ABSTRACT. This paper explores the potential of a contextual approach to multicultural conflict. It reconstructs two cases that were hotly debated in the Netherlands—‘Islamic’ headscarves for police officers and for court officers—and asks whether a ‘contextual’ approach reaches compromises and thus promotes social stability more easily than a ‘deductive’ approach. The argument is that a ‘deductive’ approach accepts standing interpretations of normative principles, whereas a ‘contextual’ approach reinterprets these principles in the light of the circumstances and that, whether or not it promotes social stability, a contextual approach makes us attend to otherwise neglected perspectives and thus yields greater normative insights.

KEY WORDS: contextualism, discrimination, exemption policies, headscarves, multiculturalism, public office

1. INTRODUCTION

“We may all claim that we respect one another, but we cannot know what such respect requires or entails in the face of deep cultural conflicts [since often] we do not share a common understanding of the disputed practice itself [and therefore we need] not only understanding of the norms in question, but a situational understanding of these norms’ intended applications” (Benhabib, 2002, p. 12, italics in original). In the past decade, especially in the field of multiculturalism, we saw a proliferation of philosophical theories that try to connect normative theory with empirical case studies. The above citation from Seyla Benhabib aptly catches a common ambition of authors like Walzer (1983), Kymlicka (1995), Carens (2000), Parekh (2000) and Benhabib (2002) herself, who put political philosophy to work in the empirical context of contemporary plural societies and to develop theory that is relevant to contemporary social conflicts and policy dilemmas. There seems to be a ‘contextual turn’ in political philosophy.

Yet, if context counts, how should it count, and how much weight should it be given? In this article we confront some general contextualists’ arguments with more traditional, ‘deductive’ moral reasoning.1 We then explore
the potential of a contextual approach to multicultural conflict by recon-
structing two concrete cases from the Netherlands: ‘Islamic’ headscarves
for police officers and court officers, and discuss whether the contextualist
claim that it is superior in generating compromises and promoting social
stability, holds in these two cases.

Questions of tolerance to cultural minority practices are usually ap-
proached deductively: We first establish the limits of tolerance in principle
and then determine whether or not a particular practice is consistent with the
principles (cf. Kukathas, 1997, p. 71). Principles have priority over other
normative considerations because the former are fundamental and the latter
contingent and thus, ‘impure’. Critics of this deductive model claim that an
‘a priori’ approach can neither deal adequately with the particularities and
complexities of actual moral reasoning, nor with the complexities of social
reality (cf. Bader and Engelen, 2003). They argue that abstract principles are
too indeterminate to inform judgement in specific cases (cf. Carens, 2000;
Parekh, 2000). It often turns out, for instance, that justice principles provide
both strong foundations for accommodating cultural minorities and good
reasons for drawing limits to toleration–abstract principles often pull in two
directions (cf. Williams, 2000). Moreover, once a conflict is defined on the
level of general and abstract principles, it also requires resolution on that
level. Arguments derived from abstract moral principles therefore dominate
reasoning about questions of tolerance and political and pragmatic (pruden-
tial, realist) concerns and options are excluded. This is unfortunate because,
as David Wong notes, “It is sometimes easier for people to come to an agree-
ment on more specific instances covered by principles than it is to come to an
agreement on the more abstract and general levels” (ibid., p. 779). Conceiv-
ing one’s disagreements with others on the most general and comprehensive
levels may thus not be the most prudent way to find solutions (ibid.).

Authors advocating a contextual approach to questions of tolerance
claim that it favours solutions that are acceptable to all actors involved
in a conflict. A contextualist approach attends to all the relevant perspec-
tives on the issue and thus yields greater normative insights than a deductive
approach. Compared with the standard Anglo-American tradition of moral
philosophy in which adjudication is the paradigm for resolving disputes, a
contextual approach emphasises arbitration—i.e. a resolution of disputes
oriented toward the reconciliation of the contending parties (cf. Wong,
1992, p. 776). However, note that the contextualist emphasis on attending
to all the relevant perspectives in a conflict does not necessarily lead to
political agreement on the issue. ‘Reasonable disagreement’ may also be
the outcome. Yet, contextualists claim this outcome is more satisfying than
the quasi-consensus on principles that follows from deductive reasoning.

A final trait of a contextual approach is that it subscribes to the idea
of ‘justice-as-even-handedness’ (Carens, 2000). Contrary to the standard