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Vol 5(2): 248–281;052119
DOI:10.1177/1468796805052119
www.sagepublications.com

Sex-selective abortion

Gender, culture and Dutch public policy

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INTRODUCTION

When, in 1973, race relations researcher Christopher Bagley visited the Netherlands, he praised the Dutch for their tolerance and enthusiastically reported that the British could learn something from them (Bagley, 1973). Thirty years later, in July 2003, the British advisor on immigration and integration, Trevor Phillips, paid a visit to the Netherlands. His judgement was less positive. He was shocked by the intolerance in the Netherlands, in particular by the negative policy concerning immigrants. He thereby referred to the intended policy, amongst others, to prohibit the wearing of *hijab* in some schools and to a policy intention to combat arranged marriages.¹ 'It was, as if I was smacked in the face', said Phillips. According to him the intended policies were inadmissible infringements upon immigrants' privacy.² He suspected that the Dutch were suffering from a post Pim Fortuyn (the recently assassinated far-right politician) trauma (Waard, 2003).³

Polls do indeed point to a hardening of the Dutch public opinion about immigrants (Dagevos et al., 2003: 432, 433).⁴ There is also, from the part of the government, less willingness to recognize the cultural claims of minorities and a more compelling demand to adjust to Dutch culture (e.g. own language teaching is no longer state facilitated and citizenship education is made compulsory for immigrants). So, yes, Phillips is right that Dutch tolerance is decreasing. Yet, does that make policy that interferes with the cultural traditions of minority groups always a sign of intolerance and an inadmissible infringement of their freedom? I do not think so.

It has been pointed out, most prominently by Susan Moller Okin (1999),

that recognition of cultural diversity can be at odds with women's rights, in which case interference might be justified. Yet, the issue is more complex than that. As a feminist at home with postcolonial theory, I find it impossible to ignore the long western tradition of representing other cultures as inferior. In particular, there is the continued imagery of Islam as a religion predisposed to maltreat the female sex. In the present Dutch climate of increased intolerance of minority groups, a concern with gender inequality could be merely a proxy for attacks on minority groups. It would be tragic, though, if our commitment to multicultural respect would keep us from recognizing gender injustice. The challenge is hence to be critical, yet not to add to the further demonization of minority groups. In this article, I will try to demonstrate that taking a critical stance against minority cultural practices can go together with a sensitivity to the cultural identities and interests of minority women.

I shall present a case that was hotly discussed in the Netherlands, i.e. the case of sex-selective abortion (hereafter SSA). My main reason for focusing on this particular case is that, in it, multiculturalism and feminism seem so clearly to be at loggerheads. Yet, they are not, so I shall argue. This case helps me hence to sustain my position that (a) it is important to be alert that policies that accommodate minority cultures do not add to the oppression of female group members, (b) yet, we should not pit a priori multicultural and feminist concerns against each other, and (c) our judgement of cultural practices should take into account the wider social context in which they exist. In this latter claim, I am inspired by the so-called contextual approach to tolerance, and my discussion of the case may also be read as a plea for contextualism.

Second, I choose this case, because of its possible relevance for other countries as well. As I shall discuss later, the pre-natal diagnostic techniques that are required for sex determination of the foetus are also available in other European countries and the abortion legislation in most European countries is such that it makes SSA possible.

My third reason to work out this case is that it illustrates how predominant in public discourse the modernization thesis still is – contrasting culture, tradition and oppression with modernity, rationality and liberalization – and at the same time how inapt this thesis is for understanding multicultural conflict. The effect of this cultural imagery is that minority women get reduced to mere prisoners of their culture. Yet requests for SSA are made by women. If one is not willing, as I am, to merely see them as cultural dupes, how then are we to consider these requests? What is also at issue, therefore, in the case I shall present, is the moral agency of the women concerned.

CONTEXTUALIZED MORALITY

Before I discuss the case of SSA, let me briefly explain my theoretical perspective.⁵

In the past decade we have seen, in particular in the field of multiculturalism, a proliferation of philosophical theories that try to connect normative theory with empirical case studies. A common ambition of authors as varied as Walzer (1983), Kymlicka (1995), Carens (2000), Parekh (2000) or Benhabib (2002) is to put political philosophy to work in the empirical context of contemporary plural societies and to develop theory that is of relevance for contemporary social conflicts and policy dilemmas. It might not be overstated to call this the contextual turn in political philosophy.

Why should context count? The contextual turn is, amongst others, inspired by the realization that liberal principles are general principles and, as such, too indeterminate to lead to a judgement in specific cases (see Carens, 2000; Parekh, 2000). Moreover, in particular cases, it often turns out that liberal justice arguments provide both strong foundations for accommodating cultural minorities and strong reasons for drawing limits to tolerance. To put it differently, liberal principles often pull against each other (see Williams, 2000). 'We may all claim that we respect one another', so writes Seyla Benhabib, 'but we cannot know what such respect requires or entails in the face of deep cultural conflicts' as very often 'we do not share a common understanding of the disputed practice itself'. Therefore, what we need to reach is 'not only understanding of the norms in question, but a *situational* understanding of these norms' intended applications' (Benhabib, 2002: 12, emphasis in original). Hence, 'to determine what justice requires in a particular case', writes Joseph Carens, 'one must immerse oneself in the details of the case and make contextually sensitive judgements rather than rely primarily on the application of abstract general principles' (2000: 14). And hence, 'history matters, numbers matter, the relative importance of the claims of the claimants matter, and so do many other considerations' (2000: 12). From this follows, first, that while in the classical deductive way of moral arguing only justice arguments are allowed, in a contextual approach, non-moral arguments, like Carens's numbers or the actual power relations in which a practice takes place, are also allowed and may co-determine our moral considerations. Second, if context counts, it follows that what may be an acceptable arrangement in one society, may not be so in other societies (see Carens, 2000: 7).

SEX-SELECTIVE ABORTION: LEGAL CONTEXT

In 1997, a debate took place in the Netherlands in which it was assumed, at least by some of the participants, that certain cultural minorities have a cultural preference for sons. Based on this preference, they may desire SSA. SSA involves the identification of the foetus's sex during the pregnancy using pre-natal diagnosis, followed by abortion of the foetus if it proves to be of the undesired sex.⁶ The overture to this discussion was a television programme, the implication of which was that abortion is too easy in the Netherlands. In the programme, two abortion practitioners stated that they refrained from any moral judgement and accepted any motive underlying a woman's wish for an abortion. Moreover, these doctors stated that the fact that the foetus was the 'wrong' sex was no reason to refuse a termination. The debate was further fuelled when the Minister of Health intervened with a clear statement that she considered SSA permissible in the Netherlands. The public debate then concentrated on the Minister's statement.

If SSA is to be applied, the sex of the foetus has first to be determined. SSA is thus closely related to the rise of pre-natal diagnosis (PND) in genetics, notably chorionic villus sampling, amniocentesis or ultrasound.⁷

In general, pre-natal diagnosis and selective abortion are driven by the desire to prevent illness. As some illnesses are sex-linked, the debate in medical ethics concerns what genetic diseases or congenital anomalies are so serious that they justify PND and selective abortion. As the sex of a child is not in itself considered an illness, sex can never be a justification for PND and abortion in medical ethics. The policy of the professional groups involved in PND in the Netherlands, and in European countries generally, is therefore not to grant requests for sex-selective tests. It is still possible, however, to discover the sex of the foetus. From 36 years onwards – 35 years in most other European countries – age is a valid medical indication for chorionic villus sampling or amniocentesis. It is common practice among genetic counsellors to inform the woman concerned of the foetus's sex when she is told about the presence or absence of a disorder or anomaly. In regular healthcare, ultrasound is carried out on medical indication only. The policy here is not to disclose the foetus's sex, because determining sex using ultrasound is less dependable than through the other two techniques. However, women of any age can go to a private clinic which will perform ultrasound scanning on request. No medical indication is required, and these clinics are usually willing to disclose the sex of the foetus. It is, therefore, technically possible, and depending on the mother's age or the technique used, legally permissible to determine the sex of the foetus.⁸

According to Dutch law, abortion is only permitted if there is risk to the mother's life or health, or if the woman is in a critical situation which cannot

be resolved in any other way. This 'critical situation' includes psychosocial distress. As it proved impossible to formulate general criteria for the definition of a critical situation, the legislature sought refuge in procedural measures to guarantee cautious decision making in individual cases. The woman is legally obliged to take five days' time to reflect. The practitioner is responsible for determining through interview whether the woman is genuinely convinced that an abortion is the only way to resolve the problem and to inform her about alternatives to abortion.⁹ Because the law does not define what constitutes a critical situation, ultimately it is the woman who decides, thus making SSA legally possible. In most European countries women have, as in the Netherlands, a legal right to decide on the termination of pregnancy, or the abortion laws in these countries recognize rather broad grounds for permitting abortion, including sociomedical reasons, like the UK (except Northern Ireland) (Outshoorn, 1996). As the Netherlands is, compared with other European countries, rather reluctant in offering PND to pregnant women, it follows that SSA is legally possible in most European countries (Hui, 2003).

THE PUBLIC DEBATE

The question of whether Dutch law on abortion is too liberal thus boils down to the question of whether the definition of a critical situation is too liberal. The then Dutch Minister of Health, Els Borst, made the following statement during a television program on 17 January 1997, which was widely reported in the press:

I can imagine that a woman from a foreign culture finds herself in such a critical situation when she has a daughter for the third or fourth time and her marriage, or even her life, is at stake. (*De Volkskrant*, 1997a)

She adhered to this statement during questions in parliament. Ms Borst, as a reputed feminist and liberal, repeated: 'I can imagine a critical situation like that, and it's not easy for me to say this' (*De Volkskrant*, 1997c).

Her statement provoked considerable reaction.¹⁰ Unsurprisingly, these were predominantly negative. Many Christians reject the notion of abortion altogether; some believe it should be allowed only if the life or health of the mother is threatened. Many saw the issue as yet another example of legislative deficiencies in protecting unborn life. The president of the Dutch Society of Abortion Practitioners, Dr Beekhuizen, pointed out that moral dilemmas about abortion are closely related to developments in pre-natal diagnosis. Beekhuizen opined that when pre-natal testing is done, only medically relevant information should be transmitted to the woman. This information would not generally include the sex of the foetus. Due to his

steadfast belief in sexual equality, he found SSA difficult to perform (Trouw, 1997). Numerous other participants in the debate argued that the Minister's policy clearly overstepped a boundary. They advanced arguments pointing to the fact that whilst some immigrants may prefer a son to a daughter, this preference does not lead them to consider SSA as an option and that, in practice, it does not appear to occur. It was further alleged that in the absence of evidence, speculation functions to stigmatize immigrant groups. The joint national organizations of and for black, migrant and refugee women, and the Vrouwenberaad Ontwikkelingssamenwerking (Women's Council on Development Aid), sent an open letter to the Minister (Vrouwenberaad Ontwikkelingssamenwerking, AISA, TARGUIA and TIYE International, 1997). This letter pointed out that the Minister's statements betrayed a misplaced cultural relativism. They claimed that the right of self-determination and the principle of non-discrimination on the basis of sex are universal. Consequently, whenever a local culture or tradition is in conflict with these principles, the principles should be respected above tradition. The signatories to the open letter added that the Minister's statement showed a rigid notion of culture; it appeared to indicate cultures cannot change, or that everyone thinks in the same way about his or her culture, or that minority women do not oppose certain misogynous traditions within their own cultures. The Minister's statement, according to the open letter, is thus 'a smack in the face for many women in the Netherlands who campaign for gender equality and equivalence in their own community'. The women's organizations that signed the open letter wanted to retain intact the right to self-determination, but they also considered that the principle of sexual equality should not be made relative. It is unclear whether they failed to see the contradiction, as clearly one cannot have both here, or thought that women do not voluntarily choose a SSA, as a columnist in a national newspaper (*NRC Handelsblad*), Anil Ramdas, assumed (Ramdas, 1997). He argued that it would seem in this case as if individual freedom (the woman decides, for example, not to have a daughter) clashes with the principle of equality between men and women. But, he continued, it only *seems* that way. If a woman does not want a child because she does not want to interrupt her career, or because she is unemployed and will have to take care of the child entirely by herself, then these are critical situations experienced as such by the individual. What we think about these personal motives is irrelevant: 'If the motive is serious enough for her, who are we to contradict her?' The situation is different, he argued, in the case of a Muslim woman who does not want any more girls. In that case 'it is not a matter of an individual desire, but of a culturally imposed demand: thou shalt bear males', and, according to Ramdas, we should not sympathize. This wish is the result of the 'male chauvinism of Islam' and should therefore be rejected. What is more, by showing sympathy, 'the Minister abandons Islamic women and sticks a knife into the back of the

incipient emancipation movement in that culture' (Ramdas, 1997). So, although he followed a somewhat different route, Ramdas came to the same conclusion as the signatories of the open letter. The opponents of Borst's cultural relativism were also in agreement on the solutions. The open letter from the women's organizations called for policy that tackles the underlying cause of the desire for abortion. This cause lies in 'a situation of injustice and discrimination against women and girls'. Arnold Koper, a columnist in another national newspaper, did not beat about the bush and stated firmly that 'if a culture is sexist, it should be opposed' (Koper, 1997).

The Minister's reaction to the debate was a commitment to investigate whether abortion clinics had stretched the notion of a 'critical situation' beyond tolerance. That investigation has since been completed and there appears to be no question of elasticism; the procedures are correctly employed, and hence there is no reason to tighten the abortion law (de Boer, 1997).

PRAGMATISM RECONSIDERED

The issue seemed settled. Yet, there remain many unanswered questions. The first is: does the practice of SSA occur in the Netherlands? There is little information available. According to the only national survey on the issue, the majority of the Dutch population rejects SSA. The non-representative data on cultural minorities suggest that certain cultural minorities do have a cultural preference for sons, and that women are condemned if they have not (yet) produced a boy. But it is unclear whether they are prepared to accept SSA (Veldkamp Marktonderzoek, 1996). Hence, Ramdas's assumption that Muslims especially would be inclined to practice SSA is not empirically founded. However, the background to the Minister's statement was that she was confronted with a testimony of an abortion practitioner. This doctor said she had received requests for SSA and had performed them (Lower Chamber, 1997). So, the practice clearly does occur in the Netherlands. This gives rise to the next question: does SSA constitute a moral wrong? In the eyes of the participants in the public debate, the majority of the Dutch population and the Minister, it does.¹¹ The question is why is it wrong?

In countries where SSA is a widespread phenomenon, such as India and China, it is the expression of a cultural view in which women are of less value than men (see Warren, 1985; Parikh, 1990; Arora, 1996). This misogyny is why most people in the Netherlands condemned SSA as morally wrong. Yet, as Mary Anne Warren rightly observes, 'an action may be morally questionable, and yet something which the agent has a moral

right to do' (Warren, 1987: 195). Didn't feminists think that women have a right to choose?

Although the Dutch abortion law does not reflect a straight pro-choice position, let us for the sake of argument assume that it is pro-choice. Even a policy that takes women's right to choose as paramount does not automatically mean SSA would be permissible. This is because in liberal pro-choice justifications, the right to choose is never understood as an unqualified right to do with one's body as one pleases. It is usually assumed that in the early stages the foetus is not a person and therefore has no moral rights (to life and to equal treatment). However, in the later stages of development, when the foetus becomes sentient, which is somewhere in the second trimester, although not yet a constitutional person, it does have moral standing (see Sumner, 1997). SSA can be performed in the second trimester. It is therefore unclear whether the foetus should be considered as possessing the capacity for sentience. If the foetus is not yet considered a sentient being, then the only constitutional person present in this case would be the woman. Therefore, her right of autonomy should take precedence. If the foetus is considered to have acquired sentience, then an abortion would need a strong justification. Could a cultural sex preference possibly qualify as a compelling enough reason? In the case that the Minister referred to in her challenged statement, there was mention of threats; apparently the woman had reason to fear for her marriage or her life. What may lay behind this? Let us turn to India.

In India, where SSA takes place on a large scale, it is in particular the urban middle classes that take to the practice (see Retherford and Roy, 2003, UNFPA, 2003).¹² An effect of India's population control campaigns is that a large family has become unfashionable among these classes. The ideal family size is two children. SSA is a way to ensure that they have a small family, yet at least one son (see Arora, 1996; Patel, 1996). A reason for son preference is that daughters are considered an economic burden, basically because they leave the family when they marry and must be provided with an expensive dowry, while sons are expected to look after their parents in old age (see Narayan, 1997). Next, in a family that already has daughters, the birth of yet another daughter may decrease the prospects of these daughters to make a good marriage, because the family lacks the economic resources to provide their daughters with the dowry this requires, and thus bring shame on the household (Patel, 1996). Women that decide on an abortion are said to be responding to severe family pressure to produce a son (see Parikh, 1990). Given this background, one is inclined to agree with Warren when she states that 'in a highly patriarchal society, sex selection (. . .) may be an extremely compelling reason [for abortion] from the viewpoint of the individuals who must make the decision' (1985: 105). In a similar vein, Gail Weiss argues that it is family interests and community normative practices that make it appear to be a desirable and, for many, the

only viable option (Weiss, 1995: 202, 213). SSA would then be allowed; there would be a 'critical situation' as intended by the Dutch abortion law.

On the other hand, this perspective adds a particularly bitter edge to Rosalind Petchesky's remark that 'the "right to choose" means very little when women are powerless. (...) Women make their own reproductive choices, but (...) they make them under social conditions and constraints which they, as mere individuals, are powerless to change' (Petchesky, 1980, quoted in Katz Rothman, 1991: 174). We should be wary therefore, as Dolly Arora warns, of techniques like SSA. What appears initially to increase individual choice, can, in effect, become an instrument of male control over the reproductive rights of women in patriarchal and authoritarian cultures (see Arora, 1996: 421). As the technology that facilitates sex-selective abortion does not lead to women's increased freedom and well-being, the appropriate response would then be to withhold access to it. SSA would simply not be an option that required consideration. This is also suggested by Warren, when she writes: 'the more powerful the social pressures upon women to have sons, the more room there is to doubt that they are really free to choose or reject SSA, and, perhaps, the stronger the argument for prohibition' (1987: 195, 196).

TOLERANCE, AUTONOMY, AND OPPRESSION

Most proponents of multiculturalism do not advocate unconditional license for a cultural group to live according to its own traditions. Tolerance is, amongst other things, conditioned by the right to autonomy; individual group members must be free to choose whether or not to follow tradition. Discussing female circumcision, Bhikhu Parekh, for instance, argues that we should not allow it to be practised on children (2000: 275–8). But when it concerns adult female circumcision, we should make an exception, 'when the demand for it is genuinely voluntary and based on deeply held moral beliefs' (2000: 279). So, for multiculturalists, an important criterion for the tolerance of a cultural practice is whether this practice is freely chosen.

It could be supposed that SSA is a medical intervention which women would not request voluntarily. Ramdas argued this point (see above). But this seems very much like saying that if a woman takes a decision that runs counter to the majority culture's sense of what is right and just, it cannot be her decision. It must be imposed by an outside source – her husband, her culture, her religion. As a result, we need not take her wishes seriously. In contrast, we should take seriously the decisions of women who, for instance, are pressured by poverty, as in Ramdas' example of an unemployed woman seeking an abortion. Ramdas' argument assumes that western women are fully autonomous in their decision-making, while women from non-western

cultures, as victims of their culture, are not. We could counter-argue that all of us are shaped by our cultures and furthermore that not all western women are as fully autonomous as he assumes. And that his example of the unemployed woman illustrates once again that we need social rights to turn rights to freedom into substantive rights. However, this counter-argument does not answer the question he raises about the moral agency of women from non-western cultures.

In the case referred to by the Minister, the abortion practitioner had established in the individual interview prescribed by the Dutch abortion legislation that the woman concerned was genuinely convinced that she wanted this abortion. Still, we may have serious doubts whether her freedom to choose was not curtailed (as she apparently had to fear for her marriage and even her life). From this I would not infer, however, as Ramdas did, that she was but a brainwashed victim of her culture, who therefore may be ignored as a moral person. There is, first, the social and cultural context to consider. With Weiss, I would like to keep open the possibility that women who decide to undergo a SSA do so in good faith, because they think that by doing so they are saving their family from devastating economic burden (cf. Weiss, 1995: 214).¹³ Second, women who contemplate SSA, experience, most likely, great family pressure to comply. This means, however, that their right of autonomy is curtailed, not their mental capacity for autonomy.¹⁴

Yet, the question remains: what weight should we give to these considerations? Obviously, the choice for a SSA is made under severe constraints. Should this lead to an amendment of the abortion law in the Netherlands so as to prevent SSA?

PREVENTATIVE MEASURES AND THE WEIGHT OF CONTEXT

SSA violates the principle of sexual equality; it denies female foetuses an equal right to life. It therefore constitutes a moral wrong in the eyes of the Dutch, including mine. Yet, from this does not follow that the abortion law must be tightened. This is because the principle of sexual equality conflicts in this case with the autonomy of women. Tightening the abortion law so as to prevent SSA would require the formulation of general criteria for what counts as a morally acceptable reason for an abortion, as well as require the scrutinizing of all women's reasons for choosing abortion. This would amount to a major violation of the autonomy of all women that request an abortion.

This seems an undesirable option. The rationale of current Dutch practice is that it tries to *prevent* SSA not by restricting access to abortion, but by *restricting access to pre-natal diagnostic technology* that determines

the sex of the foetus. This does not fully exclude misuse of the abortion law to obtain a SSA. So it only partially succeeds in upholding the principle of sexual equality. It clearly does not give equal respect to cultures that do not recognize the equality of men and women. However, it does acknowledge that women have the right to control their own bodies. Given the likelihood that in the Netherlands SSA hardly occurs, the current Dutch policy practice seems to strike a reasonable balance between the different competing principles.

In the Indian context, however, current Dutch rules and legislation on PND and abortion would clearly be insufficient. As mentioned before, SSA is widely practised in India, even to a point that, in some Indian states, the male–female ratio is adverse (see UNFPA, 2003). We know that individual women are pressured to have a SSA, while as compared to the Netherlands their exit-options are limited, as there are hardly any institutional structures that enable women to leave oppressive domestic relationships (see Narayan, 1997). Given this situation, there is ample reason for stricter legislation. In fact, India has sought to ban SSA – as, in the Netherlands, not through tightening the abortion law, but through restricting access to PND. PND may only be used for the purpose of detecting genetic anomalies or other sex-linked disorders of the foetus. Private clinics have to be registered and monitored. Moreover, the Indian legislature has recently sharpened the PND Act through an amendment that came into force from February 2003.¹⁵ In India, it is lack of public support for the law, i.e. the strong cultural preference for sons, and in relation to that problems with the enforcement of the law, that explains why SSA is still so widely practised.

Hence, while we grudgingly tolerate in the Dutch context that some women may misuse PND and the abortion law for obtaining a SSA, this tolerance is impossible to uphold in the Indian context. One might well ask if this is not a morally inconsistent position to hold. Why this does not amount for contextualists to moral inconsistency is well explained by Parekh. He argues:

We might feel that in the light of a society's history, traditions of inequality of power and cultural ethos, . . . practices [like voluntary adult female circumcision, polygamy, sale of body parts or *sati*] are likely to be misused, fail to realise their intended purpose, or lead to unacceptable long-term consequences, and should be banned. Since consequences play an important part in our assessment of a practice and since they are historically contingent, we might ban it in one society, or at one time in its history, or under one set of circumstances, but not another without incurring the charge of moral inconsistency. (Parekh, 2000: 293–4)

In the Dutch context we can afford to live with rather lenient rules on PND, while in the Indian context clearly stricter rules are required.

CONCLUSION AND DEBATE

Trevor Phillips was right to note that Dutch tolerance of immigrant minority cultures has declined in the past period. That is not to say that state interference in the traditions of cultural minorities is never in place. Certain minority practices do violate their female members' rights and interference might in some cases be warranted.

SSA is practised, albeit probably only on a very small scale, by immigrant minorities in the Netherlands, probably not by Muslims. Whether SSA is practised in other European countries, and on what scale, we do not know, as it is not registered. We do know, however, that in other western countries with minorities from countries where SSA is prevalent, some of these immigrants desire SSA (for the USA see Weiss, 1996, for Canada, see Minister of Government Services Canada, 1993). We may expect therefore, as the legal rules on PND and abortion in most European countries do not exclude SSA, that it does occur.

In the Dutch debate on SSA, a cultural preference for sons was construed as an irrational preference, springing from a backward sexist culture, and minority women got depicted as victims of that culture. Yet, a contextual analysis of SSA leads to a dramatically different picture. My excursion into the practice of SSA in India showed some of the intricacies of culture, modernity and gender inequality. SSA is possible, first, because of the existence of modern PND techniques, and practised not by the poorest, most backward part of the population, but by the urban middle class. Second, the dowry system plays an important role in the motives of Indian women to choose a SSA. Yet dowries have become so expensive because an increasingly market-dominated modern economy led to the commercialization of the dowry system (Narayan, 1997: 110–11). If we take into consideration the wider context in which Indian women choose a SSA, their motives appear neither irrational nor immoral. SSA is morally wrong, yet individuals that choose SSA are not necessarily morally inferior to those who do not (have to) make that choice.

When I argued that it is not desirable to restrict access to abortion in the Netherlands, this is not because I think that requests for a SSA spring from a harmless cultural tradition. SSA, by not granting female foetuses an equal right to life, constitutes in my view a moral wrong. Yet, the moral dilemma for the legislature is that amending the abortion law, so as to make SSA impossible, would inevitably amount to a serious infringement of the autonomy of all women that ask for an abortion.

I argued that preventing SSA by restricting access to abortion is therefore an undesirable option and that the legislature in the Netherlands, as in India, was correct to seek to ban SSA not by restricting access to abortion, but to PND. The difference is that Dutch rules on PND are rather more

lenient than those in India. Again, I think this is justified, because in the Dutch situation, SSA in all likelihood hardly occurs, while in India it is practised on a large scale. One might ask if we should condone in the Netherlands what we try to fight with all our power in India. I argued that we may – as in a contextual approach, non-moral considerations may co-determine our moral judgement.

While the current Dutch rules and legislation on PND and abortion do not require any change, this is not to say that all is peaches and cream in minority cultures in the Netherlands. We know no more about the woman that the Dutch Minister referred to in her statement than that she had to fear for her marriage or even her life if she did not consent to a SSA. Neither do we know why the abortion practitioner that interviewed her still considered her choice to be a free choice. We do know, however, that a decision to undergo a SSA is usually taken under severe social constraints and that the roots of the problem lie, as the women's organizations in the Netherlands correctly pointed out, in the patriarchal cultural traditions that make daughters the undesired sex. PND legislation does not tackle this cause. Similarly, the PND Act in India is ineffective because it lacks public support; people seek ways to circumvent it. Of equal importance therefore is public social policy aimed at tackling the causes of son preference, like the dowry system, against which the Indian government has campaigned (Narayan, 1997). It is encouraging therefore that son preference is declining in almost all Indian states (Retherford and Roy, 2003: 4), as it suggests that these policy measures do have an effect. To come back to the woman in the Dutch case: we do not know about her circumstances, but it is easy to imagine that an isolated immigrant woman is not in a situation to make full use of her right of autonomy. Obviously, more is needed than merely the prescribed interview to ensure that her choice is freely made. To enhance her autonomy against her family's pressure, her isolation should be lifted, so that she is informed about her rights. These should minimally include a secure residence status, so that she knows that, in case of a divorce, she is allowed to stay, and retain custody rights over her other children.

Lastly, let me come back to the relation between feminism and multiculturalism. SSA is a case in which autonomy and gender equality conflict and one in which respect for cultural diversity conflicts with gender equality. If we put the autonomy of women first, then we should also accept a woman's possible culturally inspired desire for a SSA. Respect for cultural diversity is thus linked to autonomy. As autonomy and equality are both principles feminists endorse, contrary to my initial intuition, it is rather difficult to perceive of this case as one in which feminism and multiculturalism conflict. The general message this case holds for me is that feminism cannot be an a priori moral position that tells us what is right and what is wrong. In each case, reaching a coherent feminist position requires hard

work. The claim that feminism and multiculturalism conflict is wrong simply because it is too general. So, yes, we need moral arguments, but no, we can do without fixed moral positions.

Acknowledgements

Research for this article was carried out within the framework of the Incentive Programme of Ethics and Policies, which is supported by the Netherlands Organisation for Scientific Research. A version of this article was presented at a conference titled 'Gender Equality, Cultural Equality: European Comparisons and Lessons', organized by the Gender Institute of the London School of Economics, 17 October 2003. I want to thank the anonymous reviewers for *Ethnicities* for their thoughtful comments on an earlier version of this paper.

Notes

- 1 He must be misinformed here, because to my knowledge there was never any policy intention to combat arranged marriages. But there is policy, which is now being implemented, to discourage marriages with a spouse from the (non-EU) country of origin.
- 2 As far as the schools are concerned this is a rather complex claim, because there are several public/private distinctions to consider. In the case of denominational, i.e. non-public, schools, their right to maintain their religious identity is understood to include the right to forbid the headscarf. Public schools do not have that right. There was, at the time of Phillips' visit, discussion about the *niqaab*, a form of veiling that covers the face. The Minister of Education issued a guideline that allows educational institutions, public and private, to forbid the wearing of the *niqaab*. The main reason for schools to forbid the *niqaab* is that the bearer excludes herself from the school community because she no longer has a public identity (Duursma, 2003).
- 3 Pim Fortuyn was the leader of a political party, the Lijst Pim Fortuyn (LPF), who considered Islam 'a backward culture', who opined that the first article of the Dutch constitution, i.e. the anti-discrimination article, should be removed and who was assassinated, in May 2002, by an animal welfare activist. After his death, the LPF overwhelmingly won national elections with an anti-immigration program. Although the decline of the LPF then set in quickly, its initial rise is considered by many in the Netherlands as an expression of the dissatisfaction of the public with Dutch politics, with Dutch immigration and Dutch minority politics in particular. The minority policy was perceived as being too soft, minorities would be 'pampered' and it was suggested that under the banner of respect for cultural diversity tolerance had gone too far. At this moment a parliamentary investigation has been completed about the failing of Dutch minorities policy.
- 4 Yet this appears to be a gradual process, which is not necessarily occasioned by recent events. The polls cover a period from 1991 to 2002. It is still too early to measure a 'Fortuyn' effect, but there is no sudden dip in the attitude of the Dutch towards minorities between 2000 and 2002. Hence, there is no visible 'September 11 2001' effect.

- 5 See, for a more extensive account, the mentioned literature and also Saharso and Bader, 2004.
- 6 SSAs are usually performed in the second trimester of pregnancy because pre-natal diagnosis cannot be conducted earlier. See for technical information Saharso, 1999.
- 7 Other PND techniques are the triple test and the measuring of the cervical crease. The first is a blood test, while the second is done through ultrasound. Their aim is to detect serious genetic diseases or congenital anomalies. As the predictive value of these tests is between 60 and 80 percent, the standard procedure is, when the test results point to the presence of an anomaly, to further determine this through chorionic villus sampling or amniocentesis. Therefore I shall not further consider the triple test and the measuring of the cervical crease.
- 8 It is currently being discussed in the Netherlands whether the rules for commercial clinics that offer ultrasound, triple tests and measuring of the cervical crease should be tightened. This is inspired not by the wish to make it impossible to detect the foetus's sex, but to prevent these clinics from referring pregnant women wrongfully (based on a false-positive test result) for further PND in a hospital. This not only leads to unnecessary expenditures on public health, but also to unnecessary miscarriages, as amniocentesis and chorionic villus sampling do carry a certain risk (Peeperkorn and de Visser, 2003).
- 9 Note, however, that the Dutch abortion law does not reflect a straightforward pro-choice position. The law is a hard-won compromise between the liberals and social democrats, who endorsed a pro-choice position, and the Christian democrats, who endorsed a pro-life position. According to the law, it is the woman who decides, but at the same time the procedures of the law (the requirement of a justification in terms of the woman's life or health, the five-day waiting period that the woman is obliged to observe) recognize the view that at every stage of development the foetus does have a moral status that should be weighed alongside (but not necessarily outweigh) the woman's interest in controlling her own body. For a full historical account of the Dutch abortion law, see Outshoorn 1986.
- 10 I have examined the reactions in three national daily newspapers that, when taken together, offer a reasonable picture of the political spectrum in the Netherlands: *Trouw* (Christian), *De Volkskrant* (social democratic) and *NRC Handelsblad* (liberal). In addition, I consulted reactions in *Contrast*, a weekly magazine on multicultural society; an open letter dated 20 January 1997 sent to the Minister by the Vrouwenberaad Ontwikkelingssamenwerking (Women's Council on Development Aid), AISA, TARGUIA and TIYE International, which together form the most important national organizations of and for black, migrant and refugee women; lastly, the reaction of the Pro Life (Consultative) Platform (PLOP), contained in a letter dated 29 August 1997 sent to the Permanent Parliamentary Commission on Health in connection with the investigation commissioned by the Minister on whether there is any need to tighten up the law on abortion (PLOP, 1997). The majority of anti-abortion groups are represented in PLOP.
- 11 Minister Borst again made it clear that she considers the use of pre-natal technology for sex selection on non-medical grounds as an undesirable

- development through her decision, taken in June 1998, to close down the gender clinic that offered sperm treatment with assisted insemination – which is yet another way to influence the sex of the foetus (*De Volkskrant*, 1998).
- 12 It is estimated that over a million SSA's were performed in India during the period 1981–91. One should realize, however, that, as Das Gupta and Mari Bhat (1998: 90) remind us, statistically this figure is not very large – it represents less than 1 percent of female births in that decade. Still, we should not feel reassured by this, as it means that, as again Das Gupta and Mari Bhat (1998) point out, 'excess female child mortality after birth continues to be the dominant practice in removing female children in India'.
 - 13 Weiss herself therefore prefers to see SSA as a 'moral mistake', so as to acknowledge that individuals who have chosen SSA are not acting in an irresponsible manner, but 'are making their decision in the light of moral considerations regarding how best to secure the material interests of their families' (Weiss, 1995: 214).
 - 14 This distinction between the right to, and the capacity for, autonomy is further elaborated in Saharso (2000).
 - 15 Under the new Act, a person who seeks help for sex selection risks imprisonment for a three-year period and can be required to pay a fine of Rs. 50,000. The medical practitioner involved risks the State Medical Council removing his or her name from the Council's register (see UNFPA, 2003).

References

- Arora, D. (1996) 'The Victimising Discourse: Sex-Determination Technologies and Policy', *Economic and Political Weekly* 17 February: 420–4.
- Bagley, C. (1973) *The Dutch Society: A Comparative Study in Race Relations*. Oxford/London: Oxford University Press.
- Benhabib, S. (2002) *The Claims of Culture: Equality and Diversity in the Global Era*. Princeton, NJ/Oxford: Princeton University Press.
- Boer, M.G. de (1997) *De WAZ in de praktijk: een onderzoek naar de naleving van de Wet afbreking zwangerschap*. Onderzoek op verzoek van de Minister van Welzijn, Volksgezondheid en Sport (The law on the breaking off of pregnancies in practice: An investigation into the observance of the Law on the Breaking Off of Pregnancies. Investigation at request of the Minister of Public Health, Welfare and Sport). Rijswijk: Inspectie voor de Gezondheidszorg (Inspection for Public Health).
- Carens, J.H. (2000) *Culture, Citizenship and Community: A Contextual Exploration of Justice as Evenhandedness*. Oxford: Oxford University Press.
- Dagevos, J., M. Gijsberts and C. van Praag, eds (2003) *SCP Rapportage Minderheden 2003. Onderwijs, arbeid en sociaal-culturele integratie* (SCP Report Minorities 2003. Education, work and social cultural integration). Den Haag: SCP.
- Das Gupta, M. and P.N. Mari Bhat (1998) 'Intensified Gender Bias in India: A Consequence of Fertility Decline', in M. Krishnaraj, R.M. Sudarshan, A. Shariff (eds) *Gender, Population and Development*, pp. 73–93. Delhi: Oxford University Press.
- De Volkskrant* (1997a) 'Artsen zouden abortuswet overtreden' (Medical practitioners would break the abortion law), 17 January: 13.

- De Volkskrant* (1997b) 'Borst handhaaft uitspraak abortus' (Borst keeps to statement about abortion), 22 January: 3.
- De Volkskrant* (1997c) 'Minister Borst houdt uitspraken over abortus om geslacht overeind' (Minister Borst upholds statements about SSA), 22 January: 8.
- De Volkskrant* (1998) 'Kliniek voor geslachtskeuze moet per 1 oktober sluiten' (Clinic for sex choice must close down by 1 October), 20 June: 21.
- Duursma, M. (2003) De jacht op codes; het problematische verbod op Lonsdale en andere 'extreem rechtse' merken (The hunt for codes; the problematic ban on Lonsdale and other ultra-right brands), *NRC Handelsblad*, 27 September: 29.
- Hui, P. (2003) 'Babysterfte vergt meer onderzoek' (Baby mortality requires more research), *De Volkskrant* 4 December: 2.
- Katz Rothman, B. (1991) 'Prenatal Diagnosis', in J.M. Humber and R.F. Almeder (eds) *Biomedical Ethics Reviews 1991. Bioethics and the Fetus: Medical, Moral and Legal Issues*, pp. 171–86. Totowa, NY: Humana Press.
- Koper, A. (1997) 'Flinterdunne opwinding' (Paperthin excitement), *De Volkskrant* 25 January.
- Kymlicka, W. (1995) *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Oxford: Clarendon Press.
- Lower Chamber of the Netherlands Parliament (1997) Vragenuur (Question hour), 21 January, TK 42–33.
- Minister of Government Services Canada (1993) *Proceed with Care: Final Report of the Royal Commission on New Reproductive Technologies*, Vol. 2 Ottawa: Minister of Government Services Canada.
- Narayan, U. (1997) *Dislocating Cultures: Identities, Traditions and Third World Feminism*. New York/London: Routledge.
- Okin, S. Moller (1999) 'Is Multiculturalism Bad for Women?', in J. Cohen, M. Howard and M.C. Nussbaum (eds) *Is Multiculturalism Bad for Women? Susan Moller Okin with Respondents*, pp. 9–24. Princeton, NJ: Princeton University Press.
- Outshoorn, J. (1986) 'The Feminist Movement and Abortion Policy in the Netherlands', in D. Dahlerup (ed.) *The New Women's Movement: Feminism and Political Power in Europe and the United State*, pp. 64–85. Beverley Hills/London: Sage.
- Outshoorn, J. (1996) 'The Stability of Compromise: Abortion Politics in Western Europe', in M. Githens and D. McBride Stetson (eds) *Abortion Politics: Public Policy in Cross-cultural Perspective*, pp. 145–64. London: Routledge.
- Parekh, B. (2000) *Rethinking Multiculturalism: Cultural Diversity and Political Theory*. Houndmills/London: Macmillan.
- Parikh, M. (1990) 'Sex-Selective Abortions in India: Parental Choice or Sexist Discrimination?', *Feminist Issues* 10(2): 19–32.
- Patel, R. (1996) *The Practice of Sex Selective Abortion in India: May You Be the Mother of a Hundred Sons*. UCIS paper no. 7 [<http://www.ucis.unc.edu/about/pubs/carolina/abortion.pdf>].
- Peeperkorn, M. and E. de Visser (2003) 'Pret-echo van foetus aan banden' (Fun-ultrasound limited), *De Volkskrant* 22 November: 1.
- Petchesky, R. (1980) 'Reproductive Freedom: Beyond a Woman's Right to Choose', *Signs: Journal of Women in Culture and Society* 5: 661–85
- PLOP (Pro Life Overleg (Consultation) Platform) (1997) 'Brief aan de voorzitter

- en de leden van de Vaste Kamercommissie voor Volksgezondheid, Welzijn en Sport betreffende de Wet Afbreking Zwangerschap' (Letter to the president and the members of the permanent parliamentary commission for Public Health, Welfare and Sport), Amersfoort, 29 August.
- Ramdass, A. (1997) 'Borst laat islamitische vrouwen in de steek' (Borst lets down Islamic women), *NRC Handelsblad* 25 January: 7.
- Retherford, R.D. and T.K. Roy (2003) *Factors Affecting Sex-Selective Abortion in India and 17 Major States*, National Family Health Survey Subject Reports No. 21. Mumbai: International Institute for Population Sciences/Honolulu Hawaii; USA: East-West Center Program on Population.
- Saharso, S. (1999) 'Women's Right of Choice?! A Reflection on Women's Rights, Cultural Toleration and Public Morality', *Acta Politica* 34(4): 331–50.
- Saharso, S. (2000) 'Female Autonomy and Cultural Imperative: Two Hearts Beating Together', in W. Kymlicka and W. Norman (eds) *Citizenship in Diverse Societies*, pp. 224–42. Oxford: Oxford University Press.
- Saharso, S. and V.M. Bader, eds (2004) 'Contextual Morality and Ethno-religious Diversity' special issue, *Ethical Theory and Moral Practice* 7(2).
- Sumner, L.W. (1997) 'Abortion: A Moderate View', in James E. White (ed.) *Contemporary Moral Problems* (5th edition), pp. 158–69. St Paul, MN: West Publishing Company.
- Trouw (1997) 'Abortusarts: Een foetus, hoe klein ook, heeft waarde' (Abortion medical practitioner: A foetus, however small, has value), 25 January.
- UNFPA (United Nations Population Fund) Office of the Registrar General and Census Commissioner, India, Indian Ministry of Health and Family Welfare (2003) *Missing ... Mapping the Adverse Child Sex Ratio in India*. [<http://www.unpfa.org.news>].
- Veldkamp Marktonderzoek (Veldkamp Market Research) (1996) *Geslachtskeuze om niet-medische redenen: De mening van de Nederlandse bevolking*. (Sexchoice for non-medical reasons: The opinion of the Dutch population). Den Haag: Rathenau Institute and the Platform Wetenschap en Ethiek (Platform Science and Ethics).
- Vrouwenberaad Ontwikkelingssamenwerking (Women's Council on Development Aid), AISA, TARGUIA and TIYE International (1997) *Open Brief aan Minister Borst* (Open Letter to Minister Borst), Oegstgeest, 20 January.
- Waard, P. de (2003) 'Britse adviseur schrikt van intolerantie in Nederland', (British advisor shocked by intolerance in the Netherlands), *De Volkskrant* 2 July: 4.
- Walzer, M. (1983) *Spheres of Justice: A Defence of Pluralism and Equality*. New York: Basic Books.
- Warren, M.A. (1985) *Gendercide: The Implications of Sex Selection*. Totowa, NY: Rowman and Allanheld.
- Warren, M.A. (1987) 'A Reply to Holmes on Gendercide', *Bioethics* 1(2): 189–98.
- Weiss, G. (1995) 'Sex Selective Abortion: A Relational Approach', *Hypatia* 10(1): 202–17.
- Williams, M. (2000) 'Toleration Canadian Style: Reflections of a Yankee Canadian', in R. Beiner and W. Norman (eds) *Canadian Political Philosophy*. New York/Oxford: Oxford University press.

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Culture or inequality in sex-selective abortion?

A response to Sawitri Saharso

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Sawitri Saharso's article on sex-selective abortion amongst minority populations in the Netherlands comes at an important moment: immigration and the issue of integration of immigrant and minority populations occupy a central place in both public discourse and policy-making European-wide. Indeed, the issue of immigration and integration has played a significant role in election outcomes across Europe. Saharso goes to the heart of the matter in addressing the role of women and gender, which occupies a pivotal place in the debate over immigration. Not unlike the colonial era, when the perceived oppression of women in colonized regions was used as a benchmark of the barbarity of that culture in contrast to the modernity of the West, today, a similar process is occurring in the post-colonies. As Saharso points out, a concern with gender inequality often functions as a proxy for anti-immigrant and or anti-Muslim discourses and practices. She argues convincingly that feminism requires a contextual approach, one that allows no easy a priori moral positions. This approach leads her to suggest that access to abortion as well as pre-natal diagnostic techniques should be available equally to all women in the Netherlands, wherever they come from, and whatever they believe, and whether or not some choose to use it to abort female fetuses in favour of males. This call for equal access, she suggests, is largely because in the Netherlands, sex selective abortion has not been proven to be a common practice; hence women's right to autonomy trumps the risk of undermining sexual equality.

I generally agree with Saharso's conclusions, and, in particular, I agree with her suggestion to enhance immigrant women's ability to make choices by securing their residency status, and informing them of their rights, rather

than by enforcing targeted legal bans against diagnostic techniques. Because her intervention is such an important one, and because she goes a long way in putting policy on the right track, I want to build on her conclusions to suggest that an approach that looks at more salient aspects of the context, questioning the role of inequality and domination and not simply looking at culture, would further illuminate the debate around sex-selective abortion (SSA), while offering other possible solutions. What I see as an overemphasis on culture here derives from the framing of the argument: Saharso focuses on a discourse that posits feminism and multiculturalism as oppositional. Even though she ultimately and effectively demonstrates that this need not be the case, in laying these out as the parameters of the argument, she diverts attention from some of the more significant issues. Indeed, the framing often serves to replicate the same stereotypes that she works to undo. I will focus my comments on three issues.

First, I want to elaborate on how the feminism–multiculturalism opposition embedded in Saharso’s argument works to elide structural issues that shape so-called cultural practices. Even while stating that immigrant/minority women are not prisoners of their culture, for Saharso, culture still plays a central role in explaining SSA. She suggests that the roots of the problem (of SSA) ‘lie in the patriarchal cultural traditions that make daughters the undesired sex.’ Similarly, she claims that these women have a ‘culturally inspired desire for SSA.’ Indeed, Saharso sets up the problem as one of committing to ‘multicultural respect,’ without compromising gender injustice. Her contextual approach involves comparing the practice of SSA in the Netherlands to that in India, and demonstrating that the problem requires a different moral stance in the Netherlands, because of the small number of people practicing it. This allowance of SSA in the North stands in contrast to the prohibition against SSA in India which bans pre-natal diagnostic technology.

While Saharso argues convincingly that national context matters, what is not apparent is what, precisely, culture means, how it functions, why it can or should be compared across India and the Netherlands (the origin of those supposedly practicing SSA in the Netherlands is not mentioned), and what ‘multicultural respect’ involves. What is this culture that makes women commit SSA? Where are these patriarchal traditions from? The impression given is that they are static, fixed across geography and history, and the difference between India and the Netherlands is simply one of numbers. What is not clear is that other aspects of these women’s contexts shape their cultural practices, and that cultural practices are always contested, changing, and often contradictory: minority women’s practices are shaped as much by their class backgrounds, their immigration status, their minority status, whether they face discrimination and racism from the majority population, their literacy, and so on. They are also influenced by

global inequalities and disparities of power.¹ Focusing on a notion of culture and cultural respect as the main source of contention depoliticizes the question of why these women have become a focal point without significant evidence about SSA, ignoring the histories and legacies of colonialism and racism that now shape the imagery around Muslim and 'third-world' women. It also ignores the question of power and domination: what are the forces that help shape these women's lives – how do the global inequalities which lead to immigration shape their worlds, practices and choices? Indeed, it has been shown that the racism faced by minorities has often worked to engender practices that distinguish minority from majority, precisely as a form of agency and resistance.² Similarly, the rates of violence against women in immigrant communities have been shown to be correlated with powerlessness, racism and economic hardship: here, what immigrant communities hold in common is their structural position, not their supposedly violent or patriarchal cultures.³ Why is the line of moral questioning about SSA not focused on state violence, discrimination and disenfranchisement, forces that shape and often define cultural practices?⁴ If the issue of SSA is to be addressed, both morally and politically, it is necessary to broaden the contextual approach to examine not only the context in which culture happens, but what makes up cultural practices themselves. Indeed, we must examine the *specific* nature of patriarchies, as embedded in economic and geopolitical relationships.

Second, I will address the concept of moral autonomy as used in the article. Saharso asks whether non-western women make the choice 'freely' to have an SSA, i.e. whether non-western women have moral agency and autonomy. She suggests that non-western women's ability to make decisions autonomously is likely hampered by their families and family pressure; for this, women should be made aware of their rights to enhance autonomy 'against family pressure.' Thus she states that they are 'not necessarily morally inferior,' just without moral autonomy. I agree that it is critical to understand that immigrant women are often isolated and without access to the larger society, making them more vulnerable to many types of pressure – without resources, everyone's choices are limited. I would like to reframe the issue, however, to move it away from the implied notion that some women can live their lives outside of communities or families, indeed, that they can be autonomous individuals, apart from the particular and local, apart from the cultural and social. I am not interested in getting rid of moral judgment, nor the concepts of agency or freedom – I follow Wendy Brown when she says that despite the many challenges to the notion of the 'sovereign subject,' freedom remains a compelling concept, because it 'still marks the ground between lives which are relatively controlled by those who live them and those that are less so' (Brown, 1995: 5). However, I do join those who argue that we are all embedded in larger social, political and cultural networks – that we

are constituted by and through them – and thus I suggest that the moral autonomy Saharso is in search of here would be more useful if differently conceived. Positing the possibility of an individual outside the collective codes that we are all subject to threatens to re-inscribe the colonially derived notion that non-western women are more subject to their cultures than are western women, who are free. Culture is made visible as the constraining force for immigrant women, while erasing its role in Dutch women's lives: thus, for instance, when Dutch women have abortions, it is depicted as a choice made freely, based only on necessity – economic or medical. Culture goes unnamed, yet do cultural practices not shape what is understood as enough money to have a child, what a child needs to be healthy, and what, ultimately, constitutes the 'critical situation,' which by Dutch law legitimizes abortion?⁵ This notion of autonomy forecloses the idea that culture or other types of embeddedness can actually lead to agency or empowerment – what is at stake is power, not culture. Conceiving of people not only as socially embedded, but socially constituted opens new avenues by which to address the question of SSA: might women have more resources, and be freer or better able to control their lives by turning to different communities, or different kinship structures, rather than trying to stand tall as abstract, rights-bearing individuals? Indeed, the question then becomes in what does agency actually consist? Only once we know this can we work to enhance it.⁵

Taking an approach that acknowledges power, conflict and inequality is essential to understand not only the practice of SSA, but the debate around it, and what the stakes are in talking about or condemning it. Such an approach would acknowledge that multiculturalism as both a policy and discourse often obscures inequalities, putting culture in their stead. It would also help to explain what Saharso construes as a contradiction between the claim to self-determination and the claim to respect for the universal principle of sexual equality made by the joint national organizations of and for black, migrant and refugee women and the Women's Council on Development Aid, and what Saharso claims is their failure to see it as such.⁷ A different approach that moves beyond culture would show that these two are not, in fact, in conflict: rather, we are all embedded and certain conditions make it easier for us to make our own choices (i.e. to be self-determining). With the right conditions – with resources – both women and men might indeed make different choices. The argument is that self-determination and sexual equality both can and would co-exist under conditions that allow for substantive choices.

Third, as a counterpoint to this debate on SSA, which, as Saharso rightly states, re-inscribes the opposition between culture–tradition–oppression, and modernity–rationality–liberalization, it helps to acknowledge that the women choosing SSAs are in fact in many ways quintessential modern liberal subjects. They are using new technologies and scientific advances to

make choices and decisions about their bodies and their lives, and to act on them. While one may not agree with the practice of SSA, understanding these women as quintessentially modern suggests a different way to frame both the debate and the line of moral questioning.

Notes

- 1 See Volpp (2001) for an excellent description of the relationship between feminism and multiculturalism. To show how one must understand geopolitics to understand cultural and religious practices that are oppressive to women, she gives examples such as (a) *sati*, which was cultivated as a religious practice in collaboration with British colonialism, and (b) how the intensification of religious fundamentalism under the Taliban in Afghanistan, including the adoption of Hudood ordinances, relates to and was propped up by the USA's economic interests.
- 2 See Bhattacharjee (1992); Prashad (2000); Volpp (2001).
- 3 See Jiwani and Buhagiar (1997); Agnew (1998); Razack (2001).
- 4 A similar example can be found in the practice of excision (or FGM) amongst immigrant populations in France. Lionnet (1992) and Winter (1994) both demonstrate how the relationship of immigrants to the French state shapes the practice, with both the state and immigrant communities fighting for the power to discipline and control women's bodies as a way to define the interests of immigrant communities.
- 5 As Saharso states, abortion is only permitted under Dutch law if there is risk to the mother's life or health, or if the woman is in a critical situation which cannot be resolved in any other way – this critical situation includes psycho-social distress.
- 6 See Saba Mahmood (2001) for an exploration of the notion of agency amongst women who are part of the Islamic revival movement in Egypt. Mahmood suggests that the concept of agency used in much western feminist scholarship is limited in its ability to understand the lives of women whose desire, affect and will have been shaped by non-liberal traditions.
- 7 In an open letter (Vrouwenberaad Ontwikkelingssamenwerking, AISA, TARGUIA and TIYE International, 1997), they argue against the 'misplaced cultural relativism' which resulted in the acceptance of the practice of SSA by the Dutch minister of health.

References

- Agnew, V. (1998) *In Search of a Safe Place: Abused Women and Culturally Sensitive Services*. Toronto: University of Toronto Press.
- Bhattacharjee, A. (1992) 'The Habit of Ex-Nomination: Nation, Woman, and The Indian Immigrant Bourgeoisie' *Public Culture* 5(1):19–44.
- Brown, Wendy (1995) *States of Injury: Power and Freedom in Late Modernity*. Princeton, NJ: Princeton University Press.
- Jiwani, Y. and Buhagiar, L. (1997) *Policing Violence Against Women in Relationships: An Examination of Police Response to Violence Against Women in British*

- Columbia*. Vancouver, BC: Feminist Research, Education, Development & Action Centre.
- Lionnet, F. (1992) 'Feminisms and Universalisms: Universal Rights and The Legal Debate Around the Practice of Female Excision in France', *Inscriptions* 6 ('Orientalisms and Cultural Differences' special issue edited by Mahmut Mutman and Meyda Yegenoglu).
- Mahmood, S. (2001) 'Feminist Theory, Embodiment, and the Docile Agent: Some Reflections on the Egyptian Islamic Revival', *Cultural Anthropology* 16(2): 202–36.
- Prashad, V. (2000) *The Karma of Brown Folk*. Minneapolis, MN: University of Minnesota Press.
- Razack, S. (2001) 'A Violent Culture or Culturalized Violence? Feminist Narratives of Sexual Violence Against South Asian Women', *Studies in Practical Philosophy* 3(1): 80–104.
- Vrouwenberaad Ontwikkelingssamenwerking (Women's Council on Development Aid), AISA, TARGUIA and TIYE International (1997) *Open Brief aan Minister Borst* (Open Letter to Minister Borst). *Oegstgeest*, 20 January.
- Volpp, L. (2001) 'Feminism versus Multiculturalism', *Columbia Law Review* 101(5): 1181–218.
- Winter, B. (1994) 'Women, the Law, and Cultural Relativism in France: The Case of Excision', *Signs* Summer: 939–74.

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'Between norms and practicalities'

A response to Sawitri Saharso

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In her article 'Sex-selective abortion: Gender, culture and Dutch public policy', Sawitri Saharso makes two very important theoretical arguments, and employs them to address a specific policy issue that has arisen in the Netherlands. I find the general arguments compelling, and agree with her (no change) policy recommendation. I remain unclear, however, as to the wider implications regarding the relationship between normative and pragmatic arguments; and my comments are largely designed to tease these out.

The first of the general arguments is that context matters. In the resolution of morally charged policy dilemmas, we cannot expect to derive 'correct' policy in an easy deduction from generally shared moral principles. There may be no shared understanding of either the principles or the practice to which it is being applied (this is particularly likely to be the case in a culturally plural society). Even where there *is* a shared understanding, the principles may point in mutually incompatible directions (this possibility has been at the heart of the so-called feminism and multiculturalism debate). And there may be non-moral considerations that ought to be brought to bear on the issue, considerations including history, numbers, and the particular power relations within which a practice takes place. One example of this last might be the *ShahBano* case in India, which revolved around the application of different systems of personal law, the legal challenge by a Muslim woman to the derisory divorce settlement she had been granted under a particularly conservative interpretation of Islamic law, and the subsequent highjacking of her story by Hindu fundamentalists who used it to attack the Muslim minority. Prior to these events, many feminists in India had argued for a uniform civil code as the best way to promote gender equity in marriage and divorce; but afterwards, it became difficult to make such an argument without seeming to endorse anti-Muslim rhetoric. Context, in other words, can change the meaning of a policy. It becomes politically irresponsible not to take this into account.

The second important argument underpinning Saharso's analysis is that people do not lose the capacity to act as moral agents just because they are making their decisions under cultural constraints. When a western woman in the Netherlands says she is too poor to have a child, her decision to abort has clearly been made under constrained conditions (she might have reached another conclusion had she been wealthier), but it is still typically regarded as *her* decision, and one she has a 'right' to make. When, by contrast, a non-western woman says the importance attached to boys in her culture means that she cannot afford to have a girl child, her decision to abort is more commonly regarded as subservience to 'a culturally imposed demand'; she is therefore to be protected from the pressures of her culture, rather than protected in her right to decide. There seems to be a presumption here that people can act autonomously when they are bowing to economic necessity, but not when bowing to cultural expectations; and one of the central points I take from Saharso's article is that this feeds, in worrying ways, into a hierarchy of western versus non-western culture. We cannot, she suggests, attribute moral agency as and when suits our purpose. We cannot wriggle out of the respect for women's autonomy by refusing to believe that a woman seeking the abortion of a female foetus really wants what she says she wants. This edges far too close to saying we will not believe a woman is 'choosing' if what she chooses is at odds with majority beliefs.

I find these points both important and compelling. I also find myself convinced by the specific policy conclusion reached in the article, that it is better to leave existing abortion legislation alone. But I am left unclear about the structure of the argument, which seems to me to shift uneasily between normative and policy concerns.

Sometimes, the article seems to be addressing and problematizing questions of justice: this is certainly what is suggested in the quote from Joseph Carens, which calls for greater immersion in the details of each case in order to determine ‘what justice requires’. When Saharso makes her points about norms of sexual equality coming into conflict with norms of women’s autonomy, or women still being moral agents even when their decisions are culturally constrained, I read her as challenging oversimplistic notions of what justice requires. She introduces, for example, the idea that sex-selective abortion might constitute a moral wrong, and yet women still have a moral right to choose it: thus that the normative case for banning sex-selective abortion may have to be balanced by the normative case for women’s right to choose. (Interestingly, this combination of views commonly surfaces in views on abortion. I have never forgotten a US survey reported by Ronald Dworkin, in which 61 percent of respondents agreed that abortion was morally wrong, with as many as 57 percent regarding it as murder, yet 74 percent still said they regarded abortion as a decision that should be left to each woman herself (Dworkin, 1989).) In much of her article, Saharso seems to be alerting us to complexities in working out what is right or wrong; warning us – as she puts it in her final comment – against ‘fixed moral positions’.

At other points, the argument is more clearly pragmatic, as when she notes that there is little evidence that sex-selection abortion is widely practised in the Netherlands; or argues that it would be undesirable to try to restrict sex-selective abortion by more closely specifying the grounds on which women can seek an abortion, because this would mean closer scrutiny of *all* women requesting an abortion, and a general reduction in *all* women’s autonomy. The earlier suggestion that women might have a moral right to carry out a sex-selective abortion now seems to drop out of the picture. The argument, rather, is that sex-selective abortion is a moral wrong; that it would be a good thing if governments *could* prevent it; but that the costs to all women of tightening access to abortion outweigh the benefits of eliminating what may be only a tiny number of such abortions. In recommending what she describes as a ‘grudging tolerance’ of possible abuses of pre-natal diagnosis and existing abortion law, Saharso seems to have wrapped up the normative issues to her satisfaction (in ways that are pretty close to the Dutch consensus), and moves us onto the terrain of pragmatic rather than normative debate.

My concern is that contextualizing morality isn’t necessarily the same as being pragmatic; and that while both are important, I’d like to be a lot

clearer about how they relate. There may be all kinds of pragmatic reasons against introducing new laws or policy directives that have little or nothing to do with normative issues. It may be, for example, that legislating against a particular practice drives it underground and makes it harder than ever to detect; it may be (as in the case discussed here) that it proves impossible to restrict a practice without restricting other practices no one intended to curtail; or it may just be that the costs of policing a new law take away resources from policing an older one. It helps to know whether the objections are normative or pragmatic, if only because these require different kinds of solution; and my own preference is to separate out the issues that need to be addressed in determining what justice requires from those to be addressed in determining which policy mechanisms will best achieve this. In her otherwise compelling treatment of the issue of sex-selective abortion, Saharso mixes up the 'moral' and 'non-moral' considerations in ways that make this more difficult to do. Oddly, the effect is that she ends up with a more exclusively pragmatic argument than seemed to be implied at the start.

References

Dworkin, Ronald (1989) 'The Great Abortion Case', *New York Review of Books*, 29 June.

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The morality of freedom and the patriarchal bargain

A response to Sawitri Saharso

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One of the important and welcome aims of Saharso's sensitive treatment of sex-selective abortion (SSA) is to question the oppositions often assumed in political theory between 'tradition' and 'modernity', and between

'liberal' and 'illiberal' cultures. On Saharso's reading, SSA does not signal a conflict between gender equality and cultural diversity. Rather, it exemplifies how gender oppression, culture, and modernity can work together. While I am in sympathy both with this particular point and with Saharso's project as a whole, I am doubtful that her moral-theoretical perspective delivers the conclusions that it claims to generate, or at least that it generates them for the right reasons. I also have broader concerns about its utility as an ethical standpoint in issues pertaining to minority politics. Saharso claims that, even if SSA is morally wrong, this does not mean that the women who choose it are irrational; and neither does it entail that access to abortion should be legally restricted. The different strands of her argument leave me uneasy about the conceptual relationship that she assumes between women's freedom and the question of morality (that is, both the morality of legal intervention and the morality of women's choices). Briefly, my concern is that, where women act in the context of deeply patriarchal social structures, contextual morality as it is presented here does not supply a sufficiently determinate ethical basis for the protection of women's free agency.

CONTEXTUAL MORALITY: CONSEQUENTIALIST OR INTRINSICALIST?

I would like to begin by clarifying the moral basis of 'contextual morality'. This is important because it appears counter-intuitive that 'non-moral considerations' should (co-)determine the right answer in cultural practices. While moral considerations are usually those relating to interpersonal standards of justice, in 'contextual morality' it seems that the determinant is pragmatic desire to maximize the *overall* well-being of women as a social group. Given the limited extent to which SSA occurs in the Netherlands, and therefore the limited number of women who are harmed by this practice, Saharso argues that *on balance* strong intervention into women's reproductive freedom is unjustified. She appeals to Carens (2000) as a fellow proponent of a 'contextual' approach. However, while Carens does urge political philosophers to attend to 'context', this is because he believes that certain contextual issues might help policy-makers to better implement principles such as the equality and liberty of persons (2000: 1). Carens' 'contextualism' therefore constitutes a *principled* moral position, whereas Saharso's appears to be pragmatic and utilitarian.

The consequentialist perspective that she generates on SSA appears (paradoxically) overly simplistic, or even rather harsh. It might be too simplistic in assuming that the right answer in ethically problematic debates becomes clear from their contextual features. This is in spite of the fact,

which Saharso recognizes explicitly, that these different considerations may leave us in a fundamental moral dilemma: there may be no answer that comes without high moral cost. Alternatively, the solution that contextual morality proposes in regard to SSA might seem too harsh in the sense that the approach advocates no change to the existing 'weak' restrictions on pre-natal diagnostic (PND) testing in the Netherlands. However, such a position offers little or no protection to a woman whose cultural norms and wider life-conditions combine to pressurize her into 'choosing' SSA. It is unclear why paying attention to context entails that the basic human interests of a few women – perhaps those of minority cultures – are less worthy ethically than the good of preserving women's general reproductive rights. In essence, the difficulty is that in seeking to maximize women's overall freedom, contextual morality does not enquire into the social conditions under which particular women make, or fail to make, effective use of those freedoms. The paradoxical result is that, while women are treated equally (that is, in the same way), the apparent egalitarianism of this consequentialist position trades precariously upon the presumed status of all women as equally self-responsible, autonomous moral agents.¹

The matter is no easier if we search within contextual morality for an intrinsic, Kantian respect for the moral dignity of women of all cultural backgrounds. Saharso is rightly concerned that legislation, whether on abortion or on PND, might not ultimately protect diverse women's agency. This is not only because such legislation is paternalistic with regard to the majority of women, but also because it is *ineffective* in the case of the minority. Therefore, she claims, in India as in the Netherlands, social initiatives are needed to address the systemic abuse of some women's moral rights. While Saharso's claim in this regard appears convincing, we should notice that her main argument justifying *stronger* PND legislation in India is that women's 'exit-options' are more limited in the Subcontinent than in the Netherlands. In Saharso's view this consideration renders Indian women less 'free'. It is true that the previous absence of strict PND legislation had particularly left poorer Indian women open to exploitation by those who administer sex-determinative testing such as amniocentesis and ultrasound under clinically unsafe conditions (Ramamanna and Bambawale, 1980). Nonetheless, it is not clear that such exploitation would be eradicated by the existence of women's 'exit-options'. At a general level it is problematic to assume that a person's capacity to exit from their culture is the measure of their real freedom; and it is not clear how an individual can 'exit' from her inherited culture without incurring a disproportionate emotional personal cost. Ultimately, the use of 'exit-options' to sustain a moral distinction between a person's freedom and unfreedom trades upon an untenable dichotomy between her cultural context and her free agency.

An analysis of both the consequentialist and Kantian readings, then, suggests that 'contextual morality' reaches its conclusions on SSA for the wrong reasons. Each reading exposes a problematic narrative within 'contextual morality' regarding the relationship between women's freedom and their wider context of choice. In fact, both readings tend to expose Saharso's presupposition of an agent whose actions are curiously *dislocated* from her cultural and material context. It is, however, exactly the assumption of the self-determining, self-responsible agent that should be questioned when thinking about the predicament of a woman who chooses SSA (Weiss, 1995).

'MORAL MISTAKES' AND THE PATRIARCHAL BARGAIN

Saharso is worried about the strong paternalism involved in regulating women's freedom to make choices that are antithetical to 'popular' (western, liberal) morality. She thus defends women's rights to act for their own culturally specific reasons. However, against Saharso, it seems to me that attention to the context in which some women choose SSA justifies a more strongly interventionist state than she recommends. This is because, in context, SSA does *not* constitute an immoral but free choice, as Saharso believes. It is worth examining why. While Saharso convincingly emphasizes the distinction between external autonomy ('acting freely in the world') and internal, 'intrapsychic' autonomy, this distinction does not easily support her view that if a woman has internal reasons for choosing SSA, one can therefore presume *prima facie* that her choice is free. I agree that, if a woman fears for her marriage and even her life, and on that basis chooses SSA, her decision is neither random nor capricious; rather, it is instrumentally rational. It would be imperialistic to assume that the woman is a mere 'cultural dupe'. The woman might have cultural reasons for preferring male sons, reasons which are ultimate and compelling *for her* in her situation. However, women can surely be rational and unfree at the same time. Kandiyotti (1988) coined the term 'patriarchal bargain' to describe how women 'strategize' when confronted with severe constraints in patriarchal societies. On this view, a woman's option for SSA may constitute the most rational and even most empowering decision that she could possibly make. By choosing to abort a female foetus she addresses the problem of gender inequality directly, not only by protecting herself from a loss of social status within her community, but also by saving her unborn child from a life of sexual subordination.

While SSA could constitute a rational, empowering and thus a *moral* choice, the ethical problem is whether such a choice is genuinely *free*. Saharso, by contrast, suggests that the difficulty is that, while SSA is

'immoral' (since it expresses norms of gender inequality), nonetheless we should separate this consideration from the woman's freedom to choose. In so doing, however, she relies on a heavily overdrawn public-private dichotomy. While 'political' liberals might insist on this distinction, feminist thinkers often insist with good reason that norms in the 'private' or cultural sphere might seriously limit a woman's freedom. This problem seems acute, since SSA is directly tied to community beliefs that may make it appear to a woman '*the only viable*' option (Weiss, 1995: 202). I share with Saharso a deep resistance to the notion that, if a woman acts for reasons that differ from those of the majoritarian culture, her standing as a moral being may be questioned. I nonetheless believe that Saharso's use of a public-private distinction sidesteps the causal relation between the woman's decision and her wider cultural and social context. Related questions arise with regard to practices such as widow-immolation, which women sometimes appear to choose autonomously. One might argue that since the effects of widow-immolation are physiologically extreme (insofar as the practice results in death or serious disability), the practice differs essentially from SSA. However, both practices raise similar questions regarding women's effective freedom where they are constrained to 'bargain' with patriarchal structures; and it is unclear how contextual morality responds to the harder cases. Weiss (1995) is correct to maintain that women do not make *immoral choices* in such situations. Rather, they make a *moral mistake*. For example, a woman might 'choose' SSA in good faith, in the sense that the elimination of a female foetus represents her genuine attempt to contain the conflicts generated by patriarchy. However, she makes a mistake because the choice is not made freely, and neither is it liberatory in its outcomes. The woman's participation in the practice results in reinforcing the very conditions of female subordination which gave rise to the conflict (Weiss, 1995: 297). The problem with widow-immolation *and* SSA is, then, that they sustain the conditions of unfreedom that preclude a renegotiation of the woman's interests and community norms. The more difficult question is, therefore: if certain women do not choose SSA freely, can their unfreedom be explained by the content of their culture's moral norms?

I learned a great deal from Saharso's detailed exploration of SSA. Contextualism is compelling precisely because of the dissatisfaction that feminists, amongst others, have expressed with the abstract disembodiment of much modern ethical reasoning. While human beings surely always act within historically specific frameworks (MacIntyre, 1985), I am nonetheless concerned that *this* contextualism might not provide the ethical ground for fostering minority women's effective freedom in the context of the patriarchal structures in which they are embedded.

Notes

- 1 The argument also seems to be counter-intuitive on 'contextualist' grounds themselves. The appeal to maximizing overall outcomes complicates any justification for the special protections of minorities, because, presumably, minority interests are (quantitatively) outweighed by those of the majority on any given issue.

References

- Carens, J. (2000) *Culture, Citizenship and Community*. Oxford: Oxford University Press.
- Kandiyotti, D. (1988) 'Bargaining with Patriarchy', *Gender and Society* 2(3): 274–90.
- MacIntyre, A. (1985) *Whose Justice? Which Rationality?* London: Duckworth.
- Ramanamma, A. and U. Bambawale (1980) 'The Mania for Sons: An Analysis of Social Values in South Asia', *Social Science and Medicine* 14(2): 10–32.
- Weiss, G. (1995) 'Sex-selective Abortion: A Relational Approach', *Hypatia* 12(3).

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Sex-selective abortion

A reply

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Sex-selective abortion (SSA) is a subject that raises troubling questions about multiculturalism, gender and autonomy that defies a definitive answer. My article was a step towards addressing this complex issue. I am grateful therefore to my discussants for their thoughtful comments on my article.

Before I respond to what I take to be their major criticisms, let me correct a factual misunderstanding. The Netherlands does not have, as Miriam Ticktin thinks, a policy of free access to pre-natal diagnostics (PND), nor am I arguing that it should have.

Ticktin claims that I am taking a culturalistic perspective that would prevent me from seeing what is really at stake. SSA is a practice that, according to her, is shaped by state violence against and discrimination of

immigrant minority groups. I have no problem in acknowledging that the Netherlands' policy towards immigrant groups is harsh and that the racist prejudice the Dutch display against immigrants is alarming. Yet they do not constitute the cause of SSA. At the root of the problem is a cultural son preference and we should be prepared to acknowledge this.

This sex preference is linked to the tradition of providing a daughter with a dowry when she marries. In my article, I explained that, due to a process of commodification of the tradition, some families now demand very expensive consumer goods for a dowry gift and therefore a daughter's marriage may economically ruin a family. This is an important background to this sex preference. I think, therefore, that I deploy a more materialist notion of culture than Ticktin thinks.

Monica Mookherjee believes that I leave women in the cold who are pressurized into 'choosing' SSA, because I do not pay enough attention to the social conditions under which these women make their choice. According to her I herewith display a non-relational view on autonomy that sees all of us as equally free to determine our lives, while Ticktin suggests that I see western women as fully autonomous and the rest of us as non-autonomous victims of our culture. I agree that I did not discuss at length how Asian women's autonomy can be enhanced, as my focus was on whether measures to ban SSA should include restricting access to abortion. I consider both Dutch and Asian women as capable of autonomy, yet both as also constrained in exercising their autonomy, albeit by different social and cultural conditions. Making the abortion law more restrictive does not lift these constraints. Social policy may, however, and therefore this is what I see as a better way to offer protection to women who are pressurized to undergo a SSA.

Anne Phillips's main worry, which she shares with Monica Mookherjee, is that my contextualism will end in pure pragmatism. Phillips expresses the classical philosophical preference: first we determine whether a practice is morally right or wrong (the philosopher's job), and once we know what justice requires, the policymaker decides on the implementation of actual policy. The actual policy-outcome may be co-determined by pragmatic concerns, but these fall outside the philosophical analysis. I do not believe in this neat job delineation, moreover, I think that what to do as a matter of policy is a question that normally also involves moral considerations.

To illustrate my point let me bring forward Stephen Macedo's discussion of the *Mozert* and the *Yoder* cases. In *Mozert v. Hawkins*, a conflict over public education and religious diversity, orthodox Christian parents objected to the school's mandatory basic reading program that exposed their children to a variety of worldviews. The parents claimed a right to exempt their children from the reading program, while remaining in the public schools (Macedo, 1995: 472). Macedo decided that on principled grounds the *Mozert* families should not be accommodated. He added to this that there are also prudential reasons that might be considered – school

administrators might anticipate that the families would otherwise withdraw their children altogether from the public school system and for that reason accommodate them – but these come secondary, and he even doubted whether courts should at all examine these ‘additional grounds’, as he called them (1995: 487, 488). Hence, Macedo distinguished between principle-based and pragmatic arguments while arguing that we should take into account the former only. Yet, note that Macedo, whilst against accommodating the Mozert parents, thought it right to accommodate the more radical claim of Amish’ parents (the Yoder case) to altogether withdraw their school-aged children from high school, since the Amish, *because of their small number*, pose no threat to public order (1995: 472, 489). Hence, it was ultimately a pragmatic argument about numbers (sic!) that settled for Macedo whether to accommodate or not. Contextual arguments interpenetrate with principled arguments. In a contextual approach, this is acknowledged and considered as inescapable. Principles are generic and as such underdetermined. To make sense of them and to be able to make a judgement in specific cases we need contexts.

This being said, I do share Phillips’s worry that there is the risk to Carens’s – and as I follow his approach (Carens, 2000), also my – contextualism that we end up with a kind of ‘moral casuistry’, as Seyla Benhabib so aptly phrases it (2002: 125). By this she means the risk that we confuse ‘the normatively right’ with ‘the institutionally feasible’ (2002: 125). The problem with Carens’s contextual approach is that pragmatic arguments may co-determine our moral deliberation, yet it remains unclear to what extent. I think Benhabib touches the sore spot in Carens’s approach, yet I do not see a ready solution. New rules of lexical priority? Which ones? Besides, they seem to go against the grain of the approach. In the meantime, unsatisfactory as it may seem, we have no choice but to contextually argue it out.

References

- Benhabib, S. (2002) *The Claims of Culture: Equality and Diversity in the Global Era*, Princeton, NJ/Oxford: Princeton University Press.
- Carens, J.H. (2000) *Culture, Citizenship and Community: A Contextual Exploration of Justice as Evenhandedness*. Oxford: Oxford University Press.
- Macedo, S. (1995) ‘Liberal Civic Education and Religious Fundamentalism: The Case of *God v. John Rawls?*’, *Ethics* 105(3): 468–96.

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