

## 'Between norms and practicalities'

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Postprint / Postprint

Zeitschriftenartikel / journal article

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### Empfohlene Zitierung / Suggested Citation:

Phillips, A. (2005). 'Between norms and practicalities'. *Ethnicities*, 5(2), 271-274. <https://doi.org/10.1177/146879680500500207>

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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.

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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