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9 Hobbes Comes Out for Equal Marriage

Eleanor Curran

Introduction

Hobbes, of course, says nothing about the notion of equal marriage, at least in the sense that we understand that term in the early twenty-first century. We can, however, ask the question, “What might he say about it?” I will attempt to answer that question from two different angles. First, I examine Hobbesian arguments that we might marshal, on Hobbes’s behalf, to use in support of equal marriage; that is, in support of the proposal that same-sex couples should be able to marry. Second, I examine biographical evidence which may give us an insight into Hobbes’s attitude to homosexuality. I argue that there is some evidence that Hobbes would not have personal objections to arguments supporting equal marriage.

There are, I argue, at least three kinds of Hobbesian arguments that can be used to defend equal marriage. First, Hobbes argues for rough natural equality and against all arguments for natural hierarchy. His arguments against natural hierarchy take the form of arguments for the equal treatment of persons, including the argument for equity. Second, I claim that Hobbes’s argument for natural equality contains an argument for the equal rights of all individuals. And third, there is the argument that everyone has the right to pursue happiness; the right to a commodious life.

Hobbes’s arguments for equality have received a great deal of scrutiny and the conclusion of commentators has often been that the arguments are instrumental.¹ I have argued elsewhere that Hobbes’s arguments for equality should be examined on their merits as well as for their use to further other Hobbesian arguments about, for example, how to move towards peace.² And, we should not ignore Hobbes’s many rhetorical comments and remarks against the notion of natural hierarchy, which also support the view that he is sincerely committed to equality. I argue, therefore, that the weight of the textual evidence, with regard to arguments for equality, is likely to suggest support for equal marriage.

Background

First, it may be helpful to provide some background to the arguments that have characterized the political debate on equal marriage. In making

the case for extending the option of marriage to same-sex couples, advocates of equal marriage have drawn attention to the injustice of excluding same-sex couples from the benefits that arise from being married. These benefits may be financial, legal or social. Marriage can be defined as a legal contract, as a social good and as a religious rite. It can also be seen as a civil status and a social practice.³ In terms of political philosophy it has traditionally been seen as the way in which procreation, family relations and inheritance are managed by the state and, to some extent, the division of labor and resources in the domestic sphere. It has also had a dual role in moral philosophy as setting out how sexual relations should be conducted or the parameters within which sex is said to be morally allowable or commendable.

Historically, at least in Europe and the West, apart from Plato's unconventional views on procreation and child rearing, marriage has been defined as between a man and a woman for the purposes of procreation, child rearing and family organization. Through the medieval period, the emphasis was on marriage as an economic transaction and to some extent this continues well into the modern era. Dowries were still common in some areas into the twentieth century.

The emphasis on marriage as providing the only permissible setting for sexual relations comes with Christianity and the natural law theory of the Christian philosophers. There are significant differences of emphasis between individual philosophers and theologians, but all agree that it is the God-given purpose of marriage, as governing the necessary process of procreation, that leads to the sanctioning of sex within marriage. The Christian view of sex as, at least to some extent, inherently bad or sinful and as only gaining moral approval within marriage, is still influential and has informed much of the debate about same-sex marriage. A growing emphasis on the companionship aspect of marriage, which has also come from Christian philosophy, is influential on the other side of the argument. As long as marriage is allowable between men and women who are unable or unwilling to have children, then sex can be condoned for the expression of a relationship of affection rather than purely for the purpose of having children. Once this is accepted, then it is arguable that sex within same-sex relationships, in the context of a stable, supportive and loving relationship, is also allowable.

Arguments against equal marriage are often religious and focus on the moral/religious impermissibility of sex between two people of the same sex. With the changing climate of opinion about same-sex relationships and their increasing acceptance, the arguments from those whose disapproval is grounded in religious belief have become couched in terms other than outright religious and moral condemnation.

Arguments in favor of same-sex marriage often appeal to liberal principles of justice:

Many arguments for same-sex marriage invoke liberal principles of justice such as equal treatment, equal opportunity, and neutrality. Marriage

provides benefits which are denied to same-sex couples on the basis of their orientation; if the function of marriage is the legal recognition of loving, or “voluntary intimate,” relationships, the exclusion of same-sex relationships appears arbitrary and unjustly discriminatory.

(Wellington 1995, 13)⁴

Three Kinds of Argument against Equal Marriage

The project of assessing what position Hobbes might take on equal marriage is problematic for many reasons. The debate is a modern one conducted using modern terms and with reference to current norms and mores about sexual relationships, all of which would be unrecognizable to Hobbes. And yet, I argue, there is enough proximity between today’s debates on equal marriage and debates with which Hobbes was familiar for us to be able to make some reasonable assumptions about what stance he might take.

The most common kind of argument that is made against equal marriage is one that employs the notion of natural hierarchy. Arguments for the existence of a natural hierarchy are common to Hobbes’s world much more than they are to our world, so this seems a good place to start. Many arguments against gay marriage assume a natural hierarchy in sexual relationships, with heterosexual relationships defined as the norm and therefore superior in the “natural order.” U.S. Senator Lindsey Graham (Republican of South Carolina), for example, has put it in the following way:

I believe in traditional marriage—between a man and a woman, without animosity, . . . I don’t mind if people are able to transfer their property, visit their loved ones in hospitals, but marriage to me, I’ve stayed with the concept of traditional marriage.⁵

Here we can see the response to appeals for some benefits associated with marriage being extended to same-sex couples, coming up against a red line when it comes to marriage itself and the legal and social (and, for many, religious) status it confers. The argument, implied rather than stated, is that even if same-sex relationships should be recognized on grounds of compassion or human rights, so that the injustice of a denial of rights to property transfer, hospital visitation and so forth can be reversed; these relationships nevertheless fall short of the ideal of a marriage between a man and a woman.

In the Irish debate on equal marriage leading up to the referendum of 2015, those campaigning against equal marriage argued, for the most part, from religious beliefs that dictated what was “natural” and what was not:

I don’t believe that homosexuals are equal in marriage. I’m not homophobic, but I don’t want the idea of homosexual parents to be normalised.”⁶
 . . . [Archbishop Eamon Martin] said it is a “fact of nature” that same-sex unions are “fundamentally and objectively different” from the sexual union of a woman and a man, which is “naturally open to life.”

He said the Church “cannot support an amendment to the constitution which redefines marriage and effectively places the union of two men, or two women, on a par with the marriage relationship between a husband and wife.”⁷

Hobbes on Natural Hierarchy

For Hobbes, those who argued for natural hierarchy were the establishment of the time, that is, the royalist, aristocratic ruling class (before and after the Interregnum). He was attached to this class, quite literally, as an employee of the Cavendish family who became the Earls of Devonshire, from when he left Oxford until his death. His attachment was such that he became more than a servant, perhaps, but always less than a family member.⁸ And it is worth noting that he was, to a certain extent, distanced from the family in the middle period of his life, from his self-imposed exile in Paris from 1642 to 1651–2 and on his return to England, when he lived independently in London for the most part, until after the Restoration in 1660.⁹ I have argued elsewhere that commentators have perhaps been too hasty to attribute political beliefs to Hobbes on account of his close associations with leading royalists and that this has led to “royalism by association” and also, more importantly for this discussion, influenced the way in which Hobbes’s more radical ideas on equality have all too often been interpreted as purely instrumental rather than sincere.¹⁰

Hobbes argues directly against the notion of a natural hierarchy and he often criticizes those who argue for a natural hierarchy using strong rhetorical language. He is scathing, for example, about Aristotle’s infamous argument in support of slavery.¹¹ He argues instead that there is rough natural equality among all individuals, and with this argument he pits himself against the orthodox royalist view that there is a natural hierarchy, that is, that there is natural *inequality*. The divine right theorist Sir Robert Filmer puts some of his remarks on natural hierarchy in terms of the natural hierarchy within the family:

The king, as father over many families, extends his care to preserve, feed, clothe, instruct and defend the whole commonwealth. His wars, his peace, his courts of justice and all his acts of sovereignty, tend only to preserve and distribute to every subordinate and inferior father, and to their children, their rights and privileges, so that all the duties of a king are summed up in an universal fatherly care of his people.¹²

Contemporary critics of Hobbes, like Filmer, were quick to pounce on his arguments defending natural equality, declaring that they were both wrong and dangerous. Filmer connects Hobbes’s support for natural equality to his support for natural liberty and sees them as leading to a right to rebellion in *Leviathan*. He declares that this “dangerous proposition” (that subjects have

a right to rebellion) comes from the “erroneous principle” of the “supposed natural equality and freedom of mankind.”¹³

Clarendon also argues for natural hierarchy:

And without doubt, the observation of all Ages since that time hath contributed very much to that Conclusion which Mr Hobbes so much derides, of Inequality by nature, and that Nature itself hath a bounty which she extends to some men in a much superior degree then she doth to others.¹⁴

Arguments for the existence of natural hierarchies are often based on simple empirical claims. In these cases, one might think, it should be a fairly straightforward matter to offer counterexamples as evidence against such claims and demonstrate therefore that such arguments would be vulnerable to attack. Arguments claiming natural hierarchy are actually quite difficult to attack in this way because the weight of evidence, at least if we are talking about natural abilities and aptitudes, is often on the side of differences rather than sameness.

Hobbes is arguably well aware of the difficulties of proving exact factual equality and doesn't attempt it. Instead, he grants his natural hierarchy opponents the argument that “there be found one man sometimes manifestly stronger in body, or of quicker mind than another”;¹⁵ and then goes on to argue for what is often termed “rough equality”:

. . . yet, when all is reckoned together, the difference between man, and man, is not so considerable, as that one man can thereupon claim to himselfe any benefit, to which another may not pretend, as well as he.¹⁶

He is moving from the empirical argument to the moral argument and it is the moral argument that matters here. It is what follows the argument for rough equality, in terms of how people are treated by other individuals and by the state or sovereign, that has moral and political significance, rather than the mere statement regarding factual equality. Similarly, it is what follows from arguments that there is a natural hierarchy, in terms of how people should be treated, rather than a mere statement of natural hierarchy, that has moral and political significance. In other words, when Clarendon declares that “[n]ature itself hath a bounty which she extends to some men in a much superior degree then she doth to others;”¹⁷ it is the conclusions he draws from this about how people should be treated that is significant:

In all well instituted Governments . . . the Heirs and Descendants from worthy and eminent Parents, if they do not degenerate from their virtue, have bin always allowed a preference and kind of title to employments and offices of honor and trust.¹⁸

So, for Clarendon, the argument is that where nature bestows privilege, the sovereign should bestow rewards in keeping with that privilege and its entitlements.

Returning to the subject of equal marriage; how might Hobbes respond to opponents who argue that there is a natural hierarchy in relationships and that marriage confers privilege rightly, according to that hierarchy?

Hobbes's Arguments for the Equal Treatment of Persons

The arguments used by opponents of equal marriage that refer to a natural hierarchy in relationships, use that natural hierarchy to justify unequal treatment. As Archbishop Eamon Martin says (above), the church cannot support treating same-sex relationships “on a par with the marriage relationship between a husband and wife.”¹⁹ Many who oppose equal marriage do now support civil unions (although most argued against them in the past) as a concession to the human rights arguments and arguments from compassion, about the denial of certain important benefits, while maintaining the natural-hierarchy argument against equal marriage.

The argument, simply put, is that the marriage between a man and a woman is naturally superior to any so-called marriage between partners of the same sex. The ingredient that makes that relationship naturally superior may be said to be the biological possibility of producing children, the religiously ordained status of traditional marriage, the “natural” biological functions of male and female sex organs, the longevity or “tradition” of such marriages as the accepted norm in our culture and so on. Whatever aspect of the relationship is picked out as the significant one, it is then argued that it would not be justified to treat relationships that lack the special status as though they are “on a par” with the superior relationship.

Hobbes has a slew of arguments at his disposal to counter this form of argument against equal marriage. They are all arguments for the equal treatment of persons. He starts his discussion of the ninth law of nature, “against Pride,” with a startling statement:

The question who is the better man, has no place in the condition of meer Nature; where, (as has been shown before,) all men are equall. The inequality that now is, has been introduced by the Lawes civill.²⁰

Referring back to his argument for rough factual equality, he makes a normative claim. Not only is it the case that we are more or less equal in our abilities, but it is not even justifiable to ask the question who is better than another; who has moral superiority. And then he shifts to the political sphere with the extraordinary statement that the inequality that exists now comes from “the laws civill.” He seems to be saying that inequality is a political matter. It doesn't exist in any significant sense in nature and there is no moral question to answer that would put one person above another. The

inequality that we observe comes not from nature but from the state. He reiterates this point in Chapter 30 of *Leviathan*, when he says, “The Inequality of Subjects, proceedeth from the Acts of sovereign Power.”²¹ And the moral question of how people should be treated, regardless of their factual equality or inequality, is answered unequivocally:

If Nature therefore have made men equall, that equalitie is to be acknowledged: or if Nature have made men unequal: yet because men that think themselves equall, will not enter into conditions of Peace, but upon Equall termes, such equalitie must be admitted. And therefore for the ninth Law of Nature I put this, That every man acknowledge other for his Equall by Nature. The breach of this Precept is *Pride*.²²

Applying this to the arguments from natural hierarchy against equal marriage, it seems that Hobbes is most likely to argue that whether or not the traditional marriage relationship between a man and a woman is argued to be in some sense superior, that is not a reason for unequal treatment. On the contrary, same-sex relationships should be treated as equal to opposite-sex relationships, whether they are actually equal in every sense or not.

There is a possible counterargument that Hobbes is referring specifically to what is needed in order for people to “enter into conditions of peace” and therefore that this requirement to treat equally even those who are “unequal” might not apply in other contexts.

My response to such an objection would be that Hobbes repeats the principle that we should treat others as our equals, both in the tenth law of nature, “against Arrogance” (of which more below), and perhaps most importantly for this discussion, in the eleventh law of nature, “Equity”. “. . . [i]f a man be trusted to judge between man and man, it is a precept of the Law of Nature, that he deale Equally between them.”²³

Equity is particularly relevant for the case supporting equal marriage as it concerns the law and how the law and legal judgments should treat people. But it also goes to the heart of what Hobbes has to say on equal treatment generally. In a recent illuminating analysis of Hobbes on equity, Larry May makes the bold claim that “equity, not justice, is the dominant moral category in Hobbes’s political and legal philosophy.”²⁴ He argues that while many of Hobbes’s readers are shocked by his apparent reduction of justice to mere legality, they shouldn’t see Hobbes’s narrow conception of justice as a rejection of the notion of fairness because that notion is fully recaptured in his conception of equity.²⁵

The prime duty of the sovereign is to procure the safety of the people:

The OFFICE of the sovereign, . . . consisteth in the end, for which he was trusted with the Sovereign Power, namely the procuration of the safety of the people; to which he is obliged by the Law of Nature, . . .²⁶

He continues:

The Safety of the People, requireth further, from him, or them that have the Sovereign Power, that Justice be equally administered to all degrees of People; . . . For in this consisteth Equity: to which, as being a Precept of the Law of Nature, a Sovereign is as much subject, as any of the meanest of his People.²⁷

Hobbes could not be clearer in his argument that the duty of the sovereign is to treat all subjects equally. Applying this argument to the case for equal marriage, it seems clear that Hobbes will support equal treatment as a matter of moral and political principle, including the principle of procedural justice. And even if the relationships in question are argued to be, in some sense, less than equal to those of traditional marriage, there is good reason to expect that Hobbes will still support equal treatment. It seems safe to assume that if faced with a choice of policies, one of which delivers equal treatment to all couples be they in opposite-sex or same-sex relationships, and the alternative, which delivers benefits to opposite-sex couples that are not available to same-sex couples, he will support the former.

Hobbes's Arguments for Equal Rights

As well as arguments directly for the equal treatment of persons, Hobbes also has at his disposal arguments for the equal rights of all individuals. Many of the discussions of equal marriage have been conducted around the issue of equal rights. Those supporting equal marriage often argue that it is a human rights issue—in other words, every adult has a right to get married and this right should not be denied to individuals in same-sex relationships.

The right to marry is enshrined in Article 16 of the Universal Declaration of Human Rights (UDHR):

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.²⁸

As Amnesty International points out, “. . . this non-discrimination principle has been interpreted by UN treaty bodies as prohibiting discrimination based on gender or sexual orientation.”²⁹

In the tenth law of nature Hobbes provides a law for equal rights:

On this law (the ninth) dependeth another, That at the entrance into conditions of Peace, no man require to reserve to himselfe any Right, which he is not content should be reserved to every one of the rest.³⁰

He refers back to the all-important second law of nature³¹ to remind us that “it is necessary for all men who seek peace, to lay down certain Rights of Nature; that is to say, not to have libertie to do all they list,” and he continues with a passage that sets out just how extensive the retained rights should be:

So it is necessarie for mans life, to retain some; as right to governe their owne bodies; to enjoy aire, water, motion, waies to go from place to place; and all things else without which a man cannot live, or not live well.³²

This crucial and fascinating passage provides strong evidence against those (many) commentators who insist that Hobbes is concerned only with the right to bare physical survival and who argue that Hobbes says the subjects give up all but these basic self-defense rights to the sovereign. On the contrary, he demonstrates here that all subjects not only have the right to self-defense or to bodily survival but they also have the right to “live well”; to live what he would call a commodious life.

I have argued elsewhere, and there is not space to do so here, that Hobbes holds a strong theory of individual rights in *Leviathan* and that, contrary to much traditional Hobbes scholarship, many of those rights are not just “bare freedoms” or “liberty rights” with no duties on the part of others to respect them. With the second law of nature, Hobbes sets out a system of the transferring and renouncing of invasive rights which leaves us with duties to respect the rights that are retained by others. Each individual, he says, is “obliged or bound not to hinder those to whom such right is granted or abandoned, from the benefit of it: and that he ought and it is his duty not to make voyd that voluntary act of his own.”³³

If I am correct that Hobbes argues for extensive retained rights that should be respected by others and for the equal rights of all subjects, then he has the arguments to support equal marriage on grounds of equal rights.

I would like to briefly discuss one further Hobbesian argument that could be made in support of equal marriage. It concerns the right, in *Leviathan*, as above, to a commodious life. In Chapter 30 of *Leviathan*, Hobbes says that the defining responsibility of the sovereign is “the procuracion of *the safety of the people*,” and he then expands on what he means by safety, which is not, as orthodox interpretation has it, mere physical safety. It is something much more extensive:

But by Safety here, is not meant a bare Preservation, but also all other Contentments of life, which every man by lawfull Industry, without danger, or hurt to the Commonwealth, shall acquire to himselfe.³⁴

Now we have, in addition to the argument that all subjects have a *right* to “live well,” a statement that the sovereign, to fulfill her office, must bring

about the conditions under which subjects will have not just the basics for survival but may also strive for the “contentments of life.” In “By Instruction and Lawes,” Hobbes states that the sovereign should achieve those conditions under which subjects may have the contentments of life, by both public instruction “both of Doctrine and Example;” “and in the making, and executing of good Lawes.”³⁵

Hobbes is saying that individuals have a right to a fulfilled and happy life and the sovereign is bound to create the conditions, both ideological and legal, that will enable people to live that life. It is an easy step from that to argue that people in same-sex relationships who want to get married and believe that being married would make them significantly happier should be facilitated in doing so by the state, and what is more, they should be encouraged and supported in doing so by the state.

Finally, I would like to mention two possible counterarguments to my position and how I would answer such counterarguments.

There is a passage in *De Corpore Politico* that might be used on the other side of the argument, to demonstrate that Hobbes would not support, indeed would condemn, arguments in support of equal marriage.

For the temporal good of the people, it consisteth in four points: 1. Multitude . . . it is the duty of them that are in sovereign authority, to increase the people, . . . 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 . . . not to forbid such 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 . . . 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, . . .³⁶

This passage seems to provide support for an argument that Hobbes would be likely to condemn equal marriage and indeed to argue that it should be outlawed by the sovereign. What is significant about this passage in my view, however, is not that Hobbes says something so deeply conventional in his early writing³⁷ but that he chooses not to repeat it, or anything along similar lines, in *Leviathan* (or even in *De Cive*). The fact that this passage or anything similar to it does *not* appear in *Leviathan* demonstrates, I argue, that Hobbes has either changed his mind on this or thinks it is of no importance. There is a parallel to be drawn with Hobbes’s arguments regarding the rights of subjects that, as I have argued elsewhere, change in significant ways between his earlier writings and *Leviathan*. In the earlier writings, Hobbes argues for the conventional view, held by royalists as well as by contemporary philosophers such as Grotius, that subjects must give up

their rights to the sovereign, including their right to self-defense. According to this early view, there is no right to resist the sovereign.³⁸ In the infamous Chapter 21 of *Leviathan*, however, this changes dramatically to an argument that subjects cannot and must not give up their rights to defend and preserve themselves, even to the sovereign, and that resisting or disobeying the sovereign can therefore be justified.³⁹

My argument regarding the passage above is that Hobbes's failure to repeat this passage or something similar is evidence of his rejection of it, or at the very least, of a choice to ignore it as unimportant, in the later writings and specifically in *Leviathan*.

Hobbes's remarks on marriage and on the raising of children are restricted, in *Leviathan*, to his own, at times eccentric, arguments from first principles, rather than echoing any conventional or orthodox views of the time. These remarks proceed strictly from his own precepts about equality, power and dominion. For example, Hobbes cites the highly unorthodox case of the Amazons, without censure, when he is considering whether dominion over children lies in the mother or the father, in the state of nature.⁴⁰ He also argues that if there is no contract, then the dominion lies with the mother, because the child is in the power of the mother and also because it can only be known with certainty that the mother is the parent.

The second possible counterargument I would like to address goes something like this. Hobbes's stipulation that people must be treated equally before the law can be upheld if it is said that (traditional—i.e., heterosexual) marriage is open to all (including those who are homosexual). In other words, no man or woman is denied the right to marry.

My response to this is simple. Allowing homosexual men and women to marry a member of the opposite sex may mean that the right to marry is open to all, but it would still deny those individuals the right to a commodious or happy life. It seems a reasonable assumption that heterosexual marriage for a homosexual person will be less likely to be a happy and fulfilling union than a same-sex marriage might be. In other words, while saying that heterosexual marriage is open to all regardless of sexual orientation may seem to fulfill the requirement of equal treatment before the law, it falls foul of the right to pursue a commodious life.

In conclusion, Hobbes has several arguments available to him, should he choose to use them, in support of equal marriage. The next question is the difficult contextual one: would Hobbes want to support equal marriage?

Hobbes and Equal Marriage: The Context

Is there any biographical, contextual evidence that adds weight to the proposition that Hobbes might support equal marriage? Before I address this question it might be helpful to ascertain something of the attitudes and legal situation regarding marriage and homosexuality during the time Hobbes was writing. It is always difficult to fully understand the beliefs and mores of

another time and particularly so, perhaps, in the case of personal and sexual relationships, when those relationships are legally outlawed.

Homosexuality or homosexual acts—at least those between men—were outlawed by the middle of the seventeenth century, but to what extent the law was enforced is much more difficult to ascertain. And it is more difficult again to know what people's attitudes and responses to the subject were. As Merry Wiesner points out, very little was written about it, particularly about female homosexuality.⁴¹ One place where it is mentioned is in guides to priests and monks about what penances to give for various sins. These do refer to both male and female homosexuality and generally give lower penances for female homosexuality.⁴² In 1554 an English statute prohibiting homosexual relations made no mention of women, though a similar law in Germany two years earlier specifically made female homosexuality a capital crime.⁴³

The condemnation of same-sex relations at this time has to be seen in the context of the religious beliefs surrounding procreation and marriage. Any sexual behavior outside traditional marriage was seen as sinful, and pregnancy outside marriage, demonstrating guilt of “fornication,” was the most policed and condemned of these sins. Prostitution was also increasingly outlawed during the sixteenth and seventeenth centuries.⁴⁴

The outlawing of homosexual acts was something relatively new in the early modern period, along with the increasing criminalization of other sexual behavior; “although the enforcement of sexual laws was intermittent and dependent on one's social class and gender.”⁴⁵

A homosexual subculture started to develop in the late seventeenth century in some large cities, among them London, Paris and Amsterdam. As the new subculture developed, men would meet other men of varying social classes in special houses for socializing and sexual relations. The increase in a particular culture and identity was met with increasing persecution. The Dutch Republic was the most severe, punishing “sodomites” with sentences up to and including life-long imprisonment or execution.⁴⁶

While women were not immune from sodomy accusations and trials, these were extremely rare and were most likely cases that aped heterosexual sex with some form of penetration or cases that involved women impersonating men and entering into “fake” marriages⁴⁷:

The enforcement of many sexual laws was intermittent, and rarely applied to the upper classes, who continued to have extra-marital affairs of all types, generally with little social sanction.⁴⁸

What does all this tell us about the attitude Hobbes might have had to same-sex relationships and about what the prevailing attitudes would have been among his friends and acquaintances? It is very difficult to know how to answer this, but there is one piece of evidence from his correspondence that may shed a little light on Hobbes's attitude towards (female) same-sex relationships.

The Letters of François du Verdus

François du Verdus was a close friend of Hobbes's from his time in France (1640–1651/2), when Hobbes was part of Mersenne's circle of scientists and philosophers in Paris. Du Verdus was a member of the same circle and had been taught geometry by the mathematician Roberval in the early 1640s, though there is no direct evidence of him having met Hobbes before 1651.⁴⁹ As Malcolm says, "From the warmth of their subsequent correspondence it is clear that Hobbes and Du Verdus [sic] formed a close friendship."⁵⁰ He also describes du Verdus as Hobbes's "most faithfull and devoted correspondent,"⁵¹ which is certainly borne out by the tone of his letters. There is one letter of particular relevance here written by du Verdus to Hobbes in 1664 and enclosing a poem that du Verdus had written and wanted Hobbes to read. First, the beginning of the letter to demonstrate the warm tone mentioned above:

Sir, Your letter from Latimers of 28 July overwhelmed me with joy: I found in it that jaunty humour which one would scarcely have unless one were in good health, and enjoying everything according to one's wishes. God be praised that you are in that condition; and may he keep you in it. Truly, I wish you more good fortune than I do for myself. And that is no formal compliment—I assure you, it comes from the heart.⁵²

And to the poem,

... Sir, here is that short work, "Iris", which you say you want to have. . . . I shall always be most happy to do whatever you ask of me, if it is in my power. . . . The style is light and natural, like that of a simple narrative: that is what is good. But there is nothing great or heroic, or tender or passionate in it: that is what is bad. Or rather, it would be bad if I had written it for any other purpose except to please those two ladies . . . in three evenings I completed those 500 or 600 lines, which I gave to them on the sixth day.⁵³

The poem starts with the mythical characters of Phoenix and Iris and then goes on to describe the love of two real women, also named Phoenix and Iris. The following extracts give some sense of the poem's content:

Listen to the story of the loves
Of another Iris, a much more charming one
Than the one whom the world marvels at in the sky;
Listen to what befell
The Phoenix of our times,
A much more fortunate one
Than the one (whether fictional or real) described by the poets.

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For even though Phoenix
Has made plenty of wounds
In other people's hearts,

Nevertheless those other loves,
all those other hearts,
are nothing to her in comparison with the love and heart of Iris.

She gives a loving reply: "O my beauty,
If it is true that you love me,
It is certainly true that I love you.
And if you give yourself to me,
I too give myself to you, and am yours
And shall be yours for ever; I swear it to you,
And here is a pledge of that": and so saying,
She kisses her again, and a thousand times, and again a thousand,

"Let us go to the temple, to adore God,
To worship the mother
Of our beautiful friendship:"

Those are her words; and they go there;
And they pray that Almighty God
Will deign to favour their sincere and pure friendship
And look kindly on it,
And bless it with happiness and good fortune.
And having made their prayer,
They solemnly swear
Their mutual, irrevocable pact
Under the hands of a priest, committed to that purpose.

Live happily, then both of you;
Let your loves be confined no longer to dreams, . . .⁵⁴

There are many ways that this poem could be interpreted, but whether one interprets it literally or in some other way, several things stand out. First, that du Verdus says it was written for "those two ladies" as though for two real women of his and possibly Hobbes's acquaintance. Second, it addresses the subject matter of two women in love, whether this is intended in a literal or metaphorical sense. Third, it makes reference to the swearing of a "mutual irrevocable pact under the hands of a priest." Again, whether taken literally or not, it demonstrates that Hobbes had no objection to such subject matter on religious grounds or any other grounds, as he requested that du Verdus send him the poem. We know, of course, that Hobbes was quite capable of thinking in unconventional ways about the roles and power of men and women from his remarks about mothers and fathers.⁵⁵ Perhaps this gives support to the notion that he was willing and able to think in unconventional terms about romantic or sexual relationships as well. It is

also worth mentioning that at this time it was not uncommon to find the expression of desire between women in literature.⁵⁶

There is one more piece of information that may be of interest regarding du Verdus' friendship with Hobbes and the poem. In his will (drawn up in 1666 when Hobbes was still alive and well), du Verdus left his manuscripts, which included translations of some of Hobbes's works, "and presumably his letters from Hobbes," to two people, with instructions, including the request "that someone would undertake the publication of three of his own manuscripts." One of these was a book in prose and verse, the second was the poem and the third was his translation of *De sapientia veterum*, "with its dedicatory epistle to Louis XIV and Hobbes." Whoever did this, he wrote, would automatically become his sole heir. "Du Verdus desired this in order 'to obey the one person in the world to whom I was able to submit myself', and to whom the two former works were dedicated: this act of piety was thus perhaps intended as a final tribute to Hobbes."⁵⁷

Conclusion

I would not go so far as to argue that the biographical evidence above demonstrates anything conclusive about Hobbes's attitude to same-sex relationships. But I think it may be of some interest, particularly as we know so little of Hobbes's personal life and his personal beliefs. It may help to throw a little light on one particular friendship and it provides an interesting addition of subject matter for contemplation and discussion within that friendship. And while it doesn't prove anything conclusive it does at least enable us to dismiss any possibility that Hobbes might be pious or disapproving in any conventional or sanctimonious way about the subject of same-sex relationships.

In the main portion of this chapter I have attempted to show that Hobbes has available to him several arguments that could be used to support the notion of equal marriage. His arguments for equality have often been too quickly dismissed or sidelined as arguments with the solely instrumental purpose of instituting an all-powerful sovereign to keep the peace. When examined on their merits, I argue, Hobbes's equality arguments provide powerful reasons for treating all persons as equals. And he is consistent in using rhetoric as well as argument to oppose those who argue for any kind of natural hierarchy. His arguments for equal rights and a right to a commodious life can certainly be used to support equal marriage. Taking all these arguments into account and considering them in the context of the sorts of arguments presented *against* equal marriage, it seems probable that if asked to choose sides in that debate, Hobbes would indeed come out for equal marriage.

Notes

1. Hoekstra, "Hobbesian Equality," 108.
2. Curran, "Hobbes on Equality."
3. Brake, "Marriage and Domestic Partnership."
4. *Ibid.*

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5. Puschake, "Marriage Equality."
6. McCarthy, "Irish Society Talks Marriage Equality."
7. Harkin, "Catholic Bishops Urge 'No' Vote in Republic of Ireland's Marriage Equality Referendum."
8. Curran, *Reclaiming the Rights of the Hobbesian Subject* Ch. 1.
9. Aubrey, *Brief Lives* Ch. 5.
10. Curran, "Hobbes on Equality."
11. Hobbes, *Leviathan* Ch. 15, 211. Hereafter, "*Leviathan*."
12. Filmer, Sir Robert Filmer, 12.
13. *Ibid.*, 3.
14. Hyde, *A Brief View and Survey of the Dangerous and Pernicious Errors to Church and State in Mr Hobbes's Book entitled Leviathan*, 32–33.
15. Hobbes, *Leviathan* Ch. 13, 183.
16. *Ibid.*
17. See note 14.
18. Hyde, *A Brief View and Survey of the Dangerous and Pernicious Errors to Church and State in Mr Hobbes's Book entitled Leviathan*, 182–183.
19. See note 8.
20. Hobbes, *Leviathan* Ch. 15, 211.
21. Hobbes, *Leviathan* Ch. 30, 385.
22. Hobbes, *Leviathan* Ch. 15, 211.
23. *Ibid.*, 212.
24. May, *Limiting Leviathan*, 67.
25. *Ibid.*
26. Hobbes, *Leviathan* Ch. 30, 376.
27. *Ibid.*, 385.
28. United Nations, Universal Declaration of Human Rights.
29. Amnesty International, "Love Is a Human Right."
30. Hobbes, *Leviathan*, Ch. 15, 211.
31. "That a man be willing, when others are so too, as farre-forth, as for Peace, and defence of himselfe he shall think it necessary to lay down this right to all things; and be contented with so much liberty against other men, as he would allow other men against himselfe" (Hobbes, *Leviathan* Ch. 14, 190).
32. Hobbes, *Leviathan* Ch. 15, 212.
33. Hobbes, *Leviathan* Ch. 14, 191. For a full account of my arguments on Hobbes's theory of rights see, Curran, *Reclaiming the Rights of the Hobbesian Subject*.
34. Hobbes, *Leviathan* Ch. 30, 376.
35. *Ibid.*
36. Hobbes, *Elements of Law* Ch. XXVIII.3, 173.
37. The passage quoted is from the second part of *The Elements of Law*, titled *De Corpore Politico*, not to be confused with *De Corpore*, published in 1655. *The Elements of Law Natural and Politic* was published in 1650 but circulated in manuscript form after Hobbes wrote it in 1640, before the start of the Civil Wars and before fleeing to France. It thus represents Hobbes's earliest attempt to write on the subject of political philosophy.
38. "This power of coercion, as hath been said . . . consisteth in the transferring of every man's right of resistance against him to whom he hath transferred the power of coercion. It followeth therefore, that no man in any commonwealth whatsoever hath right to resist him, or them, on whom they have conferred this power coercive" (Hobbes, *Elements of Law* Ch. XX.7, 112).
39. "It is manifest, that every Subject has Liberty in all those things, the right whereof cannot by Covenant be transferred. I have shewn before in the 14. Chapter, that Covenants, not to defend a mans own body, are voyd. Therefore, If the Sovereign command a man (though justly condemned) to kill, wound, or mayme himselfe; or not to resist those that assault him; or to abstain from the use of food, ayre,

- medicine, or any other thing, without which he cannot live; yet hath that man the Liberty to disobey” (Hobbes, *Leviathan* Ch. 21, 268–269).
40. “In this condition of meer Nature, either the Parents between themselves dispose of the dominion over the Child by contract; or do not dispose thereof at all. If they dispose thereof, the right passeth according to Contract. We find in History that the Amazons Contracted with the Men of their neighbouring Countries, to whom they had recourse for issue, that the issue Male should be sent back, but the Female remain with themselves” (Hobbes, *Leviathan* Ch. 20, 254).
 41. Wiesner, *Women and Gender in Early Modern Europe*.
 42. *Ibid.*, 67.
 43. *Ibid.*
 44. Wiesner-Hanks, *Early Modern Europe 1450–1789*.
 45. *Ibid.*, 311.
 46. *Ibid.*, 308.
 47. *Ibid.*, 309.
 48. *Ibid.*
 49. Hobbes, *The Correspondence of Thomas Hobbes, Volume II: 1660–1679*, 908.
 50. *Ibid.*, 909.
 51. Hobbes, *The Correspondence of Thomas Hobbes, Volume I: 1622–1659*, xxiii.
 52. Hobbes, *The Correspondence of Thomas Hobbes, Volume II: 1660–1679*, 649.
 53. *Ibid.*, 650–651.
 54. *Ibid.*, 654–666.
 55. “. . . there be always two that are equally Parents: the Dominion therefore over the Child, should belong equally to both; and he be equally subject to both, . . . And whereas some have attributed the dominion to the Man onely, as being of the more excellent Sex; they misreckon it. For there is not always that difference of strength or prudence between the man and the woman, as that the right can be determined without War.” So, once again, Hobbes is arguing for natural equality. And he also repeats his point that inequality comes from manmade laws, not nature, and reflects who is making them when he says, “. . . for the most part, . . . the sentence is in favour of the Father; because for the most part Common-wealths have been erected by the Fathers, not by the Mothers of families” (Hobbes, *Leviathan* Ch. 20, 253).
 56. “Female-female desire was increasingly portrayed in poetry, drama, pornography, medical literature, and the visual arts, however, sometimes coded as passionate friendship and sometimes as suspicious sexual deviance” (Wiesner-Hanks, *Early Modern Europe 1450–1789*, 309).
 57. Hobbes, *The Correspondence of Thomas Hobbes, Volume II: 1660–1679*, 911–912.

Bibliography

- Amnesty International. “Love Is a Human Right.” Accessed February 27, 2017, www.amnestyusa.org/our-work/issues/lgbt-rights/marriage-equality.
- Aubrey, John. *Aubrey’s Brief Lives*, ed. by Simon Webb. Key West, Florida: Langley Press, 2016.
- Brake, Elizabeth. “Marriage and Domestic Partnership.” *The Stanford Encyclopedia of Philosophy*, ed. by Edward N. Zalta. Accessed November 29, 2016, <https://plato.stanford.edu/archives/win2016/entries/marriage/>.
- Collins, Jeffrey. *The Allegiance of Thomas Hobbes*. New York: Oxford University Press, 2005.
- Curran, Eleanor. “Hobbes on Equality: Context, Rhetoric, Argument.” *Hobbes Studies* 25 (2012): 166–187.

- Curran, Eleanor. *Reclaiming the Rights of the Hobbesian Subject*. Basingstoke: Palgrave Macmillan, 2007.
- Filmer, Sir Robert. *Sir Robert Filmer: Patriarcha and other Writings*, ed. by Johann P. Sommerville. Cambridge: Cambridge University Press, 1991.
- Harkin, Greg. "Catholic Bishops Urge 'No' Vote in Republic of Ireland's Marriage Equality Referendum." *Belfast Telegraph*. Accessed May 4, 2015, www.belfasttelegraph.co.uk/news/republic-of-ireland/catholic-bishops-urge-no-vote-in-republic-of-irelands-marriage-equality-referendum-31192705.html.
- Hobbes, Thomas. *Leviathan*, ed. by Crawford B. Macpherson. London: Penguin Books, 1968.
- Hobbes, Thomas. *The Correspondence of Thomas Hobbes, Volume I: 1622–1659*, ed. by Noel Malcolm. Oxford: Oxford University Press, 1994.
- Hobbes, Thomas. *The Correspondence of Thomas Hobbes, Volume II: 1660–1679*, ed. by Noel Malcolm. Oxford: Oxford University Press, 1994.
- Hobbes, Thomas. *The Elements of Law: Human Nature and De Corpore Politico*, ed. by John C.A. Gaskin. Oxford: Oxford University Press, 1994.
- Hoekstra, Kinch. "Hobbesian Equality." In *Hobbes Today: Insights for the 21st Century*, ed. by Sharon A. Lloyd, 76–112. Cambridge: Cambridge University Press, 2013.
- Hyde, Edward, Earl of Clarendon. *A Brief View and Survey of the Dangerous and Pernicious Errors to Church and State in Mr Hobbes's Book Entitled Leviathan*. Oxford 1676.
- May, Larry. *Limiting Leviathan: Hobbes on Law and International Affairs*. Oxford: Oxford University Press, 2013.
- McCarthy, Barbara. "Irish Society Talks Marriage Equality." *Al Jazeera Online*. Accessed May 21, 2015, www.aljazeera.com/indepth/features/2015/05/irish-society-talks-marriage-equality-150519070921981.html.
- Puschake, Evan. "Marriage Equality: Republicans Struggle with Shifting Views." *MSNBC Online*. Accessed June 24, 2015, www.msnbc.com/the-last-word/marriage-equality-republicans-struggle.
- United Nations. *Universal Declaration of Human Rights*, 1948. Accessed www.un.org/en/universal-declaration-human-rights.
- Wiesner, Merry E. *Women and Gender in Early Modern Europe*, 2nd edition. Cambridge: Cambridge University Press, 2000.
- Wiesner-Hanks, Merry E. *Early Modern Europe 1450–1789*, 2nd edition. Cambridge: Cambridge University Press, 2013.