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Culture, Tolerance and Gender

A Contribution from the Netherlands

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ABSTRACT Defenders of multiculturalism have been recently criticized for failing to address gender inequality in minority cultures. Multiculturalism would seem incompatible with a commitment to feminism. This article discusses two empirical cases that pose a problem for public policy in the Netherlands: a conflict over wearing headscarves (*hijab*) and requests for surgical hymen repair. These cases evoke widespread public controversy, in part because they are presumed to express or accommodate traditions in violation of women's rights and thus raise the question of tolerance. While recognizing the potential discrepancies between feminism and multiculturalism, the author argues that committed feminists can be multiculturalists as well, and that good feminism might well require acts of multiculturalism. In addition, she advocates a contextual approach to tolerance. Her argument is that general justice arguments are too indeterminate to make for good judgement in concrete cases. The national political culture and institutional setting in which multicultural conflicts take place should be considered as morally relevant factors and co-determine our moral considerations. The dispute over feminism and multiculturalism cannot be settled in abstracto. Using a contextual approach, the author argues that wearing a headscarf and hymen repair are justifiable and consonant with feminist concerns in the Dutch educational and medical contexts.

KEY WORDS headscarves ♦ hymen repair ♦ multiculturalism ♦ tolerance ♦ women's rights

INTRODUCTION

Minority groups demand the right to live in accordance with their culture, and western states have responded by developing multifarious public policies aimed at protecting their ways of life.¹

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Accommodating minority groups is not so much of a problem where relative 'innocent' practices are involved such as allowing the Amish to drive horse-drawn buggies on American highways or the Sikhs to ride motorbikes without wearing helmets. Yet certain minority practices do seem to violate their members' civil rights and liberties, that liberal democracies are supposed to protect; in which case cultural diversification can generate deep controversy.

In this article I discuss two cases, Muslim women wearing headscarves and surgical hymen repair, that have generated widespread public controversy in the Netherlands. I selected these cases to discuss in *this* journal, however, because of the questions they raise for feminists, in particular feminists also committed to the project of multiculturalism. The headscarf is often assumed to express a sexist religious tradition that denies women full access to the public sphere. Requests for surgical hymen repair are motivated by the virginity rule that denies girls, but not boys, premarital sex. In either case, sexual equality seems to be at stake and accommodating the minority culture would seem to go against feminists concerns. These cases hence raise the question of how multiculturalism and feminism relate, a topic of heated debate in Europe in general and the Netherlands in particular.

For some the answer is clear. If minority traditions infringe on the rights of women, as feminists it is our duty to combat these traditions and multicultural understanding is utterly out of place. This view is expressed by Susan Moller Okin, who claims in her essay 'Is Multiculturalism Bad for Women?' (Okin, 1999) that multiculturalism poses a threat to feminism. She feels that multiculturalists do not have an eye for the gender injustices in minority cultures, and that granting cultural group rights would encourage the persistence of these injustices. Martha Nussbaum, who discusses many traditions of western and non-western cultures that are oppressive to women in her book *Sex and Social Justice*, is similarly wary of normative cultural relativism and is not inclined to accede to the cultural claims of religious or minority groups (Nussbaum 1999, see in particular Ch. 1, 'Women and Cultural Universals' and Ch. 3, 'Religion and Women's Human Rights').

Recognizing the potential differences between feminism and multiculturalism, I still do not present them in this article as natural enemies. My difficulty as a multicultural feminist, at home with postcolonial theory, is that it is impossible to ignore the long western tradition of representing other cultures as inferior, while now witnessing how minority cultures are demonized for their gender practices (see Mani, 1998; Mohanty, 1988; Narayan, 1997; Spivak, 1988). In particular, there is the continued imagery of Islam as a religion predisposed to maltreat the female sex. It would be tragic though if a commitment to multicultural tolerance and respect kept us from speaking out against gender injustice.

This article is written in the hope that taking a critical stance against minority cultural practices can go together with a sensitivity to the cultural identities and interests of minority women.

This article engages with a liberal philosophical perspective, and not because liberal morality is the best in the world – there is no transcultural standard for assessing that – but because in liberal democracies the legitimacy of the state is derived from liberalism and all the political movements in the Netherlands, including feminism, start from the individual as the basic moral unit and bearer of individual rights and freedoms. I believe, and in this I agree with many non-western feminists, that non-western women are entitled to the same basic rights as western women (see Moghissi, 1999). My position is that of a feminism that enables women to make the choices they feel are in agreement with their culture. It is a feminism in which freedom as well as equality for women are considered central feminist tenets.

My position is also informed by the view that moral principles acquire meaning when they are interpreted and applied in specific contexts. My second aim is to explore the possibilities of a contextual approach to tolerance. If contexts counts, how does it or should it count? Joseph Carens, a leading proponent of a contextual approach, suggests that as the meaning of liberal principles is not pre-given ‘there is a range of reasonable disagreement about what the principles of democratic justice require, and that within that range different political communities are morally free to adopt different institutional arrangements and policies’ (Carens, 2000: 7). Adrian Favell, another proponent of a contextual approach, feels we should be more attentive to the very terms the problem is formulated in by the actors involved and find out what the normative logic is, working in the national political culture and institutional context that leads to this framing of the problem (Favell, 1998). In this article I explore the idea of a range of morally permissible arrangements by empirically establishing what policy arrangements are developed in the Netherlands and seeing whether they can be explained as typically Dutch interpretations of the liberal democratic tradition. In the case of headscarves there is jurisprudence enabling me to work this way. In the case of hymen reconstruction that is not the case. There is a practice, but no formal policy. This is why I collected the arguments pro and contra that were put forward by the parties involved. I made an effort to incorporate them into an argument that would generate an answer to the question of whether or not hymen reconstruction should be allowed, taking into account the Dutch national medical health context as well as feminist concerns.

My aim is twofold: to describe how the two ‘hot topics’ are dealt with in context and to show that within the disputes on them, feminism and multiculturalism are not necessarily at loggerheads.

HEADSCARVES

Headscarves in Haarlem

The Islamic rule that women should wear headscarves in public spaces like schools or work sites, seems to serve in the public debate as the paradigmatic example of intercultural value conflict.² But what values are at stake? To begin with, there is no unanimity among Muslims about whether or not headscarves are prescribed. People who consider wearing a headscarf religiously prescribed generally claim that according to Islam, modesty requires women to cover their heads in situations where there are men who are not their relatives.³ Some people feel that in doing so they are exercising their freedom of religion, others see the headscarf as a means of excluding Muslim women from full participation in the public sphere. According to Haleh Afshar, for over two centuries this was why many Muslim women and men spoke out against the imposition of the veil (Afshar, 1998: 13). The prevailing view among feminists in the Muslim world is that the veil should, as Azza Karam puts it, 'be based on a woman's choice and conviction' (Karam, 1998: 12). Others, notably in France and Turkey, consider wearing a headscarf in public as a threat to public neutrality (cf. Bloul, 1997; Landman, 2000; Wayland, 1997). It is also noted that the rule can and often is read as following from the requirement that both sexes dress modestly or that women wear the veil because they feel it keeps them from becoming commodified sex objects (see Afshar, 1998). In other contexts wearing a veil is a way of 'accommodating protest' (MacLeod, 1991). It is also a known fact that young women from cultural minorities in the West sometimes react to the negative stereotyping of Islam by defiantly emphasizing their religious identity and wearing a headscarf (see Afshar, 1994). Wearing a headscarf is thus an act of religious consciousness. Hence, wearing a headscarf can take on many meanings, with 'gender inequality' as one possible interpretation. How is wearing a headscarf interpreted in the Netherlands and why?

On International Women's Day 2001, Cisca Dresselhuys, editor-in-chief of the Dutch feminist magazine *Opzij*, stated in an interview that she would never hire an editor who wore a headscarf because she saw it as a symbol of women's oppression by Islam (*De Volkskrant*, 8 March 2001). Dresselhuys represents a certain position in public opinion, but it is not this position that is decisive for Dutch policy on wearing headscarves. The ruling of the Dutch Commission on Equal Treatment has been far more influential for the policy development on this issue. Since wearing a headscarf regularly leads to conflicts the parties themselves fail to resolve, they sometimes bring the case before the Commission on Equal Treatment. Although the judgements of the Commission on Equal Treatment are not legally binding, the parties usually voluntarily accept them. One case

brought before the Commission concerned a conflict between a primary school and a trainee in the town of Haarlem.⁴ The conflict started in 1997 and was about the headscarf the trainee insisted on wearing, though the director insisted she remove it. After a meeting with the staff, the director suggested a compromise. The trainee would refrain from wearing the headscarf in her own classroom. The trainee refused to do so, stayed away from the school, and brought the case before the Commission on Equal Treatment in April 1998. In February 1999, the Commission ruled in favour of the trainee.

What makes this case different from other headscarf cases is that it was not a pupil, like in the French *Affaires des Foulards*, but a future state school teacher who demanded the right to wear a headscarf while teaching. The fact that it was a future state school teacher, formally representing the ethically neutral state government, who wanted to wear a headscarf thus raised the question of whether the neutrality of a state school allows for this. In the opinion of the school the answer was 'no'; 'educational neutrality' was the main argument the school rested its case on. The school sustained its position, however, with more contextually bound pedagogical arguments.

Some of the pupils were of Turkish origin and some of the Turkish girls had started to wear headscarves. When the trainee arrived the school had just formulated a deterrent policy with regard to wearing headscarves and had reached an agreement with the parents that the girls would not wear a headscarf at school. The school claimed that when they were not wearing headscarves, the girls behaved more freely, were teased less, and felt more at home in the group. Moreover, in the school's opinion the teacher should set an example in this respect. Although sexual equality was not mentioned as an argument, concerns about women's emancipation might well have played a role.

Another reason for the school's deterrent policy was that there was a silent battle going on between the liberal and more orthodox factions among the Turkish parents, with the headscarf as one of the issues at stake.⁵ The orthodox faction, it seems, put pressure on the liberal members of their community to behave more in accordance with their version of Islam (*De Volkskrant*, 4 March 1999). The school apparently wanted to 'protect' the girls from more liberal homes with its deterrent policy. Although the school did not mention this dispute in the local Turkish community in its own defence before the Commission, it was probably underlying the school's remark, made in its own defence, that

... it seems evident that an Islamic woman who thinks that even in the privacy of her own classroom she has to wear a headscarf is exhibiting, as compared with the great majority of her fellow believers, very stringent convictions and can implicitly be experienced as threatening by women and

girls of the same religion who, often with great difficulty, have acquired the right to a freer lifestyle. (Commissie Gelijke Behandeling [Dutch Commission on Equal Treatment], Judgement 99-18: 4)

In this interpretation the tolerant ruling of the Commission on Equal Treatment was playing into the hands of a community that pressured its individual members to behave in accordance with its religious rules, thereby even endangering the neutrality of the state school.

As the case became known nationally, it appeared that other towns and cities were facing the same problem. Several Rotterdam schools testified that the parents of Turkish pupils had said they would remove their children and send them to another school, if the school continued employing a headscarved teacher or trainee.⁶ This reaction on the part of the Turkish parents was interpreted by the schools as having to do with their Turkish background. The schools noted that there is a much stricter separation between church and state in Turkey than in the Netherlands, a separation that is vehemently contested, and the parents were said to see things in a national Turkish context (Judgement 99-18: 4; *NRC Handelsblad*, 1 May 1999).⁷ Their reaction may or may not have been informed by religious political strife in Turkey, but the parents' objection to a teacher wearing a headscarf was clearly a matter of principle. While 'educational neutrality' was a concern for this faction of the Turkish parents, this was not the case for the Rotterdam schools. What worried the schools most was once again an educational concern, the threat of withdrawal, which is understandable as schools need parents to trust them. Mieke der Kinderen, one of the Rotterdam school directors, expressed this concern as follows: 'Parents must share the education of their children with the teacher. They should not only be able to *accept* the teacher, but also to *trust* her' (*NRC Handelsblad*, 1 May 1999). If parents threaten to take their children out of a school, there is clearly a lack of parental trust. How did the Commission on Equal Treatment deal with these various concerns in its ruling?

The Judgement and its National Context

In nearly all the cases where it was consulted, the Commission on Equal Treatment ruled that it was not justified to prohibit wearing a headscarf, because this contravenes Dutch anti-discrimination law. In this ruling the Commission referred to the Dutch Constitution, section 6 subsection 1, that stipulates as one of the individual liberties the freedom of religion and philosophy of life. Furthermore, 'practices that, considering their character and the meaning of religious rules and regulations, are a direct expression of a religious conviction, are protected as well by the fact that it is prohibited to discriminate on the basis of religion' (Judgement 99-18:

6). The Commission has thus far considered the headscarf 'one of the requirements that follow directly from the Muslim conviction'. In its ruling on the Haarlem case, this was qualified by the statement that 'a Muslim woman or Muslim girl wearing a headscarf *can* be one of those expressions of her religious conviction' (Judgement 99-18: 6, emphasis added). It was added that it is not the role of the Commission to enter into a theological dispute about the interpretation of the Koran. It is this interpretation of wearing a headscarf as a practice that follows *directly* from the religious conviction that makes prohibiting anyone to wear a headscarf a case of direct discrimination on the grounds of religion. There are hardly any grounds that make direct discrimination justifiable before the law; freedom of religion is a fundamental right that can only be outweighed by a second party's other fundamental rights (see Verhaar, 1999a). Hence in the Netherlands a woman who wishes to wear a headscarf and presents her case to the Commission will nearly always win. The Commission only deviated from this ruling in cases where the reason to prohibit someone from wearing a headscarf concerned safety.

Saying that wearing a headscarf *can* be an expression of someone's religious conviction meets the critique expressed by Dutch Muslim and non-Muslim feminists on earlier judgements by the Commission. One of them, cultural anthropologist Willy Jansen, put it as follows:

The Commission confirms with this ruling [i.e. the interpretation of wearing a headscarf as a religious *obligation*] the view held by fundamentalist groups that are trying to represent the headscarf as a necessary Islamic requirement. . . . This ruling obstructs pluralism in the Muslim community. . . . The Commission, via its reference to religion, declares the views of one specific group to be generally applicable, which is at the expense of the freedom of choice and the religious interpretations of others. (Jansen, 1995: 164)

So according to Jansen, with its ruling the Commission was playing into the hands of fundamentalist factions in Islam. The Commission's later formulation leaves space for the notion that Muslim women do have a choice as regards wearing a headscarf, since different believers may have different convictions about the requirements of the faith.

The Commission on Equal Treatment did not consider the pedagogical arguments put forward by the school. This might well have been because the Commission was reasoning from a liberal philosophical model, according to which one first establishes which principles of justice are at issue (here: freedom of religion vs educational neutrality) and then determines whether wearing a headscarf is consonant with them (see Kukathas, 1997; Williams, 2000). Consequently, the Commission need not consider the pedagogical arguments, since there were no principles of justice at stake.⁸ Then there was the communal dispute over wearing a headscarf. To promote peace among the various parties – the school, the

trainee and in the background the divided Turkish community – the Commission could have settled for the compromise the school had proposed, i.e. that the trainee would only refrain from wearing a headscarf in the classroom. However, the Commission would have had to depart from the hierarchy of values assumed in the liberal model of moral reasoning. 'Freedom' and 'equality' stand as justice arguments above 'peace', which is merely considered a prudential argument. The idea is that state policy should stand the test of justice and under normal circumstances, social pacification is not a compelling enough reason to sacrifice the principles of justice. Within the limits of the liberal model of moral reasoning, the Commission could not consider this compromise option.⁹

The concerns of the Rotterdam schools were directly related to the fact that for the Turkish parents who threatened to take their children out of school a teacher wearing a headscarf contravened the neutrality of state education. This brings us back to the question of educational neutrality, since if parents distrust the school for the wrong reasons, it clearly would not be right to give in to their wishes.

Prior to the Haarlem case, the considerations about the neutral public sphere, that were predominant in the French debate on headscarves, never entered the Commission's argumentation. Earlier headscarf cases were typically conflicts between an employer's interest and a woman's freedom of religion (e.g. a company that claimed that an employee wearing a headscarf was not presentable or a general practitioner who expressed the fear that a nurse wearing a headscarf would cause him to lose patients). National political culture differences are presumably responsible for this. The framing in the French public debate as a conflict between the French national democratic secular culture and the religious Islamic culture is usually explained by the strong French republican tradition (see Bloul, 1997; Wayland, 1997). Within that framework the headscarf appeared as a religious symbol that threatened the French neutral public sphere.¹⁰ In the Netherlands the dominant political culture until the 1960s was pillarization, a form of consociational democracy whereby society was divided into highly autonomous vertical social segments (pillars). There were four 'pillars': Catholics, Protestants, socialists and liberals, and public life was organized around them (see Lijphart, 1975). Pillarization is a specifically Dutch interpretation of the view that the liberal state ought to be neutral between rival conceptions of the good. In contrast to a strictly secular model of neutrality such as the French one, which can only recognize thin forms of collective identity, it is a model of neutrality where all conceptions of the good have an equal right to manifest themselves in public (or, to borrow Carens's term, it is a conception of neutrality as *evenhandedness* between rival conceptions of the good [Carens, 2000: 9, but see his note 5]). Pillarization is a system that allows for public recognition and support of much broader versions of collective

identity and a system that made religion highly visible in the public sphere. The history of pillarization explains why the Dutch generally take a relaxed attitude towards wearing headscarves and other public expressions of collective religious identity.¹¹

In the Haarlem case, the Commission on Equal Treatment had to take arguments about state neutrality into consideration because the school based its defence on them. Again, the context of pillarization is highly relevant for a better understanding of the Commission's ruling. As a legacy of pillarization, parents in the Netherlands have the constitutional right to establish schools corresponding to their religious beliefs (Dutch Constitution, section 23). Moreover, the Constitution guarantees that denominational schools have an equal right to public funding. This right to public funding is associated with the Dutch interpretation of neutrality as evenhandedness. The right to equal treatment of all conceptions of the good is interpreted as a material rather than only a formal right to equality. Hence, in the Netherlands state and denominational schools are both fully publicly funded. One difference is that a denominational school has the right to stipulate religious requirements, i.e. to discriminate on the grounds of religion, and a state school does not. According to the law, 'state education respects everyone's religion or philosophy of life' but it also states that it 'contributes to the pupils' development while devoting attention to the moral and social values of Dutch society and in recognition of the meaning of the diversity of these values' (Law on Primary Education, section 29). The trainee's lawyer referred to the first part of the law. According to her it meant a state school is obliged to admit persons of all religions and cannot make demands about practising or not practising a religion. The lawyer representing the school concentrated on the second part of the law, claiming that a state school teacher should have an open attitude towards all moral and social values, which necessitates reticent behaviour and in her view wearing a headscarf in the classroom could not be considered as such (Judgement 99-18: 3, 4). The Commission noted that 'the fact that the claimant [the trainee] believes in a religion and expresses this by wearing a headscarf does not preclude her having an open attitude and being capable of teaching in accordance with the character of the school as a state educational institution' (Judgement 99-18: 4). It was neither said nor proved that the trainee did not have this attitude and according to the Commission, it was the school's responsibility to question the trainee on this point. However, this had not been done.

The Commission did not consider another solution that was feasible within the Dutch context. This solution was suggested by the one public reaction I could trace expressing the opinion that a teacher wearing a headscarf had no place at a state school. If she wished, the trainee could wear a headscarf at an Islamic school, where a headscarf is allowed and often even required. According to this author Jan Slomp, the teacher's

freedom of religion was not at stake, as it concerned here a self-imposed restriction (Slomp in *NRC Handelsblad*, 5 June 1999). In other words, the pillarized Dutch school system gave her a free choice and free exit options, so she had no right to demand that a state school accept her as a teacher. Slomp thus raised the context-specific question of whether individuals should not only have the freedom to institutions within their own pillars, but also the freedom to move between their own pillars and the 'neutral' public sphere *without* being forced to abandon their religious identities. In response to the Commission's ruling, the trainee said she was very relieved, because she had feared that if the policy of the Haarlem state school was sanctioned by the Commission, in the future she would be compelled to only teach at Islamic schools. Christian or Jewish teachers can teach in either system, so it is clear that the Dutch feel the pillarized system should no longer lock people up in their pillars. Moreover, if a Muslim teacher wearing a headscarf is not allowed to teach at a state school, whereas Christian or Jewish teachers can teach in either system, compared to them she does not have an equal choice of job options, which amounts to unequal treatment of people of different religious faiths. The option of teaching at Islamic schools should thus be rejected as unfair to the trainee.

Let us now return to the actual problem: did the school have the right to require the trainee to take off her headscarf while teaching? It is characteristic of Dutch political culture that as a legacy of pillarization, freedom of religion includes the public manifestation of religious identities. This understanding underlies the general ruling of the Commission on Equal Treatment; the ruling of the Commission was based on a contextual reading of liberal principles. Second, this does not change in the case of a state school teacher, since the common reading of the second part of the law is that a state school should promote an attitude of tolerance by teaching pupils to respect each other's ways of life. As the Commission rightly stated, there is no reason to assume that a teacher wearing a headscarf is not capable of teaching mutual respect. In the Dutch context, public neutrality does not provide an argument against a state school teacher's wearing a headscarf, in fact there are several equality arguments supporting a decision to allow it. Given that context, I think the Commission on Equal Treatment was right not to deviate from its ruling in this case.¹²

We can conclude that this case was perceived as primarily a conflict between religious freedom and educational neutrality. Sexual inequality only played a marginal role in the deliberation, so there is no conflict between multiculturalism and feminism.

SURGICAL RECONSTRUCTION OF THE HYMEN

The Problem

The norm prevails among immigrants to the Netherlands from Turkey and Morocco that a girl should be a virgin until marriage.¹³ If it comes out that a young unmarried woman has lost her virginity or has the reputation of no longer being a virgin, it is considered a disgrace for herself and her family and there are serious sanctions. The loss of honour often leads to the girl's expulsion from her family and the community. The girls themselves express the fear that no man will ever marry them and they will have no other option than prostitution (see Verhaar, 1999b: 131). They are afraid of being maltreated or even murdered by a family member to avenge the loss of the family's honour (Verhaar, 1999b). There is empirical evidence that the girls do indeed have good reason to fear community sanctions.¹⁴ This is why some girls ask for a surgical reconstruction of their hymen. The operation is now probably being performed quite regularly in the Netherlands; figures range from three cases by each practitioner a year to 10–15 cases a month (Bekker et al., 1996). Medical professionals have indicated that they have problems performing the operation, because it goes against their own norms and values, and they have asked for professional guidelines to be developed (Mouthaan et al., 1997).

As far as we know, the moral problem is a practitioner's problem. The girls' main problem is their lost virginity, and they want it to be restored. Their requests for an operation are informed by a mixture of motivations. Fear of sanctions is one, and another is that although they have already shamed their parents' trust by having sex, they still want to pay respect to them and do not want to damage the family honour (see Verhaar, 1999b: 139).

The moral problems of medical professionals are manifold and have been summarized by Verhaar (1999b: 133–4). A reconstruction of the hymen is a medically unnecessary operation. Most practitioners reject the virginity rule that necessitates the operation, because it is based on a double standard that allows boys but not girls to engage in premarital sex. The virginity rule thus infringes upon the girls' sexual autonomy and the value of sexual equality. Practitioners fear the surgery will only help maintain and reconfirm the virginity rule, and this is their main reason for not operating. By performing the operation, medical professionals feel they become accomplices to a lie and contribute to keeping up the myth that all women have a hymen that bleeds upon penetration. A further argument against operating is that it hampers the public debate that might eventually lead to the abolition of the rule. Proponents of this argument refer to the public debate in Turkey about virginity certificates

(a medical doctor declares that he has examined a girl and found her still a virgin), which led to the abolition of this practice in Turkey. However, medical professionals are well aware that an operation can spare the girls a great deal of suffering, and not performing it can also lead to sexual inequality because in effect only the girls are punished for a deed that was committed by two people. Lastly, in the present situation it is normally the Dutch Public Health Service that pays for these operations, which so far has passed unnoticed, since doctors write something else on their bills like 'vulva plastics'. This raises the question of whether these operations should be publicly financed. Using scarce public resources for a medically unnecessary operation that is only being performed due to a sexist cultural rule seems hard to defend.

Surgical Reconstructions of the Hymen: Morally Defensible?

One defence might be to consider the virginity rule a cultural custom that is culturally embedded and should not be judged on its content alone. As Bhikhu Parekh explains, this is because 'cultural practices (unlike self-chosen practices) are part of a way of life, have a normative authority and are generally regarded as binding by the members of the community concerned' (Parekh, 1999: 163). Edien Bartels (1998) seems to follow this line of reasoning in her claim that the virginity rule is central to the Islamic way of life in the Netherlands, that this way of life is endangered if Muslim girls lose their virginity before marriage, and that the deflowered girl should have the freedom to choose to remain part of the community that requires virginity upon marriage. She thus justifies a surgical reconstruction of the hymen as a practice that allows the group to continue its way of life and allows deflowered girls to remain members of the group that requires their virginity. This amounts to a justification of surgical hymen repair as an accommodation that enables a group to keep up its cultural norm of virginity. Bartels herself points out in a later publication that Moroccans and Turks generally disapprove of the operation (Bartels, 2000: 46); they see it as deceit. Instead of an accommodation to their cultural rules, they are more likely to perceive it as an attack. At any rate, it is questionable what the effect of operating will be in the long run. It may help the norm to be upheld, as medical professionals assume, but it is equally plausible that widespread hymen reconstruction might serve to subvert the norm.¹⁵ So it is impossible to say that to allow hymen reconstruction is to accommodate the minority culture or that to refuse to operate would bring sexual equality any closer. A utilitarian argument is not possible either way.

Another possibility is to take the 'shared moral understandings' of the medical field as a starting point for our reasoning. What would be our response to the practitioners' moral dilemma concerning hymen

surgery? The leading principles of medical ethics are autonomy, beneficence, non-maleficence and justice (see Schermer, 2001). While in the arguments of the medical professionals the girls mainly appear as bearers or victims of their culture, 'autonomy' is central to the argument developed by Odile Verhaar (1999b). She refutes the argument that operating reconfirms a cultural rule that violates the autonomy and bodily integrity of women, by noting that it is the girls themselves who request the operation. The decision to have the operation is made by young adult women, whom we assume are capable of calculating the consequences and balancing their various interests (Verhaar, 1999b: 138–9). We should respect their choice, I would like to add, particularly if we are concerned about female autonomy. Verhaar recognizes that it is difficult to maintain that a choice made under threat of severe sanctions is a free one, but notes that the girls do have other options, like leaving the community. She suggests that leaving the community does not necessarily mean becoming a prostitute, as there exist in the Netherlands shelters for runaway girls and women. So it is only if the girls want to remain within the family and the community, and presuming the girl's family is indeed as merciless as she presupposes, that the operation is the only solution available (Verhaar, 1999b: 131). Verhaar refutes the argument that refusing to operate would stimulate the public debate that might lead to the abolition of the virginity rule by noting that it does not offer a solution for girls who have already lost their virginity and are asking for help (Verhaar, 1999b: 138).

Confronted with a request for a hymen reconstruction, most medical professionals comply with it. I think this is an understandable, and within their personal and professional morality, a defensible choice. First, fighting an ideological battle with the Islamic communities in the interest of future generations, while ignoring the actual suffering and requests of real individuals, can hardly be considered to be consistent with liberalism's concern for the individual. Second, a doctor's duty is to act in the best interest of the patient. This is based on an understanding of the patient as an individual person, not the abstract category of 'women'. This individual is asking for a hymen repair and fears real harm if it is not made available to her. Third and most important, the main argument against hymen repair surgery is that it helps uphold cultural norms that subordinate women. Yet this is precisely what remains to be seen, since it is unclear what the consequences of hymen repair will be in the long run. Hence, while the principled argument about women's subordination thus disappears, refusing to make hymen repair available to girls would infringe on their right of autonomy and go against their interests. Consequently, hymen repair should be made available to them. The procedure could include an individual interview where alternative ways to solve the problem are discussed, as is already common practice in some

institutions. This would recognize the girls as moral agents who can choose and allow the doctors to make it clear that their decision to operate should not be viewed as consent to the virginity rule.

Surgical Reconstruction of the Hymen: At Whose Costs?

Let us now turn to the question of the public funding of the operations. To answer this question, it is relevant to examine the principles underlying the Dutch health care system. As Kathy Davis explains, that system is a welfare model of medicine that operates on a discourse of needs (Davis, 1995).¹⁶ It is typical of welfare models of medicine that they are always confronted with a dilemma: a patient has a right to any form of health care he or she needs, but there is the need to limit government expenditure on health care. There is usually unanimous agreement that unnecessary services should not be included in the basic health care package (Davis, 1995: 32). Yet until some years ago cosmetic surgery, usually considered a luxury, was covered by National Health Insurance. The medical professionals' justification of the public funding was that cosmetic surgery was not for purposes of vanity; it relieved psychosocial suffering. It was therefore consonant with the principle of beneficence. Later the rules were tightened in an effort to cut costs, but a controversy arose about whether tattoo removal should be covered by National Health Insurance. Initially, it was agreed that tattoo removal should not be covered. Since the patient had presumably been tattooed voluntarily, it was argued, it was only reasonable to take it off the same way. Then numerous Moroccan immigrant women began coming in to have their tattoos removed. Medical professionals now doubted the voluntariness of these tattoos, and saw them as a symbol of cultural constraint. As Davis writes, they saw them as 'detrimental to immigrant women's integration into Dutch society and, by implication, their well-being' and decided that an exception should be made (Davis, 1995: 36). This case illustrates how the 'psychosocial suffering' category is sometimes interpreted within a cultural context.¹⁷ This opens the door for a justification of public funding of hymen reconstruction, whose central aim, after all, is to prevent suffering. I find it difficult to assess whether this is sufficient justification. I am inclined to say it is not, if this means including it in the basic health care package. Numerous other sources of psychosocial and physical suffering are not covered by National Health Insurance. It would be hard to make it plausible that the suffering related to a broken hymen is greater than other suffering. Hymen repair could be included in the extensive health care package, just as the Amsterdam branch of the National Health Insurance (ZAO) has included male circumcision as a measure of multiculturalization in the extensive package. The issue is, of course, that in the immigrant cultures this problem is not supposed to exist. Hence, hymen

repair should be paid for by the patient herself or, if that is unfair to girls who do not have the money, by an emergency fund.

In the first instance, hymen repair seems to be an accommodation to a cultural rule that flaunts the feminist values of sexual equality and women's right to self-determination. It is a clear case where feminism and multiculturalism collide. Yet, arguably the operation can either help uphold or undermine the virginity rule, thus refuting the principled argument about gender injustice. I argue that the feminist concern for the autonomy of women means respecting other women's choices, even if we do not agree with them. This in turn means that making hymen repair available is a deed of multiculturalism and good feminism.

CONCLUSION

By examining these two cases, I hope to have demonstrated that feminism and multiculturalism can coexist. In the Netherlands, conflicts over wearing a headscarf are usually not framed as cases where sexual equality is at stake, but as cases involving freedom of religion vs employers' interests or, as in the Haarlem case, conflict with educational neutrality. If women in the Netherlands demand the right to wear a headscarf, this entails an individual and voluntary chosen religious obligation. Even if the headscarf is viewed as a symbol of gender inequality within Islam, as is sometimes the case, the conflict would still be about sexual equality vs women's autonomy and freedom of religion, or the question would be whether autonomy requires us to respect women's right to choose a way of life that does not value sexual equality. In either case, feminism and multiculturalism would not be opposed since the conflict is largely between the various values that feminists endorse.

Making hymen repair available means meeting with culturally informed requests that have to do with a cultural norm that infringes upon the rights of women. Hymen repair, however, cannot simply be viewed as an accommodation of the virginity rule. This is because in the long run the consequences of the surgery on the upholding or undermining of these norms are rather ambiguous. It is equally unclear what feminism would require us to do. This being the case, I argue that hymen repair should be made available, since withholding it would infringe upon women's autonomy and go against their interests. As I argue, there is good reason to consider the girls, although young and pressured, as morally competent actors who do have a choice and are able to state their preferences. Making hymen repair available is a policy measure that is culturally sensitive in that it acknowledges culturally informed suffering. Yet, this act of multiculturalism cannot be equated with uncritically acceding to sexist cultural norms. Hence, this case

illustrates that good feminism may sometimes even require acts of multiculturalism.

My other main point is that context matters. The liberal model of moral arguing reasons from fundamental principles to particular cases. While this may be understandable, given the philosophical ambition to formulate generally valid foundational propositions (it is obvious that our judgements should be governed by principles of justice), this model also has its limitations. One problem is that if we seek to address real, existing problems, liberal principles are – as generic principles – too indeterminate to reach a judgement in specific cases (see Parekh, 1997: 36). Moreover, Melissa Williams notes that if we look at particular cases, justice arguments provide strong foundations for tolerating and accommodating cultural minorities, but they also provide strong reasons for limiting tolerance and liberal principles often pull against each other (Williams, 2000). 'Equality', as is clear from the Haarlem headscarf case, can be an argument either for or against wearing a headscarf in public. If we accept that moral values can take on different meanings in different contexts, it follows that abstracted from context, we cannot make judgements whether acceding to minority wishes is consonant with feminist concerns. In short, the claim that multiculturalism and feminism are antagonists wrongly assumes the meaning of principles to be pre-given; it is not tenable because it is too general.

What is distinctive about the Dutch context in the cases I discuss? The Dutch Commission on Equal Treatment ruled that in the Netherlands a state school teacher wearing a headscarf is compatible with educational neutrality. I argue that this ruling should be understood within the context of pillarization. Pillarization is a system whereby public neutrality is interpreted as evenhandedness between different religions and philosophies of life and does not demand a strictly secular public sphere. Second, the Commission's ruling implicitly acknowledges that the pillarized system should no longer lock people up in their pillars. In the Netherlands the public space is open to everyone, including their religious identities.

In the case of hymen reconstruction the national context is less clearly decisive; arguably in countries where there is general agreement that premarital sex is out of the question for girls, the moral problem would be a different one. The institutional context plays a role in medical professionals' hesitation to operate. Since they doubt whether operating is consonant with the leading principles of medical ethics like the autonomy and beneficence principle. The Dutch health care system is a distinctive feature of the context in that it is a system that operates on a discourse of needs. Although these needs have occasionally been read as culturally informed needs, an operative principle of this system is that only necessary services should be covered. I argue that hymen repair

should be made available, but in the context of the need to limit government expenditure on health care, it should not necessarily be publicly funded.

As a kind of a personal coda, I would like to reveal how these debates challenged my idea of what it means to be a feminist scholar. When I began I was quite convinced that no matter how contextualized it might be, feminism constitutes a certain moral position. There may be different limits in different contexts, but surely there are also limits to what a feminist can accept. Now I am no longer so sure. The lesson of a contextual analysis is that as moral principles do not unequivocally tell us what to do, neither can feminism be an a priori position that tells us what is required as a matter of justice. Once again, in each individual case reaching a coherent feminist position requires hard work. So yes, we need moral arguments, now as much as ever, but we can do without fixed moral positions.

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NOTES

1. The distinction between 'religion' and 'culture' is often a contentious issue. Some may defend a practice as religiously prescribed, while others contest this. This can and sometimes is relevant for our judgement on tolerance, since based on the principle of religious freedom, religious practices are usually more safeguarded than 'merely' cultural practices. I examine how a practice was classified in a particular context and what consequences this had for the actors' judgement on tolerance.
2. There are different styles of veiling in the Islamic world. The prevalent style among Dutch Muslim women is the *hijab* or headscarf that covers the head but leaves the face uncovered. The public discussion in the Netherlands is hence about wearing headscarves.
3. As regards the *hijab* as something that is prescribed, in addition to the general admonitions to dress modestly, there is Sura 33: 59 of the Koran, which the obligation to wear a headscarf is said to be based on: 'O thy prophet, tell your wives and your daughters and women of the believers that they let down upon them their overgarment; this will be more proper, that they will be known, and thus they will not be given trouble' (my translation into English of the Dutch Koran translation by J.H. Kramers [1997]).
4. My reconstruction is based on judgement 99-18 of the Commission on Equal Treatment and press cuttings (*De Volkskrant*, 12 February 1999, 4 March 1999; *NRC Handelsblad*, 1 May 1999, 5 June 1999, 19 June 1999).

5. I have struggled with the terminology. In the view of some it is not very liberal to try to forbid wearing a headscarf, nor should the distinction imply, as it inevitably does, that liberal believers are less devoted or more lenient believers, but as I have not come up with a more satisfactory term, I kept to the distinction between liberal and orthodox.
6. In this sense the case also differs from the classical American conflicts over religion and state education, since in those cases (*Wisconsin v. Yoder* and *Mozert v. Hawkins*) Old Order Amish parents claimed a right to exempt their children from schooling after eighth grade or, in the *Mozert* case, fundamentalist Christian parents claimed a right to exempt their children from the school's basic reading curriculum because they feared the *liberal* citizenship values taught at school would lead their children astray. (See Becker and Kymlicka, *Ethics* 105 (1995); in this special issue on education, several contributors discuss these cases.)
7. At the time there was great consternation in Turkey when Merve Kavakci, a member of the Islamic Party of the Virtue, refused to take off her headscarf to be sworn into parliament and the ceremony was stopped. I want to add that although I agree that in the eyes of the Dutch Turkey does follow a very strict policy of secularism, I do not explain away, as the Rotterdam schools do, the Dutch Turkish parents' convictions concerning secularity as mere ideological indoctrination, that need not be viewed as sincere convictions.
8. Of course, one might wonder whether the outcome would be different if the Commission had considered these arguments. Actually, had the Commission done so, I do not think these arguments would have been strong enough for the school to win its case. If the school wanted to protect girls from liberal homes from community pressure to wear a headscarf, there are other ways to do so besides banning headscarves. Teachers could for example explain to the children that wearing a headscarf is a matter of individual choice. The teasing suggests a hostile environment that might be, but is not necessarily informed by anti-Islamic sentiments. The proper answer is clearly not to ban headscarves from the school, but to deal with the teasing. Then there was the freer behaviour of the girls when they were not wearing a headscarf. Our sources give no information on this point, but it is conceivable that even in the absence of a hostile environment, the girls' behaviour was more timid because the headscarf worked as a reminder that as Islamic girls, decent behaviour (at least in their parents' eyes) is expected from them. Again, this is not a very convincing argument against wearing a headscarf in school, as the self-assertive behaviour of the trainee is the best example that wearing a headscarf need not be an impediment for participation in the public space.
9. Personally I regret this. See Melissa Williams's excellent case for taking the claims of peace more seriously as ethical concerns (Williams, 2000).
10. Note, however, that in France, contrary to public expectations, the Council of State, France's highest administrative court, ruled that signs of religious membership are in themselves not incompatible with the principle of secularism (see Bloul, 1997; Wayland, 1997). Hence, the Council of State ruled that headscarves were permissible in schools, albeit that wearing headscarves was subject to a long list of conditions, e.g. wearing headscarves may not constitute acts of pressure, provocation, proselytizing or propaganda (see Wayland, 1997: 553).
11. This changed, however, after the terrorist attacks on 11 September 2001 in New York and Washington. In the following weeks, women wearing a headscarf were harassed in public and there was a sharp rise in anti-Islamic incidents. (information from RADAR, 10 June 2002).

12. I do not agree, however, with the Commission's suggestion that the school should have examined whether the trainee had the open attitude required of a teacher at a state school. As the Commission said itself, there was no indication that she did not have this attitude. An examination would have meant invading her privacy and it would have put an extra burden on her that is not put on people of other religions and would only be justified if there was concrete evidence of her malfunctioning. I owe this argument to Melissa Williams (in a personal communication).
13. This is often explained by referring to their Islamic background. While it is empirically the case that it is girls from Muslim backgrounds who ask for a hymen reconstruction, the virginity rule is not exclusively a Muslim rule. There are all across the globe many groups that have the same norm.
14. From a certain age there are usually strict limitations on the girls' freedom of movement in an effort to preserve their virginity, and any behaviour that may damage the girls' reputation is heavily penalized (see Brouwer, 1992). It is an established fact that Moroccan girls are heavily overrepresented in Dutch youth prostitution (Nabibaks, 1998). While honour killings are exceptional, they do occasionally occur. One fatal incident occurred on 15 November 1998, when a Dutch Moroccan father stabbed his 13-year-old daughter to death after he saw her kissing a boy (*NRC Handelsblad*, 5 August 1999).
15. Consider the further complication Melissa Williams pointed out to me: 'If it turned out, empirically, to be the case that hymen reconstruction did not have this subversive effect, would this be a reason against providing it? And if the hypothesis is correct, is *this* a reason to provide the surgery? Should the liberal state be in the business of supporting policies that subvert illiberal cultural norms *because* they have this effect? Or is such subversion permissible only when it is an *unintended consequence* of otherwise-legitimate state policies?' (Williams, pers. comm., 9 April 2000).
16. She contrasts this with the American system that is a market model of medicine where controversies on medical services tend to centre around the quality of the services (see Davis, 1995: 29–32).
17. To be fair to Davis, I should add that she considers this cultural reading an example of ethnocentrism (Davis, 1995: 37).

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