

# **Individuals within Groups**

## **The Case of Female Genital Mutilation**

The Precarious Balancing Act between Liberal States and Minority Groups



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## Introduction

Barry, Chambers, Kymlicka, and Kukathas are all liberal philosophers. They all have developed liberal arguments about issues related to the moral or otherwise rights of minority groups. Each of their theories is doing so in its own distinctive way.<sup>1</sup> Minority rights in a liberal society give rise to controversies fraught with difficulties for liberal philosophers. Liberal theory attempt to defend individual human rights<sup>2</sup> and core liberal values<sup>3</sup> alike. When a liberal society allows minority groups special rights, it is still incumbent on this society to always protect the human rights of the individual members of these minority groups.

Conflicts are likely to occur when the minority groups involved possess in themselves illiberal features, or when they adhere to illiberal values and traditions and try to impose these values on its members. Some fairly obvious questions immediately spring to mind: Should one give more weight to the rights of individuals or to the rights of the group? Would it be permitted, legally and ethically, for a liberal to interfere in the traditions and values of minority groups in order to protect individual human rights? And is it correct to protect these rights for all the members of the liberal society, including the members of the minority group which is, in one way or another, an integral part of the liberal society in which they are embedded? Is it at all possible to prioritize one core liberal value over another, and if so, which philosophical and political assumptions come into play?

The main issue I would like to address in this thesis is whether and how a liberal theory can respond to illiberal practices in minority groups. Are there theoretically coherent assumptions out there that can underpin a persuasive philosophical position that would allow the protection of minority group rights and individual rights at the same time, especially in cases where they seem to clash head-on?

The four liberal theories seem, *prima facie*, to approach the issue of moral rights of minority groups in substantively different ways. How do these theories fare when put to concrete work in a case study? Would their discrepancies in the theoretical area actually make much of a difference in a practical problematical situation? It is helpful to obtain an answer to questions such as these by engaging in a fundamental theoretical discussion in liberal theory, and look for an approach achieves a balance between protecting individual human rights and giving room to minority groups in a liberal society. Liberal states and minority groups nowadays face the daunting task of steering between the Charybdis of respecting core liberal values and the Skylla of directly interfering in the lives of groups and individuals. It requires a genuine Odysseus to come out of such a predicament unscathed.

In this thesis I will assess how these four liberal theories show their mettle when confronted with a particularly worrisome issue. My case study against which to test these four theories will be the fact that Female Genital Mutilation is perpetrated in certain minority groups living within liberal societies. The question then becomes if and how a liberal society can and should criticize such illiberal practices performed in minority groups. Do minority groups have a moral right to impose FGM on its female members, and does any of these liberal theory provide us with an

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<sup>1</sup> Barry (2001), Chambers (2008), Kymlicka (1991, 1992), Kukathas (1992a, 1992b, 2003)

<sup>2</sup> UDHR

<sup>3</sup> As advocated by Rawls (1999)

adequate answer to criticize such illiberal practices, without failing to uphold the core liberal values of freedom, autonomy, and tolerance. By law, FGM is illegal, and it is considered a severe breach of the integrity of mind and body of autonomous individuals by the majority of liberal persons. Nevertheless, it is frequently performed by some minority groups based on their own set of ethical traditions and habits. In this thesis I will try to assess whether or not it is justified, arguing from the core assumptions and hypothesis of liberal theories, to impose limits on such acts that are based on the ethical traditions and habits of minority groups.

If one were to ask Barry, Chambers, Kymlicka, Kukathas, or any other liberal theorist, whether they are of the opinion that FGM is allowed in their ideal version of a liberal society, I am confident their answer would not be affirmative. An illiberal practice such as FGM will not be permissible if the law, individual human rights, and core liberal values that all four of them acknowledge, is anything to go by. But how exactly can each of their theories oppose the practice of FGM in minority groups living in the midst of a liberal society? Can they really provide a justified account that opposes FGM? In other words, do they have a cogent philosophical argumentation to criticize FGM? Can they formulate legitimate reasons to set boundaries to group autonomy? Can they provide philosophically cogent reasons to prohibit particular acts within minority groups or, failing such a valid argumentation, are they obliged to approve such practices as FGM? In addition to answering this question, I will also give a ranking as to which of these theories is the most powerful in criticizing FGM, and what adjustments to these theories have to be made in order to make them more effective.

The research question of this thesis is therefore whether Barry, Chambers, Kymlicka or Kukathas are in a position to legitimately oppose the practice of FGM within minority groups living in a liberal society. My research question thus comes down to concerns about the possible limits on the autonomy of a minority community, exemplified in the case of FGM.

The way in which I will proceed is to compare the four theories in sets of two against two. I have put Barry and Chambers in one set, and Kymlicka and Kukathas in another set, for reasons that will become obvious. Barry and Chambers are engaged in a scholarly debate on the issue of state intervention, the value of culture for an individual, and the prioritization of group rights over individual rights, or the other way around. Kymlicka and Kukathas discuss, from different but related perspectives, the core liberal value of freedom and autonomy, and the core liberal value of tolerance and its consequences. These pairs of theorists are responding to each other, in a way that unveil features of their theories that are particularly relevant for the purpose of my thesis. After these two comparisons I will have selected two theories that I consider the most compelling and powerful to criticize FGM. In part three, I will make a final comparison between these two theories. I will by then be in a position to identify which parts of their arguments carry enough weight to set limits to the autonomy of a community, and in this way I hope to answer my research question and defend my claim that philosophically cogent reasons do exist to set limits to moral values adhered to in minority groups.

Issues of minority rights in liberal societies form a particularly relevant topic in our day and age, an age characterised by increasing numbers of individual migrants and groups of migrants driven from their home countries and cultures. These groups are forced to embed themselves in liberal societies, and, to a certain degree, have to adapt to this society, and at the same time ask the receiving liberal society to adapt to them. This puts the burden of a philosophically coherent explanatory apparatus squarely on the doorstep of current liberal political and philosophical theories. It is my aim in this thesis to unwrap this burden, and assess whether or not currently prevalent liberal theories are in a position to provide adequate solutions to these problems

hovering over minority groups in liberal societies. Or whether adaptations, extensions, rephrasing, new assumptions, new epistemological perspectives, and innovative approaches are needed to fit these theories with these rapidly changing needs and expectations of minority groups and liberal states.

The precariousness of the balance between liberal states and minority groups, referred to in the subtitle of my thesis, therefore works in two directions. The liberal state is looking for a justification to impose restrictions on minority groups, whilst at the same time paying respect to the core liberal values of freedom, autonomy, and tolerance. And minority groups are looking for ways to adapt in such a way that their core identities are not changed beyond all recognition, whilst at the same time complying with restrictions imposed on them by their host country. A fragile balance indeed, but not one, I think, that is impossible to achieve.

## I Female Genital Mutilation: a Case Study

In this chapter, I would like to start out by explaining what the case study on Female Genital Mutilation (FGM) exactly entails, and why the confrontation with it carries philosophical relevance for the liberal theories I will expound in my thesis.

### A. A Definition of FGM

From the very outset one does well to bear in mind that a universally valid law against any violation of the human body is in existence, and that is law applies to FGM.<sup>4</sup> However, although this is a general legal rule that *de iure* applies to all humanity, some traditional practices and rituals go against this universal rule, and these practices tend to continue despite the legal prohibition against it. The mere fact of having a universally applicable rule of law in place seems nowhere near powerful enough to stop minority groups from engaging in rituals that breach such a universal law. For these practices to stop happening it seems necessary to mount resistance against it from within the communities themselves. FGM has been illegal in the UK since 1985, and since 2003 anyone who has committed FGM is liable to a prison sentence of 14 years. However, since 1985 not a single person has been brought to court for FGM, whilst at the same time evidence points to the existence of some 66.000 victims, and a further 24.000 girls at risk of FGM, in the UK and Wales.<sup>5</sup> These numbers exclude the numbers of those women who are taken to their home-countries to be subjugated to these mutilating practices. In 2008, worldwide approximately 200 million young women per year are victims of FGM.<sup>6</sup> The point of all this is that while liberal states have formal legislation at their disposal to stop FGM from happening, this apparently is not the appropriate response to the issue.

Let me start by giving a brief description of FGM as I will be using it in my thesis. FGM is an umbrella term for a variety of mutilating operations on the sex organ of women. In some cases small incisions in the clitoris are made, in other cases the clitoris is removed in its entirety, including the skin around it, and in yet other cases the inner and outer labia are removed as well. What remains from the labia is then for the largest part stitched together. Apart from the fact that all this is in itself extremely painful and traumatic for young women to be subjected to, it also potentially leads to a series of complications, such as problems when urinating, problems having let alone enjoying coitus, and it includes the risk of severe infections, and extremely painful childbirths. FGM such as it is, seems an obvious severe infringement of human rights, and can hardly be tolerated in a modern liberal society in which men and women are supposed to enjoy equal rights and protection of personal mental and bodily integrity.<sup>7</sup>

In most countries where it is practised, the goal of FGM is to secure loyalty and obedience of women to men, and clamp down on the sexuality of women.<sup>8</sup> FGM is not only physically mutilating the body of a woman, but it also has a severely detrimental impact on their sexual and social behavior and acts.<sup>9</sup>

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<sup>4</sup> UDHR, article 5

<sup>5</sup> Carson (2017)

<sup>6</sup> WHO (2013)

<sup>7</sup> Dorkenoo (1999), 35

<sup>8</sup> Chambers (2008), 35

<sup>9</sup> Chambers (2008), 37

FGM can only be fully comprehended by putting it in the wider context of the cultural beliefs and goals in which the practice is embedded. Overall, the normative beliefs of a given culture will be part and parcel of any justification of FGM. FGM as a rule is an expression of the way the sexuality of women are considered from a male perspective. These normative rules are imposed by individuals on others, but also so to speak by individuals on themselves given the pressures and normative rules of the group they are inevitably part of. When it comes to FGM, not only the perception of the dominant group (usually males), but also the self-perception of the individuals (females) plays a decisive role.<sup>10</sup>

FGM in the liberal world predominantly occurs in minority groups. These minority groups are either immigrant minorities or national minorities. FGM can occur in both of these types of minority groups. FGM can obviously be taken into liberal societies by minority group who migrate into these liberal societies and stick together as a minority group, adhering to their traditional values. And FGM can occur in a collection of minority groups in a liberal society that taken together constitute a national minority, when, as a collection of minority groups they reveal such a number of common features, governance, ideological traits, and so on, that it is justified to regard them as a national minority within a liberal society. More often than not a set of separate ethnic minority cultures from a particular country as a coherent group form such a national minority group in the liberal state they migrate to.

I will focus on a country in which FGM widely occurs, and in which it forms part of the tradition of particular tribes in that society: the UK. The outcome of my case study has a wider application, and extends to what other governments can and should do in cases where behaviour of minority groups clearly clash with liberal values of the society as a whole.

A feature that is important to acknowledge when it comes to FGM in non-Western societies is the fact that liberal philosophical theories have initially been developed for Western societies. FGM is a non-Western phenomenon that has been imported via minority cultures in e.g. the UK. In a multicultural society, such minority cultures then all of a sudden fall under the jurisdiction of the UK, and such a Western legal framework significantly differs from the one in e.g. Kenya. One could argue that the Universal Declaration of Human Rights (UDHR) covers all societies and cultures, but it appears that minority cultures do retain features of their idiosyncratic traditions and habits, wherever they live, be it in their home country, or transferred into a host society. However this may be, there is ample evidence of clashes between a minority culture and its host culture, regardless of whether or not UDHR applies.

I will now proceed with expounding and analysing which opposition four well-known liberal theories would mount against FGM, within the framework of their position on minority rights

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<sup>10</sup> Chambers (2008), 38

### II Liberal Theories in Comparison

Liberalism gives an universal view on the phenomenon of multiculturalism. Although many different versions of it exist, traditional liberalism is underpinned by the three core ideals of individualism (as against collectivism), equality (as against any form of natural hierarchy) and moral universalism (as against specific ethical regulations for particular groups).<sup>11</sup>

We are not here concerned with the more well-known traditional kind of conventional liberalism, but rather with a type of liberalism that is formed by a debate with communitarian forms of criticism. The traditional form of liberalism has been altered in an ongoing dialogue with a rapidly changing world in which multiculturalism forms one of the main and most daunting challenges to be dealt with. Multiculturalism, or the ‘politics of difference’, raises objections to traditional liberalism when it comes their alleged tolerance. Recent theory claims that the type of universality that traditional liberalism defends is of such a variety that it is not genuinely universal, that it is, moreover, even discriminative against minority groups.<sup>12</sup> The concept of equal treatment needed when different groups of people have to live peacefully together in a single society requires a different underpinning than traditional liberalism can provide, according to its critics. Some liberals have attempted to modify the key notions of liberalism in order to meet these objections. To begin with, I will discuss Barry, who is a traditional liberal in that his arguments are clearly meant to be universally applicable, not allowing for exceptions for minority groups. Secondly, I will move on to discuss Chambers, who argues against Barry that his theory is insufficiently powerful in that it does not allow any interference in group practices, in that it prioritizes group rights over individual rights, and in that it does not sufficiently acknowledges the impact culture values have on the choices and life of the individual. When it comes to the issues of state intervention, prioritization of groups over individuals, and the impact of cultural values on individual choices, the discrepancy between Barry and Chambers stands out. Chambers’ theory is an example of the modified kind of liberalism that has been constructed as a response to the rise of multiculturalism in liberal societies. Thirdly, I will discuss Kymlicka and Kukathas against the same backdrop of objections from multiculturalism. Finally, I will discuss what their search for more room for minority groups whilst at the same time seeking to protect individual human rights reveals for liberal theory in general in the context of the needs of our multicultural society today.

#### A. Barry and Egalitarian Universalism

In this section I will set out the relevant features of the theory of Barry, a liberal much inclined to egalitarian and universal theoretical ideas. It seems fit to purpose to start out with the liberal view of Barry, because his view is a prime example of perhaps the most straightforward traditional type of liberal thought. According to his views, the good life of individuals is not predominantly based on the values of the group or community one participates in, but consists rather in maintaining the playing field of chances individuals receive in life level and equal. For Barry the primary focus is on the individual, communities and groups hardly play an important role in the good life for individuals. Barry’s approach to minority rights, in emphasizing individual rights over community or group rights is fundamentally different from Kymlicka’s

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<sup>11</sup> Barry (1997)

<sup>12</sup> Young (1992)

perspective. Against the backdrop of Barry's argumentation it will be interesting to see how Chambers, Kymlicka and Kukathas approach minority rights. Proceeding from this backdrop will yield an interesting perspective on minority rights, and issues involved in FGM, a perspective that we will see plays out very differently in the argumentation of each of these three writers. As far as Barry is concerned, a response to FGM would be along quite straightforward lines, to the effect that FGM encroaches on the universal rights of individuals and thus cannot be tolerated.

### Group Rights

Barry puts forward egalitarian arguments to downplay the basic tenets of multiculturalism.<sup>13</sup> According to Barry, multiculturalism is apt to ignore the fundamental equality of individuals and their fundamental right of access to equal opportunities.

Barry argues that all persons should be treated according to the same rules on a perfectly equal footing. He considers multiculturalism as a hurdle in that it jeopardizes the level playing field between all individuals. His main focus is on the treatment of individual, albeit within the confines of a cultural group. In this, he is however merely concentrating on individual rights, and not on group rights. Barry indeed argues that no group is entitled to a dedicated treatment, no case can be made of any special 'group rights'<sup>14</sup>:

'An individual immunity can be fully exercised by each member of the group whose members are eligible to enjoy it, regardless of the actions of the other members of the group.'<sup>15</sup>

For Barry the concept of individual immunity entails the fact that individuals as such are in full possession of their own fundamental rights independent of the actions of other members of the same group. These group members can not intrude on the rights of any individual in any way. This quotation indicates that for Barry individual immunity can be exercised irrespective of what other groups members do, and it highlights the way in which he is concentrating on individual rights.. The distinction Barry draws between the 'individual immunity' and the 'actions of the other members of the group', and his prioritisation of the first over the latter, is indicative of the fact that he views the individual as fundamentally and irrevocably separated from the group she is a member of. And this in its turn entails that what the individual actually does and is entitled to do is completely independent of the actions of other group members. Barry is also of the opinion that any individual, under any conditions, is entitled to leave the group.

When it comes to groups instead of individuals, Barry espouses a liberal theory of minority rights. He does not allow the state to make interventions in group practices. This means that groups possess a maximum amount of freedom to go about their business according to the wishes of the members of the group. However, contrary to other concepts of minority rights, Barry refuses to protect these group wishes as such, given his focus on the individual. He merely fences off the individual members from the group. This almost absolute prevalence of individual autonomy is the core value that forms the backbone of Barry's egalitarian liberalism.

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<sup>13</sup> Barry (2001)

<sup>14</sup> Barry (2001), 112, 113

<sup>15</sup> Barry (2001), 113

Common view has it that this type of liberalism, because of its focus on individuals, rules out the possibility of combining it with any approach that helps people on the basis of their membership of a certain group. This view might be applicable to most theories of liberalism, but not to the egalitarian liberalism of Barry. According to his version of egalitarian liberalism, any unfortunate event that the sufferer is not accountable for forms in itself an assertion that the sufferer as an individual is entitled to a solution or a requital for any loss and suffering caused by such an event. Special attention or help from the state or organisations in these cases is therefore justified. On the basis of this argument for individuals, Barry extrapolates these findings to members of a group:

‘There is by the same token, no objection on the basis of egalitarian liberal principles to special measures for providing assistance to members of groups disadvantaged in other ways: by low income, poor housing, poor quality, housing, lack of a job (or a job that pays enough to live on), poor education, *a high probability of being victims of physical violence*, an unhealthy environment, and so on.’<sup>16</sup>

It is obvious that, in the case of FGM, women, as members of certain minority cultures, have a ‘high probability of physical violence’, in Barry’s terminology. Barry is bound to consider FGM as physical violence because of the long-term impact of FGM, apart from the traumatic experience of the involuntary and intrusive event itself, which includes such long-term effects as a high probability of infertility, diminished ability or complete absence of enjoying sexual intercourse, difficulties and pain in giving birth, sclerotic scar tissue, post-traumatic psychological effects, feelings of shame, of exclusion, and so forth and so on. As such, FGM can in no way be compared to circumcision for men. When circumcision (sometimes for reasons of medical necessity) takes place on the basis of group pressure, men do not suffer from a loss of fertility, loss of enjoyment during sexual intercourse, or any of the other dire effects of FGM.

Thus, according to Barry, special measures could be taken to help the group of women likely to become the victim of FGM. This is the case in an egalitarian liberal society in which group rights do not play any decisive role, but the rights of individuals, living as they do in cultural groups, do matter. The special measures for providing help to the less fortunate are morally just and necessary for a society. These measures are universal, to be applied on an equal footing, similar to e.g. international health care measures. A group is defined by its needs, in the areas of healthcare or social-economic demands, and this group will be entitled to special, dedicated measures. But the precise definition of the group does not play any role in this entitlement to dedicated measures, nor is a group defined by its culture or any cultural minority rights. Thus, FGM deserves a dedicated set of measures for women as autonomous individuals liable to be victimized by it, but not for women as members of a minority group. For Barry this is a universal policy that pertains to deprivation of individuals instead of a group-based policy.<sup>17</sup>

In conclusion, as to Barry’s criticism of multiculturalism and his own view of a universal idea of equality, I am of the opinion that Barry’s view on FGM would be that it is prohibited on the basis of the rights of autonomous individuals. His ideal of universal rights and equality is one that denies minority rights of groups in general. On the basis of his defence of inalienable rights of persons as autonomous individuals, Barry is in a position to oppose FGM.

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<sup>16</sup> Barry (2001), 114, italics provided by me

<sup>17</sup> Barry (2001), 116

### B. Chambers and Social Construction

Chambers offers a line of criticism to Barry's position that is relevant for my thesis in that it puts the approach to FGM in a broader perspective. Barry argues that universal core liberal values should be prioritized over the demands of minority rights. In this, Barry proves himself to be a full-fledged universal egalitarian liberal. In following through this approach, Chambers argues that Barry does not do sufficient justice to liberal values. Chambers' argument hinges on the combination of the liberal values of autonomy and equality, and the critique of unjust social practices caused by social constructions.<sup>18</sup> Her argumentation concentrates on the failure of liberal theory to appreciate the injustices inflicted on the victims who choose to harm themselves, or allow harm be done to them, because of their willingness to be members of a cultural group, or simply because of the sheer practical impossibility to step outside of the group they belong to. She argues that the freedom and autonomy of the individual can be diminished by state-interference as well as by powerful social and cultural traditions, which both play a formative role in our moral opinions and cultural values.<sup>19</sup> Liberals, such as Barry, focus mostly on the autonomy of the individual: the individual is considered to be a free and autonomous person in that they must always be in a position to choose for themselves how to live their lives without any outside interference. This position leaves underexplored in what way the context of a culture, society or tradition in which the autonomous person is living has an impact on the choices, and the degree of autonomy of these, individual make. Contextual parameters and their impact on the degree of freedom of choice may very well entail imposing substantial limitations on the freedom and autonomy of the individual. Chambers wants to argue in favour of a balanced equilibrium between the liberal values of freedom and autonomy on the one hand, and the cultural and moral context persons are living in on the other hand. For this, she argues that the values of freedom and autonomy are liberal values that must be equally applied to all people across the board.<sup>20</sup> However, the social and moral context that has an impact on the choices of people and thus on the liberal values of freedom and autonomy, exist equally for all individuals, whether this entails that one is living in a minority culture, or whether one is part of a larger society in general. And this goes for all individuals, Western or non-Western.

Barry, among other universal liberals, would argue that if an individual has the opportunity to exit a group, the state should not interfere with this group and its practices and traditions, simply because every individual is in a position to leave the group if he or she does not agree with or wish to comply with the group's demands.<sup>21</sup> As long as an individual opts in favour of staying within the group, the thought is that this individual has made the choice to conform to the practices and traditions prevalent in this group, and because of this choice the practices within the group are accepted and not considered unjust according to the individual. As against this, Chambers argues that the role social constructions play in making choices is so pivotal and substantial, that the liberal state simply cannot fail to shirk its duty to protect its individual citizens living in minority groups. It is incumbent on the liberal state to protect its citizens against the harms done to them on the basis of choices made not on an individual and autonomous basis, but as a direct consequence of the traditional and moral rules of their group. Chambers' theory underscores the following:

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<sup>18</sup> Reilly-Cooper (2009), 420

<sup>19</sup> Chambers (2008), 120

<sup>20</sup> Chambers (2008), 122

<sup>21</sup> Reilly-Cooper (2009), 418

1) A social construction is to be understood as a tradition that is a shaping factor in the individual's choice to engage in and perform particular actions. This is to say, in Chambers' theory, that when individuals grow up in a society with certain prominent and ingrained traditions, which to a large extent determine their own individual choices within their community, then it is very likely that these individuals will perform actions that are in line with the social construction of their community in their adult lives that go beyond the remit of their autonomy as individuals.<sup>22</sup>

2) If these activities in line with social constructions occur in situations in which the individuals are forced to make a choice, and in this choice prefer to perform actions that are harmful or cause self-damage, the individuals concerned are basically victim of an unjust course of action caused by a social construction.<sup>23</sup> In a culture in which FGM is interwoven as a practice this usually entails that FGM occurs not just by choice of a fully autonomous individual, but comes from an individual who is inextricably hedged in by social constructions and moral prescriptions. The individual has little or no control over these social constructions, and this means that the individual is not fully autonomous when it comes to defining and participating in the traditions of a group.<sup>24</sup>

FGM is a practice that does not happen in splendid isolation, but it occurs in a cultural and moral context. A particular practice can be unjust even in the case the individuals living in this culture have, from whatever motivation or restrictions, chosen to comply with the practice. The reason for this is that 'practices are inherently social and thus do not depend on individual's choices'<sup>25</sup>. According to Chambers, to consider FGM as just an individual and autonomous choice is to ignore that this practice and any choice to comply with it is to a large degree determined by the wider cultural context. To give an example, a woman is first herself subjected to FGM decided for her by her parents. Her daughter in turn is also a victim of FGM by her choice. Her choice to subject her own child to FGM cannot be called her individual and autonomous choice, but it is rather a choice grown out of the tradition (the social context and moral prescriptions) the woman is immersed in. FGM is an integral part of a social construction that determines to a large degree the choices of all the persons steeped in the traditional values of a group.

3) The state is entitled to prevent harmful and self-damaging acts that individuals voluntarily chose. If these acts are provoked by such social constructions that can lead to unjust acts. Choices made by individuals directly under the pressure of social constructions can be objectionable from a moral point of view. The state is obliged to protect people from destructive and harmful acts. This means that limits can be posed on the freedom of people, that the state is permitted to make interventions in traditions of groups, and can do so without detracting anything from the validity of liberal values. This is because such interventions will liberate people who are fundamentally victimized by constraints put on them via social constructions:<sup>26</sup>

'without such state intervention the autonomy and fair equality of opportunity that liberals prize cannot be realized. And for egalitarian liberals, all must have prizes.'<sup>27</sup>

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<sup>22</sup> Chambers (2008), 17

<sup>23</sup> Chambers (2008), 118

<sup>24</sup> Chambers (2008), 39

<sup>25</sup> Chambers (2008), 39

<sup>26</sup> Chambers (2008), 150-157

<sup>27</sup> Chambers (2008), 118

This state-interference can come into existence in the concrete form of an ‘equality tribunal’, a concept that Chambers puts forward. An example of this would be the divorce law in the Orthodox Jewish and Muslim religions. This law holds that women cannot divorce their husbands without their consent for religious reasons, whilst this law does not equally apply to men, who are free to divorce their wives without their consent. Women should have access to the equality tribunal, to which they can take the members of their community. This tribunal will take this inequality into consideration and will intervene in the practices of the group if equality is not respected. Inequality in the treatment of men and women is proven in this case, and therefore women should gain the same rights as men, or the practice should be altered in such a way that women are treated in exactly the same way as men are. Barry does not have such an adjustment to his liberal theory in place, and in this case, the arguments at Barry’s disposal would be:

‘Although [Orthodox Jewish and Muslim divorce law] treats men and women unequally, it is beyond the scope of a liberal state to rewrite it, as long as the only reason for anybody’s adhering to it is the wish to remain a member in good standing of a certain religious community.’<sup>28</sup>

The implication of Barry’s position is that an individual is always at liberty to leave a group. As against this, Chambers is more mindful of the way a group constrains the freedom of the individual, including the difficulties involved in remaining in, or leaving a group. She sets out her theory that women can improve their situation and remain in their group, using the ‘equality tribunal’, instead of merely leaving the group, as Barry implies. I will elaborate the concept of the equality tribunal in more detail in the next section. Leaving a group in whose traditions an individual has been born and raised in can be a daunting and difficult prospect at the best of times, given group pressure and social constructions.

Where Barry would argue that in the case of FGM the individuals in a particular group are entitled to dedicated measures on an individual basis, Chambers would argue that the state would be in a position to intervene in the practice of FGM perpetrated on the basis of social constructions alive in a group. In claiming this, Chambers shows that in the case of FGM Barry can legitimize special measures to be put in place, but would not go so far as to intervene in the practice itself on account of it being a social construction within a group. So, Barry is reluctant to intervene in group practises, even though the practices might be not in line with liberal values. The only thing he can do about immoral practices in minority group cultures, like FGM, is applying dedicated measures to the individuals within the group, because his line of argumentation is based on universal rights for individuals instead of groups. However, in doing just this, according to Chambers, irony has it that Barry puts group rights over and above individual rights, and this entitles groups to perform any traditional practice on its individuals with impunity, potentially putting individuals at risk of being the victim of these traditional group practices. As against this, Chambers would argue that a focus on individuals is not always an adequate answer and that it sometimes needs adjustments. From a perspective that recognizes that any choice and the freedom to exit are biased by social construction it is justified to help prevent FGM happening in the groups. Therefore, Chambers is in a position to offer legitimate arguments against FGM based on her general theoretical position.

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<sup>28</sup> Barry (2001), 128

### C. Comparison I: Egalitarian Universalism and Social Construction

In this section I will compare the views of Barry and Chambers on FGM and the way their theories enable them to criticize FGM. For my thesis it is interesting to compare these two writers, because Chambers criticizes that part of Barry's theory where he refuses to intervene in minority groups and the harm this brings with it for the victims of FGM. The goal of this section is to see in which direction the discussion between Barry and Chambers leads with regard to the case study of my thesis. After comparing the two theories I will assess which of their theories is the most powerful to ward off the impact of FGM in a compelling and legitimate way. In the next part of my thesis I will do likewise for Kymlicka and Kukathas.

In the former two sections we have seen that both Barry and Chambers could be credited with a way in which they can legitimately oppose FGM. Barry could do so on grounds of his vision of egalitarian universalism: he denies minority rights for groups and underpins his line of argumentation with a reference to the fundamental rights of autonomous individuals. Based on this very straightforward right for individuals to be autonomous Barry is in a position to rule out FGM as a breach of the autonomous freedom of any individual.

Chambers' response to FGM can be reconstructed from her argumentation that the focus on autonomous individuals does not always provide an adequate and sufficient answer. One of these contexts is that a particular culture inevitably has an impact on the choices individuals are making. Both Chambers and Barry claim to argue from the perspective of individuals. However, Chambers argues that Barry is declining to interfere in group practices and is considering the core liberal value of autonomy as the most important. By doing so, Chambers' criticism is that Barry prioritizes group rights over individual rights. As a consequence of this, individuals are at the mercy of group practices. To alleviate any detrimental effect of the group on the individual, Barry argues that any individual should always be free to leave the group. Chambers is unconvinced by Barry's solution to the problem. Group pressure, age, being dependent on the group, are contextual factors that in real life make it very difficult if not virtually impossible to leave the group. This is the reason why Chambers offers an alternative solution to this problem of the predominance of group rights over individual rights. She conceives of an equality tribunal, a tribunal securing equality between group members in such a way that individuals can remain members of the groups, and have their autonomy protected from the group at the same time.

Barry's argumentation is straightforward and clearly focused, and allows him to criticize FGM:

'The point of liberalism is that it is universalistic. . . . The liberal position is clear. Nobody, anywhere in the world, should be denied liberal protections against injustice and oppression.'<sup>29</sup>

But in the light of my research as to whether there is a difference between the liberal theories, I will argue that the theory of Barry is too narrowly-focused to be persuasive, it is not sensitive enough to the pressures individuals find themselves under as members of a group. And as a consequence of these pressures from group traditions, as these obviously occur in the case of FGM, some adjustments to this traditional liberal theory are called for. I argue that in order to legitimately criticize FGM the question of the right balance between individual and group rights needs to be asked. Where exactly the boundary lines are to be drawn between imposing limits on a minority group on the one hand, and leaving room for the practices of the minority

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<sup>29</sup> Barry (2001), 138

group on the other hand, is of vital importance. Barry does not leave any room for a minority group to exercise its right. As FGM is a practice that clearly occurs in minority cultures, and with Barry downplaying this particular context, I argue that his theory also underestimates the fundamental principles on the basis of which FGM occurs. FGM does not happen in sheer isolation to completely autonomous individuals, but it occurs in a social and cultural context that has a direct impact on the autonomy of the individuals living in this social and cultural context. I therefore I argue that the theory of Chambers is more powerful to criticize FGM than the theory of Barry, because Chambers acknowledges the fundamental principles of the occurrence of FGM, which are to be traced back to the social and cultural context of the minority culture rather than to autonomously acting individuals. The impact of these social constructions can be so powerful that they can provide the state with legitimate reasons to actually intervene and criticize FGM. I find that Chambers is more sensitive to the context and actual social features of FGM than Barry is. Barry's line of argumentation from a purely individual perspective is in my view less appropriate to oppose FGM from the point of view of liberal theory.

According to Chambers, Barry is prioritizing group rights over individual rights in that he allows groups the freedom to decide which rules to impose on its members, and in that he does not allow any interference in group practices because of his adherence to the core liberal value of freedom. Barry argues that the existence of the ability to leave the group is a sufficient guarantee to downgrade the rights of individuals in the way he does. According to Barry, individuals should be able to leave a group of their own free choice, and in this way his theory can provide protection to an individual when the individual is put under any threat. This is sufficient to criticize FGM. However, I argue that this is not the most persuasive theory when compared to Chambers who prioritizes individual rights over group rights. Chambers claims that state intervention can be allowed so as to protect the individuals from being harmed by group practices. Barry's solution that an individual is always in a position to steer clear of the practices of the group by leaving it, is deemed infeasible by Chambers. According to her, a group is never an easy option at the best of times, what with group pressure, a life in isolation outside of the group, and the very young age of those who would potentially want to choose to leave to escape FGM. Chambers therefore proposed an equality tribunal in which FGM can be opposed from within the group itself by adjudicating the equality of its members.

In my view, these arguments show that Chambers has a stronger case than Barry does when it comes to criticizing FGM as a group practice. Although Barry's theory clearly endorses the right to oppose FGM and help individuals, it falls short of seeing the problem of FGM in its context of cultural and traditional group features. To help groups of individuals in the context of a minority culture, and not merely single individuals, adjustments to a straightforward liberal theory that operates solely from the perspective of the individual are called for. These adjustments can be based on the concept of social constructions and group pressure imposing limits on the autonomy of the individual. When this is taken into account, legitimate measures to actually stop FGM as a group practice can be put into place.

To render my argument more persuasive, I argue that in Barry's theoretical position, in spite of the core liberal values of equality and justice, other outcomes are possible. According to Barry's liberal theory, based on the rights of autonomous individuals, a universal right of free choice exists. Universal egalitarianism allows every single individual the right of free choice. Chambers detects a major problem in this line of argument that increases the force of my position set out above. Chambers argues that even if the individuals in a group have a perfect right of free choice, some individuals would be at a disadvantage to other groups because of

certain features of their culture.<sup>30</sup> Ann Cudd<sup>31</sup> gives an example how this can work in the case of the marriage market as proposed by Nozick<sup>32</sup>, in which men and women are ideally completely free to marry each other, of their own choice. If however, which is the case in some minority cultures, only the men can make marriage proposals, and women are only allowed to answer to the proposal, but they cannot make marriage proposals themselves. The consequence of this will be that even while the women have a free choice, they are still disadvantaged because of the cultural context they have to operate in.<sup>33</sup> In other words, liberal rights for individuals such as the right to free choice are in themselves not sufficient to guarantee the equality of individuals in a groups and to uphold the right to free of choice.

In line with this point of the insufficient guarantee to free choice for individuals living in groups, the liberal framework Barry offers may also be insufficient. Chambers argues that for members of certain minority groups, it will be extremely difficult to make use of the liberal values that Barry's theory assumes and advocates. These groups are not embedded or raised in any longstanding liberal tradition, and because of this one cannot simply assert that a woman victimized by FGM can leave her group, as she is not familiarized with the liberal tradition that offers this option. The option to leave might simply be invisible to her. Individuals will be under immense social pressure to stay within their group and comply with the ethical values of the group, which in the theory of Barry are then completely theirs as individuals. In contrast to this, Chambers argues that even if individuals have freely chosen to remain in a group, it is still incumbent on the state to interfere in the group. In the case of FGM, women may in theory have had the choice to exit the group, but the group pressure and the values imposed on them by the group are too incisive to make leaving a feasible option. And as a result of this FGM can continue as a practice within the group.<sup>34</sup> Chambers therefore argues that whether or not individuals possess the freedom of choice to leave the group, the state may take measures against FGM. A concrete way to intervene for Chambers is the equality tribunal, as mentioned in the previous sections. An equality tribunal makes it possible to obtain an equal treatment, oppose FGM, and stay in the group.

In this section I conclude that even when two liberal theories can legitimately put an end to FGM for different reasons, one theory can be more powerful and compelling to oppose FGM. In this case the more powerful position is occupied by Chambers, because she acknowledges the contextual circumstances that give rise to FGM in a more comprehensive fashion than the egalitarian universalist theory of Barry that narrowly focuses on the rights of mere individuals. Also, her putting individual rights over group rights, makes it possible for her to allow the state to intervene in groups . And this is yet another reason why her arguments are stronger when it comes to opposing FGM. Finally, the fact that she recognizes that the right to exit is generally next to impossible to exert, and the fact that she proposes the equality tribunal for which FGM can be opposed from within the group makes her position more powerful than Barry's theory. This conclusion also goes some way to defend my claim that it is indeed possible to find philosophically cogent arguments for criticizing FGM from the perspective of a liberal theory.

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<sup>30</sup> Chambers (2008), 127

<sup>31</sup> Cudd (2006)

<sup>32</sup> Cudd (2006)

<sup>33</sup> Cudd (2006), 130

<sup>34</sup> Chambers (2008), 129

### D. Kymlicka and Group-Differentiated Rights

One of the key features of any theory of liberalism is that its principles are universally valid for and applicable to all members of a given state, and so do not allow for any exceptions to its principles. This is bound to give clash with the fact that nations can harbour practices such as FGM. A liberal state that allows these kinds of practices to occur is not liberal in that its citizens are not protected against potential harm. In this section I will discuss the theory of Kymlicka. His liberal theory is a response to the more ‘traditional’ liberal approach of multiculturalism. He wants to explain why a liberal approach to minority rights is a morally defensible and politically viable answer. For this purpose, Kymlicka developed his concept of ‘group-differentiated rights’. Kymlicka’s argumentation is interesting for my thesis in that Kymlicka sets out a new and alternative approach to minority rights. I want to assess whether Kymlicka’s new approach can legitimately oppose FGM.

After elaborating Kymlicka’s theory, I will put his theory in perspective by setting it against the theory of Kukathas. It is relevant to compare these two theories for my thesis because the liberals Kymlicka and Kukathas have different views on minority rights. To all intents and purposes they share the same goal, *viz.* the development of a liberal theory in which minority rights can co-exists with the individual human rights that are the main focus of liberal theory. However, both theories are different in a fair number of aspects. The main difference lies in their choice of what they think is the main core liberal values. Kymlicka holds that autonomy is the main core liberal value, whereas for Kukathas it is tolerance. Kymlicka argues that minority cultures can be protected provided that the autonomy of the members of the certain minority group is safeguarded.<sup>35</sup> Kukathas, however, maintaining that tolerance is the core liberal value, would even go as far as to tolerate ‘non-liberal’ groups.<sup>36</sup> It is relevant to explore what this difference entails for the case of FGM.

In view of the history of the tradition of liberalism, after world war II a new argumentation for minority rights needed to be developed.<sup>37</sup> A new focus on ‘human rights’ took the limelight: instead of any direct protection of minority groups by e.g. group rights, one hopefully expected that the problems concerning minority rights could be solved by protecting cultural minorities in a more indirect way. And this indirect way consisted in allowing certain fundamental political and civil rights (such as freedom of expression and the right to public assembly) equally to all individuals. These fundamental rights are given to the individuals themselves, but they are practiced in the groups these individuals are participating in, and in this way the fundamentals rights of individuals living within these groups are safeguarded against undue group pressure. By protecting fundamental rights for individuals, specific minority rights for cultural minorities became superfluous. However, against this Kymlicka argues that although these fundamental rights help society to protect citizens against being harmed, these guidelines in themselves are not enough to guide the state in implementing concrete policy measures for minority groups and minority rights. Questions such as: Should political offices be distributed in accordance with a principle of national or ethnic proportionality? What responsibilities are incumbent on minorities to integrate? What degree of cultural integration can be required of immigrants and refugees before they acquire citizenship?<sup>38</sup> are questions that no fundamental human right answers with any degree of precision or to any practical degree. To give a few examples, (1)

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<sup>35</sup> Kymlicka (1995), 3

<sup>36</sup> Kukathas (2003), 181

<sup>37</sup> Kymlicka (1995), 2

<sup>38</sup> Kymlicka (1995), 5

the fundamental human right of freedom of opinion and expression does not provide us with any policy on which language to use under which conditions, (2) the fundamental human right to democracy does not explain how power should be distributed between different governmental levels, (3) the fundamental right of movement does not give any answer to question on how to manage issues of immigration and naturalization. The appropriate practical approach to all these issues are left dangling by fundamental human rights and remain subjected to decision-making processes of predominantly the majority group in a state. According to Kymlicka, the upshot of this predicament is that minority groups are likely to come to harm by any injustice that comes their way on account of the choices made by the majority group. For this reason, fundamental human rights in themselves are not enough to protect minority groups in any satisfactory way against majority group decisions. Kymlicka's attempts to resolve this issue by arguing that fundamental human rights need to be a supplemented by a theory of minority rights.

According to Kymlicka, the universally valid law against any violation of the human body that applies to FGM<sup>39</sup> would be sufficient to criticize FGM. But according to Kymlicka such a law would not suffice to give sufficient guidelines as to how a liberal state can handle harmful practices such as FGM in practice. Thus, possessing this fundamental right in itself would not be a legitimate answer for liberals to legitimately criticize FGM. For Kymlicka this fundamental right needs to be supplemented to get to a practical way to stop FGM. To resolve this issue, Kymlicka adds the concept of minority rights to the fundamental right of the autonomy of the body.

Kymlicka argues that (1) national minorities should be allowed to govern themselves and (2) these minorities groups with self-governing powers should be free of interference by liberal principles with the aim of preventing a breach of liberty and equality.<sup>40</sup> And for Kymlicka the question comes down to the question of how he can go against the practice of FGM within minority groups, whilst at the same time arguing in favour of the self-government of minority groups and the principle of non-interference of the liberal state. Is Kymlicka capable of legitimately arguing against FGM given his overall philosophical position on liberal principles?

The group rights mentioned in his book belong to groups from ethno-cultural backgrounds, for example national minority groups. Kymlicka makes a distinction between ethno-cultural groups and those immigrant groups who come to a country of their own free will, and are thus supposed to live according to the rules set by the dominant culture.<sup>41</sup> I have previously argued that FGM can be practiced both in national minorities as well as in immigrant minorities. According to Kymlicka's theory an immigrant minority has to live according to the rules of the dominant culture, in which case FGM would not be allowed. In the following I will concentrate on national minority groups in which FGM occurs because this is the focus of Kymlicka's theory. As for cases of FGM, the minority groups that practice FGM in the UK can belong to ethno-cultural groups. Because these cultural groups have been living in the UK for decades now, and the UK, and particularly its major cities such as London, are known for the fact that they have a fair number of long-standing minority groups, and these can thus be considered as ethno-cultural groups. The minority groups practicing FGM can together form a national minority group. Therefore, Kymlicka's theory can be applied to both kinds of groups that practice FGM, and I can research whether his theory can criticize FGM.

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<sup>39</sup> UDHR, article 5

<sup>40</sup> Kymlicka (1995), 7

<sup>41</sup> Kymlicka (1995), 11

As elaborated above, in a liberal society one of the main ways to allow different cultures to live peacefully together in one country is to protect civil and political rights. According to Kymlicka, these rights are important, but over and above these common rights of citizenship, additional legal and constitutional rules and procedures are necessary to protect and help minority groups. A number of differences and cultural values within liberal states can only be safeguarded by giving some members of the society specific rights as applied to particular groups.<sup>42</sup> This is what Kymlicka calls group-differentiated rights.<sup>43</sup> Accordingly, he sets out three different types of group-differentiated rights for different kinds of national minority rights:

1) *Self-Government Rights*. Rights for the national minority groups to form a governance for themselves that allows them to change to political autonomy or jurisdiction on territorial grounds within a liberal society. This will take the form of ‘devolving political power to a political unit substantially controlled by the members of the national minority, and substantially corresponding to their historical homeland or territory’<sup>44</sup>. This construction should be permanent.<sup>45</sup> Examples of self-government inside states are Indian reservations, outside the system are Guam or Puerto Rico, or again when a minority group is living in a region, such as the Quebecois in Quebec, Canada.

2) *Polyethnic Rights*. Group-specific rights allocated on the ground of poly-ethnicity. These rights are intended to provide minority groups room to enjoy their specific culture without being obstructed by any of the political institutions of the majority group. Such a polyethnic right is e.g. the right to implement policies against suppression of what young children learn at school, or public funding of certain cultural practices.<sup>46</sup>

3) *Special representation rights*. Ideally, in Western democracies, the political process is a representative government, and representation has to reflect the diversity of all the people living in a society. These are rights to be included in history, the exclusion of which is experienced by participants of groups that are culturally disadvantaged, in the form of the rights of special representation. These rights are often temporary because they are implemented because by a temporal disadvantage of a group, and it is this disadvantage that needs to be addressed by these special representation right until the issues are resolved.<sup>47</sup>

The overarching goal of these three kinds of group-differentiated rights, set out by Kymlicka, is that the individual autonomy of persons who are part of a minority group is adequately protected whilst they are also able to take part in a common or dominant culture.

### Internal Restrictions and External Protections

Whilst most liberals focus on individual rights, Kymlicka supplements these individual rights with group-differentiated rights. Of primary importance in the theory of group-differentiated rights is the differentiation between ‘internal restrictions’ and ‘external protections’<sup>48</sup>. Both of these are collective rights in that they apply to all the individuals in the group, in contrast to the

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<sup>42</sup> This is what Iris Young would call ‘differentiated citizenship’ (Young (1989), 258)

<sup>43</sup> Kymlicka (1995), 26

<sup>44</sup> Kymlicka (1995), 27

<sup>45</sup> Kymlicka (1995), 30

<sup>46</sup> Kymlicka (1995), 30

<sup>47</sup> Kymlicka (1995), 31

<sup>48</sup> Kymlicka (1996), 35

individual rights most liberals focus on. Internal restrictions are limits that a minority group itself imposes on its own members, whilst external protections are protective measures the minority group can ask for from the host society. Both these requirements serve a similar purpose, viz. ‘protecting the stability of national or ethnic communities’<sup>49</sup>. They differ in that they are addressing two different kinds of instabilities. It is important for my thesis to explore this distinction in Kymlicka’s general theory because it has a possible bearing on the validity of his arguments in opposing FGM. Internal restrictions and external protections are necessary to fully understand the facets of Kymlicka’s group-differentiated rights. This section will focus on these two kind of collective rights<sup>50</sup>:

1) *Internal Restrictions*. Internal restrictions aim to protect members of minority groups from the unsettling influences and consequences of any discrepancy within the group, for example when a member of a minority group decides no longer to toe the line of its own traditions. It comes down to the right of a group to restrict the freedom of its group members. For example, with internal restriction a group can use the state law to impose a restriction on their group members to use the right for abortion:

‘Internal restrictions involve *intra-group* relations-the ethnic or national group may seek the use of state power to restrict the liberty of its own members in the name of group solidarity.’<sup>51</sup>

In cases of internal restriction, the rights of the collective group are deemed to have more priority than the rights of the individual, and for this reason restrictions to individual rights can be imposed. An example of this is when the freedom to choose one’s religion is restricted, and group members are forced to adhere to one single orthodox religion. This can lead to the exclusion of specific groups within the larger group. In the case of FGM, this can also be very dangerous: when there is a culture in which FGM is a part that imposes internal restrictions to their members, FGM can remain in existence and has a larger chance to persist. Another risk is that FGM will stay under the radar for the major state, in which case the state is unable to protect women.

2) *External Protections*:

‘External protections involve *inter-group* relations-that is, the ethnic or national group may seek to protect its distinct existence and identity by limiting the impact of the decisions of the larger society.’<sup>52</sup>

External protection involves the right of a minority group to limit the effect of the decisions that the larger society can take and that have an impact on the minority group. An example of this is that a group of immigrants is allowed to live according to their own cultural values and traditions, and, accordingly, the impact of external pressure from the larger society on this minority group to integrate is restricted. In the case of external protection, individual suppression is not the problematic issue, rather the unfairness between groups is: one group could be put at a disadvantage in order to safeguard another group’s existence and identity.

External protection can also be of use when establishing equality between groups. It achieves this by decreasing the vulnerability of the minority group with regard to the majority group. In

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<sup>49</sup> Kymlicka (1995), 35

<sup>50</sup> Kymlicka (1995), 35

<sup>51</sup> Kymlicka (1995), 36

<sup>52</sup> Kymlicka (1995), 36

the case of FGM, external protections do not have to be dangerous in itself. It only becomes dangerous when FGM is part of the tradition that enjoys the external protection.

Internal restrictions are less directly applicable to the case of FGM than external protections are. For, obviously, internal restrictions can be disadvantageous to victims of FGM when these internal restrictions are imposed on the group by the minority groups themselves, in which case there is no external control, and no guarantee of an unbiased and unprejudiced assessment of the situation and the restrictions put in place. For present purposes I restrict my focus on identifying ways to criticize FGM. Another way to face the challenge of external protections is whether the FGM-group should be allowed external protection of their practice. I will elaborate on this question more in the next sub-section.

Internal restrictions can exist in monocultural states, because the need to protect a culture from internal dissent can exist even in a single monolithic culture. External protections, however, can only exist in multinational or polyethnic states, because when you want to protect a minority culture from the decision of larger society, more cultures need to be present.<sup>53</sup> Internal restrictions and external protection can work in the same direction, but need not necessarily always do so. A group can ask for external protection and not for internal restriction within the context of the three different kinds of group-differentiated rights. Kymlicka argues that:

‘In short, a liberal view requires *freedom within* the minority group, and *equality between* the minority and majority group’<sup>54</sup>

First, to gain freedom within the minority group, internal restrictions need to be limited because this limits the freedom of the members of a group. Secondly, to establish equality between the major and minority group external protections can help, when judiciously applied.

To summarize, internal restrictions are not allowed in a liberal society in order to safeguard the freedom of individual members of any minority group. External protections, however, can be allowed in a liberal society in so far as they do not endanger the fundamental equality between groups.

### Restricting Tolerance

In liberal theories only minority rights that are respectful towards freedom and autonomy of the individual are allowed. According to Kymlicka, freedom is closely connected with and based on group culture.<sup>55</sup> On account of this close connection, the existence of minority rights in terms of group-differentiated rights can increase the freedom of the individual, because freedom is inseparably connected with and dependent on culture<sup>56</sup>. For example, a person who wishes to live according to his or her culture has the freedom to do so, because minority rights increase the amount of freedom. In the case of one of the group-differentiated rights these can be polyethnic rights. Here, ethnic groups are allowed to freely adhere to their specific cultural values and traditions. An example of this would be a Muslim in the UK, who can visit a mosque

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<sup>53</sup> Kymlicka (1995), 37

<sup>54</sup> Kymlicka (1995), 153

<sup>55</sup> Kymlicka (1995), 75

<sup>56</sup> Kymlicka wants to defend the claim that ‘the cause of liberty finds its basis in the autonomy of a national group’ (Barker (1948), 248)

in his community, and who can attend and pray in the mosque without any impediments on the part of the dominant culture. In this case, the Muslim community has obtained an extended freedom because of their polyethnic group-differentiated minority rights. But the endorsement of minority rights, and thus the applicability of Kymlicka's theory, can only occur when group-differentiated minority rights respect the freedom and autonomy of individuals. As such, the endorsement of such rights for minority groups is always provisory and limited. Restriction of such minority rights would be valid for cases in which national groups clamp down on the freedom of their members in an illiberal manner. Some groups cross the boundaries that a liberal state can permit. According to Kymlicka's theory it is possible for a liberal society to accept a great deal of cultural diversity, but not just any diversity. In order for the diversity to be accepted, and in order to gain group-differentiated rights for a particular minority group, the diversity has to be acceptable, and needs to be in line with the freedom and autonomy of the individual. Although FGM can be an integral part of the values of a particular minority group, or a part of a tradition of a minority society, FGM as such, and as a part of a culture, is not acceptable according to the theory of Kymlicka, because it does not respect the freedom and autonomy of the individual. And it is this latter concept that provides Kymlicka with a condition for any value to be acceptable or not. The practice of FGM is not in line with the concepts of freedom and autonomy, because the women do not have any free or autonomous choice in these matters, they are merely passive victims of FGM, that is imposed on them from the outside, without their explicit autonomous consent. Because of this, they suffer a loss of the autonomy of their bodily integrity, and that, according to Kymlicka, is unacceptable.

In defining and using internal restrictions and external protections, two restrictions imposed on any liberal society when it comes to being sensitive to minority rights have already been pointed out: freedom for the members of the minority group, and equality between the minority and majority group needs to be guaranteed.<sup>57</sup> Not all demands of minority groups can be met by liberal minority rights: FGM would not be allowed because it would harm the freedom of members within the minority group, as argued above. I infer that Kymlicka holds that the performance of FGM 'violates one of the reasons liberals have for wanting to protect cultural membership-namely, that membership in a culture enables informed choice about how to lead one's life. These sorts of internal restrictions cannot be justified or defended with in a liberal conception of minority rights.'<sup>58</sup>

Kymlicka would justify the interference and restriction in a minority culture as follows: 'there are important practical and moral limits on the extent to which liberal states can impose liberal values on cultural groups, particular national minorities.'<sup>59</sup> Some liberals would maintain that one cannot interfere in the cultures of minority groups, they would allow some internal restrictions, but never external protections. We already came across this discrepancy between liberal views in the former chapter when comparing Barry and Chambers.

Here one can tease out the outlines of an answer to the question of whether Kymlicka is in a position to formulate legitimate reasons to set boundaries to group autonomy, and of whether he can provide philosophically cogent reasons to prohibit particular acts within minority groups. Kymlicka's line of argument can justifiably criticize FGM. Kymlicka argues that the liberal values of autonomy and freedom are of utmost importance and enjoy priority over other principles. They can be added to group-differentiated rights provided that the culture and

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<sup>57</sup> Kymlicka (1995), 152

<sup>58</sup> Kymlicka (1995), 153

<sup>59</sup> Kymlicka (1995), 155

traditions of the minority group is in line with these core liberal values. As argued above, FGM is does not comply with the core liberal values of freedom and autonomy. So, to conclude, minority cultures practicing FGM are not allowed to do so by law, and are not permitted to have group-differentiated rights. This also fits my line of argument above, by extending Kymlicka's concept of external protection, *viz.* the argument that the size of the group involved is not important for the concept of external protections, and therefore any group, regardless of its size in comparison to the main group, can ask for external protection to protect its identity. Kymlicka himself also stipulated that 'there is no correlation between the liberality of a culture and its size. Some minority cultures in Africa and Eastern Europe are much more liberal than the majority cultures.'<sup>60</sup> It is then protected from FGM by an appeal to the core liberal values of freedom and autonomy. In this sense, my extension of Kymlicka's concept of external protection shows how Kymlicka's argument can limit the rights of (minority) groups that perpetrate FGM.

Whether or not FGM is allowed, regardless of whether based on Kymlicka's philosophical argumentation, on the law, or on my extension of the concept of external protection, Kymlicka holds that as a liberal society (in this case the majority group) the state has the moral obligation to start a dialogue with the illiberal minority group. This moral obligation to engage in a dialogue ensures that, in the first place, people try to find a way to live together in harmony, and, secondly, they give the minority groups the opportunity to change and adapt so as to comply with the conditions of freedom and autonomy, and so obtain group-differentiated rights:

'Liberals have no automatic right to impose their views on non-liberal national minorities. But they do have the right, and indeed the responsibility, to identify what those views actually are. Relations between national groups should be determined by dialogue. But if liberal theory is to contribute anything to that dialogue, it is surely by spelling out the implication of the liberal principles of freedom and equality.'<sup>61</sup>

Kymlicka does think that the liberal majority group is obliged to seek to come into contact with the minority group and discuss and explain the value of a liberal way of life. In initiating and developing this dialogue a possible solution to the problem of FGM comes into view, when the minority group acknowledges the desirability of a liberal way of life, and is willing to redefine traditions in such a way that they meet the requirements of minority rights within the broader framework of a liberal society:

'That is not the first step down the path of interference. Rather it is the first step in starting a dialogue.'

In Kymlicka's understanding of this dialogue process, it is important to avoid being prejudiced against values of the minority groups. The differences between liberal and illiberal cultures are not always clear-cut and sharp. There is no sharp boundary line between a completely liberal or illiberal society. According to Kymlicka, a society cannot be fully liberal or illiberal, it is always a in between these extremes. That is the reason he asks for a dialogue instead of simply imposing a set of rules on a group. Also, if a minority group refuses to cooperate or is acting in a hostile way, it can be of vital importance to look at the political or historical context. The reaction of the minority group is perhaps provoked because of past demands that have not been met, or for reasons that can be traced in the history of the particular group. Most importantly, liberals should be sensitive of such issues, and generally be aware of and think more thoroughly about how they engage in the dialogue, and in this way seek to promote liberalism.<sup>62</sup>

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<sup>60</sup> Kymlicka (1992), 145

<sup>61</sup> Kymlicka (1995), 171

<sup>62</sup> Kymlicka (1995), 172

### E. Kukathas and Freedom of Association

In the previous section one can see that Kymlicka's line of argument is capable of criticizing FGM, given his focus on the primacy of autonomy and freedom. Both Kymlicka and Kukathas are aiming at a liberal approach in which there is room for accommodating rights of minority groups without thereby leaving the protection of the rights of individuals in the lurch. Instead of focusing on autonomy and freedom, as Kymlicka does, Kukathas' focus is on the liberal core value of tolerance. His focus on the core liberal value of tolerance comes down to the idea that liberals ought to tolerate 'illiberal' minority groups, while, as we have seen, Kymlicka would restrict the degree of tolerance when it comes to 'illiberal' minority groups. This has an impact not on collective rights but rather on individual rights. In this section I will explore what this difference between Kymlicka and Kukathas means for my thesis. I will do so by asking the same question as I did for the previous arguments I discussed: is Kukathas able to legitimately criticize the practice of FGM with his philosophical arguments? After having given an answer to this question, I can proceed to assess what implications this difference between Kymlicka and Kukathas has in evaluating their two lines of arguments on my case of FGM. Unlike Kymlicka, Kukathas considers the concept of tolerance as the core liberal value. The reason for this choice is that Kukathas holds that minority groups should always be allowed to make their choices in full freedom. As a consequence of this choice, Kukathas argues that a minority group is approached in an intolerant and illiberal way when it is asked to change its habits or its cultural values in order to comply with any prevalent liberal norms. This is also the reason why Kukathas criticizes Kymlicka's theory as not morally sound, because Kymlicka's theory, including the dialogue that goes with it, justifies minority cultures being forced to reorganize and let go of their traditional values. It is unacceptable for Kukathas to impose such requests on minority groups, as Kymlicka does, and it is equally unacceptable for him that every minority culture needs to endorse the values of freedom and autonomy in order to get minority rights.

Kukathas argues that tolerance is the core liberal value, because the demands of the minority groups to live their lives according to their own beliefs is to be held in the highest esteem. This line of argument does not entail that the culture of the minority groups needs to be maintained at all costs by their members, but rather that individuals have to be free to choose whether to exit the group or not.<sup>63</sup> Kukathas calls this concept the freedom of association. As a consequence of this 'freedom of association' a person is free to dissociate from the values in his or her community. Kukathas calls the society in which all these different kinds of associations are allowed the 'liberal archipelago'. For Kukathas, then, there are two separate fundamental rights for both the individual and the community, *viz.* the right of association and the right of dissociation (Kukathas calls the latter 'the right to exit')<sup>64</sup>. If a person does not agree with the traditions or the practices of the group he belongs to, this person is free to cut his ties with this community. In this way Kukathas can uphold that cultures of groups are tolerated, but still allow that individuals living in it are permitted to leave.

*Pace* Kymlicka, Kukathas does not hold that a minority group within a liberal state must endorse all core liberal values as well. For example, the minority group of the Amish people are 'illiberal', according to Kukathas. But despite this, Kukathas claims that the Amish have to be allowed to live according to their culture and practice their traditions. One example of this is that Kukathas would allow the Amish to practice their habit of not sending their children to

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<sup>63</sup> Kukathas (1995), 238

<sup>64</sup> Kukathas (1995), 239

school<sup>65</sup>:

‘If members of the cultural community wish to continue to live by their beliefs, the outside community has no right to intervene to prevent those members of acting within their rights.’<sup>66</sup>

As a member of an illiberal group this means that ‘as members of the greater society, they have - just like other citizens - individual freedoms and individual rights, but as members of the illiberal minority group they do not have’<sup>67</sup>. What happens in the case of practices in minority cultures, such as FGM, depends, according to Kukathas, on whether the persons who are participating in this practices are ready to comply with their illiberal nature. For Kukathas there are two main choices, 1) remain being a part of a minority community and accept the illiberal parts of it, 2) exit the minority community:

‘If an individual continues to live in a community and according to ways that (in the judgment of the wider society) treat her unjustly, even though she is free to leave, then our concern about the injustice diminishes.’<sup>68</sup>

In order to make this work, the rest of the larger society must accept new members who have left their own minority culture. Additionally, Kukathas finds ‘cruel, inhuman or degrading treatment’ unpalatable<sup>69</sup>: this means that members of any cultures are not allowed to act cruelly in whatever circumstances. I would assume that Kukathas thinks of FGM as a cruel, inhuman and degrading practice. Cruel and inhuman because FGM is breaching the integrity of women’s bodies in an intrusive way, and degrading in view of the goals of FGM mentioned earlier. This imposes a limit to the concept of tolerance. Finally, Kukathas makes a difference between national minority groups and ethnic minority groups in when it comes to the degree of tolerance they are entitled to:

‘The acceptance of cultural norms and practices depends on the degree to which the cultural community is independent of the wider society.’<sup>70</sup>

Kukathas’ value of tolerance is mainly concerned with traditional minority groups such as the Amish and Indians. These are examples in which the minority groups are living in relative isolation from the major society. The way Kukathas is approaching these traditional groups is not the same as he treats ethnic minority groups, similar to Kymlicka’s approach. Traditional groups are groups like Indians and Amish. These are groups that live in relative isolation from society. Ethnic minorities are different because the distance between the minority and majority group is less and this puts a stricter limit on the degree of tolerance for illiberal practices:

‘The immigrant society, while entitled to try to live by their ways, have no right here to expect the wider society to enforce those norms against the individuals.’<sup>71</sup>

Kukathas cannot interfere in the practice of FGM in that he gives priority to tolerance over any interference justified by some other liberal value. So in this sense Kukathas’ arguments are not powerful enough to criticize FGM. In another sense however, Kukathas’ argumentation about the freedom of association and dissociation allows any individual to leave the minority

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<sup>65</sup> Kukathas (1995), 116

<sup>66</sup> Kukathas (1995), 116

<sup>67</sup> Kukathas (1995), 248

<sup>68</sup> Kukathas (1995), 133

<sup>69</sup> Kukathas (1995), 249

<sup>70</sup> Kukathas (1995), 251

<sup>71</sup> Kukathas (1995), 251

community in which FGM is practiced. In this way the individual has the freedom to exit the community, and prevent herself from being victimized by FGM. Kukathas thus seems to have a solid argument to criticize FGM. But his argumentation is only valid for concrete individuals and not for groups as a whole. Another drawback for Kukathas' argumentation with regard to FGM seems to be that by allowing persons to leave the group when its norms and values are unacceptable, which might be the case with FGM, other group members, and the group as a whole, are still in a position to retain their freedom of conscience, and keep FGM in place. However, an objection which immediately springs to mind is that it is often not feasible to just leave a group, even if this is what one really wants to do. Is the choice to leave a group really a realistic option? This question is particularly relevant in the case of FGM, where the victims are mostly still very young or even infants, and where the victims clearly cannot decide for themselves to leave the group, let alone on the basis of freedom of association. This does seem to be an answer for the women who suffer from FGM. But if one looks more closely into the theory of Kukathas one can see that he actually can criticize FGM with these and also other arguments. Kukathas acknowledges that tolerance is limited because cruel and inhuman practices are not to be accepted. The assumptions on the basis of which Kukathas can define the cruelty of a given practice remain unclear, and are not to be found in his theory. Kukathas is very clear in setting up his theory about freedom of association, but when he faces the question of how to handle illiberal practices, his theory leaves something to be desired. It seems that the answer he provides for our case carries some unexplained background assumptions, and they therefore are insufficient for our purposes.

In conclusion, Kukathas can successfully criticize FGM with his theory: he states that 'cruel and inhuman' practices are not allowed. FGM is surely to be counted amongst these.

### F. Comparison II: Group-Differentiated Rights and Freedom of Association

In this section I will make a comparison between the views of Kymlicka and Kukathas with regard to FGM and the way in which their theories allow them to criticize FGM, also in relation to the previous section on Chambers and Barry. To compare these two authors is worthwhile, because they aim at the same goal with their theories, *viz.* to expand liberal theory in order to be able to meet the demands of minority groups. However, they reach this goal by following very different roads. Kukathas criticizes Kymlicka head-on, and Kymlicka has responded to this criticism. Kymlicka argues in favour of the core liberal value of autonomy, whereas Kukathas takes up the cudgel on behalf of the core liberal value of tolerance. The goal of this section is to see what the discussion between Kymlicka and Kukathas boils down to, and where it will bring us with the regard of the topic my thesis, criticizing FGM with a set of legitimate arguments in a liberal society. After comparing these two authors, I would like to assess which of their theories is most powerful in criticizing FGM in a legitimate way, a procedure similar to the one I followed for Barry and Chambers.

Both Kymlicka and Kukathas are able to provide cogently philosophical arguments to oppose FGM, just as Chambers and Barry can. However, the discussion and differences between Kymlicka and Kukathas will reveal that the positions are unequal when it comes to mount opposition to FGM:

- 1) Kymlicka can legitimately criticize FGM because he prioritizes the core liberal values of autonomy and freedom, and he holds that group-differentiated rights can only exist if they comply with these core liberal values. I have earlier argued that FGM goes against the grain of these core liberal values because young women are the passive victims lacking sufficient access to autonomy and freedom. This group can thus establish an external protection to FGM, in the case of national minorities. When it comes to immigrant groups, Kymlicka holds that they have chosen to come to the liberal country of their own accord, and therefore are obliged to concur with the rules of the majority culture. And this in itself prohibits FGM.
- 2) Kukathas can legitimately criticize FGM, because he asserts that the core liberal value of tolerance does not allow a state to intervene in illiberal practices, when inhuman or cruel practices are involved, the state is allowed to stop minorities from perpetrating these cruel acts. And FGM is likely to be a case in point.

Kukathas' possible line of argument against FGM is less thought through and less robust than Kymlicka's. Kymlicka appears to be more alive to the sort of problems involved in illiberal acts performed by ethnic groups than Kukathas seems to be. However, both theories are predominantly targeted at national minorities and far less at ethnic minority groups. In current liberal societies many problems occur in ethnic minority groups within larger liberal society, and both theories to a certain extent seem to lack the resources to resolve the problems these ethnic minority groups bring with them. The focus of their theories on national minority cultures to some degree downplays the importance of ethnic and immigrant cultures, and their argumentation reveals some conceptual gaps when it comes to resolving issues specifically provoked by these ethnic and immigrant cultures within larger liberal societies.

In *Are there any cultural rights?*<sup>72</sup>, Kukathas responds to Kymlicka's *Liberalism, Community*

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<sup>72</sup> Kukathas (1995)

*and Culture*.<sup>73</sup> This response triggered a scholarly debate between the two liberals, and Kymlicka in his turn reacts on Kukathas' response in his article 'The rights of minority cultures, a reply to Kukathas'<sup>74</sup>, to which Kukathas again responded in his article 'Cultural rights again: A Rejoinder to Kymlicka'<sup>75</sup>. After this public exchange of articles Kymlicka and Kukathas have remained locked in an ongoing dialogue. This exchange has an important bearing on the topic of my thesis, as it tellingly reveals pertinent features of the two liberal theories: Kymlicka holds that a minority culture can be protected against the majority culture (external protection) but not against its own members (internal restrictions). Kukathas denies the view that small groups should have special rights to protect them against the larger group, but he argues that minority groups can have a powerful control over its own members, even to the extent that the core liberal values of freedom and autonomy can be breached. They have this power over their members, as long as the members are free to leave the group. The theory of Kymlicka is stronger when it comes to obstructing FGM, because in his theory minority groups are free provided that they respect core liberal values, and FGM goes against these core liberal values. And for Kymlicka this is a legitimate argument for the state to protect the victims of FGM. In Kukathas' theory, on the other hand, minority groups have an almost unlimited control over their members as long as these members have the right and freedom to exit the group. In this theory the victims of FGM cannot be protected, they can only exercise their right to leave. Kukathas' argumentation in this seems disappointing. He argues that the freedom to leave the group, regardless of education, or knowledge of the conditions in the outside world remains substantial 'so long as they have an open market society to enter to'<sup>76</sup>. Kukathas' argumentation in this closely links the freedom to leave to the openness of the society that is to take up the persons leaving the group, and it has no bearing on the moral values of the minority culture of which the persons leaving wishes to steer clear of. This is why Kymlicka argues that Kukathas' theory does not live up to core liberal values:

'that she does not have a substantial freedom to leave because she lacks the preconditions for making a meaningful choice, and thus an system of minority rights which gives cultural communities that much power over their individuals members is seriously deficient from a liberal point of view.'<sup>77</sup>

Like Barry, Kukathas speaks of the right to exit the group, but they argue from different perspectives. Barry has as his starting point the perspective of the core liberal value of free choice, whereas Kukathas starts from the assumption of the core liberal values of tolerance and 'freedom of association'. Chambers' line of criticism to Barry can also be applied to Kukathas' right to exit, as Chambers also argues that a victim of FGM can leave her group. However, Chambers acknowledges the fact that most of these women are not familiar with the liberal tradition that offers this exit option, and the option to leave might simply not cross their minds, and the social pressure of the group might pin her down to the spot. Kukathas himself is aware of this problem hovering about this alleged freedom to leave the group: 'I do not think that the threat of exit will always give individuals the de facto ability to question communal authority.'<sup>78</sup>

Illiberal cultures would prefer the theory of Kukathas, and this is precisely the reason why Kymlicka argues that core liberal values are underdetermined in Kukathas' theory. The fact that in Kukathas' theory members are not forced to be in a community, or the fact that what imposes limits on a group is the inhuman or cruel nature of certain practices, make it hard to distinguish

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<sup>73</sup> Kymlicka (1989)

<sup>74</sup> Kymlicka (1992)

<sup>75</sup> Kukathas (1992)

<sup>76</sup> Kukathas (1992), 134

<sup>77</sup> Kymlicka (1992), 143

<sup>78</sup> Kukathas (1992), 678

Kukathas' liberal theory from any other communitarian or socialist theory. According to Kymlicka, the arguments of Kukathas are too weak to turn his theory into a genuine liberal theory or provide a liberal argument against FGM. Kukathas reply to this is that there are two different kinds of liberalism: one in which core liberal values such as equality and autonomy are protected (Kymlicka), and another in which it is denied that a liberal society can only exist in other liberal groups (Kukathas).<sup>79</sup> My position in this discussion would be that when opposing FGM the core liberal values of equality and autonomy are of the utmost importance, because FGM is in direct conflict with these values. The theory of Kukathas does not fully espouse these core liberal values, and thereby decreases the power to oppose FGM. This is in contrast to the theory of Kymlicka, where FGM simply cannot occur because it is completely out of line with these core liberal values. Therefore, the kind of liberalism that Kymlicka sets out is more powerful to criticize FGM.

In conclusion, I again argue, just as in the previous section on Chambers and Barry, that even when two liberal theories can legitimately put an end to FGM for different reasons, one theory can be more powerful and compelling. In this second comparison, the one between Kymlicka and Kukathas, we have seen two different kind of liberal theories, and I have argued that Kymlicka holds the stronger position because Kymlicka does not allow practices in any society which do not comply with the core liberal values of equality and autonomy, and in this theoretical context FGM cannot be practiced.

Furthermore, both liberal theories of Kymlicka and Kukathas focus on national minorities, whilst the issue involving ethnic and immigrant minority groups play an increasingly large and urgent role in multiculturalist liberal societies. In general, I feel that downplaying the importance of ethnic and immigrant minority groups, and focusing on national minority groups instead, decreases the value of their theories to tackle current problems. Liberal theorists should be more alive to the problems currently caused by ethnic minority groups taken up in large liberal societies.

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<sup>79</sup> Kukathas (1992), 680

## III Boundaries to Autonomy of Minority Communities

In the fourth and final section prior to the conclusion I would like to compare the two liberal thinkers, Chambers and Kymlicka, who are arguably in the best position to oppose FGM, as discussed in the previous two sections. Both Chambers and Kymlicka were in more powerful positions to oppose FGM than either Barry and Kukathas. I briefly summarize the reasons for this final assessment before going on to compare Chambers and Kymlicka.

Barry's theory is simply the downplaying or even denying the importance of minority groups, their values, traditions, and their place in a larger, liberal society. Kukathas' theory (1) is not obliged to comply with the core liberal values of autonomy and equality, exactly the core liberal values that are breached in the case of FGM, (2) Kukathas crucially underdetermines what he means by inhuman and cruel practices on the basis of which criteria the state is allowed to intervene, (3) Kukathas does not take ethnic minorities as such into account to any sufficient degree, and (4) Kukathas leaves the minority groups free to do as they like, provided they allow group members to leave the group, whereas this right to exit the group is not viable in the case of victims of FGM for reasons stipulated above.

Chambers' theory can legitimately criticize FGM by acknowledging the principles and circumstances that give rise to FGM, such as the impact of social constructions on minority practices and the concept of the equality tribunal. Kymlicka's theory can legitimately criticise FGM in that it does not allow practices in society which are not in line with the core liberal values of equality and autonomy. In the case of immigrant groups, Kymlicka sets out the position that these immigrant groups have made a positive choice of their own free will to come to a liberal country, and by doing this it is incumbent on them to comply with the rules of the majority culture. In this way Kymlicka can ensure that FGM can be prohibited in these immigrant minority groups.

### A. Group-Differentiated Rights and Social Construction

In this section I would like to see what the discussion and comparison between Chambers and Kymlicka can contribute to the main topic of my thesis, i.e. the question as to whether and to what extent these theories are in a position to criticize FGM with a philosophically cogent set of arguments. Or, if they fail to provide sufficiently cogent and persuasive answers to the problem of FGM, do they need finetuning and adjusting, or would the amount of adjustment change them beyond recognition, so that in effect their position has to change into an altogether new theory? Is a balance between the limitations of certain practices and the room for a plurality of different vision attainable? And, finally, does it really matter which kind of liberal theory is chosen to legitimately criticize FGM, or does one theory of liberalism carry more weight in its philosophical argumentation than another?

I will argue that the theory of Chambers is more powerful than the theory of Kymlicka when it comes to opposing FGM. Whilst compare the two theories I pointed out that Kymlicka unites the core liberal values of freedom of choice and social construction, just as Chambers does in her theory, albeit in a different manner. Kymlicka argues that some minority groups in a liberal society are entitled to have group-differentiated rights because their practices comply with the core liberal values as the freedom of choice. In the context of his search for autonomy, tolerance, and the question of whether a liberal theory can at all tolerate a society in which autonomy is

oppressed, Kymlicka argues that in liberal theory individual autonomy is to be prioritized over group autonomy. We found him to be entangled in the difficult liberal discussion of protecting the core liberal values from the practices of illiberal minority groups, whilst at the same time protecting minority groups who do not comply with core liberal values.

I argued that Chambers theory is along similar lines as Kymlicka's in (1) that she believes that liberal theory should focus on individual autonomy and not on group autonomy and (2) in that identity is determined by the values and tradition of the cultural group one belongs to. However, Chambers argues that she has doubts on the way Kymlicka's handles the thin line between protecting minority cultures (focused on the group), and protecting core liberal values within liberal society (focused on the individual).<sup>80</sup> She argues that it remains unclear which policy guidelines would follow from the theory of Kymlicka: in some parts he seems to argue from an generalizing perspective to the effect that liberals have an obligation to try and in still liberal values in illiberal cultures. In other sections Kymlicka seems to restrict his generalizing perspective in that the area of policy interference is hedged in, because they can only be put place by engaging in dialogue and cannot simply be imposed on minority groups, even if the minority groups are positively engaging in illiberal practices.

Kymlicka's theory distinguishes between national minorities and immigrant groups. The national minorities are allowed more leeway in engaging in illiberal practices than the immigrant groups as defined by Kymlicka. Kymlicka underpins this distinction by referring to an element of choice on the part of the immigrant group, *viz.* he argues that immigrant groups need to assimilate and be made to comply with the values of liberal society to a larger degree than national groups would have to, because immigrants come of their own choice to the receiving society, whereas national minority groups do not have such a choice. His argumentation even stretches to the assertion that groups such as the Amish, a national minority in the USA, can apply internal restrictions to their own members, something which is forbidden for other groups. He argues that this is permissible because those groups agreed on being a part of the USA on condition that this kind of group autonomy would be permitted. According to Chambers, this part of Kymlicka's theory contradicts Kymlicka's earlier theory, *viz.* that in liberal theory the autonomy of the individual prevails over group autonomy.

In addition to Chamber's objections, I would like to argue that the definition of immigrant groups and national minorities that Kymlicka adheres to is in fact a controversial one. When one goes back long enough in history, all human beings are in one way or another immigrants to the area where they settle, and for this reason it is difficult if not impossible to draw a sharp line between an immigrant group and a national minority. This implies that the distinction Kymlicka makes in his theory may a false interference. Further, I would argue that it is also incorrect for Kymlicka to assume that immigrant groups have a more extensive obligation to assimilate and embrace liberal values simply because of the fact that they chose to come to a host country than national groups have, who did not have that choice. Immigrants do not simply chose to immigrate, or pick a particular country as their destination. More often than not refugees are simply trying to get away from dire and life-threatening circumstances, and move to another country. And the circumstances of this choice to leave and try and settle in another country does not necessarily imply that they disown the right to hold on to their own culture. Being member of an immigrant group, I therefore argue, does not imply mean that immigrants are obliged to assimilate and adhere to liberal values to a larger degree than national minorities are.

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<sup>80</sup> Chambers (2008), 15

In Kymlicka's theory individual autonomy is prioritized over group autonomy. An individual group member agrees to (1) being a member of a group or a society, and (2) agrees to embrace traditions, practices and restrictions within this group or society. If Kymlicka is to defend his argument that certain national groups like the Amish can impose certain restrictions on their members because in history they had agreed to become a national group within a wider society, then he must argue that:

1. Internal restrictions are permitted in these cases;
2. Agreements made by historical persons are binding for people who are living now, even if this puts constraints on their autonomy;
3. It is not legitimate for an individual to be a member of a group of which she has not agreed on the terms.

These arguments would be direct consequences of Kymlicka's claim using historical arguments that certain national minority groups can impose internal restrictions, and this carries certain dangers with it. Kymlicka himself argued that internal restrictions are dangerous for individual rights, and jeopardizes the prioritization of autonomy over group rights. In the second and third arguments above one can see that Kymlicka's argument will not hold: whereas an individual can choose autonomously, no one can be said to have agreed autonomously to be a member of the group that they were born in. This is not an immediate problem in Kymlicka's theory in the case the state is liberal, but it does become a problem in a national minority group where the identity of the national minority is defined by historical agreements. Given the primacy of individual choice I agree with Chambers that Kymlicka should not accept the consequences of historical agreements that turn individuals into victim of illiberal practices they did not opt for, and that Kymlicka should not make an exception of national minority groups to the detriment of other types of minority groups.

Chambers indicates that when a liberal theory sets up its policies based on the choices individuals make in their cultural context, choices are likely to be normative choices, informed and to a certain extent determined by the cultural values and traditions alive in this group. Chambers argues that Kymlicka allocates too much autonomy of choice to national minorities. She emphasizes the fact that the focus on autonomy within a liberal theory ultimately is a necessary element, and from this she argues that 'arguments based on choice cannot justify certain sorts of restriction that are imposed on individuals or disadvantages that they may suffer.'<sup>81</sup>

I agree with Chambers' points of criticism of Kymlicka's position, because I see that according to Kymlicka national minority groups that have historical arrangements within a liberal society are given too much freedom to impose their own rights on its members, and that as a consequence of this the autonomy of the individual is put under severe strain, and that illiberal practices occur with impunity. But as argued previously, FGM is also not allowed among national minority groups.

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<sup>81</sup> Chambers (2008), 50

#### B. Chambers' Liberal Theory and the Case of FGM

So therefore I argue that Chambers' theory provides the more powerful position, over Kymlicka's theory, in opposing FGM. Both theories are liberal theories that can legitimately criticize the practice of FGM, both theories are mindful of the consequences of a culture and group pressure for the individual, and both theories prioritize individual rights over group rights. However, they are different in some crucial points. Kymlicka's theory reveals flaws in that his theory is too much targeted at national minorities, and downplays the importance of immigrant groups in current liberal societies. FGM and other illiberal practices can occur in both national minorities and in immigrant groups. One can reasonably expect from a liberal philosopher who is writing on multicultural citizenship to also take immigrant groups in due consideration. In his theory on national minority groups he makes choice a normative concept according to which certain groups can control its members with internal restriction on account of historical arrangements. Here, individuals can become the victims of illiberal practices their ancestors decided to allow, without having any free choice in this. In this part of his argumentation Kymlicka prioritizes group rights over individual rights in direct and explicit contrast to the core value of liberal theories he himself claims he adheres to.

Chambers' theory also considers FGM in the context of free choice. However, Chambers recognizes that the choice to allow FGM cannot be considered as completely autonomous, but this choice is always taken in a specific cultural context. In this she differs from the theory of Kymlicka, who loses sight of the cultural context by arguing that certain minority groups can impose restrictions on its own members. It is therefore also revealing that Chambers does not explicitly distinguish between national minorities or immigrant groups in her theory, she treats the issue from a more general perspective, regardless of what type of minority is involved. I would argue that in this kind of philosophical questions about illiberal practices in a liberal society the emphasis should not be put on one kind of a minority group to the detriment of another group, with a controversial assumption as to the definition of the various groups, but all minority groups should be considered on equal terms, as illiberal practices can happen in every group, whichever way they are defined.

Chambers thus argues that state intervention is permitted in minority groups in which choice is influenced by social constructions. In cases of intervention in the practices of minority groups she introduces the concept of the 'equality tribunal'. I argue that this tribunal is the means that enables states to deal with inequality and can thus in a legitimate way intervene in the practices of a group. When evidence is pointing in the direction of inequality in the treatment of members, the tribunal can adjust in such a way that equality of treatment is restored. This is a very strong position in the context in which FGM occurs, because it is obvious that FGM is seldom an autonomous choice but as a rule happens in a social construction. I argue that the equality tribunal can be effective as it takes into due consideration that leaving a group can be extremely difficult for the potential victims of FGM, and that leaving would also not put an end to the illiberal practices such as FGM in the group. State intervention is permitted when individuals are hurt in their individual autonomy by group practices. Therefore I argue that Chambers holds the strongest position.

## Conclusion

In this thesis I tried to find an answer to the question of whether Barry, Chambers, Kymlicka, and Kukathas are in a position to oppose the practice of FGM as this occurs in minority groups living in liberal societies, and whether they can do so by using philosophically coherent assumptions and hypotheses. A guiding idea for me has been the assumption that in principle it is possible to find cogent and persuasive philosophical arguments in liberal theories to impose limits on group autonomy in such a way that the theories can legitimately criticize FGM. In trying to move closer to an answer, I discussed and compared their views in sets of two. To begin with, I compared the theories of Barry and Chambers, followed by the theories of Kymlicka and Kukathas. In comparing their theoretical positions I have been able to tease out those arguments that proved to be most powerful in criticizing FGM. My first finding has been that all these four liberal theories can indeed legitimately oppose FGM on the basis of philosophical arguments, albeit it in different manners, and operating from different assumptions:

- A. Barry: I argued that Barry's view on FGM would be that FGM is not allowed because it is a severe infringement on the rights of autonomous individuals. His ideal of universal rights and equality is such that he denies minority rights to groups in general. However, on the basis of his defence of inalienable rights of persons as autonomous individuals, Barry is in a position to rule out FGM.
- B. Chambers: I argued that Chambers' view is adjustments to standard liberal theory is called for, because simply relying on the autonomy of individuals cannot always provide an adequate response to illiberal practices. These adjustments take the form of being mindful of the fact that individual choices and a right to exit the group are to a large extent determined by social constructions. One of the major adjustments is the possibility to interfere in groups practices by establishing an equality tribunal in cases where an unequal treatment of individuals is provoked by social constructions. These adjustments help prevent FGM from occurring in minority groups by intervening in the groups themselves, and not only by protecting the individuals in these groups.
- C. Kymlicka: I argued that Kymlicka can legitimately oppose FGM because he prioritizes the core liberal values of autonomy and freedom, and he holds that group-differentiated rights can only exist if they comply with these core liberal values, in the case of national minorities. I have argued that FGM does not meet these core liberal values, because young women are passive victims of it, and they lack adequate access to autonomy or freedom. Such a group is therefore entitled to impose an external limit on FGM. When it comes to immigrant groups, Kymlicka argues that they have made the choice themselves to move to a liberal country, and in doing so they have taken on themselves the obligation to follow the rules of the host culture. Also along this line of argument, Kymlicka is in a position to criticize on FGM.
- D. Kukathas: Kukathas can legitimately oppose FGM, Kukathas denies a state to intervene in illiberal practices in the case of national minorities because of the core liberal value of tolerance. When inhuman or cruel practices are involved, the state is allowed to stop minorities from perpetrating these cruel acts. And surely FGM is a case in point.

Having said that all four liberal theorists are in a position to criticize FGM in one way or another, I have identified a number of differences between these theorists in terms of how compelling and powerful their arguments are when applied to the case of FGM.

In the first two comparisons I found, first, that Barry's theory comes down to downplaying or even denying the importance of minority groups, their values, traditions, and their place in a larger, liberal society. According to Chambers he is prioritizing group rights over individual rights, in this Barry does not allow the state to intervene in group practices using the argument of the core liberal value of freedom. I also argued that Chambers, to a far larger degree than Barry does, recognizes that the practice of FGM is not a practice committed in splendid isolation, but, on the contrary, that FGM occurs in very specific cultural contexts. Chambers argues that prioritizing individual rights over group rights allows the state to intervene so as to protect individuals from group practices. In order to solve the issue for the individual, Chambers therefore proposes an equality tribunal in which FGM can be dealt with from within the group itself on grounds of equality of individuals. Chambers can thus oppose FGM in groups, and does not have to resort to a make-shift solution of the individuals under threat simply leaving the group.

Secondly, in the comparison between Kymlicka and Kukathas I found that Kukathas' theory (1) is not obliged to comply with the core liberal values of autonomy and equality, just the two core liberal values that are breached in the case of FGM; (2) Kukathas crucially underdetermines what he means by inhuman and cruel features of practices on the basis of which criteria the state is allowed intervene; (3) Kukathas does not take ethnic minorities as such to any sufficient degree into account; and (4) Kukathas leaves the minority groups free to act with impunity, provided they allow group members to leave the group, whereas this right to exit the group is not viable in the case of victims of FGM for reasons stipulated above. Kymlicka, in his turn, does not allow practices to occur in any society which do not comply with the core liberal values of equality and autonomy. And this in effect means that from his perspective FGM is not allowed to occur.

After setting out and comparing these four liberal views, I have indicated the substantial differences in these liberal approaches when it comes the case of FGM. I found that to legitimately criticize FGM, and other related harmful practices, it does really count what sort of liberal approach one chooses.

After these two sets of comparison, I was in a position to determine the two most persuasive theories, in support of my claim that one can find a cogent philosophical argumentation in liberal theories to impose limits on group autonomy in such a way that practices such as FGM cannot be perpetrated. And these two most powerful theories were those of Kymlicka and Chambers. I found that both liberal theories can legitimately oppose the practice of FGM in liberal societies, that both theories take the impact of the culture context and group pressure on the individual into account, and that both theories prioritize individual rights over group rights. However, they differ in a number of crucial points. Kymlicka's theory shows up flaws in that his theory is too much targeted at national minorities, and in doing so it is disadvantaging immigrant groups. In this part of his argumentation Kymlicka prioritizes group rights over individual rights in direct and explicit contrast to the core value of liberal theories he himself claims to adhere to.

The theory that comes out as the most powerfully persuasive and philosophically coherent to criticize FGM in liberal society is the theory of Chambers. The most relevant features of Chambers' theory are the following:

1. Chambers recognizes that the choice to allow FGM can never be a completely autonomous choice but is always determined to a certain degree by the cultural context in which the choice is made. FGM is not never committed in isolation but always within a cultural context.
2. Chambers does not explicitly distinguish between national minorities and immigrant groups in her theory. She treats issues such as FGM from a general perspective, regardless of the exact type of minority that is involved in it. She does not think it matters what exactly is the kind of minority that is involved in FGM.
3. Chambers argues that state intervention is permitted in minority groups in which social constructions have an impact on choice of individuals.
4. Chambers introduces in these cases of intervention in the practices of minority groups the concept of 'equality tribunal'. This tribunal is the legislative body that enables a group itself to adequately deal with the sort of inequality involved, and thus provides a legitimate means to intervene in the practices of a group.

I thus have reached the conclusion that a liberal theory that can criticize FGM is a theory that prioritizes individual rights over group rights, and prioritizes individual autonomy over group autonomy. Given these priorities, interventions on the part of liberal states is allowed because the core liberal value of autonomy remains the most crucial criterion. That means that in the case of FGM the core liberal value of freedom will be overtaken by the core liberal value of autonomy, and this justifies an intervention in the practices of minority groups.

I argue that there is still considerable room for improvement for liberal theories in formulating fitting answers to questions about harmful practices in minority groups embedded in liberal societies. I have found that in the theory of Chambers a number of elements go some way in guiding us towards a new liberal theory that allows us to find a more robust balance between accommodating minority groups in liberal society, whilst at the same time protecting the human rights and core liberal values of the individuals. Our society has an increasing number of individuals, young women in the case of FGM, who are members of these minority groups and of the larger host liberal society at the same time. Liberal societies hosting these minority groups and these women should have robust and theoretically justified means to protect them from coming to severe bodily and mental harm, and at the same time respecting the core liberal values of autonomy, freedom and tolerance.

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