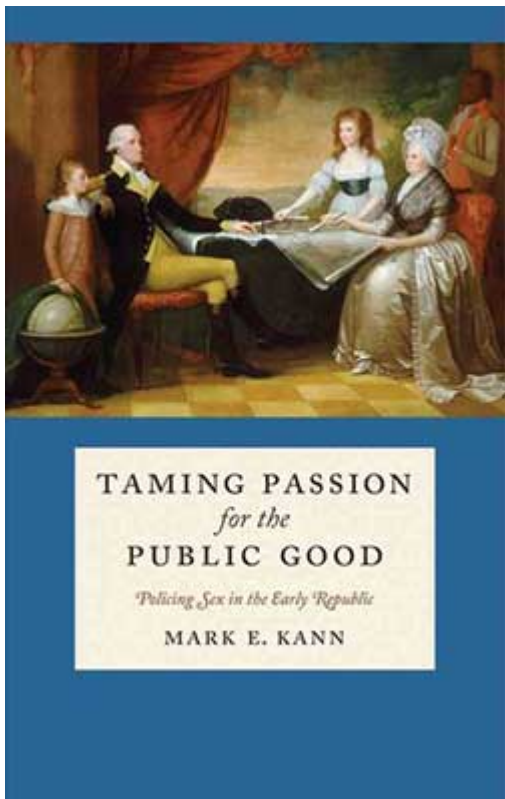
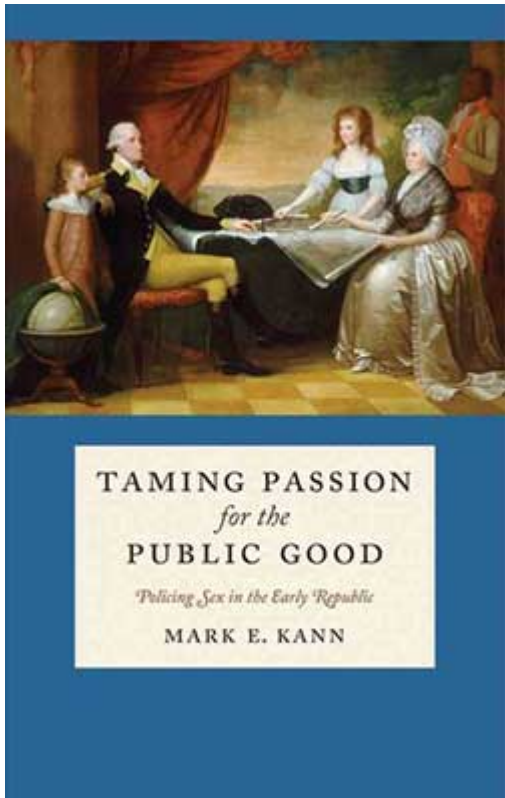


# Sex, Patriarchy, and the Liberal State



Mark E. Kann, *Taming Passion for the Public Good: Policing Sex in the Early Republic*. New York: NYU Press, 2013. 248 pp., \$49.

Decades of scholarship on liberalism and the legacy of the American Revolution have made two things clear about the liberal state. First, the liberty, individual rights, rights to property, and equality under the law theoretically guaranteed by the liberal state were not distributed evenly throughout its population. A combination of historically specific circumstances and inequalities inherent to the way liberal thinkers conceived of rights functioned to ensure that white men, especially propertied white men, were the primary beneficiaries of liberalism in America. Second, even for the people whose rights the liberal state recognized and protected, liberalism could be a profoundly coercive system. Coercion, far from being antithetical to the liberal conception of freedom, was often necessary to secure it.

Mark Kann's impressive new work on the policing of sex in the early republic highlights both of these facets of American liberalism. Kann's central contention is that the liberal legacy of the American Revolution did not displace older forms of patriarchal authority. On the contrary, patriarchal authority adapted itself to liberalism, becoming a central means of preserving and protecting the new liberal state. Using the policing of sexuality as his lens, Kann analyzes the ways in which the liberal state and its (male) agents continued to exercise police powers that originated in the right of men to maintain order in their households.

Kann's first two chapters analyze the sources of civic leaders' and state officials' authority to police sex. Drawing on Markus Dubber's argument regarding police power's origins in privileges granted to the Roman *pater familias*, Kann argues that the colonial notion that all sovereignty originated in the rights of fathers paved the way for the state to exercise police powers similar to those reserved for heads of household. Just as fathers had a nearly unchecked authority to discipline their subordinates in order to preserve the welfare of their households, the state had far-ranging authority to discipline its subjects to preserve the public welfare. While Lockean liberalism rejected a unified origin of sovereignty and the American Revolution fostered a sense of distrust in patriarchal order, neither eliminated the use of metaphors of fatherhood to explain and legitimize political authority. Kann argues that the persistence of such metaphors, combined with Lockean philosophy's allowances for the state to supersede individual rights to preserve the public good, allowed for the preservation of police powers under the liberal state. So long as patriarchal authority was "packaged with sufficiently large infusions of paternalistic caring for the public welfare," it continued to be acceptable and even appealing to post-Revolutionary generations (33).

Why did authorities feel the need to apply police powers to sex? Kann argues in his third chapter that American liberal thought emphasized the need to restrain passions, not just for the sake of avoiding individual enslavement to desire, but also for the sake of the public good. Kann posits that failure to control sexual desire or to express it through proper (marital) channels was dangerous in the context of post-revolutionary America because patriarchal order was foundational to liberalism. Patriarchal families shaped men into self-

regulating citizens of the republic who had a stake in the political system: "If traditional patriarchal family order were secured, fathers and sons would be more likely to invest liberty in virtue" (61). Behavior that destabilized the patriarchal family order threatened the young nation's political order and, indeed, its very existence. As such, Kann argues, patriarchs at the household and state level had the duty to utilize coercive and arbitrary authority to police sex for the sake of preserving liberty.

Chapters four and five examine how authorities exercised that power. Covering ground that will be familiar to readers of his previous work, Kann draws heavily on the contrasting experiences of men and women in prisons to highlight the relationship of the sexes to the state. Kann's analysis suggests that prison was a microcosm of broader trends in sexual regulation. When men's familiar indoctrination into self-restraint failed, prisons overseen by (ideally) paternalistic guards stepped in to forcibly instill sexual restraint as a means of restoring prisoners to liberty. When women strayed from the path of virtue, the situation was trickier. The duty and authority to police women generally fell to family patriarchs rather than the state, which intervened only when the patriarchal household order failed. When such a breakdown occurred, however, penitentiaries designed to restore liberal citizenship were at a loss in terms of how to deal with female inmates, who had no citizenship to restore and no men to legitimately assert sex-right over them.

The complications involved in regulating women's sexuality informs Kann's penultimate chapter on the policing of prostitution. For Kann, the state's anemic efforts to police prostitution were emblematic of the low priority it placed on actually applying its police powers to sex. Kann, echoing William Novak, argues that the state made explicit and largely uncontested claims regarding its right to regulate morality. Yet, Kann argues, the state exercised that right sparingly, and largely tolerated commercial sex despite the problems it posed. Kann speculates on a number of explanations for this, but the most compelling is that the degree to which male sex-right and financial interests were interwoven with the sex trade made it a risky target of sustained attack. The liberal state, after all, relied on consent to legitimize its nascent authority. Kann argues convincingly that this led the state to be pragmatic in its approach to regulating sex, lest police power come under sustained challenge.

Kann's book will be of interest to historians of sexuality, though at times Kann's conception of what constituted the regulation of sex and how that regulation was carried out is reminiscent of the repressive hypothesis. Because he is primarily concerned with patriarchal and state authority, Kann's analysis focuses more on—to borrow language from Foucault—power with the king than power without. There is nothing inherently problematic in this approach, but it is somewhat limited in that it provides a much clearer view of negative forms of sexual regulation (e.g. "You mustn't do *X*") than positive ones (e.g. "*Doing Y* is healthy and fulfilling"). Kann does acknowledge at many points in his text that non-state authorities—patriarchal, medical, or otherwise—deployed

discourses of normative sexuality in an attempt to shape men's and women's sexual behaviors. Yet, his attempts to gauge the extent of sexual regulation in the nineteenth-century seldom acknowledge these figures (Kann claims at one point that "elites showed considerable circumspection when actually applying the power of culture and the power of the state to monitor and regulate people's sex lives" [5]). That Kann does not devote more attention to positive attempts to regulate sex is something of a missed opportunity, as it would have allowed him to acknowledge more fully that policing sex was the project of a broader array of people than elites and patriarchs. Positive regulation could and did take place in everyday interactions, among those who lacked the formal political authority or right to punish that negative regulation required. Conceiving of the regulation of sex as an activity that diverse groups of people participated and invested in might have helped Kann in his attempts to grapple with why Americans generally consented to the state's policing of sex. It also may have pointed to why the state so rarely deployed its police power in matters of sex—namely, that it was not the central or primary agent in the diffuse process of regulating sexuality.

This issue aside, however, Kann's work is provocative and compelling in its take on the relationship between sex and the liberal state. Kann begins his book by asserting that citizens in an emergent liberal society might have expected a "wall of separation" guarding something so "very personal, private, and meaningful" as their sexual experimentation and sexual lives (21). What his analysis makes clear, however, is not only how unlikely it would have been for the post-revolutionary generations to hold or sustain that view, but also how difficult it remains to do so now. Kann argues in his final chapter that the American state continues to exercise nearly unchallenged patriarchal authority to police sex. Whether or not one agrees with this characterization, Kann's analysis vividly illustrates how complicated issues of sexual regulation remain. Even if Americans deny that the state has the right to regulate sex, sex is so interwoven with issues of interest to the state—crime, reproduction, family, and economy—that it is difficult to imagine that its *de facto* regulation could ever be eliminated without a profound reevaluation of the foundations of liberal governmentality.

Overall, Kann's work is a must-read for both specialists and those looking for an introduction to issues of sex, law, and the state. Kann's analysis of the theoretical and legal basis upon which the state policed sex is sophisticated and nuanced in a way that rewards close reading. His thesis is convincing, and Kann draws from an impressive array of secondary works on philosophy, political science, and social, cultural, and legal history to make his claims. The synthesis of such a diverse array of scholarship is a feat, and Kann accomplishes it in a way that powerfully asserts the importance of scholarship on sexuality, gender, and family to our understanding of law and the American state.

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