religious and philosophical enquiry, resulting in the reunification of those previously divided.¹¹⁵ Again, the idea that underpins Barbeyrac’s argument is that there is a single truth that individual conscience must endeavour to seek out. In matters of religious truth, therefore, the sovereign’s sole duty is to maintain ‘an even balance, so that he does not leave any one Party the means to oppress another Party’.¹¹⁶ The only exception to this general rule is toleration of the intolerant, i.e., Catholics. In keeping with his pedagogic enterprise, Barbeyrac also advises sovereigns that for them, as for ecclesiastics, the sole means to inspire true virtue in their subjects is through their own example.¹¹⁷

¹¹² Barbeyrac, *TMP*, 17.10: ‘prêtent l’oreille aux Ecclesiastiques’ and ‘des idées si confuses, si bornées, si fausses, des principes les plus évidens de la Justice & de l’Equité’.

¹¹³ On the development of common arguments deployed by Huguenot thinkers and the internal debates of the Diaspora, see T.J. Hochstrasser, ‘The Claims of Conscience’, pp. 15-51.

¹¹⁴ Barbeyrac, ‘Discours sur ‘utilité des lettres et des sciences’, p. 122: ‘les Arts Libéraux & les belles Connoissances sont un des meilleurs remparts de la Liberté’ and ‘L’Ignorance abaisse l’Esprit’.

¹¹⁵ Barbeyrac, *TMP*, 12.35.

¹¹⁶ Barbeyrac, *TMP*, 12.32: ‘la balance égale, en sorte qu’il ne laisse à aucun Parti les moiens d’opprimer l’autre’.

¹¹⁷ Barbeyrac, *TMP*, 12.53.

Barbeyrac's pedagogic enterprise is deeply caught up in his own reimagining of the history of the Huguenot persecution, where an unassuming Louis XIV was lead astray by ecclesiastical forces within the French state. Rejecting Ceillier's defence of the persecution of the Huguenots, based upon the Augustinian principle that future generations may be held accountable for the sins of past generations, Barbeyrac claims that not only is this a false principle directly in contradiction with the teachings of Scripture, but also that the French Reformed population were innocent of any crimes. Instead, Barbeyrac casts the conflict that gripped France in the sixteenth century as an internecine war between the Houses of Bourbon and Guise, in which the Huguenots showed unwavering fidelity to the crown. Religion, he claims, only entered into the civil disorder 'by accident'.¹¹⁸ This much was evident from the fact that the Huguenots only ever used peaceful means in their fight for religious liberty and never seditious ones. Barbeyrac states that the declarations given by Louis XIV, both to the French public in his edicts and in his correspondence with Oliver Cromwell and Fredrick I, Elector of Brandenburg, provide further evidence for Huguenot fidelity to the French monarchy.¹¹⁹

The point that Barbeyrac is driving at is that the Huguenot community had lived in peaceful obedience and shown loyal service to the Catholic Louis XIV and that this peaceful and tolerant state of affairs may have continued were it not for the subversive actions of French Catholic ecclesiastics. In effect, this highly subjective reading of French religious affairs in the sixteenth and seventeenth centuries allows Barbeyrac to reiterate his thesis that religious dissension and peaceful obedience to the civil authority are not incompatible and that civil disorder only arises when the spirit of intolerance is induced by rapacious ecclesiastics:

It is under such protection of the Royal Command and the Right of Nations, that they [the Huguenots] lived in peace; and would still live there in peace, if the spirit of Intolerance and the genius of Papism had not trod

¹¹⁸ Barbeyrac, *TMP*, 16.41: 'par accident'. For Barbeyrac's history of the persecution of the Huguenots, see *TMP*, 16.39-41.

¹¹⁹ On the context for Barbeyrac's claims here, see Simonutti, 'Between Political Loyalty and Religious Liberty', p. 527. For a general overview of the historical period that Barbeyrac is reimagining here, see Mack P. Holt, *The French Wars of Religion, 1562-1629*, (Cambridge, 2005).

underfoot all the maxims of the Gospel, of Good Faith, and of Natural Humanity.¹²⁰

For Barbeyrac, both ecclesiastical and civil intolerance lie at the very heart of the principles of the Catholic faith, such that while he may pursue a pedagogic enterprise in speaking to civil sovereigns and ministers of the Reformed faith, Catholic ecclesiastics in general are worthy only of invective. However, even this forms part of the pedagogic enterprise insofar as it warns Protestant ministers that also among their churches, the ‘leaven’ of Catholic intolerance that remains ‘could easily grow if they were not on their guard’.¹²¹ In short, Barbeyrac’s message is ultimately that ‘no Religion, Sect or Party’ ought ever to flatter itself that ‘it is able to be and always has been entirely free from temerarious Decisions, from Cabals, from a spirit inclined to Domination’.¹²²

The pedagogic nature of Barbeyrac’s project finds its clearest expression in his academic oration, later published as a discourse, first in Latin and subsequently in French under the title ‘Discours sur la question, s’il est permis d’echaffauder en chaire le magistrat, qui a commis quelque faute?’.¹²³ While his argument for the subservience of the church and its ministers to the civil authorities was unremarkable within the wider European Republic of Letters, in the narrow Dutch context of Groningen it was notable for departing from the restrained prudence of his orthodox academic colleagues.¹²⁴ In this discourse, Barbeyrac argues that in a well-regulated state, ‘all *Ecclesiastics* without exception are to be regarded as *Subjects*’ of the state even those that belong to the public, i.e., dominant, church.¹²⁵ Both the sovereign himself and his representatives, the civil magistrates, are owed ‘the *obedience* and the *honour*’ that the nature of their public office necessarily requires.¹²⁶

¹²⁰ Barbeyrac, *TMP*, 16.40: ‘C’est sous une telle protection de la Parole Roiale & du Droit des Gens, qu’il vivoient en paix; & ils y vivoient encore, si l’esprit d’Intolérance & le génie du Papisme ne fouloient aux pieds toutes les maximes de l’Evangile, de la Bonne Foi, & de l’Humanité Naturelle’.

¹²¹ Barbeyrac, ‘Discours sur ‘utilité des lettres et des sciences’, p. 124: ‘levain’ and ‘pourroit bien s’accroître, si l’on n’était sur ses gardes’.

¹²² Barbeyrac adds this part of the text to his original anticlerical note in the final revisions to his translations of Noodt’s ‘Discours sur la liberté de conscience’. See *Recueil de discours*, Vol. 2, p. 172, Note 1: ‘point... de Religion, de Secte, de Parti’ and ‘de pouvoir être & d’avoir jamais été entièrement à l’abri des Décisions téméraires, des Cabales, de l’esprit d’interêt de Domination’.

¹²³ Barbeyrac, ‘S’il est permis d’echaffauder en chaire le magistrat’, pp. 235-298

¹²⁴ Eijnatten, ‘Swiss Anticlericalism in the United Provinces’, pp. 861-886 but esp. pp. 877-886 on this point. Eijnatten also gives details of the differences between the French and Latin editions of the discourse.

¹²⁵ Barbeyrac, ‘S’il est permis d’echaffauder en chaire le magistrat’, p. 245: ‘tous les *Ecclésiastiques* sans exception sont regardez comme *Sujets*’.

¹²⁶ Barbeyrac, ‘S’il est permis d’echaffauder en chaire le magistrat’, p. 246: ‘l’*obéissance* & l’*honneur*’.

Both as private individuals and as public ministers of religion preaching from the pulpit, ecclesiastics thus ought to show proper deference to the sovereign power in the interests of the peace and security of the state so as not to inspire sedition amongst the people. Appealing to the example set by Christ and his Apostles and to the evidence of Scripture, Barbeyrac claims that this duty is not merely a civic duty but also a natural and Christian one too. The respect due to the civil authorities, both by public ministers of religion and by private individuals, however, is limited to the exterior marks of honour. Inner thoughts and sentiments are a private affair: ‘Every individual preserves the liberty to judge for himself wisely and modestly the morals and the actions of even the most powerful Magistrates and Princes’.¹²⁷

Barbeyrac seeks to establish here the proper bounds of the different spheres of authority belonging to the individual, to ecclesiastics and to the civil sovereign. He warns his listeners, including notable public officials, that leaving the exercise of ecclesiastical authority unchecked in the civil state poses a direct threat not only to the exercise of individual conscience but also to the authority of the civil sovereign himself. The historical record speaks for itself, Barbeyrac alleges, in showing how ‘the negligence or the impotence of Sovereigns’ have enabled ecclesiastics to establish a ‘usurped Jurisdiction’ in a great many civil matters under the pretext of fulfilling those duties proper to their religious office.¹²⁸ For Barbeyrac, one such instance of ecclesiastics using this usurped jurisdiction to meddle in civil affairs is the exclusive rights over the swearing of oaths.¹²⁹ Barbeyrac’s discourse cautions the young men to whom it was originally delivered, many of whom would have gone on to take up public office, either civil or ecclesiastical, that dutiful ecclesiastics, faithful to Christ’s example, ought always to respect the legitimate bounds of their authority. Further, if they fail to do so, it is incumbent upon the sovereign and his civil representative to constrain them to the legitimate exercise of their authority alone.

¹²⁷ Barbeyrac, ‘S’il est permis d’échaffauder en chaire le magistrat’, p. 256: ‘Chacun conserve la liberté de juger en lui-même sagement & modestement des mœurs & des actions des Magistrats & des Princes les plus puissans’.

¹²⁸ Barbeyrac, ‘S’il est permis d’échaffauder en chaire le magistrat’, p. 274: ‘la negligence ou l’impuissance des Souverains’ and ‘[cette] Jurisdiction usurpée’.

¹²⁹ Barbeyrac, *DNG*, 4.2.24, Note 3.

The arguments that Barbeyrac develops to establish the necessity of both ecclesiastical and civil toleration follow from the principles that he lays down in his theory of natural law and the relationship between it and Christian moral law. These arguments were developed in response to the religious persecution suffered by the Huguenots and the religious intolerance that he himself suffered at the hands of his own Reformed church. They also reflect his commitment to his role as a professional academician with the task of educating young men in the duties that were necessarily attached to the ecclesiastical and civil offices that they would go on to occupy. In this latter respect, he is closer to his fellow academician Noodt than to his often cited intellectual predecessor Locke.¹³⁰ The arguments presented here may also go some way to answering the objection raised by Tim Hochstrasser but first stated by C. R. Emery that ‘Barbeyrac the political theorist fails to meet the challenges laid down by Barbeyrac the moralist’.¹³¹

In essence, Barbeyrac’s call to arms for the sake of religious liberty and conscience is effectively aimed at the future generations of public servants in his academic charge much more so than to religious dissidents in the state. Reflecting on what he took to be the origin of civil intolerance and persecution, namely, the activity of rapacious ecclesiastics, his solution was to call upon the civil authorities to exercise their power in the name of civil and ecclesiastical toleration rather than in the illegitimate pursuit of religious truth by the force of arms. Barbeyrac’s pedagogic enterprise is thus also aimed at civil sovereigns, who, once rehabilitated from the false principles with which ecclesiastics so easily beguile them, have the means and the motive to protect the natural and inalienable right to liberty of conscience in the civil state. ‘Thanks be to God’, Barbeyrac says in his opening preface to the Noodt discourses, ‘that Princes may also be easily cured of the Ambition, and other vices which make them abuse their Power’ and so be prevented from lending an ear to self-serving ecclesiastics.¹³²

The difficulty that Barbeyrac faces, however, is the same one that gives rise to Emery and Hochstrasser’s objection, that is to say, how far do individuals possess the right

¹³⁰ Eijnatten, ‘Gerard Noodt’s Standing in the Eighteenth-Century Dutch Debate on Religious Freedom’, pp. 85-86.

¹³¹ Hochstrasser, ‘The Claims of Conscience’, p. 46. Hochstrasser cites C. R. Emery, ‘The Study of *Politica* in The Netherlands in the Early Eighteenth-Century’, PhD dissertation [unpublished], (London, 1967), p. 198.

¹³² Barbeyrac, ‘Préface du traducteur, sur les deux discours de Mr. Noodt’, in *Recueil de discours*, Vol. 1, p. 5: ‘Plût-à-Dieu néanmoins qu’on pût aussi aisément guérir les Princes de l’Ambition, & des autres Vices qui font qu’ils abusent de leur Pouvoir’.

within the civil state to resist the sovereign in defence of their inalienable and natural right to liberty of conscience if the sovereign power cannot or will not be rehabilitated? Or to ask the same question in another way, how far does an individual's duty to serve God according to the light of conscience – over which he himself has no mastery – license him to go in openly resisting a civil sovereign who exercises his authority beyond its legitimate bounds? Barbeyrac's attempt to respond to the tension that arises here within his theory of natural law forms the subject of the final chapter.

Chapter Five

Natural Law and the Limits of Civil Authority

I

Introduction

‘The submission of Men to Civil Government does not extend, and could not extend, even if they so wished, to the point where a Human Legislator is placed above God, the Author of Nature, the Creator and Sovereign Legislator of Men’.¹ With these words, Barbeyrac once again reminds his readers that all legitimate human authority is necessarily limited by its dependence on God’s will. Authority is always conferred for a specific purpose and this purpose defines the limits of its use; whether that is the public good in the case of the civil sovereign, or moral edification in the case of ecclesiastics, or inner morality in the case of individuals. Barbeyrac’s exposition of the juridical framework that determines the legitimate exercise of different forms of moral authority in both the natural and civil state is intended to inform his readers of their own moral duties as well as demonstrating that no genuine conflict between individual conscience, the civil sovereign and ecclesiastical powers ought to occur. The difficulty that Barbeyrac faced was that experience showed only too well that neither the sovereign, nor ecclesiastics, nor even individuals, would always respect the proper limits of their respective spheres of authority. It is the *de facto* absence of any such natural harmony that makes the juridical framework of natural law necessary in the first place.

In the previous chapter, we saw how Barbeyrac sought the remedy to conflict between individual conscience and ecclesiastical authority in the power of the civil sovereign. However, the difficulty that he faces is that there is no further terrestrial adjudicator to fall back on when the demands of individual conscience appear to be in conflict with the commands of the civil sovereign himself. The duty owed to God to follow the light of one’s conscience and the duty owed to the civil sovereign to obey his commands for the good of society cannot both be upheld in such situations. This chapter will focus on

¹ Barbeyrac, ‘La permission des loix’, p. 139: ‘La soumission des Hommes au Gouvernement Civil ne s’étend point, & n’a pû s’étendre, quand même ils auroient voulu, jusqu’à mettre un Législateur Humain au dessus de DIEU, l’Auteur de la Nature, Le Créateur & le Législateur Souverain des Hommes’.

Barbeyrac's response to a problem that troubled many of his contemporaries, namely the limits of civil authority and the extent to which individuals may legitimately disobey, and even actively resist, the sovereign power. Barbeyrac's resistance theory draws on a rich history rooted both in the natural law theories of Grotius, Pufendorf and Locke, all of whom he modifies eclectically in the service of his own argument, and in the long perspective of Protestant, especially Huguenot, resistance theory.² The latter context in particular has a dramatic prehistory of its own that is only touched upon in this chapter but remains a vital source of ideas that Barbeyrac draws upon in establishing his own resistance theory.³

Much of the discussion here presupposes a distinction that is commonly employed in the early modern period between having a legitimate right to resist and being justified in exercising that right. The former question asks whether individuals may be bearers of natural rights in their own person and the latter question asks who may resist the civil sovereign and under what circumstances. To answer these questions, it will be necessary to examine: (i) the rights and duties that Barbeyrac ascribes to individuals in the state of nature; (ii) the foundation of the civil state; (iii) the relationship between civil and natural law; (iv) the character and natural limits of sovereignty; and finally, (v) Barbeyrac's theory of justified resistance. The purpose of this chapter is to elucidate the intimate relationship between Barbeyrac's theory of natural law, grounded in individual conscience as the faculty of moral judgement, and his defence of individual liberty of conscience within the civil sphere as an indispensable moral duty with respect to God and thus an inalienable natural right with respect to all other individuals, the civil sovereign included.

² On Grotius's and Pufendorf's respective arguments for justified resistance and their reluctance to conceive of resistance in terms of a 'right', see Frank Grunert, 'Sovereignty and Resistance: The Development of the Right of Resistance in German Natural Law', in *Natural Law and Civil Sovereignty*, pp. 124-128. On Locke's theory of resistance, see fn. 126 below. On the overlap between theories of resistance within the natural law tradition and the Huguenot Diaspora, see Hochstrasser, 'The Claims of Conscience'.

³ In addition to the references already provided in Chapter 4, p. 139, fn. 100 on Huguenot political theory, there are also a number of important contributions focusing specifically on the development of Huguenot resistance theory in response to the changing fortunes of the Huguenot community before and after the Revocation of the Edict of Nantes: Quentin Skinner, *The Foundations of Modern Political Thought*. Volume Two: *The Age of Reformation*, (Cambridge, 1978), esp. 198-347; Myriam Yardeni, 'French Calvinist Political Thought, 1534-1715', in *International Calvinism, 1541-1715*, ed. M. Prestwich, (Oxford, 1985); Robert M. Kingdon, 'Calvinism and Resistance Theory 1550-1580', in *The Cambridge History of Political Thought 1450-1700*, ed. J.H. Burns, (Cambridge, 1991).

II

The State of Nature

The state of nature is an ahistorical construct that conceives of individuals in their ‘original’ condition logically prior to the establishment of civil society. It is natural man ‘considered purely and simply as Man’, that is to say, created by God with the necessary constitution and faculties to be ‘a Reasonable and Sociable Animal’.⁴ For Barbeyrac, the state of nature serves a double purpose. First, it consolidates his comprehensive account of natural law – grounded in the idea of conscience as a quasi-judicial conduit between man and God – by arguing for a strong account of individual moral authority premised on man’s natural knowledge of God’s purpose for him. Although the nature of the juridical relationship between man and God is largely presupposed in Barbeyrac’s account of the state of nature, it remains fundamental to understanding how he conceptualises the juridical relations between moral equals in the state of nature and moral personhood itself. Second, the moral relations that exist within the state of nature provide a counterpoint for the respective rights and duties of sovereign and subjects in the civil state. For Barbeyrac, the political authority possessed by the civil sovereign mirrors the moral authority possessed by individuals in the state of nature. Here, he is consciously arguing against Hobbes and Pufendorf, for both of whom the deficiency of moral authority in the state of nature justifies the absolute power possessed by the sovereign in the civil state.

Barbeyrac defines the state of nature in opposition ‘to all states where someone has the right to command in some manner, and respectively others are obliged to obey’.⁵ In theory, this includes all relations of authority not only those between sovereign and subject but also those between father and child and between master and servant. Nonetheless, like Pufendorf before him, he almost always describes the state of nature as a state whose most notable feature is not the absence of any relations of authority but rather the absence of a common political authority, namely the civil sovereign.⁶

⁴ Barbeyrac, *DNG*, 2.1.5, Note 1 and *DNG*, 2.3.4, Note 2 respectively: ‘considéré purement & simplement tant qu’Homme’ and ‘un Animal Raisonnable & Sociable’.

⁵ Barbeyrac, *DHC*, 2.1.5 Note 1: ‘à tout Etat où respectivement les uns ont droit de commander en quelque manniere, & les autres sont tenus d’obéir’.

⁶ Fiammetta Palladini argues that despite Pufendorf’s three different definitions of the state of nature and his accounts thereof, the main theoretical use that he makes of the concept is in contrast to civil society alone: ‘Pufendorf disciple of Hobbes’, pp. 31-49. She also argues here that there is a clear affinity

Individuals' common subjection to the authority of God ensures, however, that effective juridical relations in the state of nature are possible. This is because individuals are possessed of a conscience capable of apprehending the fundamental precepts of natural law and enforcing them in God's stead.⁷ In making this argument, Barbeyrac opposes what he takes to be the subjective individualism that characterises all assertions of right in Hobbes's state of nature, while also overcoming the juridical impotency that besets Pufendorf's state of nature. Here, he takes Locke to be his natural ally, citing him frequently to bolster his own argument.⁸

While Barbeyrac draws very different conclusion concerning the nature of juridical relations in the state of nature from those of Hobbes and Pufendorf, his view of the twofold nature of man is strikingly similar to that of Pufendorf. Possessed of dignity 'in leaving the hands of his Creator', Barbeyrac argues that man nonetheless becomes corrupted by the vicious and disruptive characteristics attributed to him by Pufendorf – his malice, his natural diversity of inclinations and his inherent weakness – once left at liberty to make use of his own faculties.⁹ Moreover, Barbeyrac does not deny that that it is man's malice just as much as his dignity that characterises his dealings with his fellows. Barbeyrac deliberately upsets the Pufendorffian apple cart, however, in using these same premises to conclude that individuals have just as much to fear from the misery of persecution at the hands of a malevolent sovereign in sway to his natural fallibility as they do from one another in the state of nature. Where Pufendorf, quoting directly from Hobbes's *De Cive*, lists various ills brought about in the state of nature by man's vicious temperament and the various social goods produced in the civil state through holding this vicious temperament in check, Barbeyrac rebuts both authors point by point.¹⁰

What Barbeyrac wants to demonstrate in this rebuttal is that both Hobbes and Pufendorf mistakenly exaggerate both the miseries that beset individuals in the state of nature and

between Pufendorf's and Hobbes's account of natural man and the state of nature that Pufendorf subsequently felt the need to obscure for prudential reasons, pp. 49-51.

⁷ For the foundation of Barbeyrac's concept of conscience, see Chapter 1, Section IV.

⁸ For an account of Locke's own concept of the state of nature, see John Dunn, *The Political Thought of John Locke*, (Cambridge, 1969), pp. 96-119. On the political importance of Locke's *Second Treatise* in its French translation, *Du gouvernement civil*, among the Huguenot Diaspora as 'an anti-absolutist critique of the French regime', see Savonius, 'Locke in French', p. 51.

⁹ Barbeyrac, *DNG*, 2.1.5, Note 1: 'en sortant des mains de son Créateur'.

¹⁰ Pufendorf, *DNG*, 2.2.2; Barbeyrac, *DNG*, 2.2.2, Notes 7-17. Cf. Hobbes, *On the Citizen*, 10.1.

the advantages necessarily accrued to them in the civil state. Casting the argument in a negative light, Barbeyrac suggests that ‘against the natural intention of the Creator, and from an effect of human corruption, both of these states are often unsociable, and unhappy’.¹¹ But while both states may be equally miserable, the same remedy may be sought to both through obedience to the dictates of natural law. This is achieved through attentiveness to the juridical demands placed upon all individuals by the light of conscience, whether simple individuals in the state of nature or the sovereign himself in the civil state. For Barbeyrac, a well-governed civil state would undoubtedly offer individuals greater peace and security than the precariousness of moral relations that always prevails in the state of nature, but much depends on whether the civil sovereign governs within the legitimate bounds of his authority according to the dictates of natural law.¹² In short, the best state is a state governed by dictates of natural law.

Barbeyrac’s reply to Pufendorf’s broadly Hobbesian state of nature relies on more than simply arguing that the civil state may prove to be as miserable as the state of nature. He also wants to establish that individuals in the state of nature possess the necessary moral authority to recognise and enforce relations of justice and because of this that the moral framework exists for them to be confident enough for ‘a great number to engage together for their mutual defence’.¹³ To understand why Barbeyrac thinks that this is possible, despite adhering to the belief that the attributes of the divine nature are beyond human comprehension, it is necessary to recall the arguments that have gone before in this thesis.

Conscience has a crucial role to play here in bridging the gulf between God and man. It assures individuals of the veridical nature all judgements made in accordance with the fundamental principles of natural law and confers on these judgements an authority that derives directly from the authority of the divine author of that same moral law, namely God. The authority of conscience is thus predicated upon man’s subjection to the will of God, from whom he receives ‘being, life and movement’.¹⁴ This dependency is exemplified in the mastery that God retains over man’s life, liberty and conscience. It is

¹¹ Barbeyrac, *DNG*, 2.2.2, Note 17: ‘contre la destination naturele du Créateur, & par un effet de la corruption humaine, l’un & l’autre de ces états est souvent insociable, & malheureux’.

¹² Barbeyrac, *DNG*, 2.2.2, Note 17. On the natural limits of sovereign power, see Sections V-VI below.

¹³ Barbeyrac, *DNG*, 2.2.2, Note 7: ‘on ne s’engage plusieurs ensemble à se défendre mutuellement’.

¹⁴ Barbeyrac, *DHC*, 1.2.5, Note 3: ‘l’être, la vie & le mouvement’. See Chapter 2, pp. 75-77.

because of this mastery that individuals may be said to be endowed with a property in their own life, liberty and conscience with respect to their fellow man. This is what Barbeyrac means when he speaks of inalienable natural rights.¹⁵ In contrast to permissive natural rights that we may dispose of as we deem appropriate, inalienable natural rights refer to those aspects of moral personhood that cannot be alienated because ‘a superior Law prohibits it’.¹⁶ That law is natural law. Individuals are held to protect these attributes of their moral personhood to the upmost degree because in doing so they demonstrate the necessary respect for God’s authority. All of this may be known be the light of conscience alone.

It is from this perspective that Barbeyrac characterises the state of nature as a juridical state where morality is grounded in man’s relationship to God. Moreover, it allows Barbeyrac to insist upon the morally authoritative character of individuals’ judgements of conscience and thus reject Hobbes’s claim that such judgements are nothing more than subjective, human reasoning. From the knowledge that each individual is capable of possessing of himself as a moral being dependent on the will of God, Barbeyrac also rebuts Hobbes’s claim that there are no relations of justice between individuals. For Barbeyrac, morality in Hobbes’s state of nature may be reduced to the sin of ‘claiming that something is conducive to our preservation, yet knowing in full conscience that it is not’.¹⁷ Thus, in the absence of any particular contract, Hobbesian individuals cannot cause one another harm (*tort*) in the juridical sense.

In response, Barbeyrac makes use of Pufendorf’s idea that some sort of basic natural equality obtains between all individuals considered as moral beings, i.e., subject to natural law, in order to establish his own argument that individuals may cause one

¹⁵ Cf. Chapter 3, p. 95. Petter Korkman assesses how far Barbeyrac’s concept of inalienable natural rights ought to be read as a modern theory of subjective natural rights. He concludes that while Barbeyrac does not advance a subjective theory of natural rights, he is a ‘liberal’ thinker whose ultimate aim is to protect ‘a private sphere in which every person is his own master’ within his religious and moral life: ‘Life, Liberty, and the Pursuit of Happiness: Human Rights in Barbeyrac and Burlamaqui’, in *Transformations in Medieval and Early-Modern Rights Discourse*, ed. V. Mäkinen and P. Korkman, (Dordrecht, 2006), p. 282. On the more general debate over the advent of modern subjective rights, see Richard Tuck, *Natural Rights Theories. Arguing against the idea of the rise of subjective rights theories in the early modern period*, see Knud Haakonssen, ‘The moral conservatism of natural rights’.

¹⁶ Barbeyrac, *DNG*, 1.7.17, Note 2: ‘une Loi superieure nous le défend’.

¹⁷ Barbeyrac, *DNG*, 2.2.3, Note 1: ‘on pretend qu’une chose est propre à nôtre conservation, quoiqu’on sçache bien en conscience qu’elle ne l’est pas’. Cf. Hobbes, *On the Citizen*, 1.10: ‘A person may sin against the Natural Laws... if he claims something contributes to his self-preservation, but does not believe it does so’.

another harm (*tort*) in the juridical sense: ‘everyone having the perfect right to be regarded and to be treated as a Man, whoever acts otherwise towards another person, causes him a true Harm’.¹⁸ This moral equality, he argues, is ‘the general foundation of Sociability, and consequently of all the Duties of Men towards one another’.¹⁹ This argument is important because it demonstrates that a genuine moral-juridical framework exists between individuals in the state of nature in addition to the juridical relation that pertains between man and God in all moral states. In short, individuals have duties to their fellow man as well as to God.

For Barbeyrac, this makes some kind of stable society between individuals in the state of nature possible because the perfect right to moral recognition pertains no matter what natural or social inequalities actually exist between individuals. It follows from this that there is a corresponding duty, which Barbeyrac refers to as a perpetual obligation, to treat others as moral equals. This is true not only in the state of nature but also in states where relations of authority exist between superiors and inferiors, that is to say, in the civil state between the sovereign and his subjects. Any individual, whether in the natural or civil state, who ‘demonstrates a disposition to violate towards others the maxims of Natural Right common to all Men’, and so violate the perpetual obligation to uphold this natural equality of right, dispenses his fellows from their perpetual obligation to practice these same duties towards him.²⁰ This applies not only in the state of nature but also in the civil state. It is not so much that the original obligation to treat others as moral equals ceases, for after all it is supposed to be perpetual, but rather that an overriding obligation takes precedence. In short, there is a distinction to be made here between having an obligation and being justified in exercising or not exercising that obligation.

¹⁸ Barbeyrac, *DNG*, 3.2.1, Note 1: ‘chacun ayant un droit parfait de pretendre qu’on le regarde & qu’on le traite comme un Homme, quiconque agit autrement avec un autre, lui cause un veritable Dommage’. For two contrasting accounts of the idea of moral personhood and basic rights in Pufendorf’s theory of natural law, see: Kari Saastamoinen, ‘Pufendorf on Natural Equality, Human Dignity, and Self-Esteem’, in *Journal of the History of Ideas* 71:1 (2010) and Knud Haakonssen, ‘Natural Law and Personhood: Samuel Pufendorf on Social Explanation’, (Florence, 2010). Accessed via: <http://cadmus.eui.eu/handle/1814/14934>.

¹⁹ Barbeyrac, *DHC*, 1.7.1, Note 1: ‘le fondement général de la Sociabilité, & par consequent de tous les Devoirs des Hommes les uns envers les autres’.

²⁰ Barbeyrac, *DHC*, 1.7.2, Note 2: ‘se montre disposé à violer envers les autres les maximes du Droit Naturel commun à tous les Hommes’.

The duty that takes precedence when other individuals violate the common duties of sociability is the fundamental duty of self-preservation. This is the duty to preserve and defend both oneself and, as a correlative to this, human society in general. Arguing against Pufendorf, Barbeyrac insists that the duty of self-preservation does not merely give individuals a right – or permission – to defend their life by taking the life of an unjust aggressor but rather positively commands them to do so in the form of a veritable obligation.²¹ For Barbeyrac, the duty to use force to defend one's life is grounded in the idea of life as an inalienable natural right, that is to say, a moral attribute that individuals cannot willingly renounce. Rejecting the traditional Christian argument that individuals are held to imitate Christ and patiently endure all sufferings, even death, Barbeyrac claims that this duty of self-preservation is required not only by natural law but also by Christian moral law.²²

To this end, it is also permissible for individuals to use force to protect the lives of their fellows, thereby upholding the fundamental duties of natural law against those who directly violate its maxims.²³ Nonetheless, whenever it possible to do so without endangering one's own life or the lives of others, individuals ought to spare the life of an unjust aggressor. Even though our aggressor has no right to require it of us, the injured party should always seek to 'salvage both the rights of self-love, and the Duties of Sociability'.²⁴

For Barbeyrac, the strict duty of self-preservation includes not only the right to defend one's life, limbs and possessions but also the right that to defend one's liberty. He is highly critical here of both Pufendorf and Grotius for ignoring liberty within their accounts of just self-defence. Liberty, Barbeyrac reminds his readers, is 'the rampart of my preservation, and the foundation of all other things that belong to me'.²⁵

Paraphrasing Locke's argument in the *Second Treatise*, Barbeyrac claims that all individuals have a right of self-defence by force of arms against anyone who seeks to

²¹ Barbeyrac, *DNG*, 2.5.2, Note 5.

²² Barbeyrac, *TMP*, 8.40-45.

²³ Barbeyrac, *DNG*, 2.5.6, Note 3.

²⁴ Barbeyrac, *DNG*, 2.5.1, Note 3: 'sauve en même tems les droits de l'amour-propre, & Les devoirs de la Sociabilité'.

²⁵ Barbeyrac, *DNG*, 2.5.19, Note 2: 'le rempart de ma conservation, & le fondement de toutes les autres choses qui m'appartiennent'.

establish absolute power over them and thereby deprive them of their liberty.²⁶ There is a necessary moral equivalence between life and liberty, both of which constitute inalienable natural rights.

The idea of individual liberty is also closely related in Barbeyrac's thought to the idea of conscience as something that one ought to be at liberty to follow. People need to have some degree of liberty from domination by other people, including political liberty, in order for them to be in a position to make use of their natural moral liberty to fulfil the first and fundamental duty of law of nature, namely the duty each individual has to follow the light of their conscience. For Quentin Skinner, this particular concept of political liberty – the neo-Roman concept of liberty – rests on the idea that 'to live in a condition of dependence is in itself a source and a form of constraint'.²⁷ Liberty consists in more than non-interference; it requires non-dependence on the will of another. To this end, Barbeyrac claims that individuals have a duty to preserve and, where necessary, violently defend their liberty within a political context because the possession of moral liberty is necessary to the fulfilment of their natural duties to God. Any attempt by another individual to seek to establish an absolute empire over another individual's life or liberty, that is to say, to deprive him of it completely, therefore transgresses upon the authority rightfully possessed by God.

Barbeyrac's account of the extensive rights and duties possessed by individuals in the state of nature – and the juridical relations that therefore exist between them – provides the framework for some form of stable society, or at least social relations, prior to the institutions of civil society. In arguing that natural law may effectively govern conduct in the state of nature, Barbeyrac has to show that its dictates may not only be apprehended by individuals but that they may also be enforced. He does this by making use of Locke's 'strange Doctrine' of the natural right of punishment.²⁸ Barbeyrac argues

²⁶ Barbeyrac, *DNG*, 2.5.19, Note 2. Cf. Locke, *Second Treatise*, 4.22-23.

²⁷ Quentin Skinner, *Liberty Before Liberalism*, (Cambridge, 1998), p. 84.

²⁸ Locke, *Second Treatise*, 2.9. Richard Tuck argues that this doctrine is developed by Locke as a response to the colonisation of America and used by Barbeyrac in the hopes of legitimising a European war on behalf of Protestants against Catholics, see: *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant*, (Oxford, 1999), pp. 181-182. While Barbeyrac allows for the possibility that Protestant princes may defend these injustices by force of arms in his 1734 revisions to his *DNG* notes, the general tenor of his thought and his rejection of the use of the right of punishment to license an offensive war of religion between nations suggests that he adopts a more ambivalent position on this issue than the one that Tuck ascribes to him. See Barbeyrac, *DNG*, 8.6.3, Note 1.

that individuals in the state of nature possess a right to punish violations of the laws of nature that harm either themselves or others:

The Laws of Nature, as well as all other laws imposed on Men here-below, would be wholly ineffective, if no-one, in the State of Natural Liberty, had the power to execute them, to protect the Innocent, and to restrain those who insult them.²⁹

The natural right to punish the transgressions of others is developed as a corollary to the duty of self-preservation; however, it confers a right of punishment with respect to all infractions of the absolute duties of natural law derived from the principles of religion, self-love and sociability.

But if the state of nature is characterised by the absence of any relations of authority and individuals are all moral equals, where does the authority to inflict such punishments derive from? Rejecting Pufendorf's claim that punishment can only be legitimately inflicted by a superior, Barbeyrac claims that while the punishments inflicted by moral equals in the state of nature are not exacted 'with authority', they are 'no less real nor any less well-founded' as a result of that.³⁰ The assumption here is that individuals possesses the moral capacity to make use of the natural right of punishment to uphold the interests of human society and not for more malign purposes. The judgements that individuals make of the necessity for and legitimacy of specific punishment ought to come from 'tranquil reason' and not from unregulated passions. In the absence of a common judge, the efficacy of the laws of nature rests on individuals' recognition of their dependency on God and the moral law, and their ability to make appropriate moral judgements in his stead by virtue of a well-informed and morally calibrated faculty of conscience.³¹ Without this moral backdrop, there would be nothing to separate Barbeyrac from the radical subjectivism that Hobbes attributes to individuals in the state of nature nor the juridical impotency that Pufendorf attributes to them. Man's knowledge of his dependency on God and his laws thus produces an account of natural man that invests him with considerable moral and juridical authority, in practice if not in name.

²⁹ Barbeyrac, *DNG*, 2.5.6, Note 3: 'Les Loix Naturelles, aussi-bien que toutes les autres qu'on impose ici-bas aux Hommes, seroient entierement inutiles, si personne, dans l'Etat de la Liberté Naturelle, n'avoit le pouvoir de les faire executer, de proteger l'Innocent, & de reprimer ceux qui l'insultent'.

³⁰ Barbeyrac, *DNG*, 8.3.4, Note 3: 'avec autorité' and 'ne... pas moins réelle, ni moins bien fondée'.

³¹ On the problem of judgement in a state of natural (and moral) equality, see pp. 175-176 below.

For Barbeyrac, this natural right of punishment serves as a foundation for a number of related conclusions that he wanted to draw concerning the respective rights of sovereign and subjects in the civil state: (i) individuals confer this natural right of punishment on the sovereign power in entering the civil state; (ii) individuals in the civil state have thereby consented to submit to all punishments inflicted upon them by those possessed of sovereign authority; (iii) the authority of the sovereign to inflict punishments on his subjects is limited by the original natural right from which it derives, namely to punish transgressions of the laws of nature for the purpose of upholding peace and security in human society. In sum, Barbeyrac is driving at a conclusion that Pufendorf deliberately forestalls. The sovereign power possesses a limited and conditional right of life and death over his subjects, comprising life itself, but also limbs, liberty and material possessions. By arguing for a stronger account of individual moral authority and the juridical relations that pertain in the state of nature, Barbeyrac lays the foundation for the translation of his strong account of moral individualism into political individualism within the civil state.

III

The Foundation of the Civil State

Barbeyrac claims that while ‘it is certain that Men naturally love Society’, this is not the immediate cause of the formation of civil society.³² For Barbeyrac, this is because the term ‘naturally’ does not denote here ‘the actual existence of a quality in the subject, with which it is invested by Nature’ but rather ‘the *aptitude* or disposition to receive, by means of culture or education, certain perfections proposed by Nature for its enrichment’.³³ As there is no natural impetus leading men to form civil societies, Barbeyrac argues that the actual origins of civil society as a fact of history must be distinguished from the theoretical foundations that confer legitimacy on those who possess political authority. While man’s earliest history remains unrecorded, Barbeyrac conjectures that his natural desire for society could have been satisfied ‘by the *Primitive Societies* formed by Marriage and Kinship, and by informal commerce with those with

³² Barbeyrac, *DNG*, 7.1.2, Note 1: ‘il est certain que les Hommes aiment naturellement la Société’.

³³ Barbeyrac, *DNG*, 7.1.3, Note 3: ‘l’existence actuelle d’une qualité dans un sujet, qui s’en trouve revêtu par la Nature’ and ‘l’*aptitude* ou la disposition à recevoir, moyennant la culture ou l’éducation, certaines perfections dont la Nature se propose de l’enrichir’.

whom he does not have such an intimate liaison'.³⁴ Loose federations of these primitive familial societies would have also satisfied the need for mutual security and protection without recourse to the establishment of laws, governments or magistrates. Barbeyrac adds that such societies continue to subsist in foreign lands such as Africa without fear occasioning the transition to a formal civil state.³⁵

Having rejected Pufendorf's characterisation of the state of nature as a place of insecurity and constant fear of attack, Barbeyrac also rejects the subsequent claim that fear ought to be considered the impetus for the creation of political governance amongst men. Instead, quoting Bayle, Barbeyrac claims that it is much more likely that force had a significant role to play in effecting the transition from primitive to early civil society with subsequent societies forming for a diversity of reasons, including but not restricted to further acts of force and defensive moves to forestall such acts of force.³⁶ The point that Barbeyrac emphasises in his history of the formation of civil societies is that civil societies emerged gradually rather than in concert with one another. It follows from this that the transition to civil society could not conceivably have involved careful deliberation by the heads of different families at one precise moment within history. Taking a critical stance towards Pufendorf's argument here, Barbeyrac insists that in reasoning about the historical origins of civil society, there has not been 'enough reflection on the simplicity of the times in which Civil Societies began'.³⁷ Judgement has instead been too easily clouded by observations drawn from the civil societies of the day. In looking for the historical origins, Barbeyrac concludes that neither necessity nor natural impulse leads men to form civil societies, but rather accident, convenience and the political will of powerful men.

Barbeyrac argues that while the historical foundations of civil society remain obscured by the passage of time, both Scripture and history attest to the free consent of the people as the necessary foundation of legitimate political authority distinct from simple

³⁴ Barbeyrac, *DNG*, 7.1.3, Note 3: 'par les *Societez Primitives* que forme le Mariage ou la Parenté, & par un commerce familial avec ceux qui n'ont avec lui aucune liaison si étroite'.

³⁵ Barbeyrac, *DNG*, 7.1.7, Note 1. Barbeyrac cites Bayle for the example: *Continuation des Pensées Diverses*, Vol. 2, Article 118.

³⁶ Barbeyrac, *DNG*, 7.1.7, Note 1. Cf. Pierre Bayle, *Nouvelles lettres de l'auteur de la critique generale de l'histoire du Calvinisme de Mr. Maimbourg*, 2 Volumes, (Ville-Franche, 1685), Vol. 2, Letter 17, §2.

³⁷ Barbeyrac, *DNG*, 7.1.7, Note 1: 'assez de reflexion à la simplicité des tems ausquels les Societez Civiles ont commencé'.

political power.³⁸ Consent here supposes both the moral and physical power to consent and the free and serious use of both these faculties.³⁹ Barbeyrac's use of the language of consent and concomitant use of the language of contract ties him not only to the natural law tradition but also to early Huguenot writers, for whom the ideas of contract and consent grounded the reciprocal rights and duties of sovereign and subject.⁴⁰ As well as these overlapping contexts, Barbeyrac's argument here is notable for the revisions that he makes during the course of his scholarly life concerning the precise nature of the original civil contract whereby individuals consent to the establishment of legitimate civil authority.

In both the 1706 and 1712 editions of *Le droit de la nature*, Barbeyrac follows Titius to argue, *pace* Pufendorf, that because most civil societies were formed by force, the foundation of all legitimate government must comprise a single contract of submission between a sovereign and subjects, whether tacit or express.⁴¹ In the revised 1734 version of this note, Barbeyrac still maintains that force has a significant role to play in the actual formation of civil societies but he no longer sees this as a reason to rule out Pufendorf's threefold original contract as a purely theoretical proposition.⁴² Instead, he agrees with Pufendorf that legitimate political authority requires an original contract between the people to establish civil society, a decree to settle the form of government and a subsequent contract of submission between a sovereign and his subjects.⁴³ Barbeyrac's comments suggest that it was his exchanges with Carmichael, that led to his change of heart.⁴⁴ What Carmichael emphasised in his own Pufendorf glosses was that 'both obligations can be formed by one agreement'.⁴⁵ Thus one single act of consent, whether tacit or express, was sufficient to produce Pufendorf's threefold civil contract.⁴⁶

³⁸ Barbeyrac, *DNG*, 7.2.8, Note 6.

³⁹ Barbeyrac, *DNG*, 3.6.3, Note 1.

⁴⁰ H. Höpfel and M.P. Thompson, 'Contract as a Motif in Political Thought', in *The American Historical Review* 84:4 (1979), p. 933.

⁴¹ Barbeyrac, *DNG* [1706], 7.2.8, Note 2. The note remains unchanged in the 1712 edition.

⁴² Barbeyrac, *DNG*, 7.2.8, Note 5.

⁴³ Pufendorf, *DNG*, 7.2.7-8.

⁴⁴ Barbeyrac, *DNG*, 7.2.8, Note 5.

⁴⁵ Carmichael, *Natural Rights*, p. 148.

⁴⁶ Cf. Moore and Silverthorne, 'Gershom Carmichael and Natural Jurisprudence', p. 84.

The reason for this change of heart was that Barbeyrac had come to appreciate how Pufendorf's first contract between individuals to establish a civil society 'was especially necessary, in order that Civil Society would not be presumed to have been dissolved in an *Interregnum*' or when the order of succession in a hereditary monarchy was unclear.⁴⁷ For Barbeyrac, it followed from this that a ruler who had ceased to legitimately hold or exercise the sovereign power could be legitimately succeeded without any presumed dissolution of civil society because the contractual bonds that hold all members of the civil society together would still subsist. Barbeyrac thus acquired from Pufendorf the contractual foundation for legitimate political authority that allowed for a change of personnel within the office of the sovereign without thereby opening the door to outright rebellion against a legitimate sovereign. What is curious here is the timing of Barbeyrac's revision, given that the point that Pufendorf himself was making in defence of the 1688 Glorious Revolution obtained in 1706 and 1712 just as it did in 1734.⁴⁸ Having adopted Pufendorf's notion of the threefold contract, however, the difference between Barbeyrac and his author came down to the reasons why a ruler could be considered to have ceased to rule as a just and legitimate sovereign.

The rights and duties that individuals may voluntarily alienate in consenting to the threefold contract determines the limits of legitimate civil authority as wielded by the sovereign power. In a further 1734 addition, again in response to Carmichael, Barbeyrac claims that while there are diverse reasons why individuals enter into civil society together, it is both certain and sufficient to know that in becoming a member of a civil society every individual would have 'tried to conserve, as much as would be possible, their Natural Liberty'.⁴⁹ Permissive natural rights may be alienated to the sovereign, including the laws that regulate property, commerce, marriage and a myriad of other common social practices. However, inalienable natural rights, principally the rights to life, liberty and conscience, in which God always retains his mastery, cannot be the subject of voluntary consent by individuals.⁵⁰

⁴⁷ Barbeyrac, *DNG*, 7.2.8, Note 5: 'est surtout nécessaire, pour que la Societé Civile ne soit pas censée dissoute dans un *Interregne*'.

⁴⁸ Michael Seidler, "'Turkish Judgement' and the English Revolution: Pufendorf on the Right of Resistance", in *Samuel Pufendorf und die europäische Frühaufklärung*.

⁴⁹ Barbeyrac, *DNG*, 7.1.7, Note 1: 'tâché de conserver, autant qu'il seroit possible, de sa Liberté Naturelle'.

⁵⁰ Barbeyrac, *DNG*, 1.7.17, Note 2. Cf. Chapter 3, p. 95 and p. 109, and Chapter 4, p. 140.

The most striking of all rights, or powers, that ought to be alienated to the sovereign upon entering civil society is the right of punishment. It is by virtue of having transferred this individual right of punishment that the sovereign comes to possess a comparable right to punish subjects up to and including the right of life and death insofar as the preservation and good order of society requires it.⁵¹ The limits of the sovereign right of punishment thus mirror the limits of each individual's natural right of punishment in the state of nature. This means that it is neither an absolute nor arbitrary right over the lives of one's subjects. Moreover, since Barbeyrac claims, *pace* Pufendorf, that rights and duties are always reciprocal, subjects are obliged to submit to the punishments bestowed upon them by the sovereign having consented to and thus recognised the sovereign's legitimate right to make use of his authority in this way.⁵² Even when the punishment in question is the penalty of death, individuals are still obliged to submit: 'since one confers the right of life and death on the Sovereign, or the right of the Sword, one also engages not to resist him when he makes use of this right'.⁵³ The duty to submit to the penalty of death does not extend, however, so far as to prevent individuals from escaping or avoiding it by non-violent means, provided that they can do so without committing any further sin, nor does it require them to confess their crimes in the absence of some further obligation to do so.⁵⁴

The obligation to submit to the penalty of death at the hands of one's sovereign also requires that one's sovereign only exercises his right within the natural limits of his authority. Beyond this, the sovereign no longer acts rightfully, that is to say, as a legitimate sovereign. In such cases where the person occupying the office of sovereign allows himself to be carried away by his own furies and 'acts as though in cold blood', the rights and duties that govern the just defence of oneself by means of force may be justly resumed.⁵⁵ The same is even more true of all those who act in the name of the sovereign. Here, Barbeyrac rejects Pufendorf's claim that individuals ought not to resist persons invested with sovereign authority by force for the general good of society. He argues instead that the whole of society has much to fear from any person who would

⁵¹ Barbeyrac, *DNG*, 8.3.4, Note 3.

⁵² Barbeyrac, *DNG*, 8.3.4, Note 8. See also Barbeyrac, *DNG*, 8.3.5, Note 5.

⁵³ Barbeyrac, *DNG*, 8.3.5, Note 1: 'pusique l'on confère au Souverain le droit de vie & de mort, ou le droit du Glaive, on s'engage aussi à ne pas lui résister lorsqu'il fera usage de ce droit'.

⁵⁴ Barbeyrac, *DNG*, 8.3.4, Note 3 and 4.1.20, Note 5.

⁵⁵ Barbeyrac, *DNG*, 2.5.5, Note 1: 'comme s'il agissoit de sang froid'.

transgress not only upon the legitimate bounds of their natural authority but also upon the authority possessed by God over individuals' lives, liberties and conscience.⁵⁶ By thus conceiving of the limits of sovereign authority, as well as the obligation to submit to its legitimate exercise, Barbeyrac opens the door for the claims of the rights and duties attached to natural law – in particular the so-called inalienable natural rights – to supersede the rights and duties attached to civil law.

IV Civil Law

Before looking in more detail at the natural limits of legitimate sovereignty and the idea of the right of resist, it is necessary to understand how Barbeyrac conceives of the relationship between natural and civil law. Civil law is the principal means by which the sovereign exercises the civil authority bestowed upon him by the original civil contract. It specifies certain civil obligation that all subjects are obliged to adhere to and determines the punishments suffered within the civil tribunal from any violations of these laws. Rejecting the Hobbesian line of argument, Barbeyrac agrees with Pufendorf that civil law does not in itself determine the nature of justice. Instead, civil law determines the particular application of the universal maxims of justice, i.e., the fundamental precepts of natural law, to a specific people and the circumstances in which they find themselves.⁵⁷ Civil law thus 'supplements' natural law. However, civil law, as the 'most arbitrary' of all laws, also depends upon natural law as the foundation of its obligatory force as 'a consequence of this inviolable Law of Nature: That everyone ought to religiously observe his promises'.⁵⁸

For Barbeyrac, civil law supplements the two different forms of natural law – obligatory and permissive – in quite different ways. With respect to the precepts of obligatory natural law, civil law 'confirms them, or rather ought to confirm them by its authority, insofar as the Public Good permits or requires it'.⁵⁹ Civil law does not possess the

⁵⁶ Barbeyrac, *DNG*, 2.5.19, Note 2.

⁵⁷ Barbeyrac, *DNG*, 8.1.1, Note 3. On Barbeyrac's response to Hobbes: Cf. Barbeyrac, 'Préface', *TPLN*, Note 6.

⁵⁸ Barbeyrac, 'Préface', *DGP*, §16, Note 1: 'une suite de cette Loi inviolable de la Nature, Que chacun doit tenir religieusement ce qu'il promis'.

⁵⁹ Barbeyrac, *DNG*, 8.1.1, Note 2: 'les confirme, ou doit les confirmer par son autorité, autant que le permet ou le demande le Bien Public'.

authority to amend these universal and indispensable moral precepts in any way. Instead the function of civil law is simply to enforce these precepts whenever possible. With respect to the rights accorded by permissive natural law, however, civil law possesses considerable interpretative powers. Here civil law may ‘limit natural liberty, once the Public Good requires it’.⁶⁰ In practical terms, this means that two civil legislators may create different laws to regulate the same thing within their respective states without any injustice arising.⁶¹ Thus while permissive natural rights provide the original juridical foundation for the institution of property, commerce, marriage and other social practices prior to the advent of the civil state, these kind of natural rights may be legitimately amended and even curtailed by civil law insofar as the public good requires it.⁶² The authority of the civil law in this respect is limited only by the general maxim that it ought not to command anything contrary to natural law taken in its entirety.

Even though Barbeyrac conceives of natural law as both anterior and superior to civil law, he is reluctant to conclude that individuals are thus dispensed from their obligation to submit to any civil laws that are unjust in some way. In fact, Barbeyrac concedes, sometimes legislators permit or authorise things manifestly contrary to natural law not from individual caprice but because of the greater social and political inconveniences that would otherwise arise. He gives as an example the Egyptian law that required thieves to register all stolen goods with a captain appointed solely for this purpose.⁶³ In ‘La permission des loix’, Barbeyrac offers a number of comparable examples of unjust civil laws drawn from both pagan and Christian history. The point that he is driving at here is that civil law is always an imperfect supplement to natural law. Despite these imperfections, he emphasises the gravity of ‘denouncing as unjust the established Laws’ of the state and insists that when ‘in doubt, the presumption is in their favour’.⁶⁴ Barbeyrac was unwilling to see the peace and security offered by the civil state jeopardised for each and every minor injustice perpetuated by its laws.

By emphasising the common imperfection of civil law in contrast to the constant rectitude of natural law, Barbeyrac is also emphasising the very different jurisdictions

⁶⁰ Barbeyrac, *DNG*, 8.1.1, Note 2: ‘borne la liberté naturelle, lorsque le Bien Public le demande’.

⁶¹ Barbeyrac, ‘La permission des loix’, p. 139.

⁶² Barbeyrac, *DHC*, 2.12.7, Note 1; Cf. Barbeyrac, *DNG* [1706], 1.6.16, Note 1.

⁶³ Barbeyrac, *DNG*, 8.1.3, Note 1.

⁶⁴ Barbeyrac, ‘La permission des loix’, p. 138: ‘taxer d’injustice les Loix établies’ and ‘dans un doute, la présomption est en leur faveur’.

that both forms of law respectively occupy.⁶⁵ While natural and civil law are mutually compatible, unlike natural law, the purpose of civil law is not to make men virtuous but simply to constrain their external actions insofar as these actions are harmful to the peace and good order of civil society. Barbeyrac thus claims that:

It was necessary, in order to prevent the abuse of Legislative Power, that the authority of Legislators did not extended to the point of prohibiting under [threat of] some penalty everything that they judged to be contrary to some Virtue.⁶⁶

Even when civil law prescribes the exercise of some particular virtue, ‘it is not as something praiseworthy, but as something useful’.⁶⁷ Likewise, vice is punished because of the harmful effects that it may produce, not because it is morally reprehensible in itself. Availing itself of the means of force and compulsion alone, civil law is naturally limited in its jurisdiction to constraining individuals’ external actions with only temporal, civil goods in its sights. Natural law, by contrast, operates within the tribunal of conscience to bring men to virtue by inspiring them to willingly fulfil their moral duties.

The natural limit placed upon civil authority in this respect determines how one ought to interpret the particular civil laws of a state. In his two principal discourses on the subject, ‘La permission des loix’ and ‘Le bénéfice des loix’, Barbeyrac argues that neither the permission nor the benefits accorded by the civil laws, whether express or tacit, imply any kind of moral approbation on the part of the civil legislator and thus the sovereign power. These two discourses, originally delivered as public orations and later published and subsequently appended to his 1718 edition of Pufendorf’s *Les devoirs*, form an important part of his wider pedagogic enterprise. Speaking to the young men in his charge, Barbeyrac expounds the idea that becoming a man of civil and moral standing requires more than mere fidelity to the civil laws of one’s state. Barbeyrac’s appeal to his audience to be attentive to their comprehensive moral duties rests on the belief that while the civil laws and the laws of virtue, i.e., natural law, may unfold

⁶⁵ On the differences between Barbeyrac and Pufendorf in this regard, see the discussion in Chapter 1.

⁶⁶ Barbeyrac, ‘La permission des loix’, pp. 143-44: ‘Il étoit même nécessaire, pour prévenir l’abus du Pouvoir Législatif, que l’autorité des Législateurs ne s’étendît pas jusqu’à défendre sous quelque peine tout ce qu’ils jugeroient contraire à quelque Vertu’

⁶⁷ Barbeyrac, ‘La permission des loix’, p. 143: ‘ce n’est pas comme des choses louables, mais comme des choses utiles’.

together up to a certain point, beyond this ‘Virtue alone remains, and commands absolutely’.⁶⁸

In ‘La permission des loix’, Barbeyrac argues that the silence of civil law, unlike the silence of natural law, implies ‘a simple *permission of impunity*, and not a *permission of approbation*’.⁶⁹ Individuals must thus be attentive to their comprehensive moral duties, that is, natural law and the dictates of conscience, in taking up liberties left open by the silence of civil laws. In ‘Le bénéfice des loix’, Barbeyrac extends his original argument to claim that even benefits expressly conferred by civil law ought sometimes to be willingly renounced: ‘that which rigorous Justice therefore permits, some other Virtue prohibits in certain cases’.⁷⁰ Here, Barbeyrac supposes that good conscience and sound reason require more than adherence to the maxims of strict justice. Instead, individuals ought to resolve to uphold all the moral virtues, including those such as ‘Humanity, Compassion, Charity’ and so forth.⁷¹

Replete with cautionary tales and morally edifying examples, the purpose of these discourses is to persuade his audience that each individual has the responsibility to be alert to the demands of the moral law within the tribunal of conscience, i.e., as a moral being subject to the immutable laws of nature. In addition, Barbeyrac’s pedagogic enterprise in these two discourses should also be looked upon more broadly. He is aware that the impulsive young men that he is speaking to about moral probity are the same young men who will go on to hold civil office in the future. Moreover, his audience would also have included a considerable number of incumbent civil dignitaries. Just like his discourses on the duties of public ministers of religion, these discourses serve as an explicit delineation of how far those in civil office ought to seek to extend their authority.

While Barbeyrac cautions his audience against invoking the superior authority of natural law against the particular commands of civil law, the conclusion that he nonetheless drives towards is that natural law is ‘always the Sovereign Mistress’. No

⁶⁸ Barbeyrac, ‘La permission des loix’, p. 145: ‘la Vertu demeure seule, & commande absolument’.

⁶⁹ Barbeyrac, ‘La permission des loix’, p. 143: ‘une simple *permission d’impunité*, & non pas une *permission d’approbation*’.

⁷⁰ Barbeyrac, ‘Le bénéfice des loix’, p. 162: ‘ce que la Justice rigoureuse permet alors, quelque autre Vertu le defend en certains cas’.

⁷¹ Barbeyrac, ‘Le bénéfice des loix’, p. 180: ‘l’Humanité, la Compassion, la Charité’.

human ordinance can usurp the ‘natural empire that it possesses over Men’.⁷² This principle comes into full force when civil law steps beyond the bounds of its legitimate jurisdiction in seeking to prohibit certain actions, including beliefs, deemed to be vices but that may in fact be virtues, not least because it is not the task of civil laws to prohibit vice nor instil virtue in its subjects. For Barbeyrac, this applies primarily to occasions where individuals are prevented from ‘following the light of Conscience, above all in matters of Religion’.⁷³ Liberty of conscience, as the cornerstone of all true morality and the possibility of individual salvation, is the point at which, for Barbeyrac, prudence gives way to principle.⁷⁴

V

Sovereignty

Individual subjection to civil authority and civil laws is grounded in the idea of legitimate sovereignty. All individuals in the civil state have a duty to submit to the will of a legitimate sovereign, whether expressed in the form of civil law or particular commands, by virtue of the original civil contract. In other words, individuals do not possess the right to resist the legitimate exercise of sovereign power. As the final two sections of this chapter make clear, Barbeyrac follows Grotius and Pufendorf in arguing that resistance to the person or persons invested with sovereign power may only be justified once sovereign power ceases to be exercised legitimately, but develops this argument in his own distinctive manner. The basic idea here, shared by all three thinkers, is that the person or persons previously invested with sovereign power must have either tacitly or expressly renounced any legitimate claim on the office of sovereignty. In response to any acts of manifest tyranny committed by such a ruler, individuals may legitimately resume their natural right of violent self-defence derived from the duty of self-preservation.

Barbeyrac differs from Grotius and Pufendorf, however, in significantly extending the scope of this natural law argument for justified resistance. While the numerous

⁷² Barbeyrac, ‘La permission des loix’, p. 145: ‘toujours la Maîtresse Souveraine’ and ‘l’empire naturel qu’elle a sur les Hommes’.

⁷³ Barbeyrac, ‘La permission des loix’, p. 144: de suivre les lumières de sa Conscience, sur tout en matière de Religion

⁷⁴ See Chapter 4, Section V.

references between his Pufendorf and Grotius translations make it clear that he intended his argument to be read as a whole, it is notable that he develops different aspects of his argument in response to the specific context provided by the text that he is translating. In response to Grotius's explicit rejection of a right of resistance while allowing considerable scope for justified resistance in the event that sovereignty is first abdicated or otherwise renounced, Barbeyrac confidently asserts that Grotius's arguments do in fact entail a right to resist an unjust and illegitimate sovereign.⁷⁵ Barbeyrac takes this argument further by claiming, *pace* Grotius, that this general right to resist is justified not only in accordance with the principles of natural law, but also in accordance with Christian moral law as recorded in the Scriptures.⁷⁶

In response to Pufendorf's argument for an absolute, unified sovereign power and heavily circumscribed right to resist, Barbeyrac argues that sovereignty ought to be limited if the excesses of absolute power are to be curtailed. In making this argument, Barbeyrac principally draws on notable English political theorists of limited sovereignty, above all Locke and Algernon Sidney (1623-1683). Here, Barbeyrac also explicitly connects the right to resist the unjust and illegitimate exercise of sovereign power to his defence of individual liberty of conscience within the civil sphere. It is in light of this concern to protect individual liberty of conscience that we see most clearly how Barbeyrac refashions the natural law argument for justified resistance in response to his own specific concerns as a Huguenot *refugié* committed to providing a robust defence of tolerationist principles.

Before turning to the question of resistance in more detail, it is necessary to begin with Barbeyrac's argument on the nature and limits of legitimate sovereignty. In his political arguments, Barbeyrac makes use of the traditional distinction between sovereignty and government. Rejecting the claim that the authority of the civil sovereign comes immediately from God, Barbeyrac maintains instead that it is a human institution grounded in the principles of natural law. Sovereignty is thus constituted by the original compact of subjection, whereby civil authority is conferred for the sole purpose of the peace and security of society and its members. Divine approbation confers legitimacy

⁷⁵ Arguing against his fellow Grotius glossator, Johann Friedrich Gronovius, Barbeyrac claims that Grotius defended a general right to resist an unjust tyrant: *DNG*, 7.6.5, Note 2.

⁷⁶ Barbeyrac, *DGP*, 1.4.7, Note 22.

on this original compact and puts the civil authority in a state of surety.⁷⁷ Barbeyrac also follows Locke here in rejecting patriarchalism; an argument that likens civil sovereignty to paternal power, conferring on both an absolute authority to command.⁷⁸

Barbeyrac regards the civil sovereign as a moral person invested with ‘an assembly of various rights or various distinct Powers’ that together constitute the sum of all civil authority.⁷⁹ In the 1734 edition of the text, he employs Locke’s division of the three principal powers of sovereignty as legislative, executive and confederative.⁸⁰ These powers may be held either collectively by a single individual or body of individuals, or separately by more than one individual or body of individuals. Here, Barbeyrac appeals to experience to argue that because sovereigns are not always wise or enlightened, it is better that these powers are held separately as a preventative against the excesses of absolute sovereignty, above all in a monarchy.⁸¹ To this end, Barbeyrac also argues that legitimate sovereignty does not necessarily bestow a right of alienation – that is to say, a right of property – upon the person or persons upon whom it is conferred.⁸²

Government is the form that the administration of these sovereign powers takes. It may be a monarchy, an aristocracy or a democracy, or when the various sovereign powers are held separately, it may take the form of a mixed government. While Barbeyrac claims that ‘one cannot suppose in general that a certain form of Government would be the best in itself, with respect to all kinds of Nations’, he places considerable emphasis on forms of government that properly reflect his belief that limited sovereignty is almost always preferable.⁸³ Barbeyrac is here arguing against Pufendorf’s claim that lasting peace and security is best secured in an absolute, unified monarchy.⁸⁴ In this regard, Barbeyrac also distances himself from the previous generation of Huguenot thought typified by Bayle that, broadly speaking, defended the idea of absolute

⁷⁷ Cf. Chapter 2, p. 74.

⁷⁸ Barbeyrac, *DNG*, 6.2.10, Note 2.

⁷⁹ Barbeyrac, *DNG*, 7.4.1, Note 1: ‘un assemblage de divers droits ou de divers Pouvoirs distincts’.

⁸⁰ Barbeyrac, *DNG*, 7.4.1, Note 3.

⁸¹ Barbeyrac, *DHC*, 2.7.9, Note 1.

⁸² Barbeyrac, *DGP*, 1.3.11, Notes 4 and 6. For further analysis of the context to Barbeyrac’s argument here, see Gabriella Silvestrini, ‘Rousseau, Pufendorf and the Eighteenth-Century Natural Law Tradition’, in *History of European Ideas* 36 (2010), p. 291.

⁸³ Barbeyrac, *DHC*, 2.8.4, Note 1: ‘on ne sçauroit poser en général qu’une certaine forme de Gouvernement soit la meilleure par elle-même, eu égard à toute sorte de Nations’.

⁸⁴ Pufendorf modified this claim considerably elsewhere: Seidler, ‘“Turkish Judgement” and the English Revolution’, esp. pp. 92-93.

monarchy.⁸⁵ Hence, while Barbeyrac's political theory responds to a set of concerns that are distinctly Huguenot, he draws eclectically on different traditions of thought to develop his own distinctive argument. As such, quoting the English advocate of limited government, the radical republican Sidney, Barbeyrac argues that monarchical government may easily descend into tyranny if certain limits are not placed on its right to exercise sovereign power.⁸⁶ These limits are determined by the fundamental laws of the state.

The fundamental laws of the state specify how far sovereign power may legitimately extend and certain formalities necessary for its exercise. While the fundamental laws differ between states, the example that Barbeyrac frequently refers to is the constitution of English sovereign power and government, where the King of England is required to seek the consent of the two chambers of parliament in exercising certain powers. The history of England, Barbeyrac claims, demonstrates that 'inasmuch as the King does not appear to have any intention of infringing the Liberties and Privileges of the Nation', this consent may easily be gained.⁸⁷ He suggests that even monarchs who jealously guard their independence, such as Louis XIV of France, recognised that there were certain fundamental laws that it was necessary for all monarchs to observe.⁸⁸ Speaking more generally, Barbeyrac claims that the fundamental laws of the state do not diminish sovereignty, but they do place certain juridical restrictions on the exercise of its powers. For example, as in the English case, the sovereign may be required to seek the consent of the people, or their representatives, to ratify all acts relating to taxation, warfare and so forth. But 'once they have consented, it is the King who wages War, and not the People'.⁸⁹

In his concept of limited sovereignty, Barbeyrac thus conceives of the monarch – for he is much more concerned about monarchy than any other form of government that sovereignty may take – as subject to both the fundamental laws of the state and natural

⁸⁵ Labrousse, 'The Political Ideas of the Huguenot Diaspora', p. 238.

⁸⁶ Barbeyrac, *DNG*, 7.6.9, Note 1. Cf. Algernon Sidney, *Discourses Concerning Government* [1698], ed. T. G. West, (Indianapolis, IN, 1996), 2.30.

⁸⁷ Barbeyrac, *DNG*, 7.6.12, Note 4: 'tant que les Rois ne paroissent avoir aucun dessein d'empieter sur les Libertez & Privileges de la Nation'.

⁸⁸ Barbeyrac, *DNG*, 7.6.10, Note 2.

⁸⁹ Barbeyrac, *DGP*, 1.3.16, Note 3: 'quand il a consenti, c'est le Roi qui fait le Guerre, & non pas le Peuple'.

law in general.⁹⁰ He agrees with Pufendorf that the sovereign, as the author of all civil laws, stands above their dictates and only conforms to them voluntarily as a mark of honour. Nonetheless, Barbeyrac distinguishes here between the sovereign as a legal person and the actual individual invested with this authority in arguing that when the sovereign acts as a private individual, he ought to be ‘held’ to the dictates of civil law.⁹¹ Far from standing over and above the juridical framework of human society, like Hobbes’s ‘Leviathan’ or to a lesser extent Pufendorf’s absolute, unified sovereign, Barbeyrac’s sovereign is thus deeply enmeshed within it. In the same vein, where Pufendorf dissents from the Hobbesian view that the state can cause no injury to a subject, Barbeyrac strengthens Pufendorf’s original objection with his assertion that the sovereign and his subjects are always in a reciprocal juridical relation. By virtue of this reciprocal juridical relationship, the sovereign may cause harm (*tort*) to his subjects just as a master may harm his slave.⁹² In both cases, possessing authority over other individuals does not diminish their basic moral status as ‘human creatures’ nor abrogate the moral obligations incumbent upon their superiors.⁹³

VI

Resistance

While Barbeyrac expends considerable energy specifying the natural limits to legitimate sovereign power and arguing that the exercise of legitimate sovereign power ought to be further curtailed by the fundamental laws of the state, he also demonstrates considerable caution in how far he allows individuals, or the people collectively, the right to constrain or resist a sovereign who transgresses the proper limits of his authority. Barbeyrac believes that in taking this approach he will be able to establish principles that ‘favour neither Tyranny, nor the spirit of Independence and Rebellion’.⁹⁴ His caution in this matter is evidenced in his rejection, like Grotius before him, of the republican principle that the people retain any part of sovereignty in the original

⁹⁰ Barbeyrac, *DHC*, 2.9.3, Note 1.

⁹¹ Barbeyrac, *DHC*, 2.9.3, Note 2.

⁹² Barbeyrac, *DNG*, 7.8.2, Note 1.

⁹³ Barbeyrac, *DNG*, 6.3.8, Note 1.

⁹⁴ Barbeyrac, *DGP*, 1.3.8, Note 1: ‘ne favorisent ni la Tyrannie, ni l’esprit d’Independance & de Rebellion’.

compact of subjection. It is contradictory to suppose, he claims, ‘that one confers a Power on someone, and that one nevertheless retains it’.⁹⁵

But for all that, the transfer of sovereignty is never absolute. The people always tacitly reserve the right to resume possession of sovereign power. This right comes into play ‘when the one upon whom the Power is conferred abuses it in a manner directly and conspicuously contrary to the end for which it has been conferred’.⁹⁶ Barbeyrac justifies this tacit reservation by claiming that the prohibition on constraining or resisting the person invested with sovereign power only extends as far as ‘he truly remains a King’.⁹⁷ The transfer of sovereign power and thus the obligation to submit to a sovereign extends, in principle at least, only as far as the power itself legitimately extends. The later advocate of republicanism, Jean-Jacques Rousseau (1712-1778), dismissed Barbeyrac’s attempt to justify resistance on the basis of his natural law principles as unnecessarily convoluted and restrictive.⁹⁸ But, for Barbeyrac, the complex juridical framework out of which his concept of the right to resist emerges was absolutely necessary to demarcate the limits of different spheres of authority. The duties of sociability, i.e., of preserving society and promoting peace, on the one hand, and the duty of self-preservation, on the other, thus specify the natural limits of the authority possessed by both the sovereign and the people alike.

Barbeyrac’s heavily circumscribed right to resist is determined by the proper application of these fundamental natural law duties to particular circumstances.⁹⁹ Likewise, individuals are also bound by the contractual obligations placed upon them by the original pact of submission, itself instituted to uphold these same duties. This original pact of submission places certain restrictions on the individuals that thereby become civil subjects. First and foremost, Barbeyrac claims,

⁹⁵ Barbeyrac, *DGP*, 1.3.8, Note 1: ‘que l’on confère un Pouvoir à quelcun, & que cependant on le retient’.

⁹⁶ Barbeyrac, *DGP*, 1.3.8, Note 1: ‘lors que celui à qui on conféré le Pouvoir en abuse d’une manière directement & notablement contraire à la fin pour laquelle il lui a été conféré’.

⁹⁷ Barbeyrac, *DGP*, 1.3.9, Note 1: ‘il demeure véritablement Roi’.

⁹⁸ Jean-Jacques Rousseau, *Of the Social Contract*, 2.2.5, in *The Social Contract and other Later Political Writings*, trans. and ed. V. Gourevitch, (Cambridge, 1997). For a more extended analysis of Barbeyrac’s ‘anti-republican’ political principles and Rousseau’s critique thereof, see Silvestrini, ‘Rousseau, Pufendorf and the Eighteenth-Century Natural Law Tradition’, pp. 283-290.

⁹⁹ See also discussion above, pp. 155-156.

whoever submits to a Human Authority, cannot ignore the fact that the person, to whom he surrenders a part of his liberty, is and always will be a Man, that is to say, liable to be mistaken and to be lacking in fulfilling his duty.¹⁰⁰

Subjects are held ‘to recognise him [the sovereign] as their Master on this footing’.¹⁰¹ As such, they do not possess a general right to resist the sovereign for every injustice or harm committed against them. As we have already seen, this is not to say that the sovereign has any legitimate right to commit any injustices against his subjects, but rather that individuals are bound by the same obligation as the sovereign himself to uphold civil society insofar as it remains the better moral and political state in which to realise the fundamental duties of natural law.¹⁰²

Barbeyrac thus distinguishes between ‘doubtful, or bearable injustices’ and ‘manifest and unbearable injustices’.¹⁰³ The former ought always to be borne, whereas individuals are not obliged to suffer the latter kind of injustices except willingly and for the good of society. Once the injustice outweighs the risk posed to civil society, however, nothing prevents individuals from taking up the rights that they possess against ‘the one who, by an excess of fury, has disengaged them from the bond of Subjection, and put himself in a state of War with them’.¹⁰⁴ In his translation of Cumberland’s *Traité philosophique*, Barbeyrac claims that individuals do not thereby acquire ‘authority’ over the sovereign but rather, by his own unjust actions, the person invested with sovereign power deprives himself of any legitimate claim to wield civil authority, thus returning both himself and his subjects to a ‘state of natural Liberty and Equality’.¹⁰⁵ To recall, for Barbeyrac, whilst individuals do not possess the right to judge or to punish the sovereign in the civil state, they do possess the right to judge or punish other individuals who have violated the dictates of natural law in a state of natural liberty and equality. This holds true even though the state of natural liberty and equality to which individuals return is not exactly same as the original state of nature; the first pact of society whereby

¹⁰⁰ Barbeyrac, *DGP*, 1.4.2, Note 1: ‘quiconque se soumet à une Autorité Humaine, ne peut ignorer que celui, en faveur duquel il se dépouille d’une partie de sa liberté, est & sera toujours Homme, c’est-à-dire, sujet à se tromper & se manquer en quelque chose à son Devoir’.

¹⁰¹ Barbeyrac, *DGP*, 1.4.2, Note 1: ‘le reconnoître pour son Maître sur ce pié-là’.

¹⁰² Barbeyrac argues that civil state is not always preferable to the state of nature. Cf. pp. 152-153 above.

¹⁰³ Barbeyrac, *DGP*, 1.4.2, Note 1: ‘les injustes douteuses, ou supportables’ and ‘les injustices manifestes & insupportables’.

¹⁰⁴ Barbeyrac, *DGP*, 1.4.2 Note 1: ‘celui qui, par un excès de fureur, nous a dégagé du lien de la Sujettion, & s’est mis avec nous en état de Guerre’.

¹⁰⁵ Barbeyrac, *TPLN*, 9.8: ‘l’état de la Liberté & de l’Egalité naturelle’.

individuals collectively become a people ensuring that when the subsequent pact of subjection is ruptured, the political state simply enters an interregnum.¹⁰⁶

One of the most substantial problems that Barbeyrac faced with his limited right to resist was the problem of judgement. Deprived of the authority to judge the actions of the sovereign, how were individuals supposed to determine when it was legitimate to resist those invested with civil authority? In *Le droit de la guerre*, Barbeyrac acknowledges that a general right to judge the sovereign would be ‘a perpetual source of quarrel and disorder’.¹⁰⁷ This much is consistent with his belief that individuals are obliged to suffer considerable harm at the hands of the sovereign for the good of society in general. But, *pace* Grotius, he argues that,

it does not follow from this, that the People may never judge of the actions of the King, and that they ought to suffer everything. This is contrary to the natural end of all Society, and the obligation that the People, as well as all Individuals, are naturally under to preserve themselves.¹⁰⁸

The qualification made here rests on an implied distinction between private judgement and the manifestation of that judgement through actions undertaken within the civil sphere. Individuals always possess a private right of judgement against those in authority, whether civil or ecclesiastical, but certain conditions must be fulfilled before individuals can be certain that their private judgements corresponds to a state of affairs within the civil sphere that constitutes a ‘manifest and unbearable’ injustice.

For Barbeyrac, what matters here is that the judgement made by individuals, or by the people, is ‘right’. The problem – as he understands it is – is thus essentially one about the reliability of individual, private judgement and likelihood of the grave consequences for civil society in the event that individuals are in error. Implicit within Barbeyrac’s attempt to solve the problem of reliability of judgement is the belief that in those cases where this judgement is rightfully made, the problem of authority to judge is effectively negated by the return – in terms of moral authority – to a state of natural liberty and

¹⁰⁶ Barbeyrac, *DNG*, 7.7.7, Note 5.

¹⁰⁷ Barbeyrac, *DGP*, 1.3.9, Note 3: ‘une source perpetuelle de querelles & de désordres’.

¹⁰⁸ Barbeyrac, *DGP*, 1.3.9, Note 3: ‘il ne s’ensuit point de là, que le Peuple ne puisse jamais juger des actions du Roi, & qu’il doive tout souffrir. Cela est contraire au but naturel de toute Société, & à l’obligation où les Peuples sont naturellement, aussi bien que les Particuliers, de se conserver eux-mêmes’.

equality. He thus takes up the idea, common within Huguenot traditions of thought but rejected by both Grotius and Pufendorf, that it is civil magistrates who are best equipped to ‘show the way to others’ in determining when the sovereign has acted beyond the limits of his legitimate authority and ought to be resisted in the interests of civil society.¹⁰⁹ This is because the magistrates, in fulfilling the office of public persons, possess greater knowledge of the affairs of the state and are already authorised to uphold the general good of society: that is to say, individuals who are more likely to be both informed and impartial.

This latter argument is mirrored in *Le droit de la nature*, where Barbeyrac defines ‘the people’ as ‘the greatest and most judicious’ persons within society, distinct from both ‘the vile populace’ and from a seditious cabal motivated by particular interests.¹¹⁰ Legitimate resistance thus begins with the judgement of those persons already attuned to the complexities of the moral-judicial framework of natural and civil law applied to specific circumstances. Barbeyrac makes use of Locke’s argument here that investing ‘the people’ with a right to resist does not endanger the state because the people cannot easily be persuaded to take up this right. Emphasising the proper character of sovereignty in his own translation of a passage from Locke’s *Second Treatise*, Barbeyrac alleges that ‘it is impossible for the Sovereign, if he truly has in view the good of his People, the conservation of his Subjects, and the maintenance of their Laws, not to make them know and feel it’.¹¹¹ In short, a sovereign who acts within the legitimate bounds of civil authority has nothing to fear from the people.

Drawing again on Locke, Barbeyrac concludes that the right possessed by ‘the people’ to remedy the illegitimate exercise of sovereign power by changing the legislative or executive power is itself the best remedy against rebellion. Barbeyrac thus distinguishes here between legitimate resistance against the person invested with sovereign power by

¹⁰⁹ Barbeyrac, *DGP*, 1.4.6, Note 2: ‘montre le chemin aux autres’. Cf. Skinner, *Foundations of Modern Political Thought*, Vol. 2, pp. 230-233.

¹¹⁰ Barbeyrac, *DNG*, 7.8.6, Note 1: ‘la plus grande & la plus saine’ and ‘la vile populace’.

¹¹¹ Barbeyrac *DNG*, 7.8.6, Note 1: ‘Il est impossible que le Souverain, s’il n’a véritablement en vûe que le bien de son Peuple, la conservation des ses Sujets, & le maintien de leurs Loix, ne le fasse connoître & sentir’. Cf. Locke, *Second Treatise*, 18.209 where Locke uses the English ‘Governor’ which Barbeyrac replaces with the French ‘Souverain’. Silvestrini comments on Barbeyrac’s translation of Locke here and compares it to the Mazel’s transition of the same term in *Du gouvernement civil* (1691) as ‘un Prince, ou un Magistrat’. See ‘Rousseau, Pufendorf and the Eighteenth-Century Natural Law Tradition’, p. 289.

‘the people’ and a general attack on ‘the authority of the laws’ by the populace.¹¹² A limited right to resist is thus the best means to hold all parties to their respective spheres of authority and subjection.

Moreover, this limited right to resist only comes into play when the sovereign’s acts of injustice become so ‘manifest and unbearable’ that he may be looked upon as a tyrant. But what constitutes, for Barbeyrac, a manifest and unbearable injustice? In short, all immediate and considerable threats to the lives and liberties of individual subjects that tend towards the oppression of the people and the ruin of the state.¹¹³ To recall, individuals are possessed of certain inalienable rights, principally those to life, liberty and conscience over which God alone possesses a legitimate authority. In effect, these inalienable natural rights define and protect a sphere of individual authority where God alone is master. In seeking to extend the reach of sovereign power into this sphere of individual authority, the exercise of sovereign power becomes both arbitrary and despotic. For Barbeyrac, a tyrant is thus a ruler who acts ‘beyond reason’ in transgressing the proper juridical limits that reason tells him that he is necessarily subject to. Moreover, any such tyrant puts the good order and tranquillity of the state under an immediate and general threat because ‘a man who believes everything is permitted with respect to his Inferiors, is capable of everything’.¹¹⁴

This occurs most clearly when the sovereign transgresses upon the rights of individual conscience. For Barbeyrac, the authority that the sovereign possesses over the religious beliefs of his subjects is limited by the end for which his authority was originally instituted, namely the good of society.¹¹⁵ Whatever religion a sovereign may himself profess, he thus has ‘no right to prevent every person from serving God peacefully according to the light and the movements of his conscience’.¹¹⁶ Moreover, the sovereign has no right to deprive any of his subjects of their civil or natural goods for acting in accordance with their inalienable right to liberty of conscience.¹¹⁷ And yet, all too often, Barbeyrac argues, the sovereign abuses his own legitimate right to examine public

¹¹² Barbeyrac, *DNG*, 7.8.6, Note 1: ‘l’autorité des Loix’. Cf. Locke, *Second Treatise*, 19.226.

¹¹³ Barbeyrac, *DNG*, 7.8.6, Note 1.

¹¹⁴ Barbeyrac, *DGP*, 1.4.2, Note 1: ‘Un homme qui se croit tout permis par rapport à ses Inferieurs, est capable de tout’.

¹¹⁵ Cf. Chapter 4, Section VI.

¹¹⁶ Barbeyrac, *DNG*, 7.2.21, Note 2: ‘ne... aucun droit d’empêcher que chacun serve DIEU paisiblement selon les lumieres & les mouvemens de sa Conscience’.

¹¹⁷ Barbeyrac, *DNG*, 1.3.11, Note 1.

doctrine for the good of society. This happens when he prohibits the wholly legitimate and peaceful exercise of individual liberty of conscience, understood here as a religious belief to which one freely assents, as harmful to the state.¹¹⁸ By virtue of the fact that Barbeyrac numbers liberty of conscience among the inalienable natural rights possessed by all individuals, preventing them from peacefully following the light of their conscience constitutes a manifest and unbearable injustice and, implicitly, an affront to the authority of God.

Barbeyrac claims that as nothing in the principles of natural law nor those of Holy Scripture give us any reason to suppose otherwise, it necessarily follows that,

the People have a right as natural as it is incontestable to defend their Religion by the force of arms against a Sovereign, who compels them to renounce it, or forbids its exercise, as they do to defend their lives, their goods and their liberties against the machinations of a tyrant. This right is even more allowable than any other; since it regards the greatest of all interests, and the strongest of all Obligations, or rather the one that is the foundation and source of all others; that is to say the indispensable necessity that each person is under to follow the light of conscience.¹¹⁹

Even with all the practical and prudential limitations that the juridical framework of natural law places upon this right to resist, Barbeyrac clearly believes that resistance may be both legitimate and justifiable in defence of an individual right to liberty of conscience.

Yet it should also be borne in mind that, when it comes to the question of political resistance, Barbeyrac almost certainly has in mind here the idea of a conscience that is 'right' despite the contrast that this engenders with his tolerationist defence of erroneous conscience.¹²⁰ The difference rests on the fact that any right to resist the authority of the civil sovereign only makes sense by virtue of the mastery that God retains over individual conscience, which could only legitimately come into play if we suppose that

¹¹⁸ Barbeyrac, *DNG*, 7.8.4, Note 1.

¹¹⁹ Barbeyrac, *DNG*, 7.8.5, Note 5: 'les Peuples ont un droit aussi naturel & aussi incontestable de defender leur Religion par les armes contre un Souverain, qui veut les contraindre d'y renoncer, ou leur en interdire l'exercice, que de défendre leurs vies, leurs biens & leurs libertez contre les enterprises d'un Tyran. Ce droit est même plus favorable qu'aucun autre puisqu'il regarde le plus grand de tous les intérêts, & la plus forte de toutes les Obligations, ou plutôt celle qui est le fondement & la source de toutes les autres; je veux dire la nécessité indispensable où chacun est de suivre les lumieres de sa Conscience'.

¹²⁰ Cf. Chapter 4, pp. 134-137.

individual judgement determined by the *light* of one's conscience is genuinely right. Barbeyrac, however, does not pursue the question of rightful conscience within his political arguments.

The passage quoted above also yields more general observations about what kind of conclusions Barbeyrac was driving towards in his concept of conscience. Above all, it brings us back to the idea introduced in the first chapter that, for Barbeyrac, the juridical framework of natural law relies upon his concept of conscience. Conscience again being defined as 'the foundation and source' of all other genuine interests and obligations. Moreover, the fundamental role that Barbeyrac ascribed to the concept of conscience throughout his theory of natural law goes a long way towards explaining why it is so important to him to enshrine it as an inalienable natural right alongside the more traditional ascription of this particular status to life and liberty alone as, for example, in Locke's political thought. Conscience is 'more allowable' than any other right precisely because individuals' status as moral beings is predicated on the belief that it is necessary to be left at liberty to follow its light with respect to absolute moral duties and permissive natural rights, i.e., to uphold the full gamut of rights and duties owed to oneself, to others and to God. For Barbeyrac, this is never more true than in upholding the first duty of natural law to follow the light of conscience in the sincere worship of God. Hence his particular identification of conscience with individual religious belief.

Barbeyrac's theory of justified resistance also serves as a vindication of the Huguenot cause following the persecutions suffered both before and after the Revocation of the Edict of Nantes at the command of the French king, Louis XIV. To be sure, Barbeyrac should not be read as advocating resistance to the French king by force of arms, but rather as laying the foundation for the justification of Huguenot non-obedience in response to the command to renounce their religious beliefs. For Barbeyrac, Huguenot non-obedience was both legitimate and absolutely necessary according to the principles of natural law that he wants to establish. To this end, Barbeyrac agrees with Pufendorf but not Grotius that the mass exodus of a considerable part of the people from the civil state is also legitimate according to the terms of the original civil contract.¹²¹ The sovereign possesses no right to prevent his subjects from leaving the state. Again, as a

¹²¹ Barbeyrac, *DNG*, 8.11.4, Note 1.

commentary on the Huguenot experience, Barbeyrac's natural law principles legitimise the mass exodus of the Huguenots despite the prohibition placed on the Huguenots from leaving the French state under the terms of the Edict of Fontainebleau. In short, the Huguenots were not disloyal subjects in the face of the legitimate exercise of sovereign authority but rather they remained faithful to the fundamental duties of natural law in resisting the illegitimate exercise of civil power.

Barbeyrac's commentary on the Huguenot experience also extends to the actions of those who carried out the persecutions at the command of the sovereign. Barbeyrac argues, *pace* Pufendorf, that it does not matter whether a subject acts in his own name or in the name of his king, in the tribunal of conscience, he will be held accountable for all unjust and criminal actions carried out at the command of his sovereign. Speaking of the most recent persecutions in France, Barbeyrac questions whether the agents of the Huguenot persecutions could be in any doubt about the 'tyrannical injustice and barbaric cruelty of the order that they received' against fellow subjects whose only crime consisted in serving God according to the light of conscience.¹²²

Barbeyrac rejects the defence of necessity, alleging instead that 'it is not completely beyond the resoluteness of the Human Spirit to resolve to die, rather than fail to uphold their duty'.¹²³ Neither the civil laws nor the particular commands of the civil sovereign can legitimately transgress the fundamental duties of natural law. As such, no subject is required to carry out an action that results in a manifest injustice against another individual because to do so would violate these fundamental duties and thus constitutes a manifest injustice against his own conscience too.¹²⁴ Here, conscience is identified with natural law itself in determining the limits of the legitimate exercise of sovereign power and the reason for justified resistance to such commands. Thus, in the name of individual conscience, both persecutors and persecuted alike can and should resist commands that constitute the manifestly unjust exercise of sovereign power.

¹²² Barbeyrac, *DNG*, 8.1.6, Note 4: 'l'injustice tyrannique & la cruauté barbare des ordres qu'ils recevoient'.

¹²³ Barbeyrac, *DNG*, 1.5.9, Note 5: 'Il n'est pas absolument au-dessus de la fermeté de l'Esprit Humain, de se résoudre à mourir, plutôt que de manquer à son devoir'.

¹²⁴ Barbeyrac, *DNG*, 1.5.9, Note 9.

Barbeyrac's eclectic use of other thinkers' arguments goes to the heart of his project. In many ways, Barbeyrac sees Locke as his closest ally here. As we have seen, he draws on a series of Lockean arguments to supplement what he takes to be omissions, particularly in Pufendorf's texts, from which he constructs his own arguments concerning individual moral and political authority in both the natural and civil state. But Barbeyrac was more doing more than simply reiterating the arguments of others, even those of Locke. Instead, he ought to be read as a synthesiser, constructing his own arguments through this eclecticism and carefully modifying the arguments of those who had gone before to this same end. This eclecticism can be clearly seen in his political thought. Not only did Barbeyrac link together two aspects of Locke's thought that Locke himself chose to keep separate – namely, his political individualism and his limited right of resistance – but he also allied his version of the Lockean argument to what he took to be Pufendorf's comparable defence of toleration in his *De habitu religionis christianae*, a text written in response to the Revocation of the Edict of Nantes.¹²⁵ Like Locke, however, Pufendorf kept his tolerationist arguments distinct from his discussion of justified resistance to the illegitimate exercise of sovereign power in his natural law treatises. Barbeyrac as synthesiser makes use of the ambiguities in both authors' philosophical and political positions to bring to the foreground an argument for justified resistance in the name of liberty of conscience that remained central to his own moral and political thought.

What this indicates is that, in his use of Lockean arguments within his notes on sovereignty and resistance, Barbeyrac is more than a simple consumer. Instead, he offers an early interpretation of his predecessor's ideas. Barbeyrac's reading of Locke sees the latter provide a robust defence of liberty of conscience that can be explicitly

¹²⁵ Barbeyrac, *DNG*, 7.4.11, Note 2. Cf. Chapter 4, p. 139, fn. 100. There is not space here to consider Pufendorf's theory of toleration here but for two contrasting interpretations of this issue, see Detlef Döring, 'Samuel von Pufendorf and Toleration', in *Beyond the Persecuting Society*, ed. J.C. Laursen and C.J. Nederman, (Philadelphia, 1998), pp. 178-196, who argues that Pufendorf's toleration was only ever a pragmatic 'liberal Lutheranism' accommodated to specific circumstances and Simone Zurbuchen, 'Samuel Pufendorf's Concept of Toleration', in *Difference and Dissent*, ed. J.C. Laursen and C.J. Nederman, (London, 1996), pp. 163-184, who argues that while Pufendorf does not succeed in forming a coherent concept of toleration, the substance of his arguments is steeped in the languages of natural law and reason of state. For an analysis of both Locke's and Pufendorf's theory of toleration integrated with their respective theories of natural law, see Michael Seidler, 'The Politics of Self-Preservation: Toleration and Identity in Pufendorf and Locke', in *Early Modern Natural Law Theories*, ed. T. Hochstrasser and P. Schröder, (Dordrecht, 2003), pp. 227-243. Seidler argues, as Barbeyrac himself also wants to, that Pufendorf and Locke have more in common with respect to their philosophical ideas than is usually acknowledged, whilst highlighting the distinctive nature of each author's argument.

allied to his justification of resistance in cases of extreme political necessity. While Barbeyrac may be one of the first to ascribe this view to Locke, the ongoing debate in modern scholarship show us that he was certainly not the last to do so.¹²⁶ These debates also remind us that while Barbeyrac and Locke addressed many similar philosophical issues within the Republic of Letters, they were each responding to a very different set of political events. For Barbeyrac, his Huguenot heritage – both in terms of his religious beliefs and his experience of religious persecution – left him with an abiding concern for the liberty of individual conscience as a moral and religious faculty. Yet, while his political thought may be labelled as ‘Huguenot’, he differs substantially from other Huguenot thinkers, such as Bayle, who denied that the same duty to follow one’s conscience could be transposed into a claimable political right against the civil sovereign.¹²⁷

Finally, by separating Barbeyrac from both his authors and his intellectual predecessors such as Locke, we can see how his own political thought represents a concerted effort on his part to enshrine the rights of individual conscience within the civil sphere without thereby laying the foundation for political sedition in the name of justified resistance. The principles that structure civil and political life are cautious and conservative in their reach while at the same time instituting a comprehensive right to liberty of conscience, identified both with sincere religious belief and with natural law itself. It is the authoritative judgement of conscience that serves as the foundation for Barbeyrac’s claims for justified resistance. Taking both this current chapter and the previous chapters together as a whole, it is possible to see how Barbeyrac’s theory of natural law establishes three distinct spheres of human authority: the moral authority of individual

¹²⁶ In the *Second Treatise*, Locke does not directly ally his political arguments, including the just defence of one’s liberty, to the religious argument for liberty of conscience presented in his *Letter on Toleration*. John Dunn argues, nevertheless, that Locke’s oeuvre ought to be read as a whole and that in this broader context the *Second Treatise* provides an ‘assertion of a countervailing right in the conscience of every man to judge the damage inflicted by the strong and wicked on God’s world... [where] the structure of political obligation is logically dependent on the structure of individual religious duty’. See *The Political Thought of John Locke*, p. 51 and p. 125. Arguing against Dunn, John Marshall claims that, on the contrary, that Locke had good reasons to keep his arguments purely political and thus ‘there were no significant arguments in the *Two Treatises* that men had to defend and establish their religion as well as defend their liberties, lives and properties’. See *John Locke: Resistance, Religion and Responsibility*, (Cambridge, 1994), p. 289. For the purpose of the present discussion, it is sufficient to note that Barbeyrac’s view of Locke is much closer to Dunn’s interpretation than Marshall’s.

¹²⁷ Elisabeth Labrousse argues that while Bayle provides a radical and far reaching defence of religious toleration predicated on God’s mastery over conscience, he is ‘concerned less with the rights of the individual than with those of the Creator who has reserved for Himself the domain of conscience’. Liberty of conscience in the religious sphere does not therefore, for Bayle, translate into a right to liberty of conscience in the civil sphere: ‘Political Ideas (Bayle and Jurieu)’, p. 263.

conscience, the religious authority of ecclesiastics and the civil authority of the sovereign. Each of these spheres depends on the juridical framework of natural law and thus the approbation of God himself for its legitimacy. As a pedagogic enterprise, in his careful exposition of the respective rights and duties possessed by the individuals that make up each of these respective spheres of authority, Barbeyrac provides his readers with a detailed and nuanced – though not always wholly coherent – model for the whole of human, social interaction with man's relationship to God at its core.

Conclusion

Barbeyrac the natural law theorist emerges from this study as a steadfast defender of individual liberty of conscience. Responding to the personal and political circumstances that shaped his life, he makes a thoughtful attempt to develop his own distinctive argument through a remarkable synthesis of the different traditions of thought at his disposal. The resulting account of moral, civil and religious authority is deeply rooted in the history and philosophy of early modern Europe, above all, in its insistence that all forms of human authority ultimately derive from the authority of God. I have tried to show that it is precisely because Barbeyrac's moral framework is grounded in the idea of individual dependence on the will of God that he believes himself in a position to argue that certain checks to civil and ecclesiastical authority in defence of individual liberty of conscience are both legitimate and necessary.

The innovation at the heart of his thought is his considerable extension of the concept of conscience beyond its traditional bounds, thus defending conscience not only as a religious but as a moral liberty. We have seen how Barbeyrac's comprehensive concept of conscience fulfils a number of conceptually different roles within his argument. Conscience is the source of moral knowledge and the faculty of moral judgement, and it is the locus of theological understanding as well as religious belief. However, while we may separate out some of these strands for the purpose of discussion, it is fundamental to Barbeyrac's argument that conscience is a single, unified concept. It is in these terms that his argument has been assessed here with the aim of showing that Barbeyrac's concern to vindicate the breadth and content of his concept of conscience bestows a coherence of purpose on his thought as a whole.

This study has also identified some of the difficulties that Barbeyrac faced in his attempt to realise his philosophical aims by means of the concept of conscience, above all in his theory of permissive natural law that was intended as a complement to his theory of moral obligation. It is in the relationship between the moral judgements of individual conscience and the sphere of permissive action that we discern in Barbeyrac's thought a nascent sphere of privacy. However, as I have sought to demonstrate, the relationship between these two aspects of his thought gives rise to

unresolved philosophical tensions even at the end of his scholarly career. The juridical character of his moral premises carries into his theory of moral deliberation the idea that moral determinants are always at play, but at the same time he insists that individual judgements of conscience must be freely undertaken and voluntarily acquiesced to. While it has not been possible to resolve these tensions on Barbeyrac's behalf, it has been possible to indicate, where appropriate, the philosophical and theological commitments that made them intractable issues for him.

The ambition of the present work has been to go beyond the existing literature on Barbeyrac by offering an interpretation that shows the overall coherence of his intellectual enterprise despite its apparent complexities and disparate character. It is my hope that it also opens up new avenues of research simply by giving serious consideration to Barbeyrac and his writings and, in particular, to those works that hitherto have been either ignored or studied only in isolation. In fact, through its emphasis on the features that lend coherence to his literary activity, this dissertation may provide the framework for studies that go in the opposite direction and focus on the close context of the particular stages that make up Barbeyrac's career, tasks that could only be gestured at in the course of my argument. A further desideratum that lies in obvious extension of the present work is to make more intensive use of the debates that Barbeyrac conducted with his contemporaries not only in the interpretation of the seminal figures of his time, above all Bayle, Grotius, Locke and Pufendorf, but also in his engagement with lesser lights in both the Republic of Letters and the Huguenot Diaspora.

To take an obvious example, a contextualised study of Barbeyrac as an early interpreter of Locke would require a more detailed account of his engagement with close acquaintances, such as Jean Le Clerc, with whom Barbeyrac had a close intellectual affinity. It was in fact Le Clerc who made the introduction that enabled Barbeyrac to become a correspondent of Locke in the final years of the latter's life. Such a study might lead to work on other interpretations of Locke that emerged during the same period, such as the debates that Barbeyrac engaged in with his fellow Pufendorf commentator Gershom Carmichael.

While it might be tempting to see in Barbeyrac's theory of moral authority the kernel of the Kantian argument for the moral authority of the individual, grounded in self-legislating human reason, I have resisted such temptations. By seeing Barbeyrac as distinctively a man of his time, this dissertation has worked from the premise that much of the richness of his thought – and that of his contemporaries – lies in what distinguishes it from later ideas, not least those of Kant and his successors, not in what might tie them together in some grand narrative. The challenge and the reward of studying Barbeyrac's thought come from the diversity of his writings, his eclecticism and the synthesis of ideas that makes up his argument.

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