

Hobbes on Sexual Morality

Susanne Sreedhar

Boston University, Department of Philosophy, Boston, MA, USA
sreedhar@bu.edu

Abstract

Despite the vast amount of scholarship on Hobbes's philosophy, his writings on sexuality have gone largely unexplored. This paper offers an interpretation of Hobbes's writing on that topic. I argue that if we pay attention to his remarks on sexuality, we can retrieve a coherent account of sexual morality, one that takes a strong stance against doctrines of natural sexual morality, replacing them with a commitment to positivism about sexual norms. With this reconstruction of the Hobbesian view of sexual morality in hand, I conclude by exploring some of its implications from a contemporary feminist perspective.

Keywords

Hobbes – sex – sexual morality – feminism – political philosophy – natural law

In his major works of political philosophy, Hobbes makes striking pronouncements about sexual behavior. For example, in *On the Citizen* he asserts that no sexual behavior is forbidden in nature, that there can be no such thing as marriage in the absence of a civil state, that what counts as adultery is determined entirely by the positive law, and that marriages can be dissolved or not, depending on those laws.¹ In *Leviathan* he adds that men are permitted to take as many wives as the law of their country permits.²

- 1 Thomas Hobbes, *On the Citizen*, eds. Richard Tuck and Michael Silverthorne (New York: Cambridge University Press, 1998), vi.16, pp. 86–87 and xiv.9–10, pp. 158–9. This work will be cited by chapter, paragraph number, and page number.
- 2 Thomas Hobbes, *Leviathan*, ed. Noel Malcolm (Oxford: Clarendon Press, 2012), 21, p. 340. This work will be cited by chapter and page number.

Some of these claims are accorded a few sentences of explanation or defense, but most are simply asserted. Even when Hobbes does provide some justification for these pronouncements, it tends to be unsatisfactory. His various remarks about sex appear prominently in harsh criticisms by Hobbes's contemporaries. Bishop Bramhall castigates Hobbes for his remarks on adultery and divorce while the Earl of Clarendon expresses horror at his allowance of polygamy.³ Present-day readers may not share the shock of Hobbes's contemporaries. They nevertheless are entitled to an explanation for why Hobbes holds these views, which arguments he enlists to defend them, and how those views fit into his overall moral and political theory. What are we, today, to make of Hobbes's provocative claims about sex?⁴ How should we understand his view on sex, given his scant or unsatisfying explanations?

Mainstream Hobbes scholarship sheds little light on these questions. With a few notable exceptions, Hobbes scholars have had little to say about sex. Even among the growing cohort of feminist political theorists, literary critics, and philosophers who discuss Hobbes on gender, few consider questions about sex and sexuality *apart* from gender.⁵ In an effort to fill this gap in the literature, the bulk of this paper will focus on specific questions about sexuality and what we would now call "sexual morality" or "sexual ethics." I will defend a particular interpretation of Hobbes's position on sexual morality. My thesis is that in contrast to the prevailing moralizing philosophical discourse of his time, Hobbes took a strong stance against doctrines of natural sexual morality, replacing them with a commitment to positivism about sexual norms. On my reading, he reduces the entirety of sexual morality to the dictates of positive law, that is, civil law, and he denies that the rules of sexual morality have any objectively knowable, universal, independent, or true existence.

3 John Bramhall, *The Catching of Leviathan or, the Great Whale in Leviathan: Contemporary Responses to the Political Theory of Thomas Hobbes*, ed. G.A.J. Rogers (Bristol, UK: Thoemmes Press, 1995), 156–8; Edward, Earl of Clarendon, *A Survey of Mr. Hobbes his Leviathan*, in Rogers, ed., *Leviathan: Contemporary Responses*, 234.

4 By sex I mean activities that fall under the category of intimate, sexual contact. I do not mean to discuss the division of human beings based on reproductive organs, nor do I mean to discuss the performance or expression of behaviors associated with this division (that is, gender).

5 For a recent collection of essays on Hobbes on women and gender, see Nancy Hirschmann and Joanne Wright, eds., *Feminist Interpretations of Thomas Hobbes* (University Park, PA: Pennsylvania State University Press, 2012). More recently, Eva Odzuck provides a useful overview of this literature. See Eva Odzuck "Not a Woman-Hater, 'No Rapist,' or Even Inventor of 'the Sensitive Male'? Feminist Interpretations of Hobbes's Political Theory and Their Relevance for Hobbes Studies" in *Interpreting Hobbes's Political Philosophy*, ed. S.A. Lloyd (Cambridge: Cambridge University Press, 2019), 223–241.

It is important to highlight at the outset that Hobbes does not give a systematic view of human sexuality or sexual morality. Perhaps the silence on Hobbes's views of sex in the literature is not altogether surprising given the scattered and unsystematic nature of his own remarks. The passages where Hobbes mentions these subjects are dispersed throughout his different works; they are brief; and while some are part of a more sustained discussion, those rarely form the backbone or main topic of that discussion. More often, these pieces of text read as at best thoughtful examples in service of a claim that is not about sexuality at all and at worst as offhand references. The vast majority of references to sex range from a phrase within a sentence, to a sentence, to a couple of sentences, to in very rare occasions an entire paragraph. There is no separate, dedicated, sustained account of sex or sexual morality. Nonetheless, I contend that we can reconstruct his view from these scattered remarks and the logic behind them.

Careful consideration of these pieces of text, the logic of the passages and their textual context, and the basic commitments and methodologies of Hobbes's political and philosophical enterprise yields a largely coherent and consistent position. The position is *coherent* because it is unified. The various claims fit with each other, reinforcing both the specifics and the foundational commitments of his general philosophical project. It is *consistent* because there are no significant contradictions between the various claims (rightly understood), between the claims and the principles behind them, or between the claims of the larger Hobbesian system. What is more, once we get clear on what the claims are, how they relate to each other, and how Hobbes defends them, we see that his view on sexual morality is unusual and provocative from both a historical and contemporary perspective. As I suggest below, Hobbes's pattern of denying natural sexual morality is an instance of a broader trend within Hobbes's work: what I call "dethroning."

The paper proceeds as follows. Part One provides a very brief overview of the intellectual history that informs Hobbes's thinking about sexuality, which brings into sharp relief the distinctive and radical nature of Hobbes's position. Part Two presents Hobbes's contrasting picture of sexual morality, demonstrating how a largely coherent and consistent position can be reconstructed from the text. Part Three argues that Hobbes's position, thus reconstructed, can be fruitfully understood as an exercise in dethroning and explains the meaning of that term. In the end, this reading of Hobbes's remarks on sexual morality reveals thought-provoking implications for those interested in feminist perspectives on Hobbes, implications that complement work on his views on gender.

1 Part One: “Vile comminglings” and “chance beds”: A Brief Overview of the Context for Hobbes’s Discussion

By the term “sexual morality” I mean very generally “the rules that dictate the moral permissibility of various sexual behaviors,” such as masturbation, incest, bestiality, sexual interaction with someone of one’s own sex, nonprocreative sex acts (including sodomy and coitus interruptus), fornication, adultery, polygamy, and divorce.⁶ Basically, questions about sexual morality ask *when, in what ways*, and *with whom* one is morally permitted to engage in sexual conduct.

Philosophers have always discussed sex (see, for example, Plato’s *Symposium*). In the Middle Ages, however, philosophical engagements with questions of sex took on a different form and tone.⁷ Under the influence of Christianity, philosophers began to treat questions of sex with a moral valence that casts certain sexual acts and attitudes to be virtuous (like monogamous marriage) and others to be vicious (like fornication). Medieval philosophers tended to theorize about sex using a kind of axiomatic moral framework, under the aegis of natural or divine law, that proscribed some acts as immoral and recommended others as virtuous, or at least free from sin. Saint Augustine rails against the “evil of concupiscence” arguing that people must be vigilant to “bridle and restrain its rage.” Sexual desire, Augustine claims, must be controlled

6 I limit my discussion here to sexual behaviors or actions, not sexual desires. The moral status of sexual desires was also an important issue in the history of philosophy and Noel Malcolm offers an interpretation of Hobbes’s view on sexual desire in his recent article, “Hobbes on Sexual Desire,” *Hobbes Studies* 28 (2015), 77–102. Malcolm convincingly shows that Hobbes’s views on sexual desire were radical and in strong opposition to accepted wisdom of the time. He also argues (to my mind quite definitively) that, though he was often taken this way, Hobbes should not be understood to have a libertine or proto-libertine agenda.

7 What follows is a brief overview of the relevant intellectual history. In characterizing these traditions of thought, I make generalizations which admit of nuance and to which there were exceptions. Moreover, actual practices, as opposed to philosophical discourse, were complicated and rarely adhered to philosophical mandate. For more sophisticated accounts of the intellectual history and of the actual historical practices, see, for example, Lawrence Stone, *The Family, Sex and Marriage in England, 1500–1800* (NY: Harper & Row, Publishers, Inc., 1977); Anna Clark, *Desire: A History of European Sexuality* (NY: Routledge, 2008); John Witte Jr, *The Western Case for Monogamy over Polygamy* (Cambridge: Cambridge University Press, 2015); John Cairncross, *After Polygamy Was Made a Sin: The Social History of Christian Polygamy* (Orphan Copyright Works Project, 1974); Brent Waters, *The Family in Christian Social and Political Thought* (Oxford: Oxford University Press, 2007); and Colin Heydt, “Why not Polygamy? Natural Law and the Family” in *Moral Philosophy in Eighteenth-Century Britain: God, Self, and Other* (Cambridge: Cambridge University Press, 2018), 203–227.

and directed to “the carnal generation of children” less it become “the subjection of the spirit to the flesh in a sordid servitude.”⁸ Similarly, Saint Thomas Aquinas writes extensively on sexual ethics, arguing that all nonprocreative sex is morally forbidden: “unnatural vice ... is any complete sex-act from which of its nature generation cannot follow.” For Aquinas, procreative sex can be permissible but only within the context of heterosexual monogamous patriarchal marriage:

It is evident that the bringing up of a human child requires the care of a mother who nurses him, and much more the care of a father, under whose guidance and guardianship his earthly needs are supplied and his character developed. Therefore indiscriminate intercourse is against human nature. The union of one man with one woman is postulated, and with her he remains, not for a little while, but for a long period, or even for a whole lifetime.⁹

Discussions of the moral status of various sex acts continued to be common in Renaissance and early modern philosophy. Almost without exception, sexual relations with a member of one’s own sex, sex with a close family member, sex with animals, and extramarital sex were taken to be morally forbidden. Typically, prohibitions fell into two categories: nonprocreative sex and sex outside of marriage. *Nonprocreative sex* was often referred to as “unnatural” or “against the use of nature.” *Sex outside of marriage* went by many names, from adultery, to “indiscriminate intercourse,” to “fornication” (meaning sex between two unmarried persons), and “the promiscuous use of women.”

In general, some version of what contemporary moral philosophers now call “objectivism” about sexual morality was widely accepted, though people characterize it in different ways. The term “moral objectivism” here denotes the belief that at least some rules about sexual morality are *real* and *universal*; that is, they are not the product of human convention, nor do they vary from society to society.¹⁰ On the objectivist view, to say that sexual congress between

8 Augustine, *De nuptiis et concupiscentia* [On marriage and concupiscence], written 419–20, in *The Works of Aurelius Augustine, Bishop of Hippo*, ed. Marcus Dods, trans. Peter Holmes, vol. 12 (Edinburgh: T. and T. Clark, 1874), 107.

9 St. Thomas Aquinas, *Summa theologiae*, vol. 43 (2a2ae.141–54), *Temperance* [written 1265–74], ed. Thomas Gilby (Cambridge: Cambridge University Press, 2006), 213.

10 I use the term “objectivism” here in a relatively straightforward way. I do not mean to be entering into contemporary debates in metaethics where the term has more complicated meanings. In particular, I leave aside the question of whether morality is mind-independent and so elide debates between cognitivists and noncognitivists. The

members of the same sex is morally wrong is to say that it is *inherently wrong*, *wrong in itself*, that it is *wrong for all human beings in all times and places*, and that this is a stable truth. Despite widespread agreement on the immorality of nonprocreative sex and sex outside of marriage, medieval and early modern “sexual moralists,” as we might call them, disagreed about which other moral claims about sex acts were true. What made them sexual moralists, however, is their belief that there are real truths about sexual morality, that these questions have right and wrong answers. In the medieval and early modern era, it was near-universally accepted that there was a set of proscriptions and prescriptions about human behavior that have been dictated by God and nature and some of those mandates governed sexuality.

For philosophers of these eras, moreover, interrogations of the morality of sex were not mere footnotes to other more important philosophical discussions. Rather, these *were* important philosophical topics in their own right. Medieval and early modern philosophers see sex, marriage, and family as central to the philosophical enterprise; sexuality sits at or near the core of human nature, ethics, society, politics, and religion. Some philosophers come right out and say this. Grotius, for example, says, “The union of the sexes, whereby the human species is continued, is a subject well worthy of the highest legal consideration.”¹¹ But the best evidence for the centrality of sexuality to philosophical thinking is simply a matter of the quantity of attention paid to the issue. The amount of ink spilled on these topics attests to the significance philosophers placed on them. Entire treatises were dedicated to sex, marriage, and family. We just saw a quote from Augustine’s “On Marriage and Concupiscence,” but we could also look to John Selden’s book *Uxor Ebraica*, which is entirely about marriage and divorce. Calvin, Luther, and their followers take up the subject at great length. Samuel Pufendorf, one of the great natural law theorists of the seventeenth century, dedicates over 100 pages to the topic of sexual morality in his canonical work, *On the Law of Nature and Nations*.

In the context of the natural law tradition, these questions about sex might have seemed so imperative to address because they related to “the scope of natural law,” as Pufendorf puts it in his chapter on marriage.¹² Natural law (at least in its Grotian form) is supposed to tell us what can be known by reason alone, without the help of Scripture. So, rational arguments needed to be given

question of this paper is whether sexual morality is universally true of all human beings in all situations or whether it is an artifice of human convention that can vary.

11 Hugo Grotius, *On the Truth of Christianity*, trans. Spencer Madan (London: J. Dodsley, 1782), 108.

12 Samuel Pufendorf, *On the Duty of Man and Citizen*, ed. James Tully and trans. Michael Silverthorne (Cambridge: Cambridge University Press, 1991), 123.

that would persuade and apply to all human beings as such. This is what the most interesting accounts try to do: they want to describe and justify the existence of moral facts about human sexuality “by reason alone.” No easy task.

One of the most commonly debated topics was polygamy, or more specifically, *polygyny*, the taking of many wives. By contrast, *polyandry*, the taking of many husbands, was almost universally accepted as immoral. Did natural law entail monogamy? Did the Biblical forefathers sin when they committed polygamy? King Solomon, for example, is reported to have taken 700 wives and 300 concubines. Was that wrong? Some said yes: polygamy is always immoral. Others said no: polygamy could be allowed. They disagreed, however, on the reason why. One line of argument held that God gave a special dispensation for the Jews of the Hebrew Bible. Another held that monogamy only became required once Christ made his pronouncement about husband and wife becoming “one flesh.” Grotius, one of Hobbes’s main influences, argued that polygamy was not forbidden by natural law *as such*, but was undesirable nonetheless. This sustained scholarly debate appears even more remarkable in its socio-political context: polygamy was not a pressing political issue in most of early modern Europe. It remained a perennial point of debate because it occasioned serious inquiry into the metaphysics and epistemology of natural law.

Philosophical treatments of other sex acts are often convoluted and uncomfortable to read. Immanuel Kant gives one of the most famous – and most mocked – arguments in this regard, namely, that masturbation violates the categorical imperative and that “onanism” is worse than suicide. But long before Kant, philosophers were trying to give arguments for the immorality of various sexual acts and desires. For example, Pufendorf tries to demonstrate that a mother having sex with her son is morally worse than father having sex with his daughter.¹³ The level of detail and the specificity of cases reflects an intense preoccupation with sexual matters. It was not that philosophers ever really considered the possibility that sex between a parent and child *actually* might be permissible. Rather, they seem caught up in the philosophical question about *why* it was wrong.¹⁴ Other questions, particularly about whether divorce was allowed, were not simply academic. They had real and sometimes pressing

13 Samuel Pufendorf, *Two Books of the Elements of Universal Jurisprudence*, ed. Thomas Behme and trans. W.A. Oldfather (Indianapolis, IN: Liberty Fund, 2009), 375.

14 This intricate analysis and detailed catalog of arguments is reminiscent of arguments for the existence of God – arguably the most important metaphysical question for medieval scholars. As just one example, think of Aquinas’s *five* arguments. He is not trying to convince anyone, but rather to show that it is possible to demonstrate in no less than five distinct ways.

political and legal weight, as we can see with the “King’s Great Matter” in the sixteenth century.

Some lines from Pufendorf nicely capture how philosophers other than Hobbes saw sexual morality. Pufendorf writes “the laws of nature which reason alone dictates,” forbid “vile comminglings” and “chance beds.”¹⁵ That is objectivism about sexual morality in a nutshell. “Vile comminglings” include all nonprocreative sex acts. “Chance beds” refers to sex outside of marriage. For sexual moralists, the rules governing sexual behavior were, at least some of the time and definitely in the most important cases, seen as independent of human laws and conventions and objectively discoverable by “reason alone.” There is much more to say about the intellectual history here, but this should suffice to give a sense of the background against which Hobbes is thinking and writing.

2 Part Two: Hobbes on Sexual Morality

What do we find Hobbes saying about sexuality? Relatively little, as mentioned before. However, within the remarks he does make we find a simple and fairly straightforward position; I will call it *positivism about sexual rules*: the morality of sexual rules comes all and only from the positive law. In this sense, then, there is no sexual morality, or, more precisely, no *natural* sexual morality; there is only the dictate of positive law.

This nonmoral view of sexuality, which denies objectivism about sexual morality, emerges from disparate remarks that Hobbes makes, as well as from the implications of his more general philosophical commitments. There are a variety of key pieces of textual evidence that reveal this view. Therein, Hobbes treats the moral status of sexual unions in the natural condition, adultery, incest, polygamy, homosexuality in Ancient Greece, concubinage, and fornication. Given the brief, almost glancing, nature of many of Hobbes’s remarks on sex, it can be hard to grasp the overall shape of his view without a careful catalogue of the relevant claims. In framing these, as I do below, we will see that

15 Pufendorf, *Two Books*, 333. Another good statement of sexual moralism can be found here: “Any employment of the genital members which deviates from these purposes [of having children] is repugnant to natural law. Under this heading come forbidden lust directed towards a different species or towards persons of the same sex; any kind of filthy impurity; and all extra-marital intercourse, whether by mutual consent or against the woman’s will” (Pufendorf, *On the Duty*, 120). I give a fuller discussion of Pufendorf’s sexual morality in “Pufendorf on Patriarchy,” *History of Philosophy Quarterly* 31 (2014): 209–227.

Hobbes's claims about sexual norms all point to his denial of natural sexual morality and his positivism about sexual norms.

I have divided the textual evidence into three parts. The first takes up sex in the state of nature; the second concerns positivist sexual norms; the third is about sexual politics. I use all three to make a cumulative point about Hobbes's theory of sexual morality. First is the negative claim: there are no naturally impermissible sexual behaviors. Second, this universal negative is textually strengthened by Hobbes's treatment of and expressed attitude towards the most familiar contenders for illicit behaviors, and his treatment of marriage. Third is his vision of how and why a sovereign should regulate sexuality.

a *Hobbes's Denial of Natural Sexual Morality*

In *On the Citizen* Hobbes simply states that there is no such thing as natural sexual morality: "in the natural state ... all sexual unions were licit."¹⁶ There is a sense in which he is simply drawing out an implication of his general position on morality in the state of nature. Since virtually everything is "licit" in the state of nature for Hobbes (the "licitness" of interpersonal interactions is the hallmark of the Hobbesian natural condition), of course all sexual behavior is licit. As he notoriously says, in the "condition of meer nature" everyone has the right to everything, even one another's bodies. Moreover, given Hobbes's more general views on natural morality, that he says all sex is licit by nature should come as no surprise. After all, his political theory is supposed to be built upon wholesale rejection of teleological or divinely ordained morality.

It is important to note that asking about sexual morality in the state of nature is a useful way to get at the nature of sexual morality itself, especially for the tradition of early modern philosophy. The state of nature can be seen as a testing ground for the status of moral rules. If sexual morality is as the sexual moralists understand it, then the substantive moral rules of sexual conduct will hold in the state of nature. If these sexual rules are objectively and universally true and binding, then they hold under *all* conditions, even those without a civil power in place, or even in the absence of any social structures at all. In the state of nature, a person might not be subject to (earthly) punishment as a result of sexual transgressions, but he or she will still have committed a moral wrong. Clearly, Hobbes's claim just quoted that "in the natural state ... all sexual unions were licit" would have been roundly rejected by the likes of Augustine, Aquinas, Grotius, and Pufendorf.

The specific ways in which Hobbes describes sex in the state of nature supports this reading, i.e., that he denies any place for moral judgments about sex

¹⁶ Hobbes, *On the Citizen*, XIV.9, p. 158.

in the state of nature. Hobbes himself conceives of the state of nature as a state of promiscuity, or at least nonmonogamy. Consider his repeated statement that paternity can only be known if the mother identifies the father, which seem to casually assume that women have multiple sexual partners. In the *On the Citizen* version of this claim, he says, “Add that in the state of nature, it cannot be known who is a *child’s father* except by the *mother’s* pointing him out; hence he belongs to whomever the *mother* wishes, and therefore he belongs to the *mother*.”¹⁷ While it is true that pregnancy is a reliable indicator for biological motherhood but not fatherhood, this surely makes it sound like the mother was promiscuous. This is reflective of a broader pattern that is revealing. Hobbes has a tendency to depict without comment sexual arrangements that would have been the target of derision and moral condemnation by many of the sexual moralists. In *The Elements of Law*, for instance, Hobbes gives a classification scheme for covenants involving copulation in “the state of nature.” He writes,

Of covenants that amount not to subjection between a man and woman, there be some which are made for a time and some for life; and where they are for a time, they are covenants of cohabitation, or else copulation only. And in this latter case, the children pass by covenants particular. And thus in the copulation of the Amazons with their neighbours, the fathers by covenant had the male children only, the mothers retaining the females.¹⁸

He makes two further distinctions: “covenants of copulation” can be temporary (“for a short time only”) or permanent (“for life”); they can involve domestic relations (“covenants of cohabitation”) or not (“covenants of copulation only”). To illustrate this last category, he offers the example of Amazon women. In Hobbes’s taxonomy, the contract between the Amazons and their neighbors would count as a covenant of “copulation only, for a short time only” (which would have been considered fornication at the time). His description of the Amazon women is a description of women copulating with men without cohabitation and “for a short time only” with no commitments other than an acknowledgment of dominion over the resulting children. He continues the taxonomy saying that a covenant of cohabitation can be “for society of bed

17 Hobbes, *Leviathan*, 20.5, p. 310 and *On the Citizen*, IX.3, pp. 108–9.

18 Thomas Hobbes, *The Elements of Law: Natural and Politic*, ed. Ferdinand Tönnies (London: Frank Cass, 1969), 2.4.5, p. 133. This work will be cited by part, chapter, paragraph number, and page number.

only” or “for society of all things.” The former establishes concubinage; the latter marriage.

According to the prevailing wisdom of the time, only the marital contract Hobbes describes would have been seen as a morally permissible arrangement to have. Copulation was forbidden outside of marriage, even if it involved cohabitation and/or was for an extended time. The sexual arrangements of concubines and the Amazon women would have been (and were) seen by the sexual moralists as immoral, and obviously so. But in his description of them, Hobbes once again passes no judgment at all; in his presentation in the text, the concubinage contract and the Amazon contract are on par with the marital contract. Moreover, he holds these sexual arrangements up as evidence for a variety of other claims; for example, in *On the Citizen*, the Amazons are used to show that custom does not justify patriarchy.¹⁹

What of nonprocreative sex in the state of nature? Does Hobbes have anything to say about Pufendorf’s “vile comminglings” in the “mere condition of nature”? He does not address this explicitly and it is hard to see what he could possibly have said. The Hobbesian state of nature is governed only by natural law and, as we shall see, little Hobbes says about natural law seems to be able to generate general prohibitions on bestiality, masturbation, sodomy, or same-sex unions. If the state of nature is a kind of barometer for telling whether a behavior is universally wrong, then it follows that nonprocreative sex is not universally wrong for Hobbes. There is no marriage in the state of nature, so the question of extramarital sex does not arise. He thinks that some versions of the state of nature can involve pairings of particular men and women, presumably this happens in the clan systems in the “Americas” and he talks about family units forming outside of a commonwealth.²⁰ But none of this generates the kind of “real” normativity sexual moralists presuppose.²¹

19 Hobbes, *On the Citizen*, IX.3, p. 108. For a fuller discussion of Hobbes’s use of the example of the Amazonian procreative contracts, see my piece, “The Curious Case of Hobbes’s Amazons,” *Journal of the History of Philosophy*, 57 (2019): 621–646.

20 Hobbes, *Leviathan*, 13, pp. 194 and 20, pp. 308–310.

21 A much weaker version of this thesis can be found in an offhand remark by Richard Hillyer, who notes that Hobbes’s views on lust are “significantly non-judgmental by the standards of his time” and that Hobbes has “an essentially uncensorious view of human sexuality” (“Hobbes on Sex,” *Hobbes Studies* 22 [2009]: 29–48). Hillyer is concerned to discuss the literary, religious, and historical context of Hobbes’s views on sex as well as how those views were received. So, while Hillyer’s discussion is informative, it sheds little light on Hobbes’s views on sex understood as part of his philosophical project. Similar points about the non-judgmental nature of Hobbes’s account of sex can be found in James Grantham Turner, *Libertines and Radicals in Early Modern London: Sexuality, Politics and Literary Culture, 1630–1685* (Cambridge: Cambridge University Press, 1992), 88 and 294,

There is no question that people have sex in Hobbes's state of nature. The question is whether any of those sexual acts are immoral. Hobbes's answer to this question is no.

My interpretation of Hobbes on this point is not uncontroversial. While questions about his sexual morality have been largely ignored in the secondary literature, two Hobbes scholars have argued that there is at least one natural prohibition on sexual behavior on Hobbes's account. Noel Malcolm and Glen Newey both argue that rape would be impermissible in the state of nature and their reasoning is similar. Newey points out that in the Hobbesian state of nature it is possible that there could be an "action [that] is against reason, since it cannot figure in any foreseeable rational project to preserve one's own life." He continues that, "In the case of rape ... there is in general no reason for men to think that this will help preserve their lives. In view of this, there is no reason to think that the state of nature includes a natural right to rape. It is hard to imagine circumstances in which a man's exercise of his right to self-preservation will require him to rape a woman."²²

Malcolm goes one step further, arguing that natural law actually forbids rape. It is not simply that rape cannot be seen as a means of self-preservation in the state of nature. Rather, Malcolm points out that it should actually be seen as a *threat* to self-preservation. Natural law enjoins us to pursue those actions that conduce to our self-preservation and forbids those that do not. Rape can make the rapist a target of revenge or retaliation, from the rape victim herself and if she has a male sexual partner, him too. This "unnecessarily increase[es] the risk of future threats to his [the rapist's] self-preservation."²³ Malcolm sees rape as forbidden by Hobbes's natural law in the same way that drunkenness or cruelty are forbidden – because they are self-destructive. He rightfully notes that this view sees nothing wrong with the rape *per se*; it is the fact that rape is an action that could endanger oneself that makes it wrong.

Neither Newey nor Malcolm entertain the idea that sexual violence can also be used as a way to express and maintain dominance, thereby benefitting the rapist. Rape communicates dominance to both the rape victim and others.²⁴ If

and Simon Blackburn, *Lust* (Oxford: Oxford University Press, 2004), Chapter 10 entitled "Hobbesian Unity."

22 Glen Newey, "Not a Woman Hater: Hobbes's Critique of Patriarchy," in *The Politics of Gender: a Survey*, ed. Yoke-Lian Lee (London: Routledge, 2010), 14.

23 Malcolm, "Hobbes and Sexual Desire," 88.

24 Consider, for example, the use of rape as a weapon of war: Claudia Card, "Rape as a Weapon of War," *Hypatia* 11 (1996): 5–18. There is a long feminist tradition of arguing this point, going back to Susan Brownmiller's famous *Against our Will: Men, Women, and Rape* (Simon & Schuster, 1975).

committing rape makes someone more powerful in the state of nature, then natural law would approve of it. In any case, in Hobbes's framework, there is nothing about sexual coercion or sexual violence *itself* that is right or wrong; what is important is the possible consequences of conducting oneself in one way or the other. One might reasonably judge that it is in one's interest to commit sexual violence as a way of achieving or maintaining dominance over the raped and others.²⁵ Of course, Malcolm is correct that *if* one judges that rape instead serves to threaten one's preservation, natural law would forbid it. But it is implausible to assume that rape would – or in fact should – *always* be seen in that way.²⁶ In fact, if we look carefully at Hobbes's famous description in *Leviathan* Chapter 13, we see that he depicts at least one form of sexual violence – namely, sexual capture – as a part of the state of nature. He talks about men who “invade for gain” saying that they “use violence to make themselves masters of other men's persons, wives, children and cattle” and Hobbes gives no indication that such invasions are ill conceived.²⁷

Given the inadequacies of Newey and Malcolm's attempt to ground in Hobbes's account some sort of natural sexual morality in the form of a natural prohibition on rape, it becomes clear that for Hobbes, there is nothing in nature that tells us that any sexual practices are wrong: that is to say, there is no natural sexual morality.

25 Eva Odzuck criticizes Newey on similar grounds (“Feminist interpretations of Hobbes's Political Theory,” 232–33). She argues that he is wrong to say that rape cannot be conducive to self-preservation, and shows how, given Hobbes's logic of power relations, rape could be conducive to self-preservation. She says, “Increase of power, by whatever means, is allowed and recommended by Hobbes as a means to self-preservation, and given the fact that he considers rape to be a potentially power-increasing action, it can easily be argued against Newey that natural right also comprises a right to rape.” Odzuck also notices that Hobbes seems to acknowledge the possible utility of rape when he says, “Therefore the ancient Heathen did not thinke they Dishonoured, but greatly Honoured the Gods, when they introduced them in their Poems, committing Rapes, Thefts, and other great, but unjust, or unclean acts” (*Leviathan*, 10, p. 142). By this logic, rape is an expression of power; therefore, the ancient Heathens honored their Gods when they describe them as committing rapes.

26 Here we can see the difference between rape and cruelty. For Hobbes, natural law does not permit “cruelty,” which he defines as “vengeance without regard to future good” (*On the Citizen*, III.27, p. 54). But because rape could be seen as a possible aid to one's preservation and so a “future good,” it does not meet the standard set by the cruelty exception. I will return to Hobbes's allowance of rape in the state of nature at the end of the paper.

27 Hobbes, *Leviathan*, 13, p. 192. Of course, “wives” is a misnomer here. As I will discuss in the next section, there is no marriage in the state of nature, and so there cannot be “wives” there. Presumably, then, Hobbes assumes the natural agents in question to be male, and there to be womenfolk associated or attached to them, much as a wife might attach herself.

b *Hobbes's Positivism about Sexual Norms (Adultery, Divorce, Polygamy, Incest, Homosexuality)*

The case for Hobbesian sexual positivism is strengthened when we examine his remarks about marriage and about those practices most often forbidden by sexual rules.

In *On the Citizen* Hobbes describes the institution of marriage as wholly an invention of human legal systems, rather than a divine sacrament or anything that has independent existence. In particular, he insists that what constitutes adultery is determined entirely by the civil law. This means that what is adultery in one place could constitute marriage in another; what would be illicit under one set of laws (e.g. divorce and remarriage) could be entirely appropriate under another. It is worthwhile to look at the passage in detail.

Theft, Murder, Adultery and all wrongs are forbidden by the laws of nature, but what is to count as a theft on the part of a citizen or as murder or adultery or a wrongful act is to be determined by the civil, not the natural, law. Not every taking of an object which is in the possession of another is a theft, but only the taking of something that belongs to another; what counts as ours, what as another's is a question for the civil law. Similarly, not every killing of a man is Murder, but only the killing of someone whom the civil law forbids us to kill; and not every act of intercourse is adultery, but only what the civil laws forbid ... Likewise a relationship which in one commonwealth is marriage will be considered adultery in another and vice versa. And again, agreements which constitute marriage for one citizen do not have the same effect for another even in the same commonwealth; the reason is that anyone who is forbidden to make any kind of agreement by the commonwealth (that is, by the Man or Assembly which holds sovereign Power) does not have the right to make agreements, hence his agreement is not valid; no marriage therefore occurs. But an agreement made by anyone who is not forbidden to do so is valid, and is a marriage.... Hence it will perhaps be the responsibility of the Clergy alone to perform the wedding ceremonies which have to be carried out in the Church, and to bless the couple, or consecrate them if that is what it should be called. Everything else, namely, who, when, and by what agreements are made, is a matter for the laws of the commonwealth.²⁸

Note how Hobbes disallows the power of the Church to determine what counts as a marriage. Though clergy might perform the ceremonies, what counts as

²⁸ *On the Citizen*, VI.16, pp. 86–7.

licit or illicit sex (i.e., sex within marriage vs. sex outside of marriage) is determined entirely by the laws of the commonwealth. The important claim here that what counts as theft and adultery is determined by the civil law is repeated four times in *On the Citizen*.²⁹

In the same passage Hobbes says that,

... a kind of cohabitation forbidden by the commonwealth or cohabitation between forbidden partners is not a marriage, because it is of the essence of marriage to be a legal contract. There have been marriages in many places, as among the Jews, the Greeks and the Romans, which were legal despite the fact that they could be dissolved. But among those who do not allow such contracts except on condition of indissolubility, a marriage cannot be dissolved; and the reason is that the commonwealth has forbidden it to be dissoluble, not because marriage is a Sacrament.

Divorce is potentially permissible because indissolubility and permanence are not necessary features of marriage. If a person lives in a commonwealth that allows divorce and remarriage, an agreement to form a new sexual union is valid and will constitute a marriage. If one lives in a commonwealth which understands marriages to be indissoluble, that same agreement – to dissolve one sexual union and form a new one – will not be valid nor will it form a marriage; indeed, that kind of agreement will be forbidden, and any sex outside the original marriage will be considered adultery. The same act in two societies has different legal statuses and moral valiances, one is morally permissible, the other not. In a related passage later in *On the Citizen* he asserts that “pagans’ sexual relationships were by their laws legal marriages.”³⁰ James Hamilton argues that the pagans Hobbes had in mind there were the citizens of Ancient Rome, where lawful divorce and remarriage were common and a matter of gossip rather than social or moral condemnation.³¹ Marriage for Hobbes is constituted solely by the positive law, which varies from society to society. This is a striking departure from the tradition from which Hobbes emerged and which was still prominent in early modern Europe, where marriage was thought to be

29 Hobbes, *On the Citizen*, VI.16, p. 87 (emphasis omitted); XIV.9–10, pp. 158–9; and XIV.17, p. 162. We also find a version of this claim in his *The Whole Art of Rhetoric*, in Thomas Hobbes, *English Works, Volume*, vol. VI, ed. William Molesworth (London: Bohn, 1840) p. 445.

30 Hobbes, *On the Citizen*, XIV.10, p. 159.

31 James J. Hamilton, “Pyrrhonism in the Political Philosophy of Thomas Hobbes,” *British Journal for the History of Philosophy*, 20 (2012): 217–247.

a matter of God's will and decree. Even those thinkers who were ambivalent on the topic of divorce found a religious mandate for their positions.

Additionally, this positivist view of marriage logically follows from Hobbes's claim in *Leviathan* that "in the condition of meer Nature ... there are no Matrimoniall lawes."³² Since there is no fixed natural or divinely ordained institution of marriage, marriages simply are whatever various legal systems stipulate. Far from being divinely or naturally ordained, marriage laws are merely artifices invented by people in particular times and places.

In this same vein, Hobbes refuses to universally condemn incest, another drastic departure from traditional wisdom. Bramhall castigates Hobbes on this point, expressing disbelief and revulsion at Hobbes's idea that "What is adultery ... is known by the civil law; that is, the commands of the Sovereign." Bramhall charges that Hobbes "admitteth the incestuous copulations of the Heathens according to their heathenish lawes, to have been lawful marriages."³³ To this Hobbes responds that "As for marriages within the degrees prohibited [i.e., incestuous unions], they are not referred to the abominations of the heathen. Besides, for some time after Adam, such marriages were necessary."³⁴ In other words, for Hobbes, incestuous marriages were not only permissible, sometimes they were actually required.

Along these same lines, Hobbes recognizes the acceptability of legal arrangements that allow marriage to more than one person at a time, i.e., polygamy. In defense of his claim that "the greatest liberty of subjects, dependeth on the silence of the law," he asserts that "in some places of the world men have the Liberty of many wives: in other places, such Liberty is not allowed."³⁵

Finally, consider his remarks upon male homosexuality in Ancient Greece. Hobbes betrays no judgment or condemnation of it, suggesting that it was merely the "use of that time." The passage in which Hobbes discusses this is highly evocative. Asking why Socrates would seek the love of Alcibiades, he says,

There is something in it savouring of the use of that time: in which matter though Socrates be acknowledged for continent, yet continent men have the passion they contain, as much or more than they that satiate the appetite; which maketh me suspect this platonic love for merely sensual;

³² Hobbes, *Leviathan*, 20, p. 310.

³³ Bramhall, *The Catching of Leviathan*, 138.

³⁴ Hobbes "An Answer to Bishop Bramhall's Book, called 'The Catching of the Leviathan'" in Thomas Hobbes, *The English Works of Thomas Hobbes*, vol. IV, ed. William Molesworth (London: Bohn, 1840), p. 380.

³⁵ Hobbes, *Leviathan*, 21, p. 340. I will return to this passage at the end of the paper.

but with an honorable pretence for the old to haunt the company of the young and beautiful.³⁶

In a footnote in their article, “Love and the Leviathan,” Patapan and Sikkenga say that, “While apparently positing that Greek homosexuality was conventional (“the use of that time”), Hobbes seems to admit the possibility of homosexual erotic attraction.”³⁷ I agree, and what is most important for my purposes here is the complete absence of moralizing overtones from Hobbes’s discussion. Hobbes is simply trying to make a point about the passions and invokes Socrates and Alcibiades as an example to illustrate various parts of his moral psychology. At no point does he give any indication that he thinks that the relationship between them is immoral or even morally questionable. He does artfully hint that Socrates might not have been entirely honest in his supposedly “noble” love for Alcibiades’s mind. But even if we take this as a very light rebuke of Socrates, Hobbes is certainly not calling attention to Socrates’s breach of a sexual norm – it is not directed at the same-sex nature of the desire. That Hobbes would unproblematically countenance same-sex desire and behavior seems in line with his more general claims about desire and how the objects of desire vary from person to person.

What I have said so far suggests a largely coherent picture: Hobbes says that people are required to “avoid intercourse forbidden by the [civil] laws”; but it is entirely up to the civil laws to determine what kinds of intercourse should be forbidden or permitted.³⁸ There is nothing *in nature* that can make those determinations. No independent, objectively knowable answers exist to questions about sexual ethics. Hobbes gives us a clear denial of objectivism about sexual morality and a positivism about sexual norms. We now have both general and specific reasons to accept that, for Hobbes, sexual morality is not natural. In the next section, I describe how it is, instead, political.

c *Sexual Morality in the Civil State: Hobbes’s Sexual Politics*

Is Hobbes therefore advocating that human beings live a state of total sexual license? Not in the least. Though he has no doctrine of *natural* sexual morality, he does have what we could call a “sexual politics,” that is, a vision of what role sexuality and the rules governing sexuality play in the polis. Sexual

36 Hobbes, *Elements of Law*, 1.9.17, p. 45.

37 Haig Patapan and Jeffery Sikkenga, “Love and the Leviathan: Thomas Hobbes’s Critique of Platonic *Eros*,” *Political Theory* 36 (2008), 825, fn 30. They note that this admission seems in tension with “his definition of lust as desire for ‘the different sex,’ or his observation that *eros* ‘cannot be without diversity of sex’ (DH VIII, 5; HN IX, 16).”

38 Hobbes, *On the Citizen*, XIV.9, p. 158.

morality – the set of rules that dictate permissible and impermissible sexual behavior – begins with civil society. These rules take the form of positive laws, and they serve an important function. Sex and sexual passions occasion conflict in the state of nature. Recall that people “invade” to steal others’ wives and cattle. Since the state of nature lacks the institution of marriage, no one has a recognizable or enforceable claim on any sexual or romantic partner. This is clearly an undesirable state of affairs for Hobbes. He seems to accept that there need to be some rules in place that keep in check our potentially disruptive sexual desires and that establish clear, known, enforceable dictates about what is permitted or not sexually speaking.

We can see this assumption at work in various places in the text. For example, in the *On the Citizen* passage just quoted, he makes it clear that the law will forbid certain kinds of killings, certain kinds of takings, and certain kinds of sexual intercourse. He does not specify exactly what will be forbidden or permitted, but he explains the undesirability of the state of nature by reference to the fact that all killings, takings, and sex were allowed:

[I]n the natural state, where, first, nothing was another’s (because nature gave all things to all men), and it was consequently not possible to encroach on what was another’s; where, secondly, all things were in common, for which reason also all sexual unions were licit; where, thirdly, it was a state of war and hence licit to kill...³⁹

That there must be laws governing sexual behavior that meet certain formal requirements does not tell us much about what the *content* of those laws should be. And so we can ask a second set of questions: what kinds of positive laws about sexuality should be instituted in a Hobbesian commonwealth? How exactly should the positive law regulate sexuality? What should be its scope? What should be its mandates? Hobbes does not discuss these issues at length, especially compared to how much detail he gives about how other parts of civil law should be structured (e.g., property, the judicial system, rules of succession, the role of ministers and advisors, and so on), but let us consider what Hobbes does make explicit in the text and what else we can infer.

Perhaps the most obvious example of a positive law concerning sexual conduct pertains to sexual violence. People enter the commonwealth in order to gain “security,” which Hobbes defines as the absence of “reasonable cause to fear other men as long as he refrains from wronging them.”⁴⁰ This implies a

39 Hobbes, *On the Citizen*, XIV.9, p. 158.

40 Hobbes, *On the Citizen*, VI.3, p. 77.

clear prohibition on rape and other forms of sexual violence. So, while rape might not be impermissible in the state of nature, it becomes impermissible in civil society. Sexual violence is not special here. This prohibition applies to all forms of violence: unless it is in self-defense, doing violence to another person in civil society is forbidden. Hobbes does not state that the sovereign should forbid rape, but it follows clearly from the sovereign's duty to provide security.

While Hobbes does not explicitly require laws against rape, he does explicitly discuss the civil institution of marriage. Again, he seems to simply assume that civil society will include the institution of legal marriage and attendant laws about adultery.⁴¹ Once the sovereign decides what the institution of marriage looks like, a set of prohibitions will follow. So, if in a certain society legal marriage is structured to be monogamous and such that it is the sole place for permissible sexual intercourse, then having sex before and outside of marriage becomes wrong. If another society has polygamous marriage, then what is sexually permissible or not changes accordingly. The fact that there has to be some institution – marriage – means that there will also be something – adultery – which subjects will be forbidden from doing. But what counts as adultery in a specific society will be a matter of that society's laws. Those decisions will be made on purely *political* grounds, which will make reference to the well-being of the political order, rather than any reference to nature or God's will.

Hobbes's willingness to regulate the institution of marriage is hardly surprising, given the importance he places on the related institution of family. Hobbes makes a general claim that people's families are very important to them: "Of things held in propriety, those that are dearest to a man are his own life, & limbs; and in the next degree, (in most men,) those that concern conjugal affection."⁴² But the family has specific political and legal significance for a number of reasons. First, marriage laws establish the legitimacy of children and thus the inheritance of property. A settled structure for inheritance is necessary for a stable system of private property, which he also thinks is a necessary part of a healthy commonwealth. Second, the family is the first and most important site for the education of children, which he argues should include

41 See Hobbes, *On the Citizen*, xiv.9, p. 158, just discussed, and vi.16, pp. 86–87. With respect to the latter, in saying that "*Theft, Murder, Adultery* and all *wrongs* are forbidden by the laws of nature, but what is to count as a *theft* on the part of a citizen or as *murder* or *adultery* or a *wrongful act* is to be determined by the *civil*, not the *natural, law*," he clearly assumes that civil society will include the institutions of property and marriage. His point is not to argue that those institutions should exist but rather to make a point about how their content is determined.

42 Hobbes, *Leviathan*, 30, p. 530. He continues that this is a reason for people to abstain from "violations of conjugal honour."

education in obedience to authority, civil and familial. The family is where children – future subjects – learn how to be good, obedient, productive members of civil society. Hobbes is clear that the civic education of children in the family is crucial for a well-functioning commonwealth; he even recommends setting aside one day every week for such things.⁴³ Other than that, he gives little specific advice. But following his general principles, family law – like all law – should be aimed at the public good.⁴⁴

Finally, Hobbes thinks that the sovereign has an interest in the size and health of the population he or she governs – an additional reason to regulate sexual activity. He refers a number of times to the importance of having a “strong” populace both for the sake of having a good defense against external enemies and for the sake of a productive and prosperous economy. Subjects are needed as workers, consumers, and potential soldiers.

This last point brings us to a piece of text we have not yet discussed. It is rich, complicated and fraught. And, admittedly, on its face, seems to complicate the interpretation I have been developing thus far. In his earliest work of political philosophy, *The Elements of Law*, Hobbes writes a paragraph where he seems to sound like the sexual moralists with whom we began.

In all three of his major political works, Hobbes includes a chapter on the duties of the sovereign. *The Elements of Law* version states that the duty of the sovereign is to procure the “temporal” good of the people and stipulates that this good consists of four elements: “1. Multitude. 2. Commodity of living. 3. Peace amongst ourselves. 4. Defence against foreign power.” His discussion of the first, multitude, offers important material for our purposes. Let us look at the crucial passage in detail.

Concerning multitude, it is the duty of them that are in sovereign authority, to increase the people, in as much as they are governors of mankind under God Almighty, who having created but one man, and one woman, declared that it was his will they should be multiplied and increased afterwards. And seeing this is to be done by *ordinances concerning copulation: they are by the law of nature bound to make such ordinances concerning the same, as may tend to the increase of mankind. And hence it cometh, that in them who have sovereign authority: not to forbid such*

43 Hobbes, *Leviathan*, 30, p. 528.

44 It is interesting to think in this regard what Hobbes might have thought of Plato's idea of a “having wives and children in common” (*Republic* Book v). There is no reason to think that he would have in principle opposed such an arrangement. He might not have thought it was the best public policy but it is hard to see how he could have said that it was immoral.

*copulations as are against the use of nature; not to forbid the promiscuous use of women; not to forbid one woman to have many husbands; not to forbid marriages within certain degrees of kindred and affinity: are against the law of nature. For though it be not evident, that a private man living under the law of natural reason only, doth break the same, by doing any of these things aforesaid; yet it is manifestly apparent, that being so prejudicial as they are to the improvement of mankind, that not to forbid the same, is against the law of natural reason, in him that hath taken into his hands any portion of mankind to improve.*⁴⁵

The phrasing here can be confusing, especially with claims such as “in them who have sovereign authority, not to forbid [certain things] is against the law of nature.” What he means by this is that the law of nature requires the sovereign to forbid those things. Hobbes specifies that the sovereign should enact “ordinances concerning copulation” which, for example, forbid incest, “the promiscuous use of women,” and women taking more than one husband at the same time (i.e., polyandry). He describes these as “copulations as are against the use of nature.” This seems to echo the moralistic positions with which we began. God and natural law seem to be forbidding the sovereign from allowing those “copulations as are against the use of nature” and he names some of the usual suspects: promiscuity, polyandry, and incest.

Though Hobbes may seem to be rehearsing the accepted moralizing wisdom of the time here, I do not believe that is the right way to interpret the passage. For Hobbes, the ultimate aim of population control via sexual regulation is the healthy, economic growth of the state and its ability to defend itself against external enemies. The concern with a strong populace (both in numbers and in health) was familiar to people of Hobbes’s era. Historians have remarked that the relatively small populations of European countries often led to imperatives to increase fertility.⁴⁶ This broader context of concern offers a better explanation for Hobbes’s interest in multitude than the rather puzzling biblical reference at the beginning of the passage. Given that population numbers were a matter of great concern in seventeenth-century England, it is more

45 Hobbes, *The Elements of Law*, 2.9.3, pp. 179–80 (emphasis mine).

46 See, for example, Angus McLaren, *Reproductive Rituals: The Perception of Fertility in England from the Sixteenth Century to the Nineteenth Century* (London: Methuen, 1984), Chapter 2 entitled “To remedy barrenness and to promote the faculty of generation: promoting fertility, 1500–1800.” The desirability of population growth was a tenet of mercantilism, which was Tudor economic policy. This supports the idea that some of Hobbes’s social and economic policy was deeply influenced by his Tudor predecessors. Thanks to Deborah Baumgold for pointing this out.

likely that Hobbes's pronatalism was an expression of that existing sentiment rather than a concern to take the words of Genesis seriously. After all, if he really had found the impetus to recommend multitude in the injunctions of the Bible, it does not make sense that this requirement drops out of his discussions in later works. Moreover, the logic of this passage as a whole is inconsistent with an appeal to Scripture. If a country were overpopulated, by his own reasoning, Hobbes would have to recommend measures that would limit population growth. Think of China's one-child policy. So, though he appeals to Scripture here, it is superfluous and indeed contradictory to the argument. Perhaps he referred to it out of concern for his audience – it would have been familiar to them, and perhaps he was effectively showing them there is a different way to reach a conclusion they wanted to reach. In any case, it is not that Hobbes thinks the proscriptions universal, but rather that he (mistakenly) takes the circumstances in which the proscriptions apply to be universal; namely that *under* rather than *over*population will always be the sovereign's primary concern.

Significantly, Hobbes's justifications for these ordinances are entirely political and economic, rather than moral; they are *pragmatic* and *consequentialist*, aimed at the common good (which will trump the desires and liberties of the subject if they come into conflict with it). If population growth is not necessary for the "improvement of mankind" or if it runs counter to it, then it is not "against reason" for the sovereign to allow the behaviors he lists in the passage above. It might in fact be the sovereign's duty to require them. The common good is the only measure by which the sovereign's actions are to be guided and evaluated. Furthermore, Hobbes does say here that "multitude" is part of the "temporal good of the people" but we should not take that literally. What is important for the "temporal good of the people" is that the population is the *right size* for the circumstances. In other words, while population size is important, bigger is not always better. According to the logic of his argument, in conditions of overpopulation, natural law would require the sovereign to take the opposite measures to the ones he recommends here. It is telling that this claim about population control disappears in Hobbes's later iterations of the same discussion, though he continues to show concern for a population size that serves the commonwealth's needs.⁴⁷

47 In *On the Citizen*, chronologically the next work, the four duties of sovereigns are "1) defence from external enemies; 2) preservation of internal peace; 3) acquisition of wealth, so far as this is consistent with public security; and 4) full enjoyment of innocent liberty" (XIII.6, p. 144). Population control and copulation have disappeared entirely. He mentions the commonwealth's (and so the sovereign's) interest in having a strong populace, fit to serve; and this is not unrelated to the point in *Elements*. But his first point of business

More importantly, even in this potentially recalcitrant passage Hobbes actually gestures toward the view I have been attributing to him. He says, “For though it be not evident, that a private man living under the law of natural reason only, doth break the same [natural law], by doing any of these things aforesaid.” To parse this: hedging just a little bit, Hobbes is saying that when people do not live under the dictates of civil law, they do not violate natural law when they engage in promiscuity, polyandry, or incest. “Natural reason only” does not forbid such things. This, I contend, is the fundamental Hobbesian position on sexual morality.⁴⁸

I take the above discussion to show that Hobbes is a positivist about sexual morality. This means that the positive law is the source of normativity about sexual rules. Of course, there are natural law requirements for positive law: namely that positive law serve the good of the community. Thus, sexual morality codified by positive law does inherit some of its normativity from natural law. But the natural law normativity of sexual positive laws is mediated by the requirements of the public good. Natural law itself simply does not give human beings prescriptions and proscriptions about sexual behavior; if anything, natural law informs positive law which then issues such directives.

To be sure, some of the texts canvassed above are difficult to parse, both individually and as a collection. When presented with seemingly countervailing or contradictory textual evidence, a scholar of the history of philosophy has at least four options. First, she could argue that a specific passage is an outlier or anomaly: an oversight. Second, she could argue that Hobbes (or whoever is the object of study) changed his view over time and his mature position does not include the claim from the troublesome passage. Third, she could argue that the pieces of evidence are not actually contradictory. Finally, she could admit that the pieces of textual evidence are actually contradictory and hold Hobbes to be inconsistent.

My argument avails itself of the first three of these options. As a methodological point, I think that one should try one's best to render an author's position consistent. My interpretation views Hobbes as consistent, at least in his

in *On the Citizen* is to discuss the necessity of having “intelligence agents” or spies, then he talks about raising money for armies and the problems with the universities.

48 In the explanatory notes for his edition of *The Elements of Law*, Gaskin observes about this passage, “It is noteworthy that Hobbes is saying that homosexuality, promiscuity, polygamy, and incest are not evidently against ‘the law of natural reason’, but, because they are antisocial, for the *sovereign* not to forbid them would be against the law of nature” (p. 278). This seems right to me: Hobbes's justification for these measures has to do with their antisocial, as opposed to sinful (or “vile,” as Pufendorf called them) nature.

mature philosophy, and, I suggest, it is a consistent position which helps us see something fundamental about Hobbes's approach to questions about sex.

To summarize this section, I suggested that Hobbes differs from his contemporaries and predecessors who thought that sexual morality involved objective, universal, or timeless truth. Furthermore, a possible countervailing text in his early writing was shown to pose no threat to the reading offered here. To more fully understand Hobbes's discussion of sexual morality, however, it is necessary to illuminate a principle that I argue undergirds it. I call that principle "dethroning." Hobbes stands apart from his contemporaries in arguing that sexual morality is not as "real" as they thought it was; it also is not as central or important.

3 Part Three: Hobbes and the Dethroning of Sex

The world view Hobbes is rejecting gives sexual morality a particular place within natural or divinely created hierarchies. For a patriarchalist like Filmer, for example, society is fundamentally structured around the authority of fathers over their families and of monarchs over their subjects. That structure derives from God. In that context prohibitions on activities – like non-procreative sex, incest or polygamy – take on a special importance and moral status. Like the monarch who rules by divine right, these prohibitions are enthroned.

However, Hobbes *dethrones* sexual morality. That is, he renders the dictating of sexual morality on a par with other issues that arise when thinking about social arrangements, such as levying money. So, for example, when considering the morality of monogamy, there is no need to turn to the Bible. The moral permissibility of monogamy, or polygamy for that matter, is entirely a result of civil law. That is the end of the issue for Hobbes. There is nothing about polygamy – or any sexual behavior in itself – that is immoral. Even when Hobbes seems to be participating in moralizing rhetoric, he still insists that the rules do not apply to the "private man living by reason alone." Thus, even the apparent counter-example ultimately points to a dethroning of sexual morality.

Furthermore, Hobbes's dethroning extends beyond *the content of* sexual morality to *the very debate about* sexual morality itself. Recall Grotius's claim, by contrast, that these issues are "well worthy of the highest legal consideration." As mentioned above, the tradition Grotius comes out of devoted a great deal of attention, time, and space to sexual morality because those thinkers saw it as a central and fundamental philosophical issue. Hobbes simply does not. It has no place in his enumeration of the twenty or so laws of nature. When he does mention sexual morality, it is usually in conjunction with

another topic, like property. He does not tend to take up sexual morality as a topic *in its own right*. This refusal to give primacy of place to sexual morality as a topic dethrones the topic from the exalted place that it held among Hobbes's contemporaries.

Noel Malcolm interprets Hobbes's refusal to substantively engage with questions about sex differently; Malcolm takes this as evidence for a kind of prudishness on Hobbes's part.⁴⁹ That very well might be true as a psychological characterization of Hobbes-the-person. However, I think that in terms of his philosophical project, Hobbes's relative silence on matters of sexual morality also serves as a repudiation of those thinkers and theories which put sex at or near the center of their discourse. In some ways, the very paucity of his remarks supports my argument. His political theory is largely indifferent to matters of sexuality.

Consider, for example how he treats the polygamy question. For Hobbes, societies may permit polygamy, as he makes clear in Chapter 21 of *Leviathan*, claiming that how many wives a man may take simply depends on the civil law. Here notice how Hobbes discusses property and marriage in the same breath:

As for other Liberties, they depend on the Silence of the Law. In cases where the Sovereign has prescribed no rule, there the Subject hath the Liberty to do, or forbear, according to his own discretion. And therefore such Liberty is in some places more, and in some lesse, and in some times more, in other times lesse, according as they that have the Sovereignty shall think most convenient. As, for Example, there was a time, when in *England* a man might enter into his own Land, (and dispossesse such as wrongfully possessed it,) by force. But in after-times, that Liberty of Forcible Entry, was taken away by a Statute made (by the King) in Parliament. *And in some places of the world men have the Liberty of many wives: in other places, such Liberty is not allowed.*⁵⁰

Notice that the question of how many wives a man may take is on par with a detail of property law, namely, the very specific question of whether one may use force to remove trespassers from one's property. Hobbes is referring here to the "assize of novel disseisin," a procedure which was introduced to deal quickly and efficiently with disputes over possession of land. While the "assize of

49 Malcolm, "Hobbes and Sexual Desire," 80–84. For an interesting contrast on this point, see Joanne Boucher's "The Erotic Political Philosophy of Thomas Hobbes," in *Canadian Journal of Political Science* 49 (2016): 89–105. Boucher wants to read all of Hobbes's philosophy through an erotic lens.

50 Hobbes, *Leviathan*, 21, p. 340 (emphasis mine).

novel disseisin” was an important development in English law, there is little philosophical import behind it or moral question about its permissibility. In other words, in Hobbes’s account, it is not right or wrong to forcibly remove someone from your land (as opposed to getting a court order to have them removed), just as it is not right or wrong to take multiple spouses (as opposed to taking one spouse). Rather than being central questions for the institutions they are a part of, these issues are matters of liberty, which subjects may have more or less of according to the civil laws of the time.

Hobbes’s dethroning of sexual morality diminishes the questions themselves as well as giving reductive answers to those questions. The sheer extent of what I have called Hobbes’s dethroning may well argue for a new conception of his place in the intellectual history of sex. Though this principle or strategy is not articulated overtly by Hobbes, it is there nonetheless. Proof of its existence in his work is demonstrated, as I have started to show in this paper, by the fact that it recurs again and again.⁵¹ By not engaging much with the morality of sexuality, he articulates a view that radically breaks from his predecessors and many of his contemporaries. Indeed, it counters many present-day views.

4 Part Four: Feminist Implications

As I mentioned in the introduction, feminist scholars have recently turned to the history of western philosophy in order to mine for insights or dig for poisonous roots. Heated debates between feminist theorists have yielded contradictory readings of Hobbes on women that I will not rehearse here. Rather, I focus on issues in his views on sexual morality that a feminist perspective brings to light.

First, much of Hobbes’s discussion of sexual morality invokes problematic gendered language and ideas about women. There is a general presumption that women are property, things to be fought over by men. As mentioned previously, he lists wives, along with cattle, as reasons people “invade” in the state of nature. Even his most liberal sounding statements prioritize the liberty of men to have sexual access to women. He legitimatizes *polygyny* but not *polyandry*. There is no recognition of women’s sexual desires. The passage in *Elements* discussed above is perhaps the pinnacle of this, referring as it does to the “use

51 I show that Hobbes demonstrates this same pattern of dethroning with regard to gender in my article, “The Curious Case of Hobbes’s Amazons.”

of women.” Indeed, we find sexist-sounding remarks in various places throughout the text.⁵²

Hobbes undoubtedly reflected the prejudices of his time in this regard. However, we can distinguish between the biases present in his language and examples on the one hand and patriarchal assumptions that seem built into the theory itself, on the other. For example, the central tenets of Hobbes’s philosophy would not change if we removed the sentence about stealing wives in the state of nature or added a new sentence about the liberty for a wife to take many husbands in *Leviathan* Chapter 21. The propositional content of Hobbes’s views on sexual morality can be logically separated from the gendered and sexist nature of the context in which he sometimes presents those views. Let us look more closely at the argumentative substance itself.

From a feminist perspective, what follows from Hobbes’s denial of natural sexual morality and his espousal of legal positivism?⁵³ I suggest that from a feminist perspective, Hobbes’s views on sexual morality are both promising and problematic.

On the one hand, there is a lot of liberatory potential in his dethroned view of sex. The absence of natural sexual morality undercuts all claims about the inherent wrongness of everything from premarital sex to homosexuality. There is no conception that the body and its desires are shameful or sinful, and there is no virtue of chastity. Sexual norms, now robbed of their grounding in

52 For example, when discussing the order of succession, he explains why male children are chosen over female children saying, “generally men are endued with greater parts of wisdom and courage, by which all monarchies are kept from dissolution, than women are,” though he immediately adds the qualification that, “Not but that women may govern, and have in divers ages and places governed wisely, but are not so apt thereto in general as men” (Hobbes, *The Elements of Law*, 2.4.14, p. 136). Similarly, “Among children, males are preferred to females; at first perhaps because usually (though not always) they are better equipped to manage great affairs and especially wars; but later when it has become a tradition, as a matter of not going against the tradition; hence the *Father’s* wishes are to be interpreted in their favour, unless a different tradition or other sign explicitly counters it” (*On the Citizen*, IX.16, p. 113). In *Leviathan*, we find an unqualified version of this claim when he simply asserts that “men are naturally fitter than women for actions of labour and danger” (*Leviathan*, 19, p. 302). There we also find him rehearsing the biblical view that women were created to serve men: “God hath ordained to man a helper” (*Leviathan*, 20, p. 308). Competing interpretations have been given for these remarks in the recent secondary literature. For an interpretation that leans toward the exculpatory, see my “Hobbes on ‘The Woman Question,’” *Philosophy Compass* 11 (2012): 772–81. For a less sanguine interpretation, see Eva’s Odzuck’s “Feminist Interpretations of Hobbes’s Political Theory.”

53 Admittedly, this is necessarily a speculative endeavor, but it is common in some contemporary approaches to historical texts. See, for example, the recent volume, *Hobbesian Applied Ethics and Public Policy*, ed. Shane Courtland (NY: Routledge, 2018).

misogynist natural law traditions, are free to become rational and just. This is not to say that under Hobbes's careful tutelage sexual norms *definitely will* become rational and just, especially given the Hobbesian presumption that people do and should increase their own power. But at least the dethroned view of sex frees us from the biases and prejudices that have historically stood in the way of rational and just sexual norms. Furthermore, the rejection of oppressive norms that especially target female sexuality is surely welcome.

Some scholars have already capitalized on this insight; Eleanor Curran's article about Hobbes on same-sex marriage is a great example.⁵⁴ Freed from biases and prejudices of his time and ours, we are allowed to construct a Hobbesian position in favor of equal marriage, one that builds on Hobbes's insistence on treating subjects equally. Similarly, Patricia Sheridan remarks, "The civil state imposes what Hobbes calls 'artificial' limits – and these become our civil *and* moral laws. Whatever stands outside these artificial limits is entirely up to the judgment of individuals. If the sovereign does not legislate, for example, regarding homosexual marriage, then individual citizens are free to act however they deem appropriate for their own happiness and well-being."⁵⁵

On the other hand, from a feminist perspective, the strong positivism that underlies and accompanies a dethroned view of sex and sexual morality could also be deeply worrisome. For example, as discussed above, there is no reason to see rape as an inherently moral wrong for Hobbes. Someone with feminist commitments might very well eschew any theory that fails to see rape as necessarily and distinctly immoral. Hobbes's doctrine might be simply too vacant to ground a sexual morality that satisfies feminist commitments.

The Hobbes-defender might respond that rape for Hobbes would be exactly the kind of action (like theft) that is not "naturally wrong" but would be legally and morally wrong in any functioning civil society. The case is easier to see with property. As I mentioned above, Hobbes thinks that sovereigns will institute a regime of private property, though he leaves some of the specifics vague. Getting to participate in the institution of private property is one of the goods of civil society and one of the reasons people leave the state of nature, where stable property relations are impossible. Similarly, Hobbes seems to see marriage as providing the same kinds of protections, as determining who belongs

54 Eleanor Curran, "Hobbes Comes Out for Equal Marriage," in Courtland, ed., *Hobbesian Applied Ethics and Public Policy*, 161–178.

55 Patricia Sheridan, "Resisting the Scaffold: Self-Preservation and Limits of Obligation in Hobbes's *Leviathan*," in *Hobbes Studies*, 24 (2011), 146–147. For a similar point about Hobbes on equal treatment and sexuality/same-sex marriage, see William Eskridge, "Original Meaning and Marriage Equality," in *Faculty Scholarship Series* 4889 (2015), 1075.

to who.⁵⁶ Further, I have argued above that the Hobbesian sovereign could be expected to enact laws against rape as part of a mandate for general laws against violence. For Hobbes, security requires a lack of reasonable expectation of violence if you do not wrong someone first. Women are as entitled to security as men, so there would be laws against assaulting women. These laws would be for women's sake, not to protect the various men they might be attached to.

There are other kinds of concerns, though. A lack of commitment to substantive equality for women or sexual minorities means that the only grounds for legal protection are prudential. In other words, there are no rights to which we can appeal to constrain the sovereign's reach. This is what his positivism entails. Without an inherent commitment to substantive human rights, Hobbesian politics can appear frightening. By design, the sovereign is unconstrained by those he rules. On the other hand, the wise sovereign, if one exists, seems to always legislate what is right. In a sense these kinds of moves relitigate a familiar debate about Hobbes's politics from a contemporary perspective.

One last concern may arise about the ability of Hobbesian principles to generate useful material from a feminist perspective. This concern stems from the little he does say about sexual morality. One of the more disturbing aspects of Hobbes's remarks on sexual morality comes out of the *Elements* passage that has been the focus of some of my discussion. Recall that Hobbes suggests prohibitions against incest and various "uses" of women in order to promote population growth. I argued above that the best way to interpret this passage is as guidance to the sovereign, not as any sort of claim about natural sexual morality. Even so, this passage points to a feature of Hobbes's thought that should disturb those with progressive and/or feminist commitments.

The point of the passage is that the sovereign should enact legislation aimed to promote the size and health of the population. Thinking in line with the pronatalism of his time, Hobbes took that legislation to entail measures that would stimulate population growth and guard against population shrinkage. And so he recommends forbidding polyandry. But he also raises an issue with the "quality" of the population, evoking a program that smells of eugenics, at least to some contemporary readers.⁵⁷ That Hobbes would so readily countenance state intervention in the reproductive capacities and behaviors of

56 Hobbes, *On the Citizen*, XIV.9, p. 158 and VI.16, pp. 86–87. See above Part Two, section c.

57 Thanks to Eva Odzuck for calling this to my attention. Hobbes refers to a prohibition on incest but there is no reason to think his sovereign must stop there to improve the "quality" of the population.

subjects should surprise no one. Again, what is there in the Hobbesian system to preclude this besides pragmatism? This should discomfort liberals, progressives, and anyone who thinks that the government's reach should not be so long. In addition, because the topic here is reproduction, women's bodies will be the targets, making this of special concern to feminists.

In sum, Hobbes's dethroning project is in line with his fundamental philosophical and political commitments. For Hobbes, the sexual is the political. And "reason alone" tells us very little about what substantive rules comprise sexual morality. If anything, reason alone tells us that there are no such rules, that genuine sexual morality begins with civil society. In this sense, he replaces sexual morality with sexual politics. As I hope the above discussion begins to show, the removal of natural sexual morality is both promising and problematic. It reveals the impositions on sexuality as just that – impositions – with nothing natural about them. It also reinscribes sexuality as a matter of government regulation on a new basis – that of public concern, but not *moral* concern. Maybe this is more easily challenged, maybe not. Sexual moralism in this picture is exposed as ideology, rather than as tracking anything "real." Those who share the concerns of contemporary feminism should feel deeply ambivalent about the Hobbesian view of sexual morality. But perhaps the ability to see both the promise and the pitfalls here points to one value of applying a feminist lens to historical texts.

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