

*Reinaldo Ayer-
de-Oliveira &
Gabriel Oselka*

*Faculdade de
Medicina,
Universidade de
São Paulo,
São Paulo, Brasil.
rayer@usp.br*

Feitosa et al. objectively and sensitively present and discuss an emblematic theme for bioethics: the conflicts between a people's culture and practice. Issues related to the gestation and birth of human beings are certainly among the major dilemmas in the passage from the culture of what is considered a primitive people to the cultures of so-called "civilized man". The authors coherently express the importance and controversies of the concept of autonomy. The authors have painstakingly studied the occurrence of infanticide and suicide among the Zuruahá.

We believe it is relevant to report a similar case, submitted to the São Paulo State Medical Board (CREMESP) with a request for its expert opinion and discussed in a recent publication by the Board ¹.

A physician working in the far North of Brazil was involved in the following situation: a local program for the protection of Indian tribes referred a pregnant woman expecting twins to the private clinic where he works (in charge of emergency treatment for Indians and company employees), requesting that he hide one of the newborns from the mother, and expressing the plan that this second twin be raised far from the biological family.

The reason for the request was that according to the local indigenous culture, infanticide – by asphyxia, drowning, or direct head trauma – is "the solution" for exterminating what is considered the "evil" twin, with the right to survival reserved for the "good" sibling. Infants are also eliminated in other circumstances, such as congenital malformations, Down syndrome, or when the child has not been fathered by the woman's husband.

The plan to hide the child posed a major ethical dilemma for the physician, reinforced by a previous episode. Six years previously, he had admitted premature twins, with the smaller of the two suffering life-threatening complications. A week after giving birth, when the mother learned that this twin was out of danger, she attempted to kill it in the nursery. The nursing staff found the infant in "arrest", with profuse bleeding from the anus, eyes, and mouth, and with bruises covering its body.

Alarmed, the physician requested that the woman be removed from the clinic, omitting the fact that the child had survived after intensive care. He agreed with the white people in charge of the Indian reservation that "the best thing" would be to hire an employee to raise the infant far from the tribe, unbeknownst to the family.

What nobody expected was that this information “leaked”, and as soon as the mother learned that this second twin had survived, she killed the one she had kept.

According to the physician, “*The surviving child is five years old and lives with the maternal grandmother. He has no physical sequelae, but is rejected by everyone. Whatever is given to him is taken away by the others, and he feeds on scraps*”.

In short, the physician asks: what should be done now, if this other pregnant woman may enter labor at any moment? Hide the twin birth, showing the mother only one of the newborns, as the Indian affairs program suggests? What are the criteria for choosing? Is it fair to risk the life of the infant that lives with the mother (in case she learns that the other has survived)? Or would it be best to show her both infants, even knowing that one of them will be killed at the first opportunity?

The initial argument is that according to Brazil’s *Penal Code* 2, “*non-adapted forest-dwellers*” – as they are referred to in this case – are considered “*not criminally liable*”: according to Article 26, they are exempt from prosecution since they are “*incapable of understanding the illicit nature of their acts*”. However, “*acculturated Indians*” are criminally liable.

According to the official discourse, “*acculturated*”, “*integrated*”, or “*adapted*” Indians are defined as those that can speak Portuguese and perform practices and jobs normally adopted by “*the white man*”, besides assimilating his habits. Houaiss (the standard reference dictionary for Brazilian Portuguese) defines “*acculturation*” as the cultural modification of an individual, group, or people that adapts to another culture or extracts significant traits from it, or even a fusion of two or more cultures resulting from permanent contact between them.

If one draws a parallel with the “white man’s culture”, the Indian mother that killed her child would be violating Art. 121, which safeguards the right to life (with a sentence of six to 20 years in prison). Theoretically, Art. 121 would give the physician some “argument” to counter the culture of infanticide defended by the tribe.

According to the moral code of practically all religions (especially Judaism and Christianity), to kill is wrong.

According to Art. 6 of the Brazilian *Code of Medical Ethics* (Basic Principles), “*Physicians should show absolute respect for human life, always acting in the patient’s benefit. They should never use their knowledge to cause physical or moral suffering, for the extermination of human beings, or to allow attempts on the patient’s dignity or integrity*”³.

The ethical dilemma discussed here relates to the possibility that the Indian woman, pregnant with twins, might commit what our “white” culture defines as the crime of infanticide. According to the “indigenous culture”, the Indian woman views the elimination of one of the twins as the “solution” to exterminate “evil” infant, with the right to survival reserved for the “good” sibling.

A solution with an unpredictable outcome would be to inform the mother of the existence of twins and allow her to decide what to do after giving birth.

The Brazilian *National Constitution* of 1988 gave the Federal government the exclusive jurisdiction to legislate on Indian affairs (22, XIV), establishes Federal court jurisdiction for trying and ruling on disputes concerning indigenous rights (109, XI), and acknowledges indigenous social organization, customs, languages, beliefs, and traditions (231, caput)⁴.

However, we know of no court ruling on the infanticide practiced by some indigenous groups in cases of twin births or newborns with malformations.

One could argue that in a plural society, all human groups are fully capable and autonomous. Their decisions must be respected and even occasionally tried in court, as long as they are previously informed of all the consequences. To hide the birth of one of the children means treating the problem paternalistically, thus violating the Brazilian legal order⁵.

Meanwhile, the Brazilian *Code of Medical Ethics*, Art. 6, sustains the physician’s conduct in hiding the twin birth, since it states explicitly that “*Physicians should show absolute respect for human life, always acting in the patient’s benefit. They should never use their knowledge to cause physical or moral suffering, for the extermination of human beings, or to allow attempts on the patient’s dignity or integrity*”.

As for the child, such conduct is sustained precisely by the value of preserving life in its integrity and dignity. However, in relation to the mother, the decision to protect the child, hiding its existence and isolating it to live outside the village, has repercussions that are difficult to assess.

Thus, the unavoidable question is: what about the mother’s right to decide?

If we prioritize the culture of that specific village (which has a complex organization of practice and belief, relating ways of understanding and action that are peculiar to this culture/belief), the conflict can only be resolved by referring the Indian woman (with her twins in utero) back to her “natural habit”, in order for the pregnancy to play out according to her own tradition.

Importantly, modern non-indigenous society views autonomy as a good to be preserved. A fair and just society morally preserves and sustains each person's right to live as an autonomous individual. We would add that autonomy is a concept related to freedom.

Thus, if we accept that the indigenous mother's values emanate from her culture/belief, the question arises: is she free to decide on her children's fate, i.e., that one twin should be eliminated?

Cultural traditions rooted in given cultures are not always easily accepted by others. An example is "clitoridectomy", a tradition in some African tribes.

Based on values emanating from the culture/belief of these tribes, this tradition allowed (and in some societies still allows) the excision of the clitoris in young girls in early puberty, by means of mutilating practices and with a high risk of morbidity and mortality. This extirpation was (or is) performed by women that traditionally detain the necessary practical knowledge. Despite respect for cultural traditions, the custom became the target of an international campaign of condemnation and disapproval when it came to the knowledge of people from elsewhere in the world.

In the case discussed here, if one chooses physician's autonomy as the priority (with the understanding that this helps define the full exercise of the human condition, without any tutelage), the conflict is resolved by hiding the unborn child and subsequently isolating it from the village.

Crucially, if the physician chose to perform the delivery and hide the infant, he would face ethical risks, doubts, and dilemmas. There would definitely be a need for sedation (analgesia) of the mother, since transvaginal or caesarian delivery without her active participation could result in birthing complications.

There would also be doubt about recording information on the patient chart, and especially about preserving secrecy, since information would be shared by all the persons participating in the act of hiding one of the twins.

Finally, the case highlights the possibility of the debate on autonomy as a fundamental idea, as follows: "*In deliberation pertaining to action, we should not only examine the prudence of such action in order to know whether it is an appropriate means for obtaining a desired end, but we should determine whether it is intrinsically fair and morally correct*".

1. Ayer-de-Oliveira R. Índia. In: Oselka GW, coordenador. Bioética clínica, reflexões e discussões sobre casos selecionados. São Paulo: Conselho Regional de Medicina do Estado de São Paulo; 2008. p. 187-90.
2. Brasil. Decreto-Lei nº. 2.848, de 7 de dezembro de 1940. Dispõe sobre o Código Penal. http://www.planalto.gov.br/ccivil_03/Decreto-Lei/Del2848-compilado.htm (accessed on 15/Apr/2008).
3. Conselho Federal de Medicina. Resolução nº. 1.246, de 8 de janeiro de 1988. Dispõe sobre o Código de Ética Médica. http://www.cremesp.org.br/library/modulos/legislacao/versao_imprensa.php?id=2940 (accessed on 08/Apr/2008).
4. O direito dos indígenas na Constituição. <http://www.viomundo.com.br/opiniao/o-direito-dos-indigenas-na-constituicao/> (accessed on 28/Jul/2008).
5. Brasil. Lei nº. 10.406, de 20 de Janeiro de 2002. Código Civil. http://www.planalto.gov.br/Ccivil_03/LEIS/2002/L10406.htm (accessed on 23/May/2008).

risk “of imposing imperialistic and centralist logic under the pretext of ethics and law” (p. 862).

Obviously, the practice of infanticide is morally controversial if one compares: (1) the set of values from the tradition that abolished it – represented here by the *National Campaign for Life and against Infanticide* and the case of the two Zuruahá infants removed from the village to avoid their deaths and (2) the view of what we could call contemporary morality, which is essentially secular, pluralist, and without canonic morals accepted by all, represented here by the defenders of Zuruahá identity and its practice of infanticide in the name of respect for differences. At first glance, the two views appear antithetical, since the former does not allow infanticide in any case, while the latter allows it in specific cases. However, taking a closer look, the latter is more subtle, since it appears to allow at least two types of stances towards the complexity of a morally plural world. The first of these is respect for the prevailing value systems in the various moral communities existing in society or country – as in the case of Brazil, characterized among other things by a “a very wide diversity of Indian peoples” and “many tribal groups that live with minimal contact outside the group, or even in complete isolation, [maintaining] very little or no relationship with Brazilian national society” (p. 853) and in which traditional practices like infanticide persist.

The main potential critique of this stance (respecting the differences and beliefs of the various communities constituting a country) is that it results in a moral relativism which would virtually rule out any possibility of shared values, such as those represented by human rights. As such, these rights are universally applicable and explicitly include the right to life and implicitly encompass the prohibition of infanticide. Moral relativism also implies the impossibility of even valuing behaviors and thus leads to amorality. However, moral pluralism is not necessarily a synonym for moral relativism, since the former implies respect for cultural differences and their existing value systems, which is quite different from amorality, which does not imply any respect whatsoever. Indeed, the latter type of stance implies establishing agreements in order to resolve a moral conflict such as that posed by infanticide, as long as the moral agent external to the community has sufficient understanding of (and respect for) the values that allow infanticide, which can be viewed as a necessary condition for dialogue to occur. This dialogical stance – defended by the article’s authors – belongs to the field of procedural ethics of discussion – developed by Apel and Habermas – and essentially consists

of real attempts to find (on the symbolic level) agreements between conflicting actors and value systems, but presupposing that the conflicting parties admit *a priori* that they wish to reach an agreement (also known as a transcendental condition in any dialogical confrontation); the principle of informed consent by all conflicted parties, whom are morally and cognitively competent, and, I would add, the principles of charity, which presupposes that all the parties “are playing fair”. As the authors write, in this case “it is essential to have the deepest possible knowledge regarding the culture of the people with whom the dialogue will be established” and “prior manifestation of interest in establishing this dialogue,” otherwise “the ethical debate will give way to the violence of the law of the strongest” (p. 863). The Texan bioethicist Engelhardt Jr. summarized this condition of moral agent in the contemporary, secular, and pluralist world quite well, stating that “there are no decisive secular arguments to establish that one concrete view of the moral life is better morally than its rivals, and since all have not converted to a single moral viewpoint, secular moral authority is the authority of consent (...) the authority of the agreement of those who decide to collaborate (...) without fundamental recourse to force”¹ (p. 68).

In other words, the authors approach the arguments for and against infanticide as it relates not to societies which, as stated by Agamben, consider the “sacredness of life, which is invoked today as an absolutely fundamental human right in opposition to sovereign power [over life and death]”² (p. 91), but to communities in which, as the authors contend, “[infanticide] has always functioned as a means of birth control and even as a mechanism for adapting human life to adverse conditions of survival in certain hostile environments, especially under jungle conditions” (p. 854). In the latter, there would be “good reasons” for infanticide, such as “the mother’s inability to devote the care and attention required for yet another child; the newborn’s capacity or incapacity to survive within the physical and socio-cultural environment into which he or she was born; and the preference for one sex over the other” (p. 854). These reasons, with perhaps the exception of the third, may in fact be sustained by the concept (central to evaluating the morality of human practices) of “quality of life”. According to Mori, this concept is the principal characteristic of the bioethical paradigm, in which “morality is a social institution, consisting of values and norms which, in various historical circumstances, guarantee (...) the necessary social coordination to ensure an adequate level of ‘quality of life’”³ (p. 102).

In conclusion, in taking a stance between morality and moral pluralism, the authors contend that “*an alliance with the more fragile elements of society is an essential precondition for establishing the basis for developing the process of dialogue*” (p. 862). Thereby, “*respect for otherness needs to be ensured and the sole purpose of the whole dialogue has to be the community’s welfare*” (p. 862-3). The argument is polemical, but pertinent.

1. Engelhardt Jr. HT. The foundations of bioethics 2nd Ed. New York/Oxford: Oxford University Press; 1996.
2. Agamben G. Homo sacer. I. O poder soberano e a vida nua. Belo Horizonte: Editora UFMG; 2002.
3. Mori M. Il caso Eluana Englaro. La “Porta Pia” del vitalismo ippocratico, ovvero perché è moralmente giusto sospendere ogni intervento. Bologna: Edizioni Pendragon; 2008.

César Soares Jardim

Programa de Pós-graduação
em Antropologia Social,
Museu Nacional, Rio de
Janeiro, Brasil.
cesarsjardim@gmail.com

I suspect that, among other effects, the article will produce a feeling of anachronism among readers that have accompanied the recent developments in the ethnology of South American indigenous cultures. It seems to me that this failure, certainly attributable in part to the limitations of perspective that constitute one of the prices and risks of disciplinary specialization, does not fundamentally jeopardize the position defended by the authors towards the public debates concerning infanticide practice among indigenous peoples. On the contrary, I even think that the type of intervention they defend gains relevance by offering a counterpoint to the antinomies entailed by the contraposition of culturalist and universalist *partis pris* which had informed the discussion on the matter. However, given the limitations of space provided for this commentary, I choose to offer here only an ethnological critique of the interpretations given by the authors, from the point of view of the ethnographic data presented in the article – a critique which I hope will be received as an incentive for future reevaluations of their arguments.

When I refer to the feeling of “anachronism” that a possible reader may experience when reflecting on this article, I have in mind the postulate, openly recognized by the authors themselves, that an understanding of the cultural reasons for indigenous infanticide practices must be the point of departure for any debate focusing on indigenous infanticide. However, it seems to me that indigenous infanticide practices are not only

better understood than the authors allow us to think, but also – and this is my main point – that they are understood in a significantly different way than that underpinned by the perspective in which the article situates them. Quite explicitly in the typological grouping of motivations for infanticide with which the authors begin their argument (a quite generalist typological construction lacking explicitly cited ethnographic sources for its argumentation), but, in fact, throughout the entire article, there is a repeated reduction of the indigenous infanticide to a kind of birth control method and adaptation to adverse conditions for survival. The more general and evident implication of the reiteration of this type of procedure is the establishment of a functionalist image of indigenous societies, based on which exotic or horrific customs (according to the criteria of our own cultural sensitivity), like infanticide itself, are interpreted in terms of their practical usefulness for the given community.

The reader may perceive the ramifications of this image in various parts of the article. Taken together, they appear to manifest a view of indigenous infanticide practices as functionally performing a kind of “social selection” of the “fittest” members, with the social group actively assigning to misfortune and death those infants and children whose existence proves problematic for the community. It would be unfair to claim that the authors take this procedure to the extreme, performing an absolute reduction of the rationale for the practices of infanticide to a calculation of social utility, so to speak. Still, even when they appear willing to grant space in their argumentation to the terms in which the native thought systems themselves understand infanticide practices, the authors end up conceiving such practices as a mixture of “utilitarian calculation” and “cultural reason” – as exemplified by their explanation for the infanticide of albinos, which they base on the feelings of supernatural horror they raise and on the allegation of “difficulties for survival”. The repetition of this reductionist procedure throughout the article appears to be due less to a theoretical propensity of the authors towards utilitarian, functionalist, or adaptive explanations for infanticide practices, and more to an inability, in both the argument’s general economy and their specific interpretations of given ethnographic data, to draw out the cultural reasons per se that shape these practices (reasons that are irreducible to a mere calculation of adaptability to the environment or social utility).

In only one of the three types of infanticide distinguished, the authors explicitly recognize a situation which in their words “takes into consideration limitations of a physical, mental, and/or *religious nature*” (p. 854; my emphasis). However,

as mentioned, even in these cases, the infanticide is conceived as a mixture of utility or adaptability and “cultural reason” (“limitations of a religious nature”). I suggest that, taking the opposite path from that of the authors, one should extend and emphasize precisely those motivations for infanticide practices that were subsumed under the category of “limitations of a religious nature” – and that involve what appears to me to be better worded as ontological presuppositions on the nature of the world and ontogenetic propositions on the nature of persons – to the other kinds of infanticide classes, as well as (insofar as possible) to the interpretations offered for the particular situations presented by the ethnographic data that were cited. The authors themselves appear to be aware of this point's importance, judging by a generic commentary on indigenous conceptions associated with birth and the processes of bodily construction (conceptions which are in fact among the most important associations to consider in understanding infanticide practices). However, they definitely appear to have overemphasized the merely utilitarian aspect of infanticide, overlooking a deeper explanation of the association between indigenous infanticide practices, native theories of ontogenesis, and the negative values that many indigenous peoples ascribe to specific kinds of birth – especially those involving twins, newborns with apparent physical malformations, children of undetermined fathers, or those whose origin is attributed to adultery etc.

The reduction of infanticide practices to a functionalist or utilitarian logic could have been prevented by a more substantive incorporation of the recent theoretical developments in South American ethnographic studies. Some types of infanticide discussed in the article, like that affecting twin births, for example, and which the authors explain by the difficulties that they would imply for the mother in performing her daily tasks, received one already classic interpretation from the French anthropologist Lévi-Strauss. The dualism in perpetual disequilibrium that this author identified as one of the distinctive traits of the Amerindians bipartite ideology, and which can be summarized, broadly speaking, as the impossibility of indigenous thinking to establish a relationship of equality between two halves of a virtual duality that is actualized, is strictly associated with both the sinister and malefic value ascribed by many peoples to twin births, and the cases in which infanticide is determined by the preference for children of a specific sex¹. On another note, various ethnographic studies on the construction of kinship have revealed the ambivalent nature of the identity of the bodies of

infants and children, implied by the ascribing of a statute of otherness and animality to newborns². An examination of this association between newborns and animality, as well as the need it implies for a “hominization” of bodies through the construction of kinship, two motifs that are widely publicized and reported by contemporary ethnographic literature, opens another level of intelligibility for cases of infanticide in which the newborns or children that present apparent physical malformations are targeted, making these cases refractory to explanations in terms of utility, function, or adaptation (“survival difficulties”, “limitations of a physical nature”, “usefulness to society”, a “weight” for the family or group, etc.). This lack of a more in-depth consideration of the problems that contemporary South American ethnology recognizes as underlying or associated with infanticide practices jeopardizes not only the way the authors grasp indigenous infanticide, but also the overall image of society and the rationality projected on indigenous peoples.

In short, we are left with the impression that infanticide was grasped by the authors mainly by means of an analogical extension of *our* associations around the idea of abortion – that is, as a kind of rejection of an undesired child, yet perpetrated not exclusively by the mother but by the community as a whole. For me, it appears symptomatic of this perspective's ethnocentric bias that the authors seek to establish some relationship of continuity between indigenous infanticide practices and the modern practices of abortion and neonatal euthanasia practices which make explicit all the ambiguities of our own conception of the person. I hope that this critique will offer a stimulus for the authors to a more substantive incorporation of recent ethnological studies in their future meditations, allowing a more complex appreciation of indigenous infanticide to the extent that it is closer to the native point of view. For a more recent bibliographic review of some of the themes discussed in this commentary and their connections to indigenous infanticide practices, see Holanda³. The latter author does not limit her analysis to examining the position of these practices in indigenous thought systems, but also includes as the object of her investigation the legal and ontological controversies surrounding this matter.

1. Lévi-Strauss C. História de Lince. São Paulo: Companhia das Letras; 1993.
2. Vilaça A. Making kin out of others in Amazonia. *J R Anthropol Inst* 2002; 8:347-65.
3. Holanda MAF. Quem são os humanos dos direitos? Sobre a criminalização do infanticídio indígena [Dissertação de Mestrado]. Brasília: Programa de Pós-graduação em Antropologia Social, Universidade de Brasília; 2008.

Rita Laura Segato

Universidade de Brasília,
Brasília, Brasil.
rsegato@terra.com.br

Leaving behind cultural relativism to endorse historical pluralism

Feitosa et al. discuss one of the most difficult themes in the fields of both ethics and rights, since the practice of so-called “indigenous infanticide” constitutes an issue at the limits of legal reasoning. The article is not only a theoretical reflection, but also takes place in a national scenario in Brazil where the issue is on the agenda of the National Congress and in the news media, sparking intense controversy between those pushing to pass a bill specifically criminalizing the practice and those that consider the bill inappropriate and even irrelevant.

Despite the enormous difficulties in building the argument defending the difference between peoples, even when involves the practice of infanticide, but without defending the practice itself, the authors do so efficiently and appropriately. They employ an argumentative strategy that can be described as “repatriation of the critique”, i.e., showing how in various historical situations the accusation aimed at indigenous peoples can be reversed to accuse the West of also having been stage to the practice, of having promoted or disguised it, even in the founding Biblical account itself. This strategy of showing that we are all infanticidal becomes highly convincing, since it exposes our widespread tendency to view other peoples as cruel and defective, judging them with a rigor that we fail to apply to what we consider our own world. I especially appreciate the information and analysis in the final sections: *Abortion, Infanticide and Neonatal Euthanasia and Possibilities for Intervention*.

However, I now offer some observation that could lead to retouching some aspects of the essay.

One of the paper’s problems is that it gives the impression that infanticide is highly frequent, when in fact the practice is rare, increasingly less frequent in the societies in which it occurs, and practiced in fewer and fewer societies. It is practically in extinction, and where it does occur, it is surrounded by intense controversy among the community’s members.

In dealing with the reasons that determine the practice of infanticide of various indigenous societies, the authors overlook a fundamental issue, namely the normative differences concerning who makes the decision in relation to the practice. This omission leads to the deepening of an important and quite widespread mistake, namely to believe that we are dealing with the

same type of act across various societies, when that is not the case. In fact, there are societies in which the reasons for a newborn’s life not be allowed to thrive, or even to prevent it from doing so, are of a cosmological order, and the decision to apply the rule and make sure that it happens lies with the community. And there are other societies in which the reasons are of a practical order, and in these the mother has the autonomy to make the evaluation and the decision. These are the two main tendencies, and based on them there is a wide variety of modalities.

Meanwhile, to refer to the practice, the phrase “*Among Indians, the decision to kill a child...*” is incorrect. If, as the authors note quite well, “*the human body is the result of a cultural ‘construction’*” (p. 855), then no “child”, that is, no human life, can be killed before it is “constructed”. Since the definitions of human life, including the notion of “infant life”, are different, one cannot kill what has still not acquired existential status¹. The missionary discourse makes this mistake in its representation of the phenomenon, but the authors cannot allow themselves to commit the same error, and thus a better grasp into the anthropological reflection on the depth of the difference in the conception of life and death would have been indispensable for the argument.

Along this same line, the authors do not sufficiently elaborate on the contradiction between the positions of the two anthropologists they cite. Thus, these citations appear to be used to legitimize the text, i.e., through an obligation that is foreign to the argumentation, since the two authors differ; this difference is not analyzed, nor is a way found to mediate or interpret this difference.

Likewise, I believe that they fail to reflect on the missionary critique of indigenous infanticide, insofar as the latter contends that “*life has more value than culture*”, immediately asserting that “*life and the right to it are above culture*” (p. 858). It is not culture that is at stake, but life itself, i.e., life as it determines all other forms of human life: physical life, material life, that of a people, a collectivity. It is life’s capacity to reproduce and last. There is no individual life outside collective life. In some cases, in transhumant societies and those that do not accumulate a surplus, a single additional individual life jeopardizes the life of the entire collectivity, or at least, that of his or her immediate family – that of the siblings already born and preserved, also small and without autonomy in relation to maternal care².

The authors invoke Convention 169 to emphasize that it demands respect for customary rights by applying the national law to indigenous peoples, but they forget that despite giving access

to the principles of legal pluralism, it safeguards the principles laid out under international human rights legislation and affirms respect for the internal law of peoples whenever human rights (as well as each national state's legislation) are not violated. Thus, the argumentation relying on this safeguard is only relatively effective. It would be more effective to draw on Brazil's commitment, assumed by ratifying this Convention, but also more recently by signing the Declaration of the Human Rights of Indigenous Peoples, to not legislate for indigenous peoples without their own participation in the decision-making process on norms that will affect their lives.

Further considering respect for each people's own law, I have argued at length that the discussion of infanticide does not involve this issue, but another area which I find central for dealing with such extreme dilemmas as infanticide: the state's responsibility to protect each people's internal decision-making capacity, and in keeping with this,

safeguarding each people's autonomy to build its own history. Through its own history, woven from the internal debate, and not the preservation of customs from an essentialist perspective of culture, each people will build its own particular dialogue with the common sphere of human rights. This has been my stance, and I believe that it allows us to efficiently transcend the paralyzing dichotomy between relativism and universalism³.

1. Holanda MAF. Quem são os Humanos dos Direitos? Sobre a criminalização do infanticídio indígena [Dissertação de Mestrado]. Brasília: Programa de Pós-graduação em Antropologia Social, Universidade de Brasília; 2008.
2. Sánchez-Botero E. Entre el Juez Salomón y el Dios Sira. Decisiones interculturales e interés superior del niño. Bogotá: University of Amsterdam/ UNICEF; 2006.
3. Segato RL. Que cada pueblo teja los hilos de su historia: el pluralismo jurídico en diálogo didáctico con legisladores. <http://www.cimi.org.br/?system=news&action=read&id=3594&eid=259>.

The authors reply

Os autores respondem

Saulo Ferreira
Feitosa, Volnei
Garrafa, Gabriele
Cornelli, Carla
Tardivo, Samuel José
de Carvalho

Moral pluralism: multiple views in a single search

Seeking greater clarity and possible understanding, the replies to the critiques formulated in the six commentaries on our article are addressed to each author individually, in the same order that we received them.

Lorenzo quite properly identified how challenging the postulate is to construct an *Interethnic Ethic* that can help establish possible dialogues between moral communities with apparently insurmountable cultural barriers. Beginning with this understanding, he highlights some difficulties (beyond those we demonstrated) in the possible construction of *interethnic communication communities* that could be conceived on the basis of Habermas' *Theory of Communicative Action*, as we ourselves indicated. Although he agrees with such a possibility, he identifies two

obstacles to overcome: "*the differences between the lifeworlds of indigenous leaders and common indigenous individuals and the peculiarities of genres of indigenous discourse*". We totally agree. When we referred to the Habermasian perspective, we did so based on a deliberate bioethical discourse¹ – proper to the argumentative community – like that of intervention bioethics. But we are fully aware of the difficulties, even because, as Lorenzo warns, the perception of infanticide as a problem "*derives from a Western worldview*".

Garnelo highlighted the uncertainty of conditions for philosophical production which, by imposing the "Western cogito", undermine the basis for philosophically sustaining bioethics, thus undermining as well the very argumentation we have proposed. We see no reason for this disagreement, since we assume such a challenge, even recognizing the epistemological confrontation, now approaching the model of hypercritical bioethical discourse¹ which puts us in a position of vigilance towards the possible misconstructions and asymmetries that discursive practices can contain. We place ourselves in the condition of *moral strangers*, alongside those that do not share the moral premises or rules of evidence and inference² (p. 32), but who need to build agreements, given that moral strangeness does not necessarily mean the impossibility of establishing friendly relations.

The case report by Ayer-de-Oliveira & Oselka on the twin pregnancy made a major contribution to our debate. The dilemma experienced by the attending physician in the case gives us an idea of the huge daily challenges faced by health professionals serving indigenous communities. This further reveals the need for greater and better professional qualifications, adding new knowledge to their technical training. The information on the “prior history” of an unsuccessful intervention in a similar case reveals all the care required for any intended intervention. Importantly, the physician in question proved to orient his approach according to ethical references; if another professional had not proceeded likewise, he certainly would have caused unimaginable damage with his undue intervention.

To contextualize the case, various approaches were taken, even to the point of consulting Brazilian Penal Law. Here, we take the liberty of making a slight correction. It is not true that Indians are not liable for their acts. On the contrary, the indigenous prison population in Brazil is relatively high. Thus, indigenous women can also be charged with the crime of infanticide. Article 26 of Brazil's *Penal Code*, quoted in the commentary, does not apply to Indians, but to individuals with “*mental illness or incomplete or delayed mental development*”, considered “*entirely incapable*”. The confusion probably stems from the case law that was consulted, since nothing in the current or previous penal code refers to immunity from criminal liability for indigenous persons, and many judges, moved by their high levels of prejudice and racism, and unable to perceive the Other and recognize him or her in his or her difference, have equated indigenous persons with the “incapable” (sic). Thus, indigenous persons are purportedly unable to “*understand the illicit nature of their acts*”, a position that proves false given the enormous number of criminal charges brought against many indigenous peoples, even those in more recent contact with Brazilian national society, as in the case of the Cinta-Larga in the State of Rondônia and numerous other peoples victimized by the strategy of criminalization perpetrated by their executioners. For further clarifications on this point, we suggest the elucidative work by Lacerda³.

We emphasize the relevance of the case report, especially since it reveals that the conflicts raised by indigenous infanticide practices are not limited to the villages, since the Indians establish various forms of relations with the outside world and use various public services, both in health and other areas. Finally, we highlight the appropriate discussion and caution adopted by Ayer-de-Oliveira & Oselka in their analysis, pursuing

the broadest possible scope. Such procedures contribute to the search for more adequate solutions to the various moral conflicts.

Schramm, in disagreeing with the theoretical perspective we postulated, took the care to explain the differences between moral relativism and moral pluralism, making clear our option for the latter, justified by its defense of “*respect for cultural differences and their existing value systems*”. Corroborating the dialogical stance he defends, he referred to the “*authority of consent*” defined by Engelhardt² as the “*secular moral authority*”, added the bioethical focus of quality of life, and concluded on the argument's pertinence, despite the controversy it raises. As Schramm himself warned⁴, when we face the dual challenge of respecting the specificity of the particular conflict and at the same time consider “*the universalist tradition of moral discourse*”, we should remain constantly alert in order not to promote “*cynical discrimination against vulnerable individuals and populations*”. This is the complexity that makes the argument controversial. Although in the case of indigenous peoples the concept of vulnerability is controversial, we use it here considering the historical process of territorial invasion and massacres to which they have been systematically submitted by the dominant society.

The critique by Jardim, with the peculiar acuity of an anthropologist, highlights the article's limitations in its reflections on the ethnographic data presented, making suggestions that we will certainly incorporate in future work. While clearly agreeing from the onset on with the limits identified in the area of ethnography, and recognizing our inability in ethnographic interpretations (even because none of the article's authors has training in the field), we will make some brief remarks concerning his critique.

We begin with a *mea culpa* for not having clarified two reasons which, in our understanding, give cause to the motivation of infanticide among indigenous peoples – namely cosmological and practical – as correctly observed by Segato in her commentary. We focused more on practical reasons, while we are aware that reasons of a practical nature persist within the cosmological reasons, despite the cosmological explanation given by the respective indigenous peoples. Still, there was no justification for our reductionism in translating the ontological reasons as being of a “*religious nature*”; our intention was to simplify, but we ended up limiting the reflection. We also understand now that the paper was jeopardized by not referring to Lévi-Strauss, whose quote is familiar to us. We thank Jardim for having done so. Concerning the indication of Holanda as an

updated bibliography, we agree and consider it a relevant study, with a beautiful ethnographic approach and enviable philosophic detail that require a close reading. We know the work, the author, and her thesis supervisor, Professor Rita Segato, an outstanding reference on the subject in debates held by the Brazilian Congress as well as the author of a widely acknowledged and relevant article on the theme. We maintain a frequent dialogue with Segato and Holanda and share common understandings. Unfortunately our article was prepared before their work cited in the critique, which prevented us from taking advantage of their valuable contributions.

As to the suggestion of an intent “*establish some relationship of continuity between indigenous infanticide practices and the modern practices of abortion and neonatal euthanasia*,” we wish to clarify that it is not a matter of “continuity”, but of analogy, since we understand such practices as persistent moral dilemmas and common to a wide variety of cultures, without overlooking “*the ambiguities of our own conception of the person*” or the ambiguities of our *moral strangers*. There, we do not see the “*ethnocentric bias*” alluded to by Jardim. Since this was not an ethnographic study, we cannot agree that it could trigger a “*feeling of anachronism*” among ethnological scholars of indigenous cultures. They will certainly be able to distinguish between this article and a study from their own field.

Segato, from a complementary perspective, makes important suggestions for the text in demonstrating a concern over avoiding misunderstandings related to what was not said or what should have been explained better. We share her view that the practice of infanticide is limited to few indigenous peoples, especially those with less time in contact with Brazilian national society, as well as the low and decreasing frequency of infanticide cases. However, we did not intend to give a different impression. We also accept the criticism that prioritizing one type of infanticide – that due to practical reasons – leads to generalization. We already referred to this in relation to the comments by Jardim.

Our use of the expression “*to kill a child*” reveals the difficulty in identifying an appropriate form of language, but we acknowledge the contradiction and the incorrectness when we admit that “*the human body is a cultural construction*”. Obviously, since this construction process is not concluded, this body will not have acquired “*existential status*”, and there is no reason to speak of death or killing. On the other hand, the article also contemplates the idea of a dual birth – biological and cultural – which can lead to a certain ambiguity: a biological death is possible, since the first

birth has occurred. The observation serves as a warning for us to avoid this dualism.

As for the divergence between the two anthropologists, we really had no intention to go into depth on their positions, since our stance already indicated the path to follow. The same occurred in relation to the missionary critique. But this does not mean that our choice was correct.

The fact that we invoked Convention 169 of the International Labor Organization (ILO) reflects a conscious and politically justified choice. First, because of the Convention’s political weight and legal value (having become law in Brazil since 2004). Second, because it has been used improperly by those who defend the criminalization of infanticide to justify their positions. Concerning the criticism that we failed to cite the *United Nations Declaration on the Rights of Indigenous Peoples*, the declaration was only approved by the 107th Plenary Session on September 13, 2007, when we had already concluded the paper.

1. Siqueira JE. Comentário ao texto de Guillermo Hoyos Vásquez. In: Garrafa V, Kottow M, Saada A, organizadores. Bases conceituais da bioética: enfoque latino-americano. São Paulo: Gaia/Fundo das Nações Unidas para a Infância; 2006. p. 181-8.
2. Engelhardt Jr. HT. Fundamentos da bioética. 2ª Ed. São Paulo: Edições Loyola; 2004.
3. Lacerda RF. Diferença não é incapacidade: o mito da tutela indígena. São Paulo: Baraúna; 2009.
4. Schramm FR. Bioética sem universalidade? Justificação de uma bioética latino-americana e caribenha de proteção. In: Garrafa V, Kottow M, Saada A, organizadores. Bases conceituais da bioética: enfoque latino-americano. São Paulo: Gaia/Fundo das Nações Unidas para a Infância; 2006. p. 143-57.