Same Rights for Everybody? On Danish Secularism and Homosexual Marriage

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ABSTRACT
By focusing on a particular case of Danish legislation allowing same-sex marriage, this paper seek to illustrate how state regulation of marriage in one religious community touches upon issues of political legitimacy, secularism, peoplehood and "otherness". Analyzing the case of same-sex marriage specifically in the Evangelical Lutheran Church, attention will be given to how questions of civic equality and religious equality seemed to have been intertwined: the civic right to get married regardless of sexual orientation spill over into state-church affairs.

KEYWORDS
Governance, Secularism, National Identity, Same-sex Marriage, Religion

I.
INTRODUCTION

In a global perspective, state recognition of marriage beyond traditional heterosexual living arrangements is not only a very recent phenomenon, but also a relatively rare occurrence. In June 2012 when the Danish parliament passed a bill after heated debates to allow for homosexual marriage on equal terms with heterosexual couples, Denmark joined a relatively small but growing club of countries where same-sex marriage is legal. This includes Argentina, Belgium, Canada, Iceland, the Netherlands, Norway, Portugal, South Africa, Spain and Sweden. All of the mentioned countries passed such legislation only within the last decade.

However, the Danish bill not only concerned civil marriage, as was the case in the most recent members of the club, France in April 2013 (including adoption rights), New Zealand and Uruguay both in August 2013 and finally England and Wales expected in mid-20141. De facto, Denmark already had such rights in place, as it was the first country to legally recognize registered partnerships of same-sex in 1989 with squarely the same rights as married

1 In June 2013 USA came closer to a nation-wide recognition of same-sex marriages when the US Supreme Court in United States v. Windsor decided that homosexual couples married in one of the 13 out of the 51 states and five Native American tribes will now be formally recognized by the federal government (giving homosexual couples the same right in federal administrative procedures such as federal estate tax exemptions etc.). See the slip opinion at Supreme Court of the United States (2013).

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couples\textsuperscript{2}. And in 2009 the parliament decided to put same-sex couples in registered partnerships on equal footing with heterosexual couples and singles when it comes to adoption rights (Folketingstidende 2009).

Compared to these other countries the 2012 bill redefining marriage, as having the same legality for couples of both different and same sexes does not stand out in particular. What is controversial is that the 2012 bill applies not only to civil marriage \textit{but also} to marriage in the Evangelical Lutheran Church – formally the established national church, Folkekirken. Consequently, with this bill the executive branch instructed the largest religious community in the country to redefine their rituals and ceremonies in accordance to the new provisions regulating same-sex marriages.

It appears to be a paradox: Arguably one of the most central boundary in liberal democracies, the one separating state and church, was hereby transgressed with reference to another central liberal principle, the one ensuring equal rights for all citizens. The equal rights in this case being equal access to state recognized living arrangements irrespective of sexual orientation.

This paper is concerned with how the political decision to legalize heterosexual marriages spills over into fundamental questions of state regulation of religion, Danish peoplehood and "otherness ". It is argued that the discussion of same-sex marriage becomes part of a larger struggle to either retain or redefine the narrative of the Danish people.

To approach an understanding of the 2012 marriage bill the paper draws on concepts from secularism and a theory of peoplehood with reference to this recent case. It represents a more general interaction between the state and religion in which the peculiar principles of the Danish secularism doctrine was applied. When the Danish parliament passed the new marriage bill it begged the question: How can homosexual marriage in one religious community become a national concern to be solved by the parliament? And further: Given the specific context, what kind of principles constituted the political thinking of the bill?

The paper proceeds as follows. In section II the political background and context of the bill will be fleshed out. Section III deals with how we can think Danish secularism and peoplehood since the bill was concerned with the relationship between the state and the

\textsuperscript{2} Section 3, subsection 2 of the 1989 \textit{Law on Registered Partnership} (now nullified by the new marriage bill) stated: "Provisions in Danish law concerning marriage and spouses shall be equally applied to registered partnerships and registered partners." (Lovtidende A 1989, my translation). Some restrictions did apply in 1989, such as adoption rights and general recognition in international treaties.
national church. In light of the apparent paradox of the secular Danish state, section IV finally considers how the issues of sexual equality, secularism and peoplehood interacts.

II.
THE CASE OF HOMOSEXUAL MARRIAGE IN THE EVANGELICAL LUTHERAN CHURCH OF DENMARK

"With homosexual marriage in the church we are able to take yet another step towards a society, which fully accept the equal status of individuals - no matter who you are or who you love". Minister for Gender Equality and Ecclesiastical Affairs, Manu Sareen, 2011a

“The arrangement between the Parliament and the Folkekirke was built on mutual respect and a clear understanding of who is master in which house. This understanding has now been abandoned by the new government”. Chairman for the Christian Democrats, Per Ørum Jørgensen, 2011

Notice the different perspectives between the two quotes taken from the debate on homosexual marriage in the Folkekirke. They are representative of the positions taken: While proponents of the new bill considered it as a matter of expanding equal rights for all citizens, opponents mainly regarded the case as a question of how the relationship between state and church ought to be regulated. To understand the differences of political perspectives and how this draft bill came into existence we will have to briefly examine its prelude.

As the new center-left government took office in 2011 it came at a high price. The winning parties barely had a majority of seats in parliament to form a new coalition government and due to the composition of coalition parties there was in effect not a majority to establish a clear left-wing economic agenda\(^3\). This parliamentary situation was partly a result of the fierce struggle over the median voter. As a result political statements from either side often failed to provide any clear reference points for the voter to navigate the political multiparty spectrum.

Since the center-left coalition found itself partially incapacitated on traditional social democratic issues from the start, they struggled to distance themselves from the successful

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\(^3\) One of three political parties in the coalition, Radikale Venstre, is traditionally right-wing in economic issues, but operates as a pragmatic tipping-the-scale center-party with a fairly left-leaning agenda on issues of toleration, ethics and immigration - a tolerable match for a social democratic lead government (see Stubager 2010, on the economic versus value-based cleavage in Danish voting behavior).
center-right government preceding them. Apart from planned long-term infrastructural investments and unpopular welfare reforms to slim down the budget of educational institutions and public labor market insurance, the next four years held few available winning items on the agenda.

In coalition statement *A Denmark That Stands Together* (see Prime Minister’s Office 2011) the new center-left government listed a range of more liberal reforms (reduction of greenhouse gasses, more generous social benefits for poor immigrants, better services to mentally ill, fewer chemicals in foods, laxer immigration policies etc.) predominantly relating to “softer” political values and in a much lesser degree to actual economic goals.5

It was in the context of this political climate that a new kind of ministry was introduced possibly to send a signal to the Danish electorate. Merging the former Ministry of Ecclesiastical Affairs (the government’s department for the Folkekirke) with selected gender equality-related social policy areas the government introduced the new Ministry for Gender Equality and Ecclesiastical Affairs.

A few weeks after coming to office the newly appointed minister for Gender Equality and Ecclesiastical Affairs, Manu Sareen, announced: “It is with great pride that I today have been able to declare a historical progress both for the Danish Folkekirke and for the rights of homosexuals.” (Sareen 2011b). Sareen was referring to a forthcoming draft bill that would give homosexual couples the same legal status as heterosexual ones in the Folkekirke (Kirkeministeriet 2011). In the public debate these political statements were just as predictable as they were controversial.

It was predictable in the sense that amendments to the existing law on marriage in the Folkekirke have been discussed with varying strength the last three decades. On this issue a recent Minister for Ecclesiastical Affairs set up a committee to obtain possible reform proposals in 2010 (Kirkeministeriet 2010) and in the following year the Minister in office declared that he had found wide support in church circles to allow for homosexual marriage. Thus, besides that Sareen nearly resigned his membership of the Folkekirke a few years earlier as a protest against precisely the unequal marital status of homosexuals in the church,

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4 For most of the time led by Anders Fogh Rasmussen, then leader of the center-right party *Venstre* and now secretary general of NATO. The center-left government currently in office is led by the Social Democrat leader Helle Thorning-Schmidt.

5 The coalition statement did contain economic resolutions, but these were soon withdrawn due to political opposition and bad reception in the media.
it was hardly surprising that the new Ministry produced this draft bill. As the coalition agreement of the new government stated: “The government intends to give all members of the Danish Folkekirke the opportunity to get married in the church - regardless of their sexual orientation. The government will therefore repeal the prohibition on marriage of homosexual couples in the Folkekirke and will explore additional measures to ensure gender-neutral marriage legislation.” (Statsministeriet 2011, p. 65)  

However, if the draft bill was predictable, it was politically controversial in equal amounts: It deals with the question of homosexuality in relation not only civil marriage, but to Folkekirken’s own interpretation of Lutheran tradition and culture. Nevertheless, Sareen stated that it was “the right of the state to legally define living arrangements”, and what they proposed was to call it marriage regardless of homosexual or heterosexual orientation (Schnabel 2011). Along with the government he wanted to get rid of the distinction between registered partnership and marriage. They wanted for two persons of the same gender to be able to “get married”, be it civil or in the church.

Having read the government’s intentions in the draft bill three bishops (the highest ranking authorities in the Folkekirke) stated in a national newspaper: “As things currently stand it must be so, that the Parliament legislate and set the terms for registered partnership and marriage, while the Folkekirke draw up the rituals. It is however not in accordance with existing customary practice for the government to indicate how the parties of a homosexual partnership should be asked before the blessing.” (Bro, Christensen & Nissen 2011). The mentioned customary practice (established in the wake of the 1849 constitution) of mutual distance between state and church affairs is a consequence of a legislative vacuum, in which the minister of ecclesial affairs is allowed to interfere in the “internal affairs” of the Folkekirke by requesting a royal decree (not possible by law). It has thus been custom for the responsible ministers to “… demonstrate great judiciousness and has been reluctant to regulate the internal affairs of the church unaided [by the bishops or other theological counseling].” (Gender Equality and Ecclesiastical Affairs 2013, p. 15). The question at this point is, of course, whether the state was actually intervening in “the internal affairs” of the church.  

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6 The quoted passage is not found in the official English translation of the coalition agreement (which is an excerpt) and has thus been translated by the author.

7 The internal or inner affairs of the church is defined by a recent church committee as "...rituals, church service scheme, Bible translation, and the hymn book... but also the supervisory authority specifically of the clerical
This might depend on whether the marriage institution is considered an internal affair for the church? Even though the institution of marriage does not adopt a sacramental status in Evangelical Lutheran theology as it does in e.g. Catholicism the case of homosexual marriage is indeed a delicate matter and has been subject to intense theological debates in more than a century. Recently, a church committee had 11 out of 12 members declaring that “marriage and partnership should be considered to be different arrangements” and that the Folkekirke contains a “deep-seated controversy” on whether homosexual married life can be accepted within the realm of established theology (see Kirkeministeriet 2010: 7). For that reason the committee suggested that “the marriage between man and woman” and the appurtenant ceremonies should be preserved as it is currently written down (ibid.). This wording contrasts the rhetoric of the government pushing for a bill to permit all couples to get married irrespective of gender (Kirkeministeriet 2012).

Statutorily, the bill only made it legal for same-gender couples to get married in the church, while the Minister for Gender Equality and Ecclesiastical Affairs “invited” the ten bishops of the Folkekirke, to produce a new ritual for the purpose. This way the government tried to avoid the inconvenient question of whether the secular state was actually expanding the concept of marriage on behalf of a religious community. It was a strategic compromise of the government: They suggested a supplementary marriage ritual, which applies to homosexual couples letting the existing ritual stand. Thus, they created a situation in which the two marriage institutions were ritually not the same thing (meeting some of the theological criticism), but the political message was abundantly clear: everybody now had equal rights to marriage in the Folkekirke.

In this way the government was not interfering in the internal affairs of the church, formally speaking. But by legally defining marriage as the same type of living arrangement officiated by the identical rituals (with the exception that a pastors can refuse to participate in case of same-gender marriages for reasons of conscience) the government de facto acted as a supreme authority with direct consequences for the Folkekirke’s ecclesiological self-understanding. Notwithstanding a majority of bishops actually supporting a supplementing marriage ritual for same-gender couples, it is difficult to get around the question whether in

component of the pastors’ official capacity in the form of preaching and management of the sacraments.” (Ministry of Gender Equality and Ecclesiastical Affairs 2013, p. 15). See also page 8.
fact a secular state intervened in the internal affairs of a religious community mandated by a democratic parliament and according to a 164 year old extra-constitutional practice.

Furthermore, the bill passed by the Parliament applied only to the Evangelical Lutheran Folkekirke, and no other religious community. The chairman of the Atheist Society did not miss the opportunity to deride the government’s awkward position in the matter: *After all, it is not just the Folkekirke, which had the permission to discriminate based on people’s sexuality. In Denmark we have about 120 approved religious communities all with the right to officiate legally binding weddings, if they so wish. But now, they have enjoined one of them to marry homosexuals - why should this not be the case for all approved religious communities?* (Lindgreen 2011).

By increasing the rights of one sexual minority in the Folkekirke, the government not only challenged a traditional custom practice of the state, but also caused additional tensions in relation to the rights of the remaining religious minorities.

To better comprehend the kind of political reasoning that lies behind Danish politicians interfering in the matters of the church section III will try to lay down the conceptual ground of Danish secularism.

### III.

**Danish Secularism and Peoplehood**

It might not be an exaggeration to claim that Danish secularism is so intimately linked to the idea of a Lutheran people (“folket”), that debates on politics and religion at times revolves around disagreement as to what “Danishness” truly is (see also Østergaard 2006). This might also be the reason why political opponents are occasionally portrayed as un-Danish or ahistorical when they dare to question the raison d’être of Folkekirken (literally meaning the People’s Church).

Since the founding of the new democratic constitutional monarchy of Denmark in 1849, the Folkekirke was formally tied to the state. Unamended to this day the constitution states:

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8The opinion is divided on whether the Ministry for Gender Equality and Ecclesiastical Affairs actually possess the political power or even legal competence (according to custom practice) to create new rituals for the Folkekirke. I have discussed this with professor in Danish canon law, Lisbet Christoffersen, who seems to acknowledge that the government might have the political power to force through such rituals, though she maintains that it is formally reserved to the bishops to produce rituals (see Dabelsteen 2012 and Christoffersen 2012).
“The Evangelical Lutheran Church shall be the Established Church of Denmark, and as such shall be supported by the State” (see section 4 in The Constitutional Act of Denmark 1999). Furthermore, both the church and other religious communities are to be established by their own laws (ibid: section 66 and 69).

The doctrine of the state intervening in the Evangelical Lutheran Church is a custom gradually established in the Reformation era and codified in Lex Regia, the legal foundation of the Danish absolute monarchy in effect from 1660 until formally repealed by the first democratic constitution in 1849. As has been the case with all of the succeeding democratic constitutional acts of Denmark (the current one is the fourth) the Folkekirke never established its own constitution and thus its autonomy from the state. In spite of the intentions of the founding constitutional meeting (see Rasmussen 2009, chapter V) to this day the state maintains its pre-constitutional right to intervene.

In lack of governing laws the head of the church today is de facto the Minister for Ecclesiastical Affairs and the legislative body of the Church is de facto the Parliament of Denmark9. This custom practice does place limits on the degree of intervention by the politicians in the internal affairs of the Folkekirke, and restrains pastors and bishops from speaking on behalf of the church. Still today this is the nature of the church-state regime. The so-called “dissenting” religious communities like Muslims or Catholics are to be officially approved by the Ministry of Social Affairs and Integration in order to get privileges such as authority to marry couples along with various tax reductions10.

The described custom practice in this policy area assigns a rather peculiar role to the state. It integrates an old pre-constitutional, monarchist régime with liberal democratic government. The tension such a hybrid role of the state potentially entails surfaced in the draft bill to the new 2012 marriage law where it was stated, that “the competence to enforce judicial regulation of affairs, which are defined as internal ecclesiastical rest with the Minister for Gender Equality and Ecclesiastical Affairs.” (Kirkeministeriet 2012). In many other countries such a statement from a government might sound intimidating.

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9 Denmark being a constitutional monarchy formally confers Queen Margrethe II of Denmark as the supreme authority of the state, and as a consequence also of the Folkekirke, which she is constitutionally obliged to be member of (§6, The Constitutional Act of Denmark (1999).

10 Currently there are 254 approved ’dissenting’ communities (Familiestyrelsen 2012). As of January 1st 2012 79.8% of the population were members of Folkekirken (Kirkeministeriet 2013). Contrast this with 99% at the time of first constitution in 1849 and still 91 % in 1985.
This rhetoric could be the reason why Danish secularism is often understood as a for-or-against separation of the church and state, like secular debates in many other European countries. Either one supports the traditional regime or one favors a separation to avoid such interventions from the state. Sometimes these two standpoints on separation are categorized as the culturalists (Christian and nationalist values) versus the universalists (republican and principled values) (e.g. Kritik no. 197). The former are portrayed in favor of liberty of religion but without equality of religion, which is in effect a defense of the formal status quo of the church-state relationship. As mentioned, the current constitution requires the state of Denmark to support the Folkekirke and the kind of secularism so advanced has led some to coin it “Lutheran secularism” in the research literature (see Mouritzen 2006; Christensen 2010; Berg-Sørensen 2010). By this it is implied that proponents of this position generally support idea of the Lutheran state church.

This position often stands in contrast with another strict secularist stance in which states like France ostensibly keeps the public sphere free of religion in the name of civic equality and freedom. The purpose here is to evoke a political community based on liberal-democratic principles free of religious reasoning.

The above classification of Danish positions on secularism is quite common, but I argue that it needs further nuances. Though the literature is correct to identify a dominating doctrine of secularism imbued with a Lutheran social tradition, it does not seem to appreciate that there are in fact two opposing interpretations within the Lutheran perspective, and that these constitutes the dominating political cleavage. Though both acknowledge the cultural and political primacy of the Folkekirke as a crucial element of the Danish peoplehood, they differ in their views on tolerance, public religion and religious equality.

Three dimensions of Danish secularism: people, church and equality

When analyzing the discourse of leading politicians more closely, one see that the locus of conflict is not whether or not the church should remain established, but rather how it should be established (Dabelsteen 2011). One could state that the two conceptions of secularism in Denmark, which currently dominates the discourse, both have some degree of culturalism in

11 Or similarly “Lutheran liberalism” or “secularized Lutheranism”.

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them. Even though the universalist position is present in the public debate it still exercises far from the impact of the two others.

Instead of the prevalent presentation of secularism, I argue that the two dominating “culturalist” variants would be more adequately conceptualized in a main form of secularism based on three dimensions of: 1) an understanding of the Danish people, folk, as an ethnic, cultural and religiously homogeneous people, 2) an understanding of the Church, kirke, as the fourth pillar of the Danish state besides the classical thee state powers12, and 3) an understanding of religious equality, lighed, between all members of the Church. The last dimension can also be understood as a particular interpretation of religious tolerance – the idea of the “inclusive” church, which may contain a wide range of different denominations within the perimeters of Evangelical Lutheran theology, not unlike the logic of Charles Taylor’s common ground strategy13.

As Taylors stressed, the common ground strategy was a mode of religious conflict resolution, which premised some sort of shared religious and cultural political identity within in the state. To a great extent this is the case regarding the dominating visions of Danish secularism, which does operate with a certain perception of "Danishness" or Danish peoplehood. As Rogers M. Smith (2003) has convincingly argued, political identities are constantly produced and reproduced to affirm the existing (or prospective) power structures of the state. I argue that if we are to understand the political thinking and principles of secularism, and certainly in a case like Denmark, we must understand the context of peoplehood in which these liberal principles plays out. Secularism is thus not only concerned with religious freedom, equality, neutrality and impartiality (for a prominent example, see Audi 2011: part 2), but in addition involves questions political membership, allegiance and belonging and how these affirms how we understand political trust in and worth of the people. I will return to this point in section IV.

Indeed, the general premise of Danish secularism has historically been the religious homogeneity of the Danish society (see footnote 10), and was contrived in what might be

12 The Danish constitution defines in §3 the legislative, executive and judicial power, and in §4 establishes the “fourth” element of the state domain, Folkekirken (Christoffersen 2010).
13 Taylor finds “the common ground strategy” aiming at establishing “…a certain ethic of peaceful coexistence and political order, a set of grounds for obedience, which while still theistic, even Christian, was based on those doctrines which were common to all Christian sects, or even to all theists.” (1998, p. 33). According to Taylor this kind of secular argument has its origin in the bloody 16th and 17th century wars of religion between Catholic and Protestant princes, which in turn led to a doctrine beyond confessional disagreements to unify the subjects around a common legitimate social order.
called a “multi-Lutheran” social imaginary, where religious conflicts confined themselves to this religious outlook (Dabelsteen 2012). 

During the period of political modernization from the beginning of the 19th century two variants of this ethno-Lutheran secularism has separated off. The first variant can be termed official Danish secularism, which can be considered the ideological defense of the current church-state regime. It predominantly finds its proponents in the leading political figures from the prior government and its supporters (center-right to populist-right end of the political spectrum). The central argument here for is the Evangelical Lutheran Church to maintain a constitutionally privileged relation to the state in contrast to other religious communities such as Muslims and other “dissenting” Christian denominations. This reasoning is first of all fueled by a fear of politicization of religion in the public sphere should complete religious equality be implemented. As long as religious conflict is confined to the Folkekirke as it effectively has been throughout modern history, social order is maintained. Secondly, they believe that the religious or spiritual liberty (in Danish “åndsfrihed”) is best protected in the Folkekirke when the church is not autonomous. If the clergy were to fight over the true exegesis of the Gospels, they argue, it would become as spiritually paternalistic as in the church they originally protested against (the Catholic). Thirdly, the proponents of official Danish secularism simply regard the Danish people as an Evangelical-Lutheran people. As such this secularism expresses a kind of toleration, which with Rainer Forst could be termed a “permission conception” (Forst 2012). They might accept non-Evangelical Lutheran citizens as part of society, but on the condition that they recognize and abide by official Christian institutions and practices. It is also worth noticing that proponents of this particular distinction between religion and politics do not necessarily understand their own political norms as a form of secularism, but instead simply as an assertion of Danish tradition and principles of liberty.

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14 I have termed Danish secularism folkekirkelighe, reflecting the three dimensions of political identity, the people (folk), the institutional arrangement of the national church (kirke) and the political principle of equality (lighe) (Dabelsteen 2011, 2012).


16 Particularly the parties Venstre, Konservative, Kristeligt Folkeparti and Dansk Folkeparti.
The second position I call tolerant Danish secularism. It is extensively a critique of the official variant, and is prevalent among the leading politicians of the current government.\textsuperscript{17} Even though they share the acceptance of cultural and ethical primacy of the Folkekirke to Danish identity, they still criticize the current institutional regime for unduly excluding other religious communities from equal political treatment. Furthermore, they have traditionally questioned the quite extensive authority of the state when it comes to the internal affairs of the Folkekirke in both administrative and dogmatic matters. Thus we can observe a rather different take on religious tolerance here. Furthermore, they wish the status of non-members of the Folkekirke to be considered as equal in their right to enjoy various privileges. As a whole, the tolerant variant does not envision the solution through secularization of society but through the inclusion of other religions. They prefer to maintain the current church-state regime and expand the rights to others.

A final defining characteristic of the two variants of ethno-Lutheran secularism relates to what role religion is assigned in the public sphere. The official version takes an exclusivist stance because they understand the Folkekirke almost as the literal embodiment of the Lutheran doctrine of the two kingdoms. Thus, and quite paradoxically, the secular order is upheld not in spite of the existence of the church, but because of it. Folkekirken is seen as the condition of possibility for secularity itself; without such an institution the Danish doctrine of distinguishing (though not separating) religion and politics would not be possible. Thus, even pastors of the Folkekirke should not partake in political life as a representative of the church, and other religious utterances in public debate might be considered un-Danish or even extremist. It is a conception of tolerance founded in a cultural, religious hierarchy legitimized by a majoritarian perception of authority. Tolerance is seen as a remedy to avoid conflicts by repressing religion from the public sphere. In contrast, the tolerant Danish secularism is more including in that matter, and neither consider the existence of an autonomous Folkekirke nor alternative forms of religious practice in the public sphere as threats to the social cohesion of the Danish society. They seek to include other religious communities in the deliberation of how to arrange the political institutions. Nevertheless, both of these competing secularisms share is an understanding of the Folkekirke as a public good for the wider society and not just for the members of church members.

\textsuperscript{17}Consisting of the political parties of Socialdemokratiet, Socialistisk Folkeparti and Radikale Venstre.
With the political context of the marriage bill outlined and the two dominating doctrines of Danish secularism presented, we can now turn to a discussion of the paradox the Danish state found itself in until and after the passing of the bill.

IV. "...THE TWO FLAGS SUIT ONE ANOTHER!" – THE PARADOX OF STATE REGULATION OF RELIGION IN DENMARK

The very first same-sex marriage took place in Copenhagen on a symbolically charged national flag day, Valdemarsdag. The date is June 15th and marks the legend of the Danish flag, Dannebrog, which allegedly fell from the sky during the Battle of Lyndanissee also known as the Battle of Valdemar, June 15, 1219. According to legend it was taken as a sign from God to the Danish King Valdemar that their national cause was indeed divine [sic], since the Danes left the battlefield victorious. In addition to celebrate that Dannebrog was granted to the Danes, this day also commemorates the reunification of the North Slesvig territory with Denmark June 15 1920, which was lost to the Prussia in the crushing defeat of 1864 (Adriansen 2003: 127-148).

On this very day in 2012 pastor Michael Hemmingsen stated to the press after the marriage ceremony: “It was very touching to be part of. Today we celebrate Valdemarsdag, where Dannebrog fell from the sky. Similarly, today a big spectacular rainbow colored flag fell from the sky, and let me say: the two flags suit one another!” (Østergård 2012). Besides the pastor's obvious thrill that something utterly Danish (the flag, the church, the day) can be welcoming to homosexuality, the connection between what Smith (2003) would call "a constitutive story of peoplehood" like the legend of Dannebrog and a deeply politicized religious act also appears clearly in this situation. It seemed natural for the pastor to state that a ceremony of the Folkekirke is of relevance for the whole nation.

At this point we can fully appreciate, that Mister of Gender Equality and Ecclesial Affairs, Manu Sareen’s draft bill was not only predictable and controversial, but it was truly paradoxical.

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18 According to Smith (2003), a constituting story is a political narrative on who the citizens are and accordingly what is expected of them. This is the element of people-making (often lead by the political establishment), which indicates that people does not choose their own identity but are “organically” embedded in the nation due to a common heritage, an original race or shared ancestry. Civic identity or virtue, Smith finds, is particularly bound up with religion and ethnical myths which affirms both their worth and obligations (ibid: pp. 64). Such stories might be the numerous founding myths of nations, of how they fought for independence in the past or even in prehistorical time.
On the one hand the coalition government that Sareen represents, consists of parties that were all strongly opposed the former center-left government's tight leach on the Folkekirke, and for not showing any will to equalize other religious communities with the Folkekirke. In other words, the current coalition was and still is fairly aligned with the tolerant variant of Danish secularism as described in section III. This approach was also the reason why the coalition agreement clearly stated that the government intended to organize the Folkekirke according to more “current and modern” principles of government and to secure an “explicit delegation of economic and theological responsibility” (Statsministeriet 2011: 74). Such a statement indirectly points to the need of an actual church constitution and possibly also a synod, so that pastors and regular members could decide on their own matters – on both externally and internally. It led to the establishment of a new church committee with the purpose of formulating concrete proposals to solve the governance issue of the church, scheduled to report mid-2014.

On the other hand, the intention to supplement the existing marriage ritual with a new one was framed as a matter of not discriminating citizens on the grounds of self-ascribed sexual orientation. This framing is possible because Sareen considers the Folkekirke as falling under the responsibility of the state: the state legislate on its behalf and thus falls under the same standards of rights and duties as any other public institution. That the church is subject to state policies is logical for Sareen: "As minister of gender equality and ecclesiastical affairs I am content that the Danish Folkekirke now welcomes the whole nation [hele folket]. This is how it should be. Just as no one is prevented from declaring their love in the church due to skin color or origin, no one should be denied due to their sexuality. It is both a human right to practice one’s religion and to be free from discrimination due to one’s sexuality. These rights are now also granted to the homosexual members of the Folkekirke." (Sareen 2011b).

Thus, according to Sareen the state not only held the right to enforce the bill on the Folkekirke; they responded to a moral duty to do so to ensure human rights. What Sareen and the government is suggesting, then, is that we should grant non-discrimination rights to members of a church (evident in the above quote) by infringing on secular customary practice (and standard liberal interpretations of religious freedom for religious communities more generally) imposing limits on how far the state may go. Taken at face value this seem to counter the logic of the coalition statement on church governance.
Certainly, the paradox in this case flows from the lack of autonomy the Folkekirke enjoys vis-à-vis the state and the resulting vulnerability to political interference. It was the current government parties which sternly criticized any political interference when they were in opposition. And still, the draft bill on homosexual marriage in the Folkekirke, which were implemented June 15th 2012, was indeed political interference in the internal affairs of a religious community – lead by the left-wing government.

There are at least three interesting aspects of the above paradox. First, it is an emblematic aspect of Danish secularism, that the state is so closely interconnected to the Folkekirke, that it regard the national church as belonging to the general public jurisdiction, thus being subject to the logic of civil laws of non-discrimination. After all, the Folkekirke’s pastors are legally regarded as state officials – they are partially paid directly by the state – performing a public service (see Ministry for Gender Equality and Ecclesiastical Affairs 2012, p. 9).

Second, it raises the question of how far the secular state can reach into the realm of religious communities in a liberal democracy. From the perspective of Danish secularism as conceptualized above, Sareen’s framing of the bill in the public debate was remarkable, because it revealed a form of political thinking embedded in a particular doctrine of relating religion and politics. It is an important point that the identified paradox of the current government in dealing with the Folkekirke does not reject the existence of a coherent doctrine of secularism, but actually confirms it. In fact, the political statements of Sareen display exactly the characteristics of one of the central variants of secularism, the tolerant Danish secularism, which currently dominates the landscape of Danish politics: An ambition to enhance political principles of religious freedom (more autonomy to the Folkekirke) and religious equality (equalize other religious communities in Denmark with the privileges of the Folkekirke), but still deeply embedded in the customary practice of state control of the Folkekirke.

Finally, in a case like Denmark it has consequences for the way we think of political identity (in casu the Danish people) when the national church is subjected to controversial political issues from the surrounding society. The case in point, of course, is same-sex marriages. In the remainder I will briefly expand on the latter point.

When we consider the political meaning of sexual freedom and equality in relation to the national church we must take notice of how deeply the Folkekirke is embedded in a narrative of Danish peoplehood. Historically, highly debated reforms of the organization or traditions of
the church by the government has always been partly motivated by ecclesiological concerns, partly motivated by ongoing political agendas. Since the national church is considered partly a public domain, the parliament is to maintain a church in tune with the cultural development of the nation. Many politicians in government and parliament understands the Folkekirke as a public good for the wider society and not just reserved for the members of church members.

A status similar to that of the Folkekirke has been conceptualized by religion sociologist Grace Davie with her term, vicarious religion. Davie points to how a minority of the population functions as devout people of faith on behalf of the consenting, though not actively religious majority. This minority performs religion on behalf of the majority, and at the same time maintain institutional frames offering important rites de passage for individuals and groups like birth, marriage and death (see Davie 2007). However, according to Davie vicarious religion is not only performed religion on behalf of the majority. Religious communities can often become subject to questions of pressing moral and political issues, which is difficult to solve elsewhere in society. The church then becomes a testing ground or an auxiliary valve for the wider society (see footnote 19).

Indeed, the political agenda in the 2012 bill of expanding the concept of marriage with its underlying regulation of the family structure and equal citizenship, intertwined questions of sexuality, political equality, religious equality and peoplehood. From a critical perspective the bill not only concerned the rights of homosexual citizens, but also the affirmation of a particular cultural norm in Danish nationalism. In this respect it is not surprising, that both civil and church marriages were legalized for same-sex couples. Traditionally, the national church has been a central site for affirmation of Danish peoplehood as a vicarious (official) religion. The bill thus placed homosexuality within the official national narrative, pushing the limits of sexual tolerance in the public sphere: "A fierce battle of values on gender, equality and homosexual rights is raging. It is a battle taking place all over the world... Denmark has always been among the front-runners when it comes to homosexual rights, and since the government

19 As examples of this one could mention when women became enfranchised for parish council elections of the Folkekirke in 1903, it was prior to the political enfranchisement of women for local elections in 1908 and in 1915 for the national elections. Another example was in 1948 when female pastors were allowed to serve in the churches, in a time where female participation in the work force was sparse and the traditional vision of the nuclear family was strong. In both cases it was politicians in the parliament deciding on behalf of the church. The parliamentary debate surrounding these decisions were hardly isolated from the matters of other political discussions of democratic values and gender equality, respectively.
was elected we have passed important legislation... to give homosexual couples the possibility of getting married in the church." (Sareen 2013).

Nevertheless, following the aftermath of the reformed marriage laws official numbers indicate less than one out of five same-sex marriages were held in the Folkekirke in 2012, which is significantly lower than the general average of 36 % being married in the church. Certainly, it should not be questioned how important the possibility of homosexual marriage in the church has been for the 51 couples who took advantage from the bill passed in June 2012 till the end of the year (Statistics Denmark 2013a). On the other hand, it does not appear that the bill was driven by a pressing societal demand pertaining to a large section of the population to extend its jurisdiction to the inner affairs of the church. In fact, as one bishop pointed out, neither homosexual marriage, nor blessings of homosexual couples are often seen in the church (Søgaard 2012).

Perhaps it underscores the point that both the Ministry of Gender Equality and Ecclesial Affairs and the bill was motivated by the message it sent to wider society. The theme of sexual tolerance might be a difficult question for the vicarious religion to deal with, but it might also function as normative compass in the troubled waters of multiculturalization for a – until not many years ago – highly homogeneous population. Not only is the general model of Danish secularism seriously challenged by this development. At the same time questions of sexual equality and tolerance has been perceived by several politicians to be challenged by immigrant minority groups of Muslim persuasion in particular, and this notion has been a fairly salient in public debates (as part of debates of whether Muslim immigrants accepts "Danish values"). As Davie points out, bringing the questions posed by the majority to the religiously performing minority, might be a macro sociological function in modern society. Davie herself have pointed to the debates of homosexuality in the Church of England as an example, but as indicated this theme might not be a coincidence.

20 In fact, 36 % church marriages in 2012 is a historical low and there is a fairly strong downward tendency - in year 1997 more than half the marriages were in the church. The total number of same-sex marriages in 2012 were 268, see Statistics Denmark 2013b and 2013c.

21 Before the bill, homosexuals had the option to be blessed in the church, but not married.

22 This is not a new phenomenon. As was evident during the parliamentary debates of the first law on registered partnership in 1989 the minister of justice, Ninn-Hansen, who were against the proposal in part because of the "...bad publicity of Denmark abroad where marriage provides the setting for married life between two people of different sexes" (Folketingstidende 1988/1989). The proponents did recognize the controversial issue surrounding almost equal rights to same-sex couples, but were confident as Ebba Strange "...that Denmark will stand out as a country which have ventured the possibility to grant homosexuals the prospects stemming from the draft bill." (ibid).
In her most recent book, *On the Muslim Question* (2013), Anne Norton noted how sex and sexuality in the West has become a site of fundamental disagreement among philosophers and politicians alike: "This is the terrain of the cultural wars, and underneath [...] debates of sex and sexuality, equality and the sanctity of the family, the role of women, culture and rights, continue unabated." (p. 45). As one example Anne Norton points to how the controversial Dutch politician Pim Fortuyn (assassinated in 2002) through his open and flamboyant homosexuality enabled his supporters to affirm their sexual tolerance even as they manifested their immigrant intolerance. The effect, she claims, was that sexual freedom in effect came to substitute political freedom (ibid. p. 56). Was something similar at stake in the case of the same-sex marriage bill? Did the politicians downplay religious freedom of the vicarious religion (the national church) in the name of sexual freedom for the heterosexual majority protecting a sexual homosexual minority?

Interestingly, Jasbir Puar has offered a conceptual framework to understand when homosexuality is included in "liberal discourses of multiculturalism and diversity" (2006: 85) to strengthen the national narrative but at the same time drawing up the boundaries of "us" and the "other". She coined it "homonationalism" to signify "how 'acceptance' and 'tolerance' for gay and lesbian subjects have become a barometer by which the right to and capacity for national sovereignty is evaluated." (2013: 336). As is also Norton’s argument, Puar claims that politicians publicly embracing homosexuality is often deeply embedded in a particular national interpretation of freedom, emancipation and citizen rights. In this way, mainstream political discourse recognizing a certain version of homosexuality can come to disqualify or even contribute to racial and sexual segregation from the national imaginary if certain groups does not fall within the limits of "us" (ibid.).

If we apply the notion of homonationalism to the marriage bill, we might start to question not only the right of a secular state to interfere in the inner affairs of any religious community, but also of the political thinking behind the bill. If homosexuality now is part of the national narrative of Danish peoplehood, how are other religious communities then evaluated if further equality between religious communities are obtained? Will the marriage bill be part of a homonationalism underscoring the otherness of non-Christians or even groups not open to accept same-sex marriage in their belief system? In all cases, as things stand now the question of the relationship between the Folkekirke and the state concerns all Danish citizens because it affects certain central elements of its peoplehood.
V.

CONCLUSION

The new law extending marriage to same-sex couples was part of the government’s agenda of standing out on identity politics, but can also be read as part of an early-state reform of the formal relationship between the state and the church. This might sound contra intuitive as the marriage laws in effect affirmed the superior right of the state to interfere in the inner affairs of the national church, and thus it was business as usual. However, Sareen’s new church committee looking into modernizing the governance of the church is steering in the direction of actual reforms of the church-state relationship. If the principles of the current institutional arrangement of the Folkekirke is to be discussed, it is likely that questions of formal religious equality between all religious communities in Denmark start to surface. From this perspective one could ask why the reasoning that Sareen applies to the internal affairs of the Folkekirke does not apply to other religious communities?

Currently, political forces are pulling the doctrine of Danish secularism towards a more inclusive approach towards religion in the public space and a less firm establishment. As argued, an approach to religion in the public sphere with a Folkekirke more distant to the state might entail a formal recognition of more equal religious rights for all. But coming from the existing tradition of establishment, defending such a move might be awkward: Either other religious communities will be subject to the same level of state interference as the Folkekirke (that certainly would not be compatible with liberal inclusivism or hardly any vision of liberal democracy), or the state will have to take the same hands-off approach to the Folkekirke as the “dissenting” religious communities currently enjoys. In such a scenario, the state would not be able to pass a law of marriage on behalf of any religious community.

As Danish secularism was formed in a multilutheran context with virtually all of the population being members of the Folkekirke, it did not appear controversial that religious liberty was protected qua the prerogative of the state to govern its organization (to protect spiritual freedom, “ândsfrihed”) and that religious equality was protected by a fairly inclusive and decentralized church organization so that all Lutheran denominations could be contained within the structure. Still today, it is common in the political debate to defend the status quo of church-state relationships by arguing that dissolving the current organization of the Folkekirke would result increasing religious conflict in society. From this perspective it did
not appear controversial for the state to intervene in and maintain its own church to secure such aims.

But in an increasingly *multicultural* context the state and the government find it still harder to legitimize interventions like the 2012 bill. Again, the obvious problem is religious equality. Even though the Folkekirke still enjoys certain privileges compared to other religious communities, the church is so vulnerable to political intervention, that it might not compensate the advantages. This might explain why only few of the “dissenting” religious communities have complained about their formally unequal religious rights compared to the Folkekirke. They know that there are strings attached.

On the other hand they *should* be concerned both the "privileged" Folkekirke and new marriage legislation. The Folkekirke is not only a peculiar historical artifact and a church for the majority of the Danish population. It is symbolically an important site of the people. It is not a coincidence that the parliament opens each year by attending an official service in a Folkekirke church, which is literally build into the parliamentary building. It is not a coincidence that all Danish citizens carry a passport with an early depiction of the crucified Jesus on the first page, or that the Danish flag is a white cross on a red background. The Christian symbols which the Evangelical-Lutheran church of Denmark is considered to be heir to permeates virtually all official symbols (see also Adriansen 2003). When the 2012 marriage bill was passed and thus applied to the rituals and self-image of the Folkekirke it also concerned a certain vision of the Danish peoplehood.

And it raised the fundamental question of equal religious rights. The Folkekirke might enjoy a constitutionally privileged position relative to any other religious community, but its right to enjoy complete freedom might be considered more restricted than the others. But to expand the time-honored equality between denominations *within* the Folkekirke to become a real religious equality at *state level* (i.e. separation) would formally require a constitutional amendment, which is extremely hard to obtain. Technically, the obligation of the state to support the Folkekirke can alternatively be lifted if §4 loses its legal objective to support the church of the Danish people. In other words, if the Evangelical-Lutheran Church ceases to be the church of the *majority* of the Danish people, the obligation of the state may be revoked.

However, within the existing institutional regime, making other religious communities more equal to the Folkekirke may accommodate some of the pressure stemming from the pluralizing of Danish society. In that case, religious equality will only have the status of *de*
facto because of the existing constitution, and the question is whether such an arrangement is even politically credible at the moment.

As the discussion of the marriage bill has shown, to obtain not just multilutheran equality but multicultural equality in the Danish democracy requires confronting conceptions of the people (folke-), institutional status quo (-kirke-), and not at least the existing norms of equality (-lighed).

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22


**Laws and bills**


*Forslag til lov om ændring af ægteskabsloven, arveloven, straffeloven og lov om afgift af arv og gave. (Ændringer som følge af registreret partnerskab).* bind III. Forhandlingerne, sp. 4290-4295.
