

The right to love: citizenship, migration and borders in a corner of Europe

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Abstract

For more than a decade immigration and in particular family unification has been the topic of considerable public debate in Denmark. Successive Danish governments have tightened the rules substantially, making it hard for citizens and migrants to settle in this country with a foreign spouse. Similar disputes are taking place in other European countries, and the case merits attention because Denmark has been a ‘front-runner’ in restricting migration.

In this paper I investigate the public debate over community, citizenship and the right to love spurred by the legislative changes. The empirical analysis is based on editorials, columns, letters to the editors and debate-letters in two major Danish newspapers. This material is analyzed with qualitative reading techniques. Drawing on agonistic and deliberative theories of democracy I argue that citizens and migrants have engaged in a renegotiation of the territorial and constitutional boundaries of liberal democracy.

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“I am married to the world’s most wonderful woman, but sadly she is not from Denmark or another EU-country.” (Andersen 2003)

Introduction

During the past decade Danish governments have tightened the rules of migration through marriage. These changes include especially the introduction of the 24-years-rule and the affiliation requirement. The former stipulates that a citizen and his or hers spouse must be at least 24 years old to obtain family unification. The later specifies that the couple must have greater affiliation with Denmark than with any other country (Kofod Olsen 2004: 7, Rytter 2007: 26-27, Schmidt et al 2007: 27-28).

The new regulations have spurred an intense public debate over the relationship between community, citizenship and the right to love. Some question the legitimacy of the government’s regulation of the sphere of intimacy. In today’s interdependent world, not only goods and services but also persons move across borders. Should citizens who fall in love abroad not be able to return to their home country with their partners, it is asked (Nielsen 2003, von Platen 2003)? Others invoke the responsibility of the state to protect young ethnic minority women from patriarchal family structures (Mandel 2003, Jørgensen 2003). In diaspora communities youngsters are forced into international marriages with spouses wishing for a ticket to the West, they claim. And some insist on the need to limit immigration for the sake of cultural or social cohesion. The arrival of large groups of foreigners via family unification could endanger the functioning of society, it is stressed (Moes 2003, Olsen 2003).

The purpose of my paper is to discuss and analyze this public dispute. Drawing on agonistic and deliberative theories of democracy (Balibar 2004, Honig 2001b, Habermas 2005a, Benhabib 2004) I argue that what has taken place is a struggle over the constitutional boundaries of liberal democracy.

The paper begins with a very brief introduction to changes in the concept and practices of citizenship in contemporary Europe and how this affects our theoretical understandings of democracy. Subsequently, data, methods and research question of the empirical analysis are outlined. This is followed by an overview of Danish family unification regulation and the political

context. With this in place, I then analyze public debate over family unification in Denmark and discuss how the boundaries of democratic membership are re-drawn.

Migration, citizenship and liberal democratic community

Cross-border migration and mobility in Europe is challenging our conceptions of citizenship and politics (Castles & Anderson 2000, Nanz 2009: 410). Citizenship has served as the normative model for the link between individuals and state within a given territory. It defines a set of civil, political and social rights and obligations for members of a political community (Marshall 1950, Guild 2009: 35). Yet in today's Europe citizenship has to some extent become disaggregated. Permanent residents, for example, have some civil and social rights but very few if any political rights. EU-citizens living in another EU-country have a special legal status (Benhabib 2004: 153-163, Soysal 1994: 120-127, cf. Joppke 2009: vi-vii).

At the same time territorial borders are changing. The European Union has gradually dismantled its internal border control and is seeking to harden its external frontiers (Anderson 2000: 18-22, Zolberg 2004: 11). EU member states retain leverage with regards to regulating immigration, but the European Court of justice for example is taking an active part in adjudicating the citizens' rights to mobility and family life (Geddes 2003: 136-142, ECJ 2000, 2001, 2005, 2008).

Migrants and citizens are also playing a role in this transformation. Some bring disputes over family unification before national and European courts (Means 2009, van Walsum 2009). Others participate in public debate, organize politically (Balibar 2004: 46-50, Soysal 1994: 111) or engage in lobbying through interests groups (Favell & Geddes 1999: 20-22). In doing so they often appeal to but also question prevailing understandings of human rights and citizenship.

These different currents have implications for how we conceive of liberal democracy. The republican model of democracy emphasizes the sovereignty of the people who jointly and freely regulate their common life (Walzer 1983, Rousseau 1968 [1762]). The liberal model stresses the rights of the individuals against the state (Rawls 1993, Mill 1985 [1859]). But who are the people – the citizens – and how do we interpret what basic rights they have? This, it seems, is continually changing, and these transformations in turn appear both disturbing and hard to make sense of within classic liberal and republican frameworks.

Agonistic and deliberative democratic perspectives, I believe, offer more promising avenues of interpretation. This is due to the dynamic conception of liberal democracy which these approaches share.¹ The presumption is that the founding principles, though highly important, are not set in stone. Our basic freedoms provide a framework for democratic action, but their actual interpretation is the subject of ongoing political struggle. In this process the people is reconstituted as new groups are included or excluded (Habermas 2001: 774, 2005b: 90-97, Benhabib 2007: 454-456, Norval 2007: 74-86, Mouffe 2005: 31, 212, Laclau & Mouffe 1985: 154-56).

From deliberative and agonistic democratic perspectives it is suggested that what we are witnessing is a renegotiating of the basic ideals - or what we might call the constitutional boundaries - of liberal democracy. By taking up and re-appropriating discourses and practices of liberty and equality citizens and migrants are re-interpreting what it means to be a member of political communities (Benhabib 2004: 176-212, Means 2009: 386-387, Honig 2001b, Balibar 2004: 49-50, 75-77, Rancière 2004).

Deliberative and agonistic theories differ profoundly in a number of respects. Deliberative perspectives underline the importance of dialogue, reason and understanding in parliament, courts and the public sphere (Habermas 2005b: 52-55, Chambers 2003: 308-309, Benhabib 2002: 105-8, 114-5). Agonistic approaches highlight the ineradicably conflictual nature of politics and the need for mobilization, collective action and emotional identification (Connolly 2002: 158-163, Mouffe 2005: 14-25, Honig 1993: 2-3).

The two perspectives in particular diverge in their assessment of the direction of these interpretive struggles over the constitutional ideals. From a deliberative perspective Habermas (2001: 774-775) for example tends to see a process of steady normative progress, albeit with temporary setbacks. We are, he seems to suggest, gradually moving towards a more inclusive liberal democratic regime. Though sharing part of Habermas' optimism Benhabib (2004: 191-198, 209-210) is more cautious, aware also of the potential for increasing mutual distrust and conflict through public deliberation. From an agonistic view, Honig (2001a) and Mouffe (2005: 12) underline 'the radical undecidability' of politics. History, they insist, has no telos, and

¹ A similar dynamic conception is found in parts of American legal and constitutional theory. See for example Michelman 2000 and Ackerman 1991.

constitutional battles may push the boundaries in liberal as well as conservative directions. Reinterpretation can open up new horizons, but also entails the possibility of loss. Democratic boundary drawing is thus necessarily a risky business. Political agents forget this at their peril, they argue (Honig 2001a: 80, Mouffe 2000).

Notwithstanding these differences, the shared conceptions of deliberative and agonistic theories should thus hold potential for grasping contemporary struggles over citizenship, borders and migration. This can, I will argue, help make sense of the Danish disputes over family unification.

Research question, data and methods

In this paper I seek to answer the following question:

How have citizens and migrants renegotiated the constitutional boundaries of liberal democracy in public debates over the Danish family unification regulation?

I answer the question by providing a careful analysis of the recent dispute over Danish family unification regulation. It is a theoretically informed “interpretive case” study (Lijphart 1971: 691, George & Bennett 2005: 75) with the main purpose of understanding better this specific political event. Yet while interesting in itself, the Danish debate also merits wider attention. Denmark is currently a European front runner in restrictive immigration and family unification policy, and thus an “extreme case” (Siim 2007: 945, Phillips 2007: 121-22, cf. Flyvbjerg 1991: 150). Because family unification is a main route to permanent residence, other European countries are also eager to regulate this area tightly (van Walsum 2009, Bhabha 2009) and might look to Denmark for inspiration (c.f. Phillips 2007: 122). This makes it important to investigate critically the stakes in this particular dispute.

In the paper I focus on the public debate in the two largest Danish broadsheets, the centre-right paper, *Jyllands-Posten*, and the centre-left paper, *Politiken*. The two are selected because they constitute the ideological extremes within mainstream public discourse on migration issues and thus give a very broad sample of opinions.² From these sources I collect, via the database *Infomedia*, all editorials, columns, debate letters and letters to the editor containing the word family unification (*familiesammenføring*) in 2003. This year is chosen because of the intensity of the discussion as the effects of the 2002-restrictions of the law started to become visible. This public

² For a critical analysis of the role of Danish media in the public debate over immigration, see Hussain 2000.

dispute led to significant changes in the regulation towards the end of the year – more about this in the next section. Other years and other papers or media, for example television or blogs, could give a somewhat different picture and might be interesting to include in a larger study.

It is a qualitative textual analysis. The material has been coded following a strategy of grounded theory (Clarke 2005, Strauss & Corbin 1998). In an iterative process of reading and re-reading the material I developed and adjusted the categories while drawing on political theory (Kelly 2005, Okin 1999, Miller 1997) and insights from previous studies of Danish public discourse on migration (Hussain 2000, Hervik 2004, Karpantchof 2003, Rydgren 2004, Lægaard 2005, Siim 2007). The texts are grouped according to five codes: ‘Rights-based international liberalism’, ‘State-feminism’, ‘Ethno-nationalism’, ‘Social-democratic communitarianism’, and ‘Other’. A few articles articulate more than one discourse, but have been categorized after the text’s main argument. This coding is combined with a close, discourse-theoretically inspired analysis (Wetherell 2001, Howarth 2000) of how central concepts such as citizenship, rights and borders are constructed in the debate.

Situating the debate

The dispute in Denmark over family unification is part of a broader public controversy about foreigners and immigration. The roots go back to the early 1980ies, but the debate really caught on in mid-1990ies with the creation of a new political party, The Danish People’s Party (Dansk Folkeparti). This populist and anti-immigration party has been very successful in shaping public discourse and the national political agenda and is presently the third-largest party in the Danish Parliament (Rydgren 479-497, Karpantchov 2003: 32-35, Hussain 2000: 96-97, Indenrigs- og Sundhedsministeriet 2007).

A search on family unification in Danish national newspapers shows that this issue gradually came to the fore in the late 1990ies continuing through the following decade. Denmark has had a ban on labour immigration since 1973, and critics began to argue that the existing liberal family unification rules were being misused as a route to permanent residence. In response, the then Social-Democratic and Social-Liberal governing coalition tightened the rules in 1998³ and 2000

³ In 1998 the right to family unification was removed in case of arranged marriages where the partners were less than 25 years. Moreover, it was also ruled out in case of marriages for the purpose of immigration. Finally, for couples where the party residing in Denmark was a citizen there or in one of the Nordic countries or a refugee, an economic requirement was introduced. The party residing in Denmark would have to document his or her ability to provide

(Retsinformation 1998, 2000, Siim 2007: 495). The latter change in particular merits attention for two reasons. Firstly, the right to family unification for persons under 25-years was abolished. This group could still be united in Denmark but subject to administrative discretion in individual cases. Secondly, the earliest version of the affiliation requirement was introduced, according to which immigrants residing in Denmark could only obtain family unification with a foreign spouse, if the couples affiliation to Denmark was at least as great as to any other country (Retsinformation 2000, Liisberg 2004: 17, 27).⁴

In the run up to the general election in 2001 immigration was the dominant issue and demands to limit family unification played an important part in the debate. The incoming liberal-conservative government, with the support of the Danish People's Party, promised severe restrictions (Rydgren 2004: 493-497, Fogn Rasmussen 2001a-b). In 2002 they passed a law introducing the 24-years rule and tightening the affiliation requirement. For youngster below the age of 24 years there was no longer even the possibility of obtaining family unification via administrative discretion. The affiliation requirement was widened to cover not just immigrants but also Danish citizens, and the couple's affiliation with Denmark had now to exceed their connection to any other state (Retsinformation 2002, Liisberg 2004: 17, 27).⁵

The new regulation had two explicit purposes: Firstly, it should curb immigration. The aim was to hinder immigrants and their children in marrying a partner from the family's country of origin and settling in Denmark. Secondly, the law should put a stop to forced marriages. The government expressed concern that some ethnic minority citizens were being pressured by family members into cross-border marriages. Young men and women should not be used as means of getting permanent residence in Denmark for friends or relatives (Retsinformation 2002, Liisberg 2004: 17, 27).

The new law meant that early marriages with foreign spouses could no longer take place in Denmark due to the 24-years-rule. But mature couples were also affected. For ethnic minority citizens or residents the affiliation rule and the administrative practice made it thoroughly difficult

for his or her spouse. The part in Denmark must also have had permanent residence for at least three years (Retsinformation 1998).

⁴ The 2000-law also demands that the Danish citizen or resident has a dwelling of their own of sufficient size (Retsinformation 2000).

⁵ This law also increased the economic requirements for the part residing in Denmark, whether he or she holds Danish citizenship or not (Retsinformation 2002).

to be united in Denmark with a spouse from their own or their parents' country of origin. The couple's connection would almost always be deemed greater to the home state of the spouse than to Denmark (Lisberg 2004: 33-34).

However, the law also affected ethnic majority citizen, who found it harder to be united in Denmark with a non-EU partner. In particular for Danes, who had lived abroad in for example USA or Canada for a number of years and had gotten married there, it became very difficult to return to Denmark with their families. In 2003 this gradually came to the public's attention as a number of Danes abroad and ethnic majority citizens in Denmark wrote debate letters to Danish newspapers or contacted parliamentarians to tell about their grievances (Ersbøl 2004: 99, see von Platen 2003, Nielsen 2003, Wilson 2003b, Andersen 2003, Henrichsen 2003).

This spurred a very intense debate over family unification which eventually led to a small but important change in the regulation. In late 2003 the government with the support of the Social-Democrats and the Danish People's Party agreed to introduce the so-called 28-years rule. It specified that the affiliation requirement no longer held for persons who have been Danish citizens for at least 28 years. Also exempted from the affiliation rule were persons who were born in Denmark or had arrived there in early childhood, had grown up there and had legal residence for 28 years (Ministeriet for Flygtninge, Indvandrere og Integration & Udlændingestyrelsen 2005, Retsinformation 2003).⁶ The law was subsequently criticized for discriminating between different groups of citizens (Kofod Olsen 2004: 12-13, Ersbøl 2004: 101-103). Moreover, the change was introduced alongside the presumption rule. According to this new regulation a union between cousins should be presumed to be a forced marriage and the foreign party would thus not be eligible for family unification (Retsinformation 2003). This too has been criticized by some for being discriminatory as cousin-marriages are not illegal in Denmark (Clemensen 2003, Espersen 2003).

On balance however, the 28-years rule was a liberalization which enabled large groups of ethnic majority and minority citizens to obtain family unification in Denmark, albeit late in their youth. Hence in a thoroughly immigration-hostile environment - indeed with the support of Danish

⁶ This latter exemption is not explicated in the law, but follows from the explanatory notes to the bill and is specified in an administrative note of instruction (Lisberg 2004: 27, Ministeriet for Flygtninge, Indvandrere og Integration & Udlændingestyrelsen 2005).

The law also, and explicitly, exempts children adopted before the age of six years and who have obtained citizenship before or at the time of adoption are also exempted from the affiliation rule (Retsinformation 2003).

People's Party – it was possible to change the law in a less restrictive direction, partly in response to public debate. This is striking and makes it interesting to take a closer look at the public dispute in 2003, even if it was by no means the end of the debate.

Analysis – debating the right to love

In the Danish debate a number of different positions are put forth concerning the regulation of family unification by citizens, including politicians and newspaper editors, and a few migrants. Some are in favor of a restrictive policy, while others argue against it. Their articulations and negotiations draw on discourses of liberty, feminism, social-democracy, and ethno-nationalism. Yet across the board, a central theme is the idea of a right to love, which is interpreted in competing ways and related to different conceptions of community. This is what I examine in the following sections.

Rights-based international liberalism

The largest group of articles falls in the category of rights-based internationalist liberalism. Strongly supported and propagated by the editors of the centre-left newspaper *Politiken*, it is a discourse found mainly though not exclusively in this paper. Apart from the editors themselves, it is expressed by a number of politicians from centre-left parties, especially by leading members of the small Social-Liberal Party (Det Radikale Venstre). It is also put forth by a group of other debaters as well as a handful of citizens who are themselves personally affected by the law.

The rights-based internationalist liberalism is a position which stresses the rights of Danish citizens and/or residents to live in Denmark with the partner of their choice. The general line of argument expressed here is that love knows no borders and the right to live in your home state with your closest family is essential to the concept of citizenship. As the former Minister of Economic Affairs and then leader of the Social-Liberal Party, Marianne Jelved, puts it: “A citizen must under all circumstances be able to reside in his or her country with his or her family.” (Jelved 2003, see also *Politiken* 2003a-c, Hornsgaard 2003, Andersen 2003).

The following quote from a debate letter by Anne Marie and Henrik Voldborg illustrates the argument:

“To fall in love with a foreigner and decide to get married is a big decision. To come home to Denmark with ones partner and children and find out that one’s own little family is not welcome in Denmark is a horrible chock. Despair, impotence, anger, insecurity, anxiety and risk of depression, no, the feelings are indescribable. Most Danes, who were given the choice between living in Denmark or giving up their marriage, probably ask themselves what a Danish citizenship is worth in reality when one of the most basic rights is not respected, that is, the right to marry whom one wishes to without being excluded from one’s own country.” (Voldborg & Voldborg 2003)⁷

In this way the right to family unification, via the right to love, becomes a fundamental freedom without which citizenship is an empty category. Though they do not write so explicitly Anne Marie and Henrik Voldborg’s letter gives the impression that they have some personal experience with the situation they describe, perhaps via friends or relatives.

Philip von Platen belongs to this small group of people who have chosen to give voice in public to their private grievances. He has helped fuel the debate over the restrictive regulation, and especially the affiliation requirement, by drawing attention to its consequences for Danes living abroad. Von Platen tells his story in a debate letter in *Jyllands-Posten* 24 April 2003. A Danish citizen, he married an American woman. After living together for 18 years in the USA they decided to move to Denmark. The couple met the age requirements – both were obviously more than 24 years old – but the application was denied because of the affiliation rule. Their joint connection was not, it was deemed, greater to Denmark than to any other country, and hence they could not get family unification (Von Platen 2004). Philip von Platen ends his debate letter with a very critical comment on the Danish regulation:

“Every week Danes are forced into involuntary exile - human beings whose only crime is to love a foreigner. It is these ruined lives which are hidden behind the government’s happy message that the restrictions are working because the number of family unification applications is dropping. [...] If Denmark wishes to be part of the global society then we cannot live with that Danes who go abroad must fear that they cannot come home and live a full life – unless they have remembered to marry a Dane.” (von Platen 2004)

⁷ I have translated all quotes in the empirical analysis from Danish to English.

The quote underlines again the importance of love in this discourse and how it is tied to mobility and cross-border movement. In a globalized era, it is pointed out, it is unreasonable to expect citizens not to fall in love and marry outside of the national community (see also Grove 2003, Politiken 2003c). As an ethnic majority citizens living abroad, von Platen is clearly not a member of the groups whose life the law specifically intended to regulate. This prompts us to examine more closely who it is who has or has not a right to love.

This is often slightly unclear. Some debaters refer to Danes (Wilson 2003b, Gerner Nielsen 2003b, Lemcke 2003, Hollingbery 2003a-b, Lind Simonsen 2003, Grove, Nørlem Sørensen 2003). Others use the phrase Danish citizens (Nielsen 2003, Gerner Nielsen 2003a, Politiken 2003a-c, Arestrup 2003, Andersen 2003, Jelved 2003). On the face of it, there does not seem to be a difference. The terms appear to be used, in the rights based discourse, more or less interchangeably. This suggests that a Dane is simply anyone holding a Danish passport. However the debate takes place in a context where 'Danishness' is a heavily laden concept and often used in a rather more restrictive sense capturing only ethnic majority and not minority Danes (Karpantschhof 2003: 35-36, Hussain 2000: 96, 107). This underlies the preference for the more neutral concept of Danish citizenship on the part of some participants. Indeed there is an explicit fear of a "gradation of Danish citizenship" (Politiken 2003c) in the law as well as in the debate so that this key status no longer entails the same rights and duties for all (see also Arestrup 2003, Gerner Nielsen 2003c, Shah 2003, Sethi 2003, Politiken 2003a). The right to love thus belongs to anyone who is a full member of this political community, the Danish state.

Some takes this argument a step further and include denizens such as migrants and refugees. Rasmus Nørlem Sørensen (2003) puts it this way: "Let us [...] expand our criticism of the affiliation requirement and the marriage paternalism and fight for just laws for all in Denmark and not just [for] those who 'resemble our selves' enough for us to identify with their problems." The right to love and family unity thus becomes as a basic human right. While it requires a state to protect it, this right is assigned in principle to anyone who belongs to the universal community of the human species (see also Clausen 2003, Kjær 2003, Clemensen 2003, Mortensen 2003, Svarre 2003, Wilson 2003a, Politiken 2003a).

The articles in this position thus strongly defend a right to love and family unity. They also, however, illustrate the classical liberal tension between universality and particularity (cf. Benhabib

2006: 30-33): Individuals have rights qua human beings, but these universal human rights are protected and upheld by “bounded communities”. This leaves vulnerable those whose political membership is uncertain.

State-feminism

A second group of texts are coded under the heading state-feminism. It is a smaller position put forth in both papers, though not by either’s board of editors. It is defended especially by the then Minister for Refugees, Migrants and Integration and Member of Parliament for the Liberal Party, Bertel Haarder. It also articulated by leading social-democratic parliamentarians, including the then party chairman, Mogens Lykketoft, as well as by a few debaters. It is thus largely a liberal and social-democratic discourse.

The feminist position resembles the rights-based liberal internationalism in its focus on the right of individuals to make their own choices in life and love. It differs, however, in the assessment of how this goal is best achieved.

The argument is that young ethnic minority men and especially women are pressed to marry partners they hardly know, let alone love – with detrimental effects for liberty and gender equality (Jørgensen 2003, Mandel 2003). It is pointed out that within for example the Turkish diaspora in Denmark it is customary for parents to arrange their children’s marriage (Haarder 2003d). Arranged marriages are in themselves seen as dubious from this perspective. It conflicts with the ideals of personal autonomy and romantic love. Even when the young person consents to the match he or she may simply be giving in to subtle parental pressure (Mogensen & Nørgaard 2003, Mandel 2003).

This is aggravated, however, by a particular practice of cross-border matrimony. Prior to the restrictive regulation of family unification parents and relatives often found a spouse from the parents’ country of origin (Haarder 2003d). According to two feminist debaters, Britta Mogensen and Lone Nørgaard, there are several reasons for this – culture, religion, patriarchy and money: “The [...] marriages are both a visa to the West and a successful attempt to uphold traditional values associated partly with female suppression and partly with religious submission.” (Mogensen & Nørgaard 2003) Because so much is at stake for the families involved – honour and prosperity - the young men and women often experience emotional blackmail, it is argued.

Some who resist are subjected to threats, violence or, in worst case, murder (Mogensen & Nørgaard, Haarder 2003a-c).

Moreover when the marriage is arranged with a spouse from the country of origin, this easily leads to a troubling socio-cultural gulf between husband and wife, some debaters point out. A former headmaster, Steen Flemming Jørgensen (2003) tells about a young Pakistani woman, just graduated from high school, who is now entering into marriage with a cousin from Pakistan she does not know. Having spent only a few years in school, the spouse “can hardly calculate nor read. Now he is getting married to this young intelligent girl, who can look forward to years as a homemaker and mum.” And he asks rhetorically: “[H]ow will the communication be between this well-educated and partly liberated woman and this man from some distant village, who has learned that women should be silent and take care of the home and his children”? (Jørgensen 2003, see also Haarder 2003d)

This matrimonial practice, it is stressed, thus prevents a group of youngsters in Denmark from exercising their right to love and it upholds grossly unequal gender relations (Sundoo 2003, Haarder 2003a). A restrictive family unification policy is therefore a necessary means to help some kids “resist their parents and grandparents tyranny over who they should marry” (Lykketoft & Meldgaard 2003, see also Haarder 2003a-b). As Bertel Haarder (2003a) argues: “It is parents and family who violate human rights in this case – not the government”.

Several debaters however recognize that the affiliation requirement have unfortunate consequences for some men and women – mainly well off ethnic majority citizens – who have fallen in love with foreigners. These ill-effects of the law should be avoided, if possible, but not at the cost of letting down the minority youths who are in danger (Jensen 2003, Jensen 2003a-b, Lykketoft & Meldgaard 2003): As headmaster Isabelle Mandel (2003) formulates it:

“They who argue against the new rules for family unification underline precisely this, that human beings should be allowed to decide themselves who they fall in love with and wish to live with. This is a value we should defend. That is what this law is about – that also youngster with other homelands than Denmark should be allowed to choose freely.”

Seen from this perspective, Bertel Haarder argues, the new law is a success. And he quotes Fatih Alev, a Danish-Turkish Imam, for the following optimistic assessment of the rules: “”There are youngsters who see the restrictions as an advantage. Now the girls in particular can argue better in relation to their parents for why they do not wish to get married.”(Alev in Haarder 2003c, see also Jensen 2003a).

Hence, according to this state- feminist position, the right to love is protected and upheld – also for the vulnerable - by the government’s intervention, even if it means restricting to some extent this same right for the privileged. Similar arguments are found in the political theory literature on migration and multiculturalism. Some feminist scholars also stress the need for state protection of ethnic minority women against patriarchal family structures (see especially Okin 1999, 2004).⁸ The theoretical debate, however, concerns the necessity to restrict special rights for cultural and religious minority groups. The feminist position in the family unification debate, by contrast, favours limiting the general, individual rights of all citizens to protect young immigrants.

Ethno-nationalism

A third, somewhat larger section of articles in the debate draw on what I refer to as an ethno-nationalist discourse. It is found mainly in *Jyllands-Posten*, defended by the editors of this paper. It is also put forth by a handful of centre-right parliamentarians and politicians, especially by Søren Krarup, reverend and prominent Member of Parliament for the Danish People’s party. A few other debaters also support this position.

Like the feminist discourse, the national-communitarian rhetoric provides support for a restrictive family unification policy. The reasons given are different, though. The overall argument is that the Danish nation and welfare state is threatened by extensive immigration via family unification (Moes 2003, Jepsen 2003, Krarup 2003b). An editorial in *Jyllands-Posten* (2003a), for example, condemns the allegedly irresponsible social-democratic and social-liberal politicians whose lenient refugee and family unification policy admitted all these newcomers to the country. The problem is sketched as follows:

⁸ Susan Okin’s arguments are controversial and have been subjected to extensive criticism in the literature (Cohen et al 1999, Kukathas 2001, Shachar 2001). Other political theorists are articulating different and more culturally sensitive feminist positions (see for example Shachar 2001, Deveaux, 2006, Phillips 2007, Mookherjee 2009). While a similar diversity can be found in European public debate over for example headscarves, the predominant feminist discourse is severely critical of Islam and minority cultural practices (Sauer 2009: 87-89, Scott 2007: 151-174).

“Denmark has through the past 20 years experienced a massive immigration of uneducated people, typically Muslims, who, [...] helped by some mad, unenlightened imams, constitute an increasing burden on the Danish society. Not just because we are talking about people without education, who have primarily come to be provided for by the Danish welfare-system, but also because they have demonstrated a worrying unwillingness to become integrated into a society, they clearly view with skepticism and perhaps even hostility.” (Jyllands-Posten 2003a)

Immigrants and Muslims in particular are thus portrayed as generally problematic – unskilled, lazy, sectarian and a threat to society. The new restrictive family unification policy is necessary to stop this further immigration (see also Bitsch 2003, Jyllands-Posten 2003d-e, Kristensen 2003a-b, Jepsen 2003)

Some debaters admits that the law has had negative effects on Danes living abroad, as they are no longer able to return with their loved ones to their native country (Moes 2003, Larsen 2003, Jyllands-Posten 2003c). In response to Phillip von Platen’s debate letter referred earlier, Søren Krarup (2003b) expresses great sympathy, regretting the unhappy situation, which was not “the law’s intention”:

”Under normal circumstances we all would react with indignation to such a case. [...] But the fact of the matter is that because of 20 years of immigration policy madness (udlændingepolitisk vanvid) things are not normal. They are highly un-normal. We must protect ourselves against this. We must protect Denmark against being overrun by the flood of migrants. This is why one cannot just move to Denmark when one feels like it. This is why there are requirements about age and affiliation which must be met [...] and unfortunately we cannot distinguish between a Dane who has lived in the USA and Middle-Eastern immigrants.” (Krarup 2003b)

It is the danger of the present extraordinary situation for the country which makes it necessary to limit access to Denmark - even for Danes and their spouses (Krarup 2003b). The defense of the community overrides the rights of individual citizens in this discourse.

Krarup later changes his view after hearing more sad stories from Danes abroad. He subsequently favors a revision of the law which does in fact distinguish between “Danes” and “Middle-Eastern immigrants” (Krarup 2003a). The former has a strong attachment to Denmark

while the latter do not, and hence the two should not be treated alike. If Krarup means to differentiate between Danish citizens and immigrants with permanent residence, this is not, perhaps, very remarkable. Citizen-status does generally provide a person with a wider set of rights and privileges (cf. Ersbøl 2004: 86, Joppke 2009: vii).

Yet elsewhere in the text there are indications that Krarup intends to make a distinction also within the category of citizens. He thus refers to “culture and family ties” and suggests that when it comes to acquiring Danish citizenship religion is a relevant criterion (Krarup 2003a). “[I]f we are to evaluate someone’s possibility of becoming integrated into Danish society, religion is naturally something quite decisive. Christian Europeans has evidently quite different predispositions than Muslim Asians. That goes without saying.” (Krarup 2003a) This suggests an ethnic or culturalist undertone where only those citizens with the right religion and cultural background are proper Danes. Interpreted thus, a right to love and family life in Denmark is put forth, but only for a subset of citizens. Only this, it appears, is compatible with protecting the Danish *Kultur-Nation*.

Some support this differential treatment of ethnic majority and minority citizens (Larsen 2003, Kristensen 2003a). Others advocate distinguishing between foreigners from western and non-western countries applying for family unification (Moes 2003, Jyllands-Posten 2003d). If these strategies conflict with norms about equality and human rights treaties against discrimination, then perhaps it is time to revise or drop these international conventions, it is argued (Krarup 2003b-c, Jyllands-Posten 2003b, Moes 2003). Niels B. Larsen formulates it thus:

“There is no doubt that the new rules concerning family unification affect persons whom it was not the law’s intention to affect. Let us therefore disregard [the] various conventions and decide ourselves. Let ethnic Danes, who fall in love abroad, freely bring home (indføre) their spouse. Denmark is an independent country - we should decide ourselves whom we want to have residing here.” (Larsen 2003)

In this communitarian discourse, international human rights are seen as threatening national sovereignty. The same goes for the European Union, which should not interfere with Danish immigration and family unification policy, according to a few debaters (Thomsen 2003, Engel 2003). If there is a right to reside in this country with a foreign spouse - and this is by no means

certain - it is not a human right, but a right of citizenship or Danishness.⁹ Others may have a right to love, but this does not necessarily entail a right to family unification in Denmark. The two, according to Johnnie Schoelzer, should be disentangled:

“If immigrants residing here insist on finding their spouses in the home country this is [...] their own business. They are thereafter free to leave Denmark and move together in the chosen one’s home country. It is no natural law that family unification must always take place in Denmark. If they truly love their spouses there is hardly a problem in settling in the home country. Love, as is well known, conquers all.” (Schoelzer 2003)

Taken together, then, this ethno-national discourse does allow for the right for (some) citizens to love and family life in Denmark with a foreign partner. But it is a highly circumscribed and exclusive right which can be overridden if the guarding of the national community requires so.

The distinctions drawn in this discourse both between migrants and citizens and within different groups of citizens merit close attention. It builds on a nationalism which underlines its cultural and not biological foundations. Hence a couple of the debaters explicitly stress that they are not racists (Moes 2003, Krarup 2003c). Yet the understanding of culture put forth especially by members of the Danish People’s Party are strongly essentialistic, portraying ‘Danes’ and ‘foreigners’ as inherently different. Moreover, the stereotypes of migrants and ethnic minorities sometimes articulated are very negative, generalizing and demeaning (Krarup 2003a-b, Kristensen 2003a-b). Hence at least some articles in this position fall in the category of neo- or cultural racism (cf. Hervik 2004: 257-249, Rydgren 2004: 475, 478-488).

⁹ Notwithstanding the skepticism towards human rights jurisprudence expressed in this discourse, limiting the right to family unification is not in conflict with the historical practice of the European Court of Human Rights. While the European Convention on Human Rights protects the right to family life for both citizens and residents, the Court’s practice suggests that states may turn down an application for family unification if the couple could also reside in the home country of the foreign spouse. Moreover, in cases concerning migrants and naturalized citizens, the Court has stressed the couple’s close ties or lack of same to the country in question (Ersbøl 2004: 82, 85-91, 101). For a critical discussion of the central court-case from the perspective of deliberative democracy, see Means 2009. By contrast, Danish family unification regulation is generally in conflict with EU-law. Denmark, however, has an opt-out from EU-cooperation in the area of justice and home affairs. Still, Danish citizens working in another EU-country can bypass the Danish regulation by using their right to mobility as EU-citizens within the union (cf. ECJ 2000, 2001, 2005, 2008). For an analysis of the relationship between Danish and EU policy on family unification, see Manners et al 2008: 296-299.

Social-democratic communitarianism

The last position identified in the debate I refer to as social-democratic communitarian. It consists of a small group of articles published mainly in *Politiken*. The authors are a couple of prominent social-democratic members of parliament and a few other debaters. It resembles the ethno-national discourse in its focus on the good of society, but also draws on elements from the state-feminist position with regards to universal rights and protection against forced marriages. Notwithstanding these similarities and overlaps, the texts in this position do have a distinct tone and argument with an emphasis on equal opportunities, socio-economic challenges, pragmatism and integration (Meldgaard 2003a-c, Lykketoft 2003, Olsen 2003, Kornø Rasmussen 2003, Stub Jørgensen 2003).

Like in the ethno-national position there is a worry that the arrival of too many immigrants with few educational skills and a very different cultural background can create big problems. But in contrast to this discourse, the social-democratic line of argument also stresses the rights and potentials of these new members and underlines the importance of inclusion (Lykketoft 2003, Meldgaard 2003a-c). Anne Marie Meldgaard, then spokesperson on foreigners for the social-democratic party in the Danish Parliament, puts it thus:

“Today’s integration policy is too poor. It is difficult for those foreigners who come to Denmark to get a good start. Rather than becoming team players many are being permanently benched. This is neither good for them or for the team. The Social-Democrats now believe this should change. Consequently, it is necessary to limit immigration in order to manage the integration of those we already share Denmark with.” (Meldgaard 2003c)

Large groups of migrants and ethnic minorities, Meldgaard points out, are marginalized. This is problematic in itself, since these persons do not have the same possibilities of leading rich and fulfilling lives and becoming good citizens, she claims. Moreover, it can lead to sectarianism, religious fanaticism and social fragmentation. Hence, it must be prevented through a policy of “rights and duties” (Meldgaard 2003c).

As in the ethno-nationalist discourse a threatening cultural difference again plays a part in the construction of migrants which sets them apart from “old Danes” (Meldgaard 2003c). But this otherness is not portrayed as an inherent. Practices can and should change. Foreigners can and

should become “new Danes” (Meldgaard 2003c). Moreover, the cultural lens is supplemented with a class-based analysis. The problems immigrants face are partly socio-economic and thus call for solidarity. This move makes the challenges appear more familiar and manageable. Scandinavian social-democrats have a long history of combating social injustice in the nation state:

“We have abandoned the old, deep class divides and we will not watch passively while new emerge! Foreigners shall not make up the lowest echelons of society. They shall participate actively like all others. Therefore we have to solve the problems creating social in-equality. The Social-Democrats will by all means hinder the emergence of a new lower class in Denmark, whose behavior is far from all, we as a society can and should tolerate. We will fight against prejudice and discrimination and give new Danes, who have arrived here legally, the best possible conditions to join and get started. But we shall also clearly and unmistakably communicate that we expect and demand active engagement and acceptance of our society’s fundamental democratic values.” (Meldgaard 2003c)

The new restrictive family unification regulation is viewed as a necessary element in a strategy for improving social integration. It limits the number of immigrants so as to better help those already present, and it hinders forced marriages which are incompatible with the values of democratic citizenship (Meldgaard 2003, Lykketoft 2003 Olsen 2003).

It is thus a utilitarian as well as paternalist discourse. The welfare of society is prioritized over the rights of individual citizens and the state intervenes to help ethnic minority youngsters. As in the state-feminist discourse, a right to love and choose one’s own partner is defended against interfering relatives. But for pragmatic reasons it does not extend to a right to reside in Denmark with foreign partner. This would endanger those very same rights and the good of the social-democratic community.

For all the class-based rhetoric the community which needs protecting is the nation. The struggle for equality takes place within its never questioned boundaries. The offer of equal membership, rights and duties, is only extended to those outsiders who have arrived legally. With a ban on immigration and a very restrictive family unification policy this is presumably few. This line of argument is reflected in contemporary political theory, where some communitarian social-

democrats argue that socio-economic justice is only attainable within the nation-state. Where else do we find the kind of inter-generational and inter-class trust and fellow-feeling necessary for redistributive politics (Miller 1997: 91-92, cf. Walzer 1983)? This position, however, leaves open the justification of borders and the question of internal solidarity and equality (cf. Marx & Engels [1848] 1948, Pogge 2002)

Conclusion: Redrawing the boundaries of liberal democracy

To sum up the analysis, we have seen how competing constructions of rights and community are put forth by participants in the debate in order to criticize or defend a restrictive family unification policy.

A right to love is articulated by adherents of all four positions – liberal-international, state-feminist, ethno-nationalist and social-democratic communitarian. According to the first group it is an unrestricted freedom which goes hand in hand with the right to family life in one's home state. It is moreover central to the concept of citizenship or even to the protection of basic human dignity which all persons can claim. For the latter three positions, however, the right to love does not entail an unlimited right to family unification in a particular country; either because the protection of the right to love for some citizens against patriarchal family structures necessitates a break with family unification; or because the welfare of the nation would be jeopardized by an increase in culturally different migrants and/or socio-economic in-equality.

Different conceptions of community are thus also at stake; Firstly, a liberal international community. There, rights are all that binds people together, and borders are at least semi-open; secondly, a liberal-feminist state where the borders must be tightly regulated to ensure the freedom of the citizens; thirdly a nation, whose members are held together by an imagined common cultural heritage which thrives behind closed borders; and fourthly, a national community in which participants share rights and duties regardless of ethnicity and class, but where borders should be fairly closed.

This public debate led to changes in the legal regulation, as we have seen. The result was a limited extension of citizens' rights. The 28-years rule was introduced by parties supporting a restrictive family unification policy in response to fierce criticism from Danes abroad. In strange ways the liberalization reflected a tenuous common ground between the extreme poles in the debate. Their

fierce disagreement notwithstanding liberal-internationalists and ethno-nationalists all worried about the constraint on the right to love for some Danish citizens. The former got their concession, but still faced a very restrictive and possibly discriminatory regime – and were highly displeased. The latter secured the rights of not-so-young ethnic majority Danes, but could not prevent large groups of minority citizens from enjoying a similar freedom. Negotiating the basic ideals is thus a muddled and conflict-ridden process, and the outcome always open-ended. The boundaries of Danish liberal democracy were redrawn, yet the interpretive struggle continues.

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