

**Liberalism and Multiculturalism:
Heterosexist Injustices within Minorities**

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Abstract

My key question is whether granting rights to minority cultural groups can undermine the interests of lesbian, gay and bisexual individuals (LGBs) within those groups. Put differently, this thesis is an investigation about whether the interests of LGBs within minorities are damaged by granting rights to minority cultural groups. I argue that LGBs have the following interests; in family life, sexual freedom, basic civil and political rights, participation in cultural and political life, bodily and psychological integrity, employment equality and equal access to welfare. In order to answer to this question, I engage with the contemporary political philosophy of multiculturalism and I approach the research by critically analysing five different accounts, which can be categorised as: multicultural citizenship, liberal feminism, negative universalism, deliberation and dialogue, and joint governance. My contribution to the debate is by making a variety of critical and positive claims. I make critical claims about the approaches taken by some authors by affirming that they may not fully protect LGBs within minorities from heterosexism. I make positive claims by suggesting innovative policy alternatives for tackling heterosexism within minorities. Three of the positive claims stand out. First, in order to tackle heterosexism it is important to eliminate stereotypes about LGBs. Second, it is possible to have a set of criteria in favour of group rights that does not imply the reinforcement and/or the facilitation of heterosexism within minorities. Third, the oppression of LGBs within minorities is not the logical extension of engaging in multicultural policies. These claims lead me to defend a model that combines aspects of associative and deliberative democracy. I defend that this model deals adequately with the potential threats of granting rights to cultural groups because it has a variety of mechanisms to prevent and tackle heterosexism.

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Author's Declaration

I hereby declare that I have read and understood the University of York's regulations on plagiarism and academic misconduct. I confirm that this thesis is an original and so far unpublished piece of work and that I am the sole author.

Chapter 1 – Introduction

This first chapter will introduce the topic under discussion in this thesis. In these first lines, I will explain the main topic and clarify some preliminary topics before moving to the core part of the thesis, *i.e.*, the chapters where different views are outlined and critically analysed. This introductory chapter is divided into four parts. To begin, in section 1.1 I will clarify some terminology on sexuality that is necessary for comprehending the topics discussed; more precisely, I will provide an explanation of key terms that relate to the topic of sexual orientation. In section 1.2, I will elucidate the concept of a minority cultural group. After that, in 1.3, I will explain what the topic of this thesis is, the problem I am addressing and the contribution that this thesis makes to the normative problem under discussion. Finally, in section 1.4, I will outline the chapters to follow and explain my argument.

This is a thesis in contemporary political philosophy; by this I mean that this thesis is written in the context of the scientific academic area of contemporary political philosophy. More precisely, the normative issues that are discussed in this thesis are approached within contemporary political philosophy's liberal tradition. In particular, this thesis focuses on those contemporary liberal philosophers who have written on the topic of multiculturalism.

1.1 – Terminology for Sexuality

Sexuality is a topic that has been widely debated, not only in the academic realm but also in governmental and non-governmental institutions and organisations and in everyday life. As a result of this, the terms used in the debates about sexuality can be slightly ambiguous. For this reason, this section will be dedicated to clarifying key terms on sexuality that will be used in this thesis. One of the key terms used is 'sexual orientation'. In this thesis, the term 'sexual orientation' refers to the capacity to feel and to have an enduring pattern of emotional, romantic, and/or sexual attraction to individuals of the same or different sex, and also to both sexes (APA Help Center, 2013; ILGA-Europe, 2013). The specific kind of sexual orientation that is the concern of this thesis, relates to those who either feel this relation only to

individuals of the same sex or to both sexes; that is, including lesbians, gays and bisexuals (LGB). Lesbians and gays are individuals whose emotional, romantic, and/or sexual attractions are directed to other women and men, respectively; the term 'bisexuals' can refer to men or women who have these feelings for both men and women. Throughout the thesis I also refer to the sexual orientation of LGBs as an example of homosexuality.

Routinely, these LGB individuals are victims of various forms of discrimination. Usually, the name given to discrimination of LGBs due to their sexual orientation is heterosexism. In other words, heterosexism is a form of discrimination that, in a variety of ways, favours individuals with a heterosexual sexual orientation over lesbian, gay, and bisexual individuals. Heterosexism occurs when individuals' attitudes and/or state or group institutions are organised around heterosexual sexual orientation and in a way whereby homosexual relations are outlawed or less valued. In a heterosexist society, it can be the case that legal, social, psychiatric, educational, familial and other practices and institutions directly or indirectly assume and promote heterosexual relationships (Calhoun, 1994; Calhoun, 2000, p. 82). That is to say that heterosexism can appear in at least two ways. First, it can appear at a personal level, featuring attitudes, social relations etc. For example, a person who refuses to greet a neighbour because he is gay is displaying a heterosexist attitude. Heterosexist attitudes can also appear in LGBs against themselves; those individuals who are LGB and have strong beliefs that homosexuality is wrong may internalise this and act in ways that are heterosexist to themselves. For instance, if a gay man self-punishes by inflicting self-pain because he is gay, this is an example of taking a heterosexist attitude to himself. The second way that heterosexism can appear is at the institutional level, when there are public institutions that correspond to heterosexuals' identity but not homosexuals'; these institutions ensure that relationships, directly or indirectly, will be built around male-female pairing (Calhoun, 1994; Herek, 1990, p. 321). For example, a society where heterosexual marriage is legal but same-sex marriage is illegal is a heterosexist one. Like racist attitudes and institutional racism, heterosexism pervades societal customs and institutions. Generally speaking, it operates through a dual process of invisibility and attack; this means that LGBs either remain culturally invisible or when they are visible they are, in some way, discriminated against.

A term that sometimes is used interchangeably with heterosexism is homophobia. Homophobia is sometimes defined as the irrational fear, negative attitudes and institutionalisation of practices that advantage heterosexuals over LGBs; when defining homophobia, The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) explains that it consists of “fear, unreasonable anger, intolerance or/and hatred towards homosexuality” (ILGA-Europe, 2013); also, there is homophobia “when governments and authorities are acting against equality for LGB people. This can be hate speech from public elected persons, ban on pride events and other forms of discrimination of LGB people” (ILGA-Europe, 2013). This definition suggests that homophobia consists of practices on the personal and institutional level that discriminate against individuals based on their sexual orientation.

I will use the term ‘homophobia’ interchangeably with the term ‘heterosexism’. However, it is important to say that in my use of the term I do not necessarily assume that the attitudes or institutionalisation of homophobia is irrational, like the definitions just explained assume. Affirming that homophobia is irrational can be misleading; for there may be rational reasons, even if unfair and wrong ones, for being heterosexist. By way of illustration, a person may be heterosexist because he believes that the Bible is a source of authority and he interprets that the Bible preaches that homosexuality is sinful. His belief and interpretation, even if wrong, are not necessarily irrational. Another example is where a heterosexual man may be heterosexist due to the fact that he believes that this will make him better off because there are more job opportunities for heterosexuals than LGBs. This heterosexism is not necessarily irrational, even though it may be unethical. Therefore, my definition avoids the idea that homophobia is irrational; it can, indeed, be a rational attitude.

At this point, it may be asked why I have not included transgender in this thesis; especially as academics and activist groups sometimes affirm that normative questions related to LGB are the same as those related to transgender. However, there are at least three reasons why I do not include transgender individuals in my thesis. First, while the normative challenges arising for LGBs are related to having a sexual orientation towards the same-sex, in the case of transgender, the normative challenges result from a gender identity conflict, *i.e.*, from the fact that for the transgender individual self-identity does not match his own primary physical and secondary sexual characteristics. Second, being transgender is independent of sexual

orientation; there can be heterosexual and LGB transgender individuals. Hence, contrary to LGB, being transgender is not a sexual orientation. Third, in general terms, the interests of transgender individuals are distinct from the interests of LGB. Some of these interests include the interest in changing one's official name, the interest in having aesthetic operations, the interest in changing one's own sexual organ, among other interests (ILGA-Europe, 2013; Kranz and Cusick, 2005, pp. 205–209). These, as will be clear in section 1.3 are a list of interests distinct from those experienced by LGBs.

1.2 – What is a Minority Cultural Group?

As will be explained in more detail, the topic of this thesis is a philosophical assessment of homophobia within minority cultural groups. In this section, I would like to define what a minority cultural group is. There are two necessary and jointly sufficient characteristics that groups need to become a minority cultural group. First, a minority cultural group is an agglomerate of individuals that is smaller in number than the majority and whose members have, perceive themselves to have or are perceived by others to have a set of traits that distinguish them from the majority of people in the society in which they live; these characteristics should be ones that set the group apart from other groups.

Second, the characteristics that set the group apart should be ones that have an influence on members' practical identity and mode of reasoning; by 'practical identity' echo Festenstein's (2005, p. 10) definition, that describes it as "those features of a person that ground at least some of their reasons to act". This means that whatever the practices, norms and beliefs that exist in the group, these are a "source, or at least an important source, of a person's values and commitments" (Festenstein, 2005, p. 14). Moreover, as affirmed by Young (1990, p. 45) the norms, beliefs and practices of this agglomerate influence individuals' "mode of reasoning, evaluating, and expressing". Hence, this agglomerate is, in part, a system of representing reality that has its own symbols, underlying structures and beliefs. Therefore, these agglomerates offer individuals distinguishable normative and epistemological perspectives of the world that allow them to lay the groundwork for creating norms and practices for their groups (Shachar, 2001a). In short, minority

cultural groups possess a distinguished and particular system of meaning and significance, way of understanding and organising human life, codes of conduct for what is appropriate, inappropriate, moral or immoral. Agglomerates that provide these are what, in this thesis, I call a culture. Some of the groups that classify as a culture are Catholics, British and French Muslims, Southern Baptists, The Westboro Baptist Church, the Amish, the Hutterites, The Black Church, The Church of Scientology, the Mennonites, Indigenous People, Hasidic Jews, immigrants of Caribbean and Latino origins, Catalans, Quebecois and Aborigines.

Although the groups mentioned have some points in common, it is important to emphasise that there is a variety of important differences as well. First, a culture can come in many forms. As Gurr (1993, p. 3) points out “People have many possible bases for communal identity: shared historical experiences or myths, religious beliefs, language, ethnicity, region of residence and, in caste-like systems, customary occupations”.

Second, these characteristics of providing an epistemological basis to understand the world and a normative groundwork for acting comes in degrees, *i.e.*, some cultures exert a stronger normative and epistemological force than others. For example, due to the content of their beliefs, practices and a variety of geographical and historical factors like isolation, the Amish may have a much stronger impact on practical identity than the Caribbean community in the U.K., which has assimilated to a higher degree in U.K culture than the Amish have to Canadian and American cultures.

Due to their isolation, the Amish, may have a stronger symbolic system than, for instance, the Westboro Baptist Church or Hasidic Jews living in New York, because these last two have more contact with other cultures. That is, due to the fact that these last two groups usually live among members of different cultures they may have been influenced by them more than the Amish who have less contact with outsiders. Likewise, a religion that has existed for many centuries, like Catholicism, may have a more complete code of conduct than a newborn religion like, say, The Church of Scientology. A culture like that of Quebec, where there are institutions corresponding to a variety of aspects of life, may influence practical identity more than the Jedi. To sum up, the extent to which minority groups have a culture depends on a variety of factors and it is a matter of degree. So, some groups seem to have

stronger cultures than others in the sense of being more normatively compelling and epistemologically influential.

1.3 – The Problem Discussed in this Thesis

In the context of contemporary liberal political philosophy, there have been two waves of writings on multiculturalism (Kymlicka, 1999a). In Kymlicka's view (1999a, p. 112), the first wave of writing has focused on "assessing the *justice* of claims by ethnic groups for the accommodation of their cultural differences". In this first wave of writings, contemporary liberal political philosophers have discussed what kind of inequalities exist between majorities and minorities, and how these should be addressed. Put differently, the topic of discussion of this first wave of writings has been mainly about what the role of the state in dealing with inequalities between groups should be. In general terms, contemporary liberal political philosophers who have written about this topic have taken two different stands. On the one hand, some liberal political philosophers defend that states' institutions should be blind to difference and that individuals should be given a uniform set of rights and liberties. In these authors' views, cultural diversity, religious freedom and so forth are sufficiently protected by those sets of rights and liberties, especially by freedom of association and conscience. Therefore, those who stand for a uniform set of rights and liberties contend that ascribing rights on basis of membership in a group is a discriminatory and immoral policy that creates citizenship hierarchies that are undesirable and unjust (Kymlicka, 1999a, pp. 112–113). Thus, from the point of view of these contemporary liberal philosophers, the state is under the duty of not participating or be involved in the cultural character of society.

On the other hand, some philosophers have taken the opposite view on this matter. For example, there are some contemporary liberal political philosophers who are more sympathetic with the idea of ascribing rights to groups and have defended difference-sensitive policies. As Kymlicka (1999a, p. 112) points out, these contemporary liberal political philosophers have tried "to show that deviations from difference-blind rules which are adopted in order to accommodate ethnocultural differences are not inherently unjust". In general terms, these contemporary political philosophers argue that a regime of difference-sensitive policies does not necessarily

entail a hierarchisation of citizenship and unfair privileges for some groups. Rather, they argue that difference-sensitive policies aim at correcting intergroup inequalities and disadvantages in the cultural market. Moreover, some of these philosophers contend that difference-blind policies favour the needs, interests and identities of the majority (Kymlicka, 1999a, pp. 112–114). Finally, some philosophers, like Kymlicka and Taylor, have defended that difference-sensitive policies are not only compatible with liberalism but can in fact, in some cases, promote liberalism.

In this debate, a variety of difference-sensitive policies have been discussed. In his book *The Multiculturalism of Fear*, Levy (2000, pp. 125–160) systematically exposed the kinds of difference-sensitive policies that are usually discussed in the literature. According to him, difference-sensitive policies can be divided into eight categories: exemptions, assistance, symbolic claims, recognition/enforcement, special representation, self-government, external rules and internal rules.

Exemptions to laws are usually a right based on a negative liberty of non-interference from the state in a specific affair, which would cause a significant burden to a certain group. Or, to put it another way, exemptions to the law happen when the state abstains from interfering or obliging a certain group from practicing something in order to diminish their burden. Exemptions can also be a limitation of someone else's liberty to impose some costs to a certain group. Imagine that there is a general law that states that corporations have the right to impose a dress code on their employees. However, having this general law would burden those groups for whom dressing in a certain manner (different from the one required from the company) is a very important value. For example, for many Sikh men and Muslim women it is very important to wear turbans and headscarves, respectively. Hence, it can be claimed that giving these individuals the option of either not finding a job or rejecting their dress code can significantly burden them. Owing to the fact that the choice of dressing in a certain way is much harder for Sikh men and Muslim women than for a Westerner and that it would undermine their identity, then an exemption may be justified (Levy, 2000, pp. 128–133). Hence these groups would be able to engage in practices that are not allowable for the majority of citizens.

Assistance rights aim to aid individuals in overcoming the obstacles they face because they belong to a certain group. In other words, assistance rights aim to

rectify disadvantages experienced by certain individuals, as a result of their membership of a certain group, when compared to the majority. This can mean funding individuals to pursue their goals or using positive discrimination to help them in a variety of ways. Language rights are an example of this approach. Suppose that some individuals from Catalonia cannot speak Spanish. An assistance measure would be having people speak both Spanish and Catalan at public institutions, so that they can serve people from the minority language group. Another example would be subsidies to help groups preserve their cohesion by maintaining their practices and beliefs, and by allowing individuals from a minority to participate in public institutions as full citizens. Most of these practices are temporary, but they need not be language rights, for example, are often not temporary) (Levy, 2000, pp. 133–137).

Symbolic claims refer to problems which do not affect individuals' lives directly or seriously, but that may make the relations between individuals from different groups better. In a multicultural country, where there are multiple religions, ethnicities and ways of life, it may not make sense to have certain symbols that represent only a specific culture. Symbolic claims are ones that require, on grounds of equality, the inclusion of all the cultures in a specific country in that country's symbols. An example would be including Catholic, Sikh, Muslim, Protestant, Welsh, Northern Irish, Scottish and English symbols on both the flag and in the national anthem. Not integrating minority symbols may be considered as dispensing a lack of respect and unequal treatment to minorities.

Recognition is a demand for integrating a specific law or cultural practice into the larger society. If individuals want to integrate a specific law, they can ask for the law to become part of the major legal system. Hence, *Sharia* law could form part of divorce law for Muslims, while Aboriginal law could be run in conjunction with Australian property rights law. It could also be a requirement to include certain groups in history books at schools – for example, to include the history of Indian and Pakistani immigrants in British history textbooks. Failing to integrate this law may bring a substantive burden to individuals' identity. In the Muslim case, because family law is of crucial importance to their identity, they will be considerably burdened by having to abide by a Western perspective of divorce. With regards to Aboriginal law, because hunting is essential for their way of life, if other individuals

own the land this may undermine the Aboriginal culture.

Special representation rights are designed to protect groups that have been systematically unrepresented and disadvantaged in the larger society. Minority groups may be under-represented in the institutions of a society and in order to place groups in an position of equal bargaining power, it is necessary to provide special rights to members of these groups. Hence, these rights aim to defend individuals' interests in a more equal manner by guaranteeing some privileges or preventing discrimination. One way to achieve this is by setting aside extra seats for minorities in parliament (Kymlicka, 1995a, pp. 131–152; Levy, 2000, pp. 150–154).

Self-government rights are usually claimed by national minorities (for example, Pueblo Indians and the Québécois) and they usually demand some degree of autonomy and self-determination. This sometimes implies demands for exclusivity of occupation of land and territorial jurisdiction. The reason groups sometimes may need these rights is that the kind of autonomy given by self-government rights is a necessary condition by which individuals can develop their cultures, which is in the best interest of the members of the culture. More precisely, a specific educational curriculum, language right or jurisdiction over a territory may be a necessary requirement for the survival and prosperity of the culture and its members. This is compatible with both freedom and equality; it is compatible with freedom because it allows individuals to have access to their culture and to make their own choices; it is consistent with equality owing to the fact that it places individuals in an equal situation in terms of cultural access (Kymlicka, 1995a, pp. 27–30; Levy, 2000: 137–138).

What Levy classifies as external rules can be considered as kinds of rights for self-government. They involve restricting other people's freedom in order to preserve a certain culture. Hence, Aborigines in Australia have external safeguards to protect their land. For example, freedom of movement is limited to outsiders who circulate in Aboriginal territory; furthermore, outsiders do not have the right to buy Aboriginal land. Demands that groups make for internal rules aim to restrict individuals' behaviour within the group. Stigmatising, ostracising or excommunicating individuals from groups because they have not abided by the rules is what is usually meant by internal rules. Thus, this is the power given to groups to treat their

members in a way that is not acceptable for the rest of society. An example can be if a certain individual marries someone from another group which may mean he is expelled from his own group. Another case is the Amish who want their children to withdraw from school earlier than the rest of society. In contrast to external rules, the restrictions on freedom apply to members of the group and not outsiders.

To sum up, in this first wave of writings on multiculturalism, the debate has centred on discussing the justice of difference-sensitive policies in the liberal context. On the whole, there are two difference positions taken by contemporary liberal political philosophers who have written on multiculturalism; some defend that difference-sensitive policies are justified, whereas others argue that they are a deviation from the core values of liberalism. In general terms, there are eight distinct categories of difference-sensitive policies that are discussed in this debate; namely, exemptions, assistance rights, symbolic claims, recognition, special representation, self-government, external rules and internal rules.

More recently, a second wave of writings on multiculturalism has appeared. In this, contemporary liberal political philosophers have not focused so much on debates about justice between different groups; rather, they have focused on justice *within* groups. Thus, the debate has changed to the analysis of the potentially perverse effects of policies to protect minority cultural groups with regard to the members of these minority cultural groups. Contemporary liberal political philosophers have now switched to discussing the practical implications that those that aimed at correcting inter-group equality could have for the members of those groups that the policies are directed to. In particular, the worry is that the policies for enabling members of minority groups to pursue their culture could favour some members of minority groups over others. That is, this new debate is about the risks that those policies for protecting cultural groups could have in undermining the status of the weaker members of these groups.

The reason why philosophers worry about this is because the policies for multiculturalism may give the leaders of cultural groups' power for making decisions and institutionalising practices that facilitate the persecution of internal minorities. In other words, those policies may give group leaders all kinds of power that reinforce or facilitate cruelty and discrimination within the group (Green, 1994, p. 257;

Phillips, 2007a, pp. 13–14; Reich, 2005, pp. 209–210; Shachar, 2001a, pp. 3, 4, 15–16). In short, as Shachar (2001a, p. 3) points out, the most vulnerable members of minority cultures may be “injured by the very reforms that are designed to promote their status as group members in the accommodating, multicultural state”.

This discussion about the practical implications of cultural policies for the most vulnerable individuals within minorities is the result of the acknowledgement of two important ideas. First, the idea that minority groups are internally diverse or heterogeneous. That is to say that within cultural minorities there are other minorities with different interests and characteristics (Green, 1994, p. 257; Mahajan, 2005, p. 94). For example, the Scots are a minority in the UK but Gaelic-speaking individuals are a minority among Scots. The Amish are a minority in the USA, and gay Amish are a minority within the Amish community. As Mahajan (2005, p. 94) points out, this means that “communities are neither homogeneous entities nor self-evidently given wholes”.

The second idea that has been acknowledged is that many groups have illiberal beliefs, norms and practices that can interfere with the interests of some of the members of these groups. That is, many groups reject the liberal values of liberty, equality, neutrality and other liberal values, and this rejection can be damaging for some vulnerable individuals within minorities. In practice, this means that groups have practices and beliefs that are discouraging or forbidding of some individuals’ interests, liberties and rights; these include sexual freedom, religious freedom, freedom of conscience, freedom of association, freedom of expression, freedom from torture, bodily and psychological integrity, safety among other interests. In other words, some cultural practices are violent, discriminatory and cruel to the extent that some of them can only be coercively enforced. This happens with a variety of vulnerable individuals within minorities: women, children, dissenters and LGBs are some examples (Levy, 2000, pp. 41, 51–52, 62; Phillips, 2007a, p. 12; Reich, 2005, pp. 210–211; Swaine, 2005, pp. 44–45).

The concern of this thesis in particular is how those policies meant to protect minority cultural groups can potentially impose serious threats and harm the interests and rights of a kind of internal minority that contemporary political philosophers have overlooked; namely, the kind of internal minority that this thesis explores is the

practical implication of policies for multiculturalism for LGBs. That is, the object of study of this thesis is to assess to what extent LGBs' interests and rights are sacrificed in the name of what other members of the group consider important cultural traditions. The task here is exploring the damage that can be done to LGBs within minority cultural groups, when there are multiculturalism policies in place. In short, the object of study of this thesis is heterosexism within minority cultural groups and I approach the issue from a philosophical point of view. This is not just a theoretical concern, but an actual real life problem: in some minority cultural groups, LGBs within minorities are very disadvantaged by the unintended consequences of multicultural politics (Swaine, 2005, pp. 44–45). Heterosexism is a cross-cutting issue in minority cultural groups (and society in general), covering diverse areas of life, ranging from basic freedoms and rights, employment, education, family life, economic and welfare rights, sexual freedom, physical and psychological integrity, safety, and so forth.

In general terms, it can be affirmed that LGBs have an interest in bodily and psychological integrity, sexual freedom, participation in cultural and political life, family life, basic civil and political rights, economic and employment equality and access to welfare provision.

A question that may come up at this point is where the list of LGB interests comes from. That is, the question as to why LGBs have these interests and why these interests are morally relevant from a liberal point of view, needs to be addressed. The reason why these interests matter is because fulfilling these interests is indispensable for LGBs' well-being. Such interests refer to what is fundamentally important for the well-being of LGBs. Put differently, such interests are of supreme importance due to the fact that it is necessary that LGB individuals have access to them in order to have a worthwhile life. Hence, these interests are, in part, what fulfills human life because they are how human beings flourish. It is empirically observable that LGB individuals across cultures have these interests and that it is a requirement for them to have access to these interests so as to flourish. Whenever LGB individuals have a realistic option for accessing these interests, they always or usually choose them. However, I do not mean that this list of interests is just a list of interests for LGB individuals. In fact, they are universal interests, but expressed in particular with respect to LGB individuals. In other words, the list of LGBs' interests mentioned

above are interests that fall within the scope of human universal interests (Lau, 2004; The Yogyakarta Principles, 2007). In turn, this means that these interests refer to those inalienable rights that individuals have in virtue of being human and that others have to respect them, no matter what. For these rights are fundamental rights that people have, independent of the kind of person they are (*e.g.*, from a different religion, race, etc), and these take precedence over other rights.

From a liberal point of view, which is the stand I take in this thesis, the state is duty bound to promote and protect these universal interests. In my interpretation, liberalism's core goal is to guarantee that all human beings have access to, or an equal opportunity to, live a worthwhile or good life. Therefore, due to the fact that access to that inventory of interests is a requirement for flourishing in a way that ensures one will have a worthwhile life, then the state is under a duty to protect those interests. And even if individuals decide not to take advantage of having the right to pursue those interests, owing to the fact that they are so fundamental the state is under an obligation to offer the possibility of accessing them. These characteristics and capacity to flourish give individuals dignity. Hence, denying such rights that individuals have in virtue of their nature is treating them as somehow below their human dignity.

Sometimes minority groups violate these fundamental interests. One of the LGBs' interests that may be jeopardised is in basic rights and freedoms. Sometimes, LGBs have their freedom of association, opinion, expression, assembly, and thought limited (European Union Agency for Fundamental Rights, 2009, pp. 50–55; Kranz and Cusick, 2005, p. 9; The Yogyakarta Principles, 2007, 24–26). Minority cultural groups can jeopardise these interests due to hierarchies of power within groups. Some groups use a variety of norms of social control; the Hutterites, for example, have monopolised power over economic resources. Also in some groups, participation in political decisions and freedom of expression is culturally determined; for the Hutterites, the right to express one's own opinion and so forth belongs exclusively to the Elders, a group of heterosexual older males in the group. In other cases, groups can coercively discourage and forbid political expression and exit from the group with threats, indoctrination and so forth. Nathan Phelps, a former member of The Westboro Baptist Church, has mentioned in his interviews the fear that the most prominent members of the group instill in others about challenging

‘God’s views’ and exiting the group (Winston, 2012). James Schwartz is a gay man and ex-member of an Amish community; in his interviews, he reported that he had no power for participating in the decisions made by his community and, in particular, the decision of being expelled due to his sexual orientation (Huffington Post, 2012; HuffPost Live, 2012). Moreover, sometimes there is emotional coercion and blackmail exerted on those who decide to stand up for their basic civil and political rights. For example, in some Hutterite communities, those who deviate from the norms set up by the Elders are the target of ostracism, humiliation and shunning. In other cases, members are forced to stay and abide to the norms of the group, against their will. For instance, some lesbian women are forced into marriages with men they do not wish to marry.

In some minority cultural groups, LGBs’ interest in being free from murder, torture, and other cruel, inhuman and degrading treatment is also sometimes violated (European Union Agency for Fundamental Rights, 2011, pp. 13–16; Kranz and Cusick, 2005, p. 8; The Yogyakarta Principles, 2007, pp. 12,13,16, 17, 18). Many LGBs are victims of physical and psychological harassment, murder, hate speech, hate crimes, brutal sexual conversion therapies, and corrective rape, among other kinds of physical and psychological violence. Some members of the Americans for Truth about Homosexuality, as well as members of the Southern Baptist Church along with some minorities in Ecuador occasionally engage in sexual conversion therapies that involve physical and psychological torture. Take the case of Samuel Brinton, a former gay member of the Southern Baptist Church; his parents who are ministers of the Church forced him attend a form of sexual conversion therapy which involved inflicting electric shocks on his genitals and sticking nails in his fingers, among other inhumane practices (Wareham, 2011). Paola Concha, a lesbian from Ecuador, was put in an illegal clinic to change her sexual orientation where the conditions were unsanitary, and where she was regularly beaten and denied food (Caselli, 2012a; Romo, 2012). Some individuals of South African origin engage in a practice called corrective rape that consists of sexually abusing LGB individuals, especially lesbian and bisexual women, with the purpose of making them ‘become’ heterosexual (Carter, 2013). Some Muslim groups believe that if they have an LGB individual in their families, they need to murder LGBs to restore family honour (IGLHRC, 2010). Take the example of, Roşin Ç, a Muslim man who was murdered

by his family due to his sexual orientation; his family was ashamed of this, and considered that only his death could reconstitute honour to the family (Hurriyet Daily News, 2013). Some British Muslims like Sheik Omar Bakri and extremist groups like the Westboro Baptist Church have demanded the death penalty for LGB individuals (Abedin, 2005; Westboro Baptist Church, 2013e).

In other cases, the violence is psychological rather than physical; as mentioned already, in groups like the Hutterites, Amish and Mennonites there are strategies of shunning and ostracism that may exert a strong negative impact on LGBs. Some LGBs may have strong feelings of guilt, shame, self-hate and so forth as the result of psychological and emotional coercion. For example, James Schwartz, a gay man who is a former member of an Amish community, has affirmed in his interviews that his coming out was a painful experience due to the reactions of the members of his community (HuffPost Live, 2012). Some forms of education that are overly focused on promoting heterosexuality may reinforce these feelings.

Some minority groups also neglect their members' interest in sexual freedom. Many groups have norms and beliefs that imply anti-sodomy laws. The term 'sodomy' has had and still has a variety of different meanings. In many cases, sodomy refers to anal intercourse between a man and a woman or two men. More broadly, the term is used to refer to what some consider unnatural homosexual acts. Hence, sodomy sometimes refers to lesbian, bisexual and gay sexuality, which is also the meaning I use in this thesis, although I make no assumptions about sodomy being natural or unnatural. So in this thesis, anti-sodomy laws are laws that criminalise, prohibit or control sexual behaviour and intimacy relating to lesbians, gays and bisexuals. Groups like the Westboro Baptist Church or some British Muslims like Sheik Omar Bakri demand that LGB individuals should be given the death penalty; some Amish and some Hutterites impose practices of ostracism, shunning and excommunication on those who engage in sexual practices with someone from the same sex. Some Mormons, Catholics and Muslims do not deny membership nor discriminate individuals who have a non-heterosexual sexual orientation, if these individuals do not engage in same-sex relations, *i.e.*, if they remain chaste. Hence, some minority cultural groups have practices, beliefs and norms that forbid or discourage same-sex activity.

Some minority cultural groups also sometimes undermine LGBs' interests in economic and welfare rights. In the case of employment, this refers to anti-discrimination law in the workplace and in admission for jobs. In some cases, LGBs' freedom and the right to join the armed forces, to work with children, to employment benefits and health insurance for same-sex families are denied. Although not many religious groups have armed forces, this example could apply to the Swiss Army that protects the Vatican. Generally speaking, in the Catholic Church and in Islam, LGBs cannot occupy job positions such as being a Priest or an Imam. Some Catholic Schools and institutions discriminate against LGB individuals because of their sexual orientation. For example, Carla Hale, a lesbian teacher in the USA was fired from her job because the school board found out her sexual orientation (Viviano, 2013). James Dale, a former Scoutmaster with the Boy Scouts of America was fired from his post due to the fact that he was gay (Susman and Hennessy-Fiske, 2013). Some LGBs are denied equality in healthcare; for instance, religiously run hospitals are unlikely to offer sexual health appointments directed to LGBs' sexuality (European Union Agency for Fundamental Rights, 2009, pp. 76–82).

LGBs also have an interest in being able to participate in the cultural and political life of their groups. They wish to be involved in the sacraments, cultural activities, decisions about norms and practices etc. Many groups refuse membership to LGBs and exclude them from the political decision making process as well as cultural activities within the group. For instance, in 1992, when the Irish–American Gay, Lesbian and Bisexual Group of Boston (GLIB) wanted to participate in the St. Patrick's Day organised by other Irish Americans, they were refused on grounds of GLIB having a different cultural identity from the rest of the participants, and that this would send the wrong message about St. Patrick's Day (Oyez, 2013). Groups like the Hutterites do not usually include LGBs in the major decision making process of the group.

Finally, some minority cultural groups may discourage or forbid non-heterosexual style families. Some groups may deny LGBs' the right to child custody, adoption and co-adoption¹ (Kranz and Cusick, 2005, pp. 6–7). For example, the charity, Catholic

¹ Co-adoption is a variant of adoption that consists of recognising the same-sex partner as an adoptive parent along with the biological parent. For example, in the case where there is a

Care, in Leeds, appealed for the right to refuse adoption to same-sex parents (BBC News, 2012).² Sometimes, minority cultural groups do not have institutions that correspond to same-sex marriage. In general terms, there are no ceremonies for same-sex marriage in Islam and Catholicism. In groups like the Westboro Baptist Church, same-sex marriage is described in a degrading and violent manner; they usually refer to same-sex marriage as ‘fag marriage’. This can be extremely discouraging and emotionally coercive for LGB individuals. Taking this on board, there are a number of significant interests of LGBs within minorities that may be threatened by the norms and beliefs of cultural groups. Heterosexism within cultural minorities is a reality that many LGBs challenge.

Indeed, there is a wide list of LGBs’ interests that are harmed by some minority cultural groups. However, it is important to point out that not all minority cultural groups are heterosexist. Many Buddhist and Hindu groups have very positive attitudes towards LGB individuals. In general terms, individuals of Thai nationality accept some forms of homosexuality. Many individuals of Latin-American origin, especially Brazilians, are similarly accepting. Additionally, in some Indigenous tribes, bisexuals are considered sacred (Herdt, 1997). It is also important to point out that not all members of heterosexist groups are necessarily heterosexist. As I will point out throughout this thesis, there are Catholic and Muslim theologians, for example, who consider that homosexuality does not go against their religious doctrine. For instance, the British Muslim gay activist Omar Kuddus does not consider that Islam condemns homosexuality (Kuddus, 2013a; Kuddus, 2013b). Moreover, many members of minority groups who are LGB, such as James Schwartz, consider themselves good-faith Christians (Huffington Post, 2012; HuffPost Live, 2012), even though they disagree with their communities’ teachings on homosexuality.

Another important idea to point out is that not all groups are heterosexist to the same degree and in the same way. That is, some minority cultural groups are more

widowed bisexual man who had a daughter with a woman, if he has a male partner, this partner can be considered the adoptive parent of the daughter.

² In this case, due to the fact that Catholic Care offers a public service, this discrimination affects not only LGBs within the group, but all LGBs who wish to use their service.

heterosexist than others; in addition, some have heterosexist beliefs and practices that encompass most areas of life and others just some areas of life. In short, heterosexism is a matter of degree and kind. At the top of the most heterosexist groups may be the Westboro Baptist Church and the Southern Baptist Church; these groups engage in a variety of practices and hold a number of beliefs that are extremely harmful and threatening for LGBs. In some cases, Mormons and Catholics seem to be less heterosexist than members of those groups, even though this is not always the case. In general terms, these two latter groups seem to be less willing to discriminate against LGB individuals.

The degree and kind of heterosexism and the potential negative impact that it may have on LGB individuals within minorities also depends on other factors; namely, isolation, openness, type of ambition and institutional completeness. Some groups, like some of the Amish and Indigenous People, are geographically isolated and not very open to the rest of society. In many cases, this isolation and lack of openness may make practices more impactful on those who are victims of them, as the result of the lack of any available realistic alternatives. Furthermore, isolation and lack of openness may create some epistemological barriers than other groups do not have. For example, while some LGB members of Amish communities may not be aware of available alternatives of where to live, a Hasidic Jew living in New York cannot help but to be aware that there is a mainstream society where many LGBs do have relationships.

Another factor that is relevant in understanding the level of heterosexism in groups is to know groups' aspirations. More precisely, it is important to know whether groups are totalitarian or separatist and what kinds of rights they ask for; for example, in the case of Amish and Hutterites, most of the time they simply want to be left alone, without interference of the state. Hence, they do not want to impose their beliefs about homosexuality on others and those members who disagree with them can just leave. In general terms, for some of these Amish and Hutterite groups, while LGBs do not have a space in their community, they do not oppose the fact that these LGBs may have an appropriate space somewhere else. Hence, these groups can be said to have separatist aspirations. Contrastingly, some other groups, like The Westboro Baptist Church and some British Muslims like Sheik Omar Bakri, aspire to political hegemony; in other words, they wish to impose their beliefs about homosexuality not

only on their groups, but also on the whole society. Therefore, rather than leaving open alternatives for LGBs, they wish to impose their customary law on everyone. The aspirations to the kinds of rights are also important; if a group asks exemption from a certain law, this group may acquire less power than another group that demands self-government rights. Another relevant factor is the institutional completeness of the group. The number of important institutions that are covered by the groups' culture takes on an important role in terms of practical identity. For example, even though the Boy Scouts of America is an important institution for many individuals in the USA, it does not encompass a great number of areas of life. The cultures of national minorities like those in Quebec or Catalonia or the Amish have institutions that encompass a greater number of life areas and, consequently, have a stronger influence on practical identity.

Taking this on board, as minority cultural groups are different, raising slightly different normative challenges, according to their characteristics, it is important to avoid generalisations of the nature of groups and to be cautious about classifying groups as 'heterosexist'. Throughout this thesis, I will deal carefully with different kinds of minority groups, trying to assess problems that may arise with particular groups, rather than generalising the issues.

As this section hopefully demonstrates, the danger of heterosexism within cultural minorities is a serious and real one. Unfortunately, contemporary political philosophers have not explored at length the implications of cultural policies for LGBs within minorities and have left unresolved many of the complex questions associated with it. That is, the issue of LGBs within minorities has largely been left unaddressed by contemporary political theory.

The objective of this thesis is to assess what contemporary political philosophers have written about multiculturalism and address the implications of what they have written about with regard to LGBs within minorities. Put differently, the task that will be carried out in this thesis is to review the literature on multiculturalism and evaluate how the various theories tackle the challenges that LGBs within minorities face. Moreover, after identifying the issues that may arise with these theories, I will also offer solutions of how to address them. In other words, I will outline possible policy solutions about what can be done regarding the situation of LGBs within

minorities. At the end, my objective is shared with Shachar (2001a, p. 4) who wishes to develop an argument that simultaneously “strives for the reduction of injustice between groups, together with the enhancement of justice within them”. This would be a solution that neglects neither societies’ diversity or minority groups’ internal diversity.

The objective of this thesis is to identify how the interests of LGBs can be threatened and how to address these threats. More specifically, the task that will be undertaken in this thesis is to assess the arguments that different philosophers have provided for the protection of cultural groups and assess what the implications for a specific internal minority, LGBs, are. It will be my task not only to identify what the specific issues raised by the philosophers arguments are, but also to offer solutions for how to address the specific issues that are raised for LGBs.

In general terms, the main contribution of this thesis to the contemporary literature in the contemporary political philosophy of multiculturalism is that it is the first treatment at length of the topic of LGBs within minorities. Some authors, like Levy (2005) and Sunder (2000; 2001), have written about the topic, but, to date, no author has written extensively about the normative challenges that are raised by LGBs within minorities. More specifically, I also contribute by making positive and negative claims. This is, I make negative claims that some of the philosophers’ approaches leave LGBs within minorities vulnerable and, therefore, their approaches should be rejected. I make positive claims in the sense that I try to suggest some solutions for the problem of LGBs within minorities. In particular and as it will become clear throughout the thesis, my main positive claims are that deliberative and associative democracy are the best solution for protecting LGBs from discrimination and cruelty from their groups. Another positive claim I make is to offer a set of criteria in favour of group rights that does not entail the reinforcement of oppression of LGBs within minorities. This, in turn, leads me to conclude that multicultural policies do not necessarily entail making LGBs within minorities worse off. Finally, I also contribute by placing the elimination of stereotypes as an essential aspect of fighting heterosexism and by arguing that LGB communities have the same kind of normative stand as other minority groups.

1.4 – Outline of the Thesis

This thesis takes place in the arena of contemporary political philosophy, and the challenges that LGBs face within cultural minorities are approached in the context of contemporary political philosophy within the liberal tradition. This means that the authors reviewed, the arguments assessed and the solutions offered are ones that in one way or another occur within the liberal tradition. More precisely, they occur within the contemporary philosophical liberal literature focused on the topic of multiculturalism. Not all authors consider themselves liberals (*e.g.*, Parekh); others consider that some of the philosophers who will be mentioned in this thesis are not liberals (*e.g.*, Kymlicka argues that Kukathas is not a liberal). However, due to the fact that all these authors, in one way or another are committed to the ideals of freedom and equality and, generally speaking, support at least some basic civil and political rights such as freedom of conscience, religion, association, movement and so forth, I classify them as liberals. Obviously, due to liberalism's historical age, it can be contended that there are numerous kinds of liberalism that have considerable differences. Consequently, there are numerous liberal approaches to diversity. Some of the authors mentioned are egalitarian liberals (*e.g.*, Barry); others are classical liberals (*e.g.*, Kukathas). Some take a political approach to liberalism (*e.g.*, Deveaux); while others endorse a comprehensive approach (*e.g.*, Barry). Even though these differences can be relevant in another context, this is not something I will discuss here.

Bearing this in mind, this thesis is organized as follows. In chapter 2, I will evaluate the work of Kymlicka and Taylor; these authors defend a politics of difference; they favour a multicultural model of citizenship, providing special rights to minority cultures. In this chapter, I will affirm that even though Taylor's and Kymlicka's style of federalism may facilitate the violation of LGBs' interests by their communities, it is not necessarily the case that granting cultural rights to minority groups has damaging consequences for LGBs within minorities. Hence, a multicultural citizenship where different groups have different rights is not necessarily an obstacle to LGBs' pursuing their interests. Moreover, I contend at the end of the chapter that LGB communities should have the same normative value as national minorities or immigrants. Another important insight in this chapter is the idea that not only public recognition but also recognition in the private sphere are morally relevant. That is, if

the list of interests that LGBs have is to be taken seriously, it is important to take a positive approach to LGBs' identity, not only in public institutions but also in terms of attitudes one holds towards LGBs.

In chapter 3, I assess the work of two liberal feminists – Fraser and Okin. I will contend that Okin's approach offers an important insight into the topic of this thesis; namely, Okin points out that the elimination of stereotypes is an important form of eliminating heterosexism. This idea that stereotypes ought to be eliminated will be an important pillar to the thesis, as I will argue throughout the thesis that some philosophers have left the question of tackling heterosexist stereotypes unaddressed. With respect to Fraser, I argue that including redistribution, recognition and representation as relevant to justice covers the main areas of heterosexism. Nevertheless, I will also argue that her view whereby only institutions matter for justice, should be rejected. Instead, I will contend, along with Okin, that negative attitudes towards LGBs ought to matter for justice. These two authors also offer coherent arguments in favour of group rights which I will subsequently use.

In chapter 4, I will move to an assessment of theories by Barry and Kukathas. Both believe that freedom of association is all individuals need and are entitled to for preserving their cultures. Barry takes a liberal-egalitarian approach to freedom of association. He has two main ideas; first, there are costs that groups can impose on their members and others that they cannot. Second, issuing rights to cultures is not compatible with liberalism. I will explore Barry's idea of costs and argue that he is right about some costs that can be imposed, but not completely correct. I will also affirm that that there is nothing wrong with liberalism undertaking a group-differentiated policy approach. Kukathas is a libertarian, and from this stance he takes a *laissez-faire* approach to the treatment of LGBs within minorities; he is willing to give almost complete autonomy to groups, without giving them any special rights. For him, what matters is that individuals are not acting against their own conscience; this in practice, means that individuals should be free to associate. Freedom of association, in turn, means that individuals are not physically barred from leaving and also have somewhere to go, according to Kukathas. I end the chapter by arguing that freedom of association should be complemented with more interventive policies in order to protect LGBs from heterosexism within their communities.

In chapter 5, I will analyse the views of Deveaux and Parekh. These authors defend democratic approaches to protect LGBs within minorities. Deveaux suggests a deliberative democratic approach and Parekh an intercultural dialogue. As it will become clear, I am very sympathetic with this democratic view; I will argue that a democratic approach can help to protect LGBs from heterosexism and also have a positive transformative effect on individuals. In this chapter, I will also counter-argue against those who believe that democratic approaches are problematic. Even though I am more sympathetic with Deveaux's approach, I argue that Parekh can contribute to Deveaux's model.

In chapter 6, I will turn to the approaches of joint-governance. In particular, I will assess Shachar's theory of transformative accommodation and will offer a new version of associative democracy; I consider the latter to be the best solution for the normative problem under discussion in this thesis. These approaches have in common the fact that they want to divide power between the state and minority groups. In the case of Shachar, she believes that dividing jurisdictions between the state and the group can protect LGBs from abuse. I will counter-argue that Shachar's principles do not offer normative guidance for dealing with the challenges that LGBs within minorities face. In addition, I will affirm that the division of jurisdictions collapses when put into practice. Then, I will move on to what I consider to be the best solution for alleviating the tensions between LGBs and their communities. When discussing associative democracy, I will base my theory in the work of philosophers who have already presented similar approaches – Bader, (1999; 2001a; 2005; 2007d; 2012b) and Hirst, (1988a; 1994; 1997; 1999a) are some examples. I will connect this approach with the previous chapters, especially with the chapter on deliberation and dialogue. Associative democracy is an institutional pluralist approach, which aims at giving more power to cultural groups, encouraging them to take responsibility for their own welfare; however, there are some mechanisms that prevent groups from imposing heterosexist practices on their members. Finally, in my last chapter I will summarise the thesis, outline my contribution, make some suggestions for further research and draw some conclusions.

Chapter 2 – Multicultural Citizenship

In this chapter, I outline and assess the philosophy of Taylor and Kymlicka. These authors defend multicultural citizenship, *i.e.*, a form of citizenship that provides different rights to individuals according to these individuals' identity. Owing to the fact that these authors' approaches consist of, in part, offering special rights to cultural groups, it is important to assess whether granting these special rights has implications for LGBs. Generally speaking, these authors have six points in common. Firstly, both contend that the state has the duty to support laws which defend the basic legal, civil and political rights of citizens. Secondly, according to these philosophers the state is under the duty to actively participate in the cultural character of society by promoting laws and policies that preserve and safeguard the different existing cultures in a certain society. Thirdly, Taylor and Kymlicka contend that the character of culture is normative. Consequently, and this is the fourth common feature, individuals' interest in culture is sufficiently strong so that the state needs to support it. Fifth, they both defend difference-sensitive/multicultural citizenship policies for protecting culture. Sixth, both authors endorse a form of federalism, even though federalism is not a necessary implication of Taylor's philosophy, whereas it is an essential aspect of Kymlicka's theory.

The main objective of this chapter is to probe whether multicultural citizenship necessarily entails that heterosexism will be reinforced within minority groups. This contributes to the overall objective of this thesis which is evaluating to what extent empowering minority groups may have damaging consequences to LGBs. It also links with the topic of this thesis because it helps find a solution for the existing tension between LGBs' interests and policies for the protection of minority groups. Another key question explored in this chapter is to assess what kind of powers can be problematic for the status of LGBs and I will, thereby, contest the powers that federal units acquire. This chapter will proceed as follows. In sections 2.1 to 2.5, I outline and evaluate the philosophy of Taylor and endorse his politics of recognition. Nevertheless, I also affirm that his version of federalism can be risky in the sense that it may facilitate imposing restrictions on the interests of LGB individuals within minority communities. From sections 2.6 to 2.10 I move to sketching Kymlicka's political philosophy and assessing it. I contend that the distinction between internal

restrictions and external protections made by Kymlicka is in conflict with some LGBs within minorities' interests. Finally, in section 2.11 I summarise my argument and draw some conclusions.

2.1 – Taylor's Normative and Semiotic Conception of Culture

In this section, I will outline Taylor's conception of culture. Taylor endorses a semiotic and normative conception of culture. As Benhabib explains (2002, p. 3) "affirming that culture is semiotic means that it is a totality of social systems and practices of signification, representation and symbolism that have an autonomous logic of their own". Thus, from this perspective, a culture is defined as a system of ideals or structures of symbolic meaning. This system is each culture's way of representing reality; hence, it is the culture's own logic. Affirming that culture is normative means that it is a significant source of individuals' values, commitments and reasons to act. In other words, as observed by Festenstein (2005, p. 14), according to the normative view, cultures contain "a set of shared beliefs or norms which are distinctive of a particular group" and constitute the practical identity of these individuals. By way of illustration, part of what a Jew, a Muslim or a Christian is, comes from the fact that they abide by or follow the moral teachings of the *Torah*, the *Quran* and the Bible, respectively. These two conceptions (semiotic and normative) do not need to come together, but in Taylor's definition they do. In the case of Taylor's doctrine, these conceptions of culture do not contradict each other but are, in fact, complementary.

There is a wide diversity of authors who endorse these definitions of culture, but their interpretations of what is normative and what is semiotic differ significantly. Taylor's own conception of normative and semiotic culture also has its own characteristics. Taylor (1985a, pp. 3, 36, 101, 209; 1985b, pp. 15–57; 1989 pp. 4, 36) considers that all individuals share three universal features; namely, human beings are self-interpreting language animals that form their identity dialogically. What the term 'self-interpreting animals' means is that individuals' identities depend on the way each individual sees himself/herself. According to Taylor, part of what individuals are is the conception they have of themselves. Nevertheless, it is important to notice that a person's self-interpretation does not need to be correct; it

may be incorrect but it still contributes to who the person is (Taylor, 1965, pp. 3, 8, 67, 268, 272; Taylor, 1989, pp. 4, 36).

According to Taylor, these self-interpretations always make reference to individuals' own purposes. That is to say, individuals are beings with purposes and these purposes are what the self-understandings refer to. Thus, the understanding of human behaviour should be based in relation to the intentions, desires and goals of the person. In Taylor's view, purposes, in turn, refer to moral/strong evaluations. The concept of moral/strong evaluations is used to explain the distinctions of worth that individuals make regarding objects of desire. In other words, it offers a background of distinctions between things that are important and worthy, and things that are less valuable. Hence, the self has a moral dimension in the sense that rationality and identity refer to moral evaluations (Taylor, 1989, pp. 25–53). For Taylor, the thesis that human beings are self-interpreting animals presupposes that human existence is constituted by meanings. In turn, this implies that human beings are also language animals. By language is meant all modes of expression (music, spoken language, art and so forth) (Taylor, 1994b, p. 32). For Taylor to be a language animal means that individuals are capable of creating value and meaning.

According to Taylor, the reason why self-interpretation presupposes that human existence is constituted by meanings and that humans are language animals is because if individuals interpret themselves they have to do it through language. Language has to be the means of self-interpretation. More precisely, the capacity to make qualitative contrasts that allows individuals to make strong distinctions is only possible if human beings possess a language that enables them to do so. Strong evaluations mean distinctions of worth that require hierarchy and contrast and this is only possible if individuals possess a language for expressing them. Therefore individuals only become full human agents, capable of understanding themselves, through the acquisition of language (Taylor, 1965: pp. 3, 8, 67, 268, 272; 1985a: 189–191; 1985b: 26–27).

The fact that human beings are beings with language leads to what Taylor considers to be the third universal feature of human beings, their dialogical nature. By 'dialogical nature' Taylor means that individuals are continuously formed through conversation with their significant others, with this occurring against a wider

linguistic and cultural background. Put simply, individuals' identity and rationality are constituted through interaction with others (Taylor, 1989, p. 36; Taylor, 1994b, pp. 7, 32–35). There are two reasons why Taylor affirms that individuals have a dialogical nature. The first is because language is never a private matter; it is always something that has to be shared with others. Therefore, it is necessary to enter into a dialogue with others for language to exist; consequently, if individuals are language animals, they also have a dialogical nature.

The second is that self-interpretations and self-definitions always make reference to the relationship of oneself with others. For example, 'I am French'; 'I am the daughter of (...)'. In Taylor's (1989, p. 36) words, "(...) one cannot be a self on one's own. I am a self only in relation to certain interlocutors". These webs of interlocution, in turn, have their origins in each individual's cultural community. Accordingly, linguistic meanings and self-interpretations have their origins in individuals' linguistic communities (Taylor, 1965; Taylor, 1989). This means that the terms that refer to what individuals are (desires, strong evaluations, feelings and so forth) have their origin in their language community. According to Taylor, the structure of thought is provided by culture. Language comes from a cultural community because culture is a system of meaning and value, a way of understanding and organising life that follows some beliefs and practices. Hence, from Taylor's point of view, community is what provides individuals with the pattern of meaning embodied in symbolic forms, including actions, utterances, and meaningful objects of various kinds, by virtue of which individual commitments with one another share their experiences.

2.2 – Two forms of Recognition: Intimate and Public

From Taylor's point of view, the fact that individuals share the characteristics mentioned in the previous section has normative implications. According to Taylor, in virtue of their nature, human beings should be treated with dignity. More precisely, the capacity to form one's unique and irreplaceable identity that results from human characteristics, is, in Taylor's view, a reason to affirm that all individuals have equal dignity (Taylor, 1994b, pp. 26–27). For Taylor (1994b, p. 25), personal identity means the "person's understanding of who they are, of their

fundamental defining characteristics as a human being” For Taylor, being treated with dignity requires that one’s unique and irreplaceable identity is recognised. Being recognised, in turn, means to secure respect and esteem for individuals’ and groups’ identities. This respect and esteem should be based on a positive and accurate acknowledgement of one’s capacity to form a unique and irreplaceable identity. Put differently, in Taylor’s (1985b, pp. 225–230; 1994b, pp. 25–26) view, recognition is the acknowledgement that the attributes of identity are valuable. The recogniser perceives and acts so that these attributes are valuable, not depreciatory. Hence, recognition requires that the recogniser acknowledges the recognisee’s identity as something to be valued. Recognition thus, requires a cognitive act, with the recogniser believing that the attributes of the recognisee are valuable (Festenstein, 2005, pp. 54–55). Accordingly, for someone to be recognised, one cannot do it alone; one needs someone to interact with and recognise. In Taylor’s (1993c, p. 190) words “The recognition I am talking about here is the acceptance of ourselves by others in our identity”.

According to Taylor, there are two forms of recognition; intimate recognition and public recognition. For Taylor (1994b, p. 37), recognition in the intimate sphere refers to “the formation of identity and the self as taking place in a continuing dialogue and struggle with significant others”. Put differently, recognition in the intimate sphere is about esteem and respect of one’s identity from significant others, like parents, friends, etc. Only when these significant others accept one with respect and esteem, can one be recognised as operating in the intimate sphere. According to this view, love relationships for instance are not just important because of the general emphasis in modern culture on the fulfillment of ordinary needs. Love relationships are also crucial because they are the crucibles of inwardly generated identity. The reason why this positive acknowledgement by significant others is so important is due to the fact that humans have a dialogical nature; as a result, others’ attitudes have an impact on one’s sense of self and one’s identity is shaped and sustained through intercourse with others. That is, one’s sense of who one is and, thereby, one’s identity, is strongly affected by other people’s attitudes. For this reason, without the right kind of acknowledgement from these significant others, individuals’ self-image and identity can become deeply damaged. Bearing this in mind, Taylor describes intimate recognition by making reference to a sociological and psychological

vocabulary: explaining how it can impact on one's psyche, more specifically, on one's self-image and uses sociological terms like 'significant others'.³

Intimate recognition includes what was defined as 'internalized homophobia' in the first chapter – the internalization of degrading, crippling and self-hating images of the self that some LGBs suffer as a result of the way they are treated by others. To provide examples, we can turn to the negative attitudes of Samuel Brinton's parents, Briton being the ex-member of the Southern Baptist Church who was victim of a sexual conversion conversion therapy that deeply damaged his self-image. A gay member of the Westboro Baptist Church who is routinely exposed to hate speech towards LGB people will potentially have his or her identity damaged as the result of self-hating images that may be internalised via homophobic hate speech.

Although Taylor (1994b, p. 37) considers that intimate recognition is important, he mainly discusses the idea of public recognition or recognition in the public sphere: "I want to concentrate here on the public sphere, and try to work out what a politics of equal recognition has meant and could mean". This form of recognition is about respect and esteem for one's identity in the public realm; being misrecognised in the public realm means to have one's identity disrespected in a way whereby one is treated as a second-class citizen. Being misrecognised, in this sense, is to have an unequal citizenship status in virtue of one's identity. Hence, someone is misrecognised in the public sphere if one has a legal disadvantage that results from one's identity. To have respect and esteem for someone in the public sphere means to have citizenship rights that do not disadvantage one's identity. Again, as it will become clear, many LGBs are misrecognised in the public sphere as routinely they are denied equal rights.

Hence, this political discussion is very different from the kind of recognition that is conducted in the intimate sphere. Whereas there is a concern about the psychological impact of misrecognition in the intimate sphere, in the public sphere there is no relation to the psyche; rather, it is a discussion about what kind of rights individuals are entitled to so that their identity is treated with respect and esteem. More specifically, in Taylor's work, the question about recognition addressed in the public

³ The term was first used by Sullivan (1953) in his book *The Interpersonal Theory of Psychiatry*.

sphere concerns the balance between individual rights and the protection of culture. Taylor's main example is the protection of Francophone culture in Quebec and whether it justifies and requires limitations of individuals' rights.

2.3 – Procedural and Non-procedural Liberalism

In order to discuss the best way to achieve recognition in the public realm, Taylor draws a distinction between procedural and non-procedural forms of liberalism. He affirms that, according to the procedural version of liberalism, a just society is one where all individuals have a uniform set of rights and freedoms, and having different rights for different people creates distinctions between first class and second class citizens: this liberalism is only committed to individual rights and rejects the idea of collective rights. The state, according to this version of liberalism, should not be involved in the cultural character of society and the procedures of this society must be independent of any particular set of values held by the citizens of that polity. In other words, the state should be neutral and independent of any conception of the good life.

In Taylor's (1994b, p. 60) view, procedural liberalism is inhospitable to difference because "(a) it insists on uniform application of the rules defining these rights, without exception, and (b) it is suspicious of collective goals". This does not mean that a neutral liberalism aspires to eliminate difference; rather the problem, according to Taylor (1994b, p. 61) is that a neutral liberalism "can't accommodate what the members of distinct societies really aspire to, which is survival". Taylor believes that, in some cases, collective goals need to be aided so that they can be achieved. Sometimes cultural communities need to have power over certain jurisdictions so that they can promote their own culture; this is something that a procedural liberalism does not offer, according to Taylor. For example, when referring to the denial of jurisdictional power or self-government power, Taylor (1993c, p. 190) affirms that: "When this kind of denial takes place or seems to do so in the eyes of a minority group to feel that they are really being given an equal hearing; for what they stand for seems to be at best invisible and perhaps actively rejected by the majority, and thus cannot count with them".

Due to the fact that Taylor considers recognition as important, this kind of liberalism that is inhospitable to difference should be rejected; rather, in Taylor's view, a non-procedural liberalism that is involved in the cultural character of society in a way that enhances cultural diversity and is not hostile to difference is the kind of liberalism that should be endorsed. From Taylor's point of view, this non-procedural liberalism is not neutral between different ways of life and it is grounded in judgments of what the good life is. According to Taylor, this liberalism takes into account differences between individuals and groups and by taking these into account it creates an environment that is not hostile to the flourishing of different cultures. Engaging in policies that promote culture is, in Taylor's view, extremely important; for cultural communities deserve protection owing to the fact that they provide members with the basis of their identities. The language of cultures provides the framework for the question of who one is. As previously argued, Taylor believes that identity is strongly influenced by culture; therefore, there is a moral and social framework given by the language of one's culture that individuals need in order to make sense of their lives. Therefore, recognition and protection of individuals' cultural communities is required for respecting and preserving one's identity. However, in Taylor's view, this commitment to promoting difference is acceptable only if the measures taken to promote difference are constant with what he considers to be fundamental rights. Taylor (1995, p. 247) specifically mentions the "rights to life, liberty, due process, free speech, free practice of religion and so on". According to Taylor (1986, p. 55), these rights "are so fundamental that we can more or less commit ourselves in advance to upholding them in all possible contexts".

Notwithstanding the differences between these two kinds of liberalism, Taylor affirms that underlying both of them is an idea of universal equality between citizens; the difference is that each has a different view of the implications of this idea of universal equality. In particular, in the case of non-procedural liberalism, underlying the idea of giving cultural groups the right to preserve their culture is, in Taylor's (1994b, p. 42) view, the idea that individuals have "the potential for forming and defining one's own identity, as an individual, and also as a culture. This potentiality must be respected equally in everyone" (p. 42). Hence, the politics of difference is also a demand for equality because underlying it is the idea that for individuals to be respected the human potential for identity formation is protected.

Taylor suggests that, as a starting point, in order to decide to what extent the state should be involved in the cultural character of society, there should be a presumption of equality between cultures and the possibility of defending themselves without prejudice. This presumption expresses respect for individuals' identity in the sense that their cultures are not simply judged without being studied and contextualised (Taylor, 1994b, pp. 63–73).

From Taylor's point of view, this non-procedural liberalism has implications for public policy. It means that there should be decentralised power so that communities can flourish (Taylor, 1970, pp. 1–14). However, what this decentralisation and non-procedural liberalism imply in practice depends on the context; in different countries with different kinds of minorities there may be different implications. Taylor mostly writes about the Canadian context and he believes that in this context the best policy is a form of federalism. In his view, Quebec should be given self-government rights so that it has power over a certain number of policies. In particular, Taylor affirms that it should have sovereign power over art, technology, economy, labour, communications, agriculture, and fisheries. Moreover, it should have shared power with the majority in immigration, industrial policy and environmental policy. Control over defense, external affairs and currency is given to the majority. This position is defended when Taylor discusses federalism in Canada, in the three following passages:

“Having own realizations in the field of art or technology or the economy is that it become a sovereign state, perhaps because it is the only condition of its insulating itself from powerful and pervasive foreign influence” (Taylor, 1993j, p. 50)

“Quebec needs an independent political instrument in order to ensure participation in economic direction, a role in technology design and the like” (Taylor, 1993j, p. 51)

“Quebec and – in the case of symmetrical federation – the other members of the federation would have to keep their current provincial powers, plays a certain number of others, such as powers over labour, communications, agriculture, and fisheries (this is not a complete list). The federal state would control defence, external affairs and currency” (Taylor, 1993h, p.

147).

According to these viewpoints, provinces and regional governments should have power over jurisdiction to promote their culture, *i.e.*, powers to achieve collective goals for maintaining and perpetuating their unique and irreplaceable culture. This politics of difference promotes the potential of forming and defining one's identity as an individual and also as a culture. What Taylor is proposing is a federalist model; a model that is regionally based, giving power over jurisdictions to control certain aspects of public policy which are essential for the preservation of culture. His examples are usually directed to cases in Canada, like Quebec and Indigenous groups. He defends that these cultural communities ought to have self-governing powers over those areas of law so that they can preserve their culture. It is important to emphasise that, in Taylor's view, federalism is not a necessary implication of non-procedural liberalism. Federalism is not at the core of the recognition idea; rather, federalism is a kind of system that Taylor considers that is the adequate option in the Canadian context, which does not mean it is a good option in all contexts. The idea of non-procedural liberalism can entail other forms of recognition, like joint-governance, exemptions to the law, symbolic expression, legal recognition of Sharia courts, etc. What matters is that there are legal means for individuals to flourish and have their identities respected.

2.4 – Recognition and the Status of LGBs within Minorities

In order to situate the relevance of Taylor to the problem discussed in this thesis, it may be helpful to recall the main research question that is being explored. The focus of this thesis is to probe to what extent policies that aim at protecting minority groups' norms and practices from disappearance can lead to sacrificing the list of interests experienced by LGBs within these minority groups. Taking this on board, I would like to argue that the concept of recognition seems to be one that is favourable to protecting LGBs within minorities from cultural practices and norms that harm their interests. In particular, by considering it normatively relevant that all individuals are recognised in the intimate and public sphere, Taylor is offering, at least indirectly, a criterion that imposes limitations on how groups can treat their LGB members.

With respect to recognition in the intimate sphere, Taylor does not suggest any specific policy for ensuring that individuals are recognised there. Nevertheless, the fact that he affirms that being recognised in the intimate sphere is morally relevant because misrecognition may create self-hating images, offers some guidance as to how multicultural policies should be designed. In particular, whatever policies there are for protecting minority groups they should not reinforce or preserve the misrecognition of some members of the group. That is, these policies cannot facilitate practices that entail that some members, including LGB individuals, will form self-hating images of the self. In essence, this means that practices and norms that worsen or preserve these images are a form of misrecognition that Taylor rightly affirms should not be allowed. So, practices like ostracism and shunning of LGBs in some Amish and Hutterite communities, hate speech towards LGBs in some fundamentalist Muslim and Christian communities, sexual conversion therapies that involve psychological violence and can potentially create self-hating images, are forms of misrecognition that Taylor correctly considers should be banned and are inadmissible forms of misrecognition in the intimate sphere. On top of banning policies that misrecognise LGBs, it is also an implication for the state to promote the recognition of these individuals within the group. It is an implication because a) such recognition is morally relevant and because b) Taylor endorses a non-procedural form of liberalism, affirming that the state is under a duty to promote identities. Again, Taylor does not offer any policy suggestions for this; however, it could be argued that one form of promoting recognition in the intimate sphere could be to engage in dialogue, so that significant others have more positive attitudes towards LGBs. This possibility of dialogue being a solution for recognition in the intimate sphere will be explored in more detail in chapter 5, where I will defend that deliberation and dialogue can improve the status of LGBs within minorities.

It is important to emphasise the importance of these policies for LGB individuals within minorities. As explained in the introduction, one of the most important interests of LGBs that is violated by some minority groups is the interest in being free from psychological violence. Therefore, limiting the power of groups to treat LGB individuals in the intimate sphere in ways that are psychologically violent plays an important role in fighting heterosexism. Approval from one's parents, and having positive attitudes by significant others towards one's sexuality is essential for

eliminating feelings of guilt, self-hate and so forth that some LGB individuals within minorities⁴ internalise. So, the fact that Taylor mentions this kind of impact as normatively relevant means he is affirming that groups should not have practices that make such a psychological impact on LGB individuals within minority groups. This is, forms of heterosexism that may cause feelings of guilt, shame, etc. on LGBs are a form of misrecognition in the intimate sphere that Taylor considers to be unfair. On top of this, and as will be explained in more detail in chapter 3, psychological violence has an impact on LGBs due to the fact that it undermines their capacity to pursue other interests.

Public recognition is also relevant for the status of LGBs within minorities; routinely, LGBs within minorities are treated as second-class citizens and pariahs, having fewer rights than heterosexuals. Many times, LGBs within minorities, as a result of their sexual orientation, are denied marriage, adoption, child custody, bodily integrity, sexual freedom, protection against hate crimes and speech, political freedoms and so forth. Having taken this into consideration, recognition imposes an important limitation on the power of groups and multicultural policies – whatever the power and the policies are these cannot make LGB members of communities second class citizens. In other words, according to this view, LGBs cannot be made outlaws, pariahs or be invisible by the power of the groups and the policies applied to aid cultures. This has different implications on different LGBs' interests. With respect to same-sex marriage, this does not necessarily mean that minority groups would have to engage in practices favourable to LGBs' identity. For instance, it does not mean that the Catholic Church has to perform same-sex marriage ceremonies, even though Taylor may affirm that it would be desirable to transform cultures so that all individuals are recognised. What it does mean is that at least the alternative for being a full citizen elsewhere should not be absolutely shut down by group practices. That is, group practices cannot be such that they undermine the possibility of LGBs to marry elsewhere. With respect to sexual freedom, this means that anti-sodomy laws that disable individuals from becoming full citizens elsewhere, for example, through imprisonment, would be a form of unacceptable recognition. However, on the other hand, excommunication for same-sex intercourse is a practice that seems to be

⁴ This is not just something that happens with LGBs within minorities, but with LGBs in general. However, my focus in this thesis is LGBs within minorities.

compatible with this view. Excommunicating someone who has a place to go does not necessarily make that person a second class citizen. The same applies to hate crimes and the protection of bodily integrity; if these are jeopardised within the group, then, in general terms, LGBs are being treated as second class citizens even if they have an alternative. Appertaining to the same line of thought, the violation of basic civil and political freedoms would have to be respected within the group because undermining these in a group setting would also undermine these in general. It is not clear what the implication is for adoption because individuals would not be unable to adopt elsewhere if they are denied adoption rights in their groups. According to Taylor's view, which I endorse, some limitations of freedom for LGBs within the group are acceptable and, in some cases, necessary for group autonomy. However, these limitations should be minimalised and should not jeopardise the citizenship status of LGBs.

This kind of non-procedural liberalism is not, in principle, problematic to LGBs within minorities, *i.e.*, it does not necessarily entail that the logical consequence of group rights, giving some degree of autonomy to groups to decide their own norms and practices, is to allow oppressive heterosexist practices to be imposed on their members. Hence, endorsing a liberal multicultural citizenship does not imply giving groups a *carte blanche* opportunity to mistreat their LGB members. The non-procedural form of liberalism that is guided by the idea of recognition permits that groups are simultaneously given some level of autonomy and that the interests of LGBs within these groups are protected. There is this protection because the conditions for the group to be given some degree of autonomy involve practices that do not reinforce or preserve the misrecognition of LGBs in the intimate and public sphere. I am an apologist for this kind of liberalism and, as it will become clear in chapter 6, my idea of associative democracy does, in part, follow the idea that group autonomy and group rights are acceptable if members, and in particular LGB members, are not subordinated by this autonomy.

It could be affirmed that this would mean misrecognising those groups that are heterosexist. For example, forcing the Westboro Baptist Church to be non-homophobic would be a form of misrecognising their own identity. Even though Taylor has not replied to this objection, I would say on his behalf that he would reject this as a form of misrecognition. Misrecognition only happens when the

identity in question is not a maligned one, *i.e.*, a kind of identity that consists, at least partially, of misrecognising someone else by violating the basic rights mentioned above. For example, racist or homophobic identities would be examples of maligned identities. I believe (and I think Taylor would agree) that denying rights to groups with such identities is not a form of misrecognition for two reasons. First, due to the fact that Taylor is committed to defending fundamental rights, then he is ruling out giving recognition to groups that violate fundamental rights, like homophobic hate groups. Thus, misrecognition only refers to situations where the identity being misrecognised does not involve a violation of these rights. Groups like the Westboro Baptist Church are an example of an identity that does not deserve recognition and, thereby, is not being misrecognised, in Taylor's sense, if their practices are denied. Second, Taylor affirms that cultures should be studied before they are given recognition; hence, he does not simply affirm that all cultures deserve recognition; rather he states that cultures should not be, a priori, denied recognition without their merits being evaluated. For this reason Taylor does not aim to acritically provide recognition to all groups, but only to those that, in his view, deserve it.

2.5 – Fundamental Rights, Federalism and the Rights of LGBs within Minorities

In this section, I would like to focus on Taylor's defence of federalism. I will argue that despite the fact that recognition does not entail that heterosexism within minorities will be reinforced, federalism is a form of granting special rights that may be problematic in the sense of facilitating the violation of LGBs' interests. Before I move on to explain the perils of federalism, I would like to tease out the implications of the inalienability of fundamental rights. For Taylor, fundamental rights are basic liberal civic and political rights. Taylor (1995, p. 247) especially refers to the "rights to life, liberty, due process, free speech, free practice of religion and so on" According to this view, physical and psychological integrity, sexual freedom, freedom of association and assembly should be protected under this ideal, so forms of heterosexism that violate these rights are, from this perspective, unacceptable. Sexual conversion therapies, honour killings, corrective rape, anti-sodomy laws, and limitations of political freedoms are examples of practices that would violate

fundamental rights; federal units are not free to impose practices that go against these. However, there are other LGB rights that are not fundamental rights in the sense of the term. The right to marry, to adopt, co-adopt and equal employment opportunities are not basic civil and political rights according to Taylor. So groups are not forced, in this view, to have equal rights to marry, adopt, etc. making these forms of heterosexism therefore allowed in this system. Although I disagree that the interests besides basic civil and political ones are not fundamental I consider that, generally speaking, groups should be liberalised, although only to an extent and that not all practices have to be in accordance with the interests of LGBs. When this occurs it should be if and only if there are viable alternatives. It is important that LGBs within minorities have an option, *i.e.*, they have somewhere to go where they can have full equality in all aspects. I will explore this idea in more detail in later chapters.

Notwithstanding, the powers that communities acquire in federalism may create obstacles for LGBs to pursue of some of their interests. Some of the powers that Taylor considers should be under the control of the cultural community are the economy, general welfare, labour, technology and communications; moreover, cultural communities ought to have partial power over immigration. None of these powers necessarily have negative implications for sexual freedom, bodily and psychological integrity, for this would require power over criminal justice, which Taylor does not mention as one of the powers held by federal units. However, in the case of the community being heterosexist, power over these areas may be problematic and justify institutional discrimination of LGBs in that community. If there is power over the economy and labour, and if the community is a heterosexist one, the cultural community is free to make laws that jeopardise economic and employment interests of LGB members; the community can differentiate between jobs for heterosexuals and jobs for LGBs, for example. The community can also endorse economic policies that jeopardise the right of LGBs within minorities. For example, social security and insurance policies can be set up so that married couples have better deals; if same-sex marriage is not legally recognised, then same-sex couples would be disadvantaged. In the context of Canadian reality, groups like the Hutterites and the Amish who usually are slightly heterosexist could impose this kind of discrimination on their LGB members. Hence, total power over these matters is

risky in the sense that it may help reinforce the imposition of heterosexist practices.

With respect to health welfare, LGBs within groups may be disadvantaged by health policies within the group. For instance, very often the Amish do not have the same rights to health that other citizens do as they prefer to make local deals with health centres and hospitals. If these deals do not include health issues related to LGBs, then LGB Amish will be disadvantaged in terms of healthcare. To give a more specific example, there are specific health issues that result from sodomy acts (Dean and Delvin, 2011). Although sodomy is not exclusively a sexual practice of gay men, it is mainly related to gay men's sexuality. If the Amish do not have a health agreement that covers this kind of medical treatment and advice, then such individuals will be disadvantaged. Total power over technology can also be problematic; for example, although assisted reproductive technology can be used by both lesbian and heterosexual couples, prohibiting it has a much stronger negative impact on lesbian couples than on heterosexual ones. This is because if they cannot adopt, lesbians do not have an option but to have artificial insemination; whereas for heterosexual couples the option to adopt is usually open.

Control over communications is a surprising suggestion made by Taylor. For if the cultural community is to be responsible for communications, then it will be able to control free speech. This goes against Taylor's commitment to freedom of speech that he considers to be a fundamental right. There is a high risk of violation of free speech by LGB members if a heterosexist state controls communications. In the case of Russia, the control of communications by the state has resulted in the banning of homosexual propaganda and the right of LGB rights to use free speech. Depending on the power over immigration, there is also the possibility of controlling exit and forced membership. There is a conflict here with Taylor's view that fundamental political rights should be respected, no matter what. Control over communications enables groups to suppress political expression, which may reinforce the subordination of LGBs.

At this point, there are two important points to emphasise. First, these criticisms are not a comment on Taylor's politics of recognition or his perspective that non-fundamental rights can be violated. Rather, it is a criticism about how the federalist system is not a good option, as it is a system that is vulnerable to the disrespect of

LGBs' rights. Even though the reinforcement and preservation of heterosexist practices within groups is not a necessary implication of non-procedural liberalism, the federalist model endows groups with powers that puts the well-being of LGBs at risk. In the case of Quebec, the situation is not problematic; language restrictions do not seem to impose any particular problem to fundamental rights. However, in order to promote the common good of a religious heterosexist community, like some Hutterites and Amish communities, it would be difficult not to impose some rights' violations. In the case of a religious community, like some of the Hutterites who are heterosexist, the institutions would likely lead to strong restrictions of free speech, assembly and general freedom and equality. This obviously would not be accepted by Taylor; but the point is that if his theory is to accommodate different communities, then it is difficult to see how his model would prevent groups like some of the Hutterites violating the fundamental rights of LGBs (Redhead, 2002, pp. 123–125; Rockefeller, 1994, p. 92; Rorty, 1994, p. 157). It is important to assess which powers the cultural community retains; for the kinds of powers determine the violations of rights and the limits of autonomy. It is risky to give a federal style power to cultural communities because it can perpetuate an institutional structure that consists of the unequal distribution of rights, duties and power between LGBs and heterosexuals in the cultural community. In particular, it is letting the cultural community have the power in deciding the rights of LGBs (Shachar, 2001a, pp. 93–94). Second, what was argued here does not mean that groups cannot have partial power over employment, the economy, communication, welfare etc.; it may be the case that partial power over these matters has different implications. In fact, in chapter 6, I will address two views of joint-governance which only give partial power to groups and have different implications from this one.

2.6 – Kymlicka's Tripartite Typology of Diversity

Having outlined and analysed Taylor's picture of the politics of recognition, I will now focus on Kymlicka's liberal philosophy. Kymlicka is one of the main defenders of group rights and it is important to analyse his work in order to explore whether granting those rights to minorities has damaging consequences for LGBs within those minorities. Kymlicka's theory has five important features: the theorisation of

diversity, the defence of freedom and equality, kinds of group rights, the distinction between external protections and internal restrictions and the idea of the limits of toleration. In this section, I will start by looking at the way he theorises diversity. Kymlicka builds up a tripartite typology to explain the sources of diversity that exist in contemporary societies; namely, in general terms, for Kymlicka there are three kinds of diversity: national minorities, polyethnic minorities and new social movements. Kymlicka recognises that this typology may not include all kinds of groups; furthermore, he is aware that some groups may fit more than one category of this typology. Still, Kymlicka considers this is a valid typology, for, in general terms, it captures the kinds of diversity that exist in contemporary societies; what is more, he believes that this typology provides a valid normative groundwork for exploring the challenges of diversity in the context of contemporary political philosophy.

National minorities are a group in a society with a societal culture and a smaller number of members than the majority. Kymlicka (1995a, p. 18) uses the term ‘nation’ interchangeably with the terms ‘culture’, ‘people’ and ‘societal culture’, for example, “I am using ‘a culture’ as synonymous with ‘a nation’ or ‘a people’—that is, as an intergenerational community, more or less institutionally complete, occupying a given territory or homeland, sharing a distinct language and history”. Hence, a national minority is a societal culture where the amount of members is smaller in number than the amount of members of the majority. For Kymlicka (1995a, p. 76) a societal culture is a kind of culture “which provides its members with meaningful ways of life across the full range of human activities, including social, educational, religious, recreational and economic life, encompassing both public and private spheres. These cultures tend to be territorially concentrated and based on a shared language”. According to this definition, some of the groups that Kymlicka considers to be national minorities are Quebecois, Catalans, Amish, Aborigines, some Indigenous groups and in India, Sikhs.

From Kymlicka’s point of view, national minorities or minority societal cultures usually share a number of characteristics. First, national minorities have either always been living in the country or they settled in the country long ago. For example, most of the Amish communities in Pennsylvania settled there in the 18th century, as a result of religious persecution in Europe. Aborigines in Australia and many Native American groups in the USA have always lived in that territory.

Second, from Kymlicka's point of view, these groups are often territorially concentrated; for example, Quebec and Catalonia are situated in specific geographic areas of Canada and Spain, respectively. In India, Sikhs are geographically concentrated mostly in the Punjab region. Third, according to Kymlicka, the institutions and practices of these groups provide a full range of human activities; this means that nations are embodied in common economic, political and educational institutions. These institutions are not based only on shared meanings, memories and values but they also have common practices and procedures. Put differently, nations are institutionally complete in the sense that there is a wide institutional elaboration that encompasses a variety of areas of life; they have their own governments, laws, schools and so forth.

In Kymlicka's view, the fourth characteristic that national minorities have in common is that they usually aspire to either total or partial segregation from the larger society. That is, these groups wish to be a totally or partially separate society, with a different state, governed by their own laws and institutions. Hence, national minorities, in Kymlicka's view, do not want to integrate in the larger society; rather they wish to be able to have a certain degree of autonomy. For example, many Quebecois want to be able to have their own government institutions run in the way they wish, like schools run in French. Often, the Amish want to be left alone, without intervention from the state in their internal affairs. More precisely, one of the demands of some Amish communities is that they are exempt from the basic educational requirements that other citizens of the US have to abide by, namely, the minimum literacy requirements.

From Kymlicka's point of view, national minorities can be sub-divided into liberal and illiberal minorities. The former are those whose demands are compatible with liberal values, *i.e.*, their demands do not violate individuals' rights and liberties. Under the concept of liberal national minorities are examples like Quebec and Catalonia; these national minorities usually demand the right to use a different language in schools and their other institutions and this does not necessarily violate any liberal value. The concept of illiberal national minorities refers to groups like some of the Amish and Hutterites, and some of Muslims in India. In Kymlicka's opinion, some of the demands for segregation made by these illiberal minorities interfere with individuals' rights (Kymlicka, 2001b, pp. 55–56). For instance, some

of the Amish demand the right to take their children out of school at the age of fourteen, while some Hutterites reject the idea that individuals are entitled to private property, for them, all their goods are communal property.

Kymlicka uses the term 'polyethnicity' to refer to the kind of diversity resulting from immigration. According to Kymlicka, polyethnic groups are usually not territorially concentrated; rather they are dispersed around the country to which they migrated. Furthermore, Kymlicka affirms that they usually do not want to be segregated from the majority culture; rather they want to integrate with the majority culture, demanding policies that give them equal citizenship. For instance, these groups demand language rights, voting rights, places in parliament and so forth. However, even though this demand for equal citizenship is usually what polyethnic groups aspire to, this is not always the case. As in the case of national minorities, Kymlicka contends that polyethnic groups can be sub-divided into liberal and illiberal groups (Kymlicka, 2001b, pp. 55–58). Liberal polyethnic groups have aspirations that do not go against liberal values and usually want to be integrated into society, demanding policies for equal citizenship. As an example, Kymlicka usually refers to Latin-American immigrants living in the United States, who, in broad terms, make demands for language rights, such as an education curriculum in Spanish (for example, Cubans, Puerto Ricans, Mexicans).

On the other hand, for Kymlicka, illiberal polyethnic groups are those where the culture and the demands to the state are not in accordance with liberal values. For example, some British Muslims like Sheik Omar Bakri Mohammed, who demand the death penalty for gay Muslims (Feldner, 2001; Fridae, 2001), would constitute an illiberal polyethnic group. Some Hasidic Jews living in New York who have gendered and discriminatory norms in relation to divorce and marriage, for example, are another illiberal polyethnic group in Kymlicka's view. Some of these groups have demands that are more similar to the ones of national minorities. Sheik Omar Bakri Mohammed, for example, has demanded a *Sharia* state for Muslims in the U.K (Murray, 2009). Nevertheless, Kymlicka contends these cases are the exception, not the rule (Kymlicka, 1995a, pp. 11–26, 97–99).

New social movements, the third source of diversity for Kymlicka, include peace groups, environmental groups, human rights groups and LGB groups (Kymlicka,

1995a, pp. 19–20; Kymlicka, 1998, p. 91).⁵ Kymlicka (1998, p. 92) contends that groups like LGBs “emerge because they provide a way for people to define their sense of self and to shape a new way of life and identity”. Although the LGB community is not an ethnicity, Kymlicka affirms that LGBs refer to themselves in quasi-ethnic or cultural terms. LGBs, in Kymlicka’s (1998, p. 91) view see themselves as having a “common identity, community, history, and way of life”. Kymlicka explains the kind of diversity that results from LGB groups mostly by comparison with the two other sources of diversity explained above. More precisely, Kymlicka considers that LGB groups usually have significant similarities with liberal polyethnic groups and radical differences from national minorities. Analogous with polyethnic liberal groups, Kymlicka (1998, p. 98) affirms that LGB groups do not usually share a common territory or have a historic homeland and they want to be integrated in the larger society rather than being able to self-govern: “Like immigrant groups most gay groups aim to show that their members are good citizens who are willing to participate in the larger society and seek only fair accommodations within mainstream institutions for their distinctive needs and identities”. Hence, in Kymlicka’s view, analogous to polyethnic liberal groups, LGBs desire integration and rights that place them on an equal footing as citizens: they usually do not seek an autonomous nation, rather they want to make their national community more inclusive to gays (Kymlicka, 1998, p. 98). From Kymlicka’s perspective (1995a, pp. 19–20), this desire for integration, like in polyethnic groups, is because LGBs are treated as unequal or second-class citizens and “have been marginalized within their own national society or ethnic group”. Like in the other sources of diversity, there are exceptions to the rule that Kymlicka acknowledges. Kymlicka is aware that there is some territorial concentration of LGB individuals in places like San Francisco and that there are groups, like Queer Nation, who desire separatism rather than integration; however, this is an exception to what characterises the LGB community.

Unlike national minorities, Kymlicka contends that LGBs lack intergenerational continuity; for while members of national minorities are not only usually the offspring and/or the parents of members of the same community, most LGBs are

⁵ Kymlicka mentions a fourth group, which he calls ‘old social movements’. However, this group is not relevant for the purposes of this research.

born to heterosexual parents and usually have heterosexual children. For example, members of the current Amish community are usually the offspring of other Amish and the parents of individuals who are themselves Amish. A related point is that in Kymlicka's view, socialisation in a national minority is primary, while in a LGB community it is secondary. Put differently, Kymlicka (1998, p. 98) considers that while "gays don't generally enter the gay community until their twenties or thirties", members of national minorities are usually socialised from the time they were born into that specific culture. For example, Catalans are socialised in their language and culture from the moment they are born. Gay Catalans are primarily socialised in their Catalan culture and only afterwards in a gay community (if they decide to socialise within a gay community). In practice, the implication that Kymlicka teases out is that even though LGB communities help to define the sense of self, national minorities play a more formative and primary role in this process.

Finally, in Kymlicka's view, LGB groups are different from national minorities because of their institutional completeness. As explained, the institutions of national minorities encompass a number of areas of life – education, laws, language, healthcare, and so forth; Kymlicka believes that this is not usually the case with LGB communities, moreover, in Kymlicka's view, in territories which are mostly populated by LGB individuals, like some areas of San Francisco, there is still less institutional completeness than in a national minority.

In general terms, this is the tripartite typology of diversity that Kymlicka offers. Some of the groups that are an object of study in this thesis can more or less fit this typology. Those British and French Muslims who are heterosexist and illiberal and some of the Hasidic Jews living in New York can be considered illiberal polyethnic minorities. Some of the Amish and the Hutterites can be considered national minorities. However, as mentioned above, Kymlicka acknowledges that his typology does not encompass all kinds of groups. In fact, some of the groups mentioned in the introduction and that are an object of study in this thesis do not seem to fit any of these categories. In my opinion this is the case of the Westboro Baptist Church and the Southern Baptist Church. However, normatively speaking, it is not very relevant what category exactly they fit into, because they are either polyethnic or new social movement and these two kinds of groups have the same kinds of rights, according to Kymlicka.

2.7 – Freedom, Equality and Liberal Multicultural Citizenship

Having considered Kymlicka's typology of diversity, I will now turn to his liberal justification of multicultural citizenship. These arguments are important because what I am analysing in this thesis is to what extent certain forms of citizenship that aim at protecting cultural minorities can create potential damages to the citizenship of LGBs within cultural minorities. From Kymlicka's perspective, liberalism is a philosophical doctrine that is committed to the values of freedom and equality. For Kymlicka, freedom means being able to make one's own choices (*i.e.*, being autonomous). For Kymlicka (1992, p. 128,), what distinguishes liberalism from other doctrines is the endorsement of these values, rather than the "prohibition on slavery or cruel and inhuman treatment nor commitment to some form of tolerance of group differences" (Kymlicka, 1992, p. 143). Kymlicka (1992, p. 142) contends that "Liberalism is committed to (perhaps even defined by) the view that individuals should have the freedom and capacity to question and possibly revise the traditional practices of their community should they come to see them as no longer worthy of their allegiance". In practice, this means that individuals should have an equal chance, capacity and freedom to make their own decisions about their own lives. From Kymlicka's perspective, practices, institutions, states of affairs and so forth that enable individuals to make free informed choices about how to lead their lives are illiberal. Hence, for Kymlicka (1995a, p. 82) a liberal society is one that "not only allows individuals the freedom to pursue their existing faith, but it also allows them to seek new adherents for their faith (proselytisation is allowed), or to question the doctrine of their church (heresy is allowed), or to renounce their faith entirely and convert to another faith or to atheism (apostasy is allowed)".

The reason why freedom and equality are so important in Kymlicka's theory is because they are the means for what he considers to be the good life; put differently, freedom and equality are important due to the fact that what he considers to be the two preconditions for a good life depend on those two values, especially in terms of freedom. The first precondition for the good life, in his view, is that individuals live their lives from the inside, in accordance with their beliefs about what gives life value. Individuals must therefore have the resources and liberties needed to lead their

lives in accordance with their beliefs about such values, without fear of discrimination or punishment. In short, individuals should be free to live according to their conscience. The second precondition for the good life in Kymlicka's opinion is that our choices are meaningful, intelligent and informed about the world. Thus, individuals should have the capacity to freely question those beliefs and examine them; even if this is a costly and regrettable necessity (Kymlicka, 1995a, pp. 81, 91).

Kymlicka believes that group rights are compatible and promote the liberal values of freedom and equality. As a result, Kymlicka offers arguments that relate freedom and equality with group rights. The argument based on freedom is strongly related to his idea of societal culture. In Kymlicka's perspective (1995a, p. 80), societal cultures promote freedom: "I believe that societal cultures are important to people's freedom, and that liberals should therefore take an interest in the viability of societal cultures"

From Kymlicka's point of view, the reason why societal cultures are important for freedom is because they give individuals the groundwork from which they can make choices. More precisely for Kymlicka (1995a, p. 76) due to the fact that societal cultures provide "meaningful ways of life across the full range of human activities, including social, educational, religious, recreational and economic life, encompassing both public and private spheres", then they provide the social context that individuals need for being able to make their own choices (that is, to be autonomous). Kymlicka's rationale is that autonomy is only possible in a certain social context and that social context is given by societal cultures. A societal culture can provide this context in three ways. By providing a range of options where individuals can choose; by providing evaluative categories that help individuals to assess those options; by providing a safe environment for making choices. In Kymlicka's own words:

"freedom involves making choices amongst various options, and our societal culture not only provides these options, but also makes them meaningful to us. People make choices about the social practices around them, based on their beliefs about the value of these practices (...) And to have a belief about the value of a practice is, in the first instance, a matter of understanding the meanings attached to it by our culture" (Kymlicka, 1995a, p. 83)

Taking this on board, Kymlicka's argument is that societal cultures ought to be protected because they promote the liberal value of autonomy; they promote this value because societal cultures give, in Kymlicka's perspective, a context of choice that is necessary for individuals to exercise their freedom. Put differently, from Kymlicka's point of view, individuals' own cultures provide the groundwork that individuals need in order to make free choices. Consequently, if liberals are committed to this value, they are committed to protecting the conditions (societal cultures) to achieve it. This means that if group rights are necessary for protecting this context of choice, then they are justified from a liberal point of view; for if group rights can protect the context of choice, then they are promoting autonomy. As mentioned above, from the three sources of diversity only national minorities have societal cultures. Hence, this argument only justifies group rights for national minorities in order to protect their societal cultures. In Kymlicka's view, the context of choice is given by the access to one's own culture, not just to any culture. So according to this view, for someone from Quebec, the societal culture of Catalonia does not provide a context of choice; likewise, for someone from an Amish community, the societal culture of Sikhs in India does not provide him or her with a context of choice.

In Kymlicka's perspective, there are three reasons for contending that this access has to be to the individual's own culture and not any culture. Firstly, individuals have strong attachments to their societal cultures and it is not only costly but also a slow process to change one's culture. This slow process of change is very noticeable with the numerous cases of Aboriginal individuals who have considerable difficulties adapting to Australian culture. The strong attachment of individuals to their own culture is visible because many times individuals strongly identify with their cultural identity, even though this makes them worse off. For example, even though there may be, in broad terms, Islamophobia in existence across many countries in the West, which is translated into discrimination and social stigma, many Muslims still remain attached to their cultural identity. Consequently, culture is something individuals are expected to want to have, so the state should give them this opportunity even if they do not want it. Secondly, from Kymlicka's point of view, dignity and self-confidence seem to be strongly linked to the recognition of one's identity by the state. In other words, the recognition of the state shapes one's

identity, and this recognition is essential for the well being of individuals. Thirdly, as mentioned above, for individuals to make their own choices they need to be familiar with the content of the culture and this is given in the best form by an individual's own culture. For example, a Sikh living in India will not be familiar with the options given by an Amish societal culture from Pennsylvania in terms of making his own choices (Kymlicka, 1995a, p. 83).

The two arguments based on equality that Kymlicka offers for defending group rights rely on a different line of reasoning⁶. The first argument starts by observing that there is an inevitable involvement in the cultural character of society by the state and it is impossible to be completely neutral. Kymlicka affirms that:

“Government decisions on languages, internal boundaries, public holidays, and state symbols unavoidably involve recognizing, accommodating, and supporting the needs and identities of particular ethnic and national groups. The state unavoidably promotes certain cultural identities, and thereby disadvantages others”. (Kymlicka, 1995a, p. 110)

Consequently, those individuals who do not share the culture promoted by the state are disadvantaged. In other words, they are in an unequal position. More precisely, by observing the unequal treatment that results from the inevitable involvement in the cultural character of society by the state, Kymlicka contends that uniform laws giving the same rights to all individuals from different cultures treat individuals unequally. To take the example of public holidays, the establishment of Christian public holidays disadvantages Muslims because their main festival, *Eid-al-Fitr*, occurs at a time of the year when there are no public holidays. Bearing this in mind, Kymlicka argues that if liberals are committed to equality, then they should endorse a kind of public policy that does not advantage some individuals over others; this, in turn, means that in order to equalise the status of different groups, the state ought to entitle different groups to different rights.

In Kymlicka's view, group rights can correct these inequalities by providing the necessary and sufficient means by which individuals can pursue their culture. Although the argument for autonomy only applies to national minorities, this

⁶ Kymlicka offers a third argument based on equality but it is not relevant for the present context.

argument based on equality refers to national minorities, polyethnic groups and LGBs. To rephrase, Kymlicka believes that this kind of inequality occurs with these three kinds of groups. Inequalities between majorities and national minorities can take many shapes, but an example that Kymlicka likes to use is language rights' inequalities. From his point of view, national linguistic minorities like those of Quebec and Catalonia would be treated unequally if they did not have the right to have their own institutions in their national language. The debate about Christian and Muslim holidays is an example of inequalities between majorities and polyethnic groups. Examples of inequalities between LGBs and the heterosexual majority can be the denial to LGBs of the right to marry and adopt. Taking this on board, it is Kymlicka's (1995a) conviction that the three kinds of diversity can potentially be treated unequally by a set of uniform laws. As a result, any of these three kinds of diversity are entitled to group rights on grounds of promoting equality between groups within a liberal state.

Kymlicka's second argument based on equality is that if it is the case that all individuals in society should have it, then the state is committed to promote a variety of cultures so that individuals have more options relating to choice. This argument, however, is not directed at minorities but rather at majorities, and it does not refer to a need of the minority; instead, it refers to how culture can make individuals' lives better in general, by providing more options. Furthermore, Kymlicka (1995a, p. 121) considers that due to the fact that it is difficult to change one's culture, this would not be a very attractive choice for everyone.

Having justified group rights from a liberal point of view and having offered a typology of the sources of diversity, Kymlicka sorts group rights into three categories: polyethnic rights, self-government rights and special representation rights. The entitlement to these rights depends on the kind of group, and what liberal value is promoted by having those rights. In Kymlicka's view, polyethnic rights are the rights that polyethnic and LGB groups are entitled to. In part, polyethnic rights aim at facilitating integration of those two groups in the larger society. In general terms, this integration is a reinforcement of citizenship status; in Kymlicka's (1995a, p. 31) view polyethnic rights ensure "the effective exercise of the common rights of citizenship". In practice, this means giving them equal rights to vote, marry, work and so forth. An example of a polyethnic right with this function could be giving

guaranteed interviews for those job applicants who are members of a disadvantaged minority group; for example, it would be compulsory for employers to offer Muslims in the UK a job interview. From Kymlicka's perspective, an additional function of polyethnic rights is to protect disadvantaged minorities from racism, xenophobia, heterosexism, and other kinds of discrimination. This could be pursued with policies like exemptions to some kinds of duties or obligations that other citizens have. For example, if Sikhs were exempted from wearing crash helmets in construction sites, this would be a polyethnic right. Finally, according to Kymlicka, polyethnic rights can also fulfill the function of correcting cultural inequalities between minorities and the majority. With this purpose, groups should receive different kinds of support, like financial aid, to express their cultural particularity. Polyethnic rights should do this not by eliminating differences, but by simultaneously integrating minorities and promoting their cultures. In practice, this means, for example, funding cultural events (*e.g.*, ethnic and LGB cinema festivals), parades (*e.g.*, gay pride), and inclusion in the educational curriculum, among other kinds of cultural promotion.

In Kymlicka's view, the three kinds of diversity groups are entitled to special representation rights. The function of these rights is to correct differences in representation between groups. That is, the goal of special representation rights is to tackle systematic disadvantages and barriers in the political process that jeopardise individuals with certain identities from being effectively represented. In Kymlicka's opinion, if special representation rights are successful, they will hopefully make it less likely that the political decisions taken in a certain society would ignore the political position of minority groups; for these rights would promote equality by giving equal bargaining positions to the different social actors in society. This can mean, for instance, a guaranteed number of seats in parliament for members of a certain group; in a multinational country like Spain, this would require a minimum number of parliamentary seats for Catalans and Basques, who are a national minority. Finally, the third category of rights, self-government rights, are a right only of national minorities. According to Kymlicka, this is because the function of these rights is to protect societal cultures and, therefore, the context of choice, which only national minorities have. Self-government gives national minorities the right to self-determine, by having territorial jurisdiction, political autonomy, and a number of institutions necessary for the flourishing of their societal cultures. Hence, national

minorities partially segregate from the wider state, having their own laws and institutions.

The United States and Canada are examples of countries with a federalist system that gives self-government rights to national minorities. Some of the Amish communities in the United States have their own institutions and laws, although they are still, to a certain degree, under the law of the wider society. Quebec, in Canada, also has its own laws and institutions, but to a certain extent has to abide by Canadian laws (Kymlicka, 1995a, pp. 27–29). Kymlicka does not completely rule out the hypothesis of giving self-government rights to polyethnic groups; he thinks that there is nothing normatively incoherent with this hypothesis. However, he argues that there are a number of differences between national minorities and polyethnic groups that make it less desirable for polyethnic groups to have self-government rights. First, he argues that polyethnic groups are not usually territorially concentrated and for that reason it would be difficult to implement self-government rights. Second, it is important to remember, according to Kymlicka, that polyethnic groups refer to the kind of diversity that is the result of immigration. Most immigrants are, in his view, individuals who voluntarily left the societal culture of their countries for another country. So Kymlicka believes that contrary to national minorities that are forced into a majority culture, immigrants voluntarily endorse the majority culture. Third, Kymlicka considers that it is not usually the desire of polyethnic groups to have self-government rights; rather they want to be integrated in the society of the majority (Kymlicka, 1995a, pp. 97–101). For some of these reasons, the hypothesis of LGBs having self-government rights is not, in Kymlicka's view, sustainable; namely, for him, LGBs are not usually territorially concentrated and they desire integration rather than segregation (Kymlicka, 1998, p. 98). To these reasons he adds that there is also the lack of intergenerational continuity and institutional incompleteness mentioned above, which in his view is a requirement for self-government rights.

2.8 – External Protections, Internal Restrictions and the Limits of Toleration

The liberal theory of multicultural citizenship just explained can be considered to make part of the first wave of writings on multiculturalism, which focus on the justice of group rights and the debate about what kind of inter-group inequalities

exist and how to address them. However, Kymlicka also writes about what in the introductory chapter was referred to as the second wave of writings on multiculturalism, which is the main subject of interest of this thesis. Kymlicka is aware that group rights combined with illiberal demands of cultural groups may have a perverse effect on the most vulnerable individuals within minorities. Therefore, Kymlicka also pays attention to intra-group inequality and justice within minority groups. For this reason he presents a theory that aims at tackling these kinds of injustices. Notwithstanding, this theory does not deal specifically with the kinds of mistreatment and discrimination that may occur to LGB individuals; rather this is a general theory about how the interests and rights of minorities within minorities may be harmed and how to address this potential harm. However, it is a theory that I suggest can be applied to all kinds of vulnerable individuals within minorities – children, women, LGBs, dissenters and so forth.

The way Kymlicka addresses this normative issue is by drawing a distinction between claims for external protections and claims for internal restrictions. For Kymlicka, claims for external protections are the kinds of claims that groups make against the larger society. Therefore, they involve inter-group relations: they are about the interaction between the group and the rest of the society. According to Kymlicka, such external protections aims at defending the group from external impact, *i.e.*, from the policies and decisions of the larger society that may threaten the group's existence. Kymlicka affirms that claims for external protections may entail some restrictions on individuals' behaviour, although they do not impose restrictions to the basic rights and freedoms of individuals. For instance, before the Statute of Autonomy of Catalonia of 1979, Catalonia did not have the jurisdictional powers to have institutions in Catalan. This Statute gave Catalonia exclusive jurisdiction over various matters, including the power to have courts and schools run in Catalan. The existence of this Statute is an external protection because it is protecting the group from extinction as a result of external influence. In particular, it is protecting Catalonia from losing its language, Catalan, as a result of the hegemony of the Castilian/Spanish language in Spain. Hence, the Catalans have the right to self-determine and choose what their official language is in an external protection against the Castilian speaking majority. This is an example of how external protections can impose restrictions on behaviour – having Catalan as a compulsory

language – but that this restriction does not necessarily violate any basic right or freedom.

A similar case of an external protection that may impose restrictions on behaviour is the policy in Quebec whereby businesses with over 20 employees have to be run in French. This limits individuals' freedom to run businesses in the language of their choice, but, in Kymlicka's view, does not violate basic rights and freedoms. Some other external restrictions do not seem to impose any restrictions to behaviour. There are Amish and Hutterite communities who wish to be exempt from paying some kinds of taxes; more specifically, they wish to be exempt from paying those taxes that promote goods that are inconsistent with their way of life. This claim can also be considered an external protection because it is about protecting the survival of the group from the decisions or laws of the majority. This does not seem to impose any meaningful restriction on behaviour; for if a member of the Amish community wants to pay taxes anyway, he is probably free to do so. The claim that some Sikhs have to be exempt from the law about using crash helmets on construction sites can also be considered an example of external protections. Likewise, those Sikhs who wish to wear crash helmets are free to do so, and their behaviour is not restricted. Even though this gives a general overview of what external protections entail, I will explore further what the implications of external protections are for LGBs in the next section.

Contrasting with claims for external protections, according to Kymlicka, claims for internal restrictions are the kind of claims that groups make against their own members, *i.e.*, they involve intra-group relations. Practices that involve internal restrictions are those that limit the basic rights and liberties of the members of the group. It is important to reinforce this idea that the only limitations of liberty that can be classified as internal restrictions, in Kymlicka's (1995a, p. 36) conception, are those that limit or in any way jeopardise individuals' basic civil and political rights: "I will use 'internal restrictions' to refer only to the latter sort of case, where the basic civil and political liberties of group members are being restricted". More generally, according to Kymlicka (1995a, p. 37) these are the liberties that enable individuals to revise their conceptions of the good, "[liberals] should reject internal restrictions which limit the right of group members to question and revise traditional authorities and practices". His own examples support the view that internal

restrictions refer to the violations of basic civil and political rights; as examples of internal restrictions he mentions compelling people to attend church or to follow traditional gender roles, which are restrictions to freedom of association. He also mentions clitoridectomies and compulsory arranged marriages, both norms that violate physical integrity and safety. Kymlicka also affirms that inequality in family law is unacceptable; hence, unequal marriage and divorce rights are internal restrictions that violate economic rights. Finally, he alludes to the right of not being discriminated against or denied education. All these examples refer to civil and political rights. This means that, in Kymlicka's view, not all kinds of limitations of liberty can be considered internal restrictions. Kymlicka mentions that other kinds of restrictions of liberty are acceptable:

“Of course, all forms of government and all exercises of political authority involve restricting the liberty of those subject to the authority. In all countries, no matter how liberal and democratic, people are required to pay taxes to support public goods. Most democracies also require people to undertake jury duty, or to perform some amount of military or community service, and a few countries require people to vote (*e.g.*, Australia). All governments expect and sometimes require a minimal level of civic responsibility and participation from their citizens” (Kymlicka, 1995a, p. 36)

Kymlicka believes that internal restrictions can take place with polyethnic and self-government rights, but not with special representation rights. Sexual conversion therapies that consist of inflicting electric shocks and other forms of torture, as in the case of Samuel Brinton, are considered internal restrictions. Corrective rape of LGBs that some South African individuals commit is also considered an internal restriction. Additionally, the murder of LGBs that groups, like some Muslims carry out to recover family honour are also internal restrictions (Hurriyet Daily News, 2013). In case the shunning and ostracism that some Amish and Hutterite communities impose on their members imply restrictions to their freedom of speech, then these can be considered internal restrictions, also. Employment discrimination according to sexual orientation is an internal restriction, as are those anti-sodomy laws that penalise same-sex acts. Finally, inequalities in rights of adoption, co-adoption, child custody and marriage can also be considered internal restrictions.

Even though Kymlicka has a general theory that internal restrictions cannot be imposed on individuals, he admits an exception to this rule. Kymlicka also affirms that it is not necessarily the case that liberals should intervene in the affairs of minorities when they impose internal restrictions on their members, especially in the case of national minorities. Kymlicka (1995a, p. 169) argues that intervention is only justified in cases of gross and systematic violation of human rights “such as slavery or genocide or mass torture and expulsions”. The reason why Kymlicka considers that intervention in the affairs of national minorities, but not other groups, is to be avoided is because the status of national minorities is analogous to the status of foreign states. In particular, Kymlicka argues that intervention in national minorities would be a form of paternalistic and colonialist aggression, which would likely have negative results. So Kymlicka (1995a, p. 167) argues that:

“Many of the reasons why we should be reluctant to impose liberalism on other countries are also reasons to be skeptical of imposing liberalism on national minorities within a country. Both foreign states and national minorities form distinct political communities, with their own claims to self-government. Attempts to impose liberal principles by force are often perceived, in both cases, as a form of aggression or paternalistic colonialism” (Kymlicka, 1995a, p. 167)

Moreover, Kymlicka (1995a, p. 167) thinks that forcing groups to be liberal will not have the expected outcome of making them liberal, “In the end, liberal institutions can only really work if liberal beliefs have been internalized by the members of the self-governing society, be it an independent country or a national minority”.

2.9 – Challenging the Distinction Between Internal Restrictions and External Protections

Taking this on board, I would like now to explore how Kymlicka’s distinction between internal restrictions and external protections would deal with this potential threat to LGBs’ interests. In the previous section, I presented an interpretation of what the distinction means; for the sake of the argument, I will assess the implications of that interpretation, which I call ‘the weak interpretation’, but also

present another possible way to understand the distinction, which I call ‘the strong interpretation’. I will also raise some practical concerns about the distinction by arguing that, with respect to self-government rights, the distinction collapses when put into practice.

According to the weak interpretation, which I believe to be the correct one, internal restrictions happen only when individuals’ basic civil and political liberties are being limited. Hence, violations of welfare rights, like the right to food, shelter, medical care, and employment, education and housing, are internal restrictions. Moreover, violations of rights that negatively protect individuals from excesses of the state and other people and that enable them to participate in political life are also internal restrictions. In essence, this means that torture, threats to physical integrity, life and safety, arbitrary restrictions in association, conscience, speech, assembly and voting are all internal restrictions.

Taking this on board, the interests of LGBs within polyethnic and national minority groups that go under the umbrella of basic civil and political rights are safeguarded. In terms of physical and psychological integrity, polyethnic groups cannot be exempt from laws that prohibit practices like sexual conversion therapies, corrective rape and hate speech. So some polyethnic groups like British Muslims could not be exempt from hate speech laws; some minorities in Ecuador, the Americans for Truth about Homosexuality and some Southern Baptists in the US, as well as some South Africans could not be exempt from laws that protect physical integrity. National minorities could not impose anti-sodomy laws, nor could they engage in physical and psychological violence towards LGBs. This rules out the aspiration of making homosexuality illegal which is held by some Indian Muslims and the ostracism and shunning practices carried out by some Hutterites and Amish. The reason why these practices are ruled out by internal restrictions is because the right to security, life and safety protects LGBs from practices that involve torture and threats to their physical integrity. Furthermore, owing to the fact that polyethnic and national minority groups cannot arbitrarily restrict liberty, anti-sodomy laws and restrictions to sexual freedom between consenting adults can also be considered internal restrictions.

The economic interests of LGB individuals are also considered internal restrictions in this interpretation. Polyethnic and national minority groups cannot discriminate

against their LGB members according to sexual orientation. In essence, this means that the Catholic school who fired Carla Hale would not be able to have done so, and the Boy Scouts of America would not have been free to fire James Dale. However, in the case that a priest was fired from his post due to his sexual orientation, it is more difficult to tell whether this interpretation is compatible with this or not. On the one hand, the respect for political and civil rights entails that individuals cannot suffer job discrimination on grounds of sexual orientation; on the other, freedom of conscience has to be respected and this may entail the freedom to have job posts where discrimination is acceptable.

In general terms, LGBs' political rights for voting, speech, association and assembly are also safeguarded; hence policies similar to the ones in Russia, where homosexual propaganda, association, assembly speech and identity expression are prohibited (Elder, 2013), are considered internal restrictions. Moreover, elitist political systems like the ones underlying some Hutterite communities are also an internal restriction for other members. However, when national minorities holding self-government rights refuse to concede group rights to internal minorities, they are not imposing internal restrictions. In this weak interpretation, the national minority's states do not have the duty to give more rights than the basic ones, and polyethnic rights are, in Kymlicka's view, beyond basic rights. In other words, due to the fact that group rights are not included in the inventory of basic civil and political rights, national minorities can, according to this interpretation of internal restrictions, refuse to give polyethnic rights to the LGBs within their group. Hence, national minorities can refuse to provide polyethnic and special representation rights that would reinforce LGBs' political citizenship because the kind of assistance that special representation and polyethnic rights require would provide is not a basic civil and political right. In practice, this means that in terms of political representation and expression, what the state of a national minority has to do is to give the negative right of being able to associate, assemble or speak up without arbitrary restrictions and to guarantee safety for those who want to exercise their political rights. For instance, when LGBs' political expression is not socially approved and is instead discouraged with threats of physical violence, as in Serbia (Roberts, 2012) the state is duty bound not only to give the negative right to express one's views but also to guarantee protection of those who participate in the political activity. Notwithstanding, according to this

interpretation, these national minorities do not have the duty to provide funds for the promotion of the LGB lifestyle.

Appertaining to the same line of thought, some of the healthcare needs of LGBs are protected under this interpretation, although not all. Refusing medical treatment to LGB individuals based on their sexual orientation would be a violation of basic civil and political rights. However, not legalising artificial insemination (that would permit lesbians to have children) is not an internal restriction. This healthcare need is group specific and not a general basic civil and political liberty, the violation of which entails internal restrictions. Likewise, specialised medical advice for LGBs is considered a polyethnic right that would not be a duty of the national minority's state to provide. For example, sexual health and contraception appointments or psychotherapy directed at LGBs' issues and sexuality would not be a duty that the state should provide in this interpretation. In this case, Amish groups, who normally have healthcare agreements with local hospitals, would not have to include treatment and medical assistance that supported their LGB members in their deals with the local hospitals.

This lack of duty by national minorities to provide rights to internal minorities that are beyond civil and political rights also has implications for LGBs' interests in forming a family. As explained in the expository section on Kymlicka's work, the rights to adopt, co-adopt and marry are considered polyethnic rights. Due to the fact that national minorities do not have to give polyethnic rights to their internal minorities, then these rights are also not guaranteed. There are groups that can impose discrimination on LGBs and meet the criterion of not violating internal restrictions. In the case of Indian Muslims, although they could not impose anti-sodomy laws, they would be able, according to this interpretation, to not concede LGBs rights that would permit LGBs to form a family (e.g., adoption).

Taking this into consideration, it can be concluded that, even though internal restrictions can protect many LGBs within minorities' interests, with some reforms there are many polyethnic groups and national minorities that can preserve some of their heterosexist practices and fit Kymlicka's criterion. In general, basic civil and political rights encompass a wide variety of LGBs within minorities' interests. More precisely, those interests that LGBs have in common with other citizens are protected

under this interpretation of internal restriction. Nevertheless, more group specific interests are not necessarily protected if a national minority acquires self-government rights. Therefore, it can be stated that, broadly speaking, LGBs' interests are protected via Kymlicka's distinction, with the exception of more specific interests that LGBs within national minorities have.

Turning now to the strong interpretation, this has different implications from the above. According to this, any restriction to liberty that revises and pursues one's own conception of the good is unacceptable and can be considered an internal restriction. If this view is correct, any restriction to LGBs' liberty is considered an internal restriction. This means that there should be complete equality between heterosexuals and LGBs within the group. Notwithstanding, if this is the correct interpretation, the distinction between external protections and internal restrictions face some conceptual, normative and practical challenges. First, if this is the correct interpretation, the distinction between external protections and internal restrictions collapses. Policies for external protections often require restrictions on individuals' freedom and choices. The reason for this is because external protections primarily work by restricting individuals' freedom to protect the survival of culture (Eisenberg, 2009, pp. 55–56; Parekh, 1997, pp. 60–61).

Kymlicka's own examples demonstrate this dynamic between external protections and restrictions to liberty. In Quebec, children are forced to go to a French-language school unless their parents themselves had English-language schooling. Also in Quebec, businesses have to be run in French if they have more than 20 employees. Kymlicka considers that forcing individuals to pay taxes is an acceptable restriction of liberty. Limitations of freedom in property use are also acceptable, as in the case of indigenous land that cannot be sold. Therefore, Kymlicka's own examples demonstrate that he is committed to various restrictions of liberty. Subsequently, if this second interpretation is correct, the distinction between internal restrictions and external protections is meaningless; for as Eisenberg (2009, p. 55) states "few cases exist where external protections do not entail internal restrictions".

Second, if it is the case that Kymlicka is defending that any restriction to liberty is an internal restriction, then the distinction is flawed due to the fact that some internal restrictions are acceptable and others are not. That is, it is normatively acceptable to

sometimes restrict liberties and, if Kymlicka is against any restriction to liberty, then he is excluding some cases where it would be acceptable to restrict liberty. Some restrictions to the liberty of heterosexist and illiberal groups in general and sometimes of restrictions to basic civil and political liberties are acceptable to prevent major harms. In general, it is acceptable to restrict the freedom of conscience of those who think they should convert LGBs by raping them or using physical and psychological violence towards them. In the case of restrictions to basic civil and political rights, these are acceptable, depending on the reasons why these restrictions are being made. For example, restricting freedom of speech of extremist British Muslims, like Sheik Omar Bakri, who has routinely sent a threatening message to Muslim LGBs (Feldner, 2001) is also an acceptable internal restriction. It is also morally justifiable to restrict the power of *Sharia* courts to condemn LGBs for same-sex acts and for using their civil and political rights to propagate hate and violence towards LGBs. Minor restrictions of liberty, like trying to make language gender-neutral are also acceptable. If a government prohibits the media from using gendered words like ‘spokesman’, ‘mankind’ and ‘chairman’, this seems to be an acceptable restriction of liberty with the goal of, in time, eliminating gendered language. The question of language is, in fact, quite pertinent in the case of LGB individuals. Some LGB communities use what some linguists call Lavender Language. This is the language used by some LGB communities that consists of speaking in a way that eliminates some stereotypes about homosexuality. For example, in some LGB communities, there is no use of pronouns or there is the use of pronouns with only one gender so that there is no association of the person with masculinity or femininity (Barrett, 1997, pp. 181–194; Graf, and Lippa, 1995, pp. 227–232; Livia, 1997, pp. 349–353). These restrictions enhance liberal values of equality; therefore, they are acceptable from a liberal point of view. In other words, some internal restrictions are acceptable, depending on the goals of these restrictions (Rauterberg, 2010, pp. 120–121). Bearing this in mind, some internal restrictions seem to be acceptable and some do not; consequently, if this is the correct interpretation, the distinction is question-begging.

A final challenge I would like to raise against Kymlicka’s distinction is that, with respect to self-government rights, when put into practice this distinction collapses. This challenge is independent from the points previously made due to the fact that it

does not depend on the kind of interpretation that is made about the distinction. The argument is that in the case of self-government rights for national minorities, the distinction between external protections and internal restrictions collapses when put into practice because, as Shachar argues (2001a, p. 30), “the jurisdictional powers that are important for the group to ensure its external protections vis-à-vis the larger society are the same powers which can be used to perpetuate internal restrictions on certain categories of group member”. To rephrase, the kind of autonomy that national minorities acquire to impose external protections is the same kind of autonomy needed for imposing internal restrictions on their members. For this reason, having the power to self-govern facilitates the reinforcement and institutionalisation of heterosexist practices that disadvantage LGB individuals within national minorities.

One of the powers national minorities acquire is power over employment laws. According to Kymlicka, Aborigines should have the power to decide who has the right to fish and hunt on a particular tract of land; also, for Kymlicka, the Quebecois government has the power to limit the freedom of businesses to choose their working language. This kind of power is the same that can be used to impose internal restrictions upon LGB individuals in professional activities. Some Indian Muslims, some Hutterites and some Amish would be examples of communities that could make discriminatory job laws, like not giving teaching jobs to LGB individuals (Lépinard, 2011, pp. 207–208; Shachar, 2001a, pp. 30–31).

External protections also give power to national minorities to control education. In Quebec, the government chooses the educational curriculum; in addition, French Canadians cannot choose the language of instruction for their children: it is compulsory to choose French. Control over these matters is the same that is needed to impose educational policies, which can be harmful for LGB individuals within minority groups; for example, jeopardising their capacity to exit the group by giving members a very poor education, and by instilling homophobic beliefs in them. This kind of education could potentially create internal images of self-hate for LGB individuals; it could also lead to a less tolerant social environment and make individuals homophobic when they grow up. For this reason, power over education may lead to the teaching of a homophobic curriculum that could potentially make straight individuals more homophobic and LGB individuals less confident about their sexual orientation. It is important to clarify that Kymlicka would consider an

education that limits the capacity to exit and that teaches homophobia an internal restriction; in fact, he refers to the Mennonites' demand for exemption from the national state's educational minimal requirements as a demand for internal restriction. However, my point is not to affirm that my examples are an internal restriction or an external protection; rather, the point is that control over education gives national minorities the power to impose internal restrictions in education and, consequently, reinforces homophobia within the group.

Finally, external protections give the power to define who is a member and who is not. Take the example of the French language first; the Quebecois government can decide who is a member of the Francophone community and therefore who is entitled to have what kind of education. Indigenous groups have the power to decide who is a member and who has the right to own their land. Also, the Aborigines can decide who are the members of their community and, consequently, who can fish and hunt on their land. Many of the rights of LGBs are about membership. Same-sex marriage, adoption, co-adoption and child custody are about who can be a member of the group, basically, about who can have that right. In the case of marriage, it is a group right in the sense that not all citizens have the freedom to marry – adults cannot marry children, children cannot marry each other, adults cannot marry animals, siblings cannot marry each other and so forth. Adoption, co-adoption and child custody is a group right in the same sense; it depends on economic class, criminal background, sexual orientation and so forth. Hence, there are a number of variables related to membership that are important for LGBs' rights. Therefore, as Eisenberg (2009, p. 55) affirms, the power over membership for protecting groups from external protections is the same as that which gives national minorities the power to impose internal restrictions, "Membership rules are notoriously both protective of communities and restrictive of individuals within these communities". Hence, it is sufficient for a group to consider LGBs' non-members to exclude them from having rights. Analogous to what the Iranian President, Mahmoud Ahmadinejad, has affirmed about the inexistence of homosexuality in Iran, a national minority could affirm that they are a Muslim nation and if there are LGB individuals, then they are not part of that nation; they could affirm further due to the fact that being an LGB is a trait that is sufficient for being a non-member. If these groups could contend that due to the fact that LGBs are non-members, then they could

contend that LGBs, as non-members, are not entitled to the rights to marry, adopt, co-adopt and to have child custody. I do not mean to affirm that groups should not have the right to define membership; rather my point is that the right to define membership in Kymlicka's style may entail the reinforcement of the exclusion of LGB individuals from the right to form a family.

Polyethnic rights do not necessarily impose the same kinds of problems. Broadly speaking, there are three reasons for this. First, due to the fact that for Kymlicka the state has the power to intervene in the affairs of polyethnic groups, it is less probable that there will be abuse. Second, in the case of polyethnic rights, groups do not have the institutional power to enforce the same kind of discrimination of LGBs that self-government rights have. They do not have the power to control education and employment policies, for example. That is, in the case of polyethnic rights, the autonomy gained is on a smaller scale and is not necessarily in an area that would empower groups to enforce heterosexist practices. Third, it is more straightforward that a certain right is an external protection or an internal restriction.

Taking these examples on board, the problem that results from this is that even if there was a conceptual difference between internal restrictions and external protections, in the case of self-government rights, this difference collapses because, when put into practice, the powers to implement external protections are, at least in the cases mentioned above, the same as those that impose internal restrictions. Therefore, even if external protections do not imply internal restrictions, at the minimum they facilitate the application of internal restrictions (Pogonyi, 2007, pp. 233–235); allowing group autonomy in those areas would give groups the power to also control the legislation that can impose internal restrictions. This calls for a sub-division of powers, which does not give the monopoly of power to a certain group or the state in relation to norm setting.

2.10– Challenging Kymlicka's Idea of Toleration and the Prioritisation of National Minorities

As explained in the expository sections of Kymlicka's political philosophy, he is reluctant to intervene in the internal affairs of national minority groups. To recall,

Kymlicka (1995a, p. 169) contends that it is only morally acceptable to intervene in national minorities' internal affairs if there is a violation of human rights, "such as slavery or genocide or mass torture and expulsions". In general terms, this tolerant and laissez-faire approach endorsed by Kymlicka leaves the interests of LGB individuals within national minorities extremely unprotected. However, a kind of interest that *is* protected is the interest in not having one's physical integrity harmed. According to Kymlicka's theory of intervention, if national minorities engage in practices that systematically physically harm individuals, this would be a morally unacceptable gross violation of human rights and liberal states should intervene in the affairs of national minorities. Hence, in Kymlicka's view, the sovereignty of national minorities does not give them freedom to systematically violate the physical integrity of LGBs. So, if national minorities systematically engage in practices like corrective rape, honour killings and sexual conversion therapies that involve physical violence, then, according to Kymlicka, the majority state has the right to intervene in the affairs of the national minority to stop the practices.

This protection of physical integrity also has implications for sexual freedom. If anti-sodomy laws involve imprisonment, torture, or the death penalty, Kymlicka would rightly consider these unacceptable violations of human rights, requiring intervention in the affairs of national minorities. Nevertheless, Kymlicka's theory of intervention is compatible with lighter penalties for sodomy that do not involve physical harm. For example, fines and community work as a punishment for sodomy are not incompatible with Kymlicka's criterion of the gross violation of human rights. Another anti-sodomy law that may be compatible with this non-interventionist approach is to have different ages for sexual consent for LGBs and heterosexuals. There are real cases where this difference in age is applied; for example in the U.K., the age of consent for LGBs and heterosexuals was different until 2001 (Stonewall, 2013). The reason why these kinds of anti-sodomy laws are compatible with Kymlicka's theory is because they do not involve the kind of behaviour by national minorities that, in Kymlicka's view, justifies intervention. More precisely, these anti-sodomy laws do not impose penalties that involve slavery, genocide, torture or expulsions and, for this reason, national minorities can have such laws, and the liberal state, in Kymlicka's view, does not have the right to intervene to stop this practice and violate the sovereignty of national minorities.

As a result of this *laissez-faire* approach to intervention, the political rights of LGB individuals within national minorities are not protected. Restrictions to the freedom to associate, assemble and speech would not be considered a gross violation of human rights by Kymlicka. With regards to those rights that enable LGBs to constitute a family, these are completely unprotected under Kymlicka's theory of interventionism. Same-sex marriage, civil unions, adoption and co-adoption are not usually considered fundamental human rights and they are not included in the list of inviolable rights given by Kymlicka; hence, refusing to recognise the right to constitute a family is consistent with Kymlicka's *laissez-faire* approach to national minorities. The healthcare needs of LGBs are only partially protected. In general terms, according to Kymlicka's view, the state cannot deny access to healthcare services. For example, according to this view, if an LGB person needs a cancer operation or if this person has been a victim of torture, the state cannot deny this person medical care. However, more specific healthcare needs of LGBs can be denied without being a gross violation of human rights, if we follow Kymlicka's definition. For example, denying specialised psychological support to LGBs who are victims of hate crimes, torture and so forth is not incompatible with Kymlicka's view. Nor is it incompatible to deny sexual health appointments that administer advice to LGB individuals. Also, according to this perspective, national minorities can discriminate against LGB individuals in the arena of employment, if this discrimination does not lead to the gross violation of human rights. By way of illustration, if discrimination does not lead to LGBs being homeless, without shelter and without the economic means to survive, then there is no reason, according to this perspective, for intervening. Contrastingly, if the consequences of discrimination lead to those situations, then the national minority is not entitled to discriminate.

There are two interrelated reasons why Kymlicka considers that the liberal state should not intervene in national minorities' affairs and be tolerant about these practices. First, according to Kymlicka, when comparing a nation's political sovereignty and the violation of LGBs' rights, the former is more important than the latter. Second, national minorities provide a context of choice for autonomy, which, the LGB community does not. Consequently, the form of socialisation in national minorities is more important than the one in the LGB community. To be precise, for Kymlicka, socialisation in the LGB community is secondary, less formative and

lacks the intergenerational continuity that socialisation in national minorities has. Moreover, in Kymlicka's view, societal cultures provided by national minorities ramify across different spheres of life and institutions, whereas sexual orientation does not. That is, from Kymlicka's point of view, the societal cultures of national minorities are present in a variety of important aspects of individuals' lives, whereas sexual orientation is only present in at least one. These reasons have led Kymlicka to establish a normative hierarchy, putting nations above other forms of collective identity, like sexual orientation (Benhabib, 1999, pp. 406–407; Carens, 1997, p. 44).

I would like to present counter-arguments against his idea of sovereignty and against his normative prioritisation of national minorities over the interests of LGBs and LGB communities. With regards to the fact that intervention is to be avoided, Kymlicka is, broadly speaking, correct. In general terms, Kymlicka is right to affirm that intervention in a different state's affairs is to be avoided; a state cannot simply put massive efforts towards state intervention for just any reason. Sometimes national minorities may backfire and state intervention in the affairs of national minorities may potentially cause a civil war. Moreover, as a general rule, it is a good criterion to affirm that intervention is justified only if there is a gross violation of human rights. Although this is the case and sovereignty should usually be respected, I consider that there are other variables that may justify state intervention in the affairs of national minorities even when there is no gross violation of human rights.

Some of the variables that matter are the costs involved in intervention and the capacity and likelihood of backfiring that the nationality minority has, which is different depending on the national minority. State intervention in the affairs of Catalonia and Quebec seems to be troublesome because it may require military intervention and may result in some aggressive backfiring. However, intervention in the affairs of national minorities like the Amish, the Hutterites or Indigenous People is easier to enforce and does not necessarily entail military intervention. For this reason, the protection of internal minorities' rights seems plausible to enforce because this would be done without great cost. More specifically regarding heterosexual national minorities, many of the cases of national minorities who oppress their LGB members do not seem to be the kind of minorities that would backfire. Some examples of national minorities who oppress their LGB members are some Amish and Hutterites in the US and Canada and some Muslims in India. The

former two groups are usually peaceful and it would not be likely that they would backfire if the US government intervened in their affairs in order to prevent the oppression of LGB individuals. Moreover, they would probably not have the means to backfire.

In the case of Muslims in India, intervention may be more risky due to the fact that there are strong tensions between Indian Muslims and the Hindu majority. If the Hindu majority tried to intervene, this could be considered paternalistic and/or forcing religious conversion; this, in turn, could lead to a violent confrontation between Hindus and Muslims. For this reason, intervention in the affairs of this national minority seems less justified because of the potential consequences, unless there is a systematic violation of fundamental human rights. Obviously, the Amish and the Hutterites may consider that they are being colonised or forced to abdicate their religion; however, the point I am making is that their reaction to that would probably not be as aggressive as the response from Indian Muslims towards Indian Hindus.

Even if these exceptions to the rule of intervening in the affairs of national minorities when there is a systematic violation of fundamental human rights is incorrect, there is another issue in Kymlicka's theory that has to be addressed. According to Kymlicka, it is a sufficient condition to be a national minority group to be group entitled to self-government rights. So, self-government rights are conceded to groups due to being a national minority, even though we know in advance that the group could oppress some of its members. However, it should be a requirement that self-government rights are conceded if and only if this would not lead to the persecution of some internal minorities. Kymlicka seems to endorse this idea when he draws a distinction between internal restrictions and external protections, but then seems to abandon it in the name of national minorities' sovereignty. Taking this on board, the question of sovereignty with regards to foreign independent states and national minorities is slightly different. In the former case, the discussion is about intervening in a state that is already sovereign; the latter is about giving a kind of right that national minorities do not have yet and about whether giving this right is or not a good idea. To rephrase, the question posed with respect to providing self-government rights to national minorities is not so much if the state can intervene; rather it is whether they should be conceded rights just because of being national

minorities even if it is known *a priori* that they may use those rights to persecute internal minorities.

With regards to ranking the normative status of national minorities higher than LGB groups, there are two comments to make. First, correcting inequality of access to the context of choice (which is the rationale for giving self-government rights to national minorities) is important; but it is not necessarily more important than other kinds of inequalities. As Young (1990, pp. 39–65) affirms, there are a variety of forms of oppression that may require group rights. In the case of heterosexism in particular, LGBs are victims of a variety of inequalities. To recall, a heterosexist system is one where public institutions correspond to heterosexuals but not LGBs; these institutions, insure that relationships, directly or indirectly, will be built around male–female pairings (Calhoun, 1994; Herek, 1990, p. 321). Moreover, LGBs are stigmatised, ostracised and many times required to conceal their sexual identity, often adopting a pseudonymous heterosexual identity. This creates a number of inequalities in healthcare, family life, education, employment, housing, sexual freedom, political and civil liberties and so forth. It is unclear why these inequalities should be less relevant than inequality of access to a societal culture. These inequalities are different from the kind of cultural inequality that Kymlicka is worried about, but there are no reasons to rank them. Many authors have focused too much on the paradigm of redistribution and have ignored other important areas of justice. In this case, Kymlicka seems to be giving priority to cultural justice, neglecting other equally important areas of justice.

Second, although Kymlicka is right about the fact that socialisation in national minority groups is primary and, in general, more formative, the difference between the relevance of national minorities and LGB communities is more a difference of degree than in kind. Kymlicka is right that the LGB community in general does not have as robust institutions as national minorities from Quebec or Catalonia. However, the reason for this may be in part because LGB communities do not yet have the right to self-govern anywhere in the world. Still, there are areas like San Francisco, which are not too far from the institutional completeness suggested by Kymlicka: they have LGB bars, cinemas, restaurants, schools, research centres and so forth. On top of this, as it has been explained when I alluded to the Lavender language, some LGB communities, including the one in San Francisco, have a

language that slightly differs from the majority. In countries like Sweden, there are projects to create nursing homes that may cater specifically for gays (PinkNews, 2009). Another example of an institutionally complete LGB community is Schöneberg, a locality in Berlin. In the 1920s, it was also a centre of LGB culture, with a variety of institutions corresponding to homosexual identity, before they were closed down by the Nazis in the 1930s (Metzger, 2007).

Institutional completeness is a matter of degree and some LGB communities have a considerably high degree of institutional completeness due to the large number of institutions involved. For this reason, perhaps providing LGB communities the means for making their institutions more robust is justified, that is, in the sense that many LGB communities have the desire and potential for institutional completeness. Moreover, even if the LGB community is not a kind of community that does offer institutional completeness and primary socialisation, group rights that give a similar kind of autonomy to communities should be conceded for a variety of reasons (Spinner–Halev, 2000b; Young, 1990, pp. 39–65, 156–183), and not just because of the reasons related to culture that Kymlicka defends. In other words, group rights that help groups to form their own institutions can be conceded for more reasons besides the ones Kymlicka gives; in the case of LGBs, group rights that give them more autonomy to form their own institutions could be conceded so that they do not suffer heterosexism in key aspects of their lives, such as: healthcare, family life, education employment, housing, sexual freedom, political and civil liberties, among other areas. This means that it is justified to give some degree of self-governing autonomy to LGB communities in order for them to form institutions that are free from heterosexism. As will be explained in the chapter defending associative democracy, this implies that LGBs should be given the resources and the means to form their own communities and provide their own welfare services.

2.11. Conclusion: Is Multicultural Citizenship Problematic for the Rights of LGBs within Minorities?

In this chapter, I explored the philosophy of two authors who believe that groups are entitled to special rights. The main research question I have focused on in this chapter was whether granting special rights to groups via a multicultural citizenship

model can reinforce heterosexism within minorities, thereby jeopardising the interests of LGBs. My argument is that granting special rights to minority groups does not necessarily mean that LGBs within minorities will be made worse off. As explained when defending Taylor's view of recognition, oppressive heterosexual practices are not a logical extension of multicultural policies, given that there are some provisos that limit the power of groups. Even though this is the case, federalism is a form of multicultural citizenship that may facilitate the imposition of heterosexual group practices that undermine the interests of LGB members of federal units. The main reason for this is because the kinds of powers given to federal units permit that abuses of power are committed by heterosexual groups. This chapter, therefore, is helpful in assessing what kinds of powers given to groups can put the status of LGBs within minorities at risk. Some of these powers are *total* power over membership rules, employment law, communications, and welfare provision. It is important to emphasise that the problem is, in part, that groups gain total power; in chapter 6, I will defend two approaches that only give partial power in these areas and have different implications from the kind of multicultural citizenship defended in this chapter. I do this in order to analyse whether or not giving partial power to groups has damaging consequences for the interests of LGBs.

When compared in conceptual terms, Taylor's view seems to be better prepared to avoid heterosexual injustices than does Kymlicka's. Taylor rightly points out that being recognised in the intimate sphere is morally relevant and that misrecognising individuals in that sphere may lead to the formation of self-hating images. This idea is important for LGBs because it strongly relates to their interests and psychological integrity. I suggested that a possible way to tackle this would be to engage in deliberation, and this is something I will explore in more detail in chapter 5. Recognition in the public sphere is also an important idea for the status of LGBs within minorities. According to this view, which I endorse, the recognition of groups' identity should not undermine the citizenship of other individuals, including LGB individuals. Hence, the limitation of group practices is that some individuals are not made second class citizens.

Kymlicka's distinction between external protections and internal restrictions is problematic. I argued that there are conceptual and normative problems with the distinction that make it effectively meaningless. Moreover, when put into practice

this distinction leaves space for the violation of LGBs' interests. These criticisms place Kymlicka's theory at risk of not fulfilling the objective that it was supposed to: to promote liberal values and to balance inequalities between groups. If these criticisms are correct, Kymlicka's philosophy may, in some cases, reinforce inequalities within groups; specifically, it may reinforce inequalities between heterosexual and LGB individuals within heterosexist groups, especially in the case of national minorities like some Amish and Hutterites, as well as Muslims in India. With respect to Kymlicka's idea of toleration, he wrongly prioritises nations over LGB groups, which, as I have argued, is not justifiable. Against this view, I have argued that LGB groups should also be given the power to form their own communities and be autonomous, as they are not different in kind from national minorities, only in degree. This idea is important and, in chapter 6, when associative democracy will be defended, this idea will be useful.

Chapter 3 – Two Forms of Liberal Feminism

This chapter will outline and assess the work of Okin and Fraser. Okin and Fraser may seem to be an odd couple to put together as they have some radically opposed views; however, their theories have four points in common. First, both authors contest the asymmetry thesis whereby the rules governing groups and society should be different. Rather, Okin considers that society in general and groups in particular should become liberal and Fraser suggests that parity of participation inside and outside the group should be respected. Second, and as a result, both of these authors are skeptical about providing group rights to cultures, even though they admit that in some cases group rights are justified. Third, both Fraser and Okin consider that the transformation of cultures is the ultimate goal of their policies. Fourth, both these authors consider that those in groups are the ones who should and can decide about the legitimacy of cultural practices.

In this chapter, the main argument being made is that stereotypes are an important source of heterosexism and, as such, the state is under the duty to tackle this stereotyping. This means that it is not only the function of the state to construct egalitarian institutions; it is also the function of the state to engage in policies that aim at educating people about homosexuality. It is my contention that Fraser and Okin offer good arguments in favour of group rights, and therefore group rights do not necessarily entail the oppression of LGB members. This helps me to make my overall argument that multicultural policies do not entail making LGBs more vulnerable. In part, the reason why I chose to discuss their work is because they offer these arguments that help me arguing in favour of difference-sensitive policies. Moreover, my choice of these two liberal feminists results from the fact that they engage in a very important debate about what matters for justice – attitudes, institutions or both?

The chapter is divided as follows. In sections 3.1 and 3.2 I will outline Okin's concept of the 'fully human' understanding of culture, as well as liberal feminist philosophy and its implications for multiculturalism. In section 3.3 I will assess her views, admitting that I am very sympathetic to the arguments she raises. Nevertheless, I do contend that sometimes, her arguments rely on a misinterpretation

and intolerance of cultures that ought to be avoided. In sections 3.4 and 3.5 I will elucidate the main aspects of Fraser's theory. In section 3.6 I defend that Fraser is right in considering representation, recognition and redistribution as important loci of justice and that these three loci of justice encompass most or all heterosexual injustices that LGBs within minorities are victims of. Notwithstanding, I contest her idea that with regard to justice, only institutions matter, and I argue, based on the arguments of Okin and Taylor, that negative attitudes are also relevant for justice. In section 3.7, I will summarise the chapter and draw some conclusions.

3.1 – Susan Okin's Theory of being 'Fully Human', Gendered Cultures and Sexual Orientation

Okin endorses a liberalism informed by feminist concerns; and with respect to LGBs within minorities, there are four core ideas in Okin's philosophy that are relevant. First, her thin theory of what it means to be fully human; second, her characterisation of culture; third, the connection between gender discrimination and heterosexism; fourth, the way she relates these three features to liberal feminism. In this section, I will look at those first three ideas, while in the next section I will outline the link she makes between liberal feminism and these three ideas.

In her writings, Okin has never reproduced a philosophical anthropology that could provide a precise and extensive definition of human nature. Nevertheless, she does routinely use the expression 'full human beings' which seems to refer to an equivalent or similar concept of human nature. Okin never provides a definition of what to be a full human being is; however, given the context in which she uses the term and the list of human interests and nature of examples she gives of what constitutes a full human being, it is possible to tease out some conclusions about her meaning. The context in which Okin uses the term is a criticism of how theories of justice and their policy implications are written and sketched from a male heterosexual and gendered point of view. Broadly speaking, she affirms that these theories neglect the interests and well-being of women and only focus on the interests and well-being of heterosexual males. According to Okin, this neglect means to treat women as less than full human beings. Hence, Okin affirms (1989, p. 23) that women (and presumably everyone) should be treated as "full human beings

to whom a theory of justice must apply”. However, even though Okin (1995, p. 511) makes this comparison between men and women, she never defines what a woman is either: “I do not say anything about what defines woman”.

On top of this, when Okin affirms that women are not being treated as full human beings, she usually makes reference to a list of interests that are being neglected. These interests are physical and psychological integrity, economic opportunities, education, employment, housing, credit, health care, food, sanitation and protection of sexual intimacy. In Okin’s words:

“When women's life experiences are taken equally into account, these theories, compilations, and prioritizations change significantly. Examples of issues that come to the fore, instead of being virtually ignored, include rape (including marital rape and rape during war), domestic violence, reproductive freedom, the valuation of childcare and other domestic labor as work, and unequal opportunity for women and girls in education, employment, housing, credit, and health care” (Okin, 1998b, pp. 34–35).

In Okin’s view, these are not contingent or particular interests; rather, they are cross-cultural. In fact, in her article *Gender Inequality and Cultural Differences* published in 1994, she emphasises the idea that there are interests that are cross-cultural and do not depend on gender, ethnicity, religion, geography and so forth. For Okin (1999b, p. 119), having access to the items in that inventory of interests is essential for all individuals to have an equal chance of living a good life:

“In particular, it [the good life] requires that no child go without adequate food, housing, health care, or education, that no person who is sick or disabled, or who is prepared to work (including child care as work), be in need, and that governments aim at full employment, high minimum wages, and whatever redistribution of wealth is required to satisfy the needs I mention” (Okin, 1999b, p. 119).

Analogous to the concept of a full human being, Okin never defines what culture is either. Nevertheless, it is possible to ascertain three features of culture from Okin’s

writings.⁷ These features may not be explicitly expressed in her work; but from the way Okin discusses culture, it is possible to conclude that she believes that, in general terms, cultures possess these three features. The first feature is that it has an epistemological and normative influence on individuals. Put differently, the way individuals perceive the world and themselves and the way they act are extremely dependent on the culture in which they are socialised (Okin, 1994, pp. 12–13; Okin, 1998a, p. 664).

The epistemological aspect of culture here means that individuals' mode of reasoning and representing reality is influenced by culture. According to Okin, the way individuals self-interpret and create self-images is extremely dependent on how they are treated and socialised in their culture. Generally speaking, Okin (2002, p. 220) makes this argument by referring to the incapacity of individuals to conceive exiting their communities: "without a cultural context that allows one to develop a sound sense of self, it is difficult to imagine a woman being able even to conceive of exit as an option". Okin (1989, p. 142) also affirms that there is this kind of socialisation with regards to marriage expectations: "socialization and the culture in general place more emphasis on marriage for girls than for boys and, although people have recently become less negative about remaining single, young women are more likely than young men to regard "having a good marriage and family life" as extremely important for them".⁸ However, there is no reason to think this socialisation only exists with regards to exit and marriage. For instance, it is consistent with this theory that a gay Muslim man who is socialised in a Muslim group that is heterosexist will potentially, in Okin's view, create a self-image and self-interpret in accordance with this socialisation.⁹ In particular, if this Muslim group pictures an image of gay man as disgusting, sinful, and so forth, he could potentially create this image for himself. This is what was defined in the introduction of this thesis as 'internalised homophobia': that is, the negative feelings and perception that an LGB individual may have about his sexual orientation.

⁷ The definition of culture, in this case, includes all the kinds of groups discussed in this thesis.

⁸ This idea of socialisation is very similar to Taylor's normative and semiotic theory of culture. As in Taylor, individuals' epistemological capacity is set by culture and their actions are motivated by culture.

⁹ This is not an example given by Okin; rather, it is a potential implication of her theory.

The normative aspect of culture that underlies Okin's account is that culture is, at least partially, a source of personal values which, in turn, give individuals' reasons to act. For Okin, culture may lead individuals to adapt their preferences to their circumstances so that they start preferring something that they do not really prefer. An example is the preference for forming a family, given in the quote above with regards to wishing for a family life. Another example is if there is a culture that strongly emphasises the idea that women's role is to be a housewife, then women in this culture will have a tendency to prefer to be housewives, even though this may not be what is best for them. So Okin (1989, p. 142) considers that "[women's] expectation of being the parent primarily responsible for children, clearly affects women's decisions about the extent and field of education and training they will pursue, and their degree of purposiveness about careers. In her view, these preferences strongly influence individuals' behaviour to the extent that they may make choices that go against their universal interests, as listed above; some of these interests that Okin (1989, p. 142) considers women make choices against are their universal interest in employment opportunities: "women's choices about work are significantly affected from an early age by their expectations about the effects of family life on their work and of work of their family life".

So it can be concluded that, in Okin's view, culture can lead individuals to abdicating from a good life, and this does not need to be restricted to individuals' universal interests in employment opportunities, but can also mean that culture can influence individuals in choosing to abdicate from sexual freedom, physical and psychological integrity, housing, health care, education, sanitation, credit and food (Okin, 1989, pp. 142–143; Okin, 1998a, 682–683; Okin, 1999b, p. 109; Okin, 2002, p. 206). For example, a gay man who is socialised in a culture that considers LGBs degrading human beings may start wishing to be submitted to a sexual conversion therapy that involves torture, even though that goes against a variety of his universal interests. In this account of culture, a gay man who is socialised in a culture that pictures him as someone dangerous in terms of working with children, may abdicate from a job opportunity that involves becoming a schoolteacher.

Having taken this into consideration, it can be concluded that Okin thinks that culture has an epistemological and normative influence on individuals' lives. It influences their decisions, their preferences, their self-perception and their perception of the

world. This position is a rejection of biological determinism; she rejects the idea that social roles (gender roles, race roles, *e.g.*) are a result of biological characteristics; rather, these social roles are in Okin's (1989, p. 6) view "largely socially produced". As a general rule, for Okin, most of the socialisation that can influence individuals' mode of reasoning, representing reality, decisions and values occurs informally in the private sphere, especially in the family realm (Okin, 1994, pp. 10–11; Okin, 1998a, pp. 664–665; Okin, 1998b, p. 36; Okin, 1999a, p. 12), although it does not happen exclusively in such a sphere. For example, in the case of Samuel Brinton, the MIT student who was beaten several times by his father and forced to attend sexual conversion therapies, the way his father treated him can be seen to carry more weight in determining his self than him watching TV or reading a newspaper showing that there are gay parades that support the LGB lifestyle.

The second feature of culture that can be detected in Okin's work is that cultures are usually linked with norms that refer to sexuality, reproduction and personal law. That is to say, cultures are mainly concerned about marriage, divorce, reproduction, sexual behaviour and so forth (Okin, 1998a, pp. 664, 667; Okin, 1999a, pp. 12–13). Therefore, if culture is source of normativity and epistemology and this is mostly about the representation of sexuality, reproduction and personal law, then those areas of life are the ones which are most influenced by culture. Catholicism, for example, has norms about when, why and with whom someone can have sexual intercourse. More precisely, from a Catholic point of view, it is only morally acceptable to have sexual intercourse with someone from a different sex, following the Catholic marriage ceremony and for the purpose of reproduction.

Finally, for Okin, the third feature of culture is that most cultures are gendered, patriarchal and heterosexist. More precisely, Okin affirms that from a feminist point of view, the power of cultural groups is usually distributed in a patriarchal, heterosexist and gendered way. This means that, in her view, most cultures have strong and fixed gendered roles that favour or advantage elder heterosexual men and disadvantage women, younger males and non-heterosexual members (Okin, 1998a, pp. 664, 667; Okin, 1999a, pp. 12–13). Consequently, according to Okin, cultures are internally discriminatory and the power holders are usually the elder heterosexual males, whereas younger members, especially women and LGBs, have little power within the culture. For instance, in broad terms, within the Hutterite community, the

Elders, who are always the older heterosexual males of the community, make the most important decisions. Generally speaking, in the Catholic Church and in Islam, only heterosexual men can occupy the post of power, that is, of being a Priest or an Imam, respectively. Hence, Okin affirms that it is the rule, not the exception that power is centralised on elder heterosexual males. Although the examples provided here refer to specific cultures, in Okin's view, being gendered, patriarchal and heterosexist are characteristics of virtually all cultures. Even the Western majority, Okin argues, has such characteristics, even if to a smaller degree and lesser extent than minority cultures.

By connecting this last feature of culture with the former two features, it can be concluded that, in Okin's opinion, the way individuals perceive sexuality, reproduction and personal law, and the decisions they make about these matters are usually patriarchal, gendered and heterosexist. To rephrase, according to Okin, if it is the case that, first, most cultures are patriarchal, gendered and heterosexist, second, cultures have an epistemological and normative influence on individuals and, third, cultures are about matters of sexuality, reproduction and personal law, then the way individuals behave, make their choices and interpret these matters is a patriarchal, gendered and heterosexist one. So, Okin affirms that patriarchal, gendered and heterosexist cultures deeply disadvantage those who have less power within those cultures. By being socialised in such a context, individuals who are socialised in inferior roles will lack the capacity to pursue their economic opportunities, including those related to housing, health care, education and employment (Okin, 1999b, p. 111) as well as opportunities related to sexual intimacy (Okin, 1994, p. 12; Okin, 1998a, pp. 664, 667).

Although the indoctrination just described is an important aspect of Okin's philosophy, she also raises problems that are only indirectly related to this internal aspect of individuals' preferences, capacities and self-image. For example, she also argues that there is less freedom and fewer opportunities for LGBs. Non-heterosexual individuals have much more restrictions than heterosexuals in their lives; namely, restrictions that include dress codes, social activities, employment opportunities and so forth (Okin, 1998a, pp. 681–682). So the discriminatory practices do not only have a mental impact, they also perpetuate inequality by restricting and disadvantaging internal minorities (in this case LGBs) from accessing

resources and social life in general. For instance, there may be fewer jobs available for LGBs because employers do not want to hire them. On top of this, Okin is also worried about LGBs' physical integrity; they may feel intimidated about leaving their culture or acting against cultural norms due to being afraid of physical harassment and punishment. For these reasons, Okin worries that gendered, patriarchal and heterosexist cultural norms, beliefs and practices, as well as the policies that protect those cultures can reinforce injustices within the group. She worries that multicultural policies reinforce power differences and, as a result, enable a variety of forms of oppression and discrimination within the group.

Owing to the fact that Okin mostly writes about how gendered cultures can undermine the status of women, it may not be immediately clear that this theory is relevant to the main demographic of this thesis, namely, LGBs within minorities. However, there are three reasons why what has been explained is relevant for LGBs within minorities. The first reason is because LGBs are, in part, a sexual group; hence, if cultural norms are mostly linked to the control of sexuality, reproduction and personal law, then these norms also have an epistemological and normative effect on LGBs. For example, an arranged marriage between a man and a woman may force a gay man to marry someone whom he does not feel attracted to. The second reason is that even though Okin mostly mentions that cultures are gendered and patriarchal, she also mentions that cultures are heterosexist; that is, when she explains the nature of cultures, she also mentions that many cultures have heterosexist characteristics; therefore, the protection of heterosexist cultures also has implications for LGBs. The third reason why this is relevant for LGBs is because, according to Okin, patriarchal gendered roles are correlated with negative attitudes and the discrimination of LGBs. In her article *Sexual Orientation, Gender, and Families: Dichotomizing Differences* (1996), Okin tries to make a link between heterosexism and her defense of gender-free practices; this was especially developed in her book *Justice, Gender and the Family* (1989). Okin (1996, p. 30) which argues that there is a link between sexism and heterosexism:

“(...) the dichotomizing of masculine and feminine attributes and the privileging of the former are closely related to the stigmatization of homosexuality. Consequently, to the extent that a theory of social policy aims at reducing gender by which I mean the social salience and

institutionalization of sexual difference – it is also likely to reduce heterosexism” (Okin, 1996, p. 30)

The reason why Okin thinks that the dichotomization of masculine and feminine attributes are linked with heterosexism is because LGBs are perceived by heterosexists as violating gender roles. Indeed, Okin (1996, p. 32) affirms that LGB individuals are seen by homophobes as “not fitting into prevailing gender stereotypes, for being, for example, effeminate men or pushy or emasculating women”. So, Okin’s point is that an anti-feminist culture has a negative impact on LGBs due to the fact that patriarchal and gendered views create stereotypes about how men and women should behave sexually. On top of this, heterosexists usually consider that this violation of gender roles is a threat to the patriarchal hierarchy of the family. Okin anticipates this criticism to her theory by turning to Ancient Greece, where male homosexuality was celebrated, but where society was also gendered. So, in this case, Ancient Greece was simultaneously a gendered society and a society that accepted homosexuality. However, Okin gives two responses to this. First, she responds to this by stating that the homosexuality celebrated in Ancient Greece was itself gendered. Homoeroticism was only acceptable if younger boys took the role of women (the passive role), with elderly men exclusively taking the role of men (the active role): “Greek homoeroticism was almost entirely between adult men and boys, who were frequently thought of as feminine or as playing the sexual role of women” (Okin, 1996, p. 36). Second, only same-sex relationships between men were acceptable, but not between women; hence, there was still some heterosexism towards lesbians.

It is important to notice that Okin does not systematically approach the situation of LGBs within minorities. She only theorises LGBs’ discrimination in general, situating them as members of the larger society. Nevertheless, because Okin affirms there is a link between gender oppression and heterosexist oppression it is a logical implication that the same arguments used about women within minorities can be used about LGBs within minorities. More precisely, it can be explored how cultural norms, beliefs and practices can mean that LGBs within minorities are not treated as full human beings, but instead have many of their interests jeopardised, for example, in terms of: physical and psychological integrity, economic opportunities, education, employment, housing, credit, health care, food, sanitation and protection of sexual

intimacy.

Here it is important to separate between the two kinds of impact that, in Okin's view, cultures may have in indoctrinating and/or treating individuals as less than human. One way that LGBs can be treated as less than human is by cultural practices that disrespect physical and psychological integrity and sexual intimacy. Some examples are sexual conversion therapies, like the one Samuel Brinton, the former member of the Southern Baptist Church, underwent, and corrective rape, as experienced by some individuals from South Africa. Sometimes, these practices are so violent that they also undermine LGBs' interests in health care, food and sanitation (as in the case of Paola Concha in Ecuador). In some cases, according to Okin's philosophy, individuals may internalise the desire to submit to these awful practices as a result of heterosexist socialisation. Hence, they may start desiring to be harmed so that they correct what they understand as their perversion and go against their own interests as a result of the enculturation they are subjected to. In terms of employment and economic opportunities, some groups may deny specific jobs to LGBs. The Boy Scouts of America, which is a Catholic organisation in the United States, fired James Dale from his position as a Scoutmaster, when they found out he was gay (Susman, and Hennessy-Fiske, 2013). Carla Hale was a teacher at a Catholic school and was also fired when the board of the school found out she was lesbian (Viviano, 2013). Again, in Okin's view, indoctrination may occur and jeopardise LGBs' interests in pursuing economic and job opportunities. Heterosexist socialisation, from Okin's viewpoint, may lead a LGB person to abdicate from taking a job due to the fact that his/her culture characterises him/her as someone who is not suited for that kind of profession. Thus, those cultures that characterise LGBs as incapable of working with children instill this idea in LGBs' minds, making them incapable of taking advantage of any such opportunity. Education can have a negative impact on individuals in a variety of ways. If education is mainly heteronormative and constantly rejects same-sex relations, then individuals may internalise homophobia and live with guilt about their sexual preferences and desires. Hence, self-hate, or demeaning images of the self can result from a heterosexist education. In Okin's view, certain kinds of education provision can also undermine individuals' capacity to exit the group. If individuals are not given any education at all or if their education is based solely or mostly on a religious text (*e.g.* central to the Hasidic Jews education is the study of

the *Torah*) then individuals will not have the skills to find a job outside the group. Hence, for material reasons they are not able to exit.

According to Okin, the whole process before and during marriage can also play a strong role in individuals' well being (Okin, 1989). In the process prior to marriage, individuals may create cultural expectations about who they can marry, how many children should have and when. Hence, Okin affirms that in most cultures there is a lot of pressure on women to become housewives, abdicate their education and take care of their families. For bisexual men and women, this can mean a total erasure of one side of their identity and a need to hide their sexual history from their partner, perhaps also affecting the ability of the bisexual person in the relationship to hide certain friends from their partner. For lesbians, all these expectations are likely to cause a high level of pressure and guilt about their sexual orientation. The cultural roles determined for men can also be harmful for gay males. These cultural roles include the number of expectations that are put on males: they should be the income providers, they should behave in a 'manly' way and so forth. Like in the case of lesbians, these are likely to cause self-hating feelings, guilt and so forth for those males who do not fit this stereotypical role, or want to. On top of this, from Okin's perspective, arranged marriage is a common practice in many cultural minorities. Arranged/involuntary marriages have a negative impact on both homosexual women and men. Parents coercing gay males to marry women and gay females to marry men will in both cases force LGB individuals into an arrangement they do not want to enter. Moreover, the strong expectations of marriage that parents have are likely to create a feeling of guilt in their offspring. During marriage, it is very possible that lesbians will not have the conditions for exiting. Okin affirms that in most cultures their main responsibility is likely to be taking care of the family and they may not have pursued a career. Hence, they will not have the material conditions for exiting, and consequently, are less likely to exit (Okin, 2002, p. 218). An important aspect to take into consideration here is how Okin opposes culture and agency. Okin theorises agency as the opposition to follow one's culture. Individuals are not indoctrinated or constrained so far that they do not follow gendered norms. If they follow gendered discriminatory norms, then this means they have a false consciousness. In short, agency is formed in opposition to culture.

3.2 – Liberal Feminism, Gender-Free Society and Group Rights

Okin believes that liberalism is the best solution to the issues just explained; for Okin (1999b, p. 119), the goal of liberalism is to ensure that individuals are able to pursue the good life: “Liberalism's central aim, in my view, should be to ensure that every human being has a reasonably equal chance of living a good life according to his or her unfolding views about what such a life consists in”. Therefore the liberal state is committed to protecting and promoting the list of universal interests mentioned by Okin: physical and psychological integrity, economic opportunities, education, employment, housing, credit, health care, food, sanitation and protection of sexual intimacy. Okin believes that her feminist style of liberalism fulfills this function well. This liberal feminism is one that is informed by the concerns mentioned above, *i.e.*, it is one that takes into consideration the fact that gendered stereotypes may be problematic for achieving these universal interests. More particularly for the topic discussed in this thesis, Okin believes that this liberal feminist stand would take into account the experiences of those, like LGBs, who are victims of gendered and heterosexist cultures. From Okin’s point of view, this kind of liberalism is aware of the power differences within groups that create injustices; it is a requirement of justice to address these injustices and try to achieve justice within groups.

From Okin’s point of view, a liberalism that is informed by these concerns would promote policies that aim at eliminating gender. The reason why it is relevant for LGBs to eliminate gender is because, according to Okin, an important source of injustices towards LGBs in society in general, and within groups in particular, is the existence of gendered stereotypes. As explained in the previous section, Okin believes that there is a correlation between gendered stereotypes and heterosexism; this, in turn, causes negative attitudes towards LGBs. Subsequently, internalised homophobia is translated into indoctrination and a smaller number of opportunities to support universal interests are available to LGBs. In Okin’s view, policies that aim at eliminating gender would tackle this important source of injustice. More precisely, if there are no predefined gender roles, then LGBs will not be violating any gender code by behaving in what may be considered an inappropriate way. As a result of this, individuals will not hold any preconceptions of how men and women should be. Consequently, there would be less or no prejudice, in general terms, against LGBs. The absence of prejudice, an important source of heterosexism, would, in turn,

increase the opportunities available for LGBs to have access to their universal interests. Moreover, LGBs would not internalise homophobic views of themselves. The gradual elimination of gender would lead to a gender free society, which is the ideal society for Okin. According to Okin (1989, p. 171), a gender free society is one that “in its social structures and practices, one's sex is of no more social relevance than one's eye colour or the length of one's toes”. A gender-free society would be one where individual features would not be associated with gender. The category of ‘gender’ would not be used to evaluate, categorise or discriminate against people (Okin, 1996, pp. 32–38). In such a society, sex roles and expectations about sex and sexual behaviour would disappear. Hence, the way one acts, dresses, etc. would not be associated with one’s gender or sexual orientation. That is to say that there would be no assumptions of what it is to be male or female and there would be equality in every sphere of life. Therefore, the policies of liberal feminism would be ones that would eliminate gender from all attitudes and institutions of society.

This kind of gender free social setting should be equally applied to majority and minority groups. Put differently, the standard for majority and minority groups is the same: all should gradually become gender-free and non-homophobic because any society and culture with these characteristics is automatically unjust. With respect to the majority, there is a moral duty that the institutions and the social environment is heterosexism free. In general, Okin argues that same-sex relationships are usually more egalitarian than heterosexual ones; for according to her, same-sex couples are more likely to share paid and unpaid labour and to share equally than heterosexual couples (Okin, 1996, p. 55). Hence, although she does not mention same-sex marriage, it is possible to conclude that in a gender free society LGBs and heterosexuals should be free to marry. As a consequence, there should not be anti-sodomy laws persecuting same-sex intimacy, for same-sex intimacy is a key aspect of same-sex relationships and anti-sodomy laws are incompatible with gender-free views of sexuality. Okin also seems to consider it acceptable for LGBs to adopt. She has affirmed that there is no evidence that LGBs cannot raise children. Furthermore, Okin (1989, p. 5) has stated that “nothing in our [women’s] natures dictates that men should not be equal participants in the raising of children”. On top of that, if gender is irrelevant in a gender-free society, there should be no difference if the child is raised by a lesbian, a gay or a heterosexual couple. These are some of the LGB

interests that Okin mentions, but this does not mean that she would approve inequality in terms of the distribution of basic civil and political freedoms, etc. In a gender free society, there would be no differences in rights, unless they aim at equalising the status of individuals who were previously worse off. An additional policy that is a moral duty of the state is to tackle gender stereotypes, as they are an important source of heterosexism. In Okin's view, the institutions and social environment of minority groups should follow the same trend. The social structure, institutions and practices of cultural minorities should gradually cease being heterosexist. If they are heterosexist, they should be gradually transformed. This means that state policies should aim at tackling gendered LGB stereotyping, try to make the social environment more accepting of LGBs and ban practices that disadvantage or subordinate LGBs within minorities, like employment and welfare discrimination, honour killings, sexual conversion therapies, corrective rape, shunning, ostracism, violation of basic civil and political rights, etc.

In order to achieve a gender-free society where the majority and minorities have eliminated their heterosexist beliefs, practices and institutions, Okin suggests that the state should adopt anti-discrimination laws that prevent discrimination based on gender; she also contends that the state should engage in a considerable redistribution of resources that permit individuals to pursue their life plans and be treated equally. However, even if there are anti-discrimination policies and basic rights and liberties are formally assured, Okin contends that inequality and the discriminatory practices against LGBs that occur within the private sphere constrain their choices and affect their well being (Okin, 1998a, pp. 677–680). The social roles that are formed in the private sphere, especially in the family, can affect individuals' choices and undermine liberal values. Treating individuals unequally in the private sphere undermines their rights because it does not allow them to enjoy their rights and freedoms for the reasons mentioned above. This leads Okin to conclude that the protection of basic rights and liberties is not sufficient to ensure the equality and freedom of women. Therefore, in order to achieve a gender-free society, the state should also make policies that target gendered stereotyping and reduce power differences in the private sphere. It is difficult to go into detail as to what this would mean in practice, but one of the suggestions Okin makes is that property and economic resources connected to the household be equally divided between the

members of that household. Even though the methodology suggested by Okin consists of affirmative action, the final goal is transformation. Okin wishes to deeply transform human experience so that social reality becomes different enough for gender to not even be thought of as a problem. This is not in the sense of ignoring gender differences; rather this means that the final objective is that gender becomes so irrelevant that individuals would not even think that it could be a problem of justice.

The gender-free society objective also has implications for group rights. In Okin's view, group rights that preserve gendered cultures are not helping individuals to become free of oppressive socialisation and discrimination. From her point of view, such rights, in general, reinforce internal vulnerability because they legitimise and institutionalise oppression. So, in her view, group rights often contribute to the subordination and oppression of their LGB members; for by having group rights, the most powerful members have, according to Okin, state-sanctioned authority to preserve the heterosexist, gendered and discriminatory practices that affect LGBs. For instance, if groups are given the freedom to implement their own education curriculum and this curriculum includes a heterosexist styled form of education, this would reinforce heterosexist stereotypes within the group. It is important to say that Okin is not necessarily against group rights per se. She thinks that if the culture is totally liberal, group rights can be accepted, but only if all individuals are fairly included in decision making around group norms (Okin, 1998a, pp. 677–678; Okin, 1999a, pp. 22–24). A requirement for groups to be conceded special rights is that these groups should be internally democratic, *i.e.*, all members should be fully represented in the decisions of practices and norms. So for Okin (1999b, p. 24) “Unless women—and, more specifically young women (since older women often are co-opted into reinforcing gender inequality)—are fully represented in negotiations about group rights, their interests may be harmed rather than promoted by the granting of such rights”. These are good criteria for judging the fairness of providing rights to groups and in chapter 4 I will use it in conjunction with other criteria to explain when group rights can be considered justified.

3.3 – Stereotypes, Social Meaning, Context and Agency

Okin is clearly aware that some minority groups' practices are heterosexist and that this may have negative practical implications for the LGB individuals who are members of these groups. Okin rightly affirms that for liberalism to adequately respond to these injustices it should be informed by LGB individuals' lifestyles so that it tackles the kinds of injustices that LGBs are party to. For this reason, Okin's version of liberalism has the merit of taking the design of institutions, including the idea that these institutions have to be inclusive and informed about LGBs within minorities' interests and experiences, as its starting point. An implication of this is where Okin rightly rejects cultural relativistic points of view that accept abuses towards LGB members in the name of culture. Okin correctly points out that the mere fact that an LGB individual belongs to a minority culture does not mean that that person should be less protected from heterosexism. Consequently, minority groups cannot be completely exempt from respecting the fundamental rights of individuals. For this reason, Okin rightly affirms that group rights are acceptable, but that these group rights cannot simply be conceded to groups uncritically; liberals should assess whether group rights will institutionalise heterosexism or not and then decide whether or not to concede them. In addition, liberals should make sure that groups are internally democratic. This view contrasts with, and it is more coherent than, what was discussed in the critical analysis of Kymlicka. Kymlicka is willing to give self-government rights to national minority cultures simply due to their group nature, while Okin's criteria for group rights is more rigid and coherent. Group rights are acceptable if and only if they do not reinforce internal injustices and, in this case, heterosexist injustices, and if decisions in the group are taken democratically.

Another important aspect of Okin's theory is her relation between gendered stereotyping and homophobia. Okin is correct when affirming that gendered beliefs are a source of heterosexist attitudes. She correctly points out that this not only affects the behaviour of homophobes but also the behaviour of LGBs who suffer from homophobia. Gendered stereotyping about homosexuality remains the source of homophobes' negative attitudes and can be related to employment and welfare discrimination, hate speech, hate crimes, etc. So, if heterosexism is to be tackled and if the goal is to have a heterosexist free society, then the state ought to engage in policies that attack the source of heterosexism. Notwithstanding, Okin's focus on

tackling gendered stereotyping is important and she rightly affirms that these are an important source of heterosexism, however, there are other kind of stereotypes which are also strong important sources of heterosexism. Put differently, there are other variables that influence heterosexism besides the dichotomisation of masculine and feminine. Sunder (2000) explains that, in some cases, negative views about LGB individuals result from an essentialist perception of culture characterising each culture as internally heterogeneous and each one as radically different. In order to demonstrate this, Sunder discusses the negative response in India to the film *Fire* directed by Deepa Mehta (2001). The main plot of this film is about the erotic love between two Hindu middle class sisters-in-law in contemporary New Delhi. When this film was broadcast in Indian cinemas, many Hindu Indians protested against it being shown. However, the reason for the protests was not because there were scenes of lesbian erotic love in the film; rather, the reason why protestors wanted to take the film out of the cinemas was because they considered that it misrepresented middle-class Hindu culture. According to these critics, *Fire* wrongly pictured lesbianism as a middle-class Hindu phenomenon which is, in their view, an inauthentic cultural representation. In some of these critics' views, lesbianism is a Western phenomenon and those who engage in such acts are, in a way, cultural traitors, rather than traitors against gender norms (Dasgupta, 1998; Sunder, 2000, pp. 77–90; The Times of India, 2009).

Underlying this perception of lesbians as cultural traitors, there are two assumptions being made. The first is that there is a radical difference between 'the West' and 'Indian culture'. In the interpretation of the aforementioned critics, lesbianism is a Western phenomenon that is radically different from Indian phenomena. The second assumption is that culture is internally homogeneous and that there are authentic and inauthentic views of what culture is. According to this second assumption, there is only one right way to interpret culture and internal diversity is nonexistent. More precisely in this case, the interpretation that lesbianism can be considered a middle-class Indian Hindu phenomenon is ruled, by the critics, as a plausible interpretation of culture. So, although Okin is right that tackling heterosexist injustices requires eliminating the dichotomy between masculine and feminine, this is insufficient; there is also the need to address essentialist understandings of culture that exaggerate dichotomies between cultures and rely on the idea that there is some sort of internal

homogeneity. For this reason, in order to eliminate heterosexist beliefs, policies should encompass not only the elimination of gendered views but also of essentialist perspectives on culture.

This other important source of heterosexism is not necessarily a problem to Okin's theory. Broadly speaking, her theory is that stereotyping is an important source of heterosexism and that the way to tackle heterosexism is by addressing the stereotypical practices that underlie it. Due to the fact that essentialist conceptions of culture are the result of stereotyping, then if Okin's goal is interpreted as not just to eliminate gender stereotyping but stereotyping in general, then this other form of heterosexist prejudice does not pose a problem to her theory. In fact, it reinforces her idea that to tackle heterosexism it is necessary to eliminate stereotyping. It reinforces her theory because it rightly acknowledges that eliminating stereotyping is an important process for the eradication of heterosexism.

Nevertheless, various critics of Okin's philosophy have contended that her theory and approach to justice within minorities relies itself on some stereotyping of minority cultures and endorses a kind of ethnocentrism. Even though Okin does, in fact, endorse a kind of ethnocentrism, it is important to point out that some of the accusations of ethnocentrism in her work are a misreading of her philosophy. Some critics of Okin accuse her of endorsing an Enlightenment attitude of cultural superiority, arguing that she unfairly ranks the values of Western majorities above the non-Western cultures; some critics affirm that her view is therefore ethnocentric and she ignores that her own (Western) culture, making her argument full of prejudice, sexism and heterosexism (Dossa, 2005). These criticisms of ethnocentrism are, generally speaking, a misreading of Okin's philosophy. Before Okin turned to the topic of multiculturalism in the nineties, she occupied much of her time criticising Western cultures for being gendered. This is especially noticeable in her book *Justice, Gender and the Family* (1989), where she not only makes reference to a number of cultural Western practices that she considers sexist, but also criticises political theorists like Nozick for excluding gender from their theories. In addition, in her article *Sexual Orientation, Gender, and Families: Dichotomizing Differences* (1996), where she argues in favour of a society free from heterosexism, she is mainly referring to Western culture, rather than to minority culture. Bearing this in mind, the idea that Okin adopts a kind of superiority approach to multiculturalism is false.

However, there is another kind of ethnocentrism that critics rightly identify in Okin's philosophy; some critics assert that Okin makes unfair generalisations about minority cultures, classifying them as oppressive, gendered and heterosexist, without a detailed and contextualised assessment of their specificities. Furthermore, she is accused of having a paternalistic attitude, believing that members of minority cultures do not know what is best for them. In one of the last articles she wrote before passing away, Okin rejected these accusations; explaining (2005, p.72) that in the previous papers she had written about multiculturalism and feminism, she did not simply take the paternalistic attitude of asserting that multiculturalism is bad for women, and did not make superficial generalisations about cultures out of context:

“I should probably have vetoed the more provocative title, avoiding the impression created even by posing in such a stark and simple form a question that is not only complex but that one cannot answer in any depth without taking account of the particular context in which it is asked. However, I thought it was clear in the text of both versions not only that I consider the answer to be far from simple, but also, and even more importantly, that I do not think the answer is mine to spell out in any detail. I conclude both papers by suggesting that those in the best position to answer it, in each specific context, are the women who are at the intersection of the issue – those within whatever minority cultural or religious groups are claiming group rights as necessary to preserve their group values and ways of life. In light of misunderstandings by some of the original commentators, I clarified this further in my simultaneously published response to their comments” (Okin, 2005, p. 72).

In this passage, Okin makes two important claims. First, the answer to whether group rights and cultural norms are harmful or not is something that should not be assessed out of context. It is a requirement for assessing the oppressiveness of a norm or practice to contextualise them; for the oppressiveness of a norm is not as straightforward as it may appear. Second, the individuals within minority groups are the ones who are in the best position to affirm whether the norms and practices of their group are oppressive. I am largely sympathetic with these claims; however, even though in this passage Okin endorses these views, the evidence in her work suggests that she may endorse the opposite philosophy to which she describes here.

So, although she affirms that she steps away from this kind of ethnocentrism, some aspects of her theory do, in fact, rely on this second kind of paternalistic ethnocentrism, one that is uninformed by the context of cultural practices and beliefs. With regards to the contextualisation of culture, as explained in the outline of her work, Okin (1999a, p. 14) affirms that most cultures are gendered and heterosexist and they aim at controlling the most vulnerable members: “Most cultures are suffused with practices and ideologies concerning gender”. Okin (1999a) also affirms that “Many of the world’s traditions and cultures, including those practiced within formerly conquered or colonized nation states – which certainly encompasses most of the peoples of Africa, the Middle East, Latin America and Asia – are quite distinctly patriarchal. They too have elaborate patterns of socialization, rituals, matrimonial customs, and other cultural practices (including systems of property ownership and control of resources) aimed at bringing women’s sexuality and reproductive capabilities under men’s control” (Okin, 1999a, p. 14).

This generalisation of what cultures are seems to lack the detailed and contextualised assessment of cultures that Okin affirms to endorse. She seems to put aside hermeneutical interpretations of the meaning of cultures and instead interpret practices out of context, and rather immediately characterises practices as oppressive. Moreover, some of the examples she uses for proving that cultures are gendered seem to be forced. Okin’s examples regarding homosexuality are scarce because she occupies most of her time dealing with gender. In the case of Christianity, Okin suggests that the myth of the creation of Eve symbolises the secondary role of women in the Christian tradition (Okin, 1999a, p. 13). However, it is worth asking, what about the fact that Mary, mother of Jesus, is one of the central and most important figures in the Catholic Church? For Catholics, Mary seems to be more important than Joseph, the Apostles, the Priests, Saints and other male figures in the Church. On top of this, the passages in the Bible referring to Jesus Christ’s life reveal that he treated women with respect and as equals; perhaps the most illustrative examples of this is Jesus Christ’s defence of Mary Magdalene and the fact that she travelled with Jesus as one of his main followers. Forasmuch as Okin makes generalisations about the nature of cultures and provides examples that are not clearly sexist, she is stepping away from the contextualised approach that she insists that she is endorsing. This also reveals that Okin does not seem to endorse the other

idea of the passage mentioned above; that is, she does not seem to endorse the idea that the oppressiveness of a norm is not as straightforward as it may appear. One of the reasons why she seems to not endorse this idea is that in general terms, Okin sometimes makes superficial comments about the beliefs and practices of some minorities and immediately classifies them as oppressive, as in the recently cited example of Christianity.

Another reason why Okin seems to step away from this second idea is because she never mentions the multiplicity of meanings that practices may have, which is an essential aspect of this theory whereby practices are not straightforwardly oppressive. Cultural practices and attitudes can have a multiplicity of meanings. What can be considered heterosexist or barbaric in one culture may be something completely different in another culture; so to understand the meaning of the practice or an attitude one has to determine its social meaning. The symbolism that attitudes or practices have for an individual has implications as to whether the norm is oppressive, heterosexist or not. Hence, when prohibiting a practice, the state needs to take the meaning into consideration. Owing to the fact that the social meaning of a practice is important for judging its impact on individuals, deciding whether an attitude or a practice is oppressive or not is not as straightforward. Consequently, according to the impact it has on individuals, banning it may be justified or it may not (Anthias, 2002, pp. 278–280; Dossa, 2005, pp. 643–644; Ghobadzadeh, 2010, pp. 304–305; Marranci, 2004, p. 115; Mautner, 2008, pp. 619–620; Phillips, 2007a, pp. 10–12). To think about this further, compare the practices of sexual orientation profiling in some Gulf countries and in some of the *Yuman* tribes. Bisexuals in the *Yuman* tribes are called *berdaches* and their bisexuality is celebrated as something good, with bisexuals fulfilling a sacred role within their culture. However, before they are classified as *berdaches*, there is a ritual that has to take place. In this ritual, the members of the tribe put the child being tested in a small bush enclosure, where there are displayed a man's bow and arrows, and also a woman's basket. Then the members of the tribe set fire to the enclosure and when the child runs away, depending on the object the child takes, his or her sexual orientation is revealed: if the child is male and takes the woman's object it means he is a *berdache* and if the child is female and takes the man's object, it also means she is a *berdache* (Gifford, 1931; Herdt, 1997, pp. 123–124; Williams, 1988, p. 24). In this case, the profiling of sexual

orientation is not a harmful practice for bisexuals because it has a positive social meaning: it aims at celebrating a sexual orientation identity category.

Now, compare this with a similar practice in Qatar. Recently, the government of Qatar announced that tests to detect gays will be carried out at airports in order to ban them from entering the country (Sieczwoski, 2013). In this case, this is a profiling of sexual orientation that may be considered an intrusion in someone's life, and, even worse, a way to identify LGBs so that they can be discriminated against. A similar profiling practice has therefore an extremely different meaning according to the culture in question. What is heterosexist in Qatar's culture is not heterosexist in *Yuman* culture. So unless the social meaning of practices is comprehended the practices will not be fully understood and this obviously matters for public policy in the sense of allowing or banning the practice.

A Muslim practice that may be considered heterosexist is the closeting of homosexuality; some Muslims consider that homosexuality is acceptable, if it is not publicly disclosed by those who engage in it. This can be considered heterosexist from a Western point of view because it seems to repress an important aspect of the personal identity of LGB individuals, who are basically 'silenced'. Nevertheless, sometimes this requirement of not publicly disclosing one's sexuality can be a recognition of the innateness of sexual orientation, *i.e.*, something that individuals cannot choose, and should be concealed to avoid social stigma, ostracism and so forth. In other words, the rationale behind asking LGBs not to disclose their sexuality is that LGBs may be better off and feel less pressured about their sexual identity if they are not exposed to the prejudiced opinions of others (Ali, 2006, pp. 85–91). It may not be always the case that closeting one's sexual orientation is the best option, but this advice does not seem to be heterosexist; rather it seems to be a way of protecting LGBs from negative public reactions to their sexual orientation. The concealment of homosexuality could have a completely different meaning in a different community. In some Muslim communities, exactly the same practice could mean disapproval from the person who gave advice about concealment.

Taking this on board, even though Okin does not seem to endorse her claim that the meaning of practices is not straightforward and that to understand that meaning, context needs to be added, the claim is true: it is not possible to straightforwardly

classify a practice as oppressive and, in this case, as heterosexist. Obviously, the fact that norms have different meanings does not entail that any practice can be legitimate, just because there is a positive meaning underlying it. Even if there were a positive meaning for inflicting electric shocks on a gay person to change his sexual orientation, this would not be acceptable for it would also be a violation of individuals' physical integrity. Having taken this into consideration, it can be affirmed that the contextualisation of practices is essential for understanding whether they are heterosexist or not. Without this context, it cannot be straightforwardly ascertained if practices are heterosexist or not. Following Taylor, a different way to put it is that there should be a presumption of equal value of cultures, and that cultural minorities should be given the opportunity to defend themselves without prejudice; furthermore, cultural practices should not simply be judged and banned without being studied and contextualised. Although Okin affirms that she does this, the evidence in her work seems to suggest the opposite attitude. Therefore, her approach needs to be more contextualised so that it can become closer to how people actually perceive and are affected by culture. In short, she seems to fail to keep to her commitment of assessing the context of practices and not considering oppressiveness a straightforward matter.

It is not clear whether Okin does or does not endorse her claim that the members of minority cultures are the ones who have the knowledge and experience to decide whether practices are heterosexist or not. There are two possible interpretations of Okin's work. The first is that if individuals in general and LGBs within minorities in particular, are victims of oppression and heterosexist treatment within their cultural groups, they will potentially lack the necessary confidence, self-respect, etc., for making meaningful choices. That is, heterosexist behaviour has a paralysing effect on LGBs within minorities that makes them less capable of taking advantage of opportunities. I do not reject this kind of idea. If LGBs within minorities are subject to heterosexist attitudes that involve severe emotional and psychological coercion, they will lack the capacity for taking advantage of opportunities and pursuing a decent quality of life. In other words, LGBs within minorities can potentially internalise heterosexist beliefs about themselves, with this internalisation having a negative impact upon their capacity to be agents. In the case of homophobic attitudes, these can potentially jeopardise LGBs within minorities' opportunities to

access universal interests; many of the issues that LGB individuals face are socio-psychological and taking heterosexism seriously requires that these issues be addressed. Some of these issues include feelings of guilt, self-hate and fear of losing their ties with their family. For this reason, Okin's suggestion of eliminating gender stereotypes is extremely important; for in this process, although she does not explicitly say it is an educational one, LGBs and homophobes are not immune from a critical assessment of their own views about homosexuality. This idea will be very useful throughout the thesis because if stereotypes have such a strong impact on LGB individuals' interests, then there is a moral duty to protect these interests by tackling them. If this is the correct interpretation, this does not go against the idea that the ones affected by a norm should be the ones to decide whether the norm is oppressive or not and it is, in fact, a plausible observation.

However, the second possible interpretation of Okin's philosophy seems to be more problematic and to betray Okin's idea that members of minority cultures are the ones who are in the best position to decide about the oppressiveness of a practice. This interpretation is that Okin claims that individuals can be socialised to the extent that they will radically adapt their preferences to their circumstances. The socialisation may be so extreme that some options become unthinkable, even those options that refer to universal interests. To give an example, when referring to the option of a woman existing a group that oppresses her, Okin affirms the following:

“To call on the right of exit as a palliative for oppression is unsatisfactory for another reason, too, for in many circumstances, oppressed persons, in particular women, are not only less able to exit but have many reasons not to want to exit their culture of origin; the very idea of doing so may be unthinkable” (Okin, 2002, p. 207)

In particular, LGBs within minorities who are socialised in a heterosexist context will, in Okin's view, adapt their preferences to this context to the degree that they start expressing preferences that go against what they really desire. In other words, as a result of heterosexist socialisation, LGBs within minorities become subjects without agency, controlled by culture, with all their behaviour explainable by cultural indoctrination and not by rational decision making. Okin does not explore what this would mean in practice for LGB individuals. However, it seems that, in

practice, it would mean that they would start preferring to not have a relationship and sexual intercourse with individuals of the same sex, a family, certain jobs and exit the group. Furthermore, it is an implication of Okin's interpretation that, in some cases, LGBs will start believing that they want to submit to practices of sexual conversion therapy involving physical punishment.

I strongly oppose this conception of agency that pictures individuals as victims without agency. The first comment to make about Okin's argument is that although she says that pursuing different life options is unthinkable for these individuals, leaving the group, getting married with someone of the same sex, etc., Levy (2005, p. 177) observes that "countless gays and lesbians do and have done [this] for many years". In fact, many individuals, LGB or not, who are dissatisfied with the way that group is structured and the way they are treated do just leave. For example, the gay man, James Schwartz, left his Amish community even though he lost contact with his family and friends (Huffington Post, 2012). In his book *Gay Male Christian Couples – Life Stories* (1997), Andrew Yip mentions a number of gay men he interviewed who rejected, in part, their religion in favour of a homosexual relationship. Although Nathan Phelps, the son of Pastor Fred Phelps, does not define himself as gay, he exited the Westboro Baptist Church and is now an LGB rights' activist (Hannaford, 2013). As these examples suggest, pursuing new life options is thinkable, possible and available. This does not mean that the choice is an easy one; it may be very difficult and it depends on a variety of factors. However, I will not explore what kinds of costs groups can impose on their members in this chapter; these will be discussed in the next chapter, informed by Barry and Kukathas.

Second, if this interpretation is correct, then Okin is endorsing an incoherent form of group-based determinism; according to her view, individuals are culturally endowed and incapable of choice; individuals are either agents or victims without agency. It seems that, in her view, individuals are either able to choose or not. However, although individuals are influenced by culture, there are levels to this; that is, cultural influence and agency should be understood as a matter of degree. It is an exaggeration to affirm that those LGBs who are socialised in a heterosexist environment are not capable of conceiving an emotional or sexual attachment to someone of the same sex, getting married with someone of the same sex, forming a family, and so forth. People do conceive a different kind of life and do know the

difference between wanting to pursue a homosexual life style and remaining a good faith member of their community (Anthias, 2002, pp. 278–280; Gressgård and Jacobsen, 2003, pp. 70–72; Phillips, 2007a, pp. 29, 30, 148,149; Ponzanesi, 2007, pp. 95–96; Volpp, 2001, pp. 1193 –1195). In fact, if a certain individual does not even conceive of being LGB, that probably means that this individual is not LGB; for this kind of ‘conceiving’ is involuntary and does not depend on cultural socialisation. Hence, it is an exaggeration to affirm that individuals are unable to think about alternative lifestyles. This means that those LGB individuals who remain members of their communities, who prefer not to form a family or engage in any kind of same–sex activity are not necessarily indoctrinated; rather, this can be a rational decision made by those individuals. Put differently, a LGB person who decides to favour his/her culture over his/her sexual orientation is not necessarily a subject without agency who is being controlled by culture. Nevertheless, Okin is right to affirm that some choices would not be made unless individuals were being coerced or indoctrinated. In particular, choices involving extreme physical harm and health issues seem to be the result of such a problem. For example, LGBs who ‘voluntarily’ submit to torture, inhuman sexual conversion therapies which involve electric shocks, self–inflicted harm, lack of sanitation and water, would not make these choices unless they were being coerced or were extremely indoctrinated. It is difficult to imagine that this degree of indoctrination exists; but if there are cases like these, Okin is right. What she is not right in claiming is that this is the rule and not the exception.

Third, the indoctrination theory that Okin endorses seems to be opposing the socialisation that occurs in a gendered and heterosexist culture, and the option to enter a gendered and heterosexist culture with the capacity to be an agent. Such a conception of agency, which is based on the antagonism between freedom and socialisation and the choice of living in a gendered and heterosexist culture is quite limited and does not allow for the understanding of the agency experienced by those living outside non–liberal traditions; for it excludes a priori the agency of those who choose to live illiberally and also excludes non–liberal agency (*e.g.*, religious agency). When Okin defines agency as opposed to following a heterosexist and gendered culture, she is, without justification, excluding those who decide to live that way. Nevertheless, it is not incoherent to believe that someone can decide to live that

way (Ghobadzadeh, 2010, p. 86; Mahmood, 2005, pp. 210–212). Individuals can decide to remain in their heterosexist cultures because they prefer that way of life to alternatives.

In order to illustrate how individuals can be agents within their cultures and see sources of value in their cultures consider the case of Jimmy Hales, a Mormon student at Brigham Young University, Utah in the US, who has recently come out as gay. Jimmy Hales decided to come out and film the reaction of members of his family, community and some friends, when he revealed them his sexual orientation; he posted the video on Youtube and as a result he was interviewed for a number of newspapers and TV shows. Having into consideration the interviews he gave, the videos he posted and his writings in his blog, it seems that he is not unaware of the possibility of living as gay outside his community. Neither it seems that his decision is the result of indoctrination; rather, he seems to be making an informed choice. Even though his choice is an informed one, he has chosen to have a celibate life because he sees more advantages in it – like religious fulfillment (Bennett–Smith, 2013; Hales, 2013). In cases like that of Jimmy Hales, perhaps the way to look at the option of remaining a member of such a community should be seeing it as a trade–off. Potentially, Jimmy sees sources of value in those illiberal communities that is not witnessed in more liberal communities. That is, by comparing different values (family relations, sexual intimacy, spiritual fulfillment, etc.) he may have actually chosen to be celibate. Bearing in mind that Jimmy Hales has made an informed and educated choice about his options, there is nothing necessarily wrong about his choice; the fact that he chose to remain a Mormon does not reveal indoctrination. In short, the fact that he decided in accordance with the values of his own culture does not demonstrate he is incapable of making choices. Some individuals who have never lived in a heterosexist community can also decide to join this kind of community. Taking this on board, it can be affirmed that strictly speaking, if this interpretation is correct, then Okin uncritically and too quickly victimises vulnerable individuals within cultures assuming they have no agency. However, it is not necessarily true that individuals have a false consciousness and are incapable of noticing that they are being oppressed (Deckha, 2004: 22–24; Phillips, 2007a, p. 25–26).

Even though Okin adopts this paternalistic attitude towards internal minorities, some

critics exaggerate the degree to which she does this. Some have affirmed that Okin thinks that minority heterosexist cultures should simply become extinct. However, the famous passage of her work that has led some people to affirm this is not as radical as it first seems. Okin (1999a, pp. 22–23) affirms that vulnerable individuals within minorities, especially women “might be much better off if the culture into which they were born were either to become extinct (so that its members would become integrated into the less sexist surrounding culture) or, preferably, to be encouraged to alter itself so as to reinforce the equality of women – at least to the degree to which this value is upheld in the majority culture”. In this passage, Okin favours transformation over extinction. The fact that she does not say that cultures should simply become extinct suggests that she is aware that cultures are a source of value. In fact, many LGBs are profoundly attached to their cultures and would be devastated if their cultures became extinct. Individuals in general, and many LGBs in particular, desire to remain good faith members of their communities, despite the negative aspects of those cultures (Al-Hibri 1999 pp. 44–46; Benhabib, 2002, p. 100; Levy 2000, p. 56; Shachar 2001a, pp. 65–68). Bearing this in mind, Okin’s ranking of transformation over extinction demonstrates that her philosophy does not necessarily imply that the culture of minority groups has no value.

3.4 – Fraser’s Universalistic Theory of Justice: Institutionalisation, Redistribution, Recognition and Representation

Having considered Okin’s theory I will now move to Fraser’s. Fraser’s theory of justice relies on four key ideas; namely, the universal nature of her theory, her eschewing of psychologisation, the principle of parity of participation, and the three loci of justice. These ideas are interesting to explore mainly because they offer a good contrast with Okin’s stereotyping theory as well as Kymlicka’s group rights criterion. Starting with the first key idea, what makes Fraser’s theory universalistic is that, according to her, the theory she defends should encompass all adult individuals. In Fraser’s (1995c, p. 89) view, the reason why her theory should be applied to all adults is because it “presupposes the equal moral worth of [all] human beings”. Fraser believes that her theory of justice is compatible with divergent conceptions and ways of life and is neutral among conceptions of the good (Fraser,

2001, p. 27).

The second characteristic is the eschewing of psychologisation; by eschewing psychologisation, Fraser means that it is outside the scope of justice to judge personal attitudes and the negative consequences of these attitudes to individuals. In her view, justice is not about personal attitudes; rather, justice is about how institutions are structured and how their structure impacts on the status of individuals. For example, the attitude of a homophobic person who refuses to speak to his gay neighbour is not a matter of justice, according to Fraser; contrastingly, if there is a law stating that same-sex marriage is illegal, the discussion about whether this is right or wrong is a matter that is within the scope of justice (Fraser, 2001, pp. 27–28)

Fraser provides four reasons why justice should focus only on institutions rather than attitudes. First, she considers that if theories of justice focused on attitudes, then there would be a tendency to blame the victims of negative attitudes for their status; for example, there would be a tendency to blame individuals for their incapacity or inadequacy to respond to those attitudes. In Fraser's (2003c, p. 31) words, "when misrecognition is identified with internal distortions in the structure of the self-consciousness of the oppressed, it is but a short step to blaming the victim". Second, if theories of justice focused on negative attitudes, Fraser considers that there would also be the tendency to police the minds of the oppressors, and policing the minds of oppressors requires illiberal and authoritarian measures which are not acceptable in Fraser's perspective (2003c, p. 28)¹⁰. Third, according to Fraser, if a theory of justice depends on attitudes, it would be too dependent on the psychological theory explaining those attitudes; as a result, it would be too vulnerable to the psychological theory it relies on being false or not. Hence, in Fraser's view, a theory of justice in general should be independent of empirical theories to avoid this vulnerability (Fraser, 2003c, p. 32). Fourth, in Fraser's (2003c, p. 30) view, a theory of justice should respect ethical pluralism; focusing justice on attitudes would promote a certain "conception of self-realization of the good life". From Fraser's point of view, it follows that such a theory of justice focused on the lifestyle of a certain community would not be universal, neutral and normatively binding.

¹⁰ Fraser does not make a distinction between these two reasons. In her opinion, they are one reason only.

The third feature of her theory is her principle of justice. The principle that, in Fraser's view, better satisfies the universalist requirement of justice is parity of participation. In Fraser's (2007a, p. 27) view, parity "requires social arrangements that permit all (adult) members of society to interact with one another *as peers*". Fraser (2007a, p. 28) emphasises her definition of parity of participation by pointing out that parity of participation is not the synonym of equal electoral representation, equal seats in parliament, etc., indeed "parity is not a matter of numbers. Rather, it is a qualitative condition, the condition of being a peer, of being on a par with others, of interacting with them on an equal footing" (Fraser, 2007a, p.28). In this view, what matters for justice is whether individuals are made incapable of participating on a par with others or not. If certain patterns make individuals incapable of participating in this way, these are to be corrected (Fraser, 2001, pp. 24–25; Fraser, 2003b, pp. 113–114; Fraser, 2003c, pp. 28–30).

In Fraser's (2003c, p. 36) perspective, there are two necessary and jointly sufficient conditions for parity of participation to be satisfied; namely, these are the objective condition and the intersubjective condition, "Both the objective condition and the intersubjective condition are necessary for participatory parity. Neither alone is sufficient". According to the objective condition, the distribution of material resources should not undermine individuals' independence and voice. Some examples of violations of the objective condition given by Fraser (2003c, p. 36) are violations that "institutionalize deprivation, exploitation, and gross disparities in wealth, income, and leisure time, thereby denying some people the means and opportunities to interact with others as peers". Hence, the objective condition requires that the economic structure of society be one that does not violate parity of participation (Fraser, 2001, pp. 29–30; Fraser, 2003c, pp. 36–37).

With regards to the intersubjective condition, what matters for Fraser (2003c, p. 36) is that the "institutionalized patterns of cultural value express equal respect for all participants and ensure equal opportunity for achieving social esteem". In other words, the intersubjective condition is neglected when those institutional cultural patterns systematically depreciate some categories of individuals (*e.g.*, gays, African-Americans) and their characteristics in a way that undermines their equal opportunity for achieving self-esteem. In turn, this inequality of opportunity to achieve self-esteem means that individuals are treated as less than full partners or

peers in terms of social interaction (Fraser, 2007a, p. 27). Some examples of institutionalised norms that depreciate some categories of people and, therefore, violate the intersubjective condition are when the patterns of cultural value treat those categories' individuals in a way where they are, in Fraser's perspective (2003c, p. 36) "burdening them with excessive ascribed "difference" or by failing to acknowledge their distinctiveness". For example, denying individuals the right to same-sex marriage when heterosexual marriage is legal, is an institutionalised cultural pattern which undermines parity by excessively ascribing difference. Another example of this can be seen in Apartheid in South Africa, when there was a radical difference in the treatment of black and white South Africans (Fraser, 2001, pp. 29–30; Fraser, 2003c, pp. 36–37).

The fourth characteristic of Fraser's theory of justice is that, in her view, there are three loci of justice. Redistribution is the locus of justice that refers to socio-economic injustice; more precisely, it refers to how the economics of structure can generate different status for individuals so that there is no parity of participation. Patterns of distribution are unjust when they violate the objective condition, *i.e.*, when the material conditions undermine participation. There is maldistribution when economic structures deny individuals the resources they need in order to interact with others as peers (Fraser, 2005b, pp. 73–75). According to Fraser, maldistribution can take a variety of forms; some of these are exploitation, economic marginalisation and deprivation. Exploitation happens when someone's property is unjustly taken. For example, slavery is a form of exploitation because it takes from the slave something that belongs to him, like the control over his labour power. Economic marginalisation happens when someone's economic opportunities are extremely restricted or nonexistent. For instance, when there is a law allowing discrimination of LGBs by refusing them the opportunity of serving in the army. Deprivation exists if individuals do not enjoy an adequate standard of living. For example, if the salary paid is not sufficient to provide someone with basic sanitation, healthcare, etc., then this person suffers deprivation (Fraser, 2003c, pp. 12, 13, 73; Fraser, 2007a, pp. 25–26).

Recognition has a different focus from redistribution. It focuses on institutional cultural injustices, *i.e.*, institutional social patterns of representation, interpretation and communication. Institutional cultural patterns are unjust when they disrespect

and disesteem some collectivities of individuals in a way that undermines parity of participation. When there are institutional cultural barriers that prevent individuals from interacting with others as peers, then individuals are being misrecognised. For Fraser, misrecognition occurs when individuals are denied the status of full partners in social interaction and also when institutional obstacles to their participation in social life as peers exists (Fraser, 2003c, pp. 12–15, 36). Fraser affirms that this kind of recognition is different from Taylor's. She affirms that Taylor's conception of recognition relies on a psychological theory and that his theory is about preventing individuals from forming ideas of self-hate, whereas her theory is about the legal status of individuals. In other words, according to Fraser, Taylor's theory commits the sin of psychologisation whereas hers does not (Fraser, 2003c, pp. 28–30). However, as is clear from the previous chapter, it is not the case that Taylor's theory is fully reliant on this psychologisation. As explained, this is the case with intimate recognition, but not with public recognition, which refers to a legal status, *i.e.*, to being treated as a second-class citizen.

Some examples of misrecognition in Fraser's style are cultural domination, nonrecognition and disrespect. Cultural domination happens when the cultural patterns of communication and interpretation of the institutions of a society are associated with one specific culture. For example, before Catalonia and Quebec had gained the autonomy to self-govern, their institutions were dominated by the Spanish and English Canadian cultures, respectively. Nonrecognition occurs when individuals are made invisible by institutions. By way of illustration, this happens when there are no institutions corresponding to same-sex families as a result of the assumption that all individuals in society are heterosexual. Finally, disrespect occurs when institutions picture individuals in malign ways or enhance stereotypes about some individuals. For instance, in the 80's, many LGB individuals were pictured as having HIV, when it was not necessarily the case that sexual orientation and HIV were connected.

The political/representation is the locus of justice that refers to the state's jurisdictions and rules with regards to the structures of contestation. The political is the stage where justice struggles (including recognition and redistribution) take place. It is about who is a member of the polity, who can affect political decisions, it is about who can make claims for redistribution and recognition. Therefore, lack of

participation parity, in the political sphere, means misrepresentation. This happens when there are political obstacles or political decisions that deny equal interaction in the political arena. In other words, according to Fraser (2005b, p. 76) “Misrepresentation occurs when political boundaries and/or decision rules function to deny some people, wrongly, the possibility of participating on a par with others in social interaction—including, but not only, in political arenas”. There are two ways of being misrepresented, according to Fraser. First, when political rules deny some individuals the chance to participate (ordinary–political misrepresentation). An example is the majority rule, which excludes the opinions of minorities. The second way to be misrepresented is by the boundary–setting aspect of the political. This misrepresentation consists of misframing, excluding some individuals from the frame of participation. It is about excluding someone as a member of the political community. Immigrants who do not have the right to vote can be given as an example of this kind of exclusion.

Having considered this tripartite classification of the loci of justice, there are some observations to be made about the relation between the three. Fraser has written considerably about the relation between recognition and redistribution, but not so much about the relation of these two to representation. The reason is that while Fraser has written about redistribution and recognition in various books and papers, she only developed the concept of representation later on, in her article *Reframing Justice* (2005b). For this reason, she has written very little about how representation relates to redistribution and recognition. Notwithstanding, there are three important observations to make about the relation between loci of justice.

First, the distinction made between the three loci of justice is merely analytical. In Fraser’s view, this means that, in practice, the three loci are intertwined. Hence, in her opinion, there is no zone of society which is purely economic, purely cultural or purely political. More precisely, this means that most or all economic institutions have a political and cultural dimension; likewise, cultural institutions have an economic and political dimension. In fact, Fraser contends that most collectivities or groups are characterised or defined by both their economic and cultural characteristics. This means that groups are usually characterised by how institutional cultural and economic patterns treat them (Fraser, 2003c, p. 63). As explained, the relation of the political sphere of justice to the other spheres is not systematically

explored in Fraser's work; however, it is coherent to affirm that political institutions also have an economic and cultural dimension; for, according to Fraser (2005b, p. 75), "The political in this sense furnishes the stage on which struggles over distribution and recognition are played out. Establishing criteria of social belonging, and thus determining who counts as a member, the political dimension of justice specifies the reach of those other dimensions". The second observation to make is that, according to Fraser, even though the three loci of justice are intertwined, this does not mean they are subsumed in each other, meaning that misrecognition is not a byproduct of maldistribution and vice-versa. The third observation is that there is no ranking between the kinds of injustices, maldistribution, misrecognition and misrepresentation are all injustices that have to be addressed with the same level of priority (Fraser, 2001, p. 22).

3.5 – Heterosexism, LGBs within Minorities and Policy Solutions

Fraser defines a heterosexist society as one in which the institutionalised patterns construct heterosexuality as natural and normative and homosexuality as perverse and despised. In such a society, norms privilege those individuals with a heterosexual identity over those with a LGB identity. Some examples of laws that are heterosexist can be the existence of laws ignoring hate speech and crimes towards LGBs, and social-welfare programmes that stigmatise LGBs as parents and same-sex couples. More generally, according to Fraser's theory of justice, heterosexism could consist of the violation of parity of participation in at least one of the three loci of justice. That is, an institution is heterosexist if the patterns it promotes imply maldistribution or misrecognition or misrepresentation or all of these three injustices. In Fraser's (2003c, p. 18) view, even though LGBs may suffer those three kinds of injustice, the origins of injustices towards LGBs is misrecognition, "The division is rooted, rather, in the status order of society, as institutionalized patterns of cultural value construct heterosexuality as natural and normative, homosexuality as perverse and despised". This means that the primary reason why there is maldistribution and misrepresentation is due to the fact that institutions create the cultural patterns that foster loathing of LGBs. Due to their despised sexuality, Fraser (1995c, p. 77) contends that "the injustice they suffer is quintessentially a matter of recognition".

Fraser does not explore heterosexism within minority groups; however, from the examples given in the introduction of injustices that LGBs are victims of, it can be understood how her theory can be applied to the issue. An example of being misrepresented within a minority group can be given by the cases of James Schwartz and James Dale. James Schwartz is the gay man who was a former member of an Amish community, and subsequently expelled from his community without having a say in that decision; according to him, the major decisions within the groups are made by an elite (Huffington Post, 2012). James Dale, former scoutmaster of the Boy Scouts of America, was also expelled from the group and he also had limited power to contest the group's decision to expel him (Susman and Hennessy-Fiske, 2013). Hence, it is the case that sometimes LGB individuals are misrepresented within groups.

It is also the case that LGBs are victims of maldistribution. In some Hutterite communities, it is only heterosexual elder males who hold the power over the major economic decisions of the community; also, some Catholic schools deny certain jobs to LGB individuals, as in the case of Carla Hale, the lesbian teacher who was fired when her sexual orientation was revealed (Viviano, 2013). Finally, very often, LGBs within minorities suffer misrecognition. The Catholic Church, in general, does not have ceremonies performing same-sex marriage which would be considered by Fraser a form of nonrecognition through invisibility. LGBs are victims of a variety of forms of disrespect within the Westboro Baptist Church, including physical and verbal violence. The absence of laws ignoring the harm done to LGBs by sexual conversion therapies and corrective rape is also a form of misrecognition; for the absence of these laws make LGBs invisible to justice in the sense that it neglects this harm made to LGBs as a kind of relevant justice; for this absence of law reveals that nothing is being done for tackling those crimes. To conclude, it is indeed the case that LGBs are victims of the three kinds of injustice outlined by Fraser.

In general terms, Fraser is not very worried about providing policy solutions for the normative problems she identifies. Fraser is more focused on presenting a coherent and binding normative theory. Nevertheless, she brings up four points about general policies that are relevant for LGBs within minorities. Some of these policy suggestions should be endorsed and they will be used later on to explain that multicultural policies do not necessarily entail more heterosexism within minorities.

First, Fraser makes a distinction between affirmative and transformative policies; the former are that kind of policies that try to tackle injustices without eliminating the underlying framework that generates them. For example, in terms of unemployment policy, receiving unemployment benefits if one is unemployed is an affirmative policy. Transformative policies are those policies that aim at restructuring the way society works and the framework of the problem. For instance, this could mean restructuring employment policies, forcing companies to hire more staff, etc. Taking this on board, Fraser contends that even though affirmative policies may sometimes be better than transformative ones, the rule is that transformative policies are a better remedy for tackling injustices. This is the case because, according to her, affirmative policies tend to promote group differentiation, which is undesirable; on the other hand, transformative policies try to eliminate differences in a positive way, which she considers to usually be a better option. Particularly in relation to group rights, Fraser (2003c, p. 82) seems to consider that, even if they can be good sometimes, they are a policy to be avoided, “[we] should avoid constitutionalizing group rights or otherwise entrenching status distinctions in forms that are difficult to change”. The reason why they should be avoided is because group rights may potentially make it more difficult to eliminate unfair distinctions in status; in any case, group rights may be positive sometimes (Fraser, 2003c, p. 82).

The second observation Fraser makes about policies is that, in general terms, it is not possible to affirm whether it is better to take a *laissez-faire* or an interventionist approach. For example, in the case of the misrecognition of same-sex couples when they are denied the institution of marriage, Fraser affirms that states can either institutionalise same-sex marriage or deinstitutionalise heterosexual marriage. Hence, institutionalising or desinstitutionalising a practice may be two different policies, one more interventionist and another more *laissez-faire*, but both compatible with her view. For her, these are both forms of recognition, but sometimes one may be better than the other, depending on the context (Fraser, 2001, pp. 32–36). The third important observation that Fraser makes is that both the majority’s public institutions and the institutions within groups have to promote parity of participation. Institutions should not create inequality of opportunity for individuals of different groups (*e.g.*, British Muslims and Native English) to participate as peers, nor should they create inequalities within groups (*e.g.*, gay

Muslims and heterosexual Muslims). As Fraser contends:

“Of special interest to feminists are cases in which claims for the recognition of minority cultural practices seem to conflict with gender justice. In such cases, the principle of participatory parity must be applied twice. It must be applied, first, at the *intergroup* level, to assess the effects of institutionalized patterns of cultural value on the relative standing of minorities vis-à-vis majorities. Then, it must be applied, second, at the *intragroup* level, to assess the internal effects of the minority practices for which recognition is being claimed. Taken together, these two levels constitute a double requirement. Claimants must show, first, that the institutionalization of majority cultural norms denies them participatory parity and, second, that the practices whose recognition they seek do not themselves deny participatory parity to others, as well as to some of their own members” (Fraser, 2007a, p. 31)

The fourth important point Fraser affirms about policies is that the meaning of parity of participation and the policies to achieve it have to be decided in deliberation. In her view, there is no other measure of justice independent of what is decided in democratic deliberation (Fraser, 2003c, pp. 42–44, 72). Basically, what her deliberative theory entails is that inclusive deliberation requires just redistribution and recognition and that these two require just deliberation. Fraser contends that even though this may sound like circular reasoning it is not. Fraser (2003c, p. 44) says that this just shows the “reflexive character of justice as understood from the democratic perspective”. As an example of how this deliberation would go, Fraser looks at the case of the *foulard*, in France. The case of the foulard in France was a debate about whether the state ought to allow or prohibit Muslim girls to wear the hijab in French public schools.

According to Fraser, the normative question being discussed in the case of the *foulard* is whether policies that forbid the use of the *foulard* by Muslim girls at schools can be considered a violation of parity of participation. According to Fraser, those who believe that this prohibition is a violation of parity of participation have to show, first, that banning the *foulard* is an unjust law promoting the values of the majority and, second, that permitting the use of the *foulard* would not reinforce

female subordination (Fraser, 2007a, pp. 31–33). With regards to LGBs, this means that those minority groups that engage in sexual conversion therapies like some Southern Baptists and Exodus International, would have to argue, first, that banning the practice misrecognises them as groups and that engaging in these therapies does not reinforce LGB's subordination. Likewise, if there was a discussion about the Westboro Baptist Church use of hate speech, the Westboro Baptist Church would have to explain that banning their use of hateful language towards LGBs is a violation of parity of participation, and not necessarily a violation of parity of participation.

3.6 – Assessing Fraser's Theory

In this section, I will critically analyse Fraser's work in order to argue that she brings some important insights to the topic under discussion and to reinforce the idea that Okin's argument that negative attitudes towards LGBs are morally relevant and justice requires eliminating stereotypes. An aspect of Fraser's theory that contrasts with Okin's philosophy is that attitudes do not matter for justice. I would like to contest this view taking into consideration what has been defended in section 3.3 and also by adding some other arguments that go against the more specific reasons as to why Fraser rejects psychologisation. With respect to the case of LGBs, negative attitudes towards LGBs should be relevant for justice for at least three reasons. First, as explained in Taylor's chapter and in the analysis of Okin's work, these negative attitudes may damage LGBs psychological integrity and, thereby, contribute to the formation of self-hating images and self-loathing. Due to the fact that this is a fundamental interest, then the state ought to be engaged in policies that correct these attitudes. Second, as explained in section 3.3, such negative attitudes have a paralysing effect in the sense that they may make some LGBs reject or abdicate from job opportunities, sexual freedom, healthcare etc. So, attitudes matter because they impact on rights that are relevant for justice. Third, if negative attitudes are not in the scope of justice, then one of the main sources of heterosexist injustices is being left out which, in turn, may preserve those injustices. In other words, a *laissez-faire* attitude towards attitudes ignores an important source of heterosexism and, thereby, preserves the injustices, *i.e.*, injustices will potentially continue as the main source of

them has not been attacked.

As a general response to Fraser's eschewing of psychologisation, it can be counter-argued that, contrary to what Fraser affirms, it is not possible to dissociate the psychological costs of misrecognition from misrecognition itself. Misrecognition cannot be either about institutions or about psychological costs; this, according to the critics, is a false antithesis, for if it were only about institutions (as Fraser argues), then the negative psychological effects of misrecognition would be morally irrelevant. However, misrecognition and the psychological negative effects of misrecognition cannot be morally relevant without the other: they depend on each other. Moreover, the critics argue that it is hard to imagine someone being misrecognised without the effects of misrecognition; they are an inherent part of misrecognition and they are what makes misrecognition intelligible. It would be incoherent to approve institutions which cause negative psychological effects but are consistent with parity of participation (Kompridis, 2007, pp. 280–281).

It is also possible to contest Fraser's particular arguments as to why psychologisation should not be included in political theory. In response to Fraser's argument that there will become a tendency to blame the victims, it is not the case that psychologisation necessarily does this. An example is Okin's theory where victims are not blamed at all for their status; there is no necessary link between taking into consideration the psychological aspects of oppression and blaming the victims. As Thompson (2006, p. 35) contends "To suggest that someone should change their circumstances it not the same as blaming people for their circumstances". Neither is it the case that by taking psychologisation into consideration, the mind of the oppressor's will be policed; policies like deliberation or general education do not make individuals immune to being self-critical, but stimulating individuals to be self-critical is not the same as having one's mind policed. So the implication of policing individuals' beliefs depends on what policies are implemented.

To respond to the risk of depending on an empirical theory, it is usually the case that political theory depends on empirical theory, even if only a little (Thompson, 2006, p. 36). Political theories are usually about interests, well-being and so forth, which are empirical matters. Even if they are very thin there are usually empirical theories underlying normative arguments. Finally, to the argument about lack of neutrality in

institutionalising attitudes, it can be stated that even though it is true that it would involve a certain conception of the good, there is a enough justification to do this; it can be affirmed that all individuals share a similar psychological structure and that being treated in ways that go against that structure will inevitably be ways they would not be willing to accept if they had an option. In other words, having a universal human psychological structure justifies giving importance to negative attitudes as it is possible to have a thin conception of the good when referring to psychological harm.

Having argued about the importance of taking negative attitudes inside the scope of justice, it seems that is not just institutions that matter. Rather, people's 'minds', negative attitudes, etc. also matter for justice due to the reasons mentioned above. It is interesting that one of the policies Fraser suggests, deliberation, could be an important one for dealing with negative attitudes. That is, deliberation can potentially improve attitudes and tackle stereotypes; however, I will not explore this idea now, but instead defend it in chapter 5. Moreover, Fraser's idea that transformative policies are usually better seems also to be a good idea for tackling stereotypes. If the beliefs of homophobes are transformed, this would lead to a more tolerant environment for LGBs, rather than a situation where LGBs are defended by anti-discrimination policies but where many individuals around them behave towards and/or perceive them as disgusting etc. The idea of transformation, as explained, has implications for group rights – if group rights reinforce the differences between majorities and minorities, it is better not to insist too much on these group rights. That is, a criterion for deciding whether group rights are to be accepted or not is whether it reinforces differences between minorities and majorities. In addition to this criterion, we could also add the one Fraser mentions when dealing with deliberation. She affirms when explaining the *foulard* example that practices reinforcing subordination ought not to be accepted. This could be used as a criterion for deciding on group rights, as I will explain in the next section. Fraser is also correct when affirming that it is not always clear whether the best policy is to take a laissez-faire or an interventionist approach towards minority cultures. For example, in general terms, it may be a good idea to actively intervene in the affairs of minorities that are homophobic, but there may be cases where this may not be so helpful. In India, if Hindus intervened by force in the affairs of Indian Muslims this

may result in the intervention backfiring or in the reinforcement of an oppressive norm.

Finally, Fraser's three dimensional conception of justice offers a complete approach to the issues discussed in this thesis; in other words, having a three dimensional conception of justice, where redistribution, recognition and representation matter, is important because it does not exclude forms of inequality and cruelty that LGBs are subject to from the picture. Redistribution takes into consideration the economic and welfare inequalities that exist within minority groups; recognition encompasses marriage, family, sexual freedom and psychological and physical integrity; representation includes all the forms of political rights that can be violated within groups.

3.7 – Conclusion: Stereotypes, Transformation and Group Rights

In this chapter, I have assessed the work of Okin and Fraser. I am very sympathetic to Okin's idea that stereotyping as a source of heterosexism should be eliminated. For this reason, I support that the state actively engages in eliminating these stereotypes. This, in turn, contrasts with Fraser's view that only institutions matter for justice. Rather, I defend that attitudes and institutions are relevant for justice from a liberal point of view. The idea that the state is to be involved in the elimination of stereotypes is a key idea that will be used as guidance in the next chapters to evaluate whether the philosophers' theories are tackling this important source of heterosexism effectively or not. To be precise, in chapter 4, I will contend that Kukathas and Barry should be more involved in the elimination of stereotypes. Later on, in chapter 5, I will defend that engaging in deliberation is a good way to tackle those stereotypes. Taking this on board, I contend that the state ought to transform those cultures that are homophobic so that they become more accepting of LGB members.

Another insight of this chapter is the new criteria for group rights. I consider that the non-subordination of group members, the democratic inclusion in the affairs of the group by internal minorities and the avoidance of reifying differences between majorities and minorities are criteria that do not necessarily reinforce heterosexism within minorities. These criteria combined with another criterion that I will explain

in the next chapter offer a robust justification for group rights that does not necessarily entail the imposition of heterosexist practices within minority groups.

Chapter 4 – Negative Universalism

This chapter will focus on the philosophy of Barry and Kukathas. These two authors endorse an approach which Festenstein (2005) has called negative universalism. Despite the fact that the philosophies of Barry and Kukathas are different, as negative universalists, they have four features in common. Firstly, both defend the neutrality of the state among different conceptions of the good. That is, individuals should be free to pursue their own conceptions of the good. Secondly, this impartiality does not have the same impact on all citizens' lives, *i.e.*, some will be better-off than others. Nevertheless, this is not a counter-argument against liberal values because equality of impact is not a realistic goal. Thirdly, principles of liberal theory adopt 'basic civil and political rights' with differentiations that may be justified through fundamental basic rights such as freedom of thought and association. However, basic civil and political rights and justified deviations differ substantially when both are permitted simultaneously. Fourth, negative universalists are sceptical concerning the normative value of culture and about providing differentiated rights to individuals (Festenstein, 2005, pp. 91–92). Broadly speaking, in this chapter, I explore the following questions. I assess whether conceding freedom of association to groups, without granting them any kind of special rights has damaging consequences for LGB individuals within those groups. Hence, I put into question whether these laissez-faire approaches based on freedom of association can offer a solution that does not reinforce the oppression of LGBs within minorities, as happens with federalism. I will argue that although freedom of association is important in order to tackle heterosexism within minorities, there is a need for a more interventive approach by the state. The state should engage in a variety of affirmative policies that aim at eliminating prejudice, for example, giving more power to LGBs in terms of voicing their status, among other important ways of enhancing LGB status. I also discuss whether there is an acceptable group of criteria for accepting group rights that does not lead to the subordination of LGBs within minorities. So, in continuation with what was affirmed in chapter 2, namely, that multicultural policies do not necessarily entail oppression, I will now offer a more detailed answer to the insight gained in chapter 2. My contention is that there is a case for conceding special rights to groups, if a set of criteria based on Barry's,

Fraser's and Okin's philosophies is followed. Then, contrary to the view exposed in chapter 3, I will discuss whether groups and the state need to be run by the same rules. I contend that the state should engage in policies of transformation, however, groups can still be, to a certain degree, illiberal.

Barry endorses a liberal–egalitarian version of negative universalism. In his version, there are costs (external) that groups cannot impose on their members and some other costs (intrinsic and associative) which it is acceptable to impose. Moreover, he affirms that it is not justifiable to give special rights to cultural groups. From sections 4.1 to 4.6 I explain and analyse Barry's philosophy. I contend that his intuition that freedom of association limits a state's right to intervene in the affairs of groups is correct; however, I affirm that the state can, in some cases, alleviate and prevent intrinsic and associative costs. I will explore this idea by alluding to some forms of heterosexism within minorities that entail intrinsic and associative costs which I consider that the state can and should prevent and alleviate. I will also contend that contrary to what Barry affirms, group rights can be justified. I construct my argument by giving examples of how group rights do not necessarily harm LGBs within minorities' interests, and as criteria for the acceptance of group rights I use not only some aspects of Barry's theory but also some of the arguments defended previously by Okin and Fraser in favour of group rights.

After this, from sections 4.7 to 4.10 I will move to the philosophy of Kukathas. I will argue that his libertarian approach leaves LGB individuals within minorities extremely unprotected. I consider that LGBs within minorities may be made vulnerable by the lack of state intervention in guaranteeing that LGBs can live a life free from heterosexism. Broadly speaking, I affirm that their interests are unprotected because there is no guarantee there is a place to go that is free of heterosexism, and because there is no guarantee that individuals are able to live in a heterosexist free society. In section 4.11, I will tease out the implications of the arguments made throughout the chapter.

4.1 – Barry's Philosophical Anthropology and Liberal Egalitarianism

The contribution of Barry to the philosophy of multiculturalism is built upon five

core ideas. The first is his philosophical anthropology, where he describes human nature and human interests. The second is his liberal egalitarian interpretation of freedom, equality and neutrality. The third important idea is his picture of an egalitarian society. The fourth is his rejection of group rights, while the fifth is his typology of costs that relate to the internal structure of cultural groups. In this section, I will outline the first two core ideas of his philosophy; in the following two sections I will move to the other three. Although Barry sketches his philosophical anthropology very briefly, it still makes up part of the groundwork for most of the normative arguments he presents. For Barry, there is an empirically observable human nature that is shared by all individuals across cultures. In his view, this human nature indicates that there are general interests that all humans, across cultures, share (Barry, 2001, pp. 285–286). In particular, it is observable, from Barry’s perspective, that when individuals are faced with the option of having access or not to those general interests, they always or often choose them. According to Barry, these interests are: freedom to choose and revise their own conceptions of the good, minimum literacy to gain the ability to integrate in the larger society, employment opportunities and economic resources that enable them to have a decent life (with sanitation, pure water, safety and security, medical services (Barry, 2001, pp. 30, 35, 106–107, 122, 159, 212–220, 262).

For Barry, the state is under the duty of protecting these interests and guaranteeing that, independently of individuals’ culture, religion, nationality and so forth, all should have equal access to the items in that inventory. Barry’s view is that liberal egalitarianism is the philosophical doctrine that offers the most coherent and just approach to protect these interests. In addition, from his viewpoint, liberal egalitarianism offers the normative groundwork for the challenges that illiberal and heterosexist cultural groups raise. His liberal egalitarian approach, in particular, has as core values freedom, neutrality and equality. Barry believes that the commitment to these three values provides the groundwork to deal with the normative and policy challenges of cultural diversity, heterosexism and sexual orientation.

According to Barry, neutrality means that states are under the duty of not promoting or favouring some conceptions of the good over others. In general terms, this means that state policy should not promote the survival and flourishing of a conception of the good, a language, a religion and so forth. Rather, neutrality requires that states be

committed to individual rights without any sort of collective goal, besides those that correspond to universal basic interests. When the state favours a specific conception of the good by assisting it, it is violating neutrality (Barry, 2001, pp. 28, 29, 122). In Barry's version of liberal neutrality, conceptions of the good are a private extra-political matter, which refer to personal affairs (Barry, 1995, p. 118). Hence, non-secular states, like Iran or Saudi Arabia, violate neutrality in Barry's sense because they promote a specific religion. However, for Barry it is not a violation of neutrality that states are committed to in the promotion of those universal interests mentioned above. In Barry's view, the promotion of these universal interests is not a violation of neutrality because they are common interests to everyone. Accordingly, it is consistent with this conception of neutrality to have national defence, universal health care, universal education and other policies that promote universal basic interests and needs.

The other important value for Barry, freedom, means not having paternalistic restrictions on pursuing one's own conception of the good. This implies that individuals should be provided with a considerable amount of independence to pursue their own conceptions of the good. According to Barry, all individuals should be given the means for this pursuit. In practice, this means that all individuals are entitled to freedoms that enable them to pursue their own conceptions of the good and lifestyles; in particular, Barry considers that freedom of association and conscience play a fundamental role in enabling individuals in this pursuit. As Festenstein (2005, p. 114) explains, in Barry's philosophy, this range of freedoms provides "a level of playing field on which each member of the society can pursue her own particular goals and projects". Individuals may choose to live a lifestyle that liberals may disapprove of; however, Barry (2001, p. 161) considers that bad choices are something that individuals in a liberal society are entitled to make: "In a liberal society, people must be free to go to hell in their own way, provided they stay within the law".

Barry's third commitment, the one to equality, translates into two core ideas. First, treating people equally means to furnish individuals with an equal set of basic legal, political and civil rights. This is, equality requires endorsing a unitary conception of citizenship. Second, the commitment to equality entails that the state has the duty to promote equality of opportunity. For Barry, there is an equal opportunity when

uniform rules generate the same set of choices to all individuals (Barry, 2005). This means that there is equality of opportunity if and only if, in a specific situation, different individuals have the capacity to make the choice that is needed to achieve their aims. For example, imagine that Sam and John want both to be medical doctors; imagine that Sam is from a working class family and John from an upper class family. Sam does not have the economic resources to study, but John has. In such a situation, *assuming* that the economic factor is the only relevant factor for equalising choice, in order to achieve equality of opportunity, Sam should be given a similar amount of economic resources to John, so that he has the same capacity to make the choice of a career in medicine. Therefore, equality of opportunity requires that individuals be treated according to their needs. Barry also argues that equality of opportunity entails that the state is under the duty of equalising choice sets, not equalising the outcomes that result from the decisions people make in those choice sets. Barry provides three reasons to justify why equality of outcome/impact should not be a worry of the state. First, unequal impact, according to him, is just the way the world is. Laws always impact people differently and it is not realistic to try to equalise the impact of laws. Second, inequality of impact is a reflection of freedom: individuals make different choices and that is why there are different outcomes. Third, individuals should be accounted responsible for their actions and choices and the state has no duty to correct inequalities that result from equal choice sets (Barry, 2001, pp. 32–34, 92–95).

4.2 – LGBs’ Rights, Culture and Group Rights

Barry’s philosophical anthropology and interpretation of the liberal values of neutrality, freedom and equality shape his arguments about the rights of LGBs in society, group rights and the internal structure of groups. Barry does not consider sexual orientation a universal basic interest *per se*: it is not directly included in his inventory. However, perhaps Barry should have included sexual orientation as a distinguished item in his inventory, as a positive approach to sexuality plays an important role in individuals’ lives; some of the areas of life that sexuality encompasses are health, self-esteem, self-respect, and physical and psychological integrity. Although Barry does not consider sexuality a universal human interest, the

interests of LGBs do cut across a number of universal human interests in Barry's inventory. The LGB interest in not being persecuted, in having a family, marrying and so forth can be subsumed under the banner of universal interest in terms of having a decent life, the safety and freedom to pursue one's own conception of the good. LGBs also have economic interests that are subsumed in the interest of equal opportunity and access to economic resources.

In a society governed by Barry's normative theory, LGBs should have equal rights to heterosexuals. In fact, according to Barry (2001, p. 276) "complete legal equality for LGBTs is the only thing that is within the scope of legitimate political intervention". In terms of sexual freedom, this means the laws that criminalise sodomy or that treat LGB sex differently from heterosexual sex are not acceptable. For example, different ages for consent of same-sex acts are not acceptable because they treat individuals unequally. This would thus be a random restriction of freedom, favouring a specific lifestyle (heterosexuality) and would treat unequally those who wish to pursue another kind of sexual orientation. Cruelty and torture are also ruled out from his model of society, as those would violate some of individuals' universal basic interests. In a society guided by Barry's values, the right to constitute a family should also be equal for heterosexuals and LGBs. This means that the state cannot select who can marry, adopt, co-adopt or use artificial insemination on the basis of sexual orientation; if the state privileged heterosexuality it would be giving a different set of rights and freedoms to heterosexuals and LGBs, which would violate neutrality, equality and freedom. Hence, the rights that enable people to constitute families should be equal for LGBs and heterosexuals. It is also an implication of his theory that the state cannot deny political rights to LGBs on the basis of their sexual orientation, as in Russia, where LGB propaganda is prohibited, although not other kinds of propaganda (Elder, 2013). Equality in Barry's style requires that employers and public jobs cannot discriminate on the basis of sexual orientation. Therefore, LGBs and heterosexuals should have equal rights to apply for posts in the military, civil service, schools and so forth. Likewise, all types of welfare, like health care, cannot discriminate against individuals due to their sexual orientation. To sum up, society's institutions should treat LGBs and heterosexuals equally, without privileging one sexual orientation over another. In Sweden, where there are anti-discrimination laws in welfare provision and employment, and where same-sex

marriage and adoption are legal, heterosexuals and homosexuals have the same age of consent and there is hate crimes legislation, making it, perhaps, the example of a society with institutions as described by Barry (ILGA-Europe, 2009).

The philosophical groundwork of Barry's theory also has implications for his idea of culture and group rights. Barry affirms that individuals' interest in culture is subsumed in the interest of pursuing one's own conception of the good. Although this means that culture plays an important role in people's lives, culture itself is not, in his view, a universal interest. From Barry's point of view, what is a universal human interest is the freedom to pursue and revise one's conception of the good, which, in turn, is a way to use one's freedom of association and conscience. So, cultural groups are associations, which result from individuals' use of their freedoms (Barry, 2001, pp. 33–35, 40–48; Barry, 2002, p. 215). Even though culture, and more specifically religion are, in Barry's (1995, p. 84) view, "at the core of self-identity, and [that] if its expression is denied it leaves a gap in life that cannot be filled in any alternative way", this does not make it, from Barry's point of view, a universal interest independent from freedom of association and conscience. With this groundwork in mind, there are implications for the way states should deal with cultural minorities' claims for group rights. Barry offers six arguments against giving rights to cultural groups. Four of these are a result of his liberal theory and philosophical anthropology; the other two are independent arguments not related to his theory.

The first argument against difference-sensitive policies for cultural groups presented by Barry is that this would be a violation of neutrality. For Barry, neutrality requires that there is no or little involvement in the cultural character of society; hence, if the state privileged a group either by promoting this group's culture or by empowering the group with different rights from other groups, then the state would be violating neutrality. Barry believes that liberals are committed to non-interference in the cultural character of society; as a result, liberalism is incompatible with difference-sensitive policies. In practice what this implies for multicultural demands is that any kind of exemption, recognition, assistance or any other kind of group right should be denied on the grounds of neutrality. For example, in Barry's view, if a certain state does not criminalise homosexuality and a Muslim group asks recognition of *Sharia* courts that convict gay Muslims for same-sex acts, the state should not concede this

recognition because doing so would be giving a different right to a different group and, therefore, it would be a violation of neutrality. Another example is that if there is an employment law that prohibits discrimination according to sexual orientation, then those institutions like some Catholic schools that wish to discriminate, cannot be exempt from this law; for if they were, this would be a violation of neutrality because it promotes a specific culture.

The second argument provided by Barry against group rights is that the unequal impact of policies on cultures is not an interference with freedom to pursue one's own conception of the good. In Barry's view, laws have the aim of protecting some interests against others; the fact that they have a different impact on a specific culture is not a sign of unfairness; rather, it is just a side effect of having laws (Barry, 2001, p. 34). Hence, if the law prohibiting harms to physical integrity undermines the freedom to practice the sexual conversion therapies that at least some members of the Americans for Truth about Homosexuality implement, this is not an interference with their religious freedom; rather it is a side effect of the defence of the high-order interest in physical integrity. Appertaining to the same line of thought, the non-recognition of *Sharia* courts that persecute homosexuality is not an interference with religious freedom; rather, what it means is that the law that protects the higher-order interest in pursuing one's own conception of the good (in this case, the conception of the good as homosexual) has the impact on the interest of some Muslims in imposing *Sharia* law on others.

Third, in Barry's view, the only group rights conceded, especially those exemptions to the law, are cultural practices that overlap with universal human interests. In other words, if the group right and, in particular the exemption to the law, promotes a universal human interest, then it is acceptable (Barry, 2001, pp. 48–50). For instance, Muslim girls cannot be refused education on the grounds of a minor issue such as dress codes, for education is a universal human interest. Barry also argues that because Sikhs are highly dependent on the construction business, if there is a justified law forcing the use of crash helmets on construction sites, they should be exempt of it because it would cause massive unemployment of Sikhs. Accordingly, if there was a motive based on a universal interest of being heterosexist, this would potentially be acceptable in Barry's theory. For instance, for a period, the dating website eHarmony did not have the option of matching same-sex couples. A gay

man sued eHarmony because he felt discriminated against. This gay man won the lawsuit and eHarmony was forced to change their policy and include same-sex couples, against their will. The CEO of eHarmony did not want to make this change and has argued that changing this option in the website resulted in a variety of costs that damaged the company and his personal life; among these costs were those for software programming the new features and the violent and homophobic reaction of some fundamentalist users of the website; some of these users stopped using the website and others threatened the life of the eHarmony CEO because of their opposition to same-sex marriage (Broverman, 2013; CNBC, 2013; Lau, 2006, pp. 1271, 1272, 1315). Therefore, the application of the general rule of discrimination against LGBs has in a certain way jeopardised the universal human interest in physical integrity as well as the economic resources of the CEO of the company and potentially the staff also. Bearing this in mind, in Barry's view, in order to safeguard those interests, it would be an acceptable exception to the rule not to force eHarmony to have an option for same-sex couples. Likewise, if a member of a certain community had a business that would be extremely damaged by providing a service to LGBs and, thereby, jeopardising the universal interest in economic resources of this individual, then Barry would accept this exemption.

Fourth, Barry contends that because neither culture nor cultural demands are a universal interest *per se*, then the unequal treatment that is acceptable for universal interests does not apply to these (Barry, 2001, pp. 12–13, 16). To recall, Barry's conception of equality of opportunity entails that individuals can be treated unequally so that their choice sets are equalised. However, Barry affirms that these choice sets should be equalised only if these are choice sets about universal interests, which culture is not. In short, exemptions can and should be guaranteed for universal or higher-order interests but not for particular interests. So criminalising homosexuality, for example, is not a universal basic interest and there should be no exceptions for that. Dismissing someone from a job just because this act fits one's culture is also not acceptable; however, according to the previous argument, dismissing someone from their job because there is a universal basic interest that can be potentially jeopardised if they stay, is acceptable.

These four arguments are dependent on Barry's liberal theory; they depend on his conception of human interests, freedom, neutrality and equality. To these arguments,

he adds two *ad hoc* arguments. First, that difference-sensitive rights that aim to protect economic resources are temporary, while cultural rights are permanent. This means that those who need economic resources to equalise their choice sets only need this aid temporarily (Barry, 2001, pp. 12–13). Contrastingly, according to Barry, group rights to protect culture are required permanently. Like the case of the Sikh, a permanent law that exempted Sikhs from wearing helmets would be necessary. The other *ad hoc* argument is that when there is a reasonable argument it should be applied without exception. If there is a case for exception, then the rule should be abandoned. According to him, it is philosophically incoherent to provide a universal justification for a rule and then relativise the reason just given (Barry, 2001, pp. 32–50).

To conclude, Barry offers a model of society based on the values of freedom, equality and neutrality; this society would give the same rights and liberties to LGBs and heterosexuals. Moreover, Barry is skeptical about giving rights to cultures. From his six arguments about group rights, only one opens up the space for exemptions. According to this argument, if there is a universal basic interest that is better promoted by a rule and exemption approach, then liberals should endorse this policy. However, Barry also asserts that cases like these are rare and that such policy should be avoided. Initially, this part of Barry's theory is supposed to be directed only at differences between groups; hence, it is part of the first wave of writings on multiculturalism that focused on the discussion of justice between groups. Nevertheless, as is clear by the examples given, it also has implications for what has been called the second wave of writings on multiculturalism, which is about justice within groups. This is especially noticeable in the second, third and fourth argument presented above, where, according to Barry's theory, some examples of heterosexual practices are ruled out as meeting the criteria for exemptions

4.3 – The Internal Structure of Cultural Minorities and a Tripartite Typology of Costs

As explained in the previous section, the arguments against difference-sensitive policies presented by Barry are directed at the first wave of writings on multiculturalism that focus on injustices between groups, even though some of the

arguments presented by Barry have indirect implications to the topic of justices *within* groups. Notwithstanding, Barry has also written directly about justice within groups, and thereby engaging theory that addresses the normative challenges of illiberal cultural practices regarding the interests and rights of the most vulnerable individuals within minorities; hence, he is aware that the way associations are structured can potentially lead to the oppression of some members of the group, and wants to address this issue by presenting a theory that can protect the interests and rights of those within cultural minorities. With this purpose, Barry builds a tripartite typology of costs to explain what kinds of norms are acceptable or not from a liberal point of view. According to Barry, some of these costs can be legitimately imposed, whereas others cannot. This typology, inspired in his philosophical anthropology and defence of liberal values, sets the groundwork for evaluating and setting the limits of practices within the group.

This typology divides costs into intrinsic, associative and external costs. For Barry, intrinsic costs are those that result from a negative link between individuals' beliefs and their relation to the group. Put differently, these are costs that result from individuals' beliefs about their relation of themselves to their own culture. So this kind of cost is internal and depends on how someone feels about oneself in relation to one's own culture. For example, the feeling of eternal damnation that Lauren Drain, a former member of the Westboro Baptist Church, had when she was expelled from her church is an example of an intrinsic cost (Drain and Pulitzer, 2013, pp. 269–271). When a Catholic gay man is excommunicated from the Church and is no longer entitled to receive the sacraments, which, for Catholics, usually means that he will go to Hell, this is also an intrinsic cost. The feeling of guilt that a Catholic gay man has because he believes that his sexual orientation is sinful and will lead him to Hell is thus an example of an intrinsic cost. Contrastingly, a gay man who was Catholic, but does not wish to be so anymore and is excommunicated, is not suffering an intrinsic cost. In Barry's opinion, there is nothing that the state can do because the state cannot change individuals' beliefs and feelings about the events in the group; for instance, the state cannot do anything about the gay man who believes he is going to Hell. Nor can the state, according to Barry, convince someone one is not a sinful being. What he means more precisely is that it is not possible for the state to take an action that would alleviate individuals' intrinsic costs due to the nature of

these costs.

It could be responded that the state could shape cultures' beliefs so that there would be no expulsions or internalised feelings of eternal damnation. As a result, the argument goes, individuals would not incur intrinsic costs. But such a policy would be a violation of freedom of association and conscience that Barry is not ready to accept. In his view, these freedoms should be respected and this would step on the limits of state intervention. On top of this, in Barry's view, there is no universal basic interest in not having this kind of belief about eternal damnation and so forth; as a result, there is no justification for intervention. In relation to LGBs, this means that the state cannot do anything to prevent and alleviate the feelings of sin, eternal damnation, disappointment, etc., that LGBs may internalize as a result of the doctrine of their groups. By way of illustration, the state is not able to do anything, in Barry's view, about feelings of being a sinner who has disrespected the Bible with one's sexual desires and behaviour. Nor can the state alleviate the feeling that one has of disappointing the members of one's culture as a result of one's sexual choices.

Associative costs relate to those costs that result from the loss of social relations with members of the group. An associative cost happens when significant others cease wanting to associate with someone. James Schwartz, the former member of an Amish community who is also gay, suffered associative costs when his family refused to keep in touch with him after he came out as gay (Huffington Post, 2012). The parents of Samuel Brinton, a former member of the Southern Baptist Church, thought he had stopped being gay after experiencing sexual conversion therapy. However, when he went to university he rediscovered his sexual orientation and became more accepting of his own homosexuality. When he went back to visit his parents he revealed to them that he was again feeling sexual desire for other men; as a result, they kicked him out of the house and severed contact with him. This is another example of an associative cost: Samuel Brinton's parents decided not to enter into contact with him anymore because of his sexual orientation (Wareham, 2011). A gay man who is excommunicated and thereby unable to attend sacraments and social meetings with other Catholics is also losing out on social relations, thus experiencing an associative cost.

According to Barry, it is possible to avoid associative costs; however, in general

terms, the state should *not* intervene in this aspect of group norms because associative costs result from actions that are permissible from a liberal point of view. More specifically, associative costs are a side effect of freedom of association, which is a freedom that should be preserved. Barry considers that because individuals have freedom of association, then the state does not have the right to force individuals to associate with each other against their will. Forcing the parents of James Schwartz or Samuel Brinton to associate with their offspring would be compulsive association and the state, in Barry's view, does not have the right to violate individuals' freedom of association and conscience.

In Barry's view, the state can *only* legitimately intervene to avoid associative costs, if this intervention does not interfere with freedom of association. If the state can simultaneously not violate individuals' freedom of association and conscience and alleviate associative costs, then Barry considers that intervention is acceptable. For example, according to Lauren Drain, when she was expelled from the Westboro Baptist Church, she did not have the opportunity to defend herself from the accusations of fornication that led to her involuntary exit (Drain and Pulitzer, 2013, pp. 254–271); according to Barry's theory, what the state could do in this case would not be to force other members to associate with her; rather, the state could require that the Westboro Baptist Church gave an opportunity to Lauren Drain to contest her expulsion before any decision was taken. Likewise, Samuel Brinton has affirmed that his parents simply put his belongings outside the house when he revealed he was having sexual desires for other men (Wareham, 2011). In this case, it could be compatible with freedom of association to give Samuel Brinton the possibility to voice his opinion, if he so wished.

The third costs are external costs; in Barry's view these can and should be prevented by the state. Barry classifies these costs as excessive and gratuitous. He gives a series of examples of what liberals should not permit associations to do even if consent was given by their members; all the examples Barry gives seem to refer to his inventory of universal human interests. Hence, they refer to economic and employment opportunities, minimum literacy, safety, security and bodily health and integrity. Obviously, the violation of these interests is not always clear and if an interest is being violated it has to be assessed case by case. For example, usually an employer cannot sack someone because of religious affiliation or sexual orientation. If a

Catholic community finds out that one of the members who happens to be a teacher at a Catholic school, is a lesbian, they cannot fire her based on this – at least they cannot with an appropriate compensation. But according to Barry's theory, there may be cases where firing can be justified. As in the case of eHarmony, imagine that having a lesbian as a teacher would lead to all parents taking their children from the school where she is a teacher, leading to loss of sponsorships and funding, and other economic problems. In this case, Barry could accept that this extrinsic cost was imposed, but he would surely argue that the teacher in question should be compensated for being fired. For Barry, boycotting the business that employs the person who is perceived as a disloyal member is acceptable in the long-term, but not in the immediate term; this is due to the fact that it would jeopardise the economic situation of this individual. Alternatively, those who boycott the business can pay compensation to the individual (Barry, 2001, pp. 123, 124, 132, 133, 148–154, 203).

Other practices that involve external costs and are, therefore, not allowed, are those that involve inciting violence and/or inflicting (permanent and serious) physical injury to members of the group. In Barry's view, penalties to leave the group cannot be higher than simple expulsion (Barry, 2001, p.124). Sexual conversion therapies, like the one Samuel Brinton was victim of, corrective rape and murder are forms of extrinsic cost which Barry considers unacceptable. So, honour killings of LGB family members, like some Muslim groups undertake to restore family honour are also an unacceptable external cost (Hurriyet Daily News, 2013). It is not clear if psychological costs are a kind of intrinsic cost or an external cost; Barry never uses the term 'psychological cost', but the feeling of guilt, sadness, self-hate and so forth seem to be feelings that someone would have as a result of expulsion or the thought of eternal damnation; however, if this is the case, then some intrinsic costs are possible to fix. The state could financially support psychological and psychiatric treatment for those who see themselves in a desperate situation. On the other hand, psychological costs could be considered external costs because they would be subsumed in the interest in a decent life and, more precisely, in the interest of (psychological) health. If this is the case, then if an individual has his or her psychological health damaged, then the state should try to support this individual (Barry, 2001, pp. 30, 271–274).

Normally, according to Barry, if the costs imposed on members are not external, this

means membership is voluntary. Barry alerts this is not always the case, but that it is a rule. Voluntariness, however, is something that has to be assessed according to the context, from Barry's point of view; in any case, he affirms that:

“When even the best alternative is very poor, your choosing to stay does not entitle us to conclude that you are not suffering from some kind of oppression, exploitation or injury. If, however, your staying means that you are passing up at least one reasonably eligible alternative, that is a much sounder basis for inferring that the association is not treating you too badly” (Barry, 2001, p. 149).

This typology gives groups freedom and limits how cultural groups can treat LGBs within their groups. Some examples of what kind of heterosexism within groups is acceptable and what is not, were given already above, but I would like to add some more examples. With regards to hate speech, in this view, groups are free to consider and express their negative views about homosexuality; in Barry's perspective (2001, p. 274) they can consider it sinful, disgusting and so forth: “nor can we try to prevent those who believe homosexuality to be sinful or immoral, or who believe a homosexual way of life to be inferior to the heterosexual one, from saying so in public and seeking to win others over to their way of thinking”. The right to do this is, for Barry, a consequence of civil liberties like freedom of conscience, association and speech. What groups *cannot* do is to use speech that incites violence because this would be an external cost; more precisely, it would be a violation of the universal interest in physical integrity. In practice this means that while it is acceptable to have signs saying ‘God hates fags’, it is not acceptable to have signs saying ‘Death to fags’. In terms of employment rights, groups cannot jeopardise an individual's equality of opportunity and job status by firing him or her on grounds of sexual orientation; this would be a violation of the interest in economic resources and employment opportunities.

Groups cannot criminalise LGBs' sexual freedom, but they can consider it sinful and expel and cut contact with homosexual members. For instance, the Amish community that expelled James Schwartz is free to do this. Because it is not clear whether ostracism and shunning are intrinsic or external costs, it is difficult to tell whether the practices that some Amish and Hutterite communities engage with

would be acceptable from Barry's point of view. Same-sex marriage would be institutionalised in the larger society, but groups should not be forced to perform ceremonies at their institutions – e.g., Catholics do not need to have ceremonies for same-sex marriage in their churches. With regards to adoption and artificial insemination, it is more difficult to tell what the implications are. Imagining there is an adoption institution or a health centre that belongs to a religion that considers that LGBs are not suitable parents, it is unclear what this theory of costs would imply. Although being denied the opportunity to adopt would be wrong if it was implemented by the larger society, there is no evidence that suggests the right or not of upholding this as a group. The group would not be violating a universal interest, but also it seems difficult to tell what kind of cost this denial is.

4.4 – When are Group Rights Justified?

In this section, I will assess Barry's approach to group rights. I will argue that his view is too restrictive about when to allow group rights, even though it provides some good insights. His theory, combined with some aspects of Fraser's and Okin's theories can provide a good case for group rights. Moreover, I will contend that granting special rights to minorities does not impose problems for LGBs within minorities. As explained above, Barry, when writing about group rights, mostly focuses on the first wave of writings about multiculturalism. However, his philosophy on the first wave of writings has implications for LGBs within minorities. The point I want to make is that those potential negative implications for LGBs for conceding group rights that were mentioned in section 4.2 do not pose a problem for providing group rights.

Contrary to what Barry affirms, there is nothing philosophically incoherent about having a rule and exemption approach. In general, I agree with Horton (2003, p. 30) who affirms that the "law is replete with qualifications, special cases, exceptions, stipulate definitions, excusing conditions, assumptions about what is reasonable, implicit *ceteris paribus* clauses". This is because there is a complex social reality, which has many different situations, and unanticipated cases that makes it difficult to have uniform laws, and to affirm in advance whether a practice is heterosexist or not. That is potentially the case with some sexual conversion therapies; even if we

disagree with the kind of emotional coercion that these therapies usually entail, not all are necessarily harmful if they just involve practices like praying to God. If this is the case, there is nothing contradictory about having a law prohibiting sexual conversion therapies and open exceptions if there are also good reasons for, in specific cases, having exceptions.

Not only is there this complex reality, but also, as explained in chapter 3, practices can have a multiplicity of meanings; even if there is a good reason to prohibit a practice in one culture, due to the meaning of the practice in another culture there may be a justification for permitting it. As in the case of profiling individuals due to their sexual orientation, explained in chapter 3, this profiling can mean entirely different things according to the meaning of the practice. In the case of some Muslim groups and Gulf countries, profiling aims at persecuting and stigmatising LGBs; on the other hand, in the case of the *Yuman* tribes, the profiling of bisexuals is the result of a celebration of bisexuality (Williams, 1988). Therefore, a general rule prohibiting profiling is justified to prevent persecution, invasion of privacy and negative attitudes towards LGBs, but an exception can be made for the *Yuman* tribes, where bisexuals (*berdaches*) are praised.

On top of this, owing to the fact that individuals flourish in different ways, then there are no grounds to make general laws. In Parekh's view (2001b), different ways of human flourishing require different environments; general laws cannot accommodate the variety of ways individuals can best flourish; ergo, different rights for different people are justified. As Freeman (2002, p. 603) contends, the idea here is that "equal treatment under one rule may involve unequal treatment under another rule" and for that reason it is not incoherent to exempt individuals from some laws on the grounds of equal treatment (Festenstein, 2005; Phillips, 2007a). The example of the celebration of bisexuality by the *berdaches* also fits here; the way that some of the *Yuman* tribes flourish encompasses a specific ritual that among other things gives approval for bisexual individuals; this environment is very different from the kind of approval that an LGB person would probably require in a Western liberalised culture.

Barry's other argument against difference-sensitive rights is that allowing these would violate neutrality so have a positive and a negative aspect. The positive aspect

is that it rules out the possibility of many groups requesting an exemption to the law or acquiring rights that would empower them to engage in practices that violate the interests of LGB individuals. This robust attitude towards assigning rights to groups avoids the fact that there is cruelty and discrimination towards LGB individuals on grounds of culture. The negative side is because, as Kymlicka's argument suggests (1995a), states cannot avoid being involved in the cultural character of the state. Governmental decisions about language, public holidays, etc., always have a cultural character and, for this reason, there is no such thing as pure neutrality. As Kymlicka rightly argues, equality requires group-differentiated policies to equalise the status of members of different cultures.

The distinction that Barry makes between welfare and economic rights being temporary and cultural rights being permanent is incorrect. In cases of economic assistance or the social accommodation of disability and chronic diseases, the treatment of individuals is usually permanent. In fact, it is surprising that Barry makes such a claim because he also affirms that social justice demands periodical redistributions of wealth. Contrastingly, not all group rights are necessarily permanent. For example, polyethnic rights in Kymlicka's style aim at integrating LGBs and immigrants in society; after this integration is done, these rights are not necessary anymore; hence, they are temporary. Taking this on board, this counter-argument also rules out Barry's idea that group rights for cultural groups are not justified.

The argument that Barry provides in favour of group rights based on human interests is perhaps the most important one due to its implications. According to Barry, exemptions are only acceptable if and only if they do not violate any of individuals' basic universal interests. This is a strong criterion for conceding group rights;¹¹ for it rules out the forms of cruelty and discrimination that LGBs are victims of. Following this argument, there is a robust attitude towards empowering groups with rights; this can only be the case if there is a universal interest that needs to be promoted. According to this view, there is no justification for conceding group rights based on heterosexism – as heterosexism is not a universal interest. If this criterion is combined with some of Okin's and Fraser's arguments, a coherent justification for

¹¹ Barry mostly refers to exemptions in this argument.

group rights is provided. Okin considers that group rights are only acceptable if all members are included in the decisions about group norms and if no universal interest of members is being violated by these rights. Fraser adds to this that the group has to prove that practices should not reinforce subordination of their members and that differences between the majority and the minority in question should not be reified. Putting these ideas together with Barry's, the only justification for group rights is that giving these rights promotes a universal interest, and or institutionalising the right enables all members within the group to participate; it does not reinforce or reify inequalities within groups and between groups.

According to this group of criteria I am suggesting, LGBs within minorities' interests are not necessarily jeopardised. Sexual conversion therapies, anti-sodomy laws, corrective rape, honour killings, ostracism, shunning, civil and political freedoms and psychological coercion would not be allowed because they would violate Fraser's criterion whereby the practices subordinate some members of the group. Moreover, owing to the fact that there is no universal interest in engaging in such practices, there would be no justification for group rights that promote these practices. Discriminatory employment laws and welfare services, participation in social life, adoption, co-adoption and child custody would be an intrusion in individuals' private lives that would substantially subordinate individuals. Same-sex marriage and discriminatory membership rules would not necessarily violate any of these criteria, and because there should be a balance with freedom of association, these discriminations should be allowed. However, following Okin's criterion, these discriminatory rules would require that all members of the group participate in the group decisions.

It is important to explain the difference here between same-sex marriage and discriminatory membership rules from other kinds of interests, and why some imply subordination and others do not. With regards to bodily and psychological integrity, as well as sexual, civil and political freedoms, the disrespect for these undermine, generally speaking, the ability to pursue these interests. For instance, if one is arrested for sodomy or is bodily harmed in a sexual conversion therapy, one is not able to pursue sexual freedom or bodily integrity elsewhere. Discriminatory rules in employment, welfare and adoption rules substantively diminish the opportunities of LGBs to pursue these interests; for there are a large number of institutions which

belong to cultural groups – Catholic schools, for example. Same–sex marriage and discriminatory membership rules are different from these. The equality of opportunity to marry and to join or form a group is not substantively diminished by discriminatory rules: there are viable alternatives, like civil marriage and the opportunity of joining other groups or forming a new group, if there are public funds available for this.

Notwithstanding, in my view, Barry’s inventory of universal basic interests is too restrictive; this is especially the case because he does not consider culture and sexual orientation as universal basic interests. In fact, one of his arguments against exemptions for cultural groups is that culture is not a universal interest. Barry contends that a universal human interest is the interest in being free to associate and that the interest in culture is, at best, a form of association. Whereas Barry is right about arguing that not everyone is interested in culture; however, he is wrong about ruling out culture as a kind of interest that would not receive special assistance to flourish as it is not universalistic. This is because the universalistic nature of interests depends on the level of abstraction with which they are conceptualised, and Barry uses different levels of abstraction for different interests. More specifically, he uses a high level of abstraction for arguing that welfare interests are universalistic and a narrow level of abstraction for ruling out culture as a universalistic interest.

When comparing welfare and economic rights, Barry (2001, p. 116) contends that the reason why they are acceptable and universalistic, even though they are directed at groups, is because “the beneficiaries are assumed to be people who want the same things as the rest of the population and simply lack the resources that would enable them to enjoy more of these things”. However, the universalistic nature of these welfare and economic interests depend simply on the level of abstraction that is used to understand these interests as such. For example, if one takes a high level of abstraction, having healthcare that supports cancer treatment is a universal interest because there is a universal interest in healthcare. Contrastingly, if one interprets cancer treatment at a more narrow degree of abstraction, as a specific claim for chemotherapy, or hormonal therapies, then such a claim for a welfare right is no longer universalistic; for not everyone is as likely to have cancer and not everyone is interested in having chemotherapy, or the hormonal therapies available and may prefer other cancer treatments like radiotherapy. Alternatively, culture, if there is a

high level of abstraction, can be considered a universalistic interest in the sense it is claiming freedom of association. However, Barry uses a narrow level of abstraction for culture and affirms that it is an interest of only some groups. For this reason, Barry does not use the same criterion for assessing the nature of cultural and welfare and economic interests. So, if one reads cultural interests at an abstract level, culture is a universalistic human interest; hence, assistance rights would be justified for promoting this interest in culture (Mitnick, 2006, pp. 165–167). Another reason why culture should be considered a universal human interest is because it fits, in part, his criterion for classifying an interest as universal. Barry affirms that it is observable that when individuals have the option of choosing between having these interests satisfied or not, they will routinely opt for having them satisfied. However, with culture there is a similar situation; most of the time individuals remain members of their cultures, even if they disagree with some aspects of it.

To conclude, in chapter 2, I contended that the oppression of individuals within groups is not a necessary implication of endorsing a group-differentiated approach. Taking this idea and the arguments just presented on board, it can be affirmed that granting special rights to groups does not necessarily have damaging consequences for those LGBs within the groups, provided that the criteria I suggested are followed. There are good reasons for allowing group rights to cultural minorities and these reasons simultaneously take into consideration the fact that internal minorities cannot be made worse off by embracing these special rights. The combination of the arguments of Barry with Fraser and Okin offer, therefore, good guidance for deciding when special rights are to be conceded. These contrast with Kymlicka's weaker argument that assigns rights according to the kind of group.

4.5 – External Costs and the Rhetoric of Costs

In this section, I would like to focus on two questions. The first asks whether Barry is justified to contend that external costs cannot be imposed and whether his justification is compelling. The second is a question of whether the rhetoric of costs captures or not the kind of vulnerability that LGBs within minorities experience. Answering these two questions is relevant for exploring the status of LGBs within minorities for two reasons. The first reason is that it can be understood what kinds of

practices can and cannot be imposed by groups. The second reason is because it helps to demonstrate that freedom of association is insufficient to protect LGBs within minorities; therefore, we need a more interventive approach to be combined with freedom of association.

Barry has been criticised for stipulating that external costs cannot be imposed without also offering an argument that supports his positions; these critics affirm that Barry simply asserts that these costs cannot be ‘legitimately imposed’ and are ‘gratuitous’, without giving an explanation as to why this is the case (Levy, 2004, pp. 335–336; Mazie, 2005, pp. 753–754). However, it is not the case that there is no rationale behind Barry’s statement that groups cannot impose external costs on their members. According to Barry, these costs cannot be imposed because they violate fundamental and inalienable individuals’ interests. Hence, the reason why external costs cannot be imposed by groups on members is because they violate the universal fundamental interests that individuals have, and which the state is under a duty to protect and promote.

Levy (2005, p. 176) also argues that the classification of external costs is dubious due to the fact that there are external costs which can be legitimately imposed: “some [external costs] of which I think are legitimate and some of which clearly are not”. Nevertheless, Levy does not explain why this is the case and without a more detailed explanation of which external costs can be imposed and which cannot, it is difficult to respond to the criticism. In any case, I suspect that Barry is right when he states that external costs cannot be imposed. As just mentioned, these costs refer to individuals’ most fundamental interests, which are essential for individuals’ well being, that is, to have a decent life and be able to function in society. These are the most basic of all interests, and disrespecting these is treating individuals as less than human. As was explained in chapter 1, there are interests that are indispensable for the well being of individuals and if these interests are violated then, broadly speaking, individuals are not living a worthwhile life. In the case of LGBs within minorities in particular, this intransigence with the impositions of external costs protects a number of interests for LGBs within minorities. To recall, in part, LGBs have an interest in being protected from bodily harm, murder, hate crimes and forms of torture; in particular, these include being protected from inhuman sexual conversion therapies, corrective rape, bullying and physical harassment, honour

killings and murder, among other practices that are often targeted at LGBs within minorities. Protecting the universal interest in terms of safety, sanitation, water and medical services are forms that assure LGBs' protection from these kinds of violations of their interests. Safeguarding employment and economic opportunities are also essential for LGBs' rights; for, as has been mentioned in this thesis several times, they are constantly victims of discrimination. This list of universal interests can encompass a wide number of other LGBs' particular interests, which may vary according to the kind of minority culture. The point is that I am very skeptical about whether there are any external costs that can be, in fact, legitimately imposed. For these interests are so fundamental and basic that it is difficult, if even possible, to find examples of external costs that can be legitimately imposed. Notwithstanding, many practices that may seem to be an imposition of external costs may not be; as explained in the section on Okin, some practices seem oppressive, heterosexist, gendered and so forth, but they are not. Hence, the assessment of whether a practice is imposing an external cost or not has to be contextualised.

My other argument is that the rhetoric of costs also leaves aside important aspects of tackling heterosexism within minorities. Barry's approach does not actively do anything to overcome stereotyping that, as explained in chapter 3, is an important source of heterosexism and internalised homophobia. By providing a set of rules of what can and cannot be imposed to the members by the groups and then leaving the group alone, there is no active role of the state that allows them to tackle this very important source of heterosexism; rather, implementing the rules and leaving the groups alone just ends discussion and indoctrinates individuals with homophobic views about others and themselves, immunising them from self-criticism and any revision of their views on homosexuality. This, in turn, is problematic because at least some of the norms that lead to feelings of self-loathing, and the paralysis mentioned in previous chapters are reinforced. In short, the state should actively engage in tackling the sources of heterosexist injustices; due to the fact that this theory of costs sets up a list of rules and then leaves the groups alone, then it is not tackling one of the most important sources of heterosexism, which, as explained previously in chapter 3 involves stereotyping.

Leaving groups alone without further intervention is also problematic because it does not create the means for reporting homophobic abuse within minorities. According to

the European Union Agency for Fundamental Rights (2009), many hate crimes towards LGBs are unreported and institutions need to be shaped in ways that create more sophisticated means for reporting them. An ability to denounce will, consequently, increase the availability of support from others who are sympathetic with LGBs' interests, as well as legal, medical, therapeutic advice, etc. Take the example of Samuel Brinton who was a victim of sexual conversion therapies; when he was forced to attend such practices, his parents and the 'therapists' told him that the U.S. Government would sentence him with death penalty if they found that that he was gay (Wareham, 2011). In this case, if there were means to report abuse within the group, he could have denounced the cruel treatment he was the victim of. This view that the reporting of such abuse may be helpful is reinforced by the example of Anita Hill. Anita Hill was a well-educated African-American lawyer who accused her boss of sexual harassment. However, in court, her accusation was put into question because she took some time until she accused her boss; this was seen, by some, as a form of consent to sexual harassment. Nevertheless, what this case revealed is that victims of oppression do not necessarily voice their oppression immediately; it may take time until someone reports the abuse (Mahoney, 1991). Numerous cases of domestic violence demonstrate that many women have been victims of violence for quite a while until they decide to report it. Taking this on board, if there are underdeveloped means to report such instances it becomes even more difficult to undertake such reporting.

Another difficulty that this laissez-faire model faces is that it does not explore the meaning of practices, which, as explained in chapter 3 are important for considering whether to ban a practice or not. What may look like an external cost may, in fact, be something else. For instance, the fact that in *Yuman* tribes a fire is set up in a small bush enclosure in order to conclude if a child is bisexual or not, may look like a threat and may be compared to the Ku Klux Klan practice of burning crosses and houses, when they are, in fact, very distinct practices.

4.6 – Fairness, Feasibility and Policy Suggestions for the Prevention and Alleviation of Intrinsic and Associative Costs

A different line of criticism against Barry is that his typology of costs not only does

not capture an important form of homophobia that LGB individuals within minorities are victims of, but also that it is not sufficiently interventive. External costs do not necessarily include LGB interests in psychological integrity and participation in social life and in the making of norms within the group. With respect to psychological integrity, it is not clear if this is an external or an intrinsic cost. In the case that it is an intrinsic cost, this is problematic for Barry's theory. For many costs that are imposed on LGBs within minorities are psychological, with many LGBs being taught that homosexuality is wrong, sinful, disgusting and so forth; if they reveal their sexual orientation, many times they are ostracised and shunned. If Barry is not including psychological costs as external costs, then he is leaving aside a very important interest of LGBs, the interest in not being psychologically damaged by homophobic practices (Bond, 2008, p. 410; Levy, 2005, p. 176; Reitman, 2005b, pp. 193–196). External costs also leave aside the interest in participating in social life and in the making of group norms. External costs say nothing about the right of LGBs to have control over the decisions made in the group with respect to participating in the social life of that group, Barry contends simply that groups can be free to exclude whoever they wish. Hence, these interests are neglected by Barry and the distinction between external costs and other costs is questionable in the sense that there are some intrinsic and associative costs that should not be imposed given the fact that they correspond to fundamental LGB interests.

Nevertheless, Barry contends that the mere fact that there is socio-psychological suffering does not mean that intrinsic and associative costs are a matter for the state; rather, the argument has to be that it is fair to intervene in order to prevent these costs. In addition, in the case of intrinsic costs it also has to be proved that something can be done, owing to the fact that Barry believes that preventing intrinsic costs is not feasible. In short, in order to prove that the state is duty bound to prevent intrinsic and associative costs, an argument for the fairness and feasibility of state intervention has to be provided. To recap, Barry argues that there are three reasons why the state is not duty bound to prevent members of groups suffering from intrinsic costs, one of these reasons also applies to associative costs. First, it is, in Barry's view, impossible to prevent and alleviate such costs. Second, Barry contends that intrinsic costs are usually not universal interests. Third, it would be unfair if the state intervened in the affairs of minorities to prevent intrinsic costs mainly due to

the fact that this act would require disrespecting the freedom of association; this last reason is advanced for arguing that the state should not prevent either intrinsic or associative costs.

Starting with the feasibility of intrinsic costs, recall that these relate mostly to how a person feels and/or perceives herself in relation to her culture and, potentially but not only, to the psychological harm that negative attitudes and practices may have on individuals. With regards to the way one feels about one's own culture, it is possible to prevent and alleviate these costs by providing information to those who have these feelings about alternative interpretations of the norms and practices of their cultures. Take the example of Grace Phelps–Roper, a former member of the Westboro Baptist Church who was born and raised in the Church, but who exited the group. Grace Phelps–Roper is the daughter of Shirley Phelps–Roper who, in turn, is the daughter of Pastor Fred Phelps. In one of her interviews, Grace Phelps–Roper affirmed that her contact with different Christian–based religions helped her to make the decision to exit the group; for until she had this contact the only biblical authority she had was her grandfather, Pastor Fred Phelps (McCaskell, 2013). When she was a member of the Church she felt that exiting was synonymous with eternal damnation; after having contact with other religions she started believing that life outside the group did not necessarily mean going to Hell. Therefore, her contact with other viewpoints helped to correct the intrinsic cost. Another example is the case of James Schwartz, the gay man who is a former member of an Amish community; in one of his interviews with The Huffington Post, he mentioned that his exit process would have been much easier if he had had access to information about other kind of views on Christianity (Huffington Post, 2012; HuffPost Live, 2012). Samuel Brinton's contact with others besides members of his Southern Baptist community helped him feel that there is nothing wrong with his sexual orientation and that being gay does not entail that anything is morally wrong (Bentley, 2011; Wareham 2011).

Moreover, there are a variety of forums, charities and organisations that can provide help and information that may alleviate intrinsic costs. For example, the website *Imaan* (n.d.) provides support for Muslims who belong to sexual minorities by giving individuals a new interpretation of the *Quran* as well as more general information about sexuality. On the website, some success stories of how LGB Muslims have overcome their struggle between sexual orientation and their religion are described.

Bearing this in mind, contrary to what Barry thinks, it is possible to prevent and alleviate intrinsic costs. As a potential policy for providing information to individuals who suffer intrinsic costs, I think an intercultural dialogue (using the model explained in the next chapter) could be of help here; associations could regularly engage in a dialogue with other groups, social workers, scholars, experts in religion and so forth. This would help individuals to have a broader view on their beliefs that would help to diminish intrinsic costs. As an additional policy, the state could promote forums, websites, etc. that could give information to individuals that aid them in being critical about their own cultures. On top of this, if it is the case that intrinsic costs include psychological costs, the state could offer medical support, especially psychiatric and psychological support (*e.g.*, psychotherapy, counselling), for those who exit. Even if intrinsic costs are not psychological costs, speaking of feelings about eternal damnation that seem to be a religious matter can be softened by medical advice. Ergo, it is feasible to prevent and alleviate intrinsic costs by the kind of policies just described. With regards to not feeling that one is condemned to eternal damnation not being a universal interest the same line of argument used above about group rights can be used. It can be affirmed that if this interest is considered at a higher level of abstraction, then it can be universal. It can be considered to be a form of universal interest in psychological integrity and a good quality of life.

Finally, it is not unfair for the state to intervene in the affairs of the group in order to prevent intrinsic and associative costs for at least three reasons. First, according to Barry, intervention is acceptable if it does not interfere with freedom of association. To be clear, Barry's intuition for limiting state intervention to prevent intrinsic and associative costs is, in part, that there should be a balance between protecting individuals' interests and freedom of association. I agree with Barry's intuition of balancing equality with freedom and that is why I reject Okin's and Fraser's thesis that both society and minority groups should be governed by the same rules; there are some kinds of associative and intrinsic costs that associations and individuals can impose on others. For instance, the state cannot force parents to accept their children's sexual orientation, nor should, in some cases, those who do not want to associate with LGBs be forced to do so. However, the policy suggestions given above do not interfere with freedom of association and, for that reason, they are

acceptable. Dialogue and deliberation are not too different from the example that Barry accepts as a non-violation of freedom of association. To recall, Barry contends that the state could intervene in community affairs without violating freedom of association if this intervention forced groups to have a trial or dialogue with those who they expelled, meaning that the expelled individuals had an opportunity to defend themselves before their departure. This kind of intervention is very similar to the proposal of dialogue within groups.

Second, Barry believes that no matter what norms and practices associations have they should not disable individuals from functioning in society; in fact, Barry (2001, p. 212) contends that all individuals, despite their affiliation are entitled to a functional education that is “designed to ensure that its recipients will grow up able to make a living by working at some legally permissible occupation, engage in commercial transactions without being exploited as a result of ignorance or incompetence, deal effectively with public officials, know enough about the law to be able to stay within it”. This means that, broadly speaking, this education should be one that enables them to make well-considered and well-informed choices. This education would trust in individuals to make their own choices; not necessarily the ones that a liberal would recommend, but informed choices about how the world is. This idea that individuals should be able to function is compatible with the promotion of forums, like the website *Imaan* (n.d.); as these forums help individuals to pursue their own life plans and develop a different attitude towards their sexual orientation. It is also compatible with being able to function, to be given psychological and legal support for those individuals who are suffering intrinsic and associative costs. Some LGBs victims of certain group practices and norms may need specific psychological counselling and healthcare and/or legal care depending on what they were victims of. For example, there is specific counselling for those who were victims of sexual conversion therapies involving psychological coercion. Moreover, it would be important for LGBs exiting or expelled members to be aware of any legal action they can take against the group, as a result of the associative and intrinsic costs that are being or have been imposed.

The third reason why it is fair to alleviate and prevent intrinsic and associative costs is because imposing those kinds of costs can have an impact on external costs, which according to Barry is unacceptable. In other words, in some cases, not preventing

intrinsic and associative costs may jeopardise external costs. As explained in the chapter evaluating Okin's work, severe emotional and psychological coercion can have a negative impact on individuals' mental dispositions, self-respect, self-esteem and capabilities (Spiecker, Ruyter and Steutel, 2006, pp. 316–320; Okin, 2002). This negative impact, in turn, has a paralysing effect and makes individuals less capable of taking advantage of the opportunities available. It is unlikely that LGB individuals who are raised and born in the context of the Westboro Baptist Church, where statements like 'Fags are like dogs', 'Death to fags and dykes', have the self-esteem and psychological disposition to take advantage of opportunities and pursue their interests. For this reason, the state should prevent intrinsic and associative costs so that, as Rawls contends (2001, p. 59) "the social bases of self-respect, understood as those aspects of basic institutions normally essential if citizens are to have a lively sense of their worth as persons and to be able to advance their ends with self-confidence" are fulfilled. To give some examples, a gay man who is socialised in an environment where he is taught that gays cannot work with children hardly has the psychological disposition to apply to a job position as a school teacher. A lesbian working at a Catholic school who is constantly harassed, ignored, shunned, humiliated, etc. at her work due to her sexual orientation can barely have the disposition for continuing working there. A gay Amish who is kicked out of his community when he turns 18 can hardly have the psychological disposition for finding a job. Taking this on board, even though there may be a conceptual separation between kinds of costs, in practice, they intersect and affect each other; due to the fact that intrinsic and associative costs may interfere with the external costs, that Barry considers unacceptable, then at least those intrinsic and associative costs that impose external costs are also unacceptable. The underlying premise to this argument is one which I think is plausible; namely, that individuals, no matter from what culture, have an identical psychological structure and if they are treated in an inhuman way this has a negative impact on their psychological health.

4.7 – Kukathas' Philosophical Anthropology: Human Nature and the Universal Human Interest in Conscience

Bearing in mind Barry's theory, I will now move to Kukathas' philosophy. Kukathas

philosophy is important to analyse because it takes a quite different stand from the ones discussed in the previous chapters. In chapters 2 and 3, the authors analysed are keen to intervene in the cultural character; Kukathas on the other hand, suggests a laissez-faire approach. It is important to assess to what extent such an approach would or would not have damaging consequences for LGBs.

Kukathas' theory is based on two core ideas. The first core idea is his philosophical anthropology and its implications. The second core idea is his libertarian theory of freedom. The groundwork for this libertarian philosophy is his version of freedom of association, which he thinks is the best way to protect human beings' most fundamental interest: the interest in living according to one's own conscience.

In this section, I will focus on his philosophical anthropology. The starting point of Kukathas' philosophical anthropology is that human action is motivated by self-interest, affection and principle/conscience. Kukathas' (2003b, p. 43) idea of self-interested behaviour is borrowed from economists and rational choice theorists: "It is an assumption which lies at the core of modern economics to the extent that it takes as given the existence of individuals as rational agents, and posits utility maximization as the goal of such agents". In this sense, being self-interested means to act according to what one believes is the best way to achieve or maximise one's own goals, (Kukathas, 2003b, p. 42-43). By way of illustration, if a certain individual believes that investment banking is the best way to earn money and if he has a preference to earn a lot of money, then he will try to find a job in this sector.

For Kukathas, being motivated by affection means to take into consideration in one's decision making, the wishes, feelings, opinions, reactions and so forth of significant others. Someone is motivated by affection when one's attachments to others play a role in one's decision making. Hence, being motivated by affection means that one is acting in a way that takes into consideration not just what is best for oneself, but also what one believes is best for someone else who is important. Kukathas (2003b, p. 44) explains that "Affection identifies not a disinterested motive but an uninterested one. Individuals who act out of affection are not impartial—they are simply not partial to themselves". For instance, a Muslim woman who is in love with a man who is not part of her community but who decides not to have a relationship with this man due to her parent's disapproval, is acting according to affection; for she is making her

decision based on what her parent's (significant others) feelings are about her actions. According to Kukathas' definition of affection, a gay man who does not feel there is anything wrong in principle with his sexual orientation, but who is aware of the disapproval of his parents of a same-sex relationship, and, for this last reason, remains chaste, is acting motivated by affection.

To the third motivator of human action, which Kukathas calls conscience/principle. Conscience/Principle is an attachment to ideas that motivate action. More precisely, being motivated by conscience means to act according to one's own moral beliefs. Therefore, when someone is acting according to one's moral beliefs, then one is being motivated by conscience (Kukathas, 2003b, pp. 42–48). By way of illustration, the philosopher and animal rights activist Peter Singer believes that eating meat is unethical and so when he decided to become a vegan for that reason, he was acting according to his conscience.

Even though by the explanation given above it may seem that Kukathas believes that each action has only one motivator, this is not the case. In Kukathas' view, actions usually do not have only one motivator. Rather, actions are usually the result of a variety of motivators working together. For example, the gay Christian man who chooses to endorse chastity would probably reach such a decision as the result of a group of motives, rather than just one. He could decide to not have a same-sex relationship because there are more job opportunities for straight men in a heterosexist society (self-interest); but he could simultaneously believe that as a good Christian, the right thing to do is to remain chaste (conscience); additionally, he could also remain chaste because he loves his parents enough that he wishes not to disappoint them by having a same-sex relationship (affection). All these three motives together can contribute to his decision. Therefore, even though the examples provided above seem to indicate that a specific action would have only one motivator, that was simply a methodological strategy used to explain the concepts.

On top of this, in Kukathas' (2003b, p. 45) view, "there is no natural hierarchy of motivating concerns. Action may be motivated by principle; but individuals may also abandon principle out of self-interest as readily as they act against their self-interest for reasons of affection or principle". This means that sometimes one motivator overrides the others and individuals can have stronger commitments to one kind of

motivator than another. However, Kukathas considers that conscience is the most normatively important of all motivators. In his opinion, the reason for this is, in part, that human beings are primarily moral beings and, consequently, are disposed to direct their lives/purposes towards what they consider to be morally worthwhile; consequently, from Kukathas' point of view, individuals find it difficult to act against their conscience. In Kukathas' (2003b, p. 48) view, "conscience is what not only guides us (for the most part), but what we think should guide us. It is this motivation which makes us—distinctively— human". This tendency to govern one's own conduct primarily by conscience and the difficulty to act against one's moral beliefs can, in Kukathas' (2003b, p. 53) view, be observed and has empirical support: "observation reveals that human beings are powerfully disposed to act according to conscience (or principle, to resort to our earlier, Humean, terminology), and find it difficult to act against its counsel".

An additional reason why principle is so important is because, according to Kukathas, the meaning of life is given by conscience (Kukathas, 2003b, p. 55). Hence, Kukathas considers that identity is connected with morality because what individuals are is their self-interpretation, which ultimately is provided by moral evaluation. It is important to notice that this says nothing about what each person's morality is. A human rights activist and a member of *Al-Qaeda* can be both acting according to their conscience even if they are doing opposite things. What matters here is what they believe is right.

Owing to the fact that conscience plays such a strong role in individuals' lives, Kukathas contends that living according to one's conscience is a universal and basic interest that all individuals share. Kukathas (2003b, p. 64) affirms that "the worst fate that a person might have to endure is that he be unable to avoid acting against conscience". Due to the fact that conscience structures human beings' lives, living against what is such a strong trait in people's characters is extremely difficult. Moreover, Kukathas (2003b, p. 53) states that "the life of human beings is not merely, or even primarily, bodily existence; it is a life of the mind. The greatest sufferings humans generally endure are not only physical but also mental". Therefore, living according to one's conscience is a universal basic interest because it encompasses such a great part of individuals' lives. In his view, this is a cross-temporal and cross-cultural interest. So, Samurais, gay Muslims, Catholics, members

of the Westboro Baptist Church and so forth all have this interest (Kukathas, 2003b, p.55).

4.8 – Kukathas’ Libertarian Version of Freedom of Association

The second important aspect of Kukathas’ philosophy is his defence of freedom of association. For Kukathas (2003b, p. 115), “freedom of association has to be understood not as the freedom to enter into association with others (since those others may be unwilling to associate) but as the freedom to dissociate from those one does not wish to be with”. According to Kukathas, freedom of association is primarily defined as the right to exit groups,¹² *i.e.*, freedom of association exists when individuals have the freedom to leave or dissociate from a group they are part of. In other words, essential to this version of freedom of association is the idea that individuals should not be forced to remain members of communities they do not wish to associate with. Therefore, according to this definition, freedom of association is not about the freedom of entering a specific group; rather, it is about the freedom to leave those groups that individuals want to dissociate from (Kukathas, 2001, pp. 39–40; Kukathas, 2003b, p. 95).

According to Kukathas, there are two necessary and jointly sufficient conditions for individuals to have the freedom to exit. These conditions are that individuals are not physically barred from leaving, and that there is a place similar to a market society where they can exit. It is not clear what Kukathas means by not being physically barred. On the one hand, Kukathas seems to allow physical injury and corporal punishment as acceptable practices; on the other hand, he argues that individuals should not be victims of aggression by others (Kukathas, 2001, pp. 39–42). Hence, it is difficult to tell what is included in the absence of physical restriction condition that Kukathas thinks is a necessary requirement for exit. With regards to the second condition, the place to go/enter, in Kukathas’s view, should be similar to a market society to fulfil this condition. From Kukathas’ point of view, a place to go is a necessary requirement for exit because it would not be credible to think that individuals had a right to exit if all communities were organised on a basis of

¹² Kukathas uses the terms ‘group’ and ‘association’ interchangeably.

kinship, for the options available would be either conformity to the rules or loneliness. In turn, according to Kukathas (1992a, p. 134) a market society offers “a degree of individual independence and the possibility of what Weber called social closure was greatly diminished”. So, even though freedom of association is defined as the freedom to dissociate, Kukathas considers that for that freedom to exist, there is a need for a place to go; this is not necessarily another association, but somewhere where individuals can go, besides where they are at.

Taking this on board, in Kukathas’ view, a place to go and not being physically barred are the necessary and sufficient conditions for individuals to have freedom of association. According to Kukathas, this means that there is nothing else needed for freedom of association to exist, but if these conditions are not met, freedom of association is nonexistent. From Kukathas’ point of view, this version of freedom of association is compatible with the imposition of high costs of exit/dissociation and membership due to the fact that the magnitude of costs in a choice are not related to freedom (Kukathas, 2003b: 107–109). Take the example of a politician who is offered a huge bribe to favour a lobby group; it would be very costly for him to refuse it, but that did not mean that he is not free to refuse it, according to Kukathas’ theory. From Kukathas’ (2003b, p. 107) perspective, this politician is still free to decide, even if this is a very risky decision: “It is simply to acknowledge that exit may, indeed, be costly; but the individual may still be free to decide whether or not to bear the cost. The magnitude of the cost does not affect the freedom.”

According to Kukathas, if individuals remain members of this community even if they have somewhere to go and they are not being physically barred from leaving, then it is because, Kukathas argues, they approve of that lifestyle. According to Kukathas’ theory, acquiescence or consent to a certain practice in an association exists when individuals have the opportunity to reject abiding by that practice, but they still choose to abide by it. In Kukathas’ opinion, to have this opportunity is equivalent to not being physically barred from leaving, and having a place to go. In practice, this conception of freedom has implications for the internal structure of associations and functions of the state. In terms of implications to the internal structure of associations, the state would not impose common standards for associations, besides not physically barring individuals from leaving. So it is compatible with this laissez-faire philosophy that associations can be extremely

liberal and democratic but also that those associations are internally illiberal, undemocratic, gendered, patriarchal, heterosexist, racist and so forth.

More specifically on the topic of heterosexism within minorities that is the concern of this thesis, Kukathas believes that the state would not force communities to have any specific ethical view on homosexuality or behaviour towards LGBs. By way of explanation, the state would not impose common standards for the treatment of LGBs. As a result, communities could be quite illiberal and heterosexist, with some communities having the freedom to criminalise homosexuality, prohibit same-sex adoption and exclude LGB individuals from certain job posts. Moreover, if communities wished, they could not only allow discrimination towards LGBs but also encourage this discrimination. It could also be compulsory to attend conversion therapy sessions where physical injuries would be inflicted to change sexual orientation. In Kukathas' (2003b, p. 31) own words: "if a province, for example, discriminated against LGBTs by declaring same-sex unions criminal, the federal government would not have the authority to override its laws on the grounds that they were illiberal".

To give some concrete examples, Sheik Omar Bakri could form an association governed by *Sharia*, where homosexuality was criminalised and punished, provided the fact that those who did not wish to live according to *Sharia* could leave. Those Southern Baptists who wished to inflict physical and psychological harm by applying sexual conversion therapies, could do so, if these therapies did not physically stop individuals from leaving. In this society, the members of the Westboro Baptist Church would be free to use hateful language towards LGBs. Those Amish and Hutterite communities that have practices of ostracism and shunning, would be free to exert these practices on LGBs in their community. Catholic schools, hospitals, adoption services, etc. could all discriminate according to sexual orientation. In Kukathas' view, those LGBs who remain members of these groups and accept these norms and practices, even though they have the choice not to, are making such a decision because they wish to live according to that heterosexist lifestyle.

According to this theory of freedom, the functions of the state are quite limited. In Kukathas' style of freedom of association, the state is not duty bound to secure individuals' access to healthcare, education, and so forth. These forms of welfare

should be provided by associations, if those associations wish to provide them. According to Kukathas' theory, the state should only intervene to guarantee the right to exit, preserving the ongoing order of society by guaranteeing the safety and security of its citizens and preventing civil war. In practice, this means that the state has two functions. First, the state has to guarantee that there is no violation of freedom of association, *i.e.*, that individuals within associations are not being forced to remain members by being physically barred from leaving (Kukathas, 2003c, p. 65). Second, it means that the state should regulate so that there is no aggression between associations. So, even though associations can endorse practices that are extremely aggressive towards their members, it is a requirement for Kukathas that there is mutual toleration between associations. Societies cannot commit acts of aggression towards each other and, if they do, the state can, in his view, legitimately intervene to stop this aggression.

Bearing in mind the functions of the state and the internal structure of associations, this society would be a society of societies. Each society would have its own legislation, *i.e.*, it would have jurisdictional independence (Kukathas, 2003b, p. 97). In Kukathas' view, the validity of the laws of communities only have local recognition, *i.e.*, the state would not recognise same-sex marriage and so forth; rather the state would be indifferent to the way individuals associate. So, Catholic marriages may be recognised in the Catholic community and same-sex marriages in the LGB community, with none having state recognition in the sense of being a civil marriage. The duty of the state here is to guarantee that these different views coexist and that the freedom of exiting is secured (Kukathas, 2003b, pp. 4, 22, 65–68). According to Kukathas (2003b, p. 22) such a society with so many illiberal norms would be liberal “to the extent that it is tolerant of difference or dissent”. That is to say that owing to the fact that it accommodates and tolerates a multiplicity of authorities, then the society is liberal (Kukathas, 2001, p. 41; Kukathas, 2003b, pp. 22–27).

The reason why Kukathas endorses this libertarian version of freedom of association is because he thinks that it is the best way to protect individuals' universal basic interest in living according to their conscience. Kukathas believes that in a society where associations are protected from external aggression and with few requirements for the internal structure of associations, an adequate setting for radically distinct

ways of life to coexist is offered. In his view, protection from external aggression makes it possible for individuals to live peacefully according to their conscience, even if there are different ways of living (Kukathas, 1992a, pp. 116–117).

Finally, the fact that there are few requirements for how associations should be structured gives fewer limitations on how individuals wish to live. That is, if there were too many requirements for how associations should govern their internal affairs, then there would be fewer ways of life that would be acceptable; consequently, there would be less freedom to live according to one's own conscience. In Kukathas' view, this model does not privilege some forms of conscience over others. In other words, he believes that this model treats equally those who believe homosexuality is a crime, those who want to pursue a same-sex relationship and so forth. According to this view, even though living according to one's conscience is the most basic universal interest, there may be communities who reject conscience as a value. Indeed, respecting the interest in conscience means allowing individuals to live in ways that reject liberal values (Kukathas, 2003b, p. 116). To the argument that more rights besides the right of exit should be secured to guarantee that liberty of conscience is protected, Kukathas replies that if more rights were protected or more impositions were made to communities then the freedom of conscience of those who reject freedom of conscience would not be respected. So having exit as the only fundamental right of individuals emerges as the way to simultaneously preserve the liberty of conscience of dissenters and those who desire to remain good faith members of their communities.

To this *laissez-faire* philosophy Kukathas adds the following *ad hoc* arguments about the disadvantages of state intervention. He affirms that history suggests that states have oppressed their minorities and have not safeguarded their best interests. Hence, it is dangerous to let the state decide what people's best interests are. Kukathas' argument suggests that it is likely state intervention would only reflect the personal preferences of the elite. Furthermore, if states have power over deciding what people's best interests are they are likely to go beyond their duty and impose arbitrary rules. On top of this, state intervention does not guarantee, according to him, better outcomes. Groups may backfire as a result of the attempts of state intervention to transform them (Kukathas, 1992a; Kukathas, 1997b, pp. 89–90; Kukathas, 2002b, p. 136).

His other argument in favour of a laissez-faire philosophy is that liberalism is committed to free public reason as the only legitimate basis for law. This means that there is no justified public authority to restrict individuals' freedom to choose how they live besides their own authority. If the state does not respect this, it is being dogmatic and to a certain extent totalitarian and intolerant. In addition, given the fact that there are disputable viewpoints regarding the rightness of laws, there is some reason to doubt their rightness; consequently, there is a good argument for tolerating different perspectives on the value of different laws (Kukathas, 1997b, pp. 79–80; 2003b, p. 126).

4.9 – Heterosexism, Place to Exit and Freedom of Conscience

In this part of the chapter, I will assess Kukathas' theory of freedom of association in relation to LGBs within minorities. As Festenstein (2005, p. 104) points out, generally speaking, "the possibility of exit presumes not only a society into which the departing member of the group can enter, but also that they be able to live in that society". This means that for exit or freedom of association to be possible, it is required that there is a viable alternative society where the departing member can exit to and that she has the capacity to live in that viable alternative. In the case of LGBs within minorities in particular, the viability of exit requires that there is a place of refuge, free from heterosexism, and that the individual in question is capable of moving to and living in that place. Taking this on board, my argument against Kukathas' theory resembles the criticisms that Shachar raises against his theory, although mine is focused on the case of LGBs within minorities. Shachar (2001a, p.69) argues that Kukathas "considers minority group members' right of exit to be dispositive, without ensuring that group members will actually be able to exercise this right". On top of this, as I will argue in this section, he does not guarantee that there is a viable alternative place to go and the alternative he does give is in conflict with other aspects of his theory; for that reason, freedom of conscience is not protected. So, I will try to demonstrate that the freedom of conscience of those LGB individuals within minorities who want to pursue a life according to their sexual orientation is not being protected. This, in turn, requires that the state is more interventive in the affairs of groups.

Generally speaking among philosophers, the necessity for departing members to have a viable alternative to their situation (that is, a viable place to enter) in order for exit to be credible, is not controversial. Even Kukathas, who is probably the philosopher who takes the most laissez-faire stand on multiculturalism asserts that an alternative society is a requirement for the credibility of exit. So Kukathas (2003b, p. 95) contends that if “ultimately, what matters is that people not be required to live in or be a part of ways they think wrong, or to participate in practices which (morally) they cannot abide”, then people have to have an option to live in a place where they are not obliged to live in ways that go against their conscience. To recall, Kukathas (1992a, p. 134) considers that “exit would be credible only if the wider society were much more like a market society within which there was a considerable degree of individual independence and the possibility of what Weber called social closure was greatly diminished”. From Kukathas’ point of view, the viable alternative consists of a society that is governed by market rules, which is perhaps similar to a capitalist society; moreover, owing to the fact that Kukathas makes reference to Weber, it would be one where there is individual freedom and where individuals were unable to monopolise or restrict others’ access to resources. Therefore, the point at issue then is not whether the existence of a viable alternative is a necessary condition for exit, but what kind of society this viable alternative has to be.

Nevertheless, there is still tension generated by this viable alternative, that is, between Kukathas’ version of freedom of association and the limits of the state’s power and functions. To recap, according to Kukathas (2003b, p. 115), “freedom of association has to be understood not as the freedom to enter into association with others (since those others may be unwilling to associate) but as the freedom to dissociate from those one does not wish to be with”. Hence, freedom of association is defined as the right to exit, not the right to enter into any community: no community has the obligation to accept someone they do not wish to accept. That is, cultural groups have, in Kukathas’ view, the right to establish their own membership rules, which means they can exclude and expel whoever they want. On top of this, according to Kukathas, all the institutions in this society are private; that is, besides safety and defence, there are no public schools, shops, hospitals, health centres, and so forth. However, due to the fact that the function of the state is simply to provide

safety and defence, with associations able to provide other services if they so wish to do so, then social closure would be substantively diminished. That is, if associations can refuse membership to individuals and if associations are the only providers of institutions many individuals may be fated to what Kukathas (1992a, p. 134) calls the “the lawlessness (and loneliness) of the heath”, something that Kukathas believes to be an alternative that is not credible. In short, the lack of right of entrance and the absence of public institutions seems to lead to the kind of social closure that Kukathas thinks is undesirable and not a viable alternative.

This tension creates problems for the protection of what Kukathas considers to be the most basic universal human interest in living according to one’s own conscience, that at least some LGB individuals have. The reason why this interest is not protected is due to the fact that Kukathas does not guarantee that there will be a place that is free from heterosexist practices. There is no guarantee that LGB individuals within minorities can live a life free from heterosexism in a place where LGB individuals within minorities are treated equally and not persecuted for their sexual orientation. Generally speaking, this is because Kukathas does not insist on a society that has a liberal culture and therefore, as Spinner-Halev (2000c, p. 85) observes “there is no way to ensure that one has a right to live in a society that lacks internal restrictions”.

To understand why, recall that there are two possible places to go if someone is in a heterosexist community and wants to leave: one can enter a mainstream society or one can join another group. However, entering a mainstream society is not possible. In a libertarian society structured according to Kukathas, the only members of the state are groups not individuals, and the state does not provide anything besides peace between institutions and protection against physical aggression; groups are the sole providers of welfare and employment. There will therefore be no public institution that could treat LGB individuals equally; there would be no institution that would have anti-discrimination laws in employment, equality in healthcare, cultural life, marriage, adoption and so forth. The alternative option of joining another group strongly depends on the existence of non-heterosexist groups. According to Kukathas, associations can set their internal structure up in any way they wish; therefore, it is compatible with Kukathas’ theory that all groups are heterosexist, *i.e.*, they have norms that criminalise same-sex acts and treat LGB individuals unequally. Put differently, Kukathas’ style of toleration is set at the level of community.

However, this comes at the price of lack of assurance of toleration for individuals. Therefore, as Spinner-Halev (2000c, p. 84) points out, “the ability or desire of people to live as they please (without harming others) is absent in Kukathas’s society, unless they happen to find a community they like”.

In practice, there are two possible scenarios if all communities are heterosexist. First, if all associations reject membership of LGB individuals, then their fate is loneliness and an extreme damage of interests. In this case, LGB individuals become pariahs, individuals without any legal recognition of their relationships and family, with no access to healthcare, education, housing and so forth. The second possible scenario is that LGB individuals are accepted in some communities, but are treated in ways with which they do not acquiesce. In this case, they live in such communities simply because they have no alternative. Take the example of a gay man living in the United Arab Emirates; all the Emirates criminalise homosexuality, even though penalties are different (ILGA-Asia 2009). A gay man charged with sodomy who has the alternative of going to jail in Dubai for 10 years rather than 12 in Abu Dhabi is hardly being given a credible alternative. That is, the fact that he chooses one over the other does not mean he acquiesces to that way of life. As Phillips (2007a, p. 141) affirms: “you might feel justifiably irritated if your decision to exchange one system of oppression for another is taken as evidence that you acquiesce in the new one”. This scenario shows an over-restrictive set of options, which demonstrate that there is no real acquiescence. Moreover, in a scenario like the one described, where there is no place to go, the norm of concealing one’s sexuality is reinforced due to the social stigma and physical threat of revealing it. As a result, the feelings of fear, self-loathing and internalised homophobia in general are reinforced in a scenario where homophobia remains widespread.

Whatever the scenario, freedom of conscience is not being respected; for those who want to be free and live as LGB individuals have to act in ways they think it is wrong or participate in practices which they do not accept – more specifically, they have to reject their sexual orientation. Consent to heterosexism is meaningless because there are no real alternatives (Phillips, 2007a, pp. 140–142). It can be argued that heterosexism reveals some level of conflict in Kukathas’ theory; namely, that freedom of conscience for LGB individuals would only be protected if there is a community that is not heterosexist, meaning their freedom of conscience is only

protected contingently. Either of the scenarios suggest that freedom of conscience is not being respected; for those who want to be free to be LGBs have to act in ways they think is wrong or participate in practices which they do not accept – more specifically, they have to reject their sexual orientation. As follows, consent to heterosexism is meaningless because there are no real alternatives. (Mazie, 2005, p. 748; Phillips, 2007a, pp. 140–142; Spinner-Halev, 2000c, pp. 82–85)

The fact that Kukathas' laissez-faire approach may lead to a scenario where there are high degrees of intolerance and no viable place to go free from heterosexism reinforces the ideas defended above in the critical analysis of Barry about the need for the state to take a more active role in tackling heterosexism. There is a need to insist on a liberal and a heterosexist culture in order to provide a viable alternative for LGBs; and in order to insist on such a culture, it is necessary that the sources of homophobia, including stereotypes are explored so that they can gradually be eliminated. This can be done via the policies mentioned above, like the creation of forums, engagement in dialogue, etc. Furthermore, in a scenario where there are no viable alternatives and many harmful practices are seen as acceptable, the need for means to report these issues seems to be even more urgent. Given the fact that the degree of threat is higher in a homophobic and intolerant society and if someone is doomed to acquiesce to norms they do not abide by as a result of the lack of alternatives, the means to report that one is in a situation against one's own will is more important. For example, a gay man in the Emirates who has to choose between a 10 or a 12 year sentence is in urgent need of voicing that he does not want either but that he has no alternative.

4.10 – A Viable Alternative for LGBs and the Capacity to Enter

One of the questions that has to be asked now is: what kind of a society will be a viable exit alternative and help exit become a real possibility? This society should provide a place of safety. For LGBs, providing a place of safety means that homosexuality is not criminalised, there are laws protecting LGBs from hate crimes and hate speech, like honour killings and other threats to physical and psychological integrity, and a place where the practices of ostracism, corrective rape and sexual conversion therapies are prohibited. The alternative society should also be one whose

laws do not mirror the internal homophobic rules of minority groups. A society that would be a viable alternative would have to be one that resembles a more egalitarian and liberal society, like the one defended by Barry. This means that there should be complete legal equality between LGBs and heterosexuals. Hence, equal employment and welfare rights, equal access to education, housing, access to cultural and social activities, education, equality in marriage, adoption, co-adoption and child custody should all be included in state law. For if state laws offer the same options as the groups then the scenario is similar to the gay man who has to choose between the punishments administered by the Emirates, which is hardly a viable alternative, otherwise, individuals would still be tacitly governed by the laws they reject. Moreover, if those LGBs' interests are fundamental and due to the fact that liberalism has a commitment to provide the conditions for fundamental interests, then such an alternative is morally required. On top of this, there would be anti-discrimination policies in employment and equal opportunities for all despite one's sexual orientation (Levy, 2005, pp. 182–186). Owing to the fact that attitudes matter in terms of rights, the state should engage in practices that lead to a stereotype free society, like the kind of society pictured by Okin in chapter 3.

However, the existence of this society is not enough; it is also a requirement that individuals are able to exercise the right to exit. So as Shachar (2001a, p. 69) affirms it is necessary that “citizens have the means, capacities, and freedoms to abandon their traditional cultures”. In other words, besides the existence of this alternative society, it is also necessary that, as Festenstein (2005, p. 104) argues individuals “be able to live in that society”. Against Kukathas, I affirm that his *laissez-faire* philosophy does not guarantee that individuals are able to live in that society due to the fact that it neglects the necessary and sufficient conditions for being able to exit. So the capacity to exit requires that groups' internal structure is one that does not disable LGB individuals from exiting the group. The mere requirement of not being physically barred ignores that there are forms of physical and psychological coercion that make individuals less able to reject heterosexism; moreover, there are educational and economic requirements that should be fulfilled so that the person is able to abandon the community.

LGB individuals within minorities need to be free from the psychological coercion that disables them from pursuing their sexual orientation. In order to make some

choices, it is required that individuals have a certain mental disposition to carry out those choices. As explained in chapter 3 and in the critical analysis of Barry's philosophy, lack of self-respect can lead to the incapacity to take advantage of the opportunities available. More specifically, the disposition of LGBs to leave a group and live according to how they wish requires they are free from emotional coercion, blackmail, guilt and so forth. It is hardly the case that a gay member of the Westboro Baptist Church, who is routinely exposed to hate speech ('Fags are dogs'), can have the mental disposition to pursue a relationship with another man, pursue job opportunities, make use of welfare and assert his basic rights, etc.. This kind of ostracism has a strong negative impact on an individual's mental disposition. Humiliation practices like shunning in some Amish and Hutterite communities are also kinds of practices that involve coercion likely to create psychological barriers for exiting to a heterosexism free society. Sexual conversion therapies that involve psychological violence, torture and physical punishment, like inflicting electric shocks on individuals, would not be acceptable because they would also undermine the capacity to live a heterosexism free lifestyle. Take the case of Samuel Brinton, a 23-year-old student from MIT, the son of Southern Baptist ministers, who was a victim of one of these therapies. Samuel Brinton reported that he tried to commit suicide a few times, and that the first few times he tried to kiss and hug another man, he started crying and vomited (Bentley, 2011; Wareham, 2011). Samuel Brinton's capacity to pursue his way of life was strongly undermined by the psychological impact of some of the practices he endured. As explained above, it is not clear to what extent Kukathas accepts physical aggression towards members of the group. However, it is clear that the examples just given would be acceptable in his theory, even though they would potentially make an LGB individual incapable of leaving a heterosexist group. Someone who is regularly bombarded with homophobic slurs and taught that homosexuality is dangerous for working with, say, children, may lack the self-confidence for pursuing a wide range of possible job opportunities. If LGB individuals believe they will be discriminated against at a hospital because of their sexual orientation, they may hide relevant information about their sexual orientation and may, in fact, not even go to the hospital if they need it.

Another important barrier facing individuals who enter the larger society is economic. Groups like some of the Hutterites, who do not believe in private

property, reject the idea that those who leave are entitled to part of the property; for they only believe in communal property and not in private property. For an LGB individual in a Hutterite group, the stark choice between extreme poverty and a heterosexist system seems to be unfair. In Kukathas's style of association, this kind of cost, *i.e.*, taking someone's property, is acceptable. Without the economic means to exit, the option to leave the community is severely restricted. If individuals are not in an economic situation where they have the means to refuse certain practices or arrangements, whatever they agree with cannot be considered as meaningful consent. Hence, another requirement is that individuals have the economic means to exit. I suggest that the provision of a universal basic income for all citizens could be a policy that would facilitate exit;¹³ for it would give individuals economic stability. In groups like the Hutterites, where there is no private property, an exit fund could also be a requirement. A voucher system that gives individuals access to welfare provision could also be considered as a policy that would help overcome the economic barrier. On top of this, the state would be duty bound to give assistance to those who exit form a different group and promote their identity.¹⁴ Historically, the gay and lesbian social movements have been mostly nonprofit organisations; but they have offered and are offering a number of services that require economic resources (help hotlines, health-related services, theatre groups, educational enterprises) (Chasin, 2000, pp. 183–185). Such organisations, even if non-profit, need resources to function and without funding (which Kukathas does not guarantee) they are unlikely to continue existing. Someone who just exited a cultural minority group is very unlikely to have the resources to start a community like this. Identities like LGB identity are disadvantaged in the cultural market, and without aid, survival is not possible (Kymlicka, 1995a). This access to economic resources would help LGBs to fulfil their interest in participation in social life. In Kukathas' style of association, these practices of welfare and economic discrimination would be permitted. However if the exit right is to be taken seriously, then groups should not be able to discriminate.

There is also an educational requirement that is necessary for individuals to be able to enter the majority society. The kinds of education that involve the denigration of

¹³ In chapter 6, I will defend a model of associative democracy, where I explain in more detail the role of universal basic income.

¹⁴ This is the aspect of society that would resonate with Kymlicka's ideals.

LGB individuals would have a negative psychological impact on LGBs. For example, if, in the Westboro Baptist Church, children are routinely taught that LGBs are disgusting beings, this will potentially create self-hating images for children and teenagers who have a homosexual sexual orientation. In fact, there is a quite alarming rate of suicide among LGB teenagers that is much higher than for heterosexual teenagers (APA Help Center, 2013). Yet it is still the case, in education, that there is a general requirement that applies to all individuals, independent of whether they are LGB, that everyone has the skills to live in that society. Individuals have to have the capacity to survive or interact with others outside their community. As explained in the sections on Barry (2001, p. 212), it is required that all individuals receive an education “designed to ensure that its recipients will grow up able to make a living by working at some legally permissible occupation, engage in commercial transactions without being exploited as a result of ignorance or incompetence, deal effectively with public officials, know enough about the law to be able to stay within it”. This requires that cultural groups abide by universal educational standards that do not exclude anyone from this education. More precisely, on the topic of heterosexism, LGBs cannot be denied education on the grounds of their sexual orientation. Due to the fact that the only requirement for the internal structure is that individuals cannot be barred from leaving, Barry does not guarantee that individuals receive this kind of education

This does not mean, however, that groups have to be completely liberal in their internal structure. Groups can be illiberal inasmuch as they respect these requirements. In fact, a liberal state should be a limited and restrained one which can interfere in individuals’ affairs, but should avoid doing so. There may indeed, be illiberal outcomes that are freely chosen and result from making use of the liberal values of freedom of conscience, choice, association, respect for individual differences, and freedom to pursue the conception of the good (Mookherjee, 2009, pp. 27–32; Parekh, 1999a). This means that groups can be illiberal only to the extent that they do not undermine their members’ capability to make free choices. Living illiberally or in a heterosexist way is what many people want and if they have the choice to live in a liberal society or if they come from a liberal society and opt into a illiberal community there is nothing wrong with that. It is hard to argue that well-educated individuals are being indoctrinated when they decide to commit to a

lifestyle that some may consider as oppressive (Al-Hibri 1999, pp. 41, 44–6; Bhabha 1999, pp. 81 – 84; Gilman 1999, pp. 53 – 58; Spinner-Halev, 2005, pp. 166 – 167).

These requirements, once more, lead to the idea that a stronger involvement of the state in the character of cultures is important for overcoming homophobia in minority groups. Without routinely engaging in policies that help individuals enter the viable alternative society, then exit is not realistic. This is specially the case with respect to the psychological barriers for entering, but also with regards to other requirements. If medical doctors and employers, for instance, have negative attitudes towards LGBs this can substantively diminish the job opportunities and access to welfare of LGBs.

4.11 – Conclusion: Does Granting Associational Freedoms to Minority Groups have Damaging Consequences for LGBs within Minorities?

In this chapter, I looked at two authors who offer a regime of strong toleration and group empowerment without granting special rights to groups. Rather, Barry and Kukathas defend two views of freedom of association as a solution to injustices within and between minorities. I probed these views in order to evaluate whether empowering groups with associational freedoms without granting groups special rights can offer a solution that does not reinforce heterosexism within minorities. I have contended that even though freedom of association should be balanced with worries about the status of LGBs within minorities, relying only on freedom of association is not sufficient for tackling heterosexist injustices within minority groups. In the case of Barry, I defended a case for being more involved in the prevention and alleviation of associative and intrinsic costs. Moreover, I contended that focusing simply on external costs leaves a variety of sources of heterosexism unaddressed. With respect to Kukathas, his ‘hands off’ approach permits too many violations of LGBs’ interests without giving them a viable alternative to the group. Without giving groups any special rights, Kukathas is granting groups autonomy to totally define their criminal law, membership rules, who is entitled to welfare provision and employment, etc., which, as explained in chapter 2, is problematic. Hence, I have argued that with respect to both authors, freedom of association entails a degree of *laissez-faire* which is undesirable. Contrasting with their views, I contended that in order to tackle heterosexism within minorities the state should

engage in deliberation, the promotion of a liberal culture that can be a viable alternative to the group, the promotion of forums, ways of reporting abuse, and the availability of economic funds for forming associations and guaranteeing that LGBs within minorities are not economically vulnerable. I also discussed whether groups can be illiberal or not. I contended that groups can be illiberal to a certain degree, but that some provisos ought to be respected; namely, there should be a place to go which is a place of safety and full equality, there should be funds available for LGBs to form their own associations and to have access to welfare, and LGBs should be free from psychological and physical violence. Hence, contrasting with the view defended in chapter 3, it is possible to have slightly different rules for groups and the institutions of the larger society. Finally, based on the conclusion of chapter 2 that group rights do not necessarily entail illiberalism, the insights on group rights provided by Fraser and Okin plus an assessment of Barry's arguments, I have argued that there is a case for conceding special rights to groups without reinforcing the subordination of LGBs within minorities.

To conclude, the point at issue in this chapter was not whether freedom of association is important and not whether people should have or not the right to leave their cultural communities. Rather, the point at issue in this chapter was whether providing groups associational freedoms and LGB individuals the the right to exit would be sufficient protection against heterosexism within groups. I have argued that the state needs to be more involved in the affairs of the group and engage in a variety of policies that aim at transforming minority groups in order to promote less heterosexism.

Chapter 5 – Deliberation and Dialogue

Throughout this thesis, I have been suggesting that the state should participate or intervene in the affairs of groups in order for LGBs within minorities to be protected from heterosexist injustices, arguing that deliberation may be a strategy for tackling these injustices. In chapter 3, I have mentioned that stereotypes are an important source of heterosexism and that dialogue may be a way to attack this source and eliminate stereotyping. In chapter 4, I contended that the state should not simply set the rules of what groups can and cannot do and then leave them alone. Rather, the state should be more interventive in the affairs of groups so that heterosexist injustices are not reinforced, omitted or preserved. The point at issue was not whether freedom of association and exit are to be respected or not. Rather, whether those are enough to protect LGBs within minorities. My answer was that they are not and that perhaps deliberation would be an additional and necessary form of protecting LGBs within minorities. In this chapter, I will evaluate the work of two philosophers who defend models of deliberation and dialogue: Deveaux and Parekh. Both these authors consider that there are benefits from engaging in debate with minorities and that there are advantages to making decisions about minority practices democratically. As will become clear throughout the chapter, I am quite sympathetic with the view that deliberation within the realm of groups can tackle heterosexist injustices in a good way, in particular, I suggest that Deveaux's model can do this very well. I argue that engaging in deliberation can improve the status of LGBs within minorities and that it should be a model that is adopted in order to overcome heterosexist injustices within minorities. So, to relate to what has been affirmed in chapter 4, deliberation complements freedom of association in the sense that it reinforces the protection of LGBs within minorities from heterosexist injustices. Taking this on board, this chapter will proceed as follows. From sections 5.1 to 5.6 I will outline Deveaux's model and defend that it, arguing that it can be helpful in tackling heterosexist injustices within minorities. In sections 5.6 to 5.8 I will move to an outline and assessment of Parekh's intercultural dialogue. I argue that even though Parekh's model can offer important insights, Deveaux's approach is better equipped to deal with heterosexist injustices. Then, in section 5.9 I will draw some conclusions and defend some aspects of Parekh's model that I suggest can be

complementary to Deveaux's approach.

5.1 – The Nature of Disputes Within Cultural Minorities

I have been analysing the possible heterosexist injustices within minority groups caused by multicultural policies. It has been the task of this thesis to look at whether it is the case that multicultural policies reinforce heterosexism within minorities and, if that is so, how to address this issue. Deveaux does not deal with heterosexism at length and her main focus is gender difference, but sometimes she does mention LGB individuals within minorities. Even though her focus is not LGBs, her theory can be applied to the normative debates about heterosexist injustices within minorities that are the topic of this thesis. Deveaux's contribution to the normative question explored in this thesis can be observed as emerging from two strands; these strands are the way she conceptualises the problem and the solution offered for solving it.

In general terms, disputes within minorities have, in Deveaux's view, two main characteristics. The first (2005, p. 343) is that these disputes within minorities have a political and strategic character "in the sense that they are primarily about interests, benefits and power". This means that, in Deveaux's view, the disputes or normative challenges within the group are usually about power relations existing within the group and how individuals respond to these. More precisely, some of the disputes are about who has what rights, who is the leader, who has scriptural authority, who has the power to make decisions, who controls the economic resources and so forth.

As an example of a political and strategic kind of dispute, take the way power is structured in some of the Hutterite communities. Generally speaking, the major decisions in some of the Hutterite communities are made by a small elite called the Elders; one of the powers that the Elders have is to impose the punishment of shunning, which consists of isolating, ostracising and so forth the person who is being punished. Another power the Elders sometimes have is to expel other members from the group. In the case of some of the Hutterite communities, this power to expel is social and economic; it is social because they have the power to control the social setting by expelling those who they consider undesirable members. It is economic

because in some of these Hutterite communities there is no private property and those who are expelled usually do not have right to any goods from the Elder's viewpoint. Likely, not all members are happy with these arrangements; the kind of dispute that results from the tension of this potentially contested centralised power has, in Deveaux's opinion, a political and strategic character: it is about who has what power.

Another example of a political and strategic dispute is when there is a debate about who has scriptural authority within a religious community and the implications of a certain interpretation of the scripture. Within some Catholic groups, there are disputes about who has the authority to affirm that the Bible condemns homosexuality or not; these disputes are often the result of different readings of the Bible. For instance, some Catholics who make a more orthodox reading of the Bible affirm that the Biblical passages on Sodom and Gomorrah prohibit homosexual conduct; some other Catholics who have a less orthodox interpretation of the Bible state that those passages refer to nonconsensual sexual intercourse (Helminiak, 1999, pp. 84–85; McNeill, 1993, pp. 42–49). In this case, there is a political and strategic dispute here about who has scriptural authority, and results from different interpretations of the Bible.

Taking this on board, the point is that heterosexism within minorities results, in Deveaux's view, from differences in power within groups and how individuals react to those differences. Particularly in the case of heterosexism, LGBs have less power to make decisions, control resources, contribute to the making of norms and so forth. According to Deveaux, heterosexual members of minorities have more power to defend their interests and to benefit more from cultural practices and norms than LGB members. As in the case of the Hutterites, social and economic power is centralised in the hands of older heterosexual males, who can potentially control the most important aspects of the group. In short, according to Deveaux, heterosexism within minorities has to be interpreted in part, as a result of power struggles that advantage heterosexuals over LGBs.

As mentioned, there are two main characteristics of the disputes within minorities. The second main characteristic, in Deveaux's (2005, p. 343) view of the disputes within minorities is that although disputes have this political and strategic character,

they are also about the “interpretation, meaning and legitimacy of particular customs or forms of custom”. As the examples just presented demonstrate, there is a dimension of the debate that is about the meaning and interpretation of cultural practices and norms, religious texts and so forth. Some of the debates that this involves include a holistic versus atomistic interpretation of the scriptures; a contextualised or decontextualised reading of the scriptures; the practical implications of the scripture. In the case of the possible tension in some of the Hutterite communities, there is an underlying debate about the meaning and legitimacy of practices. In part, the power of the Elders results from a specific reading of the Protestant Anabaptist tradition that ranks individuals according to gender and age. In a way, it is this reading of the Bible that leads to the hierarchy between men and women. As was made clear by the examples of the meaning and licitness of homosexuality in the Bible, there is an underlying discussion about how to interpret the scriptures.

Taking this on board, the disputes within cultural minorities have a political and strategic character, but are usually accompanied by a more intellectual dimension about the meaning and interpretation of norms and practices. Although these dimensions are usually connected, they are not necessarily inextricably connected. There can be disputes where there is only a matter of meaning to be clarified without any kind of politics and strategy involved. For instance, the discussion about the meaning of the Christian Trinity does not seem to have a necessary political or strategic element to it. There are other cases where the meanings of practices are irrelevant and it is just about power. For instance, a Muslim feminist may demand equality in divorce and marriage not because she thinks that this is written in the *Quran*, but simply because she wants to achieve equality between the sexes. What Deveaux (2005, p. 343) considers that disputes within minorities are not related to, are “ethical disagreements”. By this, Deveaux means that the disputes within minorities are not about moral value; this is, they are not about moral truths in the sense of finding a universal principle of deliberation. This contrasts, say, with Rawls’ objective in *Political Liberalism* (2005) in terms of justifying his principles of justice. For Deveaux (2006, p. 6) this does not mean that the disputes do not have a normative dimension: “I argue that cultural conflicts involving cultural minorities are primarily political in character, and while they include normative dimensions, they

do not necessarily entail deep disputes of moral value”. However, the normative aspect is only accidental when it results from debates that are carried out.

5.2 – Deveaux’s Model of Deliberative Democracy

As a normative policy solution for these disputes, Deveaux suggests a deliberative democratic model that is itself political and strategic and gives individuals the possibility to discuss the meanings and interpretations of practices and norms. In her opinion, the deliberative democratic model should be realistic and focus on individuals’ real issues, rather than trying to adopt a model that is based on individuals’ moral differences. As a result, Deveaux rejects models based on an ideal of public reason, moral consensus or idealised moral discourse because she thinks that these are not primarily concerned with the kind of disputes that exist within cultural minorities. Instead, she believes that an adequate model for this kind of dispute is one focused on mediating and negotiating conflict, and how to balance and solve disputes of interests and power. Moreover, she believes an adequate model would be one that would stimulate a debate about the meaning and interpretation of practices and norms. In short, Deveaux’s (2006, p. 96) view is that deliberation should be about, and centred on, “citizens’ needs-based and interest-based disagreements, which reflect the key motivating concerns behind cultural disputes”

From Deveaux’s (2006, p. 96) point of view, one of the advantages of this model is that it “permits and even encourages frank deliberation about citizens’ needs-based and interest-based disagreements, which I argue often reflect the key motivating concerns behind cultural disputes”. Moreover, in Deveaux’s (2006, p. 96) view, due to the fact that those who are affected by the norm would participate in the deliberation, then “proposed reforms will be relevant and informed by people’s lived experiences”. Therefore, such a model would be responsive to the kinds of dispute that exist within cultural minorities. On top of this, in Deveaux’s view, this model has the advantage of being democratically legitimate. Deveaux (2006, p. 19) affirms that the solution to cultural conflicts of a political character is democratically legitimate if and only if all cultural group members are included in deliberations “about the future status and possible reform of their community’s customs and arrangements”. Deliberation fulfills the requirement of democratic legitimacy exactly

because it includes those who are affected by the norm under deliberation (Deveaux, 2005, pp. 341–342; Deveaux, 2006, pp. 19–20, 90–92, 107–108, 217).

For Deveaux, democratic legitimacy, in turn, means respecting the principles of non–domination, political equality and revisability. These principles grant an equal, open and fair debate among participants, where inclusion would be not merely formal, but genuine, according to Deveaux. Accordingly, power differences between participants are diminished, if these principles guide the deliberation process (Deveaux, 2006, pp. 93–94). The aim of the non–domination principle is to prevent those individuals within the cultural group who hold more power from coercing the less powerful in the deliberation process.

The non–domination principle targets the kind of coercion that individuals can be victims of, if they participate or are willing to participate in a dialogue; it is incompatible with this principle to silence, threaten, inflict physical harm, prevent others from presenting concerns or proposals, monopolise voting and undertake any other pressure tactic that aims at controlling the deliberative process by dominating some members. From Deveaux’s point of view, so that individuals are not dominated, their basic rights and freedoms, in particular, the right to expression and to participate in political life, have to be respected. Hence, any behaviour or speech that intimidates or threatens these individual rights should be prohibited (Deveaux, 2005, p. 350; Deveaux, 2006, p. 114).

More particularly, in the case of heterosexism within minorities, this principle implies that those practices and norms that lead to the domination of LGB members should be prohibited. That is, if there are practices and norms that make LGB members less powerful and turn them into victims of forms of coercion, these practices and norms should be abolished, according to the principle of non–domination. This includes the vulnerability that results from the violation of basic civil and political rights, economic status, lack of access to welfare, life, bodily harm and psychological harm. For instance, hate speech towards LGBs, like that carried out by the Westboro Baptist Church, would be a violation of the domination principle. According to this perspective, the difference in economic power in some of the Hutterite communities is incompatible with nondomination; for power–holders (the Elders) are usually older male heterosexual members of the community. The

way this power is currently distributed gives the social and economic power necessary for the Elders to dominate the rest of the group. Other practices ruled out by the principle of non-domination are the strategies of ostracism that some Amish communities engage in, and that consist of isolating dissident individuals, refusing them the opportunity to voice their opinions about group norms and practices. Sexual conversion therapies, like the one Samuel Brinton was victim of, are also a form of domination that is not acceptable according to this principle.

Deveaux's political inclusion principle states that all individuals should have real opportunities for participating in the decision-making process. In this context, to have real opportunities means to have equal access to formal political deliberation. For Deveaux, the principle of political inclusion requires that extra-political and endogenous forms of influence do not play a role in political deliberation and the decisions that result from it. Extra-political and endogenous forms of influence refer mainly to forms of economic and social power. Deveaux quotes Bohman (2000, p. 36) to explain what she means by this: "extrapolitical or endogenous forms of influence, such as power, wealth, and pre-existing social inequalities" should not impact deliberation and its outcomes. In practice, this implies balancing equal voting procedures with an interest in negotiation (Deveaux, 2005, pp. 350–351; Deveaux, 2006, pp. 114–115). Moreover, from Deveaux's point of view, in order to guarantee that political participation is inclusive, deliberation can take place not only in formal but also in informal sites. For example, this may mean funding local media, and the social and community services that will promote debate (Deveaux, 2005, pp. 350–351; Deveaux, 2006, p. 115). Finally, according to Deveaux, as in the non-domination principle, this may imply economic and social reforms by the state that empower the most vulnerable (Deveaux, 2006, pp. 115–116). For instance, the centralised economic and social power that some of the Elders have in some of the Hutterite communities is not compatible with the requirement of political inclusion; for with such power Elders can manipulate decisions and outcomes of deliberation. The centralised power of Pastor Fred Phelps and his closest family to decide who can participate in their political activities, where to picket, who to exclude from the group, what sanctions to impose, what message to pass, among other things, are also forms of political exclusion that undermine the participatory opportunities of some of the members.

These two principles have very similar implications; but, as Deveaux (2006, p. 114) points out “the principle of political inclusion is more controversial both because it is ambiguous in content and may potentially shape decision–making more directly than the principle of non–domination”. Non–domination is a more general principle that targets relations of power; the political inclusion principle directly targets differences of power in participation through the political process of dialogue.

Lastly, Deveaux’s principle of revisability proposes that after decisions are made, they can be revised and debated again. Hence, all debates are unlimited in length and can be continuously and repeatedly approached. This means there are no irreversible decisions in the model of deliberative democracy: every decision made is always open to further discussion and review (Deveaux, 2006, pp. 116, 221). In Deveaux’s view, this possibility to reverse decisions imposes two constraints on the decisions taken in deliberation. First, an obvious imposition is that it cannot be decided that a certain agreement is not renegotiable. For example, assuming that an anti–sodomy law does not go against any of the other two principles, imagine that Sheik Omar Bakri forms a group where it is decided that LGBs should pay a fine if they engage in same–sex acts. Without entering into the debate about whether this law violates non–domination and political equality, if this norm was decided in the deliberation process, it would be compatible with revisability because it does not state that there is no renegotiation of the norm. On the other hand, if there were a clause affirming that this law is irreversible and cannot be contested, then this would not be compatible with the principle of revisability. In Deveaux’s (2006, p. 116) perspective, the second constraint imposed by this principle is that decisions cannot “undercut the future ability of citizens to deliberate on these or other issues”. This means that the decision taken cannot be one that will jeopardise political participation in the future; for example, the Hutterites cannot decide that from a specific point in time to the future, only the Elders, who are heterosexual older men, will make the major decisions in the group. Nor can they decide that economic and social power is centralised in a specific group of people because that would jeopardise political participation.

Modelling deliberative democracy with these principles has implications for who is included in the deliberation, where to deliberate and what topics can be deliberated. With regards to who is included, these principles impose wide political inclusion in

the process. First, in Deveaux's view, these principles imply that a process is democratically legitimate if and only if all individuals affected by a norm are freely included in the process of deliberation. In essence, this means that all decisions should not be taken only by group leaders, but by all group members affected: all individuals affected must therefore have a direct say in the matters discussed (Deveaux, 2005, pp. 341–342; Deveaux, 2006, pp. 92, 107–108, 217). Heterosexist groups, like some Amish and Hutterite communities, where major decisions are usually made by older heterosexual males, violate democratic legitimacy. Due to the fact that, in general terms, the power within the Westboro Baptist Church is monopolised by the Phelps family, then this is also a violation of democratic legitimacy. When James Schwartz was expelled from his Amish community and Lauren Drain excommunicated from Westboro Baptist Church, these were violations of democratic legitimacy due to the fact that these individuals did not participate in the decision of expulsion that affected them.

Second, the principles of deliberation in Deveaux's model also entail that there is the possibility of including outsiders in the group if these outsiders can enrich the deliberation process and reassure democratic legitimacy. Routinely, from Deveaux's viewpoint, the democratic process can take place without intervention from outsiders; but also in Deveaux's view, for groups that are extremely illiberal and hierarchical though, it may be required that outsiders are included in the deliberation process. A reason that Deveaux believes that the inclusion of outsiders would reassure democratic legitimacy is because it would bring political pressure to bear regarding reform and provide more evidence for discussion (Deveaux, 2005, p. 348; Deveaux, 2006, 108–110). In her opinion, the inclusion of some outsiders would also be a guarantee that everyone is being fairly and equally included and not suffering coercion, threats or being controlled by the most powerful members of the group. One of Deveaux's suggestions is the inclusion of arbitrators/mediators. In Deveaux's view, the inclusion of arbitrators could be helpful for mediating the process in a fair way. Moreover, the mediator could clarify which norms enjoy overlapping support and help to implement those norms (Deveaux, 2006, pp. 109–110). Deveaux also admits the inclusion of outsiders who have an overlapping identity with the group. For example, because the Westboro Baptist Church is a Christian and heterosexist group, Deveaux would admit the inclusion of other Christian groups, other

heterosexist groups and LGB individuals and activists from outside the group. These individuals could help with the interpretation of Biblical texts, share their experiences as victims of heterosexism and give their opinion about the best forms of inclusion for individuals with their particular identity. Finally, Deveaux also mentions that those with practical and academic knowledge of the topics being debated could also make an important contribution to the process. For instance, scholars with knowledge on the topic being discussed, theologians, philosophers and government policy-makers could be included in the deliberation. These individuals, in Deveaux's view, could help to clarify and offer policy solutions for the problems being discussed (Deveaux, 2006, pp. 96, 97, 109, 110).

With regards to where deliberation should take place, the principles also impose that deliberation is not limited to a formal social setting; rather it should include a variety of loci or social settings. This is because, according to Deveaux, domination and political exclusion can occur in both formal and informal social settings. From her point of view, they can occur in informal sites like home, schools, churches, and so forth. For example, there can be domination and political inequality that results from domestic arrangements. If there is a radically different distribution of income within the household, then one of the partners may be coercing or using extra political or endogenous forms of influence to determine the outcome of a deliberation. Owing to the fact that there is the possibility of domination and political exclusion in these social settings, then deliberation is justified in them; for if democratic legitimacy is to be respected, this requires assessing all different social settings that can affect that legitimacy. Discussing all topics in different settings is important because it gives the opportunity to assess all the arrangements in the light of the principles. Therefore, in Deveaux's deliberative model, the state is under the duty of expanding and supporting informal democratic activity because these are means to achieve democratic legitimacy. It should do this by proliferating spaces for debate in different social settings. For example, the state can create and promote democratic forum panels in communities in order to enhance deliberation (Deveaux, 2005, pp. 342, 348; Deveaux, 2006, pp. 27, 95, 96, 107, 108). In a religious heterosexist community like the Westboro Baptist Church, there can be centralised social power that leaves other individuals vulnerable to those who hold this power. According to Lauren Drain, a former member of the Westboro Baptist Church, power within that

church was very centralised, with a number of practices aimed at social control. In her view, there were forms of social control that took place in different social settings (Drain and Pulitzer, 2013, pp. 35, 41–43, 65, 66, 71, 81, 87–90, 141, 157).

Appertaining to the same line of thought, the principles also impose that a wide range of topics and practices within these social settings are discussed in deliberation. As just explained, domination, extrapolitical and endogenous influence in the process of political deliberation can be found in various social settings. To address this, Deveaux adds the idea that any practice in those social settings can imply domination or political inequality; hence it is a requirement of the principles to engage in a wide discussion of many topics and practices within those social settings. To be precise, when deliberating, all the practices and topics within those social settings are to be discussed. So within the domestic arrangements of couples, a wide range of topics should be discussed; the distribution of income, housework, decision making power, child care, and so forth. Within religious organisations discussion should include who holds what position (*e.g.*, priesthood), who has the power to make what decisions, who has scriptural power, who can be the public representative etc. In schools, it should be decided what the educational curriculum is, who can hold teaching positions, and other decisions.

From Deveaux's point of view, any practice, in any social setting can be decided under deliberation; there are only two limitations to what can be discussed. First, for Deveaux, the principles of democratic deliberation are not discussable and cannot be changed because this would undermine the deliberative process. Second, those practices that violate what Deveaux considers to be a moral minimum are not discussable; they should simply be banned. Although Deveaux does not explicitly affirm what the moral minimum is, her examples seem to point to extreme physical harm and death. She mentions, for example, honour killings, sati, infanticide and face scarring. For Deveaux these practices or norms that violate the moral minimum cannot be decided by deliberation and are intolerable (Deveaux, 2006, p. 8). Deveaux does not mention corrective rape and sexual conversion therapies, but these seem to be the kind of practices that would also violate the moral minimum. For Deveaux, these limitations do not mean that the outcomes of deliberation have to be liberal; in her opinion, the result of deliberation can be the acceptance of illiberal practices (Deveaux, 2006, pp. 124–126, 227–228). The result of deliberation does not need to

be a minimal moral consensus or a compromise; in Deveaux's view this may be unrealistic and undesirable; for it may undermine the strategies for conflict resolution. Also, focusing on moral argumentation diverts the attention from the strategic interests and motivations of the participants. This, in turn, makes disputes less tractable, according to Deveaux (2006, p. 101).

Taking this theory of deliberation on board, I would like to provide an example of a process of deliberation that would follow Deveaux's model. Sheik Omar Bakri is an extremely heterosexist Muslim individual who has publicly affirmed that LGB individuals should be given the death penalty; he has also used directed hateful and threatening speech towards LGB individuals, especially gay Muslims. A few years ago, he wished to implement *Sharia* in the UK (Abedin, 2005; Feldner, 2001). In order to understand Deveaux's model, suppose that at the time, the UK Government gave him the freedom to form a group where he could implement *Sharia*. For the group structure to follow Deveaux's model, the threatening and hateful words of Sheik Omar Bakri could not be accepted; for that kind of speech and behaviour would be a violation of non-domination and political inclusion principles. For this reason, for the deliberation to be fair in Deveaux's sense, Sheik Omar Bakri could not engage in speech and behaviour that would be threatening to LGB individuals. Furthermore, LGB members would have to have the same right and opportunity to participate in the decisions taken within the group; for it is a requirement of democratic legitimacy that all who are affected by certain norms or practices should be included in the deliberation process.

It would be helpful, in this deliberation process, if LGB rights activists from the UK and the EU were included in the debate. Also, theologians of Islam and gay Muslim activists like Omar Kuddus could also be included to debate group norms. This debate could be about any topic that affected LGBs, besides those violating the moral minimum. Hence, the death penalty for LGBs would be dropped from the debate, as even if it was democratically decided that LGBs deserve the death penalty, according to Deveaux, this is not a topic that should be decided via democratic deliberation. In other words, the lives of LGBs cannot be decided democratically because they are not up for discussion; as the death penalty involves the loss of life, it is not democratically discussable in Deveaux's view. However, the decision about expelling someone from the group would be possible under deliberation, as it is not

about the moral minimum. But because decisions can be reversible, the decision of expelling someone would not be an eternal decision; hence, the person who was expelled could, in the future, request a new debate about the decision.

5.3– The Scope of Deveaux’s Principles of Deliberation

The principle of revisability is important mainly because it gives LGBs within minorities the chance to routinely challenge heterosexist practices and decisions that go against their interests. Historically speaking, it has been the revocability of laws that gave LGBs the possibility to challenge those that create same–sex marriage, adoption, sodomy and so forth. In groups like the Amish or the Hutterites, the possibility of reintroducing questions about the legitimacy and fairness of discriminatory cultural norms regarding sexual orientation into the debate would be a way to give LGB Amish and Hutterites, not only the chance to reform group practices and transform them, but also to lead communities to engage in topics related to the interests and rights of LGB, which are taboo in many of them. For instance, in his interview with the Huffington Post, James Schwartz, a gay man who is a former member of an Amish community, affirmed that in his community there was no space for discussing matters concerning sexual orientation which made it more difficult to enhance reformation of his culture to become less heterosexist. He also mentioned that there was a lack of space for expressing his sexual orientation as his Amish community had very harsh and discriminatory norms including exclusion, membership and socialisation that discourage coming out as a homosexual (Huffpost Life, 2012). Taking this on board, the principle of revisability is important mainly for two reasons. First, it empowers LGB individuals within minorities because it opens up the opportunity to challenge and contest norms and practices that harm their interests. Second, it makes the community routinely engage in debates about topics which are taboo, thereby, leading to a process of critical assessment of the communities’ tenets.

Obviously, the revisability of laws can, sometimes, go against the interests of LGB in the sense that a law that enhances LGB interests can be revised and voted on. There is a good example of this at a national level. In 2008 in California, some opponents of same–sex marriage created Proposition 8, which was a ballot initiative intended to

go against a previous decision of the California Supreme Court to extend the right to marry to same-sex couples within that state. In this case, there was a revisability of a norm that went against the interest of LGB individuals in marrying. Even though this is a risk, the truth is that the revisability principle would give LGBs within minorities the chance to contest the norm that goes against their interests and reintroduce it in a debate about the topic. So, even if it may sometimes be risky to have such a principle, it also gives the possibility of revising a norm that previously worked against LGB individuals.

Non-domination and political equality principles, which aim to prevent coercion and extra-political influence, play an extremely important role in the protection of LGBs within minorities' interests. As has been mentioned several times in this thesis, many LGBs are victims of physical and psychological harassment. These two kinds of harassment are not consistent with these principles because they are a form of extra political and endogenous influence. In fact, these principles would justify laws that ban and criminalise harassment of LGB individuals, under the umbrella of hate crime and hate speech. More specifically, the non-domination principle would justify legislation banning this kind of violence because it entails that at least some forms of threat and physical injury are prohibited because they interfere with the political deliberation process. The political equality principle would reinforce this idea because threats and physical injuries would be extra political forms of influence which are not acceptable. Some heterosexist practices that involve physical and psychological violence that would not be allowed if this principle was applied are honour killings, sexual conversion therapies that involve physical and psychological violence, corrective rape, the hate speech of the Westboro Baptist Church, some forms of ostracism and shunning. These two principles also offer protection of LGBs' civil liberties. These two principles insist that individuals' basic rights and freedoms should be protected; moreover, they insist on equal opportunity for participation. In groups like some of the Hutterites, political freedom is usually censored using the strategies of shunning and ostracism; moreover, decision making power is concentrated on the Elders. These forms of violation of basic civil and political rights are ruled out by those principles. Finally, various forms of economic pressure, like denying healthcare and housing, job discrimination and so forth, are also endogenous forms of influence that are not consistent with the principles.

Notwithstanding the large scope of the principles that encompass a wide number of practices that are harmful for LGBs members of minority communities, there are still some LGBs' interests that are not covered by the principles, like family related interests (marriage, adoption, co-adoption and child custody) and sexual freedom. The political equality principle is also focused on the process of deliberation and tackles only injustices that refer to the deliberation process. These interests just mentioned, if neglected, would not necessarily have an impact on the deliberation process. Arguably, those interests are not necessarily about relations of power between heterosexuals and LGBs and, thereby, not a form of domination that would be ruled out by the non-domination principle. In other words, differences in rights in family interests and sexual freedom are, in fact, inequalities, but they are not necessarily power inequalities; rather they are inequalities in recognition. For this reason, even though Deveaux's principles are extremely important, they are in a sense too focused on specific kinds of inequalities, especially political inequalities. Centring citizenship in the political sphere only makes LGBs sexual outlaws, *i.e.*, individuals with no legal recognition and protections for their lives (Phelan, 2010, pp. 13–21). By doing this, Deveaux's theory potentially undermines LGBs' freedom to pursue their conception of the good way of life. So the criticism here is that there is a need for a principle that includes these kinds of inequalities as morally relevant, like the concepts of recognition, in Taylor or Fraser's version.

5.4 – Why Deliberation is Important for LGBs within Minorities

In chapter 4, I argued that the state should be more involved in the affairs of minority groups so that there are no damaging negative effects of policies to LGBs within those groups. The state should intervene more and try to tackle the source of heterosexism, finding forms of empowerment for LGBs within minorities so that they can participate more fully in political and social life, and also so that they have the means to voice their status. Moreover, the promotion of a stereotype-free environment in society and in minority groups is desirable for improving the status of LGBs within minorities. In this section, I will defend Deveaux's approach, arguing that it offers a good way for the state to participate and intervene in the character and affairs of minority groups. The first reason why deliberation is

important is because it empowers LGBs to participate in the political and social life of the group. The associational freedoms and exit strategies do not completely capture the demands of LGB individuals within minorities. Exit is important, in part, due to the fact that it limits group power that coerces members to engage in practices they do wish to engage in. However, some LGBs within minorities do not want to exit; rather they want to remain members of the group and transform the practices of the group so that it becomes more inclusive about their lifestyle (Sunder, 2001; Phillips, 2007a, p. 155). Some LGB individuals within minorities claim the right to remain members of their group and the right to participate in the making of norms and practices within it. For example, James Dale who was forced out of his post in the Boy Scouts of America did not want to exit this group; rather, he wanted to remain a member and, if possible, help transform group practices (Susman and Hennessy-Fiske, 2013). Another example is the dispute that the Irish–American Gay, Lesbian and Bisexual Group of Boston (GLIB) had with South Boston Allied War Veterans Council. In 1992, GLIB requested the South Boston Allied War Veterans Council to march in the St. Patrick’s Day parade that the Council was organising. This request was refused by the Allied War Veterans Council because they considered that the participation of the GLIB would go against the kind of expression that the parade represented. However, GLIB took this to court and claimed that even though they were LGB individuals, they also recognised themselves as members of the Irish community, *i.e.*, as individuals of Irish descent who wanted to celebrate their ethnicity (Oyez, 2013).

So, the interests of LGBs within minorities is not just about being able to leave the group if they wish; it is also about being able to be active participants in groups, developing or claiming the power to potentially transform their cultures and enjoy the social activities the groups offer. Deveaux’s model captures this idea because she insists in the participation of all members in the making of group norms and decisions about practices; so because according to Deveaux’s model for a norm to be legitimate it has to be inclusive of all members, then she is responding to the demands of those LGBs within minorities who wish to transform their cultures rather than exit them. By including LGBs in group decisions, they are given the power to veto practices and norms that make them worse off, as well as the power to negotiate group reforms with the purpose of transforming the group to be more accepting of

LGBs' sexuality. This view contrasts with the associative freedoms perspective in chapter 4 that does not emphasise the idea that LGBs should be able to participate in the political and social life of the group. Even in cases of expulsion from the group, this method is empowering because it would require the possibility of the member who is being ejected to have an opportunity to defend himself, as in the example in chapter 4 about Lauren Drain having the chance to debate her forced exit with the Westboro Baptist Church.

The second reason why Deveaux's model of deliberation helps protect the interests of LGBs within minorities is because it gives them the means for reporting heterosexism within the group. As explained in the previous chapter, an area where the state should be more interventive in the affairs of groups is in the area of reporting incidents against LGBs, that is, it should create the means for reporting hate crimes, hate speech and abuses in general. According to a European Union Agency for Fundamental Rights report (2009, p. 49) many LGBTs who are victims of hate crimes and hate speech are unable to report it to the authorities, which makes it difficult to enforce laws for protecting them:¹⁵ "Tools for reporting incidents to the authorities are underdeveloped, although underreporting of hate crime can seriously hamper the ability of the authorities to fight against it effectively". Furthermore, because many victims just stay silent, like Anita Hill, it is good to facilitate the means whereby victims have an incentive for reporting their situation.

Deveaux's model helps the process of reporting abuse for three reasons. First, by including all members of group in deliberation she is empowering members to voice their opinions and report the situation within the group. Second, by including outsiders in the group, individuals who have a background in social work, psychology, psychiatry, etc., can perhaps notice if individuals show symptoms of psychological or physical abuse. Third, due to the fact that deliberation should take place in various sites and about all topics this gives LGBs within minorities the chance to express themselves about those topics in an environment that they feel more comfortable speaking at and about. To understand these positive aspects of deliberation, take the example of Samuel Brinton, son of the two Southern Baptist ministers, who was victim of a sexual conversion therapy for years. Potentially, if

¹⁵ The report refers not only to LGB individuals but also to transgender individuals.

Samuel Brinton had the means to report the abuse, this practice could have been terminated much earlier. Moreover, if health professionals had been included in this debate, they could have noticed the bruises on Samuel Brinton's body as well as his psychological health situation as the result of the torture he was victim of. On top of this, Samuel Brinton could have felt more comfortable denouncing abuse without their parent's presence and the fact that there are diverse sites/platforms of deliberation, would mean it would be possible to adapt those sites to what could have been a more protective environment for Samuel Brinton. Likewise, with lesbians who are victims of corrective rape, if they had more opportunities to voice their view on rape, healthcare professionals could notice their situation, and a variety of platforms to denounce the situation could be discussed; this would therefore facilitate the reporting of abuse. In the case of rape in particular, the variety of platforms is very important, as some women feel ashamed of being raped and having, for instance, online means to report rape may make it easier to denounce it. Hence, owing to the fact that Deveaux's model encourages deliberation of different platforms and with the inclusion of a variety of individuals, this gives individuals who are oppressed the possibility to voice their suffering.

The third advantage of Deveaux's model of deliberation is that it can be informative and not immunise heterosexual individuals and LGBs within minorities from a process of reflective self-criticism about their views on homosexuality. As explained in chapters 3 and 4, prejudice is an important source of heterosexism and it is important that prejudice is tackled in order to avoid heterosexual injustices. LGBs who are socialised within a heterosexual group can potentially form self-images of hate and strong feelings of trauma and guilt. Furthermore, heterosexism has a paralysing effect on LGBs, making them less capable of taking advantage of the opportunities available. Much of the homophobes' prejudice and attitudes are also the result of uncritical beliefs about homosexuality. For instance, some of those individuals who force LGBs to attend sexual conversion therapies and to become victims of corrective rape believe that there is something wrong with homosexuality and that such practices can change individuals. Some schools do not want to offer LGB individuals' jobs as teachers because they think that LGBs are dangerous for children. For the same reason, some institutions consider that same-sex couples cannot be good parents. More generally, Nussbaum (2010, pp. 61–68) has assessed a

variety of anti-sodomy laws in the US and Britain and has concluded repeatedly that these laws are based on prejudice about what is natural and what is not. In short, stereotypes are the origin of a variety of discriminatory views about LGBs. Deliberation forces individuals to expose their views and confront their stereotypes. This can play an important role in eliminating and diminishing heterosexual prejudice, as well as challenge one's own heterosexual views (Phillips, 1999, pp. 130, 143).

The process of debate can potentially help individuals to rethink their views; however, the main reason why this process can be helpful for eliminating prejudice is due to the inclusion of outsiders in the deliberation process. Some of the outsiders that could be included are social workers, psychologists, and psychiatrists. By bringing more evidence to the deliberation, the views of these specialists could make the discussion more insightful and potentially develop as an instrument individuals can use to rethink their beliefs about homosexuality, and endorse more positive views about LGBs. Psychologists, social workers and other health care professionals could explain that there is nothing medically, biologically or psychologically wrong with homosexuality. In the case of sexual conversion therapies and corrective rape, specialists could bring in evidence to convince members that these practices are extremely harmful and ineffective. For example, psychologists from the American Psychological Association, who found that "To date, there has been no scientifically adequate research to show that therapy aimed at changing sexual orientation (sometimes called reparative or conversion therapy) is safe or effective" (APA Help Center, 2013) could bring this evidence to the discussion. This kind of evidence could lead to less homophobic attitudes towards LGBs and less self-demeaning images that some LGBs hold as a result of the way they are socialised. With regards to prejudice relating to the dangers of LGB individuals working with children and being good parents, health care specialists could bring evidence to the discussion demonstrating that there is no correlation between pedophilia and homosexuality (APA Help Center, 2013). With regards to more pragmatic information, the inclusion of outsiders could mean, for example, that valuable information about the legal status of LGBs is discussed. In cases like in some Hutterite communities where there is no private property, only communal property, legal specialists could give advice about what LGB exiting members are entitled or not. Assuming that Samuel Brinton

wanted to sue his parents for torturing him, a legal specialist could also have been of some help in this case.

In the case of faith-based groups, the participation of specialists in religious texts and of individuals with similar identities could be helpful for improving the status of LGBs within groups. In fact, as Deveaux rightly points out, many disputes within groups are about interpretation and the meaning of norms; hence, these experts would bring a new perspective for interpreting group norms. For debates within those Muslim communities that are heterosexist, the inclusion of LGB Muslim charities like Imaan (Imaan, n.d.) and gay Muslim activists like Omar Kuddus could bring new interpretations about homosexuality being a sin or not in Islam scripture. Kuddus (2013a) has affirmed, for instance, that the essence of Islam is that of compassion and, thereby, homosexuality is not a sin from an Islamic point of view. Such a statement could give some confidence to LGB Muslims and stimulate a new interpretation of the *Quran* by some homophobes. In the case of the Westboro Baptist Church, different experts in the Bible could give different views about the role of homosexuality in the Bible. This would be beneficial in the case of the Westboro Baptist Church in particular; according to Nathan Phelps, his father, Pastor Fred Phelps, proclaimed himself to be the only reliable font of biblical authority within the group (and in the world) (CFI Ontario, 2011; Hannaford, 2013). The inclusion of new views would give the members the opportunity to be exposed to different interpretations of the Bible, giving more positive readings of homosexuality. Grace Phelps-Roper and Megan Phelps-Roper, who are ex-members of the Westboro Baptist Church, reported that it was quite important for them to read and hear about different views of Christianity so as to understand that life outside the group did not mean eternal damnation (McCaskell, 2013). Therefore, due to the fact that many groups are closed and information is limited and controlled, this inclusion of outsiders could have an epistemological effect on members, encouraging them to be more approving of homosexuality.

Another important characteristic of Deveaux's model that could help stimulate self-criticism is the variety of platforms available for deliberation. If individuals are exposed to different views in different places, it may be easier for them to formulate new opinions. Indeed, in the case of exiting members of the Westboro Baptist Church, it seems that having had access to different platforms where homosexuality

was discussed played an important role in helping second-generation members of the Westboro Baptist Church to change their views on homosexuality. Ex-members of the Westboro Baptist Church, Megan Phelps-Roper, Grace Phelps-Roper, and Lauren Drain were included in pickets, blogs and on TV shows, where they could debate their views. It was in part having access to this variety of platforms that triggered the process of self-criticism. For different platforms have different debaters and give different incentives for discussion. For instance, blog debate can be anonymous leaving more space for people to discuss a topic without necessarily revealing their identity and, thereby, people may be less ashamed of what they are saying.

The fourth advantage of deliberation is that approving norms and practices that enhance the interests of LGB individuals within minorities in this way, allows the public endorsement of homosexuality. In turn, public endorsement of the homosexual members of a certain community by its members would make LGBs in that community better off. As Phillips (1999, p. 129) points out, living in a community where one's sexuality is tolerated but not accepted, can have a strong negative impact on individuals: "It is not so easy, however, to live with mere 'tolerance' of what others see as your perverted sexuality". For example, the practice of shunning that some Hutterites enforce where individuals are looked down upon, isolated and so forth, even though they remain members of the community, may cause great distress to LGBs. Public endorsement is also important because, as explained in chapter 4, there should be an incentive for the existence of a liberal culture that can offer a place of safety and equality.

Finally, Deveaux's method has the advantage of taking a contextualised approach to norms and practices; it does not assume that minorities are simply repressive or heterosexist; rather it puts norms and practices into context so that the social meaning is clarified before a decision about their legitimacy and heterosexism is made. This is important due to the fact that, as explained in the chapter that dealt with Okin's philosophy, the social meaning of a practice is relevant for understanding the impact it has on individuals. By engaging in deliberation, it is possible to clarify the meaning and this would avoid prohibiting practices and norms that are harmless, even though they may not look so. This does not mean that Deveaux endorses moral relativism; in fact, there are some practices that are not

discussable because she rightly considers them straightforwardly harmful; these are the practices that violate a moral minimum. So Deveaux is simultaneously rejecting moral relativism and giving primacy to the contextualisation of practices.

5.5 – Criticisms to Deliberation and Response

Some philosophers have a more pessimistic view about the self-criticism that deliberation can enhance. In this section I will outline the arguments of those philosophers who endorse a more pessimistic view and try to counter-argue their perspectives. A more pessimistic view could affirm that group members are more likely to respond positively to the arguments of their leaders rather than outsiders or LGB members. So, the social status of the speaker matters for how others perceive and accept what is being debated (Sanders, 1997; Sunstein, 2002, p. 121). This is to say, different individuals have different epistemological authority within the group and consequently a different capacity to evoke the acknowledgement of their arguments (Sanders, 1997, p. 349). This idea is reinforced by the fact that, contrary to an academic dialogue, a political dialogue is, broadly speaking, more likely to be based on prejudice and cultural bias. In such dialogues, the argument goes, it is unlikely that individuals convince people from different cultures to acquire different beliefs and engage in different practices. According to this argument, in the case of the Westboro Baptist Church, the authority of Pastor Fred Phelps and his daughter Shirley Phelps-Roper, who are the most active and prominent members of the church, would have much more importance for the members than the arguments of outsiders or former members like the ones mentioned above.

In response, although it is true that individuals have different epistemological authority within groups, it is also the case that bringing new evidence, including experts and having a variety of platforms can make a significant difference. That is, even though members are potentially more responsive to the arguments of their leaders, exposing individuals to other ideas can still trigger self-criticism. So, if individuals are exposed to a larger bundle of modes of expression, they are more likely to have new ideas. Epistemologically speaking, the social conditions for someone to be self-critical and challenge one's own ideas will be better secured by being exposed to alternative views (Hardin, 1997, p. 100; Weinstock, 1994). For

example, one of the times that Grace Phelps–Roper was interviewed, she affirmed that one of the experiences that triggered her questioning and exiting the Westboro Baptist Church was her internet discussions and exchange of Twitter hash tags with David Abitbol, a Jewish social media activist (McCaskell, 2013). Jews along with LGBs are the main targets of hate of the Westboro Baptist Church; this outcome of dialogue suggests how deliberation can, in fact, have a positive impact on individuals' views. Samuel Brinton affirmed that after he was victim of sexual conversion therapy he could not have any physical contact at all with other men, even his father; however, when he went to university and moved beyond his Southern Baptist community his beliefs on homosexuality changed and his attraction to other men flourished. Again, it was, in part, due to the fact that he was exposed to other perspectives on homosexuality that allowed him to develop a more positive attitude to his own sexual orientation (Wareham, 2011).

A different line of criticism is about the potential negative outcomes of deliberation. Some critics affirm that the outcome of deliberation cannot be decided in advance, and rather than the result being a positive public acknowledgement, it may be a stronger disapproval of what is being discussed; moreover, critics like Barry (2001, pp. 276–277) argue that to systematically engage in deliberation can be dangerous because it puts “at risk the survival of the liberal rights that have already been won and even more their extension so as to complete the movement towards legal equality”. In the case of LGBs, this means that may result in a more intolerant and heterosexist society and group. So, rather than the result being positive, leading to the approval of same–sex marriage, adoption, etc., the outcome could instead be a rejection of all this. Therefore, the critics affirm that democratic decision making about LGBs' rights exposes them to potentially tyrannical policy outcomes in the group; this is because it empowers groups and gives them leeway for making policies that go against the rights of LGBs. This idea is reinforced because of Deveaux's norm of inclusion; to recall, Deveaux's principle of political inclusion states that all individuals (members and non–members of the group) affected by the norm and with interest in the deliberation taking place should be able to participate in the deliberation. According to Deveaux, it is reason enough that if you have an interest in the deliberation, you have the right to be included in the deliberation. The potential problem of this norm is that by including anyone interested in the

deliberative process, Deveaux is potentially including anyone who is homophobic. That is to say, being interested is such a general norm that oppressive group leaders, Neo-Nazis and homophobes in general could claim to be interested in the deliberation; for they can claim that it is in their interest to participate in the making of laws that creates barriers for LGBs to flourish because they feel deeply upset by the very existence of LGBs. The idea behind this argument is similar to Hare's example (1977, p. 147) of the fanatical Nazi; this fanatical Nazi feels deeply affected by the existence of Jews and his welfare depends on the extermination of them. This kind of attitude is not mere fiction; recently in France there were a number of protests against institutionalising same-sex marriage. These protests united groups and individuals who usually oppose each other; in particular, Marine Le Pen and her party the Front National, with ethnic and religious minorities. It could be argued, then, that Deveaux's norm is over-inclusive, giving space for incorporating extremist views that are quite heterosexist. The critics could argue that this, in turn, legitimises the influence of heterosexist views on the deliberation process.

Even though it is true that those LGB rights and interests that are already conquered are at risk in deliberation, there are three comments to make about this. First, even if it is the case that deliberation leads to less tolerance towards LGBs, Deveaux's principle of revisability will give LGBs the chance to challenge decisions that are not according to their interests; therefore, even if there are decisions that result in less favourable outcomes, these can be changed. Second, even if the outcomes are negative, there are many LGBs' interests that remain protected; for, according to Deveaux, outcomes cannot violate the moral minimum and cannot jeopardise the capacity to deliberate; this capacity to deliberate, in turn, requires that a variety of heterosexist practices are prohibited. Therefore, even if there is a negative outcome of deliberation, many LGB rights will remain inalienable. Third, as Waldron affirms (1993, pp. 404–406, 416–421), the dichotomy between Supreme Court decisions and democratic ones is a false one, in the sense that they entail similar risks. Judges in the Supreme Court may also hold negative views about homosexuality and they can make decisions that go against LGBs' rights. This is, there is a threat of unfair bias coming from Judges' decisions. Judges are people too and they can act, like those deliberating, out of spite, hate, principle or whatever. Hence, the outcomes that may result from other means are equally dangerous for LGB rights. In particular, in the

case of homosexuality in the context of the United States, the Supreme Court Judge Antonin Scalia has often been criticised for his homophobic views (McKay, 2013). With judges like Scalia, LGBs' rights are not immune to backward steps and threats. In India, until recently homosexuality was not a crime, but the law has changed as a result of a decision from the Indian Supreme Court (Lal, 2013). More generally, as Nussbaum rightly points out, anti-sodomy laws in the United States, that were not publicly voted for but made by the Supreme Court, seem to be based on disgust for homosexuality, rather than unbiased consideration. This is noticeable especially in the kind of language used in these laws; some of them say that sodomy is prohibited because it is 'lascivious', 'detestable' and a 'misdemeanour' (Nussbaum, 2010, pp. 8–12, 61–68). Taking this on board, both court decisions and deliberation have similar risks and the dichotomy made between these two methods of decision is flawed.

The critics of deliberation sometimes also affirm that rather than public acknowledgement, the process of deliberation can highlight differences that were not obvious before (Shapiro, 2002, pp. 123–124). Revealing one's own sexual orientation and exposing one's own views on this matter may be consciousness-raising to other group members. By this I mean that it may lead more orthodox members to realise that there are sharp differences between their views of their practices and norms and the ones held by LGB members. This may lead to a feeling that differences are not reconcilable and sharpen conflict in the group between heterosexual and LGB. An example of how dialogue may lead to more conflict can be witnessed in the case of Lauren Drain, a former member of the Westboro Baptist Church. In her book *Banished*, Lauren Drain (2013) explains that when she was a member, she challenged the practices and beliefs of the group and in particular, the scriptural authority of Pastor Fred Phelps. This resulted in her being expelled from the group and having to cut off contact with her family and friends who are still members. Another example of a conscious-raising situation is the loss of contact James Schwartz experienced with his family in the Amish community that resulted from his coming out as gay. In addition to being conscious-raising, it could be argued that openly deliberating about one's sexual orientation eliminates the possibility of concealing one's sexual orientation, and this concealment is what makes possible the avoidance of social danger. That is, sexual orientation is a

characteristic that is only detectable if revealed, unlike gender and ethnicity; hence, after there is a debate where someone reveals one's sexual orientation, the safe space of the closet that protects individuals from harassment is no longer available. For example, it was when Samuel Brinton revealed to his father that he felt attracted to a man that the beatings and the therapy started. On top of this, it can be argued that considerable damage can be caused to LGBs during the process of deliberating which can make the whole process deeply uncomfortable for many of those involved. For example, LGBs might feel extremely distressed and not want to sit on a panel and be told that they are sinful for several hours, even if the net outcome is positive, *i.e.*, that more people are convinced that homosexuality is not sinful.

To respond to these criticisms, the highlighting of differences can, in fact, be an outcome of deliberation; but while this may be risky, it is not alarming. Some LGBs within minorities who do not come out because of the social negative attitudes towards LGBs are already aware that there is a negative perception of homosexuality. That is, the differences are highlighted internally which, in turn, for many LGBs results in self-censoring behaviour. For example, a gay Muslim man in Pakistan who shared his experience as a gay man in a homophobic society with PinkNews.co.uk affirmed that he self-censors looking at other men and his speech because he is afraid others might realise his sexual orientation. He also affirmed that this self-censoring is suffocating for him because he can never or rarely openly express his inner desires and feelings (PinkNews, 2013). So, although differences might not yet known by others, they are strongly highlighted in the minds of many LGBs. What this deliberation highlights afresh is the possibility of public acknowledgement, which would be an improvement of their situation. This is mainly because it opens up the possibility of a liberal culture resulting from the dialogue, and potentially decreases the suffocating feelings of concealing one's sexual orientation. With respect to the concealment of homosexuality as a strategy to avoid social danger and the distress caused in the deliberation process, it is true that these are problems related to deliberation. However, the view that sexual orientation should be concealed for these reasons should be rejected. First, even though sexual orientation is invisible, it becomes more visible with age; the concealment of sexual orientation is an option that decreases with age due to the fact that others will often notice that some LGB individuals are single after marrying age. For this reason, at

least in some cultures for some LGBs, their sexual orientation is indirectly revealed after a certain age because of not being married (Tebble, 2011, pp. 926–927). Second, as Tebble (2011, p. 927) contends, the act of concealment reinforces “the very norms of physical disappearance and discursive silence that lead one to feel obliged to do so”. It reinforces these norms due to the fact that it strengthens feelings of shame, disgust and self-loathing that are the endogenous motivators of the concealment. In other words, closeting one’s sexual orientation fortifies the internal motivators of concealment that are, in part, shame, disgust, fear, and self-loathing, and, thereby, are also a form of violating LGB interests. The case of the gay Muslim in Pakistan just mentioned reveals this exactly: the fact that he conceals his sexuality reinforces the suffocating effect of suppressing his desires and feelings (PinkNews, 2013). Third, even if closeting one’s sexual orientation can potentially decrease social danger, the American Psychological Association also advises that disclosing one’s own sexual orientation “increases the availability of social support, which is crucial to mental health and psychological well-being” (APA Help Center, 2013).

5.6 – Parekh on Human Nature, Culture and Sexual Orientation

Now that I have outlined and critically analysed Deveaux’s theory I will move to the theory of intercultural dialogue defended by Parekh. Parekh’s theory relies on four core ideas. These four core ideas are his theory of human nature, his conception of culture, his understanding of sexual orientation and his version of intercultural dialogue. I will start by outlining the first three aspects of his philosophy and, then, in the next section, I will move to explain his defence of intercultural dialogue.

When using the concept ‘human nature’, Parekh is referring to those desires, dispositions, capacities and properties that all individuals innately have by virtue of being part of the human species. Although these properties are not inert and indeterminate, neither are they the result of culture or of socialisation; rather they make up part of the congenital, physical and psychological constitution of human beings. According to Parekh, to those who belong to the human species, these properties are universal, trans-historical and cross-cultural; this means that all individuals in all societies share them at all times. The Samurais, members of the Westboro Baptist Church, members of the LGB and queer movements all share these

characteristics. So for Parekh (2005, p. 115) “They are universal in the sense that they are shared by human beings in all ages and societies”. However, Parekh (2005, p. 114) asserts that this does not mean that human nature is unchangeable: “The properties are permanent in the sense that they continue to belong to human beings as long as they remain what they are and that if they were to undergo changes, human nature itself would be deemed to have changed”.

Generally speaking, in Parekh’s (2005, p. 116) view, in terms of physical shared properties, members of the human species “have a common anatomy and physiological processes, stand erect, possess an identical set of sense organs which operates in an identical manner, have common bodily–derived desires and so forth”. With regards to their mental structure, human beings also have the capacity to create value and meaning. In other words, from Parekh’s (2005, p. 139) point of view, human beings have the capacity “to think, reason, use language, form visions of the good life, enter into moral relations with one another, be self–critical and achieve increasingly higher levels of excellence”. Parekh also affirms that human beings are capable of a variety of moral and non–moral emotions; by these Parekh means feelings like love, hate, self–hate, generosity, and others (Parekh, 2005, p. 116). Finally, according to Parekh (2005, p. 116) this shared mental structure also includes the capacity to “will, judge, fantasize, dream dreams, build theories, construct myths, feel nostalgic about the past, anticipate future events, make plans and so on and on”.

According to Parekh, these universal human characteristics that translate into a physical and mental shared structure imply that all human beings have similar capabilities and limitations to act; furthermore, Parekh (2005, p. 132) contends that it implies that all human beings share basic needs and conditions for flourishing: “these conditions [to grow and flourish] constitute the well–being and define the content of their fundamental interests”. From Parekh’s point of view, this involves a need for a prolonged period of nurture. During this nurture, it is important that individuals acquire a number of skills that enable them to deal with the demands of their personal and social life. In Parekh’s (2005, p. 117) view, requirements that individuals need for acquiring these skills, include: “a stable natural and social environment, close personal relationships, a measure of emotional security, moral norms and so forth”. For Parekh, these capabilities are worth recognition as they give human beings dignity. This universal human dignity, in turn, requires that there is a

universal standard that no human being should be treated below.

From Parekh's point of view, although human nature is an important aspect of what human beings are, these shared characteristics exist only at a high level of abstraction. The ways individuals flourish are set up by their human nature, but human nature does not exhaust human flourishing. Parekh (2005, p. 118) adds to this by stating that human beings are also influenced by factors external to their human nature: "human nature does not exhaust all the characteristics of humans as species". These factors, in Parekh's view, are mainly geography, environment and cultural circumstances. In Parekh's perspective, culture is, in particular, one of the strongest influential factors of human flourishing. Culture is, according to Parekh, a system of meaning and significance, which is historically created and where individuals are involved involuntarily.

In Parekh's view, this cultural context is rarely static; rather it may change according to its interaction with other cultures and with economic, political and society institutions. Bearing in mind the influence of culture on individuals' identities, Parekh affirms that the conditions and way forward for human flourishing also depend on culture. This means that questions like 'what life is worth living?', 'what activities are worth pursuing?' and 'what forms of human relations are worth cultivating?', depend on contextual and historical understandings. Therefore, although the universal properties that result from human nature are shaped by culture to the extent that the ways of human flourishing are possibly incommensurable and incompatible; however, Parekh does not think that that this makes some ways of flourishing less valuable than others. This variety is merely the result of the plurality of cultures.

According to Parekh, homosexuality¹⁶ is not a system of meaning and significance that provides the kind of structure that culture provides; rather homosexuality is an unconventional lifestyle. Although Parekh does not define it, by unconventional lifestyle he seems to mean a way of human flourishing which slightly differs from the culture that these individuals belong to. For Parekh (2005, p. 3), LGBs "broadly share their society's dominant system of meaning and values". Although they share

¹⁶ Parekh uses the terms 'gays and lesbians', and never mentions homosexuality, or bisexuality; however, there is nothing that indicates that he is not referring to homosexuality and that he is excluding bisexuals from his theory.

this, they differ from their cultures because they disagree about the traditional beliefs and practices of marriage, paternity, adoption and so forth, that is held by the culture they are embedded in. Although Parekh does not affirm it explicitly, he seems to believe that homosexuality is a liberal lifestyle. For Parekh, the liberal values of freedom of choice and personal autonomy underlie the demands for sexual freedom, same-sex adoption, same-sex marriage and so forth that LGB individuals make. Thus, Parekh (2005, p. 4) states that “Their challenge is limited in scope and is articulated in terms of such values as personal autonomy and choice that are derived from the dominant culture itself”.

This distinction made by Parekh between culture and sexual orientation places LGB groups, cultural minorities and LGBs within minorities in different normative situations. When comparing LGB groups with cultural minorities, Parekh concludes that they have different aspirations. Owing to the fact that LGBs share the dominant system of meaning and significance, they do not want to segregate from the wider society; rather they aim at a cultural transformation of their culture so that it would integrate their practices. Contrastingly, for Parekh, cultural minorities like, say, Muslim minorities, do not share the majority culture and want to be able to reject the practices and the beliefs of the majority. Thus, cultural minorities wish for a degree of segregation from the larger society. Therefore, the rights that they demand are different: LGBs demand rights of integration while cultural minorities, in general terms, demand rights that imply a certain degree of separatism.

For Parekh (1996, p. 251–252), the other normatively significant difference between LGB groups and cultural minorities is that cultural practices “are grounded in a legitimizing system of beliefs, are part of the cultural identity of the community, carry a measure of cultural authority, and are generally regarded as binding by the members of the community concerned”. Accordingly, Parekh affirms that cultural practices have a moral justification behind them in the sense that they are supported by a specific system of meaning and significance; this system means that the practices are morally justified due to the fact that all moral norms are based on culture. Although for Parekh, sexuality and sexual practices involve a spiritual and social meaning that is strongly influenced by culture and to understand the sexuality of a particular group, it is necessary to look at its moral relevance, in terms of its place in human life in comparison to other activities and in human life in general,

sexuality (and sexual orientation) do not constitute a culture *per se*.

Parekh never speaks about the status of LGBs within minorities; but from his characterisation it is possible to tease out some conclusions. Due to the fact that, according to Parekh, LGBs endorse liberal values and want their cultures to adapt to their lifestyles it can be concluded that LGBs within minorities are individuals who want their cultures to liberalise so that their lifestyle is accepted. For if Parekh considers homosexuality a liberal life style and LGBs within minorities endorse, in part, this lifestyle, then they wish to liberalise their culture. So, according to this view, a gay Muslim, a gay Catholic, a lesbian Southern Baptist, a lesbian South African and so forth, wish their cultures to endorse some liberal values so that it can include their lifestyle.

5.7– Operative Public Values and Intercultural Dialogue

Parekh's philosophy encompasses both waves of writings on multiculturalism; that is, his philosophy addresses both justice between groups and justice within groups. Even though Parekh is aware that there may be cultural practices that are harmful for some members, he does not deal in length with how heterosexist practices within minorities can harm LGB individuals. Nevertheless, because he is aware of differences between groups and of the potential negative impact of norms and practices on vulnerable individuals within minorities, he suggests a model of intercultural dialogue that aims at solving this kind of tension. In particular, Parekh considers that if there is a practice of the minority that the majority disapproves of, the decision of allowing or banning the practice should be made following a dialogue. To take the cases of heterosexism that are the concern of this thesis, if, in a liberal society, there are minority groups that mistreat LGBs, the decision about prohibiting or allowing this mistreatment has to be decided via dialogue. Hence, the allowance or prohibition of practices of ostracism towards LGBs, discriminatory norms of membership, the use of hate speech towards LGBs, sexual conversion therapies, job discrimination, among other heterosexist practices, should be decided after the dialogue has taken place. These practices, in Parekh's view, cannot be simply prohibited without giving minorities the possibility to defend their practices, even if the majority disagrees with them.

According to Parekh, there are three main reasons why there is a need for a dialogue in a situation where there is a heterosexist practice within a minority group disapproved of by the majority. The first reason why Parekh affirms that cultural practices cannot simply be banned is because, as explained in the previous section, culture is an extremely important aspect of individuals' lives; moreover, cultures provide a moral groundwork for the practices of minorities. Therefore, according to Parekh (2005, p. 241), banning a practice implies a loss of identity and self-respect of the one who lost it, which "cannot be overcome without a deep sense of moral loss". Hence, majorities have a duty to give minorities the opportunity to defend their practices; majorities cannot simply ban practices without the minority having a chance to explain why the practice is legitimate; for Parekh (1999b, p. 171) a practice "forms part of the minority way of life, society owes it to the minority to explore what the practice means to it, what place it occupies in its way of life and why it considers it valuable, before deciding whether or not to disallow it".

The second reason is that, in Parekh's perspective, to understand cultural practices it is necessary to understand their cultural meaning; hence, an apparently repressive practice may, in fact, be harmless. Third, Parekh (2005, p. 144) is a moral pluralist, who endorses the idea that "every system of morality is embedded in and nurtured by the wider culture". For this reason, there is no universal justification for banning a practice; there are only local justifications for specific cultures for banning practices. As a result, from his viewpoint, the illegitimacy or legitimacy of heterosexist practices can only be justified locally, for a certain group in a certain context. A dialogue would be the means for morally justifying the banning or allowance of a practice in that particular context.

Bearing this in mind, in Parekh's view, the only possible guidance for a dialogue has to be a group of values that have a local justification; consequently, the only justification for a practice to be banned or allowed has to be based in the morality of that specific culture. More specifically, Parekh considers that the dialogue has to be based on and carried out having as guidance the public political culture of a certain society where the tension exists. The public political culture of a society represents the shared moral structure and gives a vague conception of the good life of that society. Parekh names this public political culture as the operative public values. The operative public values are those values shared by most members of different classes,

religious groups, sexual orientation and so forth in a specific society. For example, Parekh would consider the operative public values of Britain those values that are shared by most British Muslims, members of the Labour party, the Conservative party, the Anglican Church, Caribbean immigrants and so forth. Obviously these values are local and vary according to the society. Thus, the operative public values of the United Kingdom are quite different from those operating in Iran, or China.

For Parekh (2005, p. 269) operative public values are not abstract ideas; rather they are the customary practice of social reality: “the values are operative because they are not abstract ideals, but are generally observable and constitutive a level social reality”. When Parekh affirms they are observable, this means more specifically that the operative public values are embodied in the various major social, economic, political and other institutions of that society. More precisely, the operative public values are embodied in the society’s constitution, laws and civil relations (Parekh, 1996, pp. 259–260; Parekh, 1999b, pp. 169–170). For Parekh, the values that are embodied in the constitution are the fundamental rights and obligations of citizens, for example, the United States’ Constitution or the Universal Declaration of Human Rights (Parekh, 1996, p. 260). The laws of a country flesh out the values of the constitution and relate to the specific situations of everyday life. Although laws are constrained by the constitution, laws are not necessarily the same as the constitution (Parekh, 1996, p. 260). In Parekh’s (1999b, p. 169) view, the difference between the constitution and the laws is that “those [values] embodied in the constitution are general and regulative and largely deal with the government’s relations with its citizens, whereas those embodied in laws are specific and substantive and largely deal with the citizens’ relations with one another”. For example, the Equal Protection Clause of the 14th Amendment of the United States Constitution establishes that no state can deny any person equal protection of the law. However, the Equal Protection Clause does not impose any hate crime legislation. Legislation that protects LGBs from hate crimes would be an example of the specificity and substantiveness that laws have that constitutions do not. Finally, civil relations refer to rules of civility like the relation between members of a common neighbourhood, colleagues, classmates and so forth; for example, neighbours’ attitudes to each other such as not playing loud music after midnight, which is an example of a rule of civility.

From Parekh’s point of view, operative public values are contextual and historical.

As a result, Parekh asserts that they are not static: they may change in response to the changes in society. For instance, D'Emilio (1998) defends that attitudes towards homosexuality changed with the industrial revolution; after the industrial revolution, the family did not have the same function it had before, which was being an economic unit. Owing to the fact that the family was not valued as much anymore, then alternative sexualities (like homosexuality) were more accepted following the industrial revolution. This is an example of how values change with the circumstances. According to Parekh, the meaning of operative public values is not rigid either; they can be contested and interpreted in a variety of ways (Parekh, 1995, p. 437; Parekh, 1996, p. 261). Equality, for instance, can mean different things for different people. Finally, Parekh affirms that these values are interconnected in the sense that they cannot possibly be disjoined from other values. From Parekh's (1999b, p. 171) perspective, these operative public values "represent the society's shared moral structure and are its values as distinct from those of a section of it, they provide the only valid moral standpoint from which to evaluate minority practices". Hence, it can be concluded that the operative public values are, from Parekh's point of view, the only legitimate groundwork by which to assess and discuss cultural practices; for if they represent the shared common structure of the majority of individuals in the society and if morality is only justified contextually, then they are what gives legitimacy to cultural practices.

Taking this on board, if there is a tension between the majority and a minority about a practice, this would initiate a dialogue in order for a decision to be reached about banning or allowing the practice. A possible tension could be the Westboro Baptist Church's regular use of hate speech towards LGBs; when referring to LGBs they use offensive words like 'fags' and 'dykes' and have signs saying 'God hates fags', 'Fags doom nations' and so forth. This offensive language is disapproved of by many Americans and does seem to disrespect the integrity of LGB individuals. However, the members of Westboro Baptist Church have affirmed that being able to express their views on homosexuality is part of their duty to God. More precisely, in general terms, the members of the Westboro Baptist Church (2013a) believe it is their duty to make people aware of what they consider to be the dangers of homosexual conduct for one's own soul: "We use great plainness of speech, and will not beat around the bush when it comes to someone's eternal soul" (Westboro Baptist Church, 2013a).

Moreover, they argue that Bible passages support their position of God's hatred towards LGBs, especially from the Old Testament. On top of this, the members of the Westboro Baptist Church justify the use of the term 'fag' using biblical and conceptual reasons:

“A "fag" is a firebrand. A "fag" is used for kindling – it fuels fire. "Fag" is a metaphor used in the Bible, for example, in Amos 4:11 (where it is translated "firebrand" in the KJV). Just as a "fag" fuels the fires of nature, so does a sodomite fuel the fires of hell and God's wrath. We do not use the word "fag" in order to engage in childish name-calling. Rather, we use it because it is a metaphor chosen by the Holy Ghost to describe a group of people who BURN in their lust one toward another, and who FUEL God's wrath” (Westboro Baptist Church, 2013d).

So this is an example of the kind of tension that would initiate an intercultural dialogue. While the majority disapproves of the language used by this religious group, the members of the Westboro Baptist Church consider that the use of hate speech is essential to their way of life. With this existing tension between minority and majority, then there could be an intercultural dialogue to discuss whether the practice should be banned or accepted. Parekh's model of intercultural dialogue has three stages, although despite Parekh's (2005, p. 271) suggestions of this three-state dialogue, he also affirms that “the stages are neither successive nor all necessary; they overlap and any of them might be skipped”.

In order to explain the stages of the dialogue, I would like to use the example of the use of hate speech by the Westboro Baptist Church and imagine how the debate would be carried out if Pastor Fred Phelps was their representative.¹⁷ In the first stage, the representative of the minority group would have to explain the relevance for their culture of a practice disapproved of by the majority. According to Parekh, at this stage, the representative can use two kinds of argumentative strategy. The first consists of explaining why the practice is a key aspect of their way of life. The reason why the majority should accept this kind of justification is because acting against a cultural norm that is essential to them cannot be easily overcome without a

¹⁷ Parekh uses the term 'spokesman'; however, I think this gendered term is simply a lapse, rather than a suggestion that the representative has to be a man.

deep sense of moral loss (Parekh, 2005, p. 241). Furthermore, because moral arguments are culturally-based this norm has at least some moral value for the individuals in that culture. To defend the use of hate speech by the members of the Westboro Baptist Church, Pastor Fred Phelps could allude to the passages in the Bible mentioned above and explain the function of speaking out and using words like ‘fag’ for preaching their beliefs. Pastor Fred Phelps could add to that the Bible passages of Leviticus and the stories of Sodom and Gomorrah to support his views on homosexuality. So he would be arguing that heterosexism is key to their way of life because it is preached in the Bible and also stress that it their duty to promulgate their loathing of it.

The second kind of argumentative strategy that the representative could use at this stage is to argue that banning this practice would destroy or weaken their culture (Parekh, 1996, pp. 263–264). In the case of the Westboro Baptist Church, Pastor Fred Phelps could argue that if they were forced to restrain their hate speech, members would simply dissociate because the reason why individuals joined the group in the first place was to be able to listen to the message of God. That is, he could argue that what holds the community together is the homophobic speech and a restriction in this speech would lead to the disappearance of their culture through dissociation of members. He could give the example of Steve Drain¹⁸, a new member of the Westboro Baptist Church, who joined the community because he thought that their attitude and beliefs about LGBs are correct (Drain and Pulitzer, 2013, pp. 29–40, 67 – 80). Pastor Fred Phelps could argue that disallowing hateful speech would give an incentive for members like Steve Drain to leave.

The second stage of the intercultural dialogue would involve an explanation of the practice by linking it with other practices. At this stage, the objective is to identify whether it is an isolated practice that aims at repressing a specific kind of individual or whether the practice is not an isolated one in the group. In Parekh’s opinion, identifying whether it is an isolated practice or not would help understand if the practice is based on prejudice and an instrument of social control:

“No way of life is a monolithic whole such that it is shaken to its roots by challenging its every practice. And if an offensive practice were really

¹⁸ Steve Drain is Lauren Drain’s father.

central to it, the latter itself would become suspect. The critic could therefore rightly demand that a minority spokesman cannot merely appeal to the cultural authority of the practice and should offer a reasonably convincing defense of it” (Parekh, 1999b, p. 172)

Furthermore, according to Parekh, this is an important stage of the dialogue because the mere fact that the practice is part of the way of life (potentially decided in the first stage) is not sufficient for defending the practice (Parekh, 1995, p. 439; Parekh, 1999b, p. 172). In the case of the Westboro Baptist Church’s homophobic speech, Pastor Fred Phelps could try to link it with other practices of the Church. More precisely, he could argue that the whole community is committed to preaching heterosexuality and God’s wrath to non-heterosexual conduct. So, he could mention the fact that members of the Church are committed to long-term heterosexual marriages; he could also make reference to their picketing of soldiers’ funerals, where they accuse soldiers of defending a sexually immoral nation. Pastor Fred Phelps could also argue that the Bible teaches to preach hate: “Because the Bible preaches hate. For every one verse about God's mercy, love, compassion, etc., there are two verses about His vengeance, hatred, wrath, etc.” (Westboro Baptist Church, 2013c).

In the third and final stage of the intercultural dialogue, the minority representative would need to step out of his culture and try to justify the practice according to operative public values. In general terms, there are three kinds of strategies that could be used to link their practices with these operative public values. The first possible strategy that the representative could use is to argue that the practice that is disapproved of by the majority does not offend operative public values and that, in fact, it may be compatible with them. Pastor Fred Phelps could argue that their hateful speech is compatible with the United States’ operative public values of freedom of speech and religion. He could contend that this operative public value is fleshed out in the First Amendment of the Constitution. For the reason that freedom of speech and religion are operative values of American society, then Pastor Fred Phelps could argue that religious hate speech towards LGBs should be accepted.

The second possible strategy to use is to argue that the society majority also discriminates and uses hate speech towards LGBs and that it is not an exclusive

practice of the Westboro Baptist Church. Pastor Fred Phelps could give the example that some states like Georgia have anti-sodomy laws. In addition, he could argue that important members of the majority, like the Supreme Court Judge Antonin Scalia, often engage in homophobic speech. For example, Judge Antonin Scalia has compared homosexuality with bestiality, saying that they are similar kinds of sexual perversion (Mckay, 2013). The third strategy that can be used is by affirming that operative public values are discriminatory, unfair or biased. Pastor Fred Phelps could argue that the idea of full equality under the law is a biased interpretation of Christian values that reflects a specific culture that is not his (Parekh, 1995, pp. 439–441).

Confronted with this argumentation of the minority, the majority, in this third stage, also has to defend and justify the rationale underlying operative public values. With this purpose, the representative of the larger society could defend these values by explaining that these values are part of their history and tradition, way of life, or national identity. For example, suppose that the majority representative argued that hate speech towards LGBs should be banned because it is a violation of equality. Then, the representative of the American society could argue that equality under the law is a value that has been present in the United States since the Founding Fathers signed the United States Declaration of Independence. Moreover, the representative could also argue that failing to respect this and engaging in hate speech could cause large-scale disorientation and chaos in the United States. This defence of the operative public values has to be defended in a manner intelligible to the minority or accept that the values need to be revised (Parekh, 1995, pp. 440–441). This means that the representative of the majority should try to make a link with the culture of the minority.

There are three possible outcomes of this intercultural dialogue. One is that the minority convinces the majority that the practice should be accepted. If this is the case, this may imply, in Parekh's view, group-differentiated rights, exemptions to the law, assistance, recognition and so forth. Another possible outcome is that the minority realises that its practice is repressive and should not be tolerated; therefore, they decide to abandon the practice. A third possible outcome is that an agreement is not reached: the majority is unconvinced of the arguments of the minority and the minority remain intransigent about the practice. If this is the case, the majority can

ban the practice; but if the majority decides to ban the practice, it should be because the practice is incompatible with the operative public values of the majority and not simply as a matter of prejudice. Parekh argues that the majority's position should prevail for three reasons. First, operative public values make up part of the major institutions and practices and they cannot be changed without having a profound impact on society. Second, although the wider society has the duty to accommodate the minority, it does not have to be at the cost of its own culture. Third, minorities (especially immigrants, in Parekh's view) are new to the larger society and they have to understand that in matters which are still in dispute they should defer to its judgement. Moreover, Parekh affirms that they are more likely to be accepted or integrated by the larger society if they are flexible in their positions (Parekh, 1995, p. 442).

5.7 – Assessing the Philosophical Groundwork of Parekh's Philosophy

Parekh's version of intercultural dialogue and its implications for LGBs are underpinned by a philosophical doctrine; in this section, I will assess this underlying doctrine by looking at three aspects of it that are relevant to the purposes of this thesis. More specifically, I will examine, in relation to LGBs within minorities, Parekh's idea that operative public values should guide the dialogue, his justification for having an intercultural dialogue and his characterisation of LGB groups.

Parekh is extremely critical of the liberal tradition. He argues that liberalism is just one more cultural tradition amongst others, and one which is trying to impose its values (Parekh, 2005, pp. 13–14). Additionally, he is an anti-universalist and a moral pluralist who argues that institutions are only justified for a particular culture (Parekh, 1999a). Notwithstanding, Parekh's model of intercultural dialogue requires that the majority society is a liberal one. Kymlicka (2001a, p. 132) rightly points out that the ground-rules of Parekh's version of dialogue (*i.e.*, the institutional procedures) are liberal ones. In particular, his model of dialogue presupposes ideals like equal democratic participation, toleration and freedom of speech and information. The dialogue presupposes these values because Parekh aims at full inclusion of minorities and majorities in the dialogue so that they can freely express their views; furthermore, one of the aims of the dialogue is to tolerate practices.

Additionally, although Parekh insists on a representative for minority cultures, he rejects the idea that this representative can exclude some of their members from the dialogue. All this suggests that the intercultural dialogue in these terms requires a liberal society as a background (Bromell, 2008, pp. 180–181; Kymlicka, 2001a, p. 132; Miller, 2002). In fact, Parekh seems, on some occasions, to endorse liberal values as a basis for intercultural dialogue. For example, Parekh (2005, p. 340) affirms that “the dialogue requires certain institutional preconditions such as freedom of expression, agreed procedures and basic ethical norms, participatory public spaces, equal rights, a responsive and popularly accountable structure of authority, and empowerment of citizens”.

Even though Parekh’s philosophy seems to endorse liberal ideals, he does not seem to acknowledge that the society where the dialogue takes place needs to be a liberal one; he simply affirms that the dialogue should be guided by the operative public values of the wider society. The problem about this is that when he distances himself from liberalism by affirming that dialogue should be guided by operative public values, he risks that the operative public values of certain societies will not include the value of dialogue and that even if dialogue is valued, there may be discriminatory norms of inclusion in the dialogue. For example, in a society like Saudi Arabia, there is no guarantee that dialogue will take place; for Saudi Arabia’s interpretation of *Sharia* does not necessarily include the value of dialogue. In addition, in a society like Saudi Arabia where LGBs and women’s rights are extremely neglected, the rules of inclusion in dialogue may dictate that LGBs and women are not entitled to be included in the dialogue. Therefore, this normative dependency on the local culture can undermine the realisation of a dialogue and, if the dialogue is carried out, this may mean that it will be carried out with norms of exclusion.

A second philosophical aspect of Parekh’s theory that is relevant for this thesis is his rationale for defending intercultural dialogue. To recall, Parekh contends that an intercultural dialogue should be carried out for three reasons, two of which are relevant here. First, it should be carried out due to the fact that cultures have moral value for their members and that these members are deeply attached to their cultures. This attachment and moral value that cultures have for individuals should not be taken lightly and minorities should have the opportunity to defend the practice via a dialogue. In other words, he rightly argues that banning minority practices should not

be taken lightly and that majorities owe respect to these practices owing to the fact that minorities give considerable importance to them. This is also noticeable in one of the strategies that Parekh considers as useful in the first stage of the dialogue; namely, the strategy that consists of affirming that the practice is a key aspect of the group's way of life. Once again, affirming this is an acceptable strategy demonstrates that Parekh considers culture as morally relevant for individuals. This is important for LGBs within minorities because many of them do not want their cultures to become extinct even though these cultures may be heterosexist; rather many LGBs wish for their cultures to survive, even though they may transform. As in the case of the Boy Scouts and GLIB, mentioned above, LGBs do not want to make their cultures' extinct; rather they want to remain members of their groups but as long as these groups become more accepting of them. So, an intercultural dialogue is, in part, taking into consideration this attachment that individuals in general and LGBs in this case, have to their cultures and will not simply prohibit practices. Thereby, Parekh is rejecting the idea that there is nothing important about minority cultures and that the members of the majority culture have absolute power to immediately ban a practice they disagree with. The other reason advanced by Parekh for intercultural dialogue is that it would help in clarifying and understanding the different meaning of practices. As explained when the philosophy of Okin was assessed, the social meaning of practices is not unequivocal and the meaning is relevant for judging the fairness of the practice. In fact, Parekh is right when he affirms that some practices that may seem oppressive may actually be an expression of the operative public values of the (liberal) majority. In the context of LGBs within minorities, some practices that may seem heterosexist are not heterosexist at all, as in the case of the *berdaches* in *Yuman* tribes. Given this potential multiplicity of meanings, Parekh correctly concludes that an intercultural dialogue that gives the representative of the minority culture the chance to clarify the meaning of the practice should be carried out before a final decision is made. Finally, the third philosophical aspect of Parekh's theory that is relevant is his characterisation of LGB individuals. To recap, he affirms that LGB individuals wish that their cultures are transformed so that they are more inclusive of the LGB lifestyle and that, in general terms, LGBs aspire to rights that promote the inclusion of their lifestyle, rather than rights that entail a degree of separatism. These two statements are only partially correct. As explained in the evaluation of Deveaux's philosophy, some LGBs within minorities wish to remain members of

their groups and be able to participate in the transformation of their groups. Notwithstanding, this is not always the case; some LGBs simply want to leave their communities and have no interest in participating in the transformation of their cultures. The same applies to the statement that LGBs wish for integration rather than separatism. As explained in the critical analysis of Kymlicka's work, this is sometimes the case, but there are also LGB groups that demand rights for self-government.

5.8– Practical Questions about Parekh's Version of Intercultural Dialogue

In the previous section, the philosophical groundwork underlying Parekh's theory was examined. Now, I will look at more practical aspects of his philosophy and discuss how Parekh's approach stands with respect to heterosexist injustices within minorities and how it can be compared with Deveaux's model. In particular, I will look at the implications of the topic in this thesis that takes as its starting point the operative public values of society, considering who participates in the dialogue, the stages of the dialogue and the potential outcomes of the dialogue. A practical difficulty that Parekh's model faces is that using operative public values as guidance for dialogue is not always possible because these do not always exist and this may shut down the dialogue. Whereas in the United States the standard for treating someone well is perhaps not using offensive language and treating someone with equality, this is not what the Westboro Baptist Church believes to mean by treating someone well: "according to my standards, it would be infinitely more mean, hateful, uncompassionate, etc., to keep my mouth shut [about homosexuality] and not warn you that you, too, will soon have to face God" (Westboro Baptist Church, 2013b). While the Westboro Baptist Church is guided by the idea of hate, the values, generally speaking, of American society are not based on that ideal. So, sometimes there is no common ground as to where to start, so guiding dialogue in this way may not always be beneficial.

Another practical difficulty of Parekh's version of intercultural dialogue is that it is less developed than Deveaux's in enhancing LGBs empowerment within the group, in terms of participating in political and social life, creating the means for reporting abuse and stimulating self-criticism. Deveaux affirms that all individuals should be

included in deliberation and she describes what requirements are necessary for individuals to be in a situation where they have the capacity to enter into the deliberation. Contrastingly, Parekh does not discuss what conditions would be necessary for participants be in an equal bargaining position in the dialogue. In fact, he only affirms that individuals cannot be excluded from the dialogue and he mostly describes his model as a debate between two representatives. Recall that one of the strengths of this model was that it empowers individuals within minorities by making sure they will have the conditions for participating in the decisions of the group. Hence, the lack of tools for ensuring that LGBs have the same bargaining power undermines the advantage of deliberation by placing individuals in a situation where they can actively participate in the political decisions of the group. Focusing the dialogue on representatives and not outlining the conditions for equality in dialogue rather than engaging in a process that would include all participants equally would substantively diminish the means for reporting abuse which is one of the advantages of dialogue. Thus, this dialogue, by focusing mostly on representatives and not so much on the bargaining power of internal minorities, offers an underdeveloped tool for reporting abuse. Owing to the fact that the debate is only focused on two representatives rather than including all the processes of self-criticism, means it is limited to those who are debating, rather than spread widely by cultural members. That is, the self-criticism benefit of dialogue is also substantively diminished owing to the fact that it immunises most members from self-assessing their views about homosexuality.

Another important practical aspect of the intercultural dialogue that should be analysed lies in its three stages. The first stage of the intercultural dialogue plays a fundamental role in the clarification of the meaning of the practice. The representative, by explaining the nature of the practice, how it relates to a way of life and to the survival of the community, is clarifying the meaning of the practice for the members; and, as explained above, this meaning is important in understanding whether it is heterosexist or not. Even though this stage helps to clarify the meaning, it would be better to make sure all members speak, rather than just a representative as the practice may have different meanings for different individuals within the group. Moreover, the fact that one has to explain the reason why the practice is important also enhances self-criticism by the person who is defending the practice, who may

not have thought about the importance of it before, instead simply ‘going along’ with the practice. Hence, for those homophobes who just abide by the idea that homosexuality is wrong, if they had to explain why it is wrong they may realise that their reasons actually lack justification. For instance, in the case of Lauren Drain and Grace Phelps–Roper, the fact that they had to routinely defend their homophobic views on homosexuality and the reasons homophobia is important for the Westboro Baptist Church’s way of life, helped them review their ideas about homosexuality (McCaskell, 2013). Likewise, if a gay man who has internalised homophobia has to explain why rejecting his sexual orientation is crucial to his way of life, this may help him realise that there is nothing wrong with him pursuing a relationship with another man.

I am more skeptical about the relevance of the second stage of the dialogue; Parekh considers it important in part because it helps to clarify if the practice is oppressive or not. According to him, if it is an isolated practice, it is more likely that it is a form of social control. However, the fact that a practice is not isolated says nothing about its oppressiveness. As demonstrated by the example of the Westboro Baptist Church given above, heterosexism is not an isolated practice and this does not make them less oppressive or heterosexist. More precisely, Pastor Fred Phelps could successfully demonstrate that a specific heterosexist practice is integrated in a whole lot of other heterosexist practices. In reality, the fact that there are more heterosexist practices within the group can demonstrate exactly the opposite, *i.e.*, that power is so centralised that all behaviour is surveilled. Putting all the heterosexist practices of the Westboro Baptist Church together suggests how members, especially potential LGB members, are routinely surveilled, discriminated against and mistreated. Indeed, in some of the interviews given by Nathan Phelps, he explicitly stated that there are a variety of forms of social control that encompass all aspects of life (CFI Ontario, 2011; Hannaford, 2013). In her book, Lauren Drain (Drain and Pulitzer, 2013, pp. 81, 87–90, 141, 157) reinforces this idea by giving a number of examples of when she felt this social control. Hence, the non–isolation of the practice has no or little relevance for judging the oppressiveness of the practice.

The third stage of the intercultural dialogue is an extremely important one because it is when the representatives of both the majority and minority have to be more self–critical and confront their own stereotypes. When the representative of the minority

has to step out of his culture and try to assess the practices and beliefs of his own culture by using operative public values as a criterion, this forces him to reassess and rethink his perspective on a topic, in this case homosexuality. In the case of the Westboro Baptist Church, this would be very helpful because members usually affirm that their standards are completely different from the majority: they say they use the standards of God and the Bible as opposed to the standards of popular culture, therefore, trying to think about homosexuality having different standards as a criterion may lead to different conclusions, helping the self-critical process of challenging stereotypes. Indeed, in one of her interviews, Grace Phelps-Roper affirmed that having contact with other religions and other Christian readings of the Bible, besides the one given by the Westboro Baptist Church, helped her to reassess her beliefs on homosexuality and Judaism. In particular, her debates with LGB and Jewish activists helped her to broaden her knowledge about the status of LGB individuals and change her mind about the use of hate speech towards them (McCaskell, 2013). Likewise, after forcing Paola Concha to attend sexual conversion therapy, her mother changed her mind about homosexuality. This is because she reassessed her beliefs, taking into consideration the operative public values of Ecuador in relation to the physical and psychological integrity of the majority rather than continuing to hold onto her beliefs about the ‘badness’ of homosexuality (GayTimes, n.d.). In this case, trying to assess the therapy from a different point of view would have been beneficial. This process could potentially contribute to a more liberal culture (which is needed for tackling heterosexist injustices) because it would put into question the belief in heterosexist institutions upheld by the majority. For example, when the majority is confronted with the second strategy used by the minority in the third stage of dialogue this would force the former to question the justice of its own institutions. To recall, the strategy used by the minority consists of arguing that the majority’s institutions are also heterosexist. This would force the majority to reassess whether it is really the case that some LGBs are discriminated against or not by their institutions. Owing to the fact that, in this third stage, the majority representative would have to also defend the values of the majority, would also potentially have the positive effect of making him more self-critical about his views. Furthermore, owing to the fact that he would have to defend the operative public values, this would make him reflect about the possible stereotypes and lack of justification that the operative public values may have. All this process would help

enhance self-criticism. Although there are these advantages to the third and first stages, it would be better if this dialogue was focused and extended to all members rather than just the representatives.

Finally, the other practical implication of his model to be discussed refers to the potential outcomes of dialogue. As in the case of Deveaux, it can be argued that dialogue can lead to more heterosexist practices. The response to this criticism is similar to the one given in Deveaux's section: different methods of law making are not necessarily better. Take the example of Iran, which is a Muslim country run by a government that does not usually engage in dialogue. In Iran, there is a group of twelve specialists in Islamic law, called the Guardian Council of the Constitution, who has the power either to promulgate or veto the laws voted in parliament. So far, these twelve specialists have not passed many laws favourable to the protection of LGBs' rights. This means that there are no reasons for being optimistic about other means for defending LGBs' rights. A more worrying practical aspect of Parekh's model with respect to possible outcomes refers to his affirmation that the position of the majority should prevail if no agreement is reached. This solution gives too much power to the majority to decide the prohibition of practices or not and gives no veto power to minorities. Although it is true that the existence of dialogue would give an opportunity for clarifying the meaning of practices, the fact that everything is decided in dialogue and that the majority has the absolute right of banning the practice leaves minorities and minorities within minorities too dependent on the majority. Put differently, cultural groups and minorities within minorities who seek approval or disapproval of a certain practice are dependent upon the approval or disapproval of the wider society (Kelly, 2003, pp. 104–105). Therefore, contrary to Parekh's objective, this decision making power institutionalises inequalities between the majority and minorities. In reality, it advantages the majority too much by giving it the power to decide everything. Hence, this methodology of decision should be corrected using similar guidelines to the ones suggested previously with regard to the work of Deveaux.

5.9 – Conclusion – What can Deliberation Achieve with Respect to Heterosexist Injustices within Minorities?

To conclude, the challenge posed in this chapter was whether deliberative democracy and dialogue could have a positive effect on the situation of LGBs within minorities. The rationale behind discussing about the advantages and disadvantages of deliberation and dialogue is that it has been concluded from chapter 4 that a laissez-faire state is required for protecting LGBs within minorities from heterosexism. Consequently, I contended in chapter 4 that it is necessary to endorse an approach that not only respects freedom of association, but also that complements it by participating more directly in the affairs of the group. I have argued that deliberative democracy in Deveaux's model is, broadly speaking, up to this challenge and is able to offer an effective alternative in tackling heterosexist injustices within minorities. In general terms, the advantages of this model are that it empowers LGBs, increases the availability of support and means of reporting abuse, it also stimulates self-criticism, helps achieve the public endorsement of homosexuality and helps clarify the meaning of practices. Parekh's model has less sophisticated means for achieving these results and, for that reason, I consider that Deveaux's version is more suitable for tackling heterosexist injustices within minorities. Nevertheless, I believe that Parekh's approach can contribute to a better deliberative model, especially if stages one and three of his dialogue are combined with Deveaux's model. If, when deliberation is carried out, all the participants had to explain why the practice is a key aspect of their way of life, self-criticism could be stimulated, and it could also clarify that not everyone believes in the practices for the same reasons. Likewise, if stage three was introduced into the model, it would force both the majority and the minority to be self-critical and question their own institutions.

Chapter 6 – Joint Governance

In this chapter, I will turn to a group of approaches which I call joint governance. Joint governance models try to divide power between the state and the group in order to tackle heterosexist injustices within minorities. These views are power-sharing systems in the sense that the group and the state both have only *partial* power to decide practices and norms. In this chapter, I will evaluate two models of joint governance; transformative accommodation and associative democracy. In chapter 2, when federalism was analysed and in chapter 4 when the work of Kukathas was assessed, it has been concluded that giving total power to groups may facilitate the imposition of heterosexist practices. It has been concluded in chapter 4 that the state should intervene more in the affairs of minorities in order to grant that special rights provided to groups do not reinforce heterosexist injustices within minorities; moreover, it has been affirmed that equal access to welfare, economic resources, and job opportunities is essential for protecting LGBs from homophobia. The approaches studied in this chapter aim at exploring versions that are more interventive, committed to partial power and a higher degree of equality of welfare provision, job and economic opportunities. Hence, it is interesting to analyse whether these approaches can offer a viable alternative to the ones explored in previous chapters. I will defend the possibility that associative democracy combined with aspects of deliberative democracy, as defended in the previous chapter, can offer an adequate solution for protecting the interests of LGBs within minorities.

This chapter is divided as follows: in sections 6.1 and 6.2 I will outline Shachar's work. Then, in sections 6.3 and 6.4 I will contend that even though the principles of transformative accommodation can provide important insights and the idea of partial power is important, there are some problematic aspects to this theory. More precisely, I will contend in section 6.3 that the principles of transformative accommodation lack content for giving normative guidance that fuels important questions relating to LGBs within minorities. In section 6.4, I will contend that when put into practice, the division of jurisdictions collapses. I will also defend that Shachar's model should engage in deliberation, which it does not.

In section 6.5, I will move to explaining and defending associative democracy. I

argue that associative democracy combined with deliberative democracy is an adequate solution for protecting LGBs within minorities from the violation of their interests. This model is strongly inspired by the philosophy of Hirst and Bader, but is also influenced by what has been discussed throughout this thesis. This model of associative democracy draws from chapter 2's discussion of federalism and chapter 4's discussion of Kukathas whereby heterosexist groups should not be given *total* power in areas that refer to the interests of LGBs within minorities. This model draws also from the discussion with respect to Taylor's work regarding the importance of recognition in chapter 2, the debate about stereotypes in chapter 3, the discussion about more interventionism in the affairs of groups in chapter 4 and the discussion about the benefits of deliberation in chapter 5, where it is suggested that it is important to stimulate internal democracy within groups in order to tackle heterosexist injustices, rather than just leaving groups alone. Furthermore, it draws on from chapters 2 and 4 that giving special rights to groups is acceptable and does not necessarily entail more oppression. Having outlined and linked associative democracy with the protection of LGBs interests I will, in section 6.6, raise some potential problems that can be pointed out about against associative democracy, responding that associative democracy can respond to these criticisms without encountering any problems. Finally, in section 6.7, I will draw some conclusions about the chapter.

6.1 – Shachar's Legal Analysis of the Paradox of Multicultural Vulnerability in Nomoi Communities

Even though Shachar has written extensively about multiculturalism, she has not provided a lengthy definition of what culture is. Shachar's (2001a, p. 2) short definition of culture is that it is a "comprehensive and distinguishable worldview that extends to creating law for the community". This means that culture is normative in the sense that it is an important source of individuals' values and commitments; these values and commitments give individuals at least some of their reasons to act. To minority groups that have a culture Shachar (2001a, p.2) attaches the label 'nomoi communities'. According to her, this term can apply to religious, ethnic, racial, tribal and national groups, as all these groups can have the normative dimension required

to be classified as a ‘nomoi community’.

In Shachar’s work, it is very noticeable that she is aware that some of these nomoi communities may have traditions that harm and disadvantage some of their members. In particular, Shachar (2001a, p. 15) worries that multicultural policies reinforce internal injustices by the “solidification of the power relations encoded in these [harmful] traditions”. In Shachar’s view, this solidification could translate to a variety of violations of citizenship rights (Shachar, 2001a, pp. 3–15). Shachar (2001a, p. 3) calls this phenomenon of intragroup inequality that results in policies that aim to protect culture, the paradox of multicultural vulnerability: “By this term I mean to call attention to the ironic fact that individuals inside the group can be injured by the very reforms that are designed to promote their status as group members in the accommodating, multicultural state”.

Generally speaking, Shachar’s writings on multiculturalism focus on internal injustices that concern gender. However, there is no reason to think her objective is simply to theorise gender issues and not offer the possibility of applying this to other kinds of vulnerable individuals within minorities. Hence, although Shachar does not systematically discuss the implications of her theory for sexual orientation, in this part of the chapter I will try to tease out the potential links here. As in the case of gender, LGBs’ identity routinely clashes with their cultural identity; also, as in the case of gender, LGBs within minorities often have fewer rights than heterosexual members; for example, they may not be considered members of the group, they may not have the right to marry, adopt and so forth.

To illustrate the paradox of multicultural vulnerability, Shachar routinely uses a legal dispute that occurred with a Native–American tribe and one of their members. This is the case of Julia Martinez; Julia Martinez, was a member of the Santa Clara Pueblo tribe whose daughter’s membership of the group was rejected, a rejection leading to tragic consequences. In 1941, Julia Martinez, who was a daughter of members of the Santa Clara Pueblo tribe married a man from outside the group. With this man, she had a daughter, who was raised in the Pueblo reservation, subsequently participating in and learning the norms and practices of the tribe. However, according to this tribe’s law, only the offspring of male members are considered members; hence, although Julia Martinez’ daughter was raised on the reservation, she was not, in the

eyes of the tribe leaders, a tribe member. When Julia Martinez's daughter got ill, she had to go to the emergency section of the Indian Health Services. Nevertheless, she was refused emergency treatment on grounds of not being a member of the tribe; a refusal that later caused her death (Shachar, 2001a, pp. 18–20). From Shachar's point of view, this case exemplifies how some individuals within minorities can be treated unfairly. Julia Martinez and her daughter had less rights than other members, who could have full access to the health services of the Santa Clara Pueblo tribe.

The methodology that Shachar uses, as a legal scholar, to identify situations where the paradox of multicultural vulnerability exists, is to look at differences in rights in different areas of law. As explained above, she does not tease out the implications for sexual orientation; but, given the kinds of LGB rights that are usually violated, it is pertinent here to allude to at least three areas of law, namely, the family, criminal and employment law.¹⁹

When dealing with the paradox of vulnerability concerning gender, Shachar focuses mostly on family law. This area of law usually refers to domestic relations and group membership; without trying to give an exhaustive list, family law deals with questions of group membership, paternity rights (*e.g.*, adoption and child custody), marriage, divorce and so forth. As this list suggests, family law deals with the interests of LGBs; to recall, in general, LGBs have an interest in marriage, group membership in their communities and paternity rights. Unfortunately, many minority groups (and majority groups) deny LGBs these rights. To provide some examples of norms of inequality in family law, take the example of some membership rules upheld by minority groups. James Schwartz, a gay man who is a former member of an Amish community, was expelled from his group due to his sexual orientation. Hence, this Amish community can be seen as having a discriminatory rule of membership that excludes LGBs (Huffington Post, 2012; HuffPost Live, 2012). With regards to other areas of family law, like marriage and paternity rights, LGB individuals are also sometimes discriminated against by their groups. Catholic Care, an adoption agency in Leeds, wished to refuse adoption to same-sex parents (Doughty, 2012). In general terms, the Catholic Church does not have ceremonies for same-sex marriage. Taking this on board, it can be stated that LGBs are sometimes

¹⁹ Heterosexist injustices also take place in different areas of law, but most of these injustices happen in these three areas.

discriminated against in family law.

Another relevant area of law for the topic of inequalities within minorities is criminal law. Criminal law regulates social conduct that may threaten, harm, endanger or undermine the safety of individuals. Criminal law decides on the conviction and sentence of the criminal and the compensation of the victim. Many LGBs within minorities are victims of physical and verbal harassment, hate speech and hate crimes. Moreover, many countries criminalise same-sex relationships, intercourse and so forth. Hence, many LGBs' interests are subsumed in the area of criminal law: especially LGBs' interests in safety and sexual freedom. To provide some examples of inequalities in the realm of criminal law, take first the example of the use of hate speech by the Westboro Baptist Church. The members of the Westboro Baptist Church constantly use hate speech against LGBs, especially against gay men. This group also wants to impose restrictions on LGBs' sexual freedom and have demanded the state criminalise homosexuality with use of the death penalty (Westboro Baptist Church, 2013e). Some Southern Baptists use sexual conversion therapies that aim at changing the sexual orientation of LGB members by inflicting physical pain and psychological violence upon them; this was the case of Samuel Brinton, whose parents were members of the Southern Baptist Church, and who forced him to submit to such 'therapy' (Wareham, 2011). In some South African communities, some lesbians are victims of corrective rape, a practice that consists of raping women so that they become straight (Carter, 2013).

Finally, a third area of law where LGBs within minorities' rights are sometimes jeopardised is employment law. Employment law refers to the relationship between employer and employee, the nature of contracts, obligations and rights, getting sacked, unemployment, termination of employment, penalty payments, wages and remuneration; conditions of work; health, safety, welfare and social security. Contrastingly with family and criminal law, Shachar does not mention this area of law in her work at all; however, owing to the fact that in many cases inequalities in employment rights between LGBs and heterosexuals are verified, then it is pertinent to discuss this area of law. In some cases, there are Catholic schools that do not accept LGBs as teachers. Carla Hale was a teacher at a Catholic school, who was fired when the board of the school found out she was a lesbian (Doughty, 2012). James Dale was a Scoutmaster with the Boy Scouts of America who was fired from

his post as a result of other Scouts finding out he was gay (Susman, and Hennessy-Fiske, 2013).

6.2 – Transformative Accommodation

Shachar (2001a, p. 4) believes that the solution to the paradox of multicultural vulnerability is to endorse a conception of citizenship that simultaneously addresses injustices between groups and within groups: “We need to develop a conception of differentiated citizenship which is guided by an ambitiously innovative principle: one that strives for the reduction of injustice between groups, together with the enhancement of justice within them”. In Shachar’s view, this would be an approach that acknowledges that individuals have a strong interest in remaining members of their *nomoi* communities and have their citizenship rights protected. This is because, according to her, the solution consists of a model of citizenship that simultaneously protects rights and cultural membership and does not oppose rights to culture. In practice, she believes that this means that this model of citizenship has to enhance an interaction between cultural groups, internal minorities and the state. That is, it is a model that includes the participation of these three actors (cultural groups, state and internal minorities) in the making of law (Shachar, 1998b, pp. 90–92; Shachar, 2001a, pp. 70–71). For this she suggests a joint governance approach to the paradox of multicultural vulnerability. This, according to Shachar, is a dynamic division of power that enhances the participation of cultural minorities by dividing legal authority between different power holders (Shachar, 2001a, pp. 88–90).

Shachar’s own model of joint governance, and one she considers as fitting that kind of citizenship is called transformative accommodation. According to Shachar, this model relies on four assumptions. First, individuals have a multiplicity of identities. For example, Malcolm X was a Muslim, a male, an African–American, and a heterosexual. Hence, individuals have a multiplicity of affiliations that play a role in their identities. The second assumption is that both the group and the state have normative and legal reasons to shape behaviour. There may be a variety of reasons for this, but at least one of them is that individuals have a strong interest both in preserving their cultures and protecting their individual rights. Third, both what the state and the group do impact on each other. For instance, the laws that the state

makes about same-sex marriage has an impact on heterosexist minority groups; the heterosexism of minority groups, like the hate speech of the Westboro Baptist Church also impacts on the state. Fourth, both the state and the group have an interest in supporting their members (Shachar, 2001a, p. 118).

On top of these four assumptions, transformative accommodation is based on three core principles; sub-matter allocation of authority, no monopoly, and the clear establishment of delineated options (Shachar, 2001a, pp. 118–119). According to the sub-matters allocation of authority principle, the holistic view that contested social arenas (family law, criminal law, employment law and so forth) are indivisible is incorrect. According to this principle, these social arenas can be divisible into sub-matters, *i.e.*, into multiple separable components that are complementary (Shachar, 1998a, pp. 292–294; Shachar, 2001a, pp. 51–54; Shachar, 2010, pp. 398, 406–407). In practice, this means that norms and decisions about disputed social matters can be determined separately.

In Shachar’s view, family law can be divided into demarcating and distributive sub-matters. In her (2001a, pp. 119–120) view, the demarcating sub-matter of family law is where group membership boundaries are defined: “There is a demarcating function which regulates, among other things, the change of one’s marital status or one’s entitlement to membership in a given community”. That is, it is in this sub-matter that the necessary and sufficient attributes (biological, ethnic, territorial, ideological and so forth) for membership are decided. In the case of the Santa Clara Pueblo tribe, it would be the legislators in the demarcation sub-matter who would determine whether Julia Martinez’s daughter was a member of the tribe or not (Shachar, 2001a, pp. 52–54). In the case of James Schwartz, the demarcating function would be where his membership of the community was decided. Other questions decided in the demarcating sub-matter are who can divorce and marry within a group (heterosexuals, LGBs, humans, minors, adults) and when. Likewise, the boundaries of membership for those who can adopt is also featured in this area of law (heterosexuals, LGBTs, adults, first class, working class). Hence, in the case of Catholic Care mentioned above, the demarcating function would be where the decision about who can adopt would take place.

From Shachar’s perspective (2001a, p. 54), the distributive sub-matter of family law

“defines property relations between the spouses and, in the event of death or divorce, determines the economic and parental consequences of this change in personal status”: more precisely, discussions about property during marriage and after divorce, heritage and compensation (Shachar, 2001a, pp. 119–120). In the case of Julia Martinez, this sub–matter would refer to her entitlement or not to use the Indian Health Services. In the case of James Schwartz, this would refer to whether the group should compensate him for his expulsion, and what property and welfare he is entitled to when leaving the group. In the case of Catholic Care, the distributive sub–matter would depend on whether LGBs are members of the group that can adopt or not. If they are, this could refer to how much economic assistance they are entitled to, how much they have to pay for this service, and other things. If they are not, this sub–matter can refer to the kind of compensation that the same–sex couple who applied for adoption should receive from Catholic Care as a result of being denied such a service.

According to Shachar, criminal law can be divided into two sub–matters: conviction and sentencing. Shachar (2001a, p. 160) affirms that the former refers the “the legal determination of whether an accused person is guilty or not”. This means that is in the conviction sub–matter where the assessment of criminal evidence is made; this assessment of criminal evidence is made so that a decision is taken about someone having committed the crime or not. More precisely, what goes under the banner of conviction is the assessment of witness plausibility, the coherence of the accusation and defence, the intention of the accused to commit the crime and so forth. In the case of individuals who were victims of sexual conversion therapies, like Samuel Brinton, a former member of the Southern Baptist Church and the Ecuadorian lesbian Paola Concha, conviction would determine whether their parents, as well as those who carried out the therapy, are guilty or not. In the case of the hate speech used towards LGBs by members of the Westboro Baptist Church conviction would refer to determining whether they did, in fact, use hate speech. According to Shachar (2001a, p. 160) the sentencing sub–matter refers to the decision about “the appropriate means of punishment, protection of the public, deterrence, or rehabilitation of the offender”. In practice, this refers to decisions taken about the number of years in jail, the fine to be paid, the kind of compensation to the victim and so forth. In the case of sexual conversion therapies, this refers to the decision

about what penalty those involved in forcing Samuel Brinton and Paola Concha to attend the therapies would receive. In the case of hate speech, it would be determined what punishment, if proven guilty, Sheik Omar Bakri and the members of the Westboro Baptist Church would receive.

Contrasting with the two former areas of law, Shachar does not mention employment law in her work; hence, she does not explain how to divide employment law into sub-matters. However, it makes sense to divide it into demarcating and distributive sub-matters, as in family law. The former would refer to inclusion or exclusion of individuals from certain jobs. So, in the demarcating sub-matter it is decided who can have which jobs. For instance, the demarcating function in employment law refers to the question of whether gay men can work with children or not. To take particular cases, the demarcating function would refer to the laws about whether the Catholic School and the Boy Scouts of America were entitled to fire Carla Hale and James Dale from their respective posts. The distributive sub-matter of employment law would refer to questions of compensation in employment law. In this case, it would be about the kind of compensation that Carla Hale and James Dale would be entitled to as a result of being fired from their posts.

By establishing the second principle, the no monopoly rule, Shachar defends that jurisdictional powers should be divided between the state and the group. According to this principle, neither the state nor the group should hold absolute power over the contested social arenas. More precisely, the group should hold power over one sub-matter while the state should hold power over another. Consequently, legal decisions would result from an interdependent and cooperative relationship between the group and the state (Shachar, 2001a, pp. 120–122). In the case of family law, if there is a divorce dispute, the state could take control of distribution (property division after divorce, *e.g.*) and the group, demarcation (who can request divorce and why, *e.g.*) or vice-versa. In the cases mentioned above, if the group had power over demarcation and state distribution, the group could decide whether Julia Martinez and James Schwartz are members of their groups or not, whereas the state would determine what group resources these three individuals are entitled to use and whether they are entitled to any compensation as a result of being expelled. In the case of refusing to allow adoption, like Catholic Care, the same kind of procedure would be carried out; the group could decide who can adopt, while the state can decide what compensation

those who cannot adopt are entitled to. In a criminal dispute, the state can decide whether someone is guilty of a crime by holding power over conviction and the group can decide the penalty if holding power over sentencing, or vice-versa. In the case of Samuel Brinton, the state could decide whether those involved in the crime are guilty or not and the Southern Baptist Church could decide what penalty those involved would receive, if the state holds power over conviction and the group over sentencing. In the case of Sheik Omar Bakri, the British Muslim community he is part of could decide if he is guilty of hate speech or not, and the state could decide the penalty he would receive; in this case, the group would have power over conviction and the state power state over sentencing.

Finally, in an employment dispute, if the group holds power over demarcation, it can fire someone from a job, but the state holds power over distribution and it can set up the compensation to be given, or vice-versa. With regards to the cases above, the Catholic school that fired Carla Hale and the Boy Scouts of America that fired James Dale could decide whether to fire them or not, if they had power over the demarcating function. In this case, the state would decide what compensation to give Carla Hale and James Dale in case they were fired. Although these examples attribute specific sub-matters to the state and to the group, this attribution is not necessary. That is, Shachar never affirms that the state has to hold onto distribution or demarcation or whatever; so the question of who keeps which sub-matter is open to discussion. The only suggestion Shachar makes is that in the case of family law, groups are likely to want to keep demarcation, but this is not necessarily the case.

The third principle defended by Shachar is the definition of clearly delineated options. According to this principle, individuals should have clear options between choosing to abide by the state or the group jurisdiction. In particular, this means that individuals can either decide to abide by a jurisdiction or they can refuse to abide by it and exit that jurisdiction at predefined reversal points. These predefined reversal points are an agreement made between the state and the group, where it is decided when individuals can exit the group and in what circumstances. From Shachar's point of view, if and only if there is disrespect either by the state or the cultural group, can individuals exit that jurisdiction:

“Such “reversal” provisions cannot be taken lightly. The purpose is not to

fracture group solidarity so that members can opt out at the slightest opportunity. The initial division of authority between group and state must still remain meaningful and presumptively binding on its individual members. “Opting out” is justified only when the relevant power-holder has failed to provide remedies to the plight of the individual; only then can the individual instigate a fair claim against that authority” (Shachar, 2001a, p. 123)

In essence, individuals can choose being under the family law, criminal law, employment law, etc., of the state or the group. However, after making that decision, they have to be committed to it. That is, individuals cannot just exit the jurisdiction; there should be a strong justification for them to do so, otherwise this system of multiple jurisdictions would not work effectively. According to Shachar, clear delineated options are advantageous to minorities within minorities:

“In the short term they serve as a stopgap for the individual, when the relevant power-holder fails to provide answers to the needs of certain categories of citizen insiders who are subject to its jurisdiction in a given sub-matter of authority. In the long term, the allowance for “reversal” in jurisdiction following failure in performance can generate significant internal changes, because it raises the collective risks and costs in maintaining discrimination and subordination within the *nomoi* group” (Shachar, 2001a, p. 123)

6.3 – Assessing the Principles of Transformative Accommodation

In this section, I will move to assessing the principles with respect to their relationship with heterosexual injustices that occur within minority groups. The no monopoly rule is a principle with a very powerful underlying idea, and is crucial for dealing with the normative questions that arise in this thesis. The idea is that the state should not have absolute power over the affairs of minorities, while minorities should not have absolute freedom to treat their members as they wish. This principle rightly suggests that if either of these has total power, they may abuse it. A state with total power to determine their citizens’ lives, and which determines the cultural

character of society will have the means to oppress the minority cultures within this society. If groups are left alone they may impose restrictions and violations on the rights of their members. The principle of no monopoly is important because it does not concede the groups and the state the power to regulate everything. Rather, this principle takes into consideration both the potential arbitrary state power but also arbitrary social power. This view contrasts especially with the federalism of Kymlicka and Taylor and the libertarianism of Kukathas. As explained in chapters 2 and 4, these authors' theories are problematic in part because they provide a monopoly of power to groups in certain areas which facilitates the imposition of heterosexist cultural norms. The idea of dividing power is important and in section 6.5 I will defend an approach which endorses this idea of partial power as a good solution for not facilitating heterosexist injustices, and balance this worry with associational freedoms.

Despite the fact that it will be argued in the next section that the sub-matter allocation of authority collapses when put into practice, this principle is an extremely helpful concept. For by dividing kinds of oppression into sub-matters it is made easier to identify what the status of individuals within the group actually is. In particular in the case of LGBs within minorities, the division of family law into demarcating and distributive sub-matters identifies two forms of heterosexism: one that refers to an unequal distribution of resources (distributive) and another that concerns the legal recognition of same-sex families (demarcating). In the case of employment law, the division of sub-matters clarifies that LGBs can be victims of discrimination in employment opportunities (demarcating) and how well-off they are economically speaking (distributive). In criminal law, via the sub-matters it is possible to identify that, in heterosexist societies, LGBs can be victims of crimes that from a liberal point of view are not crimes and that the sentences they receive may be disproportionate. In non-heterosexist societies, conviction helps identify the kind of protection LGBs are receiving for hate crimes and sentencing clarifies how serious the homophobic crimes are taken. So, as a methodological tool for clarifying the status of LGBs within minorities the principle of sub-matter allocation of authority is an extremely helpful tool.

The clearly delineated options principle has the advantage of eliminating the stark option of individuals either choosing either their rights or their culture, providing the

possibility of a partial exit, where individuals can choose what jurisdiction they wish to abide to. This is important because, as it has been explained throughout this thesis, many individuals are deeply attached to their communities and they do not always wish to leave; a partial exit option makes it possible that individuals remain members without having to abide to norms and practices that they do not want to abide to. Nevertheless, Shachar's condition that individuals can only exit at predefined reversal points may be problematic. To recall, Shachar affirms that opting out is acceptable if and only if the power-holder has failed to provide the remedies it was supposed to. In practice, this means that individuals can only exit if there is a breach of agreement from the group. However, this significantly limits individuals' freedom; individuals may change their minds about abiding by the rules or they may have had wrong expectations about what the agreement meant and, as a result, they would want to leave, which is not permissible according to Shachar's model. This is problematic for LGB individuals within minorities, especially bearing in mind the process of coming out. Many LGB individuals only realise their sexual orientation in their late twenties and even if they realise earlier due to social pressure they tend to go through a phase where they deny and do not want to assume their sexual orientation. This means that they may initially agree to heterosexist practices that they later on realise they do not want to abide by or that they change their mind because they gain a more positive view of their sexual orientation. This happens many times with victims of sexual conversion therapies. At the beginning of his therapy, Samuel Brinton thought that was the right thing to do, although he changed later on (Wareham, 2011). The late realising and initial denial of one's sexual orientation can also mean an agreement about other practices which, in the future, disadvantage them. For example, an 18-year old man who is either not aware yet of his sexual orientation or who self-denies it may agree that the health care provided by the group will not include sexual health appointments directed to sodomy advice; he can also agree that his culture is free to discriminate LGBs from job posts, but then later on, when he either realises or stops denying his sexual orientation, he changes his mind. In Shachar's model, those LGB individuals who become more aware or stop denying their homosexuality would not be able to opt out because they have initially agreed to a jurisdiction. Hence, her model needs an easier way out of a jurisdiction in order to avoid the scenario where individuals are somehow forced to remain members. This rigidity about not switching jurisdictions may make it more

difficult for individuals to abandon heterosexual practices; for individuals cannot just leave to go somewhere else in this model without justification.

Two counter-arguments can be raised against this view. First, it could be argued that LGB members of minority groups or the majority state could agree to reversal points that would be favourable to LGBs. If this were the case, then the negative outcomes explained above would not happen, as the reversal points would be more liberal. Second, it could be contended that the principles of transformative accommodation could limit the power of groups within minorities to decide what practices they have and, as a result, there would be practices which are incompatible with the principles and, therefore, not allowed. According to the first counter-argument, there are two possible agents that could intervene to negotiate the reversal points: members and the state. The members' option is ruled out by Shachar; she considers that one of the advantages of transformative accommodation is that members of groups do not have to negotiate the reversal points. As Shachar affirms:

“The fact that such reversal points are predefined by the state and the group as a condition for the creation of joint governance is significant for another reason. It relieves the vulnerable insider from the need to negotiate individually the transition between group and state norms on a case-by-case basis (as we have seen in the examples of *Parkinson* and *Amod*), thus overcoming one of the thorniest problems of other models of accommodation” (Shachar, 2001a, p. 125)

This, however, seems to contrast with another affirmation that she (2001a, p. 138) makes, when contending that “women (as well as any other group systematically put at risk by their nomos) can gain access to the resources and capacities needed to exercise and initiate change from within their communities.” Notwithstanding, empowerment by gaining access to resources does not mean that individuals will engage in dialogue with respect to the reversal points. In Shachar's theory, what this means is that individuals will have to gain the skills necessary for exiting the group, *i.e.*, Shachar (2001a, p.69) is affirming that jurisdictions within the group cannot undermine the right to exit by undermining members' “know-how, language skills, connections, and self-confidence needed to successfully exit from their minority communities”. Nevertheless, even if individuals have the capacity to exit they are

limited by the reversal points which prevent them from leaving. In short, the resources that individuals within minorities are entitled to are those that correspond to the necessary and jointly sufficient requirements for exit and not to the negotiation of reversal points.

With regards to the state, this is dependent on the state negotiators of the reversal points being liberal and aware of the existence of LGBs within the group. Due to the fact that internal minorities are not included the information about practices would be highly dependent on the leaders' good will about informing the state about the existence or desire (or not) of the group to have policies protecting LGBs. Shachar's model would benefit from a revisability principle, as in Deveaux's theory, where all decisions can be discussed again. Despite the importance of this kind of revisability it seems to be in tension with Shachar's idea that if the division of jurisdictions are to be taken seriously, then individuals cannot just leave, they have to respect the reversal points. It is in conflict because it would require a greater flexibility of to challenge those reversal points, which Shachar seems unprepared to accept.

With respect to the second counter-argument, the normative principles offered by Shachar do not offer sufficient guidance for the limitation of power of groups in their jurisdictions. Heterosexist practices are not incompatible with these principles; it is possible to respect those principles and criminalise homosexuality, have sexual conversion therapies, inequality in employment between LGBs and heterosexuals and so forth. Although these principles offer important insights on the normative problems that arise from minorities within minorities and of cultural diversity, they are not sufficient for protecting LGBs. The three principles of transformative accommodation are compatible with denying rights to LGBs and the criminalisation of homosexuality. In other words, it is not an implication of the principles that LGBs and heterosexuals should be treated equally; in addition, anti-sodomy laws that criminalise homosexuality are consistent with the principles. The sub-matter principle only states that areas of law can be sub-divided. This sub-division does not offer any moral groundwork that supports the equal treatment of LGBs and the ban of cruelty towards LGBs within minorities. For simply stating that areas of law cannot be divided does not say anything about the content of the law. The no-monopoly rule suggests that powers should be divided between the state and the group. Although this is an important principle, as in the case of sub-matters, there

are no implications for the content of jurisdictions; that is, this principle only implies that law making should be both the responsibility of the state and the group, but it does not give other guidelines about what kind of agreement has to be reached. The clear delineated options principle also does not guarantee equality for LGBs and the elimination of cruelty towards them. The fact that individuals can choose between two jurisdictions says nothing about what each jurisdiction is; as in the case of Kukathas, where there is a possibility for a LGB person having to choose between two heterosexist communities, there is also no guarantee in Shachar's theory that the choices available would not be both heterosexist. Bearing this in mind, the principles do not offer a normative groundwork that rules out unequal treatment and cruelty towards LGBs within minorities. There can be jurisdictions where LGBs are discriminated against, cannot marry, adopt, and so forth. Moreover, the principles do not rule out the possibility of criminalising homosexuality; hence, anti-sodomy laws, different ages of consent and so forth are compatible with these three principles.

Shachar (2001a, p.139) does mention that there are some practices that should not be acceptable affirming that "Not only are they guaranteed access to minimal material protections... [but also] to other capacity-enhancing resources (educational, legal, institutional, and so on)". This, as explained above, mostly refers to the resources that are necessary and sufficient for exit. Such a requirement does imply that there are limitations for the mistreatment of LGBs within minorities. In particular, if the right to exit and educational equality of LGBs within minorities are being undermined, then the practice should not be allowed. Notwithstanding, these minimal material protections are very weak for implying that there is equality in sexual freedom, participation in social life, in employment and other kinds of welfare. It means however that basic healthcare cannot be denied to LGBs within the group and that LGBs within the group cannot be put in a situation where their minimal material protections are being violated. Due to the fact that legal protections are also required this means that political freedoms like freedom of speech and association should also be respected. Bodily integrity also seems to be a basic right that LGBs are entitled to in this model. However, this requirement implies nothing about adoption, child-custody, sexual freedom, and marriage rights.

The lack of normative guidance of the principles also have a problematic aspect whereby they do not give a definition of what a crime is; this, in turn, creates a

tension in Shachar's theory because it makes it difficult to decide how to legislate some matters and how to divide jurisdictions. With respect to the rights of LGBs, in the context of cultural diversity, there are radically different standards to what a crime is. From a liberal point of view, same-sex intimacy between consenting adults should not be criminalised; therefore, from a liberal point of view, anti-sodomy laws should be abolished. Contrastingly, for many cultural groups (like the Westboro Baptist Church or Muslims like Sheikh Omar Bakri Mohammed), homosexuality is considered a crime. Hence, for these groups not only should same-sex marriage not be legalised, but they consider that anti-sodomy laws should be implemented. There are also radically divergent opinions about whether LGBs working with children and adoption by same-sex couples should be considered a crime or a right. On the one hand, from a liberal perspective, it is a requirement of freedom and equality to allow LGBs to adopt and pursue the careers they wish. On the other hand, some groups may consider that LGBs are not suitable to work with children, as in the case of Carla Hale, who was fired for being lesbian. More radically, sometimes there is the belief that homosexuality is correlated with pedophilia; some examples of groups that think this are the association Americans for the Truth about Homosexuality in the United States (Americans for Truth, n.d.). So, there is a radical difference between liberal majorities' and minorities' views on LGBs working with children. In addition, groups like the Westboro Baptist Church do not necessarily consider verbal and physical harassment towards LGBs as crimes (as liberal states usually do). For the members of the Westboro Baptist Church, the use of hate speech is considered a moral duty for spreading the Bible's teachings that homosexuality is one of the worst sins: "according to my standards, it would be infinitely more mean, hateful, uncompassionate, etc., to keep my mouth shut [about homosexuality] and not warn you that you, too, will soon have to face God" (Westboro Baptist Church, 2013b). Moreover, in their view, the use of strong and offensive language is necessary for spreading a clear message of the sinful nature of homosexuality: "We use great plainness of speech, and will not beat around the bush when it comes to someone's eternal soul. Watch out for those people who tell you that it's okay to be gay – they'll take you to hell with them" (Westboro Baptist Church, 2013a).

As these examples hopefully demonstrate, the standards of heterosexist groups and liberals are radically different. Bearing this in mind creates a problem for Shachar's

model. Transformative accommodation is a legal model that is based, in part, on dividing areas of law into sub-matters; however, as the examples demonstrate, there is no agreement about what area of law these disputes belong to. That is, there is a disagreement about whether they are a matter of criminal law or something else. The principles of transformative accommodation do not offer the groundwork for deciding whether a dispute is a matter of family law, criminal law or whatever (Baines, 2006, p. 57; Bond, 2008, pp. 408–409). Furthermore, there is no guidance about whether the starting point should be the liberal or the group’s point of view about the matter. That is, there is no guidance about whether the joint governance jurisdiction should be built upon the group’s conception of homosexuality as a criminal matter or the liberal perspective of freedom and equality. Taking this on board, there is a lack of normative guidance provided by the principles for decisions about how to build up the shared power of transformative accommodation.

6.4 – The Collapse of the Division of Jurisdictions into Sub-matters and the Lack of Deliberation

In this section, I would like to raise a different line of criticism to transformative accommodation; in my view, the division of jurisdictions into sub-matters collapses when put into practice. This may happen for at least one of two reasons. First, due to the fact that sub-matters are dependent on each other, the power one sub-matter usually has influences the power over other sub-matter. However, in some cases, the power in one sub-matter can jeopardise the power of the other sub-matter making power in one of the sub-matters redundant. For example, a norm in the sentencing sub-matter of criminal law can jeopardise the conviction function of the other power holder. Shachar is aware of the impact that sub-matters have on each other; in fact, it is one of the assumptions of transformative accommodation that the state and the group impact on each other. So according to Shachar (2001a, p. 121) “Since neither can fully override the other’s jurisdictional mandate, the “no monopoly” rule re-defines the relationship between the state and its minority groups by structurally positioning them as complementary power-holders.” Moreover, as mentioned previously, the third principle of transformative accommodation is that there is interdependence between the actions of the state and the actions of the group. In

addition, it is her hope that the involvement of the state in the making of norms will have a positive transformative effect; namely, she believes that groups will tend to become more liberal as a result of the impact of state norms on group norms. Nevertheless, this is not always the case; there is the possibility that this sub-division of powers will have the opposite effect than the positive transformation that Shachar desires. The second reason why there is a collapse is because, in many cases, there is a sub-matter which is dominant and can settle the dispute, setting aside the other sub-matter and therefore making it meaningless. Put differently, there is regularly sub-matter that is more important than the other in the sense that a decision made in that sub-matter can potentially settle the dispute without needing to make a decision in the other sub-matter. Very often the fundamental questions regarding the interests of LGBs within minorities depend mostly on one sub-matter; if a heterosexual group has power over that sub-matter, then the role of the other sub-matter is redundant.

To understand the two ways that sub-matter allocation of jurisdictions can collapse, I would like to give examples from criminal, employment and family law. With respect to criminal law, the honour killings of LGB individuals and sexual conversion therapies can serve as examples of this collapse. Take the case of Roşin Ç, a Turkish gay man, who was murdered in May 2013 by his father and two uncles because they did not accept his sexual orientation. This was an honour killing as the motive for his murder was restituting the honour of the family, which was, according to this family members, jeopardised by Roşin Ç's behaviour (Hurriyet Daily News, 2013). Now assume that the criminal trial was to be decided under Shachar's model and that the state would have power over conviction and the group over sentencing. If this was the case, although the state can convict the murderers for the crime, if the members of the group do not disapprove the crime, they can potentially give a very light penalty to Roşin Ç's father and uncles, like a fine. This disproportionate penalty nullifies the role of conviction; for the role of conviction is, at minimum, to lead to a sentence that corresponds to the kind of crime committed. Without making any assumption about what the goal of punishment is, my point is that whatever the meaning of the goal, the penalty should be proportionate to the crime. In other words, if the role of conviction is to lead to a sentence that corresponds to the crime committed, then if the sentence does not correspond to the committed crime, then the role of convicting is nullified. The conviction of Roşin Ç's father and uncles would

be pointless if the sentence would be paying a, say, £5 fine each for what was effectively homicide. Hence, conviction without a meaningful or appropriate sentence makes conviction absurd because it undermines the goal of convicting someone by giving him/her an appropriate sentence. This means that power over one sub-matter can undermine the power over the other, because it makes its role void. The ineffectiveness of joint-governance to deal with criminal cases like this is even clearer if one of the reasons is that Shachar considers joint-governance to be a good alternative. Shachar (2001a, p. 161) affirms that such a system “makes it possible to grant the people most directly affected by the offender’s conduct (such as their victims, family members, and the community at large in cases of domestic violence and sexual abuse) a public voice in the process at the time of sentencing”. However, the family members here are actually those who committed the crime, making it quite a biased trial to include those in the decision for sentencing.

Now assume that the state had power over sentencing and the group over conviction. If this is the case, power over the conviction sub-matter can settle the dispute, making the role of sentencing meaningless. In this case, if the close family is to decide conviction and if they approve the crime, they can easily manipulate the conviction by ruling out important evidence as relevant. In other words, letting the family of the criminals (and the victim) decide whether someone is guilty or not makes the trial less credible due to the emotional proximity of those making the about what is being judged. In this case, conviction is the dominant sub-matter, which, depending on the decision made, can set aside the relevance of the power over sentencing. Possible results go from considering the defendants innocent to convicting them of minor crimes (*e.g.*, convicting them of second degree rather than first degree murder). To sum up, in the first case, where the state had power over conviction and group over sentencing, there was a collapse of jurisdictions due to the fact that decisions made by the group could be such that they would nullify the power of the state; in the second case, the dispute can be settled only by one sub-matter, making the other sub-matter meaningless.

Now take the case of Samuel Brinton, the gay ex-Southern Baptist who was physically and mentally abused by his father (beaten regularly, tortured, etc.) and later on forced to undertake sexual conversion therapy (Bentley, 2011; Wareham, 2011). If this case was to go to court using the model of transformative

accommodation, a similar outcome to the above may result. If the Southern Baptists had the power to decide the conviction and if they approved of using therapy, they might simply consider Samuel Brinton's father not guilty or perhaps only guilty of a minor charge. Likewise, if they had power over sentencing, they may give his father a meaningless sentence. Again, in this case it was close family who committed the crime so letting them decide on the sentence or conviction was not of much help in protecting Samuel Brinton.

To think of a case of discrimination in employment, take the example of Carla Hale, mentioned above. The state would have power to stop the school from firing Carla Hale, if it had power over the demarcating sub-matter; however, there is nothing that the state can do against practices that may lead to involuntary exit. Practices of shunning, ostracism, and so forth are not incompatible with this view. If this is the case, Carla Hale may feel forced out and quit her job. If there is a compensation policy under the power of the group which states that if someone voluntarily quits, then this person has right only to a small compensation, then the distribution of powers did not provide a sufficiently robust protection of Carla Hale; for she quit her job and received a small compensation for it. In the case of the state having power over distribution, it is more difficult to have this manipulation of sub-matters; the state can set high compensations for firing, voluntary exit and so forth; this would remove the incentive of mistreating individuals within the work place to force them to exit. In this case, the distribution sub-matter is dominant, with power over demarcation becoming almost trivial. Hence, whomever – the state or the group – holds power over this sub-matter is the one who holds the only significant power.

Finally, to understand this idea as applied to group membership, take the example of the Santa Clara Pueblo tribe given by Shachar and suppose that rather than a heterosexual couple, they were instead a lesbian couple. This could become problematic if the group holds power over distribution rather than demarcation. In case the tribe had power over distribution, then the child would not be able to access the resources of the tribe; hence, although he would be a member, this does not seem to guarantee that the child would have any right to the distributive resources of the group. Even if there is a demarcating norm which states that membership is given by any blood relation (father or mother), the group can set up a distributive rule that only offspring of a male member have access to resources; for if they have control

over the distributive function, they can make the rules they wish. So, if this lesbian couple had a daughter via artificial insemination, then their daughter would not have the right to group welfare. Membership, in this case, would be absolutely useless because it gives access to nothing; hence, the power over the distributive aspect of family law, in this case, jeopardises the power of the state to control the demarcating sub-matter in the sense that the power has no significant function. In case the state has power over distribution, the child would have access to the resources. However, there is another difficulty here that is also present in the situation of Carla Hale, when groups cannot expel their members. As explained, stereotypes towards LGB individuals play a very important role in reinforcing heterosexism, not only because LGBs internalise homophobia but also because many of the homophobes' attitudes are based on stereotypes. Shachar does nothing to eliminate these stereotypes and those who remain in this situation of remaining members against other members' will, would probably feel regularly ostracised. So even if they are well off economically speaking, the social atmosphere they are socialised in may not be a heterosexism-free one.

This takes me to another problematic aspect of Shachar's view. Contrasting with the views defended in chapter 5, this model does not engage in policies that can enhance self-criticism, develop reporting tools and increase the availability of support in general, thus leading to the public acknowledgement of homosexuality. In this version of joint governance, the strategies explained in chapter 5 for achieving these goals are not present in the arena of transformative accommodation. Deliberation, forums, the promotion of debate, etc. which are the main tools for this purpose are not part of transformative accommodation.

6.5. – The Most Effective Solution for LGBs within Minorities: The Conflation of Associative and Deliberative Democracy

In this section, I will present what I believe to be the best solution for the dilemma of LGBs within minorities. More precisely, I want to suggest a model of associative democracy combined with the model of deliberative democracy defended in chapter 5 that is an institutional pluralist approach, as the best solution for the dilemma; associative democracy is a power-sharing system, while sovereignty is divided and

is not exclusively from the state or the majority. That is, there is a decentralisation of powers and a fair amount of autonomy for organisations (Bader, 2005, pp. 322–323; Bader, 2007d, pp. 186–189). This model is strongly inspired by the works of Bader (2003a; 2003b; 2005; 2007d), and Hirst (1988a; 1994; 1999a; 2000; 2001), but it is also influenced by what has been discussed throughout this thesis. This approach has five main characteristics.

First, the institutions and the welfare providers in society should not be only the ones provided by the state and the market; rather, associations should gradually be able to form and maintain their own institutions; furthermore, they should also become the providers of economic and social affairs. Put differently, in associative democracy, associations are, along with the state and the market, the primary means of organising economic and social life. In particular, that means that it will not be only the state and the market, but also associations that provide health care, education and so forth. Associations can also have their own institutions, like their own version of marriage (polygamous, same-sex, heterosexual, *e.g.*). Hence, although the state does not become a secondary public power, it would have to divide power with associations (Bader, 2007d, pp. 189–190; Cohen & Rogers 1992: 395; Hirst, 2002, p. 409; 1994, p. 19). In an associative democracy, most of the institutions available and the welfare provided would come from associations such as ILGA, Queer Nation, the Catholic Church, *Al-Fatiha Foundation* and so forth. This would permit institutions and welfare to reflect the preferences of the consumers and different identities. Hence, there will be a variety of institutions and welfare provisions that are consistent with different kinds of lives (Hirst, 1997, pp. 31–33). The Catholic Church can provide a Catholic model of welfare, and institutions that correspond to the Catholic doctrine. The LGB community can have its own model of welfare and institutions. In short, in an associative democracy, different versions of the good life are provided by a variety of different welfare systems that reflect various ways of life lived by individuals and groups. Hence, associative democracy stimulates minority institutional pluralism (Bader, 2005, pp. 322–324; Hirst, 1988a, p. 142; Hirst, 2000, pp. 292–293; Hirst, 2002, p. 409). As we have learned from Shachar’s no monopoly rule, if the state has total power over jurisdictions, welfare or otherwise, it may result in an abuse of power or bias. Hence, according to this first characteristic, both the state and groups have the possibility to form their own welfare system and avoid

majority bias.

The second characteristic of this style of associative democracy is that there is a variety of mechanisms of public finance available for individuals and associations. Associations would, in general, be publicly funded according to a common per capita formula, *i.e.*, according to the number of people who join and use the services provided by the associations (Hirst, 1997, pp. 65–67; Hirst, 2000, p. 292–293). Moreover, in an associative democracy, all individuals would be entitled to a basic universal income. A universal basic income means that individuals are entitled to an amount of income unconditionally, despite their willingness or otherwise to work, group membership, class, family status, etc. (Parijs 1995, p. 35). On top of this, the model of associative democracy provides a voucher system that gives individuals access to basic welfare provision. With these vouchers, individuals can gain access to education, healthcare and other kinds of welfare provision (Bader, 2005, pp. 334–335; Bader, 2007d, pp. 212 – 214; Hirst, 1994, p. 179). In chapter 4, when discussing vulnerability within groups, I argued that Kukathas’ theory leaves many LGBs economically vulnerable. I also suggested that a variety of mechanisms of public finance would be necessary for making exit real, with the voucher system and a basic income ways of empowering LGBs within minorities. The funds available for forming one’s association would also empower LGB individuals to exit and go and live somewhere else, as they would have the possibility of forming their own association with state funds.

The third characteristic of this model is that there are two functions that are exclusively state functions, *i.e.*, they are not the role of associations. First, the state and only the state has the power to secure peace between associations and safeguard the rights of individuals. In other words, only the state has the monopoly on violence and the administration of justice (Hirst, 1994, pp. 44–45). Second, the state has the function of collecting taxes and redistributing funds. When discussing the work of Kukathas in chapter 4, the conclusion was that the power to administrate justice, especially criminal justice would put LGBs’ interests at risk. According to this third characteristic for an associative democracy, this kind of power cannot be delivered to groups because of the potential risks of doing so.

The fourth characteristic of this model is that it makes a distinction between two

kinds of associations: these are cultural associations and cultural-based associations.²⁰ Cultural associations refer to institutions like the Catholic Church, the Westboro Baptist Church, the Southern Baptist Church, The Black Church, Mosques, etc. These associations have as their primary purposes the expression of norms of conduct and a system of beliefs, even if a thin one, that works as their guidance. These are groups that are, at least in part, semiotic and normative. Cultural-based associations refer to those institutions that relate to a culture but also have a public function. This public function can be commercial or offer a public service. Some examples are Catholic schools, Catholic adoption services, Mormon hospitals, Muslim health centres, Christian Bed and Breakfasts, etc. This dual typology aims at balancing the associational freedom of groups with the need of anti-discrimination laws to protect LGBs within groups.

In this conception of associative democracy, the rules governing the internal affairs of cultural associations are different from the rules ruling the affairs of the cultural based associations. Cultural associations cannot violate the basic civil and political rights and freedoms of individuals, neither can they violate members' physical and psychological integrity, jeopardise members' capacity to exit or violate the deliberation procedures outlined in chapter 5. In practice, what these limitations imposed on cultural associations mean to LGBs within minorities is that that torture, corrective rape, honour killings of LGBs, sexual conversion therapies that involve physical and psychological coercion, anti-sodomy laws like the death penalty, corporal punishment and so forth are practices that associations cannot impose on their members. So the therapies Samuel Brinton and Paola Concha were victims of, the ostracism and shunning carried out by some Amish and Hutterite communities, the hate speech used by the Westboro Baptist Church, the honour killing of Roşin Ç (Hurriyet Daily News, 2013) are all practices that are prohibited by this model of associative democracy. Respect for psychological integrity means that groups cannot have practices of ostracism and psychological coercion, as some Hutterites have. In terms of exit capacity, this means that associations cannot impose practices on members that undermine their members' capacity to exit, as explained in the chapter regarding Kukathas. It also means that basic freedoms of speech, assembly,

²⁰ There is a third kind of association: corporations like Amazon, Tesco or Coca-Cola. However, these are not relevant for the present discussion.

association etc. cannot be undermined in any way. Finally, another requirement that should be followed by cultural associations is that all decisions within the group should follow the deliberative democratic model explained in the previous chapter. This means that decisions about the norms of the group should follow deliberation on a variety of platforms, with the inclusion of all members affected by the norms and outsiders. It should also follow the principles of revisability, non-domination and political equality. However, cultural associations are free to have internal rules that discriminate against their members; for instance, in job posts that relate to their culture, associations can discriminate according to sexual orientation – for example, the Catholic Church and Islamic groups can discriminate against gay and bisexual men from jobs as priests and Imams, respectively. Associations can also have discriminatory membership rules and exclude LGBs, *i.e.*, LGB members can be expelled or denied membership due to their sexual orientation, with the proviso that LGBs' basic rights and freedoms are respected and the process of expelling or of making the discriminatory norm is democratic in the sense explained in chapter 5. The reason why these discriminatory practices are allowed but the others are not is due to the fact that denying these interests does not significantly disadvantage LGBs within minorities in the same way that the violation of other interests does. In the case of same-sex marriage and discriminatory rules of membership, LGBs can simply join another group, form a new group or exit to the larger society where membership and marriage laws are more egalitarian. With respect to jobs like the priesthood, as explained in chapter 4, there should be a balance of associational freedoms and anti-discrimination law and allowing groups to discriminate in these jobs does not substantially undermine the equal opportunity to find jobs for LGBs. Contrastingly, if someone's bodily and psychological integrity, basic civil and political rights, exit capacity and deliberative democracy were violated, this would probably mean they could not go elsewhere. Undermining bodily integrity is a kind of harm that is so basic that it should never be violated. As explained in chapter 3, psychological violence often creates self-hating images which have a paralysing effect on individuals, undermining their capacity to pursue interests and live a psychologically healthy life. If individuals were denied basic rights (e.g., freedom of association) and capacity to exit, they could not go elsewhere to pursue their interests. If internal deliberative democracy was denied, then LGBs would not have the possibility to fulfill their interest of participating in the political and social life of

their culture.

With respect to cultural-based organisations, the requirements of respect for exit, internal deliberative democracy, bodily and psychological integrity and basic rights also have to be followed. Hence, institutions like Exodus International or the Americans for Truth about Homosexuality cannot offer sexual conversion services that violate those rights. Nor can they have norms that undermine the capacity of individuals to exit and deliberate. The difference of these from cultural associations is that these cultural-based associations are semi-public, in the sense that although they are run privately and some rules can be set privately they, in general terms, are open to everyone. This means that these kinds of organisations cannot discriminate, they cannot select their employees according to sexual orientation, race, gender, etc. Nor can they refuse to allow their service to be used by individuals based on individuals' identity. This means that Catholic Care, for instance, cannot deny adoption services to same-sex parents. Catholic schools cannot deny education to the daughter of a same-sex couple; nor can Catholic schools deny a teaching job to LGB individuals, as happened in the case of Carla Hale. With regards to healthcare needs, this means that associations cannot deny medical services or healthcare support to individuals due to their sexual orientation. Hence, religious hospitals that belong to a heterosexist group cannot refuse, say, cancer treatment, to an individual due to this individual's sexual orientation. Whenever cultural and cultural-based associations violate these norms, the state can legitimately intervene and whenever necessary those that violate these rights should be taken to court. This lack of power to discriminate against LGBs results from the lessons learned through federalism in chapter 2 and Kukathas' libertarianism in chapter 4. As has been explained, total power over employment and welfare could potentially facilitate the imposition of heterosexist practices. Having taken this into consideration, it can be argued that associative democracy provides groups with the power to form their own institutions, but limits the power to discriminate internally.

The fifth characteristic of associative democracy is that if the practices of associations deviate from the rules just given and groups want an exemption, the groups have to fulfill the criteria for associations being entitled to group rights, as explained in section 4.4. To recall, these criteria were that all members of the group are (a) included in the decision making carried out within the group (Okin, 1999a),

(b) that the practice being discussed does not reinforce the subordination of some members, (c) the group right does not reinforce differences between the majority and the minority (Fraser, 2007a) and (d) that the group right promotes a universal interest (Barry, 2001). These requirements guarantee that group rights will only be acceptable if they do not imply that the status of LGBs within groups is made worse off. Hence, this contrasts with other authors, like Kymlicka, who consider that the main criterion for conceding group rights is the nature of the group. In the group of criteria that I defend, what matters are the normative implications that conceding group rights have for those who are affected by them. According to the view I defend, the distinction between the nature of the groups, *i.e.*, whether they are immigrants, national minorities, etc. should not be a primary criterion for conceding group rights, even though, in some cases, these categories may be relevant. In fact, distinguishing between the nature of groups and normatively hierarchising them may, in some cases, be a dangerous strategy. As learned when critically analysing Kymlicka's work, considering nations as normatively more relevant than LGB groups may, in some cases, lead to allowing the imposition of heterosexist practices on LGB members of national minorities, thereby facilitating the subordination of LGBs. Associative democracy follows the criteria for group rights just mentioned and, for that reason, it does not facilitate the subordination of LGBs. Moreover, due to the fact that there is no assumption that national minorities or any other form of group is normatively more important than LGBs, the risk that exists in Kymlicka's theory of tolerating abuse is not present here. That is because the relevant division of groups is between cultural and cultural based associations, rather than between nations, immigrants, etc.

This associative democratic approach is a liberal one for two reasons. First, there is a high degree of individual and associational autonomy in associative democracy. Second, in associative democracy, the power of the state is considerably limited: as explained there are only two state functions – redistribution and security (Hirst, 1988a, pp. 144–145; Hirst, 1997, pp. 28–38).

To understand why this model is good for LGBs within minorities, it is helpful to recall what the interests of LGBs within minorities are. Broadly speaking, LGBs have an interest in family life (marrying, adopting, having child custody rights), in sexual freedom, bodily and psychological integrity, they have an interest in

employment, economic opportunities and access to welfare services, an interest in basic civil and political freedoms and an interest in participating in the social and political life of the group.

The family life interests are protected by the shape of associations, public institutions and the possibility of LGBs forming their own institutions. Cultural based associations, which are the ones that provide adoption services cannot discriminate, *i.e.*, they cannot lawfully reject LGB's from using their adoption services. Cultural associations can deny same-sex marriage; however, state institutions can recognise same-sex marriage and LGBs can form their own associations, where same-sex marriage has legal recognition. This contrasts with Kymlicka's interpretation of federal powers and the *laissez-faire* approach of Kukathas. In both cases, groups can completely ban same-sex marriage without leaving any other option. The interest of LGBs in sexual freedom is also protected. Groups do not have the power to establish anti-sodomy laws as the administration of justice is a function of the state. The only measure that can resemble an anti-sodomy law is that cultural associations have the right to expel members according to sexual orientation. However, even if this is the case, the process has to be done democratically, following the model of the previous chapter.

Bodily integrity and the life of LGBs within minorities is protected because the associational autonomy of both cultural and cultural-based associations is limited in the sense that they are prohibited from imposing such practices. Hence, honour killings, sexual conversion therapies, corrective rape, etc. are kinds of practices prohibited by law. Another reason why bodily integrity of LGBs is, broadly speaking, not threatened is due to the fact that the monopoly of violence and administration of justice are not powers that groups have; rather, these are powers that belong to the state. This contrasts with the normative and practical implications of theories by Kymlicka and Kukathas. Although Kymlicka wishes to liberalise communities, he is also willing to allow a degree of illiberalism to national minorities. For this reason, it is normatively consistent with his theory, as explained, that these practices sometimes happen, even though Kymlicka affirms that if these practices happen *systematically*, then there should be state intervention. In the case of Kukathas, physical harm is normatively acceptable and, thereby, those heterosexual practices are allowed. Hence, contrasting with these theories, associative democracy

does not have the normative implications that lead to the acceptance of some forms of violation of bodily integrity for LGBs.

Psychological integrity is also protected by the limitation of associative power in engaging in psychological violence. As mentioned, neither cultural nor cultural-based associations can engage in such practices, for example, ostracism. An important lesson learned in chapters 2 and 3 is that negative attitudes and stereotypes towards LGBs are morally relevant in the sense that they impose serious threats to the interests of LGB individuals within minorities. As Taylor rightly points out, misrecognition by significant others can affect one's well being by creating self-hating images. In the case of LGBs, these individuals can internalise homophobia as a result of these negative attitudes. In chapter 3, when discussing the work of Okin and Fraser, it was concluded that stereotypes towards LGBs are an important source of heterosexism in two ways. First, many homophobic attitudes such as denying employment to LGBs or engaging in hate speech and hate crimes towards them result from stereotyped views of what LGBs are. Second, stereotypes have a paralysing effect on LGBs, undermining their agency to take advantage of the opportunities available. In addition, they have a negative psychological impact on individuals who are likely to be affected by such attitudes. These ideas that stereotypes and negative attitudes matter lead to the conclusion that Fraser is wrong when she affirms that only institutions matter for justice; rather attitudes are also morally relevant and states ought to do something about these attitudes. In part, it is due to the fact that eliminating stereotypes and negative attitudes is morally relevant, that in chapter 5 I have defended that deliberation should be a method used for tackling heterosexist injustices within minorities. Furthermore, engaging in deliberation has the advantages of helping LGBs to report abuse, increasing the possibility of contact with other individuals who can be supportive, empowering individuals and helping clarifying the meanings of group practices. In an associative democracy, the internal structure of associations ought to follow the deliberative democratic model explained in the previous chapter; hence, the benefits of deliberation mentioned earlier also apply to associative democracy.

The interests in participation in social and cultural life are mainly protected by the availability of funds for forming associations and internal deliberative democracy. The availability of funds enables individuals to form associations the way they wish

and pursue their lifestyles, costumes, traditions, conception of the good via accessing the funds available for these purposes. Owing to the fact that groups are internally democratic, individuals are able to participate in the construction of norms, veto norms that are undesirable and voice their opinions in general.

The interests of employment and economic opportunities and access to welfare are protected via the mechanisms of public finance, the differentiation between cultural and cultural-based associations, the egalitarian society and the internal deliberative democratic structure of associations. With respect to public finance, the basic universal income alleviates LGBs from economic pressure and creates independence from the group. The voucher system reinforces the economic status by giving LGBs access to public welfare. These two mechanisms are especially helpful in groups like some of the Hutterite communities, where there is no private property. LGBs' economic opportunities are also made better off by the shape of associations and the public state institutions available. Cultural-based institutions cannot discriminate in job posts and neither can they reject LGBs from using their services to LGBs. Jobs and welfare services should also not discriminate according to sexual orientation, so there is also that option as well. This contrasts with Kukathas, for example, where there are no public institutions. It also contrasts with the powers given to groups in a federalist system, which include power over employment laws. Contrastingly, in this model of associative democracy, there is a variety of forms public finance to form their own institutions which correspond to LGBs' welfare needs. Finally, deliberation and internal democracy can help make people more sympathetic to LGBs' needs, with LGBs becoming more empowered to contribute to a better welfare that corresponds to their needs. Finally, the interest in basic and political freedom is protected because all associations have to respect freedom, and because there are public finance mechanisms which can be used to pursue freedom of association, assembly etc. For example, LGBs can use public funds for organising LGB parades.

6.6 – Possible Objections to Associative Democracy and Response

In this section, I would like to respond to some possible counter-arguments against the view defended. First, it could be argued that this approach still allows some

discrimination towards LGBs within minorities due to the fact that cultural associations can treat LGBs unequally to a certain extent. Although it is true that this is the case, as explained in chapter 4, it is important to balance freedom of association with individual rights and permitting associations to have a degree of associative autonomy that allows them to discriminate is a consequence of actions that individuals are allowed to do. Still, associative democracy is committed to transforming cultures by engaging in regular deliberation and including LGBs in the decisions of the group.

Second, if groups are given the powers of associative democracy, especially the power to provide their own welfare, it could be argued that this would entail associations gaining the power to institutionalise practices that harm LGB interests. Therefore, some healthcare cultural associations would provide sexual conversion therapies, which go against the interests of LGBs. Hence, the argument is that allowing cultural institutions to have this degree of autonomy would lead to freedom for institutionalising these practices. So, in this case, those clinics in Ecuador, the Americans for the Truth about Homosexuality and Exodus International would be publicly funded to continue these practices. This argument can be understood in two ways. First, that associative democracy implies that groups have the freedom to impose these practices. According to this argument, it is compatible with associative democracy to accept these practices. Second, the powers acquired by groups with associative democracy facilitate the institutionalisation of these practices, even if they are not allowed. As an analogy, Kymlicka's distinction between internal restrictions and external protections collapses, in part, due to the fact that the powers that impose internal restrictions are the same as those defending the group from external protections. Hence, in the case of associative democracy the power to have one's own welfare is the same power that imposes the practices that harm LGBs within minorities.

The first version of the argument is of normative character whereas the second is a practical matter. To answer the first version of the argument, it is not the case that this is compatible with associative democracy; as explained, bodily integrity is protected no matter what, hence, there is protection of LGBs from those kind of

practices. With respect to the second version of the argument, even though it is more difficult to answer it is still possible to counter-argue it. In the case of Kymlicka and Taylor, who are federalists, the powers acquired by national minorities would give them a higher degree of autonomy and self-governance than cultural associations normally have.

Federalism and the powers of federal units, in particular, may impose serious threats to the interests of LGBs, if the federal units are heterosexist. Some of these powers that may entail the violation of the interests of LGBs within minorities are *total* power over membership rules, administration of justice, employment and welfare policies and family law. In the case of associative democracy, associations only gain *partial* power over some affairs, having to be subjected to state law. This *partial* power makes a significant difference to the kind of practices that can and cannot be imposed. With respect to power over membership, in associative democracy, cultural associations can discriminate against members, but the process has to be democratic, which implies a level of empowerment that federalism lacks. Cultural-based associations cannot discriminate with respect to membership and, for that reason, an associative democracy does not face the problems that these other theories face. With regards to employment and welfare, as explained, cultural-based associations cannot discriminate against LGBs; only cultural associations are allowed to discriminate in employment, and only if the job position is essential to their cultural expression. Cultural associations do have power over important matters of family law, like marriage. However, this does not pose a problem to LGBs within minorities due to the fact that they have a viable realistic alternative to marriage in their community; namely, in associative democracy, as alternatives, LGBs can either be married by state institutions or form associations where marriage is legally recognised. Due to the fact that adoption services are a public service provided by cultural-based associations, then these are not entitled to discriminate against LGBs according to sexual orientation. The administration of justice and decisions in criminal law are areas where, in this model of associative democracy, groups have no power and, thereby, cannot undermine LGBs interests in bodily integrity by making sexual conversion therapies compulsory or lawful.

Third, it could be argued that associative democracy would lead to a series of

homophobic tyrannies, somehow similar to Kukathas' model where individuals can form their own associations in ways that could be quite discriminatory. Again, this is not the case with associative democracy. For not only is there a mainstream society, where individuals are treated equally, but also the autonomy of associations is more limited than the kind of autonomy that is present in Kukathas' approach. In associative democracy, cultural based institutions are semi-public, which means that they cannot totally exclude individuals, as in Kukathas' style of freedom of association. Furthermore, in Kukathas' style of association there is no guarantee that individuals can participate in the decisions of the group, whereas internal democracy and deliberation in associative democracy guarantees this.

The fourth possible criticism to the associative democracy welfare system is that it promotes inequalities because it permits different association performances. If a Catholic group is made up of 40 per cent of the population and Muslims only make up 1 per cent, the funds available and the overall performance of the former is likely to be much higher than the latter. Hence, the services provided for Catholics will be much better than those provided for Muslims (Stears 1999, p. 584). Therefore, associations can be in danger of promoting group inequalities and reinforcing material hierarchies between groups (Amin, 1996, p. 34; Rahman, 2002, pp. 23–24). With regards to LGBs within minorities, this would mean mechanisms of public finance are of little or no use to them. This is so because those who wish to form their own welfare system corresponding to their identity and/or those who wish to use the vouchers they hold in order to fulfil their welfare needs would not have a realistic alternative to the welfare and life in the group because they are fewer in number. More precisely, the welfare provided by LGBs would not be sufficiently competitive and would be of lower quality than that provided by those associations which have more members; in addition, there would be very few services available for LGBs where the voucher system could be used.

In response, the inequalities between groups are able to be corrected by the state funding system of associative democracy. As a general principle, associations are funded according to a per capita formula; however, this is not necessary. If there are relevant inequalities, this can be corrected so that associations perform equally (Elstub, 2008, pp. 116–117). Moreover, even if the performance is not the same in

general, the basic needs of LGBs (which refer to the most relevant inequalities) are all covered by the associations. In other words, not only do the funds have to be sufficient for associations to satisfy the basic needs of their members, but also with regards to the satisfaction of basic needs, it is compulsory that all associations are open to the public (*e.g.*, for medical emergencies). In addition, the alternatives to associative democracy do not necessarily perform better than associative democracy. State-centered welfare and free market welfare also suffer from regional inequalities; the services in London are probably better than in Wigan because there are more funds and investors available in the capital.

A fifth possible criticism against associative democracy is that relies on the idea that individuals are capable of identifying what their own needs are; however, individuals do not know how to fulfil their own welfare needs, instead, there is a need for specialists to do this. As in Okin's case, it can be argued that individuals are indoctrinated into their cultures and they mistake their culturally constructed preferences with their needs. Hence, in this view, individuals are indoctrinated in their culture to a point where their conscious preferences and needs are fake ones. In the case of LGBs within a homophobic group, they could think their need is to convert their sexual orientation to a more 'acceptable' one, but their need is, in fact, to take a healthy approach to their own sexuality. This model of associative democracy endorses a form of moderate universalism, which argues for the protection of basic needs and rights no matter what groups wish. So in associative democracy, the most basic needs of individuals are protected, independent of their preferences. Furthermore, as explained before, indoctrination to the degree that Okin argues, is not an accurate description of individuals' agency. On top of this, because associative democracy is combined with deliberation then it can have the positive epistemological effects mentioned in the previous chapter.

6.7 – Conclusion – Towards an Associative and Deliberative Democracy

In this chapter, I looked at two versions of joint-governance as potentially good approaches for dealing with the normative challenges that refer to LGBs within minorities. Although I support the idea of joint governance, I came to defend the idea that Shachar's transformative accommodation has some tensions. In particular, the

principles of transformative accommodation leave important debates about LGBs within minorities open to discussion; there is a collapse of jurisdictions when transformative accommodation is put into practice, and there is a need for more deliberation within the group. I defended that associative democracy can offer a good alternative for protecting the interests of LGBs within minorities, for an associative democracy offers a variety of public finance mechanisms that empower LGBs within minorities. It also examines the possibility that giving total power to groups puts at risk the interests of LGBs within minorities and, instead, endorses the idea that groups should only have partial power. The dual typology between cultural and culturally-based associations can, as explained, offer a balance between respecting associational freedoms of groups and protecting LGBs within minorities from harmful and discriminatory practices. Special rights can be conceded to groups, but with the proviso that they follow the criteria defended in chapter 4. Another advantage of associative democracy is that it is combined with deliberative democracy; as a result, the advantages of deliberative democracy mentioned in chapter 5 are also present in associative democracy. Perhaps, for the reason that these two modules of deliberative and associative democracy are both present in this version of associative democracy, a more appropriate name for it could be associo-deliberative democracy.

Chapter 7 – Conclusion

This is a thesis in contemporary political philosophy, with the topic under review being how some policies that aim at protecting minority cultural groups can potentially have damaging consequences for the interests of LGB individuals who are members of those groups. I have assessed, from a liberal point of view, the work of a variety of authors so that I can respond to the question of whether the interests and rights of LGBs are sacrificed if groups are conceded some degree of autonomy to pursue their own cultural practices. My general answer is that it depends on the kind of rights groups are given and that there are some models which are problematic and others that are not. This final chapter is a conclusion of what has been discussed so far. It is divided into three sections. In section 7.1, I summarise what has been discussed in this thesis. Then, in section 7.2, I outline the contribution that my argument makes, before suggesting areas for further research. In section 7.3, I make my final conclusions.

7.1 – Summary of the Thesis

In chapter 1, I started by making a general introduction to the terminology relative to sexuality, then defined what I meant by a minority cultural group, explaining that the problem discussed in this thesis is whether policies meant to protect minority cultural groups can potentially impose serious threats and harm the interests and rights of LGB individuals who are members of minority communities. I have defended that these LGBs have an interest in sexual freedom, bodily and psychological integrity, basic civil and political freedoms, employment and welfare equality, participation in the cultural and political life of their groups and family life. Having access to this inventory of interests is fundamental in the sense that those LGBs who do not have access to it usually do not have a worthwhile life, *i.e.*, a life with dignity. As explained, many minority communities are heterosexist and, therefore, disrespect the interests of LGB individuals. Hence, discussing this topic is not just an academic concern, but a real life problem.

In chapter 2, I analysed the work of Kymlicka and Taylor. These two authors defend

what I have called a multicultural model of citizenship, *i.e.*, a form of citizenship that consists of granting special rights to individuals according to their group affiliation. When analysing the work of these two authors, I contended that it is not necessarily the case that granting rights to minority groups can impose a threat to the interests of LGBs within those groups. However, I also contended that Kymlicka's distinction between internal restrictions and external protections is problematic; for it cannot offer adequate protection to the vulnerability of LGBs within minorities. Taylor's theory of recognition, on the other hand, does not seem to be problematic in the sense of reinforcing or facilitating heterosexism within groups. If his idea that tackling negative attitudes in the private sphere and granting equal rights in the public sphere to all individuals is morally relevant, then as a matter of principle, LGBs interests are protected. Notwithstanding, both authors defend a form of federalism that I reject. I contend that federal powers may reinforce the power of heterosexist minorities to impose harmful practices on LGBs. In the case of Kymlicka, this means that national minorities like the Amish, the Hutterites or Indian Muslims gain power to be more heterosexist. With respect to Taylor, although his version of federalism also facilitates the imposition of heterosexist practices and norms, his federalist idea is not a necessary implication of the politics of recognition. So, because federalism is not an essential fact of his theory, then there is no implication to the validity of the politics of recognition.

In chapter 3, I moved to analysing the work of two liberal feminists – Fraser and Okin. I strongly agree with Okin's view that stereotypes are a strong source of heterosexism and that eliminating them is part of the task of eliminating heterosexist injustices. However, I also contended that her approach to the vulnerability of LGBs within minorities is sometimes a bit paternalistic and decontextualised. In particular, I contended that whether a practice is oppressive or not is not as straightforward as Okin seems to assume. Rather, it is important to probe the meaning of the practice and contextualise it in order to assess its oppressiveness and heterosexism. Fraser highlights an important insight by affirming that representation, recognition and redistribution are all loci of justice. These three areas cover, in general terms, the kind of heterosexist injustices that LGBs within minorities are subject to. However, Fraser defends that the aforementioned three areas of justice only matter if they exist in institutions and not attitudes. Siding with Okin, I defended that negative attitudes

towards LGBs are morally relevant for justice as they have a strong negative impact on LGBs within minorities.

In chapter 4, I analysed the philosophy of two negative universalists: Kukathas and Barry. The main feature of these authors' argument lies in endorsing the idea that freedom of association is what groups should be given in order to pursue their conceptions of the good. I contended that freedom of association is no doubt important and that the interests of LGBs should be balanced with the associational freedoms of groups. However, I also affirmed that these two approaches of freedom of association are not sufficiently interventive as they leave unanswered a variety of key questions with respect to heterosexism. In particular, freedom of association does nothing to tackle the stereotypes which are an important source of heterosexism. With respect to more particular issues with these authors' theories, Kukathas version, in general terms, is problematic because it gives too much power to groups without admitting that LGBs have to have somewhere to go where they can pursue their lifestyle, and that they have the capacity to exit their groups. With regards to Barry, I argued that his typology of costs is question-begging because some intrinsic and associative costs can and should be prevented and alleviated. Moreover, I contested most of his arguments against group rights and defended that there is a group of criteria in favour of group rights that does not have negative implications for LGBs within minorities.

Deveaux's and Parekh's philosophies were assessed in chapter 5. In this chapter, I defended that Deveaux's approach could be extremely helpful in tackling heterosexist injustices within minorities. Her view has a variety of benefits that would improve LGBs within minorities' status. This model can help tackle stereotypes, giving LGBs the means to report abuse, lead to the public acknowledgement of homosexuality, enhance the availability of support, enhance self-criticism about one's own views on LGBs, help clarify the meaning of practices, and help LGBs engage in the cultural and political life of the group. So, contrasting with the approaches in chapter 4, deliberative democracy in Deveaux's style is sufficiently interventive in the affairs of groups. I am less sympathetic to Parekh's view, as I think the way the dialogue would go cannot offer the same insights that Deveaux's theory would. Notwithstanding, I still affirm that Parekh's theory can make an important contribution to Deveaux's deliberative approach.

Finally, in chapter 6 I assessed two versions of joint-governance; namely, I assessed Shachar's transformative accommodation and I presented a version of associative democracy. I defended that associative democracy, combined with aspects of the deliberative model defended in chapter 5, may give the best solution for granting autonomy to minority groups, without reinforcing or facilitating heterosexism within the group. The key features of his model, greatly inspired by the philosophy of Hirst and Bader, are as follows: a distinction between cultural and cultural-based associations, the availability of a variety of public finance mechanisms for individuals and groups, a considerably high amount of autonomy for associations to form their own welfare, the limitation of group power with respect to the administration of justice, and a criteria for group rights as defended in chapter 4. With respect to Shachar, her theory provides conceptual tools for analysing the problem discussed in this thesis which are very informative about the the kinds of oppression suffered by LGBs within minorities. However, I contended that her principles are not sufficiently normatively compelling, leaving a considerable number of important questions to be answered, like the definition of a crime. In addition, I argued that the division of jurisdictions collapses when put into practice.

7.2. – The Contribution of This Thesis and Further Research

There is a considerable amount of literature dealing with the first two waves of writings on multiculturalism. To recall, the first wave of writing was about the justice of the claims made by minority groups, and the second wave was about justice within groups. Nevertheless, no treatment at length has been offered about heterosexist injustices within minority cultural groups. Some philosophers, such as Sunder (2000) and Levy (2005) have discussed the potential perverse effects of policies to protect LGB members from minority groups; however, this discussion was not done in length. Hence, broadly speaking, one of the main contributions of this thesis and something I believe that this thesis offers afresh is a lengthy philosophical liberal approach to this topic. I have done this by exploring the work of different philosophers in the area of multicultural theory, and by linking this with a wider empirical and theoretical literature that relates with this topic. Another contribution that this thesis offers is that it links the work of different philosophers

who have not been discussed together before. Generally speaking, my contribution to the field consists of offering both negative and positive claims to the debate. That is, I contribute by contending that some approaches may not work, *i.e.*, they may reinforce heterosexism within minorities, and by bringing in new solutions and a fresh approach to the topic. With respect to negative claims, two sets of insights have been offered. The first set refers to the kinds of powers that should not be granted to minority groups because of the inherent risk they have in facilitating and perpetuating heterosexism within minorities. One of my contributions was to contend that the total power wielded by heterosexist minority groups over some affairs can put at risk the interests of LGBs within minority groups. This led me to argue that Kymlicka's distinction between external protections and internal restrictions collapses as it may reinforce the vulnerability of LGBs within the group; the idea that total power over some affairs puts at risk the interests of LGBs within minorities also led me to look anew at federalism and laissez-faire liberalism. I have argued that federalism, like that defended by Kymlicka and Taylor, and a hands-off approach as taken by Kukathas, grants total power over some affairs that may facilitate the imposition of heterosexist practices and norms. My analysis of the dynamics of power also led me to bring forth new insights about partial power. Although as has been made clear, I support the idea of granting minority groups partial power over some affairs, in chapter 6, I also argued, in an analysis of Shachar's philosophy, that, at least with respect to LGBs, partial power may sometimes not be sufficient for granting LGBs protection from heterosexism.

The second set of negative original claims that I make in this thesis relate to the involvement of the state in the cultural character of groups. I have contended that those authors who do not wish to intervene in the cultural character of groups and instead leave them alone, leave unaddressed a variety of key important questions that relate to homophobia. So, my contribution here, with respect to eliminating heterosexism, is that states should be more involved in the shaping of the cultural character of groups. With respect to Fraser's theory, discussed in chapter 3, this goes against her idea that only institutions matter. Hence, this means that justice requires that the state is not only involved in the making of institutions that treat LGBs equally but also in enhancing more positive attitudes towards LGBs. The implication for authors, like Barry and Kukathas, who endorse freedom of association as the only

or main policy for dealing with the challenges of multiculturalism, is that although associative freedoms are important they do not constitute a sufficiently protective policy as they still leave LGBs vulnerable to a variety of heterosexist practices.

The positive original claims I have mentioned constitute the following. First, a key idea I have defended here is that engaging in multicultural policies does not necessarily entail promoting heterosexist practices and norms that will somehow disadvantage LGB members of minority communities. The work developed in this thesis is the first piece of work at length that answers the question of whether or not heterosexism within minorities is a necessary implication of engaging in multicultural policies. Other authors have explored at length related questions, such as whether multicultural policies reinforce gendered practices, but the research carried out here is the first to answer that question with regards to LGBs and heterosexism. A second original positive claim I make in this thesis relates to group rights. I offer an original combination of criteria for conceding group rights; having defended that if some aspects of the philosophies of Fraser, Okin and Barry are combined, then a coherent group of criteria in favour of group rights is offered. Although these criteria are not new in the sense of me being the first to suggest them, it is new that they are put together as a set of criteria that can prevent the imposition of heterosexist practices within minority groups. To recap, the criteria are that a) group rights promote a universal interest, b) they do not reinforce differences between minorities and majorities, c) the rights do not reinforce the subordination of some of the members of the group and d) everyone should be included in group decisions. In part, this group of criteria is important because it emphasises a key idea I have defended in this thesis, namely, that it is not necessarily the case that granting rights to minority groups entails the violation of LGBs' interests.

Another important contribution that I make is providing an original argument contending that LGB communities and other minority groups, like national minorities, are not different in kind, but only in degree. By relying on empirical evidence, like the existence of well sized LGB communities, such as the one in San Francisco, where there is a considerably high number of institutions corresponding to LGBs' identity, and by exploring the normative implications of this, I have contended that due to the close similarities of national minorities and LGB communities, then these two groups ought to be entitled to the same kind of rights,

whatever those rights are. What is original about this claim is not the empirical claim that LGB communities are institutionally well-sized and complete, but the normative comparison with minority cultural groups and the implications this has for group rights and multicultural theory in general. Some of the most important implications are the entitlement of LGB communities to similar kinds of assistance that other minority groups have, the non-hierarchisation of minority groups and the duty of the state to actively assist LGB communities in flourishing.

A fourth original contribution made in this thesis is the systematic exploration of the role of stereotypes, meaning and context for the status of LGBs within minorities. In order to explore the topic of heterosexism within minorities, I have applied the existing multicultural theory that defends that cultural practices should be contextualised and their meaning fully understood in order to decide whether to ban a practice or not. Although the idea that context and meaning matter is not new, the application of this idea to the status of LGBs is underexplored, and I tried to tease out the implications for LGBs with a grasp of empirical and theoretical literature on multiculturalism. For instance, I alluded to minority groups like the *Yuman* tribe to prove my point about heterosexism not being very straightforward. Likewise, whilst the idea of stereotypes as a source of homophobia, is not a new topic, what is innovative is a systematic exploration of how stereotypes are normatively relevant for LGBs in the context of multiculturalism, followed by a consideration of the ensuring public policy implications of this.

Perhaps the most important new positive claims were made in chapters 5 and 6. In chapter 5, I offered a new look at the potential functions of deliberative democracy and dialogue with respect to the interests of LGBs within minorities. I developed an argument that demonstrates the potential of deliberative democracy to improve the well-being of LGBs. This argument is based not only on normative literature about sexual orientation and multiculturalism, but also takes into consideration contemporary empirical research on sexual orientation and multiculturalism, for example, reports and data from APA and the European Union Agency for Fundamental Rights. In chapter 6, I developed a new model of associative democracy. Even though the model was inspired by Hirst and Bader's philosophy, the version of associative democracy I presented is innovative and differs from theirs because it not only has slightly different characteristics but also approaches different

problems. One of the reasons why this new model is innovative is because it is strongly linked to the model of deliberation defended in chapter 5 – no model of associative democracy has been systematically connected with deliberative democracy before, especially with the model of deliberative democracy defended by Deveaux. Moreover, the distinction I made between cultural and cultural-based associations is a categorisation that is not present in Bader's and Hirst's models. On top of this, their models of associative democracy do not offer a group of criteria for group rights, although the one I offer does. The application of this topic to multiculturalism and, in particular, to the question of whether granting special powers to communities has negative implications for LGBs is a new topic that has not been explored before. Most of the associative democracy literature focuses on topics of redistributive justice. Bader's approach, although it does focus slightly more on multiculturalism, does not explore the topic of vulnerability for LGBs within minorities.

Taking this on board, I would like to suggest some topics for further research. Associative democracy is a model that has been underexplored, especially with respect to multicultural theory. As just mentioned, few authors have, in fact, approached multicultural dilemmas from an associative democratic point of view. For this reason, even though the impact of multicultural policies on women, children and other vulnerable individuals within minorities is a topic that has been widely studied, it would be an a stimulating new approach to rethink the status of those internal minorities from an associative democratic point of view. In other words, it would be an interesting future contribution to look at the problem of minorities within minorities, taking into consideration the claims made by associative democrats.

As I have affirmed, the treatment at length of the topic of the impact of granting special rights to minority groups to LGBs within minorities is a new one and it is one of the main contributions of this thesis that this topic is analysed in detail. However, there are other internal minorities, especially sexual minorities, on whom no or little research has been carried out. It would be interesting to carry out further research on the impact of attributing special rights to minority groups such as transgender, swingers, intersex and sado-masochists. These are sexual minorities who have a distinct set of interests from LGBs and whose interests and normative challenges to

multicultural theory may slightly differ from other internal minorities.

I argue throughout this thesis that stereotypes are an important source of heterosexism and that in order to tackle heterosexism one has to try to eliminate stereotypes. I have identified at least two sources of heterosexist stereotypes: namely, misconceived perspectives on gender and on the nature of cultures. As a main suggestion for the elimination of stereotypes I have defended that individuals engage in deliberation. Bearing this in mind, further research could focus not only on finding other sources of heterosexist stereotypes besides the ones mentioned, but new techniques for eliminating stereotypes besides deliberation and the other policies I have suggested.

Finally, as I have explained, and as the empirical evidence collected by the European Union Agency for Fundamental Rights demonstrates, the methods of reporting and denouncing hate crimes, hate speech and abuse in general towards LGBs are underdeveloped. Having taken this into consideration, further research could also focus on developing more sophisticated tools for reporting and denouncing hate crimes, hate speech and abuse, besides those I have already suggested.

7.3 – Final Conclusion – Towards an Associo–Deliberative Democracy

Unfortunately, around the world there are many countries, minority groups and individuals who hold negative beliefs and have negative attitudes towards LGBs. As a result, many countries and many groups have laws, practices and norms that strongly undermine the interests of LGB individuals. To recall, LGB individuals have an interest in bodily and psychological integrity, equal access to employment opportunities and welfare provision, participation in the cultural and political life of their groups, family life, sexual freedom, and basic political and civil rights. Many communities disrespect these and treat LGBs unequally, denying them equal rights to pursue these interests. Perhaps the most extreme cases refer to the horrifying practices that take place around the world, like corrective rape, sexual conversion therapies, and honour killings that put at risk the most basic and fundamental rights of LGB individuals. In fact, in general terms, there are very few countries, for example, Sweden, where LGBs are treated equally to heterosexuals. Hopefully, in

this thesis, I have contributed to the existing literature on multiculturalism and the rights of LGBs, which can be applied in real life cases, so bringing some improvement to the lives of LGBs around the world. I have strongly supported that deliberative and associative democracy are approaches that could bring about a new form of politics, with institutions that could improve the well-being of LGBs. The main ideas for this model are as follows: first, groups should routinely engage in deliberation; this deliberation should be inclusive of all members, including outsiders, it should be open to all topics, and take place in a variety of loci. Second, minority groups should be run democratically, so that all individuals are empowered and able to participate in the political decision making of the group and the construction of norms. Third, there should be a variety of public finance mechanisms that support individuals and groups to avoid experiencing vulnerability. This means, in practice, that individuals should have access to a variety of resources to form their institutions, have access to welfare and the necessary economic conditions for survival, as well as the fulfilment of their basic interests. Furthermore, it means that groups should receive economic assistance to pursue their own welfare institutions. Fourth, there is a morally relevant distinction I made in chapter 6 between cultural and cultural-based associations and this distinction is relevant for how associations are structured internally. Fifth, there is a set of criteria for group rights that should be followed in order to prevent the vulnerability of LGB members. Sixth, the administration of justice and monopoly of violence belongs to the state and not associations. The best way to describe it, is as an associo-deliberative democracy, as it is the combination of both deliberative and associative democracy models. If this suggestion is followed, I believe that LGBs' interests within minorities will be protected. Owing to the fact that there is no society today that has such a system, because it consists of a variety of different mechanisms and because it requires a great transformation of current institutions, it may take time until this is achieved. However, by taking into consideration the potential of this model and the arguments raised in this thesis, I believe that in time, it can be implemented.

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