The Limits of Liberal Ethics: Homosexuals between moral dilemmas and political considerations in the Danish parliament

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Abstract

The vast majority of decisions in the Danish parliament are taken along party lines. Sometimes, however, the parliamentary parties allow their members to deviate from the party line. This often happens if a party has no official position or its principles or ideology are ambiguous on a particular issue. In these cases, MPs see themselves as basing their decisions on ethical rather than political considerations. This paper argues that the political debate in connection with these "ethical" issues is suspended between liberal and a communitarian values. This is demonstrated in an analysis of three debates in the Danish parliament involving homosexuality: The passage in 1989 of the Act on registered domestic partnership which made Denmark the first country in the world to allow homosexual marriage; the introduction in 1997 of a new ban prohibiting doctors from artificially inseminating single and lesbian women; the 1999 introduction of adoption by stepparent in registered domestic partnerships. The analysis demonstrates that liberal tolerance reaches far in Danish political culture, but there are limits to the liberal ethics. It further demonstrates that the study of moral considerations in general and the study of the tension between liberal and communitarian values specifically contribute to a greater understanding of Danish political life, not only at the rhetorical level, but to explaining politicians' behavior.

MANKIND

Men, said the Devil,
are good to their brothers:
they don't want to mend
their own ways, but each other's.

Grook by Piet Hein

Let us, for a while, disregard all the difficulties connected with finding the exact definition of the concepts "cigar" and "to moisten." And let us imagine that we are subjected to a surreal bombardment of news that the President of the world’s largest, and currently only, superpower has used other means besides a humidor to moisten his cigar: Offhand, most Danes would say that it is the President's private business how he chooses to moisten his cigar. The Danes were surprised, and their prejudices disproved, when the majority of Americans reacted in the same manner when the example became reality.
Although Danes - and many other nationalities - felt, in principle, that the whole case belonged to the President's private life, many of us still watched, enthralled, as a video taped testimony of the American President was shown on TV in 1998. Although we say, as an excuse, that we only watched so that we could evaluate the performance of the special prosecutor and the President in this bizarre political game about the President's private (read: sex) life, very few of us can honestly say that the story did not rouse our curiosity. Especially when we learned that a cigar was, for once, a cigar. Has not everybody with access to the Internet received and sent jokes about The Oral Office? If we take a look at our real, rather than our theoretical, attitude towards the President's sex life, we have, perhaps occasionally, thought that this business with the cigar was strange, or, in fact, unnatural. And then with such a young humidor substitute! Clinton, the energetic, youthful president with great oratorical skills, changed overnight into a dirty old man of questionable morals and a questionable ability to lead the world's greatest power. Thus, his most intimate life still ended up influencing his public office.

If Clinton's problems arose exclusively out of USA's puritan heritage, we could simply leave it all to Americanists to study. But the claim is here that this is a general phenomenon in the Western culture: in the political debate as well as in our individual ethical-moral assessment of what is right, we oscillate between two poles. On one side, we defend people's right to be different from us. On the other side, we all have our ideas about the good life and judge others' actions based on our own standards. Both sides are reflected in the Clinton case. One side represents the apparently dominating opinion that the President has a right to a private life. When one feels that this right is being violated, one may, as a statesman expressed it, feel discomfort ad nauseam. The other side represents those with a really strong faith who claim that the President is morally corrupt, because he does not live in accordance with good American family values and for this reason is unfit to fill the office as president. Between the two sides are all us average people. We try to stick to our principle that people have a right to be what they are, but we still cannot keep our private opinion of how the good life is lived from influencing our judgment of how other people live or perform professionally. The tension between these two poles is reflected at the philosophical level in the, sometimes heated, debates between liberals and communitarians. The liberals introduced rights-based thinking into
Western philosophy and civilization – and with such an impact that today it is clearly the dominating political-philosophical position. The liberal point of departure is that we do not (necessarily) all want the same, but despite this, we are forced to live (to a certain degree) in a community with others. To keep us from decapitating each other – which has proven altogether impossible, logically and in practice, if the goal is to remove all views that differ from our own – the liberals see a just political system as a system based on tolerance, impartiality and individual liberty and/or equality rights. In comparison, the communitarians say that the liberal position not only builds on a conception of man as an atomized and rootless being, but that liberalism is a major contributor to this atomized and rootless state. Consequently, the liberals remove man from his own nature, because according to the communitarians, man is a fundamentally social being who finds his identity and meaning in a community with others – hence the name communitarianism (Mulhall & Swift 1996; Kristensen 1996; Bamforth 1997). In contrast to the impartiality of liberal philosophy, communitarian philosophy claims "the moral value of a well-defined partiality" (Poulsen, 1996: 139) in relation to the common good as defined by the social community in which the individual is shaped and lives and which should be reflected by the political organization of society.

In everyday political debates, the argumentation is rarely as logically clear as in the philosophical debate. In addition, the debate is rarely between liberals and communitarians; rather it is as a debate between rights-based arguments (impartiality) and concrete communities’ communitarian arguments about what the good life is (partiality). None of us have to search very long for issues that test our fundamental rights-based philosophy. Should Jehovah’s Witnesses be allowed to deny their children blood transfusions during operations, even when this will mean death? Should Muslim parents have the right to decide whether their daughters wear veils and enter into arranged marriages? Should Nazis have the same rights as everybody else to start a school with public subsidies? We often have to relate to rights-based arguments in an abstract manner, in some cases even we even have to will it when we defend the right to be, at least extremely, different from ourselves. In contrast, our conceptions of what is substantially good seem obvious to us, because we have been indoctrinated with values through socialization in the cultural community we belong to. Group formation, and thus group solidarity and norms, emerge naturally, according to the
communitarians (Poulsen, 1996: 135-138). This means that the group norms appear natural, also to group members, in the sense that they seem self-evidently right – as opposed to other groups’ norms. They may occasionally seem so natural that they are consolidated in a literally natural order, as, for example, when gender-specific professional choices are explained by biological differences between men and women. Our oscillation between a liberal and a communitarian pole is, perhaps, due to the fact that they constitute complementary parts of a more complex set of socio-psychological dispositions: we need the close ties of our community as well as conflict management on a broader social scale. This makes the poles necessary for human existence, but does not automatically ensure logical consistency in political argumentation (Poulsen, 1996: 143).

This paper argues, first, that in issues with clear moral dimensions, the political argumentation is bounded and charged by these two political-philosophical poles, the liberal and the communitarian. They may be expressed with various degrees of clarity and sophistication, but they are being referred to in the political debate. One’s political opponents will demand an explanation of why one has landed in exactly that spot in the suspension between the two poles. This does not necessarily mean that one has landed there solely because of political-philosophical/ethical deliberations. Many other pragmatic political considerations may have contributed. But one will be held accountable for one’s choice of position and therefore, argumentation is important, also for politicians, because there is a limit to how far one can stretch one’s argument still keep one’s credibility intact (Majone, 1989; Stone, 1988). Second, the paper argues that moral considerations help explain how politicians arrive at their position, at least on some issues. Political considerations, such as voters and coalitions, cannot alone explain politicians’ argumentation and behavior.

The importance of the philosophically charged field between liberalism and communitarianism in which political discussion on ethical questions takes place and of moral positioning in politics is illustrated by three cases. (1) The passage in 1989 of the Act on registered domestic partnership, which permits same-sex couples to marry; (2) the passage in 1997 of the Act on artificial insemination which introduced a new ban prohibiting doctors from artificially inseminating single and lesbian women under all circumstances, and the attempt in 1998 to repeal this particular paragraph in the Act; and (3) the 1999 amendment to the Act on
registered domestic partnership allowing adoption by stepparent. These three cases have been selected for two reasons. First, the bills concerned issues on which all parties, with only one exception, had taken no official position; neither could an unambiguous party position be deducted from the parties’ fundamental philosophies or stance on other ideological matters. What should a good social democrat or center democrat think about gays’ rights to marry each other? Second, and in continuation hereof, in everyday political parlance, including the MPs’, the issues debated in the three cases belong to the category of political decisions that should be made on the basis of ethical rather than political considerations. Accordingly, when it came to voting on the two former cases, the parliamentary parties allowed their members to deviate from the party line. This goes against the vast majority of decisions in the Danish parliament, Folketinget, which are taken along party lines. For no apparent reason, party discipline was not upheld in the latter case, although substantially the issue of adoption by stepparent in registered domestic partnerships seems as “ethical” an issue as the ones debated in the two former cases.

The distinction between political and ethical decisions is not clear, but it might be that, in Denmark, the liberal distinction between a private sphere and a public sphere has taken roots across party lines. Political issues that intimately affect the private sphere are not really legitimate public issues. When, for different reasons, it is still deemed necessary to make public decisions about these issues, the appropriate thing to do is to at least put aside party political competition. This is an attempt to depoliticize issues that really should not have been politicized.

**Legal recognition of homosexual relationships**

Historically, attitudes towards and behavior directed against homosexuals have not exactly been characterized by tolerance, impartiality, liberty and equality, neither in the European nor other cultures. Denmark is no exception. In the first Statute Book to establish common legal standards in the Danish Kingdom, Danske Lov from 1683, there was a stipulation, under the category "misdeeds," that „Omgængelse, som er imod Naturen, straffis med Baal og Brand“ (Relations which are against nature will be punished at the stake). Among other things, this stipulation applied to certain sexual relations between men, regardless of age. Two centuries later, the Danes had become a bit more humane, as a similar
stipulation about "unnatural relations" in the 1866 civil penal code changed the punishment to prison (Betænkning 1127: 22).

The proponents of decriminalizing not only homosexuality, but sexuality in general, have unambiguously taken on the liberal rights-based philosophy. The most striking example of this is probably the argumentation in favor of abortion rights: women's right to freely decide over her own body. After several attempts at the beginning of this century, homosexuality was decriminalized by a change in the Danish penal code in 1930, however there were different stipulations regarding age and punishment for homosexual and heterosexual relations. After several amendments to the stipulation in the penal code, the final step towards full equality between homosexual and heterosexual relations was taken as late as 1981.

The greatest struggle for Danish homosexuals in the first half of this century concerned the criminal discrimination and stipulations in by-laws on indecent behavior. The idea was to get „the state off our backs,“ but when the state finally left homosexuals alone as far as labeling them criminals, the struggle was now about getting it back in other aspects. Homosexual behavior was no longer subject to discrimination, but the homosexual way of life was, because homosexual couples did not have the same rights as heterosexuals for the simple reason that gay marriages were not allowed.

Already in the 1960s, an MP from the Radical Liberal Party presented the idea of introducing homosexual marriage to a somewhat surprised Folketing (FF, 1968-69: sp. 662), but it did not enter the manifesto of the National Danish Organization for Gays and Lesbians until 1977. Realistic possibilities of gathering sufficient political support to ensure greater legal recognition of homosexual relations arose around the formation in the early 1980s of the so-called “alternative majority” of the Danish Parliament (Damgaard 1992).

In 1982, the Conservatives took over the prime minister’s office from the Social Democratic Party. Until January 1993, the Conservatives formed minority coalition governments with shifting center-right parties. From 1982-1988, the parties forming the government with the Conservatives were the Liberals (a party with a high profile on liberal economics and new public management), the Center Democrats (a non-socialist party which originally splintered from the Social Democrats), and the Christian People’s Party (a center
party stressing moral/Christian and social values). In its economic policies, the Conservative-led government was supported on its right flank by the Progress Party (originally formed as an anti-tax and anti-welfare party in the early 1970s) and on its left flank by the Radical Liberals, a social-liberal party at the center of Danish politics which, because it has often held the key to the parliamentary majority, has been one of the most influential parties in Danish politics in spite of modest electoral support. However, as far as security policy and “new left” issues, the Radical Liberals joined the parties on the left side of Danish politics and formed the “alternative majority”. During this period, the government accepted numerous defeats in more or less important matters without resigning or calling elections (Damgaard 1992, 32) With the entry of the Radical Liberal Party in the government in 1988, the “alternative majority” was dissolved.

The formation of the "alternative majority" became a window of opportunity to press homosexual rights high up on the policy agenda. Thus, in the course of a four-year period from 1984-88, a number of legislative initiatives were taken to improve the homosexuals’ conditions. All proposals were formulated by the Radical Liberals alone or in cooperation with various parties to the left of the center in Danish politics. One proposal was presented solely as political mischief with no chance of passing at the time. The other proposals were all passed against the government’s wishes and without its votes, although the government parties in some cases abstained from voting:

- In 1984, the Radical Liberals – obviously annoying the Social Democrats and the other left-wing parties (FF, 1983-84, 2. Samling: 4608 ff.) - proposed a parliamentary resolution to introduce registered domestic partnership. The party knew full well that the resolution had no chance of being passed at the time (Søland 1998: 54).

- At the same time, and inspired by the Swedish model, a parliamentary resolution was proposed to form a commission to study the homosexuals’ situation in society (FF, 1983-84, 2. Samling: 6990).

- In 1986, a Bill to modify the death tax for cohabiting siblings and cohabiting persons of the same sex was introduced (FF, 1985-85: 12514).

- In 1987, a Bill to amend the civil penal code in order to prohibit discrimination based on sexual orientation was introduced (FF, 1986-87, 1. Samling: 11488).

- In January 1988, a Bill on registered domestic partnership was introduced. It was canceled when a parliamentary election was called in May 1988.
In November 1988, the Bill was reintroduced, but this time without the authors from the Radical Liberals who had entered the government after the election. The Bill was passed in May 1989 with the Social Democrats, Socialist People's Party, Radical Liberals, two Liberal MPs, eight members of the Progress Party and two Center Democrats voting in favor. Votes against the Bill came from the Conservatives, the Liberals, Christian People's Party, Center Democrats, seven members of the Progress Party, one MP from the Radical Liberals (who, as minister, had to vote against) and an MP from Greenland. Three Conservatives and two Liberals voted neither for nor against. 

The people's attitudes

How did the population react to these radical (in more than one sense) proposals? Politicians — and homosexuals — were surprised to learn that the people's attitudes towards homosexuality, just like the public debate, had become quite a lot more liberal.

In 1947, the Nordic Gallup Institutes carried out a survey in which they asked a segment of the population to list seven crimes according to their seriousness, i.e., murder, rape of adult women, breaking and entering, forgery, driving under the influence (DUI), hunting outside the season, and homosexuality. 61 percent of the Danish population listed homosexuality as the worst or second worst crime (Havelin 1968: 73). The survey took place 17 years after the Parliament had decriminalized homosexuality, and homosexuality was the only one of the seven categories in the survey that was not a felony in Denmark! The survey revealed a huge gap between the legislators' and the population's attitudes towards homosexuality at that time. The MPs felt morally obligated to follow a liberal rights-based philosophy, although they must have known that the population did not sympathize with their stand.

During the next four decades, the population's attitudes towards homosexuality changed dramatically: the population adopted the liberal rights-based philosophy to the point that, in the mid-1980s, a majority favored an extension of homosexual rights to include the right to marry. According to a Gallup survey published in June 1985, 24.2 percent of the respondents said that society in general showed sufficient understanding of the homosexuals' conditions, while 50.7 percent said that this was not the case. In the same survey, 40.9 percent found it reasonable that homosexuals should be able to marry with the same rights as non-homosexuals, while 34 percent said that this was not reasonable (Berlingske Tidende, 2. juni 1985). In a
representative AIM survey in June 1988, just after Folkeatinget had first discussed registered partnership, 57 percent of the respondents said that they favored registered partnership, while 25 percent were opposed. The AIM survey clearly showed positive relation between education and number of proponents of registered partnership, but all educational levels had a significant majority of proponents. Interestingly, the survey also revealed significantly more proponents than opponents among the voters throughout the political spectrum, including the parties on the right wing of Danish politics. The parties to the right of the Social Democrats had a 52 percent majority of proponents and 35 percent opponents (AIM 1988). When the law went into effect in the fall of 1989, a new representative Gallup survey was carried out. It showed that 64 percent of the respondents favored registered partnership, while 30 percent were against (Berlingske Tidende, 27. November 1989). In a Eurobarometer survey from 1993, the proponents also came in at 64 percent (NSD Brukermelding 1995).

The Politicians’ arguments and motives

During the 1980s, the population’s attitudes towards homosexuality came under strong influence of the liberal rights-based philosophy. So did the political argumentation in Folkeatinget. Across the political spectrum, the parliamentary debates in the 1980s about all proposals to improve the homosexuals’ conditions were unambiguously dominated by the liberal view. It had become so pervasive that politicians who did not care for gays and lesbians or feared that their voters did not found it impossible say so directly. The parliamentary actors had a clear common understanding of the limits to politically acceptable statements. Ministers and spokespersons took great pains to express, again and again, how despicable any kind of discrimination was to them and how much they wanted to improve conditions that made life difficult for homosexuals (cp. FF, 1986-87, 1. Samling: sp. 9697). This was also the case in the debate about the most far-reaching proposal, the introduction of registered partnership. Among the statements made by the Conservative minister of justice and spokespersons from those parties with a majority of opponents were:

Christian People’s Party’s spokesperson “... of course, people who have these problems have a right to live their lives, and this right must be secured” (FF, 1983-84, 2. Samling: sp. 4627).
Conservative spokesperson. "We must respect each individual's right to personal freedom and to live life as they choose, with equal recognition of others' right to do the same and the legal norms of society. That right is, nowadays, an indisputable right, and this right means access to form relationships between persons of different sexes or between persons of the same sex. No doubt about that ... We can and will not have discrimination based on sexual habits or the like" (FF, 1987-88, 1. Samling: sp. 8363, 8365).

The agreement across party lines not to tolerate discrimination against homosexuals and the willingness to solve homosexuals' problems is, in itself, remarkable, considering statements MPs in other countries are allowed to make about homosexuals. In other words, the Danish political culture has developed its own norm which, at least at the rhetorical level, says yes to tolerance and no to moralizing.

The fact that the all-pervasive stand on homosexuals was so explicitly rooted in the rights-based philosophy made it difficult to formulate resistance to the various proposals made in Parliament to improve homosexuals' conditions. You can't have your cake and eat it too - not even if you are a Danish MP! This was evident in the striking lack of substantive arguments against the proposals in the parliamentary debates. The only exception was the proposal to introduce a ban on discrimination based on sexual orientation, because the proposal involved a limitation to the freedom of speech, resulting in great fundamental skepticism, also among the proponent parties of the proposal. In this instance, however, two liberal principles collided.

The only party that admitted its resistance to registered partnership was the Christian People's Party. Despite previous declarations about securing homosexuals' right to "live their life," the party argued from a communitarian point of view based on a Danish-Christian culture and what this culture deemed "natural":

"It is against everything we have stood for and which rests on Danish culture and tradition. And we might add, which we will, of course, against a Christian view.

We feel that marriage should be between man and woman. We were created as man and woman - probably for a natural reason - and we feel that this must be the fundament of our society" (FF, 1987-88, 1. Samling: sp. 8380-81).

On one side, the party did not want to discriminate. On the other side, it later characterized the proposal as "a humanistic-ideological attack on all Christian and basic human adherence to marriage as it is known and recognized in all previous historical cultures" (FF, 1988-89: sp. 10838).
This issue carried such weight in the Christian People’s Party that its resistance to registered partnership became the main theme in its election campaign in the spring of 1988. This was all in vain, as a voter survey showed that none of the respondents mentioned it as an important political issue (Elklit and Tonsgaard 1989: 449, 453).

The lack of communitarian arguments in the debate on the part of the opposing parties was noticeable, even though their main objection was the same as that of the Christians, namely that the proposal got touched too much on marriage and its symbolic value. The first time Folketinget discussed the proposal about registered partnership, the Conservative minister of justice said:

"I can inform you, at the government is ready to accommodate the homosexuals’ justified needs to the extent possible, for example in by modifying rules for death tax, rules for securing the financially weak part if a relationship ends, etc." (FF, 1983-84, 2. Samling: sp. 4610).

But on the other hand, the government would not help pass the proposal that would, in one stroke, satisfy the majority of the homosexuals’ legal needs, namely introduction of registered partnership. The interesting point here is that the minister of justice only once used the argument about registered partnership infringing too much on heterosexual marriage to justify his opposition, namely in relation to other countries’ perception of Danish family law. The spokespersons for the other three government parties were also extremely hesitant to use the argument, to the point where it almost disappeared in the many other arguments used (Albæk 1998).

One explanation of the lack of communitarian arguments could be that opponents of registered partnership found themselves in a dilemma as far as arguments. You cannot mobilize liberal tolerance and spout it with great fanfare in Folketinget and then consistently argue against tolerance towards one specific group of the citizens. The way a political issue is presented has consequences for the subsequent argumentation (Stone 1988). If the opponents dared to use communitarian arguments about the sanctity of marriage, the proponents would roast them on an open fire and make opponents of registered partnership look as remnants from the dark middle ages.
When the marriage argument, and in general arguments about "naturalness," could not be used as primary ammunition, others had to be found. The government's objections, as presented by the minister of justice and backed by the spokespersons of the government parties, were not moral, but primarily legal-technical and pragmatic, although they did have moral qualities:

- A majority of six out of eleven members of the commission that was formed to study the homosexuals' situation in society advised against registered partnership. Folketinget should heed the majority recommendation.
- An actual need to introduce registration had not been demonstrated. In part, it was uncertain how many homosexuals would take advantage of the new rules; in part, the needs of homosexual cohabitants seemed to be covered in all significant aspects by the special rules for death tax passed by Folketinget in 1986.
- Cohabitants, whose position had improved significantly with the 1986 act, would see their legal status deteriorate if they could not (siblings) or would not (homosexuals) register.
- Denmark should not be a model country in this area. It might create general international uncertainty about Danish family law.
- Nordic legal unity would be broken.
- Adaptation of other legislation would be very difficult.
- It would be inhuman to demand that homosexuals should register publicly in order to have the death tax reduced.
- Danish efforts to stop immigration would be weakened.

The list is interesting, first, because it is devoid of communitarian arguments and, second, because it is a compilation of arguments with no interrelation.

The fact that legal-technical rather than ethical arguments are used may, however, be due to the fact that other, not only ethical considerations were really at work. One condition that could explain the resistance of the government parties is, in fact, the government coalition. The government consisted of four parties, and to one of them, Christian People's Party, registered partnership was a crucial point. The government could not take a positive or even neutral stand on the proposal without jeopardizing the coalition.

This interpretation can be supported. In the 1988-89 negotiations, after an election had led to a reshuffling of the government, an MP from the Center Democrats (CD) said:

"Last time a similar proposal was debated in Folketinget, CD was against it, because at that time, we were part of a government coalition in which at least one party – maybe more, I don't know – did not like it" (FF, 1988-89: sp. 4301).

Ministers from the Radical Liberals also had to consider the coalition, when the party entered the government in May 1988. "A government is a unit," as the Conservative minister of justice said when he
was asked why the Radical Liberal ministers would not vote in favor of a proposal they had helped introduce in the previous parliamentary session (FF, 1988-89: sp. 4308). In this case the Radical Liberals has to consider the Liberals and the Conservatives who, six months earlier, had argued against registered partnership, perhaps pressured by the Christians. In the end, the government voted against, including the Radical Liberal ministers, while the Radical Liberal parliamentary group voted in favor. In other words, the group disregarded the government coalition. A possible explanation of why so many, but not all, members of the Liberal and the Conservative groups voted against registered partnership at the third reading, even though they no longer had to consider the Christians, might be that they wanted to support the government. It would be too embarrassing if too many members of the government parties voted against the government, although the party leadership had publicly stated that party discipline was not mandatory.

At the same time, the Liberals and the Conservatives faced a problem: a large group, even a majority (as the above mentioned AIM survey from June 1988 revealed), of their voters favored registered partnership. It was therefore prudent to use a legal-technical argumentation and point out practical obstacles to passing this Bill, instead of one that might seem moralizing and narrow-minded. And it is striking that two government parties’ spokespersons, Liberals and Center Democrats, made very brief contributions to the debate. They clearly wanted to avoid the pitfalls of moral inconsistency or far-out legalese arguments, while the Conservative spokespersons, each time the proposal was debated, apparently found it necessary to second their minister of justice and carefully repeat his argument.

It is also possible, that the voter considerations the government parties had to take were exactly opposite: although a majority of their voters favored registered partnership, it was not high on their agenda (cf. Elklit and Tønsgaard 1989: 449, 453). Still, there might be a conservative group of voters with strong moral objections to homosexual marriage. For these conservative voters, who perhaps had trouble keeping up with the general trend towards liberal tolerance in sexual matters, the parties’ stand might be important, because in contrast to, for example, disgruntled social democrats, they had an alternative at the next election, namely the Christian People’s Party, whose other political standpoints were close to their own. Although the parliamentary parties allowed their members to deviate from the party line, voter considerations may thus
explain that so few Conservative and Liberal MPs voted in favor of registered partnership or abstained from voting.

This interpretation may seem farfetched, especially for people who are not political scientists. But it is actually based on a classical argument in voter theory: A minority of a party’s voters may have such strong preferences on an issue that they consider moving their vote if the party line goes against them, while the majority is adequately indifferent that the issue has no influence on their vote (Downs 1957: 56-57).

One example of how voter considerations can rarely be completed ignored is the Conservative People’s Party’s mischievous positioning in the parliamentary debate in relation to the Progress Party. The Progress Party was, at that time, split into a libertarian wing, unconditionally favoring registered partnership, and a more traditional bourgeois wing, equally unconditional in its opposition. In the spring of 1989, the debate about immigrants was heating up, and the Progress Party had really made its mark on this issue. Creating great irritation among the libertarian wing of the Progress Party, the Conservative spokesperson insisted that the Progress Party was inconsistent when it favored tightening up immigration policies, while, at the same time, one half of the party supported registered partnership which, according to the Conservative spokesperson, would lead to a massive evasion of Danish efforts to stop immigration. It was the increased access to family reunification that the Conservative spokesperson referred to:

"... we may now be facing a trebling. We can have pro forma marriages, pro forma registered partnership between gays and pro forma registered partnership between lesbians" (FF, 1988-89: sp. 10469).

The arguments in favor of registered partnership were unambiguously based on a liberal foundation. The proponents’ conception of justice had sprung from the liberal rights-based philosophy. Introducing registered partnership was, as expressed by one of the authors, an "act of justice" (FF, 1987-88, 1. Samling: sp. 8367). Some parties had a long tradition of strong political stands when it came to guarding people’s rights. Specially, as far as homosexuals’ rights, the Socialist People’s Party and especially the Radical Liberals had such a tradition (FF, 1987-88, 1. Samling: sp. 8373-74). The liberal rights-based philosophy was prominent in the official ideology of the Progress Party, and the party’s libertarian wing traditionally opposed a paternalistic government. The liberal tolerance was so pronounced in one MP from the Progress
party that he, as the only MP, requested that the Legal Affairs Committee positively considered adoption, at least of stepchildren. (FF, 1987-88, 1. Samling: sp. 8379-80). But also other parties without the same outspoken, rights-based tradition had MPs for whom the introduction of registered partnership was an act of justice that came before any voter considerations As an MP from the Central Democrats put it:

"of course, those who are elected in Northern Jutland [the northernmost and traditionally morally conservative part of Denmark, E.A.I – as I am – have been contacted by many voters, and not all accept that I intend to vote in favor of this Bill"

(FF, 1988-89: sp. 10479).

But, parallel with the MPs’ wishes and will to commit an act of justice, political considerations might also be involved in when and how a bill is pursued. First, a party can promote itself by protecting rights as the Radical Liberals did in 1984, annoying the Social Democratic Party and the left wing in Folketinget, when they proposed registered partnership all by themselves. The majority of existing and potential Radical Liberal voters, i.e., highly educated people, probably agreed with the party line. Second, "the alternative majority" in the 1980s got so far unknown power to carry through proposals with high promotional value, especially in the areas of foreign affairs, environment and justice, including protection of minorities.

Although it did not need to as far as mandates are concerned, the "alternative majority" still considered the government parties in connection with the passage of registered partnership. Clearly, the authors of the Bill worried that the communitarian ghost might come out of the closet, and they took great pains, throughout the debate, to establish that they were not talking about marriage; they were simply copying the legal aspects of marriage and giving them to the homosexuals.

For the same reason, all religious aspects of registered partnership (in contrast to heterosexual marriage) were removed from the Bill, and it was not discussed how the registration would take place. Later, an administration decision was made to use the common civil marriage ritual. The Bill also entailed that one of the partners had to be a Danish citizen. Denmark would not become a Las Vegas for gays (FF, 1988-89: sp. 4302). And finally, registered couples could not adopt. Leaving adoption out of the Bill was probably very wise, because the parliamentary debate ten years later seems to indicate that had adoption been part of the Bill, it would not have passed.
Artificial insemination

As the 20th century drew to a close, ethics became fashionable. Also Folketinget felt the ethic wave against its shores and established an Ethic Board as a bulwark. The Board would advise the government and Folketinget in ethical matters. But advice was not enough; action was called for. And action came in connection with the introduction of a Bill about artificial insemination. The technological development made human fertilization possible through methods that were far from the natural way, and consequently it became necessary to regulate how artificial fertilization could get. To Folketinget’s parties, the question of the beginning of life was so ethic that the answer could not be subjected to party discipline. On October 2, 1996, a minister of health introduced Bill on artificial insemination in connection with medical treatment, diagnostics and research, etc.

The presentation of the 179 MPs’ individual ethic stands was spectacular. In a normal reading of a bill, there is an internal division of labor in the parties which means that it is almost exclusively the spokespersons and members of the standing committees who are active (Jensen 1999). In the parliamentary debates on artificial insemination, many different MPs participated. As a result, at the second reading Folketinget had to vote on 55 amendments to the Bill, 32 of which were moved outside the report which the Legal Affairs Committee had submitted to Folketinget between the first and second reading of the Bill. At the third reading, there were 21 further amendments to vote on, 12 of which were moved outside the supplementary report which the Committee had submitted between the second and third reading. Normally, only one report is submitted between the first and second reading of a Bill and only a limited number of amendments are moved by individual Committee members. Only in extremely rare cases are amendments moved by non-committee members, and only extremely rarely is a supplementary report submitted to the parliament. Even the parties’ spokespersons had a hard time keeping track of the many motions and counter motions.

The government was at this time a minority coalition government headed by the Social Democratic Party. The other members of the coalition were The Radical Liberals and the Center Democrats. The Bill was
introduced by the minister of health from the Center Democrats. In this chaos of amendments to the Bill, three Social Democratic MPs moved amendment No. 29 with the following wording:

After § 2 a new section is inserted: „§ 03. Artificial insemination may only be offered to women who are married or who live with a man in a marriage-like relationship.”

Some MPs realized very late during the second reading the exact implications of this amendment, while others probably never fully knew what they actually voted on all those many times they had to press the button. The amendment was passed at the second reading with 82 votes in favor and 53 against, while two MPs abstained from voting (FF, 1996-87: sp. 6383).

The amendment was now part of the Bill. However, at the third reading of the Bill, two MPs from the Socialist Peoples Party moved an amendment to remove the new § 3 from the Bill. The amendment was rejected, with 52 votes in favor and 106 against (FF, 1996-97: sp. 7824).

In the next parliamentary session, members of the Socialist Peoples Party, the Radical Liberals, the Liberals, the Progress Party and the Unity List introduced a Bill to remove § 3 from the Act, so that all single and lesbian women would be eligible for artificial insemination. The Bill was repealed when an election was called in February 1998, but it was reintroduced in the new parliament by members of the same parties and the former minister of health from the Center Democrats, the party having left the government in December 1996. The Bill was rejected on June 19, 1998, with 57 votes in favor and 70 against.

30 of the 48 social democrats who voted were in favor of the Bill. The share was approximately the same in the Socialist People’s Party and the Center Democrats with approximately 60 percent in favor of removing the ban. All radical liberals, except one, supported the Bill, in contrast to the Conservatives where all except one voted against the Bill. A quarter of the Liberals votes favored a removal, while the Progress Party was split. The only parties that voted en bloc were the Danish People’s Party (favored the ban) and the Unity List (opposed to the ban). 52 were absent (Afstemningslisten, afstemningsnr. 134, 19.6.1998).

The Act on artificial insemination prohibited doctors from treating single women and lesbians for infertility, in public as well as private clinics, against or without payment. Doctors cannot offer single women or lesbians any kind of treatment against infertility, including artificial insemination. Doctors cannot
assist private sperm banks by, for example, examining sperm for HIV-infection, if the sperm is used for insemination of single women or lesbians. All these things were perfectly legal before the Bill became law. After the law "Ms Henriette Kjær [a Conservative MP, E.A.] and I [a Social Democratic MP, E.A.] and the baker ... may offer treatment by insemination, but ... the only ones who can't, are the professionally trained doctors. It is absurd" (FF, 1997-98, 1. Samling: sp. 3177). Many MPs regarded this as Folketinget's first large ethical, legislative complex, and for the first time, Folketinget precluded, for ethical and moral reasons, a specific group of citizens from receiving medical treatment, also if they wanted to pay out of their own pocket (FF, 1997-98, 2. Samling: sp. 773). This goes against § 1 in the Danish Health Act which explicitly states that everybody has equal access to medical treatment.

The opponents of the ban saw the law as obvious discrimination. Generally, the proponents of the ban did not feel the same need to declare their dislike of discrimination as the opponents of registered partnership had had 10 years earlier. It appears as if the proponents of the ban knew full well how difficult it would be to explain why one specific group of citizens was denied access to a medical treatment which was being offered to others.

But of course nobody likes to be labeled as someone who discriminates against others, so they did argue that the ban did not constitute discrimination. First, a discussion took place of what constitutes "treatment", reminiscent of the war on words between President Clinton and Special Prosecutor Kenneth Starr as to what constitutes a sexual relationship. The proponents of the ban argued that a lesbian is not sick, compared to a woman with, for instance, defective ovaries. Consequently, you could not talk about denying someone treatment. Second, an MP from the Socialist People's Party, among others, argued that the ban did not constitute discrimination – Folketinget simply put the interests of the child above that of the parents:

"I'll say it now, and I hope it is the last time I have to say it to Ms. Yvonne Herløv Andersen [MP, Center Dems., E.A.]: It is not discrimination! We want to ensure that the child – somehow – has a father, and not just a handful of sperm, and here we have to think of the child. The child is the weak party in this, regardless of what Ms. Yvonne Herløv Andersen tries to tell me and others in this matter" (FF, 1997-98, 2. Samling: sp. 1998).

The structure of this argumentation is symptomatic of the proponents of the ban: They do argue in terms of rights. The rights of children who are not even conceived are put above the rights of living women. Since
children's rights were the issue, the proponents felt that the state had a responsibility to define the contents of these rights since the children were not capable of doing it. This created a linguistic shift among the MPs who started using children's interests and rights as synonyms. But interests are, as opposed to rights, determined by contents. Consequently, the communitarian values, shared by a majority of the MPs, came to define children's interests. And in this case, the majority thought -- for different reasons -- that it was in the interest of children to have both a mother and a father.

Apparently, the majority attitude among the MPs coincided with the population's attitude. The previously mentioned Eurobarometer survey showed that only 18.6 percent of the Danish population in 1993 favored adoption for homosexuals -- a parallel to artificial insemination (*NSD Brukermelding* 1995). If the share was approximately the same four to five years later, it would be unfair to say that MPs favored equal rights for lesbians because they wanted to please the voters. A radical liberal core voter, of which there are few, could be liberal also on this issue. But by mathematical necessity, a typical social democratic voter could not: the Social Democratic Party's share of votes was approximately twice as high as the 18.6 percent of the population who favored the option to adopt.

The proponents of the ban realized that single women and lesbians would not necessarily have fewer children because of the ban. They could use other methods of fertilization since they were now forced to do so. The proponents wanted to stop doctors from participating in artificial insemination of single women and lesbians because of their fundamental position that the state in no way should sanction families without both a father and a mother. As one of the social democratic proponents of the ban expressed it:

"... we cannot legislate people's behavior, but we can send some signals, and we can make some rules. If this Bill [to repeal the ban on medical treatment of single women and lesbians, *E.A.*] is passed, *Folketinget* would signal that in the future we have no interest in, we do not want that a child's right to a father and a mother must be fundamental" (FF, 1997-98, 2.

Samling: sp. 2002).

However, lesbians who got pregnant in other ways had full access to medical care from the moment they were pregnant.

The conflict between the communitarian and liberal views is very visible in the debate. It is also interesting that the debate caused several MPs to justify their stand with fundamental, political-philosophical
arguments, which is quite uncommon in parliamentary debates. A libertarian MP from the Progress Party, who was one of the authors of the Bill to remove § 3, depicted the political-moral dilemma with extreme precision:

„Finally, I want to mention the ideological approach to this. Throughout my political life, I have based politics on personal freedom – personal responsible freedom of course – and if a woman is artificially inseminated, then I feel it is her decision. The state should not interfere. The state should not be the moral guardian in this issue ...“ (FF 1997-98, 1. Samling: sp. 3181).

A Liberal author argued along similar lines (FF, 1997-98: sp. 3074-75) as did a party colleague:

„As liberals, we are of the opinion that ... (s)ociety and we as politicians in particular can and should not interfere in a person’s ethical choice. We would never be successful anyway, and it is a slippery slope where the population would then depend on who is in power. It has no place in the European civilization“ (FF, 1997-98, 2. Samling: sp. 2121).

These fundamental liberal views also inspired some of the proponents of the ban to argue at the political-philosophical level. Especially the Conservative spokesperson:

„Mr. Flemming Oppfeldt [Liberal MP, E.A.] asks whether it is up to the state or the individual person to decide whether one’s children should have a father or not. This is probably the difference between the Liberals and the Conservative People’s Party, and it may also emerge during this debate. The Conservative People’s Party accepts that the state interferes in some things, but liberals do not always, and this is an area where I feel that, since the state has to make guidelines and take some responsibility for the children who live in our society, there must be some regulations to counteract a fatherless society.

Basically, we prefer that children have a father and a mother“ (FF, 1997-98, 1. Samling: sp. 3178).

The communitarian arguments presented during the debate on artificial insemination were much clearer than those presented during the debate on registered partnership. The liberal view dominated the debate about registered partnership completely, except in the Christian People’s Party. The government’s arguments against registered partnership were, to a large extent, legal-technical pseudo-arguments. But during the parliamentary debates about artificial insemination the regard for children’s interests justified genuine communitarian arguments by not only bourgeois politicians, but also by the left wing. A probable interpretation is that liberal tolerance is challenged more when an issue goes beyond what two or more adults consent to in private and voluntarily.
In contrast, especially the Liberals' status as opposition party meant that the members did not have to consider the government during the debate on artificial insemination, which six members took advantage of and presented genuine liberal arguments and voted accordingly. In other words, the fact that the members were not under party discipline and the resulting internal splits according to views meant that, in principle, the lines between liberal versus communitarian views became very visible in the debate.

Adoption by stepparent in registered domestic partnerships

The parliamentary debate about the Bill on artificial insemination could make one believe that the MPs had a relatively firm and fundamental perception of the limits to liberal tolerance, as far as children and homosexuals are concerned. However, a year later it turned out that this was not the case.

In October 1998, the Social Democratic minister of justice introduced a Bill on amendment to the Act on registered domestic partnership. During Folketinget's readings of the 1988-89 Bill on registered domestic partnership, a section had been added, stipulating that that at least one of the partners must be a Danish citizen. There are no such requirements for heterosexual marriages. This section was added to accommodate the critics of the Bill. Since then, Sweden, Norway, Iceland and Holland had introduced registered partnership, and therefore the minister of justice suggested that citizens from these countries, from countries who would later introduce registered partnership and non-Danish citizens with permanent residence in the country should be able to enter registered partnership.

At the first reading of the Bill on November 13, 1998, there was remarkable agreement across party lines that the minister of justice's proposal was exceedingly sensible and fair. Only the Christian People’s Party argued against it because of the party's basic opposition to registered partnership.

During the first reading, a member of the Center Democrats suggested that Folketinget on this same occasion also discussed the possibilities for adoption of one's partner's children, which was another of the few exceptions from the heterosexual marriage that had been decided when registered partnership was passed in 1989. The Act left no possibility for joint custody in registered partnership under any circumstances. During the treatment of the minister of justice's Bill in the Legal Affairs Committee, the amendment to allow adoption by stepparent in registered partnerships was formally moved.
You would think that the question of adoption by stepparent was just as "ethical" as the introduction of registered partnership and the ban on artificial insemination for single women and lesbians were at the time. But apparently not: only the parties' spokespersons spoke during the parliamentary debate, and the vote was, almost without exception, according to party lines.

Supporters of the amendment to the Bill explicitly argued that this did not concern homosexuals' rights. The proposal was not to give registered partners the right to adoption in general. What was at stake was children's interests. It was clear that the proponents of adoption by stepparent tried to avoid the debate from the law on artificial insemination and the MPs therefore used children's interests precisely as the proponents for the ban on artificial insemination of single women and lesbians had done. As the social democratic spokesperson said. It is about

"... children's interests. We do not have to decide if we think that a child is best served having a father and a mother. We have to consider the facts and the reality that shows us that there are actually children who live with one parent, who lives in a registered partnership.

For some of these children, it will clearly serve their interests to have the security which an adoption represents — in everyday life and in a situation where the biological parent dies ....

Adoption by stepparent is possible in heterosexual relationships, and for that very same reason it should also be possible in registered partnerships". (FF, 1998-99, 1. Samling: sp. 6692-93).

This argument was echoed by the spokespersons of those parties that favored adoption by stepparent, including the spokeswoman of the Socialist People's Party. She mentioned that she personally had opposed artificial insemination of single women and lesbians, but indicated that she favored adoption by stepparent in registered partnerships. The spokeswoman thus took a very pragmatic stand: She personally felt that children had a right to have a father and a mother, and based on this fundamental position, she had supported the ban on artificial insemination of single women and lesbians; at the same time, she accepted the fact that there are children in registered partnerships and in those situations, the possibility of a legal recognition of the de facto parent relation would serve the child's interest. The other opponents of artificial insemination of single women and lesbians in the parties that favored adoption by stepparent probably had the same attitude. The parties that voted for adoption by stepparent were the Social Democrats, the Socialist
People's Party and the Unity List, and to the right of the Social Democrats, the Radical Liberals, Center Democrats and all but one MP from the Progress Party.

The opponents of adoption by stepparent presented two arguments: one substantial, the other procedural. The substantial argument was only presented by the Danish People's Party and the Christian People's Party. In both parties, the opposition was based on communitarianism. The Christian spokesperson said:

"A child has a right to a father and a mother and should not have same-sex custodians forced on them (FF, 1998-99, 1.
Samling: sp. 6694).

The procedural argument had two elements: First, the Danish People's Party and the Christian People's Party regretted that the amendment to allow adoption by stepparent had only been formally presented during the Legal Affairs Committee's treatment of the minister of justice's original Bill to extend the right to enter into registered partnership. This meant that Folketinget had very little time before its summer break to debate the proposal. Second, it was argued that there was no identity between the minister of justice's original Bill to extend the right to enter into registered partnership and the amendment to the Bill concerning adoption by stepparent, which is required according to the Standing Orders of Folketinget in order to ensure that proposals get three parliamentary readings. However, Folketinget's Presidium had earlier denied a conflict of identity between the Bill and the amendment.

Still, the Liberals' spokesperson used the identity conflict to refuse to vote for the amended Bill and did not comment substantially on the amendment. The Conservatives did not even speak during the debate. By sticking to the argument about an identity conflict, the Liberals (and the Conservatives) gained several political advantages: First, the government could be accused of sloppy which had recently been a big issue discussed in the media; second, by not commenting substantially on the amendment they avoided coming across as narrow-minded and still accommodate those voters who might be against adoption by stepparent; third, those MPs who might favor adoption by stepparent, i.e., probably those who had voted against the ban on artificial insemination of single women and lesbians, avoided a dilemma in case party discipline was enforced against the proposal for adoption by stepparent for substantial reasons.

Morale
The limits of liberal tolerance are established somewhere in between liberal and communitarian values. If they are fixed for anyone, it is only for the very few. Inconsistencies may occur in one's position on a single issue, between related or heterogeneous issues and over time. The same would be the case for the political parties' positions and for parties, inconsistency may also occur because there are other considerations besides ethical ones.

The case analyses indicate that the moral considerations not only limit arguments, but are also decisive for some politicians' positions in some situations. Only very broad interpretations of voter considerations can explain why the Conservatives and the Liberals voted against registered partnership. And even when the coalition considerations were no longer crucial, most politicians in the two party groups voted against. In connection with the Bill on artificial insemination, coalition considerations were definitely not decisive for the 18 social democrats who voted against lesbians' rights. And the remaining 30 who support equal rights for lesbians, were not dictated by voter consideration. The positions of other MPs are equally difficult to explain by coalition and/or voter considerations. In other words, it appears that moral considerations contribute to explaining politicians' behavior in those instances when the party discipline is removed.

Liberal tolerance for others' right to live their life according to cultural norms and values that deviate from one's own is great in Denmark, but not boundless. A minority in the Danish population and in Folketinget draw the line at homosexuality. A majority of the MPs, and probably a majority in the population, draw the line at children. But at the same time, the passage of the law on adoption by stepparent demonstrated that some MPs can pragmatically adjust these limits to fit reality.

We can never be sure where the line will be drawn on ethical issues, only that it will be drawn. Therefore, it is extremely important that these lines and where they are drawn are discussed explicitly in politics - again and again - so that the citizens can find out where their elected representatives are.

Before we smugly criticize those politicians who, in the debates described here, drew a line where we would not have drawn it, we had better carefully consider where our own tolerance ends: Jehovah's Witnesses? Muslim girls? Nazis' children?
Notes

1. This article is an English adaptation of a Danish version printed in *Politica*, Vol. 30, No. 4, 1998. Thanks to Henning Bech, Kristian Kindler, Asbjørn Sonne Nørgaard, Jørgen Poulsec, Peter Rossel and Lise Togeby for inspiring me while I wrote this article. Thanks to *Folketingets Library*, the library at the Department of Political Science, University of Aarhus, and stud.scient.pol. Jakob Lavsen, for speedy assistance. And thanks to Annette Bruun Andersen for assistance with the English translation of the article.


3. For example, a press release from Kent Kirk was quoted on 24-25 January in most national and local papers.

4. The numbers have been switched: It says 23 in the preprint of *Folketingets Forhandlinger* 1996-97, sp. 6350.

5. For example: „And now to Ms Sonja Mikkelsen’s proposed amendments. I do not remember which numbers they have, but they are the ones that were entered in the supplementary report, and I know they have been put in – just so you know it – after no. 14 and before no. 15, so it is no. 13 on the ballot list” (*Folketingets Forhandlinger* 1996-87, sp. 7811).
Literature


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