

## 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 protection of minorities, because, presumably, minority interests are (quantitatively) outweighed by those of the majority on any given issue.

## References

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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

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