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## PUFENDORF ON PATRIARCHY

Susanne Sreedhar

*Abstract: This paper reconstructs Samuel von Pufendorf's argument for patriarchy and explores the implications of this argument. I demonstrate that Pufendorf relies on a set of premises about the connection between sexual order and social order, as well as a specific view about the nature of masculinity. I then consider whether his views are inherently gendered—that is, whether they are necessarily views about men rather than about human nature—and briefly situate Pufendorf's views on sex and marriage in the context of his natural law theory.*

Despite his substantial influence on his contemporaries and eighteenth-century successors, Samuel von Pufendorf has been a casualty of the canonicalization of the history of philosophy.<sup>1</sup> Michael Seidler observes that Pufendorf was “almost as unfamiliar during most of the 19th and 20th centuries as he had been familiar during the preceding hundred years and more.”<sup>2</sup> In recent years, there has been a significant revival of interest in Pufendorf's work among philosophers and intellectual historians in the English-speaking world. However, very little attention has been paid to his views on women and the family. This is a surprising oversight, given the striking content of those views and their lengthy and detailed exposition.<sup>3</sup> Indeed, James Tully opens the introduction to his edition of Pufendorf's *On the Duty of Man and Citizen according to Natural Law* [*De officio hominis et civis juxta legem naturalem = DOH*] with a footnote saying,

The use of non-sexist language to introduce Pufendorf's theory would cover over its gender bias, which needs rather to be exposed. Therefore, “man” and male pronouns have been used to make explicit the exclusion of women from politics and their social subordination in the theory, and in doing so, facilitate criticism. (xiv)<sup>4</sup>

The present study begins to take up Tully's challenge.<sup>5</sup>

Specifically, my paper reconstructs Pufendorf's argument for patriarchy and explores its implications. It shows that Pufendorf's argument

for the necessity of the patriarchal family relies on premises about the connection between sexual order and social order and on a specific view about the nature of masculinity, or maleness. I also consider whether these views are inherently gendered, that is, whether they are necessarily views about men rather than about human nature. My goal is both limited and ambitious: ambitious in that it is the first attempt to reconstruct Pufendorf's argument for the necessity of patriarchal marriage and limited in that it engages only a fraction of Pufendorf's extensive discussion of matters relating to sex and gender.

## I

Pufendorf places a prolonged and detailed discussion of sex, gender, marriage, and the family near the center of his social and political theory, and this discussion is sufficiently distinctive in both scope and volume that it cannot be ignored in any full account of his political philosophy. If we compare the proportion of Pufendorf's output devoted to these topics to their presence in Thomas Hobbes's works, for instance, the contrast is striking. The latter spends barely three pages on these topics, while Pufendorf's systematic treatment of "matrimony" and "paternal power" alone spans over one hundred pages in the 1688 edition of his masterpiece, *On the Law of Nature and Nations* [*De jure naturae et gentium* = *DJN*].<sup>6</sup> Claims about gender and the family are invoked elsewhere as well. For example, in an earlier work—*Two Books on the Elements of a Universal Jurisprudence* [*Elementorum jurisprudentiae universalis libri II* = *EUJ*]<sup>7</sup>—the first distinction Pufendorf makes between people considered as "private persons" (as opposed to "public persons") is "drawn from *sex*"—although it is then followed by distinctions involving age, citizenship status, family position, lineage, and occupation. (*EUJ*, Bk.I.Def.VI§2, p. 40).<sup>7</sup>

Pufendorf's views on marriage, the family, and the regulation of sexuality play a foundational role in his political philosophy. Thus, he says in the *DOH*, his popular, pedagogical précis of the *DJN*, "Marriage may be called the first example of social life and at the same time the seed-bed of the human race. . . . *Without this a decent and well-ordered society among men and the development of civil life are inconceivable*" (*DOH*, II.II.3, p. 120, italics added). Similar references to marriage described as "the foundation of social life" (*DJN*, VI.I.7, p. 849), "the foundation of all good order" (*DJN*, VI.I.15, p. 867), and the like, abound in *DJN* and his other natural law works.

Natural law, on Pufendorf's account, revolves about the principle of sociality (*DJN*, II.3.15, pp. 207–9), which generates duties that facilitate human security and flourishing.<sup>8</sup> He applies this methodology to the full gamut of natural and adventitious human institutions, not just

marriage but also family and household, property and commerce, religious associations, civil society, and international relations. In all these contexts, natural law demands behaviors that further sociable relations and, thereby, conduce to the peaceful, productive human relationships that everyone needs and desires. If patriarchal marriage—that is, two-person, opposite-sex, monogamous (especially on the part of the wife), long-term, male-dominant union—is most conducive to social order, it follows that natural law would dictate it. This is also the background to Pufendorf's rejection of sexual behaviors that violate natural law (for example, prostitution or adultery): these undermine the family, an institution crucial to social order. And it explains the connection between social institutions and particular (gendered) desires that need either to be transcended and/or managed.

Pufendorf's detailed account of gender and sexuality is of interest partly because of its sheer range and variety. It covers topics such as homosexuality, bestiality, and polygamy; it explores the origin of, and justification for, sexual modesty; and it suggests that there is a principled difference between types of incestuous relationships—with a mother's intercourse with a son being supposedly worse than a father's with a daughter (*EUJ*, Bk.II.Obs.V§6, p. 375).

It should be noted, however, that, although Pufendorf discusses topics related to *sex and gender*—such as marriage, the family, and sexuality—quite extensively, he talks about *women* relatively little. As we will see, his discussions are largely about men-in-marriage, men-and-family, men-in-relation to women, and men's sexuality. Even so, there are some interesting exceptions that I return to below.

These discussions are so extensive because Pufendorf draws heavily on hypothetical, fictional, and historical cases drawn from previous literature on the topic. This alone makes his treatment extremely interesting. However, it is also striking because Pufendorf comes to these issues, at least in part, by way of Hobbes, who said little, for example, about gender and even less about sexuality. But what makes Pufendorf's serious and elaborate discussion of these issues even more intriguing is that gender and sexuality were perhaps not as disputed as other matters receiving extended discussion in his work, such as the state of nature, property relations, forms of the state, and the state-church relationship. It is at least puzzling that he spends so much time working out the intricacies of sexual morality, when it is unlikely there would be any significant disagreement about his conclusions, at least as a matter of political or social fact. That is, in a very real sense, he seems to be defending "commonsense views" on gender and sexual morality. I briefly return to this puzzle later in the paper.

Of course, Pufendorf's topics and arguments belong to a wider literary and social context, and they have long, complex histories stretching back to the early Middle Ages and antiquity. A full understanding of their role in his texts must see them with those associations. For the purposes of this particular paper, however, I will focus only on Pufendorf's own construction or use of the relevant arguments, as it were.

## II

In his major work, the *DJN*, the chapter "On Matrimony" begins with a series of arguments against "wandering lust," "indiscriminate intercourse," "venery," and "chance beds." Clearly, Pufendorf rejects sexual license of any kind; he believes that sex should be confined to marriage and that the institution of marriage should be heterosexual, lifelong, and monogamous (at least on the part of the wife). In this section, I reconstruct the *argument* for this claim.

At first blush, one might assume that Pufendorf would rely on familiar pronouncements from Western scripture or ungrounded claims from Aristotelian biology of the sort that pervaded medieval philosophy. However, I think that we should *not* interpret Pufendorf along those lines, because relying on such premises would violate his larger philosophical and methodological commitments. Pufendorf belongs to a tradition that sought to provide a new, secular grounding for natural law, philosophy, and political theory. This project, often seen as originating with Hugo Grotius, aimed to provide philosophical foundations that did not rest on theological premises, or on the kind of Platonic or Aristotelian moral metaphysics that remained hugely influential in seventeenth-century Europe. Instead, Pufendorf (and Grotius and Hobbes) grounded social and political theory on a *secular*—or, more precisely, a *deconfessionalized* or *desacralized*—conception of natural law and on notions of contract or consent rooted in the assumption that people are naturally free and equal.<sup>9</sup> Taking his own project seriously, then, means accepting that he situated his traditional and patriarchal claims about sex and marriage in a nontheological, secular account of natural law—an approach that does not support and, indeed, seems *prima facie* to militate *against* the picture of sex and marriage Pufendorf offers.<sup>10</sup>

There are several stages to Pufendorf's absolute rejection of sexual license. He first establishes the wrongness of certain kinds of sexual behavior, varying his reasoning somewhat in each of his key political works. Thus, *DJN* approvingly quotes Pliny: "Do not hold sexual intercourse with animals. Nor disgrace a woman in shameless postures. Nor transgress the natural forms of copulation in illicit love. Nor let a man cohabit with brutes themselves. Nor let women imitate the intercourse

of men" (*DJN*, VI.I.4, p. 842). *EUJ* refers to "the precept about avoiding irregular sex relations, or those vile comminglings with one's own sex or with different species" (*EUJ*, Bk.II.Obs.IV§8, p. 333). And *DOH* declares,

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. (*DOH*, II.II.2, p. 120)

The clear targets are bestiality and homosexual sex, including, perhaps, lesbian sex, as the referent of "let[ting] women imitate the intercourse of men." Less clear is what Pufendorf means by phrases like "shameless postures"; one wonders what other kinds of "filthy impurity" he had in mind. While our imaginations can fill in the blanks, what is important to note is that these are the sorts of claims one would make to distinguish between the "natural" (and permissible) ways to have sex and the "unnatural" (and sinful) ways to have sex.

In the *DJN*, after establishing the wrongness of homosexuality, bestiality, and shameless postures, Pufendorf turns to a critique of societies that accept "wantonness" more generally. The examples here all involve what he calls "the promiscuous use of women," by which he means women having more than one (presumably male) sexual partner. The opposite of "the promiscuous use of women" is what he calls "the exclusive use of women." The three main forms of wantonness are (1) prostitution, (2) women having sex before marriage, and (3) women taking multiple male partners. Beyond his thoughts about the moral undesirability of such actions, Pufendorf is most concerned to reject social structures in which wantonness or "the promiscuous use of women" is permitted or condoned.

So what is Pufendorf's official argument against "wantonness" and for its opposite, marriage? To remain consistent with his own project, we must find a nontheological, secular argument for these claims: I propose an interpretation based on the connection between proper sexual behavior and the requirements for social peace and harmony. The wrongness/badness of these sexual forms is rooted in an appeal to the conditions for what he calls a "peaceful and decorous social order" (quoted above). To begin with, he draws a comparison between man and beast, suggesting that everyone should readily see that our lives would be *far worse* than the lives of cattle "if there were no laws of marriage." As he says, without marriage,

Consider what quarrels men would have over beautiful women. They would be much more common than among bulls, because these are not incited to passion except when a cow is in heat and she allows

the male only once a year, while man is an animal always ready for the deed of love. Furthermore, is not such a promiscuity in generation unfitted to reproduce the species? For if a woman kept herself for one man alone, that would be a kind of marriage. (*DJN*, VI.I.5, p. 845)

There is evidence for three distinct claims here, all of which are reiterated elsewhere in Pufendorf's works.

First, he suggests that, in the absence of a rule requiring that each woman keep herself for one man alone, men will fight among themselves. This is why he thinks that peace between men is threatened by sexual license for women. These quarrels would be persistent, incessant, and continuous since humans, unlike cattle, do not mate just once a year; rather, we are, as he says, "always ready for the deed of love."<sup>11</sup>

Second, Pufendorf separates considerations of what is necessary for peaceful relations between adult men from what conditions are best to "reproduce the species"—the "furthermore" indicates that he takes considerations of family form to be different and separable from considerations about conditions for peaceful relations among adults. (Although he includes reproduction as a relevant consideration, it is clearly not the salient one in this passage.)

Third, Pufendorf understands a crucial feature—perhaps *the* crucial feature—of marriage to be the husband's exclusive sexual access to his wife. He reiterates this thought later in the chapter, saying, "Again, the main difference between the mating of mankind and the promiscuity of the beasts, lies in the fact that the wives plight their faith to their husbands to give their bodies to them alone" (*DJN*, VI.I.15, p. 867). For Pufendorf, female monogamy is central to what marriage *is*; in fact, it seems to be so important that it constitutes a sufficient condition for marriage.<sup>12</sup>

The claim about the central importance of marriage is ubiquitous in Pufendorf's work; he insists that it is essential for a peaceful and stable society, and he often uses mythical or historical examples to illustrate the threat to social order posed by its absence. For instance, he says, prior to the rule of Cecrops, ancient Greece had no marriage laws, and any woman could lie with any man she chose. The people "cohabit[ed] like animals without law, and if any woman conceived from such promiscuous intercourse, she offered her progeny to any one that was pleased to take it of those with whom she had cohabited" (*DJN*, VI.I.5, p. 844). This was dreadful for reasons that Pufendorf does not spell out; instead, he emphasizes what a beneficial thing it was when Cecrops came into power and instituted marriage.

Another key example is the story of the women of Ceos, originally told by Plutarch. Pufendorf describes this case, saying, "there was no record

of adultery or rape of a virgin for a period of seven hundred years; and yet the island was famous for women of singular beauty" (*DJN*, VI.I.4, p. 844). To understand what Pufendorf is claiming, it is helpful to consider the passage from Plutarch that was his source:

It was a custom for the maidens of Ceos to go in a company to the public shrines and spend the day together, and their suitors watched their sports and dances. At evening they went by turns to each one's home and waited upon one another's parents and brothers even to washing their feet. Very often more than one youth would be in love with one maid, but their love was so orderly and so controlled by custom, that when the girl became engaged to one, the others ceased their attentions at once. The net result of this orderly behaviour on the part of the women was that there was no memory of a case of adultery or seduction in that country for the space of seven hundred years.<sup>13</sup>

For Pufendorf, Ceos is a vision of utter sexual peace. And it is clear that he thinks that what is doing the work is the fact that each woman is kept for one man. Because of this custom—that “when the girl became engaged to one, the other [men] ceased their attentions at once”—many sorts of sexual display and behavior were acceptable. Maidens could dance publicly and even privately wash men's feet. But once a woman was claimed, she was off limits. And all the men respected that. The point is not that Pufendorf thought that Ceos was a perfectly peaceful society but that there were no disruptions caused by *sexual* urges. If we read this alongside the cattle passage, a coherent picture seems to emerge.<sup>14</sup>

So Pufendorf's first argument for the central importance of marriage—and, thus, for female monogamy—is that it is a necessary (but not sufficient) condition for peaceful social order. The connection is clear both in his admiration of cases in which the rule of female monogamy was assiduously practiced (for example, Ceos) and in his multiple and lengthy criticisms of cases in which the rule was not followed consistently (for example, allowing prostitution) or not followed at all (for example, pre-Cecrops Greece or Plato's community of wives).

Pufendorf's second argument for female monogamy is that men need assurance of paternity before they will contribute to the arduous task of raising children. Here are two representative examples:

A further consideration is the weakness of a woman and her need of support in pregnancy. Yet what man would offer his support unless he were sure he was the father?—a matter of uncertainty apart from marriage. The rearing of the human species is likewise a matter of labour and expense, for which a woman's resources scarcely suffice. Yet what man would undertake the care of any but his own offspring, whom it is not easy to pick out when such free licence prevails? (*DJN*, VI.I.5, p. 845)

It is surely patent that a man desires for himself legitimate offspring, not suppositious or adulterous. Therefore, the maiden should, before all else, plight her faith to the man to grant no one but him admission to her bed. (*DJN*, VI.I.10, p. 855)

So he held that functioning families depend on female monogamy (because a man will not take care of children if he does not know with certainty that he is the biological father), and—as he repeatedly emphasizes—marriage and families are the building blocks of society.

Two points about this picture are worth exploring further. The first is that it rests on an a rather unflattering picture of manhood, according to which men are jealous, quick to anger, fickle, unreliable, and selfish. Pufendorf seems to take this point as given, but it takes some argument. Is there a reason why it is so important to men that they contribute to raising only those children who are biologically their “own” (a reason that held before the emergence of evolutionary biology)? For men, what hangs on the legitimacy of their children? Of course, many answers have been given to this question, but Pufendorf does not develop one here. The second point is that it is the regulation of sexuality, particularly of *female* sexuality, that is the key to marriage serving its function.<sup>15</sup> And these two things are related: it is *because* men are like this that women’s sexuality needs to be controlled so tightly. Each woman has to “keep herself for one man” to prevent the kinds of conflicts that arise when men fight over women and to ensure that each man knows which children are biologically his.

It should be noted that the view that men are depraved and have base desires fits with the general Pufendorfian view of man as “fallen.” (Since Pufendorf is trying to avoid theological justifications, this idea may also be taken as an empirical generalization about human nature.) Pufendorf scholar Ian Hunter calls special attention to the connection between the depravity of humankind and the need for social control in Pufendorf’s theory; however, neither Hunter nor other commentators seem to appreciate that *marriage* is an important locus or mechanism of this social control. Yet, given the foundational place Pufendorf accords marriage, it can be argued that the state’s function as a source of social control is at least in part a gendered one. It is striking that Hunter emphasizes Pufendorfian man as depraved and fallen, and also stresses the need for the state to regulate base desires, but never once mentions sex or any of these discussions about sexual morality.<sup>16</sup>

On the second point, it is not strictly correct to say that only *women’s* sexuality is being regulated: since men and women are supposed to have sex only with one another, both are being regulated simultaneously. However, they are regulated in different ways and to different degrees.

Although Pufendorf ultimately condemns men who have sex outside marriage, it is the requirement of female monogamy—the “exclusive use of women” provision—that is primary and drives the sexual regulation of both sexes. Indeed, female monogamy is so important that, for Pufendorf, chastity is women’s principal value:

Let no one violate the chastity of a woman against her will. For women are esteemed primarily by its preservation. But that those who mutually consent ought not to indulge a roving passion, that is, when they do it merely for the satisfaction of lust, follows because they are thereby assailing the foundations of human society, which by those enticements wished to promote the propagation of the species. But if they intend to secure offspring, they are disturbing civil society, whose harmony is to the highest degree involved in scrupulous observance of marriage. But virgins who have the hope of marriage sin in a special manner when they consent to the defloration of their chastity. For thenceforward they offer damaged goods instead of sound to purchasers. (*EUJ*, Bk.II.Obs.IV§25, p. 351)

This, of course, follows from his general account. Importantly, the heading of this section is “Right reason dictates that a man should care for himself in such a way that human society be not thrown into disorder.” As we see, in this passage, Pufendorf is drawing a tight connection between the desirable outcome—that human society not be thrown into disorder—with the crucial importance of women’s chastity. Unless women remain chaste, social peace and stability will be impossible.

Making explicit this connection between Pufendorf’s views on the requirements of natural law and his mandates about sexuality allows us to begin to solve the puzzle I posed at the beginning of the paper, namely, why Pufendorf spends so much time and effort justifying norms that would likely have been seen by most of his peers as uncontroversial. Pufendorf’s natural law theory was at the time highly contested, in part because of his attempt to separate it, at least in part, from certain theological commitments. That being the case, it is unsurprising that he takes the opportunity to demonstrate how his natural law theory yields what would have been, at least in part, familiar rules about human sexuality. Perhaps here we see a recognition that the secular social contract approach would otherwise tell strongly against these “commonsense” beliefs about sex and gender.

### III

An important question arises at this point. Are Pufendorf’s unflattering claims about jealousy, selfishness, and so forth about *human nature* or, specifically, about *men*? *Prima facie*, there is good reason to take them as

applying to human nature generally. Multiple Pufendorf scholars have pointed out that he is working with a particular picture of human nature, according to which people are fundamentally base and depraved.<sup>17</sup> Commentators regularly recognize that, according to Pufendorf, people are jealous and greedy and sinful in various ways, ranging from the venial to the violent. While people have a duty to cultivate sociability, these problematic desires and personality traits are strong countervailing influences. Of course, our natural propensity toward avarice and envy does not mean that people are always at each other's throats. Such problematic desires exist alongside sociable ones. However, there can be a *duty* to cultivate sociability only if it is the case that sociable desires do not always win out; we need not be compelled to do that which we will do naturally anyway.

Importantly, when scholars discuss this part of Pufendorf, they do not emphasize the sexual aspect. For example, they consider jealousy as a general phenomenon without addressing sexual jealousy or the role of jealousy in human sexuality.<sup>18</sup> The image of the generally jealous, petty, greedy, depraved, or potentially depraved human has a number of possible origins; it could be viewed as postlapsarian or Hobbesian, for example. But whether theological or philosophical in nature, there is no doubt that a central part of Pufendorf's project was to find a way for the state to regulate human beings such that their base nature was mitigated or quarantined.

Though men are overwhelmingly the actors in Pufendorf's analysis, there are a few places in which he attends specifically to women—and to the differences between men and women, with regard to the sexual passions. At some points in the text, Pufendorf appears to make substantive claims about human nature that are inclusive of women (that is, that both men and women are petty, jealous, and prone to wantonness), rather than simply characterizing men and then generalizing to all adult humans. On this interpretation, women have these problematic desires, just as men do. The best example of this is in his discussion of infanticide in the context of the requirements of natural law. He considers the question of whether women who kill their own babies born out of wedlock are doing something wrong and concludes that they are.<sup>19</sup> He reasons as follows: some say that this is not a violation of natural law because these women are acting on a very natural impulse to avoid dishonor, shame, and the serious threats to their reputation—and so to their well-being—that result. However, those people are incorrect, according to Pufendorf:

Nor is a mother free from sin against the law of nature, when she kills her child in order to avoid disgrace, and thus overcomes her instinct

toward her child by another instinct, namely, that of fear of and escape from infamy. . . . For the life of the babe was guarded not only by the mother instinct but by law; and the mother should have recognized before the event that her infamy was of less consequence than the death of one whose existence was due to an act to which she herself had consented. Wherefore, if the care for her reputation meant more to her than the pleasure of copulation or the love of her own offspring, she ought to have been thinking about the matter before she took the man to herself. After the act, the child does not merit death, in order that the sin of the parent may go unobserved. (*DJN*, VI.I.3, p. 841)

Notice some interesting things about Pufendorf's analysis.<sup>20</sup> Women on this picture are *sexual* agents. They can both experience and act on sexual desire. They can also exercise their agency in dealing with the possible consequences of their sexual desire, so they can be fully culpable. Pufendorf does not diminish the responsibility of women here because they are women, though he seems to elsewhere (*EUJ*, Bk.I.Def.VI.§2, p. 40). In the case of infanticide, the morality of the agent's actions is not reducible to her identity as a woman but, rather, is based on the nature and consequences of her own desires and subsequent choices as an agent. Women are not—in this passage—seen as passive and childlike, incapable of the kind of fully fledged agency necessary for censure and blame. In having sexual desires and making sexual choices, women can be just as lusty and wanton as men (though he does give weight and a certain amount of validity to these reputation concerns in a way that he does not seem to for men, at least not in this context).

On the other hand, there are places that suggest that Pufendorf has a different conception of female sexual and romantic desire than he does of male sexuality. This is perhaps clearest in his discussion of the polygamy asymmetry. Here he takes up the question of what kinds of marriage relationships are allowed by natural law, discussing both *polyandry*, where one wife takes multiple husbands, and *polygyny*, where one husband takes multiple wives. The details of Pufendorf's thoroughgoing condemnation of polyandry are a topic for another time<sup>21</sup>; but, when he turns to polygyny, he takes a more ambiguous or ambivalent position. He argues that polygyny is allowed by natural law in some circumstances but, in the end, concludes that it is a nonideal family type, so there should be both male and female monogamy. Yet, for our purposes, both his arguments for the permissibility of polygyny in some circumstances and his ultimate endorsement of universal or symmetrical monogamy are revealing.

Ursula Vogel—the only English-language scholar to address this topic—insists that the polygamy asymmetry can be traced to Pufendorf's desire to avoid overt conflicts between his philosophy and the

Old Testament. Given the moral authority attributed to the patriarchs of the Old Testament, many of whom had multiple wives, Pufendorf requires an explanation for why David, for example, did not violate natural law. Thus, he must find a way to render their actions permissible under natural law while still affirming the moral and legal bans against polygamy that had become commonplace in Europe by this time. Christian Thomasius, a follower and reader of Pufendorf's, realized the inconsistency between Pufendorf's ban on female polygamy and his qualified permission of male polygamy, later pointing this out.<sup>22</sup>

But even if this desired reconciliation explains Pufendorf's motivation, it is not the complete story: consistent with his secularizing project, Pufendorf gives an *argument* for why polygyny might have been permissible. First, it does not violate the requirement that knowledge of paternity be ensured. Every man still knows that his wives' children are his own:

Now those who maintain that polygamy is not repugnant to the law of nature speak in this way. The end of formal marriage, which is certainty as to one's offspring and mutual assistance, can be secured no less in polygamy than in monogamy. For the repeated claim of some that "by this custom there will be no return of conjugal faith", as reason dictates, "since otherwise the reason of the pact and exchange of faith cannot take place", is senseless, for mutual faith does not require that it be equal upon both sides. Nor does the end of formal marriage require that just as the wife shall admit to her person no one but her husband, so her husband may not bestow himself on any other women than his sole wife; for the certainty as to one's offspring which forbids a woman from being intimate with several men, has nothing to do with a man. (*DJN*, VI.I.17, p. 870)

Second, Pufendorf suggests that polygyny is not an inevitably destabilizing institution, as he insists polyandry is. Importantly, this is because he holds that women who are multiple wives can accept their situation and not cause discord. While some multiple wives can be petty and jealous of each other and each other's children, this is not always the case. According to Pufendorf, in hotter climates women are more obedient:

For those who dwell in warmer portions of the earth are usually very passionate, while their women, whether from natural endowment or because of their rearing, are so under the power of their husbands that their jealousies generally do not greatly disturb the peace of the household. (*DJN*, VI.I.16, p. 869)

In colder climates, on the other hand, women have too much power and so would not presumably be able to handle this arrangement. He makes reference to "those nations where the women are too forward, or where

men are too subservient to their wives” and opposes them to nations where “women are more accustomed to obey their husbands, whether because of their nature or their training . . . and a tactful man experiences no difficulty in preserving peace even between several wives.” In the former, polygyny could be expected to cause “jealousy, domestic discords, and hatreds of rival mothers” but not so in the latter (*DJN*, VI.I.17, p. 871). For my purposes, the significance of these kinds of claims is that they show that, for Pufendorf, women’s natures appear to be at least somewhat *malleable*. While men will *always* fight over women if given the chance—hence, the necessity of female monogamy for a functioning society—women may not. Under some circumstances, women would not exhibit jealousy that would arise were men in their position. It is not that women’s tendency to discord is *climate* dependent; rather, it is *social power* dependent.

Pufendorf’s point is that women in hot places are subject to their husband’s power to a greater extent than women in colder places, and it seems reasonable to think that, in general, people subject to control are more malleable than those who are not. It is not, then, that women in hot climates have fundamentally different agencies than women in cold climates; it is that social forces affect their freedom to express this agency. (Ignoring the claims about weather dependency, there is a relatively plausible view here: people with less social power are less able to exercise agency.) In any case, Pufendorf assumes that men (at least in the sexual realm) are not *prima facie* subject to social control; monogamous marriage, of course, has the beneficial secondary effect for society of keeping men from acting in lecherous ways. As for his assumptions about women, while he occasionally acknowledges their capacity for agency, he is also reflecting the early modern worldview in which that agency is heavily controlled by men, whether they be fathers or husbands.

Pufendorf does not reach a definite conclusion on the relationship between polygyny and natural law, saying he will leave it to readers to decide.<sup>23</sup> However, he does say that,

However all this may be, it is surely patent that it is best and most decorous, as well as most conducive to domestic peace, for one man to live content with one woman, and so this kind of marriage should undoubtedly be regarded as the most perfect, whose laws are to be observed most sacredly no less by the husband than the wife. (*DJN*, VI.I.19, p. 874)

It is hard to know exactly how to interpret this passage. Pufendorf’s conclusion can be read as pragmatic—that is, that monogamy is surely best (and most decorous) because it is the most reliable guarantor of

domestic harmony and individual virtue. This would be in line with his attempt to allow for variances that result from historical contingency and differences of circumstance. Or his point may be quasi-aesthetic, that is, that a relationship in which all parties have a symmetric relationship to moral law is more pleasing than one in which they do not. Symmetry then becomes a virtue of marriage as much as it is a virtue of visual proportion and scientific theory. What remains clear is that Pufendorf leaves himself room to critique rather than outright condemn the biblical patriarchs; their household arrangements are less than wholly pleasing to us, and rightly so.

What conclusions can we draw about Pufendorf on female agency, sexual or otherwise? Ultimately, the text is inconclusive. At one point, at least, in discussing maternal infanticide, he recognizes female agency, both moral and sexual—and thus implicitly includes females in the general claims he is making about the base nature of human agency, both moral and sexual. And yet, in discussing polygamy, he downplays the role of female agency, rendering it climate dependent (or, at least, malleable according to the various social orders evident in differing climates). This implies either that women do not intrinsically have the same sexual desires and impulses to action as men or that the presence of such desires is irrelevant, since women will not—or cannot—act on them (that is, they lack the relevant social and political power to set their desires in motion). Or perhaps women have different sexual desires, the destructive consequences of which are negated by their political powerlessness. In any case, their social and political role renders their sexual nature irrelevant to social order and, thus, uninteresting to Pufendorf, the scholar of social order.

In other words, that Pufendorf fails to draw a decisive conclusion about the nature and role of female sexual desire is itself a fundamental conclusion about its *irrelevance*. If it is true that we ought to concern ourselves with the potentially base nature of human sexual desires because of their potentially disruptive effect on virtuous social order, then only those sexual desires capable of disrupting social order need concern us. Women as sexual beings may be passive, or they may be active but ineffectual; either way, their desires are irrelevant to the real question at hand. They thus become relevant to Pufendorf's analysis primarily as objects likely to arouse, direct, or distort male desire.

#### IV

Pufendorf, perhaps more than any other early modern philosopher, places special importance on marriage and the dynamics of gender in his social and political theory. As my paper begins to show, this makes him a figure worthy of more attention from feminist historians of political thought.

For him, sexual order—and, specifically, the strict regulation of female sexuality—is a necessary condition for social peace and harmony. This is due to the depravity of men, although questions remain about what role is played by the passions of women in this story.

The material covered here represents only a fraction of what Pufendorf has to say on the topics of gender, sexuality, and the family. A more inclusive treatment would also consider his discussion of the marriage contract, which contains some surprisingly egalitarian features. For instance, he admits there that relations between men and women can be constituted in a nonhierarchical way and gives a complicated and interesting analysis of divorce (in interaction with John Milton). It would also attend to his claims about the role—or lack thereof—of women in civil society and the tensions and possible contradictions between these various positions. In general, more work is needed not only on the other dimensions of Pufendorf's views on the family and household but also on the various contexts (historical, social, intellectual) from which these complicated discussions emerge. Gender identity and the regulation of sexuality inform Pufendorf's political thought in a number of important ways, and my treatment of patriarchal marriage has engaged just one aspect of this complex body of ideas. My hope is that more elaborate and wide-ranging discussions will follow.

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## NOTES

1. Many people provided feedback on early versions of this paper. I would like to thank the audiences at the Harvard Mahindra Humanities Center, the Workshop on Gender and Philosophy at MIT, the New England Colloquium on Early Modern Philosophy at Yale, the Texas A&M Early Modern Initiative, and the Society for Analytical Feminism. Special thanks also go to Sean Desilets, Alice MacLachlan, Bryce Huebner, Carol Hay, Aaron Garrett, Kinch Hoekstra, and an anonymous reviewer. I am most grateful to Michael Seidler, whose detailed readings and challenging commentaries were invaluable.

2. Michael Seidler, "Pufendorf's Moral and Political Philosophy," *Stanford Encyclopedia of Philosophy*, first published Sept. 3, 2010, substantively revised March 19, 2013, <http://plato.stanford.edu/entries/pufendorf-moral/>, accessed April 24, 2014.

3. For example, see Knud Haakonssen, *Grotius, Pufendorf, and Modern Natural Law* (Brookfield, VT: Dartmouth, 1999); Ian Hunter, *Rival Enlightenments: Civil and Metaphysical Philosophy in Early Modern Europe* (Cambridge:

Cambridge University Press, 2001); J. B. Schneewind, "Pufendorf's Place in the History of Ethics," *Synthese* 72, no. 1 (1987): 123–55; and, most recently, Stephen Darwall, "Pufendorf on Morality, Sociability, and Moral Powers," *Journal of the History of Philosophy* 50, no. 2 (2012): 213–38. The major exceptions are Ursula Vogel, "Political Philosophers and the Trouble with Polygamy: Patriarchal Reasoning in Modern Natural Law," *History of Political Thought* 12, no. 2 (1991): 229–51, and Maria Drakopoulou's edited collection *Feminist Encounters with Legal Philosophy* (New York: Routledge 2013), which contains a chapter titled "Samuel Pufendorf, Feminism, and the Question of 'Women and Law.'" Michael Seidler, "Religion, Populism, and Patriarchy: Political Authority from Luther to Pufendorf," *Ethics* 103, no. 3 (1993): 551–69, and Kari Saastamoinen, *The Morality of Fallen Man: Samuel Pufendorf on Natural Law* (Helsinki: SHS, 1995) also pay some attention to the issue. It is easy to document the striking lack of attention to these issues in "mainstream" Pufendorf scholarship in English, but doing so would take up too much space for this particular paper. It is uncontroversial, I take it, to point out this lacuna in the scholarship.

4. The following version of the *DOH* is used here: Samuel Pufendorf, *On the Duty of Man and Citizen according to Natural Law*, ed. James Tully, trans. Michael Silverthorne (Cambridge: Cambridge University Press, 1991).

5. There is no doubt that Pufendorf has, in fact, been almost entirely overlooked by the (now relatively large) Anglophone feminist literature on early modern social contract theory. Interestingly, Carole Pateman's canonical work, *The Sexual Contract* (Stanford, CA: Stanford University Press, 1988), does include some brief mentions of Pufendorf, although Pateman is interested in his views on slavery, not women and marriage. But Pateman's later works, including her recent book with Charles Mills, *Contract and Domination* (Cambridge: Polity Press, 2007), include no references to Pufendorf at all. And a search of the indexes of a great number of books on this topic coming out of philosophy, political science, intellectual history, and gender studies turned up only a couple of references to Pufendorf, and even those were mostly a sentence or part of a sentence. On the one hand, this is not surprising given Pufendorf's absence in the canon of Western political thought. However, anyone looking carefully at early modern social contract theory cannot help but come across Pufendorf and quickly realize his importance. In any case, there is no sustained discussion, at least in English, of Pufendorf by academics interested in women and the history of moral/political philosophy.

6. The following version of the *DJN* is used here: Samuel Pufendorf, *De jure naturae et gentium libri octo*, trans. C. H. Oldfather and W. A. Oldfather, with an introduction by Walter Simons (Oxford: The Clarendon Press, 1934).

7. The following version of the *EUJ* is used here: Samuel Pufendorf, *Two Books of the Elements of Universal Jurisprudence*, trans. William Abbott Oldfather and Thomas Behme (Indianapolis, IN: Liberty Fund, 2009). Note that *EUJ* is an early work, in which Pufendorf's natural law theory is not yet fully developed. The points in the quotations I use from *EUJ* are all echoed elsewhere in his mature political theory.

8. See C. L. Carr, and M. J. Seidler, "Pufendorf, Sociality, and the Modern State," *History of Political Thought* no. 3 (1999): 354–78.

9. Hunter (*Rival Enlightenments*) makes this point most forcefully but see also Haakonssen (*Grotius, Pufendorf, and Modern Natural Law*), Schneewind ("Pufendorf's Place in the History of Ethics"), and Saastamoinen (*The Morality of Fallen Man*). It is, of course, crucial that what we mean when we use terms like "secular" to apply to the seventeenth century is different from how we use it today. And Pufendorf scholars seem to disagree on exactly how to understand the relationship between natural law and theology in Pufendorf. For example, Schneewind says,

We must begin by noting the religious underpinning of Pufendorf's method. One of his avowed aims is to show that morality, or natural law, has a firm basis which does not rely on controversial religious claims (L. Preface, p. ix). But this aim does not, on his view, require him to dismiss religion completely from natural law theory. There are religious convictions which all reasonable men share, and to which appeal can be made. Thus he assumes both that "it has long been established by men of discernment . . . that God is the maker and controller of the universe", and that this belief is a common possession of mankind (L.II.iii.20, p. 217; cf. L.III.iv.4, p. 383). It is only revealed religion that must be excluded from natural law theory. Natural religion is vital to it. ("Pufendorf's Place in the History of Ethics," 134).

10. Two points need to be made here. First, he also uses the language of teleology and theology in his discussion of sexual morality. However, for reasons I have given above, in a philosophical reconstruction of the argument, I think we should not include these appeals. Second, whether he "based" such claims on his natural law theory might be debatable, since one might argue that they are not so based but, instead, constitute holdovers from other, more traditional viewpoints. That is, it is quite possible that Pufendorf is at least partially inconsistent, and if so—or to that extent—his claim that sociality requires a certain kind of family life may simply be insufficiently examined, or wrong.

11. Obviously, insisting on *male* monogamy would have the same result in terms of ensuring peace. But Pufendorf does not do that—presumably because he thinks men's sexual nature is (inevitably? legitimately?) promiscuous (at least more so than women's). But importantly, this presumption is a separate point from the one about assuring paternity.

12. One might suspect that Pufendorf is overstating his claim here. At other points in the text, he insists that other things be in place as well—a certain level of financial security, for example—for a union to count as a marriage.

13. Plutarch, *Moralia*, trans. Frank Cole Babbitt (Cambridge, MA: Harvard University Press); Plutarch, "XII. The Women of Ceos," *Mulierum virtutes*, ed. Frank Cole Babbitt (London: William Heinemann Ltd., 1931), 3, <http://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A2008.01.0207%3Achapter%3D12>, accessed April 24, 2014). Note, of course, that Pufendorf quotes only part of this text.

14. There is at least one difference, though: in the cattle passage, it is clear that the problematic or troublesome sexual desires are men's. This is not clear in the Ceos story.

15. It is worth considering why Pufendorf does not seem to take seriously—and he definitely does not emphasize—the possibility that *men* might be required to restrain their sexuality with regard to women. Does he not consider this because he thinks men are just not capable of it? (Presumably not, because men can behave themselves in Ceos, the place without rape, adultery, or fornication.) Why is the onus completely on women? Also, it is odd because when he *does* think men need to show sexual restraint, it is not with regard to women; rather, it is with regard to other men or animals. This might put more pressure on the importance of the need for assurance of paternity, which, after all, is the only thing that is different between women on the one hand and men/animals on the other.

16. See Hunter, *Rival Enlightenments*.

17. Hunter (*ibid.*) and Seidler both clearly make this point. Saastamoinen in particular emphasizes the Lutheran roots of Pufendorf's view that human beings are "seething with evil desires" (*Morality of Fallen Man*, 73).

18. Again, Hunter (*Rival Enlightenments*) is probably the best example. In his early work Saastamoinen mentions but does not develop the point about sexual desires; his later work does not even mention them.

19. While we make an important moral distinction between abortion and infanticide, Pufendorf does not seem to. He does take up the question of when life begins but does not offer a definitive answer (see *DJN*, I.1.7, p. 8).

20. The generality of Pufendorf's moral claim presupposes a number of different things, the most obvious being that the sex was consensual. He does not answer the question of whether natural law forbids rape victims from killing the resulting infant or inducing miscarriage. Of course, at the time, women who had extramarital sex that we would now consider nonconsensual were almost always regarded as having chosen it, so it is likely that a large number of the cases to which Pufendorf refers we would now call rape. Yet, despite our understandable misgivings about Pufendorf's ability to recognize those cases when a woman really does "take a man to herself" of her own volition, there remains a discernable phenomenon here, namely, that some women do have consensual, extramarital sex and end up with unwanted pregnancies that pose a threat to their reputations. Pufendorf may misrepresent the *conditions* of female sexual and moral agency, but he has not failed to recognize the agency itself.

So, Pufendorf seems to be assuming that these pregnancies resulted from extramarital affairs to which women consented; but how does he square women's "agency" in this instance with his general view of lusty males? His broader worldview would certainly suggest that rape would be a possibility, but here it seems he is not imagining a scenario in which the woman was impregnated against her will.

21. Very briefly, he seems to reject polyandry because it is necessarily and fundamentally unstable. If we reconstruct the argument, we can see that there

is a kind of transitivity at work: things that are unstable violate natural law; polyandry is an unstable institution; so, polyandry violates natural law. The only evidence he gives seems to be that men will not take care of children that they cannot be sure are their own. When he discusses examples of polyandry, he does not adduce evidence in which the multiple husbands fight among each other. Nor does he claim that the children are not properly taken care of, though he says that the males will not be able to recognize which children are theirs.

22. Vogel, "Political Philosophers and the Trouble with Polygamy."

23. "Whether or not this form of polygamy is repugnant to the law of nature, is a question upon which the learned are not yet in entire agreement. We for our part will set forth the arguments for both sides, leaving the decision to the reader" (*DJN*, VI.I.17, p. 870).