

The 10 most common objections to sex selection and why they are far from being conclusive: a Western perspective



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Abstract

After its review of the Human Fertilization and Embryology Act of 1990, the Department of Health concluded that the British Parliament ought to outlaw sex selection for any but the most serious of medical reasons. This paper reviews the most frequently expressed objections to social sex selection and concludes that there is simply no moral justification for prohibiting parents from using sex selection technology to balance their families.

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Introduction

In July 2006, Caroline Flint announced that the Department of Health is going to advise the UK government to ban sex selection for social reasons (BBC, 2006). Given that Flint's opposition to social sex selection seems to be solely based on the public's 'yuck' reaction, it is to be hoped that the UK government will disregard her advice and refuse to create yet another victimless crime (Richards, 1986).

As is widely known, many European countries, including Austria, Switzerland, Belgium, Italy and Germany, have already passed legislation that makes sex selection for any but the most serious of medical reasons a crime. For instance, Germany's notorious Embryo Protection Act of 1990 considers social sex selection a criminal offence punishable by one year of imprisonment. In the Australian state of Victoria, the sentence is even harsher. According to Section 50 of the Infertility Treatment Act of 1995, doctors performing sex selection for non-medical reasons face up to 2 years of imprisonment. More recently, Canada enacted its Assisted Human Reproduction Act of 2004 declaring that doctors performing sex selection for non-medical reasons are guilty of an offence and liable to imprisonment for up to 10 years.

Is there any valid justification for criminalizing social sex

selection and for sentencing a doctor to jail for, say, helping the parents of three boys to finally conceive a girl? I don't think so – at least not in a Western liberal democracy.

Western societies are based upon a 'presumption in favour of liberty': each citizen ought to have the right to live his life as he chooses so long as he does not infringe upon the rights of others. The state may interfere with the free choices of its citizens only to prevent serious harm to others.

This so-called 'harm principle', which has been developed by Wilhelm von Humboldt and John Stuart Mill, has three important implications. First, the burden of proof is always on those who opt for a legal prohibition of a particular action. It is they who must show that the action in question is going to harm others. Second, the evidence for the harm to occur has to be clear and persuasive. It must not be based upon highly speculative sociological or psychological assumptions. And third, the mere fact that an action may be seen by some as contrary to their moral or religious beliefs does not suffice for a legal prohibition. The domain of the law is not the enforcement of morality, but the prevention of harm to others (Hart, 1963; Taylor, 1973; Feinberg, 1984; Warren, 1985; Dworkin, 1994; Epstein, 2002).

With this in mind, let's turn to the 10 most common objections to social sex selection and inquire whether they provide a rational basis for outlawing it.

A constantly recurring objection to sex selection is that choosing the sex of our children is to 'play God'. This religious objection has been made to all kinds of medical innovations. For example, using chloroform to relieve the pain of childbirth was considered contrary to the will of God as it avoided the 'primeval curse on woman'. Similarly, the use of inoculations was opposed with sermons preaching that diseases are 'sent by Providence' for the punishment of sin. Since even fundamentalist Christians ceased to regard the alleviation of pain and the curing of diseases as morally impermissible, it is hard to take this objection seriously. What was once seen as 'playing God' is now seen as acceptable medical practice. More importantly, the objection that sex selection is a violation of 'God's Law' is an explicit religious claim. As Western liberal democracies are based on a strict separation of state and church, no government is entitled to pass a law to enforce compliance with a specific religion. People who consider the option of sex selection as contrary to their religious beliefs are free to refrain from it, but they are not permitted to use the coercive powers of the law to impose their theology upon others (Dahl, 2003; Badnarik, 2004).

Some are opposed to sex selection because it is 'unnatural'. Like the objection that choosing the sex of our children is playing God, the claim that sex selection is not natural most often expresses an intuitive reaction rather than a clearly reasoned moral response. That a particular human action is unnatural does in no way imply that it is morally wrong. To transplant a heart to save a human life is certainly unnatural, but is it for that reason immoral? Surely not! Thus, if we have to decide whether an action is morally right or wrong we cannot settle the issue by asking whether it is natural or unnatural (Dahl, 2003; Silver, 2006).

A more serious objection to sex selection is based on the claim that medical procedures ought to be employed for medical purposes only. Preimplantation genetic diagnosis (PGD) and flow cytometric sperm separation, it is argued, are medical technologies designed to enable couples who are at risk of transmitting a severe sex-linked genetic disorder to have a healthy child. In the absence of a known risk to transmit a serious X-linked disease, there is simply no valid justification for employing PGD or MicroSort. This is a familiar objection in debates over novel applications of genetic and reproductive technologies. However, as familiar as it may be, it is certainly not a persuasive one. We have already become accustomed to a health care system in which physicians often provide services that have no direct medical benefit but that do have great personal value for the individuals seeking it. Given the acceptance of breast enlargements, hair replacements, ultrasound assisted liposuctions and other forms of cosmetic surgery, one cannot, without calling that system into question, condemn a practice merely because it uses a medical procedure for lifestyle or child-rearing choices (American Society for Reproductive Medicine, 2001).

A related objection insists that offering a service for social sex selection constitutes an inappropriate use of limited medical resources. But, again, if offering face-lifts is not considered to

be a misallocation of scarce medical resources, it is hard to see how offering sex selection can be considered so. Moreover, by implying that every time a patient gets a nose-job another patient misses out on a bypass, this objection betrays a severely distorted conception of economics. If at all, this argument may apply to a state-run socialist economy based on a 5-year plan, but certainly not to a private-run capitalist economy based on a free market. Just like a chef opening up a fancy restaurant offering French cuisine does not deprive us of our daily bread, so a doctor opening up a fertility centre offering sex selection does not deprive us of our basic health care. Provided their businesses are set up privately and their services are paid for privately, they don't take away from anyone.

Perhaps the most powerful objection to sex selection is that it may distort the natural sex ratio and lead to a socially disruptive imbalance of the sexes, as has occurred in countries such as India and China. However, whether a distortion of the natural sex ratio poses a real threat to Western societies is, of course, an empirical question that cannot be answered by intuition, but only by evidence. According to representative social surveys, demographic research and data from gender clinics, couples in Western societies do not have a marked preference for either sex. What they are longing for is a family with children of both sexes. This distinct trend towards a 'gender balanced family' has not only been observed in Germany, the UK and the US, but also in Canada, Italy, Spain, Sweden, Belgium, Austria, Switzerland and The Netherlands (Dahl *et al.*, 2003a,b, 2004, 2006; Dahl, 2005a,b).

While a distortion of the natural sex ratio may not be a problem in Western countries, it surely is a problem in some Asian countries such as Pakistan, India, China and Korea. According to a recent survey from India, about 10 million female fetuses may have been aborted within the last 20 years alone (Bhat, 2006; Jha *et al.*, 2006).

Given the number of female selective abortions in India, it does not come as a surprise that some authors have called for a world-wide ban on social sex selection (Hudson and Den Boer, 2004; Shenfield, 2005). However, does the practice of social sex selection in India really justify prohibiting social sex selection in countries such as Germany, the UK or the USA? Most certainly not! First, preventing Western couples from choosing the sex of their children will not change the sex ratio of India. Second, even if it is only meant to 'send a message', it is simply naive to assume that Indian families will appreciate our gesture, well-meaning as it may be. As long as there are religious and economical incentives for preferring boys over girls, our moral plea will fall on deaf ears on the subcontinent. Third, and most importantly, denying Western couples the opportunity to have a daughter because Indian couples have killed theirs would amount to punishing the innocent. There is no moral justification whatsoever for punishing the people of one country for actions committed by the people of another (Dahl, 2005c; Dickens *et al.*, 2005).

As already mentioned, Western societies do not have to worry about an impending imbalance of the sexes. However, even if social sex selection may not distort the natural sex ratio, it may distort the natural birth order. Given that a substantial portion of the US population still prefers its first child to be a boy, it could be argued that sex selection technology may

be abused to ensure the birth of a first-born 'son and heir'. Hence, another objection to social sex selection claims that we are at risk of 'creating a society of little sisters.' Once girls are second born, they will feel second best. Is this a sound objection? I don't think so. Although it is, quite literally, conceivable, it is highly unlikely that hundreds and thousands of couples would employ sex selection technology for their first child to be a boy. As already pointed out, data from American gender clinics suggest that the only couples willing to subject themselves to an intrusive and expensive treatment for preconception sex selection are couples with two or three children of the same sex who long to have at least one child of the opposite sex. According to a study by Nan P Chico who analysed 2505 letters from couples inquiring about sex selection, 'only 1.4% of these couples were seeking a first-born son' (Chico, 1989). Moreover, there is nothing in the literature on birth order studies that could possibly justify the claim that children who are second born feel second best (Sulloway, 1996).

Another frequently advanced objection claims that sex selection is 'sexist'. Feminist philosopher Tabitha Powledge even went so far as to call sex selection 'the original sexist sin.' Sex selection, she argues, is deeply wrong because it makes 'the most basic judgment about the worth of a human being rest first and foremost on its sex' (Powledge, 1981). However, this argument is deeply flawed. It is simply false that all people who would like to choose the sex of their children are motivated by the sexist belief that one sex is more valuable than the other. As we have seen, almost all couples seeking sex selection are simply motivated by the desire to have at least one child of each sex. If this desire is based on any beliefs at all, it is based on the quite defensible assumption that raising a girl is different from raising a boy, but certainly not on the preposterous idea that one sex is 'superior' to the other (Steinbock, 2002).

A further common objection concerns the welfare of children born as a result of sex selection. Thus, it has been argued that sex-selected children may be expected to behave in certain gender specific ways and risk to be resented if they fail to do so. Although it cannot be completely ruled out, it is highly unlikely that children conceived after PGD or MicroSort are going to suffer from unreasonable parental expectations. Couples seeking sex selection to ensure the birth of a daughter are very well aware that they can expect a girl, not some Angelina Jolie; and couples going for a son know perfectly well they can expect a boy, not some Brad Pitt.

Last but not least, there is the widely popular objection that sex selection is the first step down a road that will inevitably lead to the creation of 'designer babies'. Once we allow parents to choose the sex of their children, we will soon find ourselves allowing them to choose their eye colour, their height, or their intelligence. This slippery slope objection calls for three remarks. First, it is not an argument against sex selection *per se*, but only against its alleged consequences. Second, and more importantly, it is based on the assumption that we are simply incapable of preventing the alleged consequences from happening. However, this view is utterly untenable. It is perfectly possible to draw a legal line permitting some forms of selection and prohibiting others. Thus, if selection for sex is morally acceptable but selection for, say, intelligence

is not, the former can be allowed and the latter not. Third, the slippery slope argument presumes that sliding down the slope is going to have devastating social effects. However, in the case of selecting offspring traits this is far from obvious. What is so terrifying about the idea that some parents may be foolish enough to spend their hard-earned money on genetic technologies just to ensure their child will be born with big brown eyes or black curly hair? I am sorry, but I cannot see that this would herald the end of civilization as we know it (Stock, 2003; Bailey, 2005).

Since it cannot be established that social sex selection causes any serious harm to others, a legal ban is ethically unjustified (Savulescu, 1999; McCarthy, 2001; Robertson, 2001; Steinbock, 2002; Dahl, 2003; Schulman, 2004; Harris, 2005).

References

- American Society for Reproductive Medicine 2001 Preconception gender selection for nonmedical reasons. *Fertility and Sterility* **75**, 861–864.
- Badnarik M 2004 *Good To Be King: The Foundation of Our Constitutional Freedom*. Writers, Newton, USA.
- Bailey R 2005 *Liberation Biology: The Scientific and Moral Case for the Biotech Revolution*. Prometheus, Buffalo, USA.
- BBC 2006 Baby sex selection 'to be banned'. BBC News of 12 July 2006 http://news.bbc.co.uk/2/hi/uk_news/politics/5172602.stm
- Bhat M 2006 Sex ratio in India. *The Lancet* **367**, 1725–1726.
- Chico N 1989 *Confronting the Dilemmas of Reproductive Choice: The Process of Sex Preselection*. University of California Press, San Francisco, USA.
- Dahl E 2005a Preconception gender selection: a threat to the natural sex ratio? *Reproductive BioMedicine Online* **10** (Suppl. 1), 116–118.
- Dahl E 2005b Sex selection: laissez faire or family balancing. *Health Care Analysis* **13**, 87–90.
- Dahl E 2005c No country is an island: a comment on the House of Commons report Human Reproductive Technologies and the Law. *Reproductive BioMedicine Online* **11**, 10–11.
- Dahl E 2003 Procreative liberty: the case for preconception sex selection. *Reproductive BioMedicine Online* **7**, 380–384.
- Dahl E, Gupta RS, Beutel M *et al.* 2006 Preconception sex selection: demand and preferences in the United States. *Fertility and Sterility* **85**, 468–473.
- Dahl E, Hirsch K-D, Brosig B, Beutel M 2004 Attitudes towards preconception sex selection: a representative survey from Germany. *Reproductive BioMedicine Online* **9**, 600–603.
- Dahl E, Beutel M, Brosig B, Hirsch K-D 2003a Preconception sex selection for non-medical reasons: a representative survey from Germany. *Human Reproduction* **18**, 2231–2234.
- Dahl E, Hirsch K-D, Beutel M, Brosig B 2003b Preconception sex selection for non-medical reasons: a representative survey from the United Kingdom. *Human Reproduction* **18**, 2238–2239.
- Dickens BM, Serour GI, Cook RJ, Qiu R-Z 2005 Sex selection: treating different cases differently. *International Journal of Gynecology and Obstetrics* **90**, 171–177.
- Dworkin G 1994 *Morality, Harm, and the Law*. Westview, Boulder, USA.
- Epstein RA 2002 *Principles for a Free Society: Reconciling Individual Liberty with the Common Good*. Perseus, Reading, USA.
- Feinberg J 1984 *Harm to Others: The Moral Limits of the Criminal Law*. Oxford University Press, New York, USA.
- Harris J 2005 No sex selection please, we're British. *Journal of Medical Ethics* **31**, 286–288.
- Hart HLA 1963 *Law, Liberty, and Morality*. Stanford University Press, Stanford, USA.

- Hudson VM, Den Boer AM 2004 *Bare Branches: The Security Implications of Asia's Surplus Male Population*. MIT Press, Cambridge, USA.
- Jha P, Kumar R, Vasa P *et al.* 2006 Low female-to-male sex ratio of children born in India: national survey of 1.1 million households. *Lancet* **367**, 211–218.
- McCarthy D 2001 Why sex selection should be legal. *Journal of Medical Ethics* **27**, 302–307.
- Powledge T 1981 Unnatural selection: on choosing children's sex. In: Holmes HB, Hoskins BB (eds) *The Custom-Made Child: Women-Centred Perspectives*. Humana Press, New Jersey, USA.
- Richards DAJ 1986 *Sex, Drugs, Death, and the Law: An Essay on Human Rights and Overcriminalization*. Rowman and Littlefield, Lanham, USA.
- Robertson JA 2001 Preconception gender selection. *American Journal of Bioethics* **1**, 2–9.
- Savulescu J 1999 Sex selection – the case for. *Medical Journal of Australia* **171**, 373–375.
- Schulman JD 2004 An attempted suppression of liberty. *Reproductive BioMedicine Online* **8**, 374–375.
- Shenfield F 2005 Procreative liberty or collective responsibility? Comment on the House of Commons report Human Reproductive Technologies and the Law, and on Dahl's response. *Reproductive BioMedicine Online* **11**, 155–157.
- Silver LM 2006 *Challenging Nature: The Clash of Science and Spirituality at the New Frontiers of Life*. Ecco, USA.
- Steinbock B 2002 Sex selection: not obviously wrong. *Hastings Center Report* **32**, 23–28.
- Stock G 2003 *Redesigning Humans: Choosing Our Genes, Changing Our Future*. Mariner, New York, USA.
- Sulloway F 1996 *Born to Rebel: Birth Order, Family Dynamics, and Creative Lives*. Pantheon, USA.
- Taylor R 1973 *Anarchy, State, and the Law*. Prentice-Hall, New Jersey, USA.
- Warren MA 1985 *Gendercide: The Implications of Sex Selection*. Rowman and Allanheld, San Francisco, USA.

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