

# Liberalism and Culture

The legitimacy of the “Cultural Defense”

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# Abstract

The thesis examines selected “cultural conflicts” that can be said to exist in majority/minority relations within the context of Western liberal democratic societies. A normative analysis regarding when it is justified for a minority to claim certain rights with reference to culture is conducted. Four controversial examples are included: The ban of religious symbols in public schools in France (the Muslim headscarf being the specific symbol discussed), polygamy, female circumcision and underage/child marriage. The examples presented are treated as cultural traditions that serve to exemplify how the normative guidelines in the study regarding the “cultural defense” can be applied in practice. The value hierarchy in the study is constructed using a theoretical framework based on liberal theory. The central premise that the study is based on is the liberal principle of freedom, and the importance of culture for said freedom. A central argument in the study is that acceptance of cultural variation is crucial in every society with the ambition to call itself liberal; it is also evident in the study that sometimes when it comes to cultural dilemmas in the West, the concept of “Western values” have been inaccurately equalized with the values of liberalism.

*Key words:* Political science, Normative analysis, Liberalism, Culture, Cultural Conflict

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# 1 Introduction

The purpose of this study is twofold. The introductory part consists of an empirical analysis of some challenges that exist in majority-minority relations in Western liberal democracies. The empirical examples chosen are from the United States and France. The focus is put on giving an account of examples of specific controversial issues where there is, or can be said to be, a clash of norms or normative principles between the majority and a minority culture. On the basis of the initial empirical part of the thesis a normative analysis is performed in the second part of the study. The aim of the normative analysis is to construct guidelines consisting of a set of criteria in order to present a normative stance on when cultural variance in the context of a Western liberal democracy should be accepted, i.e. when it is justified for a minority culture, or more specifically, individuals belonging to a minority, to claim a certain right with reference to culture, and consequently when it is not justified.

The set of criteria range from: *Cultural variance must be accepted when...* To: *Cultural variance cannot be accepted when...* The four main examples of when conflicting normative views can occur/exist between the majority and a minority culture within the context of Western liberal democracies that are included are:

1. The ban of religious symbols in public schools in France
2. Polygamy
3. Female circumcision
4. Underage/child marriage

The “normative conflicts” between cultures that are included are examples chosen in order to illustrate the normative stance taken on the basis of the specific normative premises in the thesis, and it will be evident that they fall under different categories. Further, it can be argued that when formulating any normative criteria, there is always somewhat of a gray middle area of the scale that is most problematic to define; this will be addressed in the analysis as well.

The ban of religious symbols within public schools in France includes all religious symbols; however there have been controversy and claims that the purpose with the ban was mainly aimed towards the Muslim community and the headscarf in particular. One argument that has been used to justify the ban is that the headscarf is oppressive to women and that religious symbols should not be allowed in schools within the public education system in a secularized country. However, one could

argue that it is a direct violation of liberal human rights to ban someone from wearing a headscarf or another religious symbol to a public school or workplace. It can also be argued that the question of certain religious or cultural symbols within the public education system or in public work places lands in the “gray middle area” of what should be accepted, or that it should not be accepted at all, and this will be addressed in the thesis as well. However, it will be evident that the above example with the religious symbols land in the “when cultural variance must be accepted” category of the scale in this thesis. The headscarf and the other contingent symbols that will be included in the thesis are treated partly as religious symbols but also as cultural symbols since there is variation to if Muslim women wear the headscarf or not, especially when it comes to immigrant women within the West. There is also variation from country to country within the Muslim world so within the context of this thesis it cannot be said that the headscarf e.g. is only a religious symbol, but also a cultural symbol.

The three remaining examples (polygamy, female circumcision and underage marriage) will be treated as strictly cultural traditions, and not as religious traditions. Because even if it is possible to argue that the traditions are practiced to a higher extent within some religions than within others (where the traditions are unacceptable), it cannot within the context of this thesis be said that any religion unanimously advocates any of the above traditions. Thus the argument in this thesis is that the traditions are practiced, as well as seen as acceptable or not, to a varying degree, not from religion to religion, but from *culture* to *culture*.

The example of polygamy is included as an example that is very controversial and is not accepted in Western democracies today. However, it will be evident in this thesis that according to the theoretical value logic that the study is based on, it is possible to argue that polygamy as well lands in the category of cultural variance that should be accepted in a liberal society. Why the question of if a minority culture, or more specifically individuals belonging to a culture that views polygamy as acceptable, should be allowed to practice polygamy within the context of a liberal democracy lands in the above mentioned category will be evident on the basis of the normative premises that are detailed in the main part of the study.

The two additional main examples (female circumcision and underage marriage) are included with the purpose to illustrate the extremity of the other end of the scale, i.e. what cannot and should not be acceptable in a liberal society.

When performing a normative analysis and in constructing a set of criteria as in this study, it means that a hierarchy of values is constructed (Badersten 2006:31). The theoretical base in the study is value theory and a core premise in the study is that culture can either sustain or constrain individual freedom. Thus, the central core principle that the normative premises within the scale of what should and what should not be acceptable with reference to culture are based on the liberal principle of

human rights and liberties with the intrinsic value of freedom, as will be defined in the introductory part of the study. Further, the normative logic that the analysis is based on is in a sense deontological, i.e. an act should be valued with regard to what the duties or responsibilities of (in this case) the liberal society are (Ibid. 15). The consequence of this deontological logic is in the context of the study that cultural variance should only be accepted when the premise of liberal human rights is fulfilled, including political and civil rights, as defined in the analysis. The ontological stance in the study is that values and value-judgments exist and are real in the sense that values influence humans and how we act. However, values often have a limited validity, e.g. certain values are valid within a certain context (in this case the context of a liberal democratic society). Consequently, values are dependent on the human context. In this sense the ontological stance is a value relativistic one, this stance means though that it still is highly possible as well as relevant to study values in a scientific manner (Ibid. 65). It can even be said that value conflicts and normative dilemmas make up what politics essentially are about, since the politics of a society ultimately is about prioritizing between differing values (Ibid. 29).

## 1.1 Research question

What are some of the (controversial) challenges in majority/minority relations within the context of a Western liberal democratic society? When is it within the above context justified for a minority to claim certain rights with reference to cultural variance?

## 2 Previous research on the subject “Minority rights and the relevance of Culture”

### 2.1 Political Philosophy

Within the field of political philosophy, the existing literature regarding normative argumentation for minority rights is growing. According to Patten (2009) the scientific debate concerning the moral justification of language rights for example, often revolves around the *categorization of rights* (Patten 2009:103). The five different categories often referred to in this context are:

1. Toleration rights
  2. Accommodation rights
  3. Context-of-choice rights
  4. End-state rights
  5. Fairness rights
- (Ibid.)

Toleration rights simply mean that individuals are protected from government interference in their private life and within the private sphere, within the civil society e.g. Toleration rights are often viewed as the easiest category of rights to justify. Accommodation rights run along the same line, however the difference is that accommodation rights concern situation that arise in the public sphere, e.g. in the example regarding language rights, an accommodation right can be the right to an interpreter when standing trial, if the accused does not understand the language of the majority (Patten 2009:108-110). Context-of-choice rights relate to the notion that individuals should have the right to make informed decisions about their lives, the context of choice is supplied by the culture that an individual belongs to and is crucial for the personal autonomy. The three above categories of rights are all in line with liberalism and the argumentation for them follows a “liberal logic” of basic civil rights that

will be used in the normative argumentation further on in this study. The End-state argument on the other hand says that the mere fact that a culture (or a language that the speakers of it are strongly attached to) is disappearing is reason enough for the culture to enjoy certain protective rights. This argument is clearly not in line with liberalism or liberal theory, since it means that also illiberal cultures should be granted minority rights (Ibid. 115-117). In this way, end-state rights are fundamentally different from the other three categories mentioned above. Lastly, fairness rights can be considered to belong to the same category as end-state rights, however there is a difference. According to the fairness argument, the justification of a right is based on the claim that without it, there would be unfairness in the social process that determines the availability of options for individuals speaking a minority language e.g. (Ibid. 120).

Depending on what rights are viewed as of most importance, then by constructing a value hierarchy, different approaches for argumentation are possible, which can provide the theoretical framework for normative justification of certain minority rights. The above categories can also be connected to what within political philosophy often is referred to as the moralism of multiculturalism. It is widely considered within the context of political philosophy that morality (i.e. the appliance of moral judgments to political actions) is relevant to politics (Iverson 2005:171). Iverson identifies three kinds of moralism:

1. Undue abstraction
2. Unjustified moralism
3. Impotent moralism  
(Ibid.)

Iverson further writes that political philosophers often are subject to the criticism of abstracting too much from the context of political action and by this *undue abstraction* can lead to depoliticizing. Further, theories of moralism can be too abstract and also be overly moralistic about the capacities of the people to whom the moral arguments are addressed to, hence it can be difficult to live up to and implement the idealizations of moral theories (Ibid.). *Unjustified moralism* is according to Iverson when the state through public policy imposes moral judgments that infringes on the basic freedom and dignity of the citizens, this can never be morally justified and generates frustration as well as resentment among the citizens. It is the inversion of this phenomena that Iverson calls *impotent moralism*, i.e. the effect of the unjustified moralism, which leads to the desire to strike back at the forces that have denied you freedom and basic political rights (Ibid. 171-172).

Each of the above mentioned moralisms have been featured in recent criticisms of the political theory and public policy of multiculturalism (Ibid.) and can enable normative argumentation for either

the defense of special minority rights, or the rejection of them, on the basis of which moralism is applied.

## 2.2 Political science: The liberal tradition

The individualistic perspective of liberalism can be said to be a direct contradiction to the idea of group rights for cultural minorities. However, there are scholars within the school of liberal theory that challenge this idea and therefore there are many dimensions to the scientific debate over what role minority rights and culture play for freedom and equality in a liberal society. E.g. the three arguably most influential scholars within the field of minority rights and liberal multiculturalism are Will Kymlicka, Bhikhu Parekh and Charles Taylor, all of whom identify as liberals, but have made differing theoretical attempts to develop a liberal multiculturalism (Tempelman 1999:19). While Kymlicka argues for a redefinition of liberalism from within when it comes to multiculturalism, both Taylor and Parekh argue in their work that we must go “beyond liberalism”. Taylor e.g. complains that liberalism is “inhospitable to difference” (Loobuyck 2005:108).

A key issue within the scientific debate is the question of whether group rights should be practiced or not, as a possible means to protect minority cultures and cultural norms. There is a conflict within contemporary liberal theory as well as between the liberal and democratic perspectives in this debate (Kane in Carter & Stokes eds. 2002:97). The two arguments defenders of group rights often refer to are that they serve the purpose of either protecting minority cultures or to promote greater democratic inclusion (Ibid.). Scholars like Kymlicka (1995) e.g. argue that group rights for certain minorities are a necessity in order to achieve freedom and equality in Western liberal democracies, because cultural identity and norms are so deeply rooted and by this play a key role for the liberal principle of freedom (Kymlicka 1995:194-195). Kymlicka attempts to prove that liberalism and the principle of individualism is consistent with group rights, and that it is the right of minority cultures to gain possibilities to nurture and protect their culture and cultural norms. According to this view a cultural norm within the majority culture should be to encourage the protection of (at least certain) minority cultures. Although this view raises many questions, e.g. how it can be considered as equality if the cultural norm is that only certain groups are entitled to group rights? E.g. Kymlicka only promotes group rights for national minorities and indigenous people, and not for immigrants. The work of Charles Taylor also serves as an example of the view that cultural minority groups deserve special protection, on the basis that cultural identity is deeply rooted and provides the members of a cultural community the basis of their identity (Tempelman 1999:19). Taylor stresses the importance of

real recognition in the sense that the majority culture must show respect to minority cultures by communication and presuming that the minority cultures are valuable not only for the members themselves, but also for the liberal society as a whole. Hence, intercultural dialogue is essential. However, all cultures are not equally acceptable, Taylor is very clear about the fact that only cultures that respect the basic human rights as well as the liberal rights of liberty, free practice of religion, free speech etc should be accepted by the liberal society. The communication across cultural boundaries that Taylor advocates is also central in the work of Bhikhu Parekh. Parekh goes as far as to stress that said communication is the most important form of cultural recognition and that to what extent cultural variance can or should be accepted in a liberal society should be decided by means of an open dialogue where both “sides” are allowed to defend their standpoint.

Although, it is unavoidable in Parekh's view that the rules of the dialogue are guided as well as made by the public culture of the majority society, and if the debate stands at a standstill the public values of the majority tend to rule the outcome (Ibid. 24), which can be seen as problematic. There is also the problem of what to do when a minority culture is not willing to participate in public dialogue and defense of their normative values.

A further advocate of multiculturalism and the importance of culture is Robert E Goodin (2006). Goodin has (on the basis of C.B. McPherson's famous protective and self-developmental models of liberal democracy) two different models of what he calls liberal multiculturalism (Goodin 2006:289). The first model is what Goodin calls “protective multiculturalism”, according to this model special minority rights (such as group rights) are a requirement in a liberal society in order to ensure that cultural minorities do not suffer from oppression by the majority culture (Ibid.). This model bears many similarities to the before mentioned liberal multiculturalism advocated by Kymlicka e.g. The second model developed by Goodin is what he calls “polygot multiculturalism”. In this model, instead of protection of minorities, the emphasis is on inclusion and welcoming of minority cultures into the majority culture. This does not in any way mean assimilation, only that the majority can expand its “context of choice” by welcoming minority cultures into its own culture (Ibid 289-290). In contrast to the model of “protective multiculturalism” group rights are not compatible with the model of “polygot multiculturalism”. In a sense it can be said to be a matter of making a difference between what is considered as political demands for recognition that are egalitarian and concerned with the elimination of oppression and disrespect on the one hand, and demands for esteem/affirmation on the other hand (Mcbride 2009:96-97). The rejection of what Mcbride (2009) calls demands for esteem or affirmation also means a rejection of special rights for minorities. However, it can always be discussed where exactly the line

is/should be drawn between what constitutes an egalitarian demand and what in its turn is perceived as demands for esteem/affirmation.

The before mentioned attempts by Kymlicka, Taylor, Parekh et.al. to develop multiculturalist theories including certain rights for minorities has not surprisingly been widely criticized by many other liberals. Brian Barry (2001) e.g. accuses them of denying the ideals of the Enlightenment and thus being anti-liberal (Barry 2001:5). This does not mean that Barry is against pluralism or diversity, however he speaks of liberal instead of multicultural measures, thus Barry defines multiculturalism as something that per definition transcends liberalism in order to accommodate cultural diversity (Loobuyck 2005:109-110). If this definition is used “liberal multiculturalism” would be a *contradictio in terminis* (Ibid. 110).

A further argument that Barry presents against special rights for minorities includes that if groups or individuals are given special rights with reference to culture, there is a possibility that these rights can be abused, i.e. the argument “It's a part of my culture” can be used when demanding illiberal rights (Barry 2001:252-254). However, if the legislation of the state includes distinct criteria for when a demand is justified and when it is not because it goes against liberal values, the risk of abuse of the legislation concerning cultural rights could be minimized. Hence, it is (at least in theory) possible to get around this argument and claim that since the risk of abuse can be limited, the validity of the argument Barry makes is decreased.

A key factor for what kind of multiculturalism is proposed is how the concept of cultural identity is perceived (Tempelman 1999:17). Within liberal theory one can find three main types of collective identities referred to: The first type being *primordality* where identity is based on unchangeable features that are perceived to be given by nature. Hence, a group is seen as a homogeneous unity and strangers are perceived as outsiders that are fundamentally different from the group and therefore perceived as naturally not comparable with the group and even dangerous and a threat to the collective (Ibid. 18). The second type of identity referred to is the *civic* construction of a collective identity. This conveys a constructivist type of identity where the core of the collective is not seen as natural, but as a historically developed construction based on shared traditions, rules and institutional arrangements (Ibid.). In this view the boundaries are more diffuse and undefined and outsiders or “strangers” are not automatically perceived as threats or incomparably different. The third type of identity referred to is the *universal mode* where the collective identity is based on universalistic codes that tie the community together, meaning that the collective is not dependent on any natural ties or traditions, but instead the community is unquestionably “given” since the universalistic codes link the identity to a “...deeper and imperishable realm behind the fluid and mundane order (Ibid.). A core principle within the universal mode is that boundaries can easily be crossed through

communication and education, because everyone (at least in principle) is invited to do so (Ibid.)

Of course, cultural identity can be dynamic as well as difficult to define in practice, however, for the purpose of a valid scientific argumentation it is of importance to define the concept “cultural identity” and be clear about how cultural communities are perceived in the study.

## 2.3 Feminism

Feminism traditionally opposes group rights and perhaps the most famous feminist argument against group rights comes from Susan Okin who writes that there are many minority groups that are antifeminist, and where the claims of a minority culture strongly clash with the norm of gender equality that exists in the West, and she argues that this is a strong argument against all kinds of group rights on the basis of culture (Okin 1999:9-11). The main premise Okin bases her theory on is the same as other feminist scholars like Norris & Inglehart (2003) e.g. Namely that culture and cultural norms are a key factor for to what extent gender equality exists in a society, because most cultures traditionally have a principal aim to control women by men (Ibid. 13). Hence, specific cultural rights should not according to this view be accepted in a Western liberal society.

Okin also claims that as a rule, the defense of cultural practice often has a greater impact on the lives of women and girls than on those of men and boys. Okin stresses that “Religious or cultural groups are particularly concerned with “personal law”-the laws of marriage, divorce, child custody, division and control of family property, and inheritance.” (Ibid.). With this Okin puts a major focus on how culture within the private sphere affects the opportunities of freedom for women within the public sphere. Because, home is where much of the culture is being passed down to the young and the distribution of power and responsibilities at home regulates how much women can participate in public parts of political and cultural life. This is a key issue for political as well as substantial freedom for women according to Okin since it is in the public sphere of cultural life that the rules and regulations of both the public life and the private life are being made (Ibid.). This can be said for cultural minorities and other marginalized groups as well. Without the opportunity to participate in political life the voices of minorities will not be heard, which means that the question of freedom as well as equality for minorities will not even be on the political agenda.

## 2.4 Conclusion

As evident in the above overview over previous research, different scholars have taken a variety of theoretical approaches to the concept of a "liberal multiculturalism". The relevance of political philosophy and the connection to moral considerations is also evident when studying material within the research subject. The traditionally considered perspective that liberalism is a direct contradiction to the idea of minority rights has been challenged by three of the most distinguished scholars within the field (Kymlicka, Parekh & Taylor), which illustrates the many dimensions of the scientific debate regarding minority rights and what role culture plays for freedom as well as equality in the liberal society. The answer to this question varies and ultimately depends (among other things) on the value hierarchy constructed in the research, which e.g. is evident in the included feminist argumentation against group rights, since the value of equality between men and women is seen as superior to the value of cultural rights to minorities. In a way the argument made by Okin is that multiculturalist measures are not desirable in a liberal society for the reason that it *might* be harmful to women. This argument stands in contrast to the liberal arguments highlighted in the research overview, where there is a consensus (regardless of what position the mentioned scholars take regarding the question of special rights for minorities) that multiculturalism is desirable and benefits not only the relevant minority cultures, but also the liberal society as a whole.

# 3 Theory

## 3.1 Value theory

The discussion regarding theory of science when it comes to normative analysis is highly about which value theory approach is used in the analysis (Ibid. 56). Value theory provides the analytical framework for:

1. What the concept of values means?
2. What *ontological* status we can ascribe values?
3. What *epistemological* status we can ascribe values, i.e. if it is possible to study values in a scientific manner or not?

(Ibid. 56)

The answers to these questions differ and all depend on which value theory approach is used. The most relevant theoretical definitions that are to be made for the purpose of this study is the ontological as well as epistemological stance. The normative analysis in this study is based on relativistic value ontology, which means that values are considered to be dependent on human ideas and perceptions. In this sense values are very real, however they are not independent from the human context. Hence, values are subjective rather than objective. Consequently, to claim that a certain cultural right is desirable for example, cannot according to the relativistic value theory be said to be an objective truth, mere a subjective claim (Ibid.61). This answer to the second question above does not mean however that the scientific study of values is impossible. On the contrary, it is still possible and meaningful to study values in a scientific manner, just not objectively in the sense that the concept of values would be unaffected or uninfluenced by the human context and who we are, i.e. context is key and the epistemological status ascribed to values in this study is dependent on the value relativistic ontological stance taken. Hence, the criteria that is developed in this study for when cultural variance must be accepted and when it cannot be accepted relies entirely on the liberal context, which means that liberal theory is the Meta theory in the normative analysis. The claims that are made are entirely dependent on what is seen as right and just on the basis of the premises presented, premises that are based on liberal theory and the liberal principle of human rights. It is crucial in this analysis to remember that political and civil

rights, or more precisely, how these rights are perceived varies from culture to culture and also from time to time (Ibid. 67). Consequently, the normative claims that are presented in this analysis are not valid outside of the cultural context in which they are made.

## 3.2 Liberal Theory applied

The term "liberal" has been applied to many different theories within many different fields of research (Kymlicka 1989:9). The definition used in this thesis is the one used by Will Kymlicka among others, i.e. "...liberalism as a normative political philosophy, a set of moral arguments about the justification of political action and institutions" (Ibid.)

One central premise in the liberal theory applied in this study is that a liberal view requires freedom for the individuals within the minority culture as well as equality between the minority culture and the majority culture (Kymlicka 1995:152). This is the main reason why a liberal order cannot accommodate nor accept all demands made by cultural minorities, e.g. if a minority culture does not want a system where cultural rights are tied with the promotion of basic human, political or civil rights for all individuals, this is simply not acceptable in a liberal order (Ibid. 153). Hence, the premise of equal individual rights is central in the analysis. One could ask why it then is even relevant to take culture into consideration and argue for acceptance of cultural variance if the answer is to simply grant equal rights for all according to the liberal principle. One answer is that it completely depends on what we mean with the concept of "equal rights for all" and the concept of equality in majority-minority relations will be discussed further in the study. Another definition relevant for the argumentation in this thesis is that the liberal freedom principle includes that the basic liberal rights are to secure the free and informed application of justice for all citizens, to the basic structure of society (Rawls 1996:334). Without these rights the liberal democratic order cannot be secured. The normative argumentation is thus based on that an essential interest of liberal political theory is to give an account of what people's interests are and treat these interests with equal concern and respect (Kymlicka 1989: 13). Hence, within the concept of this study it means that all individuals regardless of their culture should in a liberal context have the freedom and opportunity to live their lives as they wish, including according to the norms within their culture, as long as this does not cause harm or oppression to other individuals, or to their equal right to lead their lives as they wish. Put simply this means that the rights of the minority should never be denied nor stripped away by the majority as long as this premise is fulfilled. This individualistic perspective (which is crucial within liberal theory) does not mean that culture does not matter.

On the contrary, in concurrence with Will Kymlicka (1995) it is in this normative analysis argued that cultural identity is often deeply rooted and therefore relevant to study, and that recognition as well as acceptance of cultural diversity is important in a modern liberal society. By respecting cultural minority rights the freedom of individuals can increase, because freedom is intimately linked with (as well as dependent on) culture (Ibid. 75).

Thus, a premise in the study that goes in line with the above statements is that culture does indeed matter for freedom, equality and justice, and that the liberal society should take this into consideration in order to function according to liberal principles, it will be argued. We ourselves define what gives value to our own lives, and in a liberal society we should have this right as long as our actions do not interfere with the rights of others. What is valuable for one person in their life might not be important to another. Individuals should therefore have the liberty as well as the resources to lead their life in accordance with what they value in their life (Ibid. 81). In accordance with the value relativistic approach applied in this study, these values are entirely dependant on context and vary from individual to individual. Simply put, understanding a value is a matter of understanding the meanings attached to it by our culture. Which is a further argument for why culture matters within the context of liberalism (Ibid. 82-83).

A specific liberty is more or less significant depending on to what extent it is involved in, or necessary to the full and informed exercise of the freedom principle (Ibid. 335 modified). I.e. the ability to not only be able to make decisions for ourselves that maximize a particular value, but to also have the ability to question if the certain value even is worth pursuing (Kymlicka 1989:11). The ability to question the traditions of ones culture e.g. and have the ability to make informed decisions concerning if the traditions are worth keeping. Also, the freedom to exit is crucial in the context of a liberal society. It can under no circumstances be justified to make an individual live according to certain cultural traditions under force. The freedom principle guarantees every individual the right to exit a culture, and cultures that are oppressive or do not respect the freedom principle of individual autonomy should, as mentioned before, not be granted cultural rights.

The freedom to exit principle is valid regardless of if a culture is oppressive or not, individual autonomy means that one is justified to pursue one's life as one wishes, which includes the ability and freedom to cross cultural boundaries, hence the concept of a cultural community is in this study viewed as a dynamic order that has the ability to change and evolve. Individuals can both exit their current, and enter a for them new, cultural community and the constructions of the community can change as well as intermingle with other cultures. The key factor is that as long as the actions of a group or an individual do not infringe upon nor violate the rights of others, everyone is always free to be responsible for his/her life

from the inside. It does not matter if someone else has the reason to believe that we are making a mistake, or believe that the values we live our life according to are wrong, nobody else has the right to lead someone else's life from the outside. Part of the above statements include the argument that no life goes better when being forced by others to live according to values that the individual him/herself does not enforce (Kymlicka 1989:12-13). However, this argument is only valid if individuals have the ability and cultural conditions to acquire an awareness of different views on how to live a good life and also the ability to intellectually question and re-examine the different views. This is where other liberal values come in, e.g. the right to education, freedom of the press etc.

The argument in this study is that the same conditions that go for individuals can also be valid for a group, i.e. a cultural entity. As long as the individuals belonging to the group have the right to personal autonomy, there is no reason why granting certain rights for minority groups would be a contradiction to the liberal principles mentioned above. On the contrary, it is in this study argued that granting minority rights can be a necessity in order to secure the liberal freedom (with all its responsibilities) to individuals belonging to a minority culture.

Example: Individuals belonging to a minority culture have the right to decide for themselves which cultural traditions are worth upholding, this means that the majority has no right to penalize the minority for unorthodox religious or sexual practices etc, given that the minority respects the previously defined conditions regarding the responsibilities that go with the freedom principle, i.e. not to violate another persons rights. Hence, according to the above principle a normative argument in defense of e.g. the right for a minority culture to practice polygamy can be justified, as long as it is consenting adults with the ability and the right to question the values and beliefs they live their life according to that practice the specific cultural tradition. It does not matter how controversial polygamy is in the eyes of the majority culture, according to the above criteria, the majority does not have the right to impose their values on the minority, and does not have the right to strip away the right of the minority to live their life according to their values. The example of polygamy will be further discussed in upcoming chapters of the study.

Following the same logic of argumentation based on the above liberal principle, neither underage marriage nor female circumcision can ever be justified within the context of the liberal society. Both these traditions involve children and clearly violate the rights of the individual. By the practice of these two cultural traditions the rights of the children are violated in a number of ways:

1. Children do not have the full ability to make informed decisions, or the ability to question the values and beliefs behind the cultural practice.

2. Children do not have the ability to "exit" the culture and the traditions also hinder the opportunity of the children to exit the culture when they become adults. Circumcision can never be reversed and if an individual is already married before entering adulthood, the ability to exit the culture is limited.
3. Both traditions often involve physical force and can be classified, as abuse as well as violation of the individual autonomy, which includes the right to one's own body.

These theoretical considerations and the application of them is consistent with the logic that the normative argumentation is based on, i.e. the logic of deontology. The logic is not applied in its strictest sense and crucial in this study is that there lies no universalism in the arguments presented, as it often does in deontology. As previously mentioned, context is key in this normative study. However, the arguments presented regarding the above mentioned liberal rights do follow the deontological logic. The argument put forward is that each and everyone should within the concept of a liberal society have the right to him/herself lead the life he or she wishes, the right to non-interference from others. This right is often referred to as a *negative right* (Badersten 2006:113), and simply put means the absence of interference from others (e.g. the majority culture wanting to decide how a minority culture should lead their life). However, with this right there is a distinct obligation that follows at all times. We never have the right to lead our lives so that we impose on the rights or freedoms of anyone else, this obligation is as central as the above mentioned freedom itself, because if we impose on the right of non-interference of others, we have imposed on the negative right that the freedom principle itself is entirely based on (Ibid.) Since the right to freedom as defined like above is a negative right, it merely means that everyone should have the right to non-interference. However, the liberal principles of freedom that this study is based on as previously defined also requires the presence of the positive right that is to be able to *actually* be in charge of one's own life, in this case with the liberal society granting cultural rights in order to enable individuals to live their life as they want, as long as the rights granted by the liberal society are in line with the obligation to respect and never to impose on the rights of others. The deontological argument here is that the above obligation must be followed at all times, and as long as it is, cultural variance should be accepted by the liberal political society.

## 4 Method

The quality of research, especially regarding qualitative research attracts a lot of attention (Flick 2006:26), not least when it comes to normative research method. It can be said that there is a long history of suspicion and criticism against the validity and reliability of normative research and traditionally normative analysis has been avoided within the field of social sciences, my field of political science being no exception. To the extent that when forming the idea for this thesis and trying to find suitable literature that in a systematic way described and provided guidance in theoretical and methodological considerations proved to be quite difficult. To this date I am yet to find such a book in English. With this said the Swedish book “*Normativ metod: Att studera det önskvärda*” (2006), by Björn Badersten has proven to be very helpful in guiding me as a researcher when formulating the methodological considerations for this study. In accordance with Badersten I am inclined to claim that the methodological base that normative analysis relies on is not necessarily more uncertain than the one of empirical analysis, and that it is merely the questions asked (and consequently the answers provided) that differ (Ibid. 5).

The method in this thesis consists both of an empirical as well as a normative analysis. First an introductory qualitative empirical analysis is done, of existing literature within the area of research, i.e. the examples selected in order to illustrate the normative stance that is taken in the study. The examples that are brought up are the ban of religious symbols in public schools in France, polygamy, female circumcision and underage/child marriage. The sole purpose of this empirical part of the study is to illustrate some examples of potential controversial issues between the majority and a minority. The empirical examples provide a necessary tool in order to illustrate the criteria that is formulated in the normative part of the study and is consequently suitable in order to answer the research question. The chosen examples are from the United States and France, with the reason that aside from both countries being Western liberal democracies, the existing material on the cultural conflicts chosen is largely from/on either the United States or France, because the specific “cultural conflicts” analyzed in this study have been on the political agenda in recent years, with much public and political controversy, in these two countries.

The use of existing material like literature is necessary for this study, as in (arguably) most qualitative studies, in order to use insights and information as context knowledge (Flick 2006:59). It can be argued that

when studying existing material the ideals of objectivity that traditionally has been formulated by methodologists only can be partly met when conducting concrete research (Ibid. 13). Which is also another reason to why normative analysis traditionally has been met by widespread suspicion. The above argument is acknowledged in this study and the relevance of context and interpretation is as previously mentioned key in this analysis, which is evident of the somewhat relativistic stance taken in the theoretical considerations. Hence, I as a researcher am clear about the ontological and epistemological stance, which is the first requirement in order for the analysis to be valid and reliable. There are further requirements in order to increase the validity and reliability of a normative analysis, and the main ones that must be taken into consideration are: Precision, reproducibility and internal relevance, i.e. first, to enable the reader of the thesis to understand the logics behind the argumentation it is important to be precise and use clear definitions. Also, the normative analysis should be reproducible in the sense that the analysis is based on openly declared principles. Lastly, it is important that only arguments relevant to the subject are used (Badersten 2006:104). The aim is not to “win over” the reader, merely to present a valid argumentation according to the normative logic used in the thesis.

The method used in the normative analysis is to theoretically argue on the basis of the previously mentioned premise of the liberal principle (as in individual autonomy), for the normative stance that cultural variance should be accepted as long as the premise of liberal freedom, with the obligations that come with this freedom, is fulfilled. The argumentation aims to show that on the basis of the normative logic used, the examples of religious/cultural symbols in public schools and work places should be accepted in the context of a liberal society, and that the same goes for the more controversial issue of polygamy. On the basis of the same premise, it will be evident in the argumentation that the other two examples included (female circumcision and underage marriage) cannot and should not be accepted.

The argumentation used bares some similarities to normative arguments within other areas of research, e.g. one argument used by Michael Walzer concerning when war can be justified and when it cannot, is that states have the right of territorial integrity and political sovereignty (Walzer 1977:53). It is possible to draw some parallels to the argumentation used in this thesis from the argumentation Walzer uses, the difference being that in this case the concern is not the sovereignty or integrity of the state, but of the human individual. This is one example of how the logic and structure of the arguments presented in this thesis can be seen as familiar within the field of political science. Allen Buchanan also uses similar argumentation in the book “*Secession*” (1991) where he uses normative argumentation for under what conditions secession can be morally justified (Buchanan 1991). On the basis of the premise of this thesis, a similar form of argumentation that both Walzer and Buchanan use

for their research purposes is applied on the research question in this study, i.e. when is it justified for an individuals belonging to a minority to claim certain rights with reference to culture?

An important aspect to normative analysis is to also address counter-arguments that can be made against the argumentation presented (Badersten 2006:49), this too will be done in connection with the argumentation. However, it is relevant to remember that even though it is possible to formulate counter-arguments against any and every argument presented in normative studies in general, when the purpose is a normative analysis in a scientific manner, what is most important is that the analysis is systematic and follows the logic and the premises that have been defined in advance. Hence, a counter-argument is only valid if it does the same (follows a scientific normative logic). Consequently, even though the counter-argument would be equally valid, it does not mean that the validity and/or reliability of the original argument necessarily decreases or is any less valid.

## 4.1 Definitions

1. *Culture*: The collective that is a culture is in this study viewed as a civic construction of a common identity. A culture being a constructivist type of collective that provides a sense of cultural identity for individuals that perceive themselves to be part of the collective. In this view a culture is a historically developed construction that is based on shared traditions, rules as well as institutional arrangements. Hence, a culture is not seen as a natural construction, but as a collective where boundaries can be diffuse and undefined, and (in contrast to the primordial view), a culture is not according to this civic view seen as an entity that is unchangeable and hostile to differences and other cultures, which means that individuals have the ability to evaluate and also cross cultural boundaries, which enables cultures to change and evolve over time. “Strangers” are not automatically perceived as a threat to the collective, or as incomparably different and because cultural boundaries can be diffuse, it is possible for individuals to enter and/or exit cultures (Tempelman 1999:17-18 modified).

2. *Cultural Identity*: The identification with a societal culture that provides its members with meaningful ways of life across the range of human activities, which includes social, educational, religious as well as recreational life, in both public and private spheres, including shared traditions and conventions (Kymlicka 1995:76, modified). It is recognized in this thesis that cultural identity can be very complex and that individuals can belong to multiple cultures e.g. and also that cultural identity can be fluid and that how individuals perceive their cultural

identity can differ not only from person to person but also from time to time. It can even be said that fluidity is in the nature of the concept of “cultural identity”, however this does not cause a problem for the main argumentation presented in this study. Since the normative argumentation is based on and therefore only relevant with regards to individuals that perceive themselves to belong to a certain minority culture that potentially practice traditions and conventions that differ from the traditions of the majority culture.

Part of the defense of cultural rights is by the above definition based on that as members of a cultural community, individuals acquire certain tendencies and dispositions, which can be as deep as those they are deemed to possess by nature (Parekh 2006:122), which is why culture and cultural identity matters.

*3. Western liberal democracy:* “Democracy” is in this study defined as the rule of the people, a system for choosing government through free and fair elections at regular intervals (Diamond in Dahl et. al. (ed.) 2003:30). However, the concept “liberal democracy” contains much more and is here defined as a political system in which individual as well as group liberties are (should be) well protected and where there exists a sphere of private life which is insulated from state control, where in addition to “...the minimization of violence in political life and of arbitrary action by government...” liberty is considered a basic good and “... the freedoms of the individual to think, believe, worship, speak, publish, inquire, associate, and become informed...” are recognized as human rights (Ibid. 31).

The analytical perspective in the study only deals with cultural conflicts within “the West” and all the material is from/on either North America or Europe. Hence, the term “Western liberal democracy” is used.

*4. The principle of liberal freedom:* The negative right of non-interference as well as the positive right to *actually* be able to be in charge of one’s own life. Together with the distinct obligation that follows at all times. I.e. we never have the right to lead our lives so that we impose on the rights and freedoms of anyone else, this obligation is as central as the above mentioned freedom itself, because if we impose on the right of non-interference of others, we have imposed on the negative right that the freedom principle itself is entirely based on (Badersten 2006:113).

The positive right of liberal freedom (i.e. the individual right to lead one’s own life as one wishes) includes the right to make informed decisions, the right to one’s own body, as well as the right to exit a culture. The above aspects of liberal freedom are in this study considered to be the most relevant ones in relation to the research question regarding minority rights.

## 5 Empirical Examples

### 5.1 The ban of religious symbols in public schools in France

The French *laïcité* strongly resists all group rights and based on this principle of secularism the French government has banned the wearing of religious symbols in public schools and institutions. Even though the ban is on all religious symbols, the policy generated a specific controversy known as the headscarf controversy, (or the politics of the veil) *l'affaire du foulard* (Koopmans Et. al. 2005:168) One criticism that has been put forward in connection with the ban is that in its quest to uphold secularism a risk is that the principle of *laïcité* as put in practice by the French government, denies "...the natural space where liberty is given to everyone" (Ibid. 170). Critics of the ban of religious symbols also stress that *laïcité* should include the respect for difference; this has been the argument of many Muslims that claim the right to wear the headscarf. The claim that is made reaffirms the principle of *laïcité*, but also expresses the request of more space for cultural difference. In this way, the argument made can be considered a cultural claim, as opposed to only a religious claim. Further, the request for acceptance of the headscarf is stressed to be a request for the tolerance of culture, not politics (Ibid.).

The ban of the headscarf can be seen as a part of the return of an assimilation policy as opposed to integration policies, and there has been a retreat of movements that are in favor of the right to difference (*droit à la différence*) in the recent years in France (Freedman 2004:6). Part of the controversy that came with *l'affaire du foulard* was that the girls that were affected by the new policy were often represented by the media as being tools of Islamic organizations that were trying to infiltrate or "take over" the French society (Ibid.). This is part of the argument that the women and girls wearing the headscarf are oppressed in comparison with "liberated" Western women (Ibid.).

This statement will be addressed in the normative argumentation further on in the study. It will be evident that it is actually the above mentioned Western feminist argument often used in defense of the ban of the headscarf that in fact can be viewed as not only oppressive to the

women and girls who wish to wear the headscarf, but also a violation of the basic civil rights and liberal freedom of the minority.

The classic answer by liberal states when it comes to culture and religion has traditionally been “neutrality” (Joppke 2007:313). However it is important to remember that the concept “neutrality” can be very multifaceted. There are a variety of stances that “neutrality” leaves space for, particularistic and/or universalistic, unity and/or rights-oriented stances (Ibid.). Different approaches have been taken in different countries considered to be Western liberal democracies. In France, the concept of *laïcité* appears to be so deeply rooted in the majority culture that the state does not, nor has in the past, aspired to be or even appear “neutral” to culture or religion. The ban on religious symbols seems to represent the move towards an even stricter unity stance, i.e. the requirement to blend into the majority culture in order to be “French enough”, not only by sharing the values and norms of the majority, but also by blending in and belonging to the majority culture by looking and dressing a certain way to school and other public institutions. And the strict separation between the state and religion makes publicly visible association with religion to appear problematic because it is viewed as a challenge to the principle of *laïcité* (Koopmans Et. al. 2005:172). However, the demands for rights that Muslims in France are making are largely only requests that are defensive, i.e. merely a response to what is considered the application (by the government) of a universalist and assimilationist approach to cultural pluralism (Ibid. 169), these demands are not demands for political rights that challenge the *laïcité* principle. Hence, the group demands for the right to wear the headscarf to public schools and institutions are within the context of this study viewed to be in line with the liberal principle of secularism. Wearing religious or cultural symbols to school or work is not in this study considered to be a part of politics in the way that it appears to be in the eyes of the French government. Therefore it will be argued that a more right oriented stance when it comes to religious or cultural symbols should be adapted within the context of a liberal society. And that the kind of *laïcism* where there is no room for cultural or religious variety is not desirable in a liberal society, because the right to difference (*droit à la différence*) is in this study considered to be a core principle of liberalism that should be accepted by society. Hence, the rights oriented neutrality that will be applied in the normative chapter means that the liberal state should respect culture variety and that the state should deal impartially with its citizens, and not interfere in what kind of life they wish to lead, or discriminate what item of clothing is acceptable to wear on one’s head when attending public education, when the clothing is an expression of identity that (it will be argued) does not cause harm to anyone and is not worn for the sake of being offensive to others. By this, it will be evident that the tradition of a girl or woman wearing a headscarf does not violate the rights of anyone, as long as the defined conditions under which the tradition is upheld are fulfilled.

## 5.2 Polygamy

The term polygamy refers to plural marriage, most often a husband who has multiple wives. Several attempts by individuals belonging to cultural minorities to continue plural marriages and also to enter new polygamous relationships have been made in Western liberal democracies, e.g. in the United States and in France (Rendel 2004:128-129). Examples from these two countries will serve as the empirical examples on polygamy in this study.

### 5.2.1 Examples from the United States

There may be several legal consequences with polygamous relationships in the United States, e.g. prosecution for bigamy, prosecution for statutory rape, and also many complications regarding policies like taxation, health insurance and immigration. As early as 1878 a well-known culture conflict case concerning Mormon polygamy took place in the state of Utah. In the case (*Reynolds v. United States* 1878) the U.S. Supreme Court ruled that the defense of religious freedom is not valid when it comes to polygamy, with the argument that if polygamy would continue to be legal, this would lead to anarchy and enable people to themselves decide which laws to follow and which to ignore. This ruling later led to the lobbying by The American Civil Liberties Union in Utah to the national board, in an attempt to overrule the policy concerning polygamy, citing the freedom of religion defense. The appeal was unsuccessful and polygamy remained against the law, however no one was prosecuted for practicing polygamy in the state for over forty years after it became illegal (Ibid). Still today, a controversy remains not only in Utah, but in other states as well, over the legitimacy of polygamy. This was particularly evident in the news coverage of the polygamy case in Texas in the spring of 2008. The case concerned the sect Yearning for Zion in San Angelo, Texas. Officials raided the ranch where the sect resided, and a judge ordered that 416 children living on the ranch would be kept in state custody (<http://www.cnn.com/2008/CRIME/04/20/polygamy.sect/>). The Texas branch of the American Civil Liberties Union (ACLU) responded to the ruling that they were concerned with the human rights of the children and their mothers, saying:

“While we acknowledge that Judge Walther's task may be unprecedented in Texas judicial history, we question whether the current proceedings adequately protect the fundamental rights of the mothers and children,” Terri Burke, executive director of the ACLU of Texas, said in a written statement.

"As this situation continues to unfold, we are concerned that the constitutional rights that all Americans rely upon and cherish -- that we are secure in our homes, that we may worship as we please and hold our places of worship sacred, and that we may be with our children absent evidence of imminent danger -- have been threatened," Burke said." (Ibid.).

While much of the public controversy regarding the case in San Angelo, Texas is not about only polygamy per se, but about the welfare of the children living on the ranch, the statement made by ACLU in response to the ruling by Judge Walther illustrates somewhat of a conflicting value hierarchy. ACLU emphasizes the fact that since from their point of view there was no absolute evidence of imminent danger regarding the welfare of the children, the state may have violated the basic rights of both the children and their mothers by taking them away from their residence by force. The value of privacy, freedom of religion and the right of the parents to live with their children when there is no proof of imminent danger are all according to the view expressed by ACLU superior values to the suspicion by the authorities that the children's' welfare might be in danger whilst living on the sect's ranch. The ruling of the judge on the other hand, illustrates the view that a suspicion on probable terms is enough in order for it to be justified for the authorities to remove the children from the ranch.

The examples presented above will be further analyzed in the normative part of the study. However, it can be stated already here that since it is a given that the children by being minors did not have the ability to exit the culture (the sect) on their own, and since it is also unclear whether the mothers had the ability, or even the right to exit or not, this alone can be viewed as reason enough for the authorities to take care of the children when there is a probable suspicion of abuse, it will be argued on the basis of the normative theory applied in the analysis. As for the polygamous relationships practiced within the sect, similar normative arguments based on the previously defined criteria will be applied, i.e. polygamous relationships practiced by minority cultures should only be accepted within the liberal democratic society when the criteria defined in previous chapters of this study are fulfilled.

### 5.2.2 Example from France

In the 1980's the French government gave permission to immigrant men to bring multiple wives when moving to France (Okin 1999:9). It is difficult to assess how many polygamous families there are in the country, some say fewer than 10000 while some estimate around 20000 (Haddad & Smith 2002:153). In 1995 the former immigration minister of France made a statement where he said that up to 200000 people were living in

polygamous families (Ibid.). Emigration to France, from mostly the former French colonies in Africa, has presented a variety of problems for the families concerned, ranging from open discrimination to the fact that most apartments in France are designed for smaller families, which means that polygamous families live in extremely crowded apartments (Ibid.). In practice, polygamy among immigrants was tolerated in France until 1993, when a new immigration act was introduced which included the instruction to refuse to grant or renew residence permits for those living in a polygamous relationship, whether they were legally married or not in their home countries (Freedman 2004:114).

One common argument used by the French government when outlawing polygamy, after first accepting it among immigrants for several decades was, (in addition to the fact that polygamy does not fit the model of traditional marriage) that polygamy is bad for women. This is the feminist argument and it can be argued that there is a widespread consensus not only among feminists, but in Western societies as a whole that since polygamous relationships among immigrants in the West as a rule consist of one husband and his multiple wives, the “polygamy problem” in the West can be regarded as a gender issue per nature. However, in the case of immigrants in polygamous relationships in France, it can be considered quite a paradox that the new policy of restriction, which came to be with the argument that it was a defense of women’s rights, in reality has led to devastating practical consequences for many of the women (Ibid.) By outlawing polygamy the rights of the women has not been defended, on the contrary their living situation has drastically worsened because now they are illegal immigrants. The new law meant that husbands were forced to reject all wives except one in order to have the possibility to renew their residence permits, this meant that only the husband and the chosen one of his wives were able to stay in the country legally, while the rest of the wives were suddenly stripped away of their rights and residence permits, left with the options to either be deported to their country of origin, or to hide and stay in France illegally (Ibid.).

It is recognized in this thesis that many times, polygamous relationships can be harmful to especially women, and that the feminist argument against polygamy is valid in many cases. However, in the above case with the “polygamy problem” in France, it will be argued that the new French policy that meant the loss of the wives' legal status in the country was a direct violation of their rights and caused them direct harm. It is not argued in this study that polygamous relationships are ideal, or even desirable, the argument put forward is merely that when certain criteria is fulfilled, polygamy should be granted to cultural minorities that wish to practice it, with the argument that the practice of polygamous marriages between consenting adults does not violate the liberal rights of anyone, neither the minority/ies nor the majority. In addition to this the argumentation also includes cases like the French example, where the

(previously defined) liberal rights of the women are violated when direct harm is caused by a new policy that changes the law, and the above example will be further analyzed in the normative part of the study.

### 5.3 Female circumcision

Female circumcision (also known as female genital surgery or female genital mutilation) is a cultural custom that involves the removal of some or all of a girl/woman's external genitalia. The custom has existed for thousands of years and is prevalent in Africa and the Middle East, but also in Islamic Indonesia, South America and Australia. It is estimated that approximately 85 to 114 million currently living girls and women in the world have been circumcised (Renteln 2004:51). No religion requires the surgery; therefore the custom is treated as a strictly cultural tradition in this study. In Europe, the custom has been previously unknown, however by migration the number of individuals that belong to cultural minorities living within the West and practicing the tradition is growing (Ibid.51-52).

There are many cultural arguments that are traditionally presented in defense of female circumcision, e.g. that it guarantees virginity before marriage and chastity afterwards and that it is a rite of passage for girls, which means that without being circumcised, a girl will not be able to marry, and if unmarried, she will be a social outcast. However, the resistance against the custom is growing within many countries where female circumcision is practiced, e.g. in Sudan as well as in Kenya, the respective governments have banned the custom (Ibid. 52). In some countries in the West, e.g. in the United States a federal law specifically criminalized all forms of female genital mutilation. Special laws that forbid female circumcision have been contended, with the argument that already existing legislation in Western liberal democracies can be utilized instead. This is also the argument in the normative part of the thesis, since it is argued based on liberal human rights that female circumcision cannot be accepted within the liberal society, on the basis that it causes direct bodily harm and violates the individual freedom of choice to make informed decisions, since the surgery is performed on children who cannot decide for themselves, nor have the ability to exit the culture. Key for this argument is that since the procedure is irreversible, it means that the girls can never fully exit the culture and lead their lives as they wish in the future either. This makes circumcision distinctly different from other cultural choices that parents make for their children (like choices about what clothing children wear e.g., as in the example with the headscarf), because

when parents (or other relatives) make the decision to circumcise the girls, it is a decision about the girls body that she will have to live with for life, never having the freedom to re-evaluate the custom for herself later in life, which is possible with other cultural traditions, such as the example of the headscarf.

The counterargument, in defense of additional legislation, is that a specific law against the custom serves to clarify the status of female circumcision and making it clear that cultural custom cannot justify the procedure, this has been the purpose of the federal law in the United States, to serve as a largely symbolic law (Ibid. 53).

The international strategy has been to condemn female circumcision on the basis that it is unhealthy and this is true regarding the way the procedure has traditionally been performed; it has often led to severe health complications. However a problem with using solely this argument in the condemnation of the custom is that with the use of modern medical techniques, it is possible to carry out the procedure under highly antiseptic conditions, which means that immigrants living in the West could have access to medical care that could limit the risk of health complications from the surgery, if the procedure was legal (Ibid. 52).

The main argument in this study, in addition to the health argument, is that female circumcision should be illegal on the basis that it violates the rights of the girls, i.e. the right to one's body that should exist in a liberal society. The custom also makes it impossible for them to later in life fully exit the culture, since the procedure is irreversible and by this has permanently altered their bodies and thus violated the right of the girls to chose how to lead their lives in the future.

## 5.4 Underage/child marriage

The rules that specify the appropriate age for entering a marriage vary from society to society, in many parts of the world, e.g. in Africa, Asia and Latin America it is common that girls who are under the age of sixteen get married. Also in many societies there is no law that specifies the minimum age and instead it is the parents that decide when they consider their child to be ready for marriage (Renteln 2004:114-115). In Europe and North America, the minimum marriageable age is generally 18 years old ([http://en.wikipedia.org/wiki/Marriageable\\_age](http://en.wikipedia.org/wiki/Marriageable_age)). However, there are some variations and in many European countries as well as in regional states in Canada and in the United States it is also legal to get married at age 15-17 if there is parental consent. While in some countries, e.g. in Finland and Sweden, it is not parental consent that is required when someone under the age of 18 wants to enter a marriage, but the consent from the ministry of justice (Finland) or the county administrative board

(Sweden) when it is a case of “special circumstances”. In France a new law was enforced in 2005, with the explicit reason to protect minors from arranged child marriages (Ibid.). In this study (as in most European and North American countries) the marriageable age is considered to be 18 years old, because this is (within the context of this study) when an individual is considered to an adult. Further, the normative argumentation will include an argument against underage marriage even if there is parental consent, (or as in some countries/regions, approval from a judge, administrative board or the ministry of justice), for the reason that before an individual is an adult, she is per definition dependent on her parents/legal guardian, which means that the ability to evaluate and/or exit a culture is limited, and if a girl is already married when she enters adulthood, there may be a higher risk that the above limitations remain.

Most cases of underage marriage (or at least the ones that are brought to attention) involve the bride/wife being underage, which means that cultural conflicts regarding child marriage are arguably a gender issue by nature. The motivation of the parents to marry off their daughters at a young age is often to ensure their virtue, if the girls stay unmarried too long; the fear is that the girls will not be considered suitable for marriage according to the cultural norms of their community (Ibid.119). It is when couples emigrate and arrive in countries where a minimum age exists that difficulties can arise. There are examples of this happening in e.g. the United States and in Great Britain Ibid. 116-118).

However, examples of underage girls entering marriage can also be found *within* for example the United States. One case that caused much controversy took place in Southern California, where the Orange County Social Services Department helped at least fifteen Latina girls marry adult males. The reason the Department cited was that they were concerned with the fact that the girls were pregnant, so instead of treating them as victims of statutory rape or child abuse, they saw marriage as the “solution to the problem”, which meant that the agency recommended this solution to juvenile court judges. The cases were treated by the Social Services agency as a “cultural issue” because of the fact that virtually all the girls were Latinas (Ibid. 117-118, 277). In the state of California the age of consent for sexual relations is 18 (<http://www.avert.org/aofconsent.htm>), while there is no specific minimum age for entering a marriage. However, those under the age of 18 who wish to get married must receive parental consent or the approval of a superior court judge ([http://en.wikipedia.org/wiki/Marriageable\\_age](http://en.wikipedia.org/wiki/Marriageable_age)). The criteria used by the Social Services agency was whether or not the couple consented to marriage as well as raising the child together, whether the sex had been consensual or not, and whether the girl was dependent on financial support from the man (Ibid.117).

The normative argumentation against child marriage in this study will largely follow the same lines as the argumentation against female circumcision. Because even though the premise in this study is that liberal

societies must be sensitive to culture, it must at the same time handle cultural conflicts involving children with extra care in order to uphold the rights of children. Within the context of this study, children are not considered to have the ability to protect their own rights, or choose if they wish to enter a marriage or not, especially younger children. Children also lack the ability to exit the culture, simply because children are dependent on their parents or other legal guardian/s.

Therefore it is in this study considered to be somewhat of a moral difference between arranged marriages where both the bride and groom are adults, and arranged marriages involving minors. Because even though arranged marriages between adults may not be consensual, it is argued that an adult per definition has a better possibility of making intellectual and informed decisions, than a child, an adult also stands a higher chance to evaluate a culture and possibly also exit a culture. This is why the tradition of underage marriage (and not arranged marriages in themselves) is included as an example of cultural conflict in this study. This specific example also illustrates why cultural conflicts involving children should be handled with extra care and just like in the previously mentioned example with the children belonging to the polygamous sect in Texas, it will be argued that the value of protecting the liberal rights of children is always superior to the value of cultural rights, since children per definition (by being dependent on adults) do not have the full ability to protect their own rights.

## 6 Normative analysis

The four kinds of cultural variance that has been presented in the previous chapter are very different, although they do also bear some similarities. When it comes to all four cultural traditions it is possible to cite the “cultural defense”, however, it is in this study argued that the argument of cultural defense only is valid when it comes to two of the examples; The right to wear the headscarf to public schools and other institutions, and the right to practice polygamy when all parties involved in the relationship are consenting adults.

First, the right to wear the headscarf is in this study considered to be fundamentally different from the other two examples that involve children or minors (female circumcision and child marriage), which will be evident in the normative argumentation that follows.

### 6.1 Argumentation against the ban of the headscarf (and other religious symbols) in public schools and institutions in France

The headscarf policy affects both adult women (e.g. teachers and other staff) as well as underage girls who are students in public schools. Regarding adult women it is simply a matter of the liberal principle of freedom as defined in this study. If a woman wishes to wear the headscarf she should have the right to do so based on this principle, and then the action does not violate the rights of anyone. When it comes to students in public schools, the girls are children/underage and therefore the argumentation regarding them will be somewhat different.

#### 6.1.2 Teachers wearing the headscarf

In France (as opposed to Germany e.g.), the ban of religious symbols also applies for teachers (Gallala 2006:593). When it comes to adult women, the right to wear the headscarf is a liberal right that does not violate the rights of anyone, as long as a woman is not *forced* to wear the headscarf. Of course it can be argued that there are always cases that can be placed

within the gray area of what is considered to be free choice, i.e. to what extent a woman actually has the ability to decide for herself if she chooses to wear the headscarf or not, but this can be said for anything, there will always be difficult cases. However, this does in no way justify a ban by the government that affects every single one of the women who wear the headscarf and are part of the faculty or other staff in a public school. The policy does not respect the right to difference and forces all of the women, no matter how much they wish to wear the headscarf, to remove it. The argument that the ban is justified with reference to *laïcité* is not valid according to the normative logic in this study, on the contrary, the ban is considered a violation of the basic liberal rights of some women that the policy is argued (by supporters of the ban) to protect. Wearing the headscarf can be an important expression of identity for many women. In contrast to some other symbols, the headscarf is not worn for the sake of being offensive to others and by this the headscarf does not cause any harm, nor violate the individual rights of anyone. It is not a political symbol, and should not be part of politics, as it seems to be viewed to be by the French government. The respect for difference is key in a multicultural society, and the aspect of *laïcité* as put in practice by the French government is not desirable in a liberal society because it puts a clear restriction on the citizens/residents and their freedom to lead their life as they wish. The view in this study is that the right to have the choice to wear a headscarf or not is a right that should be accepted on the basis of the liberal principle of freedom, and that the ban is viewed as an attempt to further implement a form of assimilation that is not in line with the principles of liberalism, as applied in this study. A society that is hostile to cultural pluralism is not considered desirable, when the form of pluralism that is advocated is consistent with liberal principles.

The argument that the headscarf is oppressive to women that is often used in defense of the ban (Freedman 2004:6) is simplistic and often invalid, and is not respectful to cultural difference. The women who wish to wear the headscarf and by this lead their life according to their cultural norms should always have the right to do so, and it is the policy that takes away this right that is oppressive, not the religious/cultural tradition itself. It would be possible to argue that immigrant women living within the West and still wanting to wear clothing that is specific to their cultural norms and traditions, would not choose to do so if they were “liberated” in the same way as women within the West have been in the recent decades (Ibid.). This argument is in this study considered to be offensive and a mere illustration of the assimilationist view that the cultural norms of the majority are the only ones that are desirable, or even accepted. When the majority society has this kind of assimilationist arguments that in their substance only respect and reward the individuals that conform to the majority norms, minority cultures clearly lack the capacity to maintain their culture (Parekh 2006:166). A society can never be entirely neutral, the majority culture will always be the norm, however a liberal society

should strive for a right-oriented neutrality, which means that the liberties of all citizens/residents should be protected, and includes that no one should be discriminated against because of the fact that they do not fit into the majority norm. It is argued here that the ban of religious symbols as the headscarf is not consistent with this kind of rights oriented neutrality, because it clearly alienates the women who wear the headscarf and means that they are excluded to work within the field of public education.

A symbol or a piece of clothing that represents religious or cultural belonging can never in itself be oppressive, it is only when the individual lacks the ability to make decisions for herself and to evaluate if the tradition is worth to uphold or not, that cultural clothing or symbols may become oppressive.

### 6.1.3 Students wearing the headscarf

As a general rule in at least liberal democratic societies, it is the parents (or other legal guardian/s) that choose what clothing their children wear. It is the parents that generally buy the clothes and have the power to decide what clothing is proper attire for their children. As long as the choice of clothing cannot be classified as abuse, i.e. as long as it does not cause harm to the child, this is the right of the parents in a liberal society. It is argued here that the headscarf cannot be considered abuse or a violation of the rights of children, just because the French government has implemented a policy that says so. The clothing we wear is most often a direct reflection of our cultural belonging and it is considered a liberal right to choose what kind of clothing we wish to wear in order to e.g. express our cultural identity. It can be argued that there are many kinds of clothing that is seen as inappropriate, especially for children to wear, and it is recognized here that there are in most societies (a liberal society being no exception) many restrictions to what clothing is viewed as appropriate or not. Examples of inappropriate clothing can be clothes with offensive symbols, or clothes that are too thin and make the child cold, or clothes that are too revealing etc. The list could go on and on, depending on the existing norms in a society, and in some cases a ban of certain symbols or clothing that is viewed inappropriate can be justified. However, it is argued here that the headscarf does not fall under the category of harmful or inappropriate attire, and that it is the cultural right of Muslim parents to choose if their child should wear a headscarf to school or not. It is not argued here that it is desirable for parents to make their children wear a piece of clothing that they do not wish to wear, of course it would be ideal if it is only the children that express their will to wear a headscarf that do so. However, parents make decisions for their children all the time (and it is their legal right to do so), and since it is in this study argued that children/minors cannot fully make informed decisions or evaluate their

culture in the way that adults can, because minors are dependant on their parent/s or other legal guardian/s, the decision that a minor should wear the headscarf is here considered to be the equivalent to a parent choosing other pieces of clothing for their children to wear. By this it cannot be considered a violation of the rights of the children/minors, nor any other individual or group, if students wear a headscarf to school.

It is when children become adults that they must have the freedom to evaluate if they wish to continue wearing certain cultural clothing or not. Wearing clothing that is an expression of cultural belonging when one is young does not in itself hinder the possibility or opportunity to later in life decide to stop wearing it. Just like girls who e.g. have not been allowed to wear the headscarf, might as well decide to do so when they become adults. This is a key factor in the normative argumentation made, if the cultural tradition that parents decide for their children to follow while they are minors does not cause harm, nor affect the individuals opportunity to lead their lives as they wish when they become adults, it is not a violation of the child's liberal rights. Further, the argumentation that the French government used when implementing the ban (see chapter 5: Empirical Examples), i.e. that the headscarf is a threat against secularism is not considered valid in this normative analysis. It is recognized here, in accordance with the French government, that there is no place for religion within politics. However, the wearing of headscarves and other religious/cultural symbols in public schools is not in any way considered a threat against secularism within the context of this study. Cultural clothing is not a threat to liberal politics. It is only by implementing the ban that the French government made it a political issue, which in its turn led to the infected political debate, as well as the whole discussion regarding cultural group claims mentioned in chapter 5, and for the reasons stated, the ban is considered to not only be a violation of the liberal rights of the women and girls who wear the headscarf, but also of the rights of the minority community as a whole.

## 6.2 Argumentation regarding polygamy

Polygamy is not legally accepted in Western liberal democracies today, nor is it culturally acceptable within the majority culture. However, individuals who belong to minority cultures have on several occasions cited the "cultural defense" in the attempt to continue their polygamous marriages, and also to enter new ones, e.g. in the United States and France (Renteln 2004:128-129), where the examples in this study are from. In addition to immigrants who wish to continue their polygamous marriage in their new home country, there are also cases that do not concern

immigrants, but minorities within the country who cite e.g. religious beliefs and wish to enter polygamous relationships. This is the case with the Mormon example in Texas that is analyzed as an example in this study. The second example included concerns Muslim immigrants in France.

Regarding the example of the Mormon sect (see chapter 5, section 2.1) the argumentation against the polygamous relationships within the sect was highly about the welfare of the children living on the ranch and not about only about polygamy per se. One reason for inclusion of the above example in this study was to illustrate the fact that polygamy is not only a cultural conflict that arises because of migration, which also the historical example mentioned in the same section illustrates. The argumentation here concerning the case of the Mormon sect (Yearning for Sion) in Texas differs slightly from the argumentation concerning the French example, however the arguments are based on the same normative logic as well as the same premises. As previously mentioned, the rights of children need special protection by the liberal society for the reason that children lack the ability to protect their own rights. The children living on the sect's ranch are (since they are minors) dependent on their parents, which means that the possibility to by themselves exit the culture is/was very limited. It is also unclear whether their parents had the ability to do so if the welfare of their children was in danger, or the right to do so for any reason. According to the normative premises in this study, the right, as well as the actual ability to exit a culture is part of the liberal principle of freedom that must be respected in a liberal society. It is here argued that a suspicion on probable terms that the welfare of children is in danger is enough reason for authorities in a liberal society to temporarily remove the children from the ranch and keep them in state custody. Thus the value that when there is probable suspicion that children suffer harm is superior to the rights of the parents, since no individual is ever justified to lead his/her life in a way that causes infringes on the rights of others, and children themselves cannot fully protect their own rights. Important to remember though is that it is *not* argued in this thesis that growing up in a polygamous family in itself causes harm to a child.

When it comes to the French example (see chapter 5, section 2.2) it is here argued that the policy implemented by the French government caused direct harm to the individuals concerned. After tolerating polygamy among immigrants for several decades, the new immigration act that was introduced in 1993 meant that husbands who had several wives, were forced to reject all but one in order to be able to stay in France (Freedman 2004:114). This meant that the status of the wives that were rejected suddenly turned them into illegal immigrants. It is quite a paradox that the new policy of restriction came to be with the argument (among others) that it was needed in order to protect the rights of the women, when in reality the policy led to devastating consequences for the very same women it was supposed to protect (Ibid.). By outlawing their marriages, the rights of the women were not protected; on the contrary, it

is argued here that the policy was a violation of the liberal rights of the women, as well as of the liberal rights of their husbands. The feminist argument that polygamy in itself is harmful to women is rejected in this analysis. It is recognized that there of course are cases when the argument is valid, however this does not mean that it is always the case and the argument that women who belong to cultural minorities never would choose to enter polygamous marriages if they were “enlightened” in the way that Western women are, is here (just like in the case with the headscarf) considered simplistic and offensive, because it is not sensitive to cultural variation. No one can say what someone would choose or not choose, except the individual herself. And it is not within the context of a liberal society justified for anyone else to judge or decide how an individual chooses to live his/her life, just because we do not understand the choices that are made. Today, many liberal democracies are more accepting than ever before when it comes to family formations that differ from the norm that is a marriage between one man and one woman. E.g. gay marriage is up on the political agenda in many countries today, and even legalized in some liberal democracies. In the same way that it should be the liberal right of the individual to enter a marriage with someone of the same sex, it should be the right of the individual to enter a marriage with more than one individual, as long as it is a union between consenting adults. Neither gay marriage nor polygamy is a threat to, or affect the liberal rights of others, and therefore it is not justified within the context of a liberal society to deny individuals to have the right to enter gay or polygamous marriages if they wish to do so. Hence, there are parallels that can be drawn between polygamous marriages and gay marriage, the difference being that gays are not a cultural, but a sexual minority, while individuals who wish to practice polygamy belong to cultural minorities, which is why the concept of “cultural rights” is relevant.

### 6.3 Argumentation against female circumcision

Female circumcision can never be justified within the context of a liberal society because it is a violation of the liberal rights of the girls that the procedure is performed on. It is argued here that the tradition is in many ways fundamentally different from many other decisions that parents make for their children. The tradition causes direct bodily harm and often leads to severe health complications for the girl (Renteln 2004:53). However, even if the conditions that the procedure is performed under is sterile and minimizes the risk of health complications, it is still on the basis of the normative logic in this study considered to cause bodily harm because female circumcision is irreversible and therefore permanently alters a girls body, meaning that it can never function in a way that it would have if the

removal of (some or all) the external genitalia would not have taken place. The right to one's body is a fundamental right always superior to the value of cultural tradition, thus the "cultural defense" argument can never be valid when it comes to traditions that ignore said right. Once the procedure is done, the girl loses all freedom to later in life re-evaluate the custom, since it can never be undone. Parents do not have the right to abuse their children, and therefore the liberal society should never accept a tradition that can be classified as physical abuse. The above argument can be used regarding other forms of physical abuse as well, e.g. when a possible cultural defense is presented in cases where parents have used corporal punishment when disciplining a child. However, when it comes to female circumcision it is a case of physical damage that can never heal, and therefore here considered to be an even more serious violation of individual rights than corporal punishment.

The legislation in the United States that specifically outlaws all forms of female genital mutilation was put in place to largely serve as a symbolic law (Ibid.) It is here argued that special legislation is not necessarily needed, given that there already are existing laws that can be utilized. However, legislation that outlaws the tradition is not enough. Information and further education regarding the damages that the tradition causes is crucial in order to enable individuals within cultural minorities that practice the tradition to themselves evaluate the tradition, which can be a step towards the cessation of the practice in the future, if not among first generation immigrants, then potentially among the second or third generation.

Children have individual rights that are not connected to their parents and it is when these rights are not respected by the parents or other legal guardian/s or family members that society has the distinct responsibility to step in and actively prevent that harmful cultural traditions are continued in the new home country. Further, it is not only within the context of Western liberal democracies that the procedure is condemned; many countries where female circumcision traditionally has been practiced have banned the custom, e.g. Sudan in 1945 and Kenya in 1982 (Ibid.), which indicates a growing consensus in other parts of the world as well that it is not desirable that the tradition is upheld, although it is by migration to Europe and the practice of the tradition by cultural immigrants within the West that arguably has contributed to the recognition of the problem and increased the debate regarding the tradition.

## 6.4 Argumentation against underage/child marriage

Much of the normative argumentation against child marriage follows the same line of argumentation as in the case of female circumcision in this study. The cultural defense is not valid when it comes to the tradition of child marriage, thus it is argued here that child marriage can never be justified within the context of a liberal society. In this study the marriageable age is considered to be 18 years old, since this is when an individual legally is an adult. It is argued that parents do not have the right to marry off minors because the tradition is a violation of the individual rights of the children; hence the decision to enter a marriage cannot justifiably be made by parents for their children. The choice to enter a marriage should be done by the individual herself and thus cannot/ should not be made until the individual is an adult. As long as an individual is a minor, she is per definition legally dependent on her parents, which means that she is unable to make legal decisions for herself. For this reason the decision to grant a marriage when someone is a minor should not be made by judges, administrative boards or the ministry of justice either.

Underage marriage is in this study considered to be harmful to children, although the harm may differ somewhat from the harm caused by female circumcision. Even though underage marriage arguably does not cause irreversible bodily harm as in the example of female circumcision, it still is a tradition that here is considered to cause harm for several reasons. First, even though a marriage is not necessarily irreversible, the opportunity to re-evaluate or exit the culture is arguably lower if a child is already married when she becomes an adult, which means that the opportunity to live her life as she wishes when she becomes an adult is more limited than it would have been if the decision to marry would have been made later in life.

Secondly, even if the minor would consent to the marriage, as in the cases of the Latina girls in Orange County, California (see chapter 5, section 3) the decision is per definition done under circumstances where a minor is dependent on adults who are responsible for her welfare. If a child enters a marriage with an adult, parents (arguably) cannot guarantee the welfare of their child since the child then is (in addition to her parents), in a dependent situation in the relationship with her husband. The vulnerability significantly increases when one party in a marriage is a child while the other is an adult, which often is the case in arranged marriages, as seen in the cases with the Latina girls in California e.g.

Thirdly, the right to one's own body is fundamental in the principle of individual rights and a child has no to very little possibility to defend said right when it comes to sexual relations in a marriage.

## 7 Conclusion

It is argued in this study that the principle of tolerance is as important in a society as the principle of freedom, and that the two cannot exist separately. Thus, tolerance of cultural variation is crucial in liberal societies. However, there is a limit to how far the tolerance of cultural variation should go, and to define criteria regarding when minorities have the right to claim cultural rights, and consequently when a cultural defense cannot be justified, has been the purpose of this study.

It is illustrated in the analysis how Western values often can be inaccurately equalized with the concept of liberal values, which is in this study viewed as an example of how the concept of “liberalism” can be wrongfully used when implementing policies that in reality actually are illiberal, as in the example of the French government and the ban of the headscarf, or in the example concerning polygamy, since there is nothing within the theory or political order of liberalism that says that polygamous relationships should not be accepted. The outlawing of female circumcision and underage marriage on the other hand is in line with liberalism and fall under the category of cultural variation that should never be accepted.

The “social imaginary” that the majority norms are the only desirable ones in a society causes harm and multiculturalism benefits not only the minority culture but the society as a whole, as long as the cultural claims made by minorities are in line with the criteria defined, i.e. the liberal principle of freedom with all the responsibilities that come with said freedom. The Western order must in a true liberal sense accept differing cultural as well as religious traditions (Dallmayr 2002:104) and this is even more important when it is a question of individuals from differing cultures co-existing within the same society, which due to migration makes the research subject all the more relevant to study. It is crucial though for the liberal society to actively work and prevent that the cultural defense is used in cases where there is a risk that the individual rights are violated. The cultural defense is possible to present in a variety of cases concerning cultural traditions. The cases chosen to be included in this study are just a few of possible controversial issues. There is a broad spectrum of potential cultural conflicts that can be studied in a scientific manner, cases that relate to the problematic discussed in this thesis, i.e. traditions that concern children, attire, or marriage. There are also a variety of other areas where cultural conflict may occur, how to treat animals or the dead e.g.

In the illustration of how a liberal order calls for the respect of differing cultures, all the while there is a responsibility to protect individual rights; it is evident that sometimes it can be a fine balance. There is always a gray area within all models or guidelines and there are always difficult (if not impossible) cases when it comes to determining if a cultural defense is valid or not. However, when it comes to cases involving female circumcision or child marriage the guidelines presented in this study are absolute in their nature, since it is argued that it can never under any circumstances be culturally justified to circumcise girls/women or to marry off a child, because both traditions involve such a fundamental violation of individual rights. The argument related to the above traditions also includes the strong normative stance that the rights of children require special attention since children lack the ability to defend their liberal rights.

Regarding cultural or religious attire it is argued that a ban of cultural clothing cannot be justified in a liberal society and that countries that have enforced the ban, such as France (where the examples in this study are taken from) or Germany, violate the liberal rights of the minorities who wear cultural or religious clothing. The normative stance in this study is that it is possible, as well as desirable that a multiculturalism that is visible exists in liberal societies, and cultural clothing is not a threat to the separation of state and church, like defenders of the ban have argued. It is never justified to automatically presume that there is a threat towards the majority just because there exists a visibility of individuals who differ from the cultural norm within the public sphere. On the contrary, it is necessary in order to ensure the liberal rights and freedoms of all individuals in society.

There is no conflict between liberalism and the importance of culture. Culture does matter and can provide an important identification with ways of life across the whole range of human activities. A society that prohibits the visibility of culture and most importantly differing cultures, cannot be called a liberal society. This means that different ways of life across the range of social, educational, religious as well as recreational life must be allowed to exist and be visible also within the public sphere. It is not acceptable to only tolerate variation that is limited to the private sphere. It is recognized in this study that the concept of cultures as well as cultural identities is fluid by nature, which means that cultural identity can be very complex, however this also means that it is possible for individuals to cross cultural boundaries and to re-evaluate their culture, which in its turn means that cultures evolve over time. The ability to re-evaluate cultures and to exit a culture if it is oppressive is, as previously mentioned, key for the argumentation in this study.

The argumentation in the analysis follows the ideology of liberalism and thus liberal theory. The theoretical framework also consists of value theory, since the argumentation is a normative analysis where a value hierarchy is constructed based on the liberal principles defined in the study. Hence, the claims that are made are entirely dependent on the

theoretical framework and what is viewed as just on the basis of the liberal premises. This means that even though it is possible to make numerous counter-arguments against the arguments that are presented in this study, it does not take away from the fact that the study does follow a consistent scientific logic based on a value relativistic ontology. For this reason, only some counter-arguments have been included in the study, mainly arguments that have been used as a defense for the ban of the headscarf and the practice of polygamy. It has been highlighted in the analysis how the arguments used in the defense of the ban of the headscarf as well as in outlawing polygamy has been wrongfully presented as arguments that are “liberal”, which is an example of how often “Western values” can be incorrectly equated with “liberal values”. In fact, most of the arguments used in the debate over the headscarf as well as polygamy have been feminist arguments, which is why this also is highlighted in the study. It is argued in the analysis that neither the headscarf nor the practice of polygamy in itself can be oppressive to women and that it therefore cannot be justified to enforce legislation against the cultural traditions based on the feminist argument. It is only in combination with actual internal restrictions, that the tradition of the headscarf or the practice of polygamy may be oppressive. There has been a debate as well as a controversy regarding the two cultural traditions, especially in France where the controversy has been on the political agenda due to immigration. This is the reason for the choice of including France (in addition to the United States) as an example to illustrate the normative stance. However, the cultural conflict does not only exist in the specific country/ies where the examples in this study are taken from, it has also been on the political agenda in a variety of Western liberal democracies, e.g. in Germany and in the U.K., and due to the continuance of migration, it is likely that issues that can be regarded as cultural conflicts increase in the years to come. This is why it is important to bring attention to them, which has been a further aim with this study.

The reason why more space in the study is given to the traditions of the headscarf and polygamy than to female circumcision or child marriage is that the first two are considered more controversial, since it can be argued that it is more difficult to define which category they (should) fall under according to the criteria that is formulated.

Emphasis is in the analysis put on a more rights oriented liberalism that is defined as a “...normative political philosophy, a set of moral arguments about the justification of political action and institutions (Kymlicka 1989:9) which means that the rights of the minority cannot simply be decided by the opinion of the majority. It is not justified to outlaw a cultural practice just because the majority culture cannot understand the value of it. This is why cultural conflicts should be solved by an essential interest of the liberal political order to give an account of what peoples’ interests are and then treat these interests with equal concern and respect (Ibid.13), which cannot be done if it is only the

majority opinion that decides to what degree cultural variance should be accepted or not. This is why it is argued here that an increase of individuals representing minority cultures within the political sphere is essential in order to ensure the rights of minority cultures. It is key that the majority culture gets an increasing understanding of the values of the minorities, because values are dependent on context and in order to understand differing or conflicting values it is important to understand the meanings attached to them by culture. Cultural identity can for some be as deeply rooted as other traits of the individual that can be viewed as “given by nature”, which is part of why cultural traditions must be accepted in a liberal society as long as the actions of the group or the individual do not infringe upon the rights of others. One’s cultural identity is not given and varies not only from individual to individual, but also from time to time, which means that cultures are dynamic entities that (arguably) constantly change and also intermingle. In order for this to happen, restricting legislation that limits the visibility of cultural variance should not be adopted, because multiculturalism is here considered to be beneficial for the liberal society as a whole, because it increases the freedom of the individual, since freedom is intimately linked with, as well as dependent on culture (Kymlicka 1995:75). The capacity of people to make informed decisions highly depend on access to cultural structure (Ibid.84), and in multicultural societies where there is visible cultural variety, the opportunity to evaluate the meaning of one’s own cultural values increases drastically. One can arguably not make fully informed decisions, nor fully evaluate the cultural conditions one lives under, if there is nothing to compare with.

The same premises that go for the examples that are brought up in this study are also valid when it comes to other cultural conflicts. The answer is not to enforce legislation in order to ban cultural traditions as a “simple” solution to the “problem”. It is possible to handle potential cultural conflicts in other ways, with a more case-to-case approach, as long as it is a question of traditions that arguably are not illiberal. It is illiberal to enforce a ban that outlaws cultural expression and the opportunity to lead one’s life as one wishes. In a liberal society this should not be accepted, because as long as one does not cause harm to others, it is not legitimate for the government to limit the liberty of neither the individual nor a group. It is not just to discriminate a minority because of their cultural values. Only in cases where illiberal traditions are being practiced, is it legitimate to enforce values upon individuals. It might not even be the values of the majority, because its possible that in some cases there is no consensus among the majority concerning a specific cultural tradition practiced by a minority. It is the values of liberalism as defined previously in this study that are legitimate to enforce upon individuals or groups that do not respect individual rights.

When it comes to polygamy a case-to-case approach is necessary in order to determine if the practice causes harm. This is the approach used

regarding any marriage and there is no reason why polygamous marriages should be any different, if there is abuse in a marriage, if there is a probable suspicion that the welfare of an individual involved in the relationship is at risk, it is legitimate to press criminal charges, and legitimate for social services to remove children from their parents if there is probable cause that the children suffer harm. This is the practice when it comes to any marriage or relationship and the same should go regarding polygamous relationships. Living in a polygamous family cannot in itself be said to cause harm to a child, there are many children growing up in families that do not fit the mold of traditional marriage, e.g. children growing up in households with a single parent or children with gay parents etc.

It is here argued that it does not make any sense for secular societies to limit the concept of marriage with all its rights and responsibilities to what is considered traditional marriage between one man and one woman, which essentially is a Christian tradition. It is the right of cultures as well as religions to ordain what unions they see fit (as long as they are not illiberal), but it is not the right of the government in a secular country to discriminate.

Regarding cultural or religious attire, the same guidelines should be applied as with other clothing. Parents have the right to choose how to dress their children, at it should be a given that the same rules should apply for parents belonging to minority cultures, as the ones that apply to those identifying as the majority culture. There are examples where it is justified to ban certain attire or symbols within the public sphere, attire or symbols that are used for the purpose of racial agitation or that are in other ways offensive. In cases like these it is justified to enforce a specific ban on certain symbols. However, prohibiting cultural and religious clothing or symbols that do not fall under this category, as is the case of most cultural and religious clothing, is discriminative and assimilationist, and go against the tolerance and acceptance of multiculturalism that should exist in every society with the aspiration to call itself liberal. Therefore legislation that protects the right to the kind of visible multiculturalism that cultural attire entails should be adopted in every liberal society.

In this way, the right to wear cultural clothing without it being an obstacle for participating in public and political life is not a group right for specific groups, but an individual right for all individuals that identify themselves as part of a minority culture.

Value conflicts and other normative dilemmas is ultimately what make up the entire essence of politics. In this way politics is the construction of value hierarchies (Bedersten 2006:29) and with Western liberal democracies today being more multicultural than ever before, it is necessary to only enforce policies that treat every culture with equal respect. In some cases it is necessary to grant specific cultural rights for minority cultures that practice cultural traditions that differ from the majority norm, i.e. as evident by the example of polygamy. In others it is

simply about granting equal rights to minorities as to the majority, as in the example of cultural attire, and in some cases it is crucial to draw the line for what should be accepted, as evident by the examples of female circumcision and child marriage. What needs to be remembered though, is to not make the mistake of automatically equalizing the concept of “Western values” with the values of liberalism.

## 8 Executive summary

The thesis examines some of the controversial challenges that exist in majority/minority relations within the context of Western liberal democratic societies. The aim of the study is to construct guidelines that are based on a normative value hierarchy concerning when it is justified for minorities to cite the cultural defense and claim certain rights with reference to cultural variance.

Four specific examples of existing cultural conflicts are included in the study: The ban of religious symbols within public schools in France (the Muslim headscarf being the specific symbol discussed in the study), polygamy, female circumcision and underage/child marriage. The headscarf is treated as a cultural symbol in addition to a religious one and the three remaining examples are treated as strictly cultural traditions as opposed to religious traditions, because no religion unanimously advocates the traditions, even if they are more common within some religions than others.

The examples in the study are from the United States and France and were chosen because they in recent years have been on the political agenda in these two countries, however there is a variety of similar examples of possible cultural conflicts that exist in Western liberal democracies today that could have been possible to study, which illustrates that there is a broad spectrum of normative dilemmas regarding majority/minority relations that can be studied. It is argued in this study that it can be possible to apply the normative guidelines constructed in the thesis to other cultural conflicts as well, as long as it is within the context of liberal democratic societies. It is evident in the study that the four examples fall under different categories of cultural variance that should be accepted and variance that cannot and should not be accepted.

The empirical examples serve to illustrate the normative argumentation regarding to what extent acceptance of cultural variation should be accepted. The guidelines in the study are based on the basis of a normative logic constructed with a theoretical framework based on value theory and liberal theory. The normative logic is based on that an act should be valued with regard to the duties and responsibilities of (in this case) the liberal society. This makes the normative logic deontological, all though not in its strictest sense. The consequence of the normative logic of the study is that cultural variance should only be accepted when the central premise of liberal human rights is fulfilled. The ontological stance in the study is somewhat relativistic, however only in the sense that values are dependant on human influence and thereby the validity of a normative

value argumentation is restricted to the cultural context. Consequently, the normative analysis that is performed in this study is limited to the context of liberal societies, or societies that have an aspiration to become liberal.

Liberalism is defined in the study as a political system in which individual as well as group liberties are and should be well protected, and where there exists a private sphere that is free from state control. The principle of liberal freedom that the normative guidelines are based on is defined as the negative right of non-interference as well as the positive right of actually be able to be in charge of ones own life. In the freedom principle there is a distinct obligation that follows at all times, namely that we never have the right to lead our lives so that we impose on the rights of others.

Crucial in the study is the premise that culture does indeed matter, because the identification with a societal culture can provide its members with a meaningful way of life across all human activities, e.g. social, educational, religious as well as recreational life. A culture is in the study viewed as a civic construction of a common identity that gives a sense of identity to individuals that perceive themselves to be part of the collective. In this way it is the individual who should have the ability to decide for themselves which shared traditions are worth upholding and which are not. Hence, a culture is here perceived as a historically developed construction with the ability to change and intermingle with other cultures, as opposed to a natural construction.

It is argued with the help of the examples chosen that tolerance of cultural variation is equally important in a society as the freedom principle is. However, it is stressed that there is a distinct limit to how far the tolerance of cultural variation should go. Cultural traditions that are illiberal should principally never be accepted.

It is illustrated in the analysis how the ban of religious symbols within the public education system in France is illiberal and it is argued that a ban of the headscarf cannot be justified in a liberal society, the normative stance taken stresses that it is possible, as well as desirable that a multiculturalism that is visible in the public and political sphere exists in liberal societies, and that this is not a threat to e.g. secularism.

The example of polygamy is quite controversial and polygamy is not accepted in Western liberal democracies today. It is also an example of how it is possible to inaccurately equalize the concept of "Western values" with values that are liberal. There is nothing within liberalism that supports the outlawing of polygamy as long as everyone involved in the relationship are consenting adults. A parallel is drawn to gay marriage and it is argued in the study that it is not justified for the government in secular societies to limit the concept of marriage with all its rights and responsibilities to what is considered traditional marriage, which essentially is a Christian tradition.

The same premises that go for the above mentioned examples are also valid when it comes to similar cultural conflicts. The answer is not to enforce legislation in order to ban cultural traditions as a "simple solution" to the "problem". As long as the traditions practiced arguably are not illiberal as defined in the study, a more case-to-case approach is possible when handling potential cultural conflicts. It is not justified to discriminate a minority on the basis of differing cultural values. However, this argument is not valid when it comes to traditions that violate the principle of liberal freedom, as evident of the two remaining examples in the study (female circumcision and child marriage).

Value conflicts can be said to make up the essence of politics, which makes them highly relevant to study. Especially with liberal democracies being more multicultural than ever before. It is necessary to treat the majority and minority cultures with equal respect. In certain cases it is necessary to grant cultural rights for minorities that practice cultural traditions that differ from the majority norm, as in the example of polygamy. In other cases it is simply about granting equal rights to minorities as to the majority, as in the example of the headscarf. And in some cases it is necessary to draw the line for what can be accepted, as in the examples of female circumcision and child marriage. Evident in the study is that there can be a distinct difference between the concept of "Western values" and the values of liberalism, which is relevant to keep in mind.

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