SEX-SELECTIVE ABORTION: A MATTER OF CHOICE

Jeremy Williams

This is the uncorrected post-print version of an article published in *Law and Philosophy* 31.2 (2012): pp. 125–159. The final publication is available at Springer via http://dx.doi.org/10.1007/s10982-011-9118-x.

ABSTRACT. This paper argues that, if we are committed to a Pro-choice stance with regard to selective abortion for disability, we will be unable to justify the prohibition of sex-selective abortion (SSA), for two reasons. First, familiar Pro-choice arguments in favour of a woman's right to select against fetal impairment also support, by parity of reasoning, a right to choose SSA. Second, rejection of the criticisms of selective abortion for disability levelled by disability theorists also disposes, by implication, of the key objections to SSA, as developed, most notably, by feminists. The paper, then, consists of a conditional defence of SSA, under which SSA should be available, and protected by a right, *if* selective abortion for disability is. Opponents of SSA might respond by conceding additional restrictions on selection against disabled fetuses. It should become clear throughout the paper, however, that any such new restrictions would be unacceptably onerous for women.

I. INTRODUCTION

Consider the claim that, in the matter of whether an abortion will be performed, it is a woman's *right to choose*. I shall understand this slogan as referring to a moral right on the part of women to non-interference - in particular from the state - in the making and execution of their decisions regarding the outcome of their pregnancies. The philosophical problem of abortion is sometimes characterised as a problem of

determining whether women do indeed have a right to choose. But in fact very few people believe that women utterly lack this right. That is, very few people believe that abortion ought *never* to be among a woman's legally allowable options – to the point where she must, in Judith Thomson's words, 'sit passively by and wait for her death' rather than terminate a life-threatening pregnancy.[1] For all but the most extremist anti-abortionist, then, the more arresting question is not *whether* women have a right to choose, but rather what the appropriate limits or *scope* of this right might be.

This paper addresses one particular issue arising in relation to the scope of a woman's moral right to choose, to wit, the question how far it encompasses a woman's use of abortion as a means of selecting against unwanted fetal traits. Notwithstanding that abortion is already among the most vexed of contemporary moral issues, selective abortion is particularly controversial. For even many of those who strike an otherwise Pro-choice stance towards the legality of abortion have qualms about at least some instances of selective termination. In particular, a great many people appear to believe that, whilst a woman is *of course* entitled to abort in response to prenatal testing that reveals that her child would be disabled, abortions performed on grounds that the fetus is of the 'wrong' sex are objectionable, and ought not to be allowed. This view is reflected in the abortion laws adopted by many states around the world, including those in areas where sex-selective abortion (hereafter 'SSA') is in high demand, such as India, and in which it is not, such as North America.[2] It is also reflected in the pronouncements of the United Nations, which has 'urged' governments to prevent SSA, but which does not similarly urge

[1] Thomson (1971, p. 52).

[2] For details of the law on SSA in a number of countries, see Jackson (2001, p. 109).

restrictions on the selective termination of disabled fetuses.[3] The mainstream media regularly condemns SSA using the language of 'gendercide', and calls for the countries in which SSA is most prevalent to do more to prevent it, whilst selective abortion for disability seldom, if ever, elicits a similar reaction.[4] In this paper, I argue that such disparate treatment of selective abortion for disability and for sex cannot be defended. More specifically, my thesis will be that if we are committed to a Pro-choice stance with regard to selective abortion for disability, we will be unable to justify the prohibition of SSA.

The philosophical background to my argument is as follows. First, feminist philosophers have often argued that SSA ought to be banned, on grounds that when it is used, as it most regularly is, to prevent the existence of females, it harms women and girls throughout society, and holds back prospects for achieving gender equality. Second, some disability rights advocates have advanced parallel claims: on their view, allowing selective abortion for disability is incompatible with the requirement that, in a community governed by justice, disabled and non-disabled individuals alike are to be treated and valued as equals, and able to regard themselves as such.[5] Third and finally, Pro-choice liberals have in general been strongly supportive of a woman's right to choose abortion in response to a diagnosis of fetal disability (at least on the

[3] See UNFP (1995, articles 4.16 and 4.23).

[4] For instance, *The Economist* magazine is an ardent critic of sex-selective abortion, to which topic it has returned several times in recent years. The cover story of its North American edition of March 4th 2010 (illustrated by a pair of empty pink baby booties) was 'Gendercide: What Happened to 100 Million Missing Girls?'.

[5] I say that 'some' disability theorists argue for prohibition. More common within the disability literature is the view (for which see, e.g., Asch [2003, p. 333-4]) that, whilst selective abortion for disability is morally objectionable, it ought not to be banned. For more on this point, see fn 6, below.

assumption that the fetus does not have sufficient moral status to forbid this), and have accordingly made it a priority to show that the objections that make up the disability rights critique are not sufficient to yield the conclusion that such abortions ought to be banned.[6] Comparatively, meanwhile, they have given much less attention to the topic of SSA in general, or the feminist objections to that practice in particular. Yet interestingly enough, on the relatively few occasions when SSA has been discussed, some prominent Pro-choice liberal authors have voiced criticisms of it that are strikingly reminiscent of those deployed by feminists.

Jeff McMahan, for instance, is a key defender of selective abortion, and has responded in detail to the objections to its availability posed by some disability rights advocates.[7] In a brief aside, he also addresses the topic of sex selection.[8] There, McMahan notes that, in sexist cultures, the birth of a daughter can be seen as a

---

[6] Pro-choice liberal respondents to the disability rights critique of prenatal testing (such as Buchanan *et al* [2000, ch. 7] and McMahan [2005a and 2005b]) tend either to interpret it as overall intended as a challenge to the legality of selective abortion for fetal impairment, or to concentrate on overcoming those elements of it that are intended as such a challenge. As mentioned in the preceding footnote, many disability scholars who criticise the way in which selective abortion is offered and utilised in fact accept that it ought to remain legal. In this paper, however, unless otherwise stated, I shall nonetheless also generally assume (in some cases counterfactually) that the objections of disability theorists aim to establish that selective abortion for fetal impairment should be prohibited. I do so because I am concerned to show that, if one is committed, as Pro-choice liberals overwhelmingly are, to the view that those objections fail to demonstrate that selective abortion for disability should be banned, then one is also committed to rejecting parallel arguments directed against the legal availability of SSA. My thanks to both reviewers of this article for stressing the need to clarify these points.

[7] See McMahan (2005a and 2005b).

[8] See McMahan (2005b, p. 167).

serious burden to a family, comparable to the birth of a disabled child. But he argues that 'the solution in this case is to eliminate the social discrimination, not to eliminate the victims of it. Sex selection merely affirms and perpetuates the pernicious social discrimination.'[9]

Meanwhile, in their book *From Chance to Choice*, Allen Buchanan *et al* devote a lengthy chapter to rebutting various disability rights objections to prenatal screening and other genetic and reproductive technologies used to control children's traits.[10] By contrast, only two pages of the book discuss sex selection, during which the authors criticise the practice on grounds that it

> depends on and reinforces a systematic bias against women. Acting to take advantage of unjust arrangements, or acting in ways that reinforce them, is thus itself objectionable, and permission to pursue [what prospective parents regard as] "the best" through this means is appropriately restricted.[11]

In a nutshell, then, Pro-choice liberals have been widely hostile to the suggestion that justice recommends a ban on selective abortion for disability, but have been known to be sympathetic to the claim that it recommends a ban on SSA.

In this paper, by contrast, I argue that a Pro-choice position in respect of selective abortion for fetal disability is incompatible with the prohibition of SSA, for two reasons. First, familiar Pro-choice arguments in favour of a woman's right to select against fetal impairment also support, by parity of reasoning, a right to choose

---

[9] Ibid.

[10] See Buchanan *et al* (2000, ch. 7).

[11] Ibid., p. 184.

SSA (section II). Second, rejection of the disability rights critique of selective abortion also disposes, by implication, of the key objections to SSA, as developed, most notably, by feminists, and endorsed also, as we have just seen, by some liberals (section III, sub-sections A - C). My argument, then, consists of a conditional defence of SSA, under which prenatal sex selection ought to be available, and protected by a right, *if* selective abortion for disability is. Accordingly, one way for committed opponents of SSA to respond might be to concede additional restrictions on selection against disabled fetuses. It should become clear throughout the paper, however, that any such new restrictions would be unacceptably onerous for women.

Before I begin, some preliminary remarks are in order. First, some terminological guidance: although they are often taken to have different meanings, for expository ease I use the terms 'sex' and 'gender' interchangeably, and likewise with 'disability' and 'impairment'.

Second, prenatal screening followed by abortion is only one of several means by which potential parents might seek to avoid the birth of a child of a particular sex. Others include androgenic sperm sorting, and PGD performed on *in vitro* embryos. My arguments below will certainly have implications for the question whether there is a right to use these other forms of sex selection. But this paper concerns abortion specifically, and so I make no deliberate attempt to tease them out.

Third, I focus, as the relevant philosophical literature most regularly does, on deontological arguments that seek to evaluate what the moral value of *justice* permits or requires in relation to the availability of selective abortion. A distinct set of concerns about SSA, meanwhile, is consequentialist in character, pertaining to the long-term effects of unbalanced sex ratios in societies where the procedure is widely

requested.[12] Someone might think that even if, on grounds of justice, women have the right to choose a SSA, that right may justifiably be overridden in the name of averting the bad consequences of a skewed sex ratio. In the paper's concluding section, however, I give reasons for thinking that consequentialist objections to SSA will be difficult to sustain.

Fourth and finally, some writers object to SSA on grounds that it constitutes a form of unjust discrimination against *the fetus*. For instance, feminist writer Sawitri Saharso avers that the fundamental objection to SSA is that it 'violates the principle of sexual equality; it denies female foetuses an equal right to life.'[13] On this view, however, no particularly distinctive philosophical issues arise in relation to SSA. For in order to assess the force of the objection, we need only revisit once again the already well-trodden debates over the moral status of the fetus, and, in particular, the debate over whether it is appropriately regarded as a person, to whom rights to equal treatment can be attributed.

For that reason, I restrict my attention in this paper to abortions performed prior to the point in pregnancy when the developing fetus acquires the capacity for consciousness. On what is probably the prevailing view within the abortion literature, the fetal organism, during the period in which it lacks the capacity for consciousness, also therefore lacks interests and moral status.[14] It is not, in other words, the kind of being that can be harmed or wronged by having its death brought about. As far as we know, the capacity for consciousness first develops in the fetus

[12] These concerns feature particularly prominently in media coverage of the issue. See, for instance, *The Economist* (2010).

[13] Saharso (2005, p. 257).

[14] See, e.g., McMahan (2002) and Steinbock (1992).

at somewhere between the 20th and 28th week of pregnancy. I shall assume, conservatively, that it develops in the 20th week. As it happens, fetal sex can now be determined with a high degree of accuracy as early as 11 weeks, via chorionic villus sampling, or from 12 weeks, via ultrasound.[15] Where only the preconscious fetus is at issue, any objection to SSA on grounds that it violates a fetal 'equal right to life' or similar will certainly be misdirected. Hence, opponents of SSA within the first 20 weeks must couch their objections – as they typically do – in terms of what is owed not of fetuses, but to persons who already exist in society at large.

Before turning to those objections, in the next section I establish a *pro tanto* case, based on women's interests, for conferring upon them a right to choose a SSA.

II. IN DEFENCE OF SSA

My argument in this section goes through two key stages. First, I set out the main lines of a (fairly routine, I believe) Pro-choice case for extending women's rights to choose from non-selective abortion to the selective termination of pregnancy on grounds of fetal disability. In the second, I show that, once we have made this initial move, we will be led by the same considerations to make a further step, acknowledging a right to choose abortion on grounds of fetal sex.

In beginning the first stage of the argument, consider the following women, all of whom want a *non*-selective abortion within the first 20 weeks:

1. *Jane* has been raped. She cannot cope with the emotional costs involved in carrying in her body and bringing into the world a reminder of her attacker.

[15] See Savulescu (2006, p. 146), and Efrat *et al* (2006).

2. *Sasha* is single and on a low wage. Faced with a lack of affordable childcare, and of other forms of support for lone parents, she decides that she cannot afford to have a child.

3. *Sophie* is married, and has three children. Due to the combined weight of their work and childcare commitments, she and her husband are highly stressed, and rarely manage to spend 'quality time' together. Sophie fears that, if she has another baby, it could destroy her marriage.

I assume that Pro-choice advocates will have no difficulty in agreeing that the women in cases 1, 2 and 3 each have the right to choose an abortion. In each case, their having that right is an important guarantor of their weighty interests – e.g. those in autonomy or mental well-being - and (the fetus being preconscious) there are no countervailing fetal interests to be considered. Now contrast those cases, pairwise, with these (i.e. comparing case 1 with 1', case 2 with 2', etc.):

1'. *Tamsin* is told that there is a 25% chance that any child she conceives will have a serious mental impairment. Such a child would require round-the-clock care, would never be independent, and would manifest distressing behaviours such as compulsive self-mutilation.[16] Tamsin believes she could not cope with the emotional costs involved in caring for such a child. However, she wants to have a non-impaired child.

2'. *Anna* is told that there is a 25% chance that any child she conceives will have a

[16] Self-mutilating behaviours are a notable symptom of Lesch-Nyhan syndrome. For details, see Buchanan *et al* (2000, pp. 99-100).

serious physical disability. Owing to the lack of support in her society for disabled people and their carers, she decides that she cannot afford to have such a child. However, she could afford to have a non-disabled child, and wants to try and do so.[17]

3'. *Belinda* and her husband are considering having their first baby, which they believe they can afford, without compromising their careers or relationship, to which they are already deeply committed. Belinda is told, however, that there is a 25% chance that any child of hers will have a serious disability. She fears that the additional strain which this outcome would place upon her and her husband could destroy their marriage.

---

[17] Notice that, as case 2' has been formulated, having a disabled child is an ineligible option for Anna due to the absence in her society of adequate levels of help for the parents of such children. That suggestion is in keeping with the claims of disability theorists, who emphasise the degree to which the hardships encountered by disabled people and their families are traceable, not to anything inherent in the disabling traits themselves, but rather to society's failure to accommodate and accept them (it is controversial, however, both among disability scholars themselves, and between them and their critics, whether the burdens associated with *all* disabilities can be plausibly traced to discrimination, and an absence of support services). In the literature on prenatal testing it is often thought that, if the costs of caring for a disabled child can be attributed to social injustice, this undermines the case for allowing selective abortion. For in these cases we should concentrate on overcoming the injustice. Comparison between cases 2' and 2, however, indicates that this thought is mistaken. In the original case 2, the burdens which Sasha is attempting to avoid also arise owing to an absence of adequate social support. If we are committed to the view that Sasha has the right to choose a non-selective abortion (and Pro-choice arguments often hinge crucially on the importance of ensuring that women are able protect themselves against patriarchal injustice) then by that token, as the argument in the text has it, Anna also has a right to selectively abort her impaired fetus. I am grateful to an anonymous reviewer for helping me to marshal my thoughts on this issue.

At first sight, it would be utterly arbitrary to affirm, on the one hand, that the women in the first three examples have the right to choose an abortion, whilst denying, on the other, that the women in the subsequent three lack the right to *selectively* abort, if their fetuses are found, after prenatal testing, to have a disability. For in each pair of cases, the women are motivated to avoid *the same* bad effects, to wit: serious emotional suffering (cases 1 and 1'), increased vulnerability to poverty (cases 2 and 2'), and increased risk of relationship breakdown, with all that that entails for their material prospects and so forth (cases 3 and 3').

This is not to say, of course, that there are no relevant differences between the two sets of cases. For to deny the women in the first set the abortions they want is to constrain them to accept the costs of unwanted parenthood, whilst to deny the women in the second set the *selective* abortions they want is compatible with allowing them not to complete their pregnancies. To clarify this, suppose that the women in cases 1', 2' and 3' live under laws which generally allow abortion within the first 20 weeks, but which specifically prohibit selective abortion for fetal disability. This might be achieved, for instance, by the state's forbidding doctors from divulging the results of prenatal screening to women for use in weighing up whether to have an abortion. Under these conditions, the women in cases 1' through 3' can still have a non-selective abortion. However, each woman must choose between the following unattractive options, to wit: (a) either complete her pregnancy, and risk the birth of a disabled child who would impose costs upon her that are (in her own assessment) unacceptably high, or (b) have an abortion and abstain from conceiving again, in order to be certain of avoiding the aforementioned costs, but at the price of being deprived altogether of the chance to have a wanted child. In short, in the absence of

selective abortion, each woman must *gamble* with her interests in order to have the chance of achieving an important goal. Equal concern and respect for women hardly seems compatible with restricting their options in such a way as to require them to risk being harmed as a means of pursuing an important dimension of their conceptions of the good.[18]

Consider now a third set of scenarios, involving SSA:

1". *Chen* was sexually abused by her mother as a child, and finds it difficult, to this day, to trust or forge close relationships with females.[19] She becomes pregnant,

[18] As an anonymous reviewer reminded me, disability theorists sometimes argue that prospective parents, insofar as they rely on stereotypes of disabled people as helplessly dependent on others, etc., are prone to overestimate the burdens involved in caring for a disabled child. Asch and Wasserman, for example, suggest strikingly (2005, pp. 175-6) that, contrary to what prospective parents tend to assume, 'most of the costs and strains of raising even a severely impaired child are bearable by parents of ordinary means and resolution, and… are not significantly greater than those borne by many parents of unimpaired children.' These claims may be seen to sit badly with disability advocates' demands for more adequate social provision for disabled children and their families. They also appear to be at odds with evidence that, in the UK, for instance, families with a disabled child are disproportionately likely to be in poverty (on which see, for example, Every Disabled Child Matters [2007]). However, even if some would-be procreators do show a tendency towards exaggerating the costs involved in caring for a disabled child, it does not follow that they may justifiably be prevented from engaging in selection. For, as I argue below, there are serious objections to the state's taking it upon itself to judge whether and when the interests of some particular woman are sufficiently engaged as to warrant her having access to the procedure, rather than leaving that judgement to the woman herself. The state certainly isn't in a better position to know, in case 3', whether Belinda's marriage is under threat than she is, for instance.

[19] I have developed this example from a suggestion in Savulescu (2006, p. 147).

but comes to believe that she could not cope with the emotional costs involved in having a girl, including both the feeling of estrangement from the child, and guilt if she were led to surrender her for adoption. However, she wants to have a boy, and feels capable of raising one.

2". *Parminder* and her husband live under cultural conditions in which girls are much more costly to raise than boys. Females are widely discriminated against in the labour market, and so cannot contribute significantly to the family economy. A daughter will continue to be a financial drain on her family until such time as a husband can be found for her. And even if or when this happens, the parents will be expected to provide a substantial dowry. Under these conditions, Parminder believes that she cannot afford to have a daughter. However, a son would be an asset, and she wants to have one.

3". *Susan* is married and has four daughters. Her husband is becoming increasingly frustrated and unhappy living in an all-female household, and desperately wants a boy to 'balance' the family. Susan would also like a boy, and believes this would strengthen her marriage and family. She becomes pregnant, but fears that, if the child is another daughter, this could destroy her marriage.

Once again, if we compare these cases pairwise with those in the previous set we see that the women in each pair are seeking selective abortions in order to protect the same interests of theirs. Accordingly, if we believe that those interests provide a compelling case for granting the individuals in the second set of cases a right to selectively abort their disabled fetuses, it will be hard for us to deny that they provide an equally compelling case for granting the individuals in the third set a right to

choose a SSA.

Now, opposition to SSA often stems from the assumption that preferences with regards the gender of one's child are merely self-indulgent or trivial. Cases 1" through 3" show that, on the contrary, women can have extremely compelling reasons for holding such preferences. Indeed, on reflection, it ought not to be a surprise that women can have a significant stake in the sex of their offspring. Sex is an attribute of persons that has, like class or natural endowment, a significant and multi-faceted influence upon our life chances and sense of self. To be sure, in a more equal world, the importance of sex would recede (though it is unlikely that it would ever cease to make any difference at all to our lives). But we do not live in such a world. Because sex has an important bearing upon our lives, it also has a bearing upon our relationships, including the parent-child relationship.[20] The experience of parenting females is often different to that of parenting males. Some would-be parents will, in virtue of their circumstances, be better equipped to do one or the other.

None of that is to say that there will not be cases in which a woman's reasons for wanting a child of a particular gender are substantially less pressing than in cases 1" through 3". We can imagine women's reasons arranged on a spectrum, from the most urgent to the most trivial, with the latter including, for instance, the woman who wants a boy just so she can dress him in blue, decorate his room in a particular way, and so forth. It is doubtful that many women would go to the lengths of having an abortion to gratify merely trivial preferences of this kind, but suppose that some would. What does this fact imply?

[20] My argument here is indebted to Overall's discussion (1987, p. 25ff) of the significance of 'sexual similarity or complementarity' in personal relationships.

Presumably, it can indicate at most the appropriateness of restricting the use of SSA to women whose needs surpass some threshold of urgency. But why should we want to do that? Liberalism standardly adopts a presumption in favour of individual liberty unless or until there are compelling grounds to restrict it (such as, paradigmatically, reasons pertaining to the importance of avoiding harm to others). Even if, then, some women opt for SSA for reasons which we regard as poor, this does not in itself constitute a reason to interfere with them.

In addition, suppose we could agree in principle on criteria for what counts as a good reason for opting for SSA. A Pro-choice view is still likely to insist that, due to epistemic and other constraints, the state is very unlikely to be able to apply these criteria without inconsistency or injustice. That is, it will likely either not be able to find out enough about women's circumstances to be able to judge accurately whether their reasons for wanting a SSA are good enough, or it will be able to do so only at the cost of unacceptable intrusion into their private lives. These problems raise the danger that some women with good reasons for wanting SSAs would be denied them, whilst others who need them would be deterred from seeking them in the first place.

This last point echoes familiar Pro-choice arguments against restricting the right to abort for fetal impairment. In some countries, such as the UK, women can only obtain such an abortion if they can persuade their doctors that the fetal disability in question is serious, and/or that their own circumstances are such that having a child with such a disability would significantly jeopardise their interests. Yet, to grant this kind of discretion to a doctor or other official 'gatekeeper' to the abortion procedure seems to place women's interests at the mercy of others to an

unacceptable degree.[21] Moreover, to require a woman to plead her case before - and explain intimate features of her personal life to - a stranger, may well be experienced as demeaning.[22]

Finally, it is important to recognise that an attempt on the part of the state to ban SSA will have predictably adverse effects on pregnant women beyond those who want to undergo the procedure. There are two methods available to a state that seeks to prevent SSA. First, it might insist that an abortion may only be performed where doctors or other officials are satisfied that the woman has one of a list of pre-approved reasons (for instance, avoiding damage to her health), and must be withheld if it is found that her intention is to engage in sex selection. Alternatively, the state might impose no restrictions on what counts as an acceptable reason for abortion, but instead ban doctors from disclosing the fetal sex to women undergoing prenatal testing. These alternative policies will foreseeably both carry costs. As we have already seen, the first may lead to some women being unfairly denied an abortion, not because they in fact have proscribed motives, but rather because they cannot dispel their doctors' suspicion that they have them. For instance, women from minority cultures that are widely known to favour sons, and who are not sufficiently adept in the use of the majority language to explain their reasons for wanting an abortion clearly or convincingly, may be at a disadvantage under this policy. The second policy, meanwhile, withholds information that is wanted not only by women who

[21] For this argument, see, e.g., Jackson (2001, p. 106).

[22] That it is demeaning to have to submit to such scrutiny is an objection commonly levelled against the regime that was in place in some American states prior to *Roe v. Wade*, under which a woman wanting an abortion would have to appear before a panel of physicians, to persuade them of her urgent need. I am grateful to an anonymous reviewer for suggesting this parallel.

would use it to select, but also by those who only want to use the information gleaned from prenatal screening for other reasons. Jeff McMahan records having once been told by a prenatal screening provider that the service is offered to help parents better prepare for the birth of a disabled child, rather than to facilitate abortion.[23] A woman might want to know the sex of her fetus for parallel reasons - for instance, because she needs to be able to imagine herself parenting this *particular* child in order to mentally acclimatise herself to the fact of her pregnancy and impending motherhood. Such a woman may end up being led to abort anyway if she cannot do this, when knowing the fetal sex would have enabled her to complete her pregnancy. It should not be necessary to emphasise to liberals, who stress the importance of informed, autonomous choice, that there are significant risks involved in denying women access to facts that are relevant to the making of such a momentous, complex, and emotionally charged decision as the decision of whether or not to have a child.

To summarise, the same considerations that underpin the case for a right to selectively abort on grounds of fetal disability also recommend granting women a right to selectively abort on grounds of fetal sex. Admittedly, this *pro tanto* conclusion might be overturned if it were to turn out that the latter type of selection faces special and persuasive objections. However, as we shall see in the next section, that is not so.

III. THREE OBJECTIONS TO SSA

To reiterate, according to its feminist critics, SSA is antithetical to gender justice.

[23] See McMahan (2005a, p. 79 n4).

Three objections are standardly levelled against it: (1) that when it is made legally available, women who would not otherwise choose the procedure will be exposed to a risk of being coerced or pressured into undergoing it, thereby undermining their autonomy; (2) that SSA expresses a belief in the inferiority of females to males, thereby corroborating and reinforcing harmful sexist attitudes towards women in the society at large; (3) that SSA constitutes a wrongdoing tantamount to genocide – namely, *gynecide*. These objections are all addressed to real-world societies and cultures that exhibit at least some sexism, and in which, if SSA is made available, it will be used mainly, perhaps even overwhelmingly, to prevent the birth of girls.[24]

Strikingly similar arguments have been adopted by some members of the disability rights movement. Indeed, the latter generally begin from the premise that SSA is objectionable, for the reasons given by feminists, before arguing that selective abortion for disability shares the same wrong-making features.[25] Below I shall argue that, insofar as feminist and disability critiques of selective abortion mirror one another, to reject the latter, as Pro-choice liberals overwhelmingly do, is also, *pari passu*, to reject the former (which, as we have seen, liberals have sometimes been minded to endorse).

A. The autonomy objection

[24] Feminist scholarship, of course, exhibits great diversity. I do not mean to be read as suggesting either that all feminists favour the prohibition of SSA, or that those who do so each advance all three of the objections identified in the text. According to some feminists (e.g. Warren [1999]), both allowing and prohibiting SSA will foreseeably carry costs to women, and the question which costs are decisive may depend on facts about the particular society.

[25] See, e.g., Parens and Asch (2000, p. 14).

In section II, I cited autonomy as one of the interests of women which underpins the case for granting them a right to choose a SSA. According to some feminists, however, the precise opposite is true, to wit, that the value of autonomy *condemns* a permissive approach to SSA, at least in cultural contexts in which daughters are devalued, and the status and security of women depends, at least in part, on their ability to bear sons. What I shall call the *autonomy objection* claims that, where there exists a cultural preference for boy children, to permit SSA would be to endanger women's autonomy, by exposing them to pressure to make use of the procedure, from their husbands, families, and communities in general.[26] This pressure, according to the objection, becomes more powerful and difficult for women to evade as SSA becomes more routinely used by others in their community, with greater uptake fostering the assumption that opting to learn the fetus' sex and abort if it is female is the normal or required thing to do. Prohibition of SSA is therefore endorsed as a way to shield women from the demands and expectations of others, in at least countries such as India where son preference is strong and widespread, and also perhaps in multicultural western states, where SSA is not in high demand, but would be sought by members of certain son-preferring minority groups if it were available.

Note that proponents of the autonomy objection do not deny that it is possible for women to autonomously choose a SSA. That would be implausible, since at least some SSAs will be requested by women for reasons unrelated to a cultural imperative, and others will be requested by women who want to conform to their culture, but whose circumstances are such that they are not constrained to do

[26] For objections to SSA based on women's autonomy, see, e.g., Bubeck (2002, pp. 223-4), Chambers (2004, p. 330), Corea (1985, pp. 191-2), Saharso (2005, p. 258ff), and Warren, (1999, p. 141).

so, and have a feasible alternative. The objection claims only that women in general ought to be denied access to SSA, as a way of protecting those whose autonomy would otherwise be at risk. Note also that it would be open to proponents of the autonomy objection to argue that women who autonomously choose SSAs act wrongly, by contributing to a cultural climate in which undergoing the procedure is an expected part of female behaviour.

Now, nobody could deny that women in son-preferring cultures often face powerful pressure to abort their female fetuses. However, the key weakness of the autonomy objection lies in its failure to acknowledge that women who choose abortion on grounds other than that the fetus is of the 'wrong' sex are also subject to comparable constraints. Cultural expectations do not only weigh down on women from non-western backgrounds. Consider, in particular, the pressure which western and non-western women alike face to test their fetuses for various disabilities, and abort in light of a positive diagnosis. Describing this, disability theorist Marsha Saxton writes:

> Women are increasingly pressured to use prenatal diagnostic testing under a cultural imperative that undergoing these tests is the "responsible thing to do." Strangers in the supermarket, even characters in TV sitcoms, readily ask a woman with a pregnant belly, "Did you get your amnio?" While the ostensible justification is "reassurance that the baby is fine," the underlying communication to the mother is clear: screening for fetuses with disability traits is the right thing, "the healthy thing," to do.[27]

[27] Saxton (2000, p. 157).

Saxton's point highlights an important aspect of the disability rights critique of prenatal testing and selective abortion, which emphasises the way in which the judgements of others in the community, and the more or less explicit persuasion and cajoling of friends, family members, partners, and medical staff, all combine to make the refusal to test and abort a disabled fetus an ineligible option for many women.[28] Her observation exposes a dilemma for proponents of the autonomy objection: either abandon the claim that the existence of cultural pressure to undergo SSA provides in itself a sufficient reason to prohibit the practice, or extend the objection, so that it condemns the availability of selective abortion for disability also.

Now, feminists who are sympathetic to the disability rights critique of selective abortion may be tempted to take the latter path. So it is worth setting out precisely why that would be an unsatisfactory solution. The problem is that, if they do so, they will immediately be compelled to make still further concessions. Indeed, it is difficult to see how they will be able to avoid the conclusion that *all* abortion, whether selective or non-selective, ought to be prohibited. After all, no abortion choices are made in a cultural vacuum. The women who make them will generally be cognizant of, and influenced by, prevailing norms and expectations regarding pregnancy and motherhood. For instance, women in Britain who become pregnant whilst claiming out-of-work benefits are likely to be painfully aware that their culture views women who have children without the independent means to support them as feckless and irresponsible. The same is true of women who become pregnant in their teens, while single, or by multiple sexual partners. Advocates of the autonomy objection cannot, I believe, plausibly claim that exposure to a cultural imperative to

[28] On this strand of the disability rights critique, see, e.g., Tomlinson (1998), and Shakespeare (2005).

bear sons is any more corrosive of a woman's autonomy than exposure to an imperative to bear only healthy, non-disabled children, or to abstain from procreation altogether whilst single. Thus, if their aim is to save women from pressure to conform to the dictates of their culture, they will have to endorse constant interference in their abortion choices (and, indeed, their other choices). This finding seems to constitute a *reductio ad absurdum* of the autonomy objection.

Now, at this point, an adherent of the autonomy objection might claim that what sets SSA apart from other types of abortion is our knowledge that women are not merely pressured to undergo it, but *coerced* into doing so. Sawitri Saharso reports on a fierce debate over SSA that took place in the Netherlands in the late 1990s, after the then Minister of Health stated on television that, in her view, Dutch abortion law, which permits termination of pregnancy when a woman finds herself in a 'critical situation', could be validly interpreted as licensing the selective abortion of a female fetus.[29] The example the Minister gave was of a woman 'from a foreign culture' who had asked for a SSA, fearing for her life if it was not granted.[30] According to Saharso, many Dutch commentators were incensed by the suggestion that a woman should be

[29] Saharso (2005, p. 251).

[30] Ibid., 252. More accurately, the minister referred to a woman who, if denied a SSA, would find her marriage or her life at risk. However, for a woman's husband to threaten to break off their marriage is not the same as his threatening to end her life. For the former, unlike the latter, is something he is entitled to do. Therefore, his making the former threat does not appear to constitute coercion of a kind that overwhelms voluntariness, even if he acts wrongly in applying that threat. A usefully cognate issue here is that of consent to sexual relations. The man who says, 'Have sex with me or I'll kill you' is uncontroversially guilty of rape. On the prevailing view, however, the man who says 'Have sex with me or I'll leave you' is not, even if he is a reprehensible character. For more on the latter issue, see Wertheimer (2003, ch. 8).

provided with an abortion on these grounds, and drew a sharp distinction between this sort of case and, say, the more familiar scenario in which a woman has a non-selective abortion because she is too poor to bring up a(ny) child. Saharso expresses concern that the Dutch debate reveals a double-standard on the part of the media, whereby a western woman who needs an abortion because she is, e.g., in financial dire straits is assumed to act autonomously, whereas a non-western immigrant woman who says she needs a SSA in order to placate her husband is regarded as a mere puppet of her culture, who does not show real agency. However, a ready response would be to say that there is a principled distinction to be drawn here, between women whose options are limited due to the application of threats of rights violations, as in the case cited by the Dutch minister, and those who are in straightened circumstances for other reasons.

To elaborate on this last point, threats of serious wrongful harm are generally regarded as destructive of autonomous decision-making in a way that the prospect of being harmed more generally need not be.[31] For instance, if X consents to Y's performing an abortion only because Z is holding a gun to her head, her agreement is uncontroversially neither morally nor legally transformative – Y, that is, is not granted a right to proceed. But it is not the mere fact that X has no reasonable alternative but to agree that negates the transformative power of her consent in this case. For we certainly *do* think that a woman's consent is validly given when she agrees to an abortion only because, say, she has a heart defect that will result in her death if she completes the pregnancy. Rather, it is the fact of X's interests having been *unjustly* threatened that appears to make the moral difference. Now, standard liberal

[31] In this paragraph, I draw in particular on A. Wertheimer's influential book, *Coercion* (1987).

commitments to individual autonomy and anti-paternalism can be compatible with prohibiting certain practices on grounds of ineradicable concerns about people being coerced into participating in them, and the harm that would ensue. Could a case in favour of the prohibition of SSA *specifically* be made on grounds of protecting women who are at risk of domestic coercion?

I believe that to argue for the prohibition of SSA on the aforesaid grounds would be *ad hoc*. For women who find themselves in abusive relationships are clearly not only at risk of being coerced into having unwanted *sex-selective* abortions. Rather, they are at risk of being coerced generally into having abortions wanted by their husbands and families. This is so even for women whose cultures are notably son-preferring. Consider the example of India. Saharso observes that many Indian women find themselves in oppressive domestic situations from which they have few exit options, and are compelled by their husbands and families to undergo unwanted SSAs.[32] On those grounds, Saharso thinks that the need to prohibit SSA in India is indicated (by contrast, in the Netherlands she believes that the law can afford to be less restrictive, since there are more adequate support systems in place to deal with women fleeing domestic abuse). However, Indian women also report being forced by threat of violence to have abortions for reasons unrelated to fetal sex preference – for example, because the child is simply unwanted by the husband, or because conception occurred outside wedlock, and would bring shame on the family, or because the pregnancy is regarded as unlucky for superstitious reasons.[33] Saharso's argument proves too much: it implies that abortion ought in general to be banned in India, to protect the women who are at risk of this kind of abuse. However, it is far

[32] See Saharso (2005, p. 258).

[33] See Visaria *et al* (2004, pp. 5046-7).

more plausible to respond to valid concerns about domestic oppression by urging the adoption of policies designed to effectively punish abusive spouses and family members, empower women within the home, and provide them with feasible exit options. This alternative approach strikes a more appropriate balance between the interests of women who are at risk of coercion, and those who autonomously want an abortion. In general, the central defect with the autonomy objection, both when it appeals to cultural pressure, and when it appeals to coercion, is that it does not take into account the autonomy of all women who are involved in SSA.

B. The expressivist objection

The second feminist objection, which I shall refer to as *the expressivist objection*,[34] has it that SSA violates gender justice by giving voice to, and amplifying, pernicious and harmful judgements about the status and worth of all women. The basic idea here is that taking action to prevent the existence of females communicates that they are not the equals of males. Clare Chambers puts the objection this way:

> Sex-selective abortions are by definition chosen in response to a cultural norm that girls and women are inferior. Allowing such abortions both legitimates and strengthens the norm, and thus undermines sex equality more generally. The norm is legitimated because, by allowing the practice, the state refrains from insisting upon sex equality and implies that the inferiority of women is a reasonable ground on which to abort a female foetus. The norm is strengthened because, in the community in general, people will be aware that the norm of female inferiority is sufficiently

[34] This is the name standardly given to a parallel objection to prenatal testing and abortion found in the disability rights literature.

> entrenched and important to justify the elimination of particular potential women. Sex-selective abortion aggressively emphasizes that girls and women are viewed as inferior within their culture – and, of course, that boys and men are seen as superior. As a result, the *equality* of women and girls not directly involved in sex-selective abortion is further undermined.[35]

Notice Chambers' claim that SSAs are 'by definition' chosen in response to a norm of female inferiority. This implies that, in the absence of such a norm, SSAs would not be requested. Yet that does not appear to be true, as cases 1" and 3" (not 2") from section II indicate. Arguably, both of these cases could arise even in a fully gender equal world.[36]

Let us, however, continue to focus on the real-world societies in which misogynist norms persist. Chambers argues that, in this context, there is expressive significance both to what the state does, and to what individual women do, in relation to SSA. First, in permitting these abortions, the state is seen as endorsing, and thereby validating, a norm of female inferiority. Second, in choosing to undergo them, individual women contribute to the strength and prominence of that same norm.

Assume for the moment that the legal availability and/or use of SSA does send an objectionable, inegalitarian message about the status and worth of females. What would be the effects upon women of their living in a society in which this

---

[35] Chambers (2004, pp. 329-30). For further statements of the objection, see, e.g., Arora (1996, p. 421), Bubeck (2002, p. 225), and Wertz and Fletcher (1992).

[36] This point is compatible with acknowledging what seems clearly plausible, to wit, that cases fitting the mould of 3" are much more likely to occur where sexist norms are prevalent.

occurs? We can foresee the message's having both *direct* and *indirect* effects upon women. That is, women may be affected both as first-hand recipients of the message, and as residents in a society in which it is apprehended and internalised by others. In terms of its direct effects, the message is demeaning, and may therefore damage the capability for self-respect of women who are exposed to it. In terms of its indirect effects, the message reminds people in yet another way that females are held to be of lesser value in their society, and some may be moved to treat them accordingly, in contravention of justice.

A version of the expressivist objection has also become widely known as the signature argument of the disability rights critique of selective abortion. In the hands of disability theorists, the objection avers that the availability and widespread use of selective abortion for fetal impairment reflects and reinforces a number of hurtful and pernicious stereotypes about disabled people - for instance that they have no right to exist; that their lives are uniformly so riddled with misery as to be not worth living; that they bring only unhappiness and no rewards to those around them; and so on. [37] The broadcasting of these ideas is seen both as harmful and disrespectful to disabled people in itself, and as ratifying existing societal prejudices against the disabled, thereby increasing their vulnerability to abuse.

The disability variant of the expressivist objection has been subject to widespread, sustained criticism in the Pro-choice liberal literature.[38] One key counter-argument claims that the objection's assumptions regarding what acts of

[37] For key statements of the disability variant of the expressivist objection, see, .e.g., the various contributions to Part Three of Parens and Asch (eds.) (2000).

[38] In this paragraph and the next I rehearse arguments developed, notably, in Buchanan *et al* (2000, p. 274ff) and McMahan (2005a, pp. 84-7).

selection express about disabled people are made too swiftly. For what does it mean, in the end, to say that an act has expressive significance, or that it reflects some objectionable view or norm? On what seems the most plausible interpretation, what an act expresses depends upon the motives and beliefs of the agent. On this view, an act of selection expresses a pernicious, inegalitarian view about disabled people if and only if the woman who engages in it is in fact motivated by such beliefs. But a woman who selectively aborts her disabled fetus need not be motivated by these beliefs. There is nothing incoherent in a woman's believing that to have a disabled child would be worse for her, given her specific circumstances, whilst fully recognising that already-existing disabled people are entitled to equal concern and respect, that they generally have lives well worth living, that many parents regard their disabled children as a blessing, and so forth. For this reason, the overall practice of selective abortion for disability cannot be read as expressing any uniformly malign view about disabled people, their moral status, or their value to others. So to read it would be to unfairly tar all those who undergo the procedure, for whatever reason, with the same condemnatory brush. The most that can plausibly be claimed is that *some individual instances* of selection will be reflective of the aforementioned objectionable beliefs – to wit, those that are chosen by women who actually entertain them. However, from our epistemically non-privileged position as mere onlookers to women's decisions, with no special insight into their lives or attitudes, *we* cannot know which decisions are, and which are not, indicative of negative judgements about disabled people. We do not have sufficient grounds, as onlookers, for inferring that any given woman's act of selection conveys a negative judgement about the disabled, let alone that all of them do so.

These counter-claims concern the expressive significance of individual acts of

selection against disabled fetuses, rather than the expressive significance of the state's decision to allow such selection. But the same reasoning can also be straightforwardly applied to the state. To wit, we can say that a legal rule permitting selective termination of pregnancy on grounds of disability expresses an objectionable view of the disabled if and only if legislators enacted the rule on the basis of such a view. However, if the justification for the law is instead only to safeguard women's weighty interests, it cannot be held to express any negative attitudes towards disabled people, and no such attitudes ought to be inferred.

It should by now be apparent that these lines of defence against the expressivist objection in the context of disability can also be deployed in the context of SSA. Indeed, consistency appears to require that they *are* so deployed. This yields the following results. First, a woman who opts for a SSA need not herself subscribe to any inegalitarian beliefs about the inferiority of females. Rather, she may believe merely that the birth of a girl would, given her circumstances, be worse for her. If SSAs can be sought for reasons other than a belief in the inferiority of females then they do not necessarily express any such belief. And since we cannot make windows into the souls of individual women who opt for SSA, we are not justified in inferring any such belief on the part of any given woman who does so, still less on the part of *all* such women. Moreover, the state's decision to allow SSA need not imply that it eschews the principle of gender equality. Whether or not it does so depends on the reasons for which the permissive law was enacted. Indeed, we can go further: why should a permissive policy on SSA be thought more likely to express a pernicious view of the status of women than a restrictive one? The latter could, after all, be passed by a state which denies that women have a right to give some measure of priority to their own interests, which is a key aspect of having the moral status of a

person.

These conclusions receive corroboration when we recall the details of cases 1", 2" and 3" from section II. The women in these cases want to selectively terminate their female fetuses, but this is not incompatible with a robust belief in gender equality on their part. Moreover, a state that allows these abortions also need not be signalling any dilution of its commitment to equality, if it is moved to act by the women's interests.

Now, proponents of the expressivist objection typically focus on cases such as that of Parminder (case 2"), who seeks a SSA because the misogynist discrimination prevalent in her society means that the birth of a daughter would impose extra costs upon her and her family. Even Parminder's choice need not be an endorsement of a norm of female inferiority.[39] But it nonetheless certainly underscores, at least, that girls are 'viewed as inferior' (to use Chambers' words) *by others* within her culture. It is, after all, only in virtue of the fact that they are so viewed that having a girl child carries extra costs. A proponent of the expressivist objection might be tempted to claim, then, that even if Parminder's abortion does not reflect a belief on her part in the inferiority of females, it is still indicative of the prevalence of such beliefs in society at large, and the prohibition of SSA is justified in the name of dampening the expression of *that* thought.

[39] Indeed, it may be *because* of Parminder's belief in sex-equality that she chooses a SSA. For instance, she may believe that it would be worse, from the point of view of gender equality, to cause the existence of additional females who will only be subject to inevitable discrimination and neglect. Or she may think that there is no sense, from that same point of view, in her disadvantaging herself. For she may be able to do more good for sex equality if she protects herself from the additional, culturally-imposed burdens involved in having a daughter.

This claim, however, seems implausible. It amounts to the suggestion that we ought to try to suppress the knowledge that there exists prejudice and discrimination against women. Yet, to attempt to do that seems self-defeating from the point of view of justice. Obscuring injustices from sight only impedes efforts to rectify them.

It might next be responded, then, more promisingly, that when people are made aware that a norm of female inferiority obtains among others in their society, this may in turn affect their own perceptions of women for the worse. In particular, they may wrongly conclude that, in virtue of its prevalence, the norm must have something to commend it. Does this revision to the expressivist objection, appealing to what people may mistakenly infer from the phenomenon of SSA, provide a good enough reason for the state to prohibit the practice?

Consider a parallel revision to the disability variant of the expressivist objection. This claims that, whether or not women who selectively terminate their disabled fetuses are themselves motivated by objectionable ideas about disabled people, the combined effect of what they do will still be to promulgate such ideas throughout society. For many people will be apt to infer that disabled people are widely viewed as an unwelcome and resented drain on a family's energy and resources, which it is rational to go to any lengths to avoid, and this will in turn have a negative impact upon their own perceptions of disabled people, their role in society, and the validity of their moral claims against others. Therefore, the objection has it, the selective termination of impaired fetuses ought to be disallowed, irrespective of the motives of those who use it, and of the state that permits them to do so.

What are we to make of the latter argument? To be sure, we are all under a duty, at the bar of justice, to shoulder certain costs in order to help bring about a social climate in which disabled people are fully accepted as equal members of the

community. However, as we saw in section II, if selective abortion is not available, women who find the costs involved in caring for a disabled child unacceptable must either (a) forego having a child altogether, or (b) attempt to fulfil their desire for parenthood, but at the risk of having a disabled child, and incurring the costs they wanted to avoid. I believe that many Pro-choice advocates would say, at this point, that the costs to women of prohibiting selective abortion are too high for them to be expected to bear them in order to avoid inadvertently corroborating other people's prejudices against disabled people. That is, they would say that enacting a ban on selective abortion involves an *unfair distribution* of the costs of achieving justice for the disabled. The unfairness here seems all the more pronounced because, under a ban, women are being asked to make a large sacrifice to help prevent others from drawing conclusions about the status and value of disabled people that are anyway unreasonable. This is to make women bear the costs of other people's failures of moral deliberation, in a way that seems in tension with the special responsibility of each person for his or her own decisions. These points suggest that we should concentrate on other means of dispelling prejudice against the disabled, whilst leaving abortion choice intact.

If this reasoning is correct, however, then once again it also applies, *mutatis mutandis*, to the feminist variant of the expressivist objection. True, we can reply, widespread SSA is a graphic indicator of the extent to which females are undervalued in a society. Seeing this, some observers may have their prejudices about women confirmed, or develop new ones, to the further detriment of gender equality. However, to prohibit SSA on those grounds would be to unfairly concentrate the costs of eliminating sexism upon a particular group, to wit, child-bearing women who want, but can no longer obtain these terminations. In the absence of SSA, women

who believe that they cannot afford a(nother) daughter must either abstain from procreation altogether, or become pregnant anyway, and bet on having a son. We can add that, in patriarchal cultures, in which wives are expected to bear males, and are at risk of abandonment if they do not, refusing to procreate altogether may not be a feasible option. In addition, women who bear daughters may face pressure to repeatedly become pregnant until they bear the sought-after sons, at considerable cost to themselves. On all these grounds, prohibiting SSA involves denying some women the option of avoiding significant harms. Indeed, the more sexist a culture is, the greater the harm to which such women will be exposed under prohibition. It seems manifestly unfair to expect them to incur these harms, thereby taking upon their own shoulders the costs of other people's unreasonable propensity towards misogyny. We should aim to rectify sexism by other means.

Someone might respond that the foregoing argument does not take into consideration the fact that, by helping to break down sexist attitudes, prohibition will benefit *all* women, including those who are harmed as a result of the non-availability of SSA. This would mean that the latter are being asked to shoulder harm in the name of achieving a benefit for themselves. Conversely, the prohibition of selective abortion for disability may seem to burden one group (pregnant women) for the sake of another (disabled people). Is this point sufficient to drive a wedge between the two forms of selection? It seems not, for three reasons. First, even if the women who are denied SSAs are part of the group that gets the benefit of prohibition, this does not undermine the claim that the benefit has been obtained via an unfair distribution of costs, unless the costs are adequately compensated by the benefits. And there seems little reason to think that the benefits of prohibition would be felt so strongly, and so immediately, as to adequately compensate those who are

significantly burdened by the absence of SSA. Indeed, the expected benefits may never transpire at all: whether or not a prohibition of SSA helps to mitigate sexism depends on what other drivers of prejudice are present in a society. And even if prohibition does contribute to change, that change is likely to be slow and generational, in which case prohibition involves imposing costs on some women now for the sake of benefiting others in the future. Finally, it is not in fact true that women would not be beneficiaries of any weakening of prejudicial attitudes towards the disabled that might occur as a result of a ban on selection against impaired fetuses. Rather, they would stand to benefit both as persons who are at risk of becoming disabled (as we all are), and as persons whose dependents, loved ones, etc. are subject to that same risk. In a nutshell, then, the suggestion that women may be benefitted as well as burdened by a prohibition on SSA cannot rescue the expressivist objection.

It might also be argued that the claim that a ban on SSA distributes the burdens of eliminating sexism unfairly elides pertinent distinctions between women who seek such abortions under different circumstances. Suppose the case of a comfortably-off, urban middle class couple. They want a son to carry on the family name, and to take over the family business, but neither partner would encounter significant harm if they had a daughter. If the woman in this case has a SSA, one might think, she feeds the sexism in society *unjustifiably*. Her case is unlike that of a woman who, for example, needs a SSA as the only way to avoid becoming destitute. These reflections can incline us at most to say that not all women will be sufficiently in need as to have a right to be allowed to use SSA, when this results in some reinforcing of sexist attitudes. Should we move to this position? We saw in section II that there significant difficulties involved in restricting access to abortion to those

deemed to have needs that surpass some threshold of urgency, pertaining both to the location of the threshold, and to its fair and consistent application across cases. Suppose, however, that these problems were surmountable, so that SSAs could be made available to some, discerningly, on the basis of need. It is far from clear that, at the bar of the expressivist objection, this would be an improvement on allowing SSA for all. For the policy still allows onlookers to form the mistaken impression that females are of lesser value, and now also requires the state to draw distinctions between females born under different circumstances (which are likely to correlate with differences in social class, caste background, etc.), in a way that may be thought to further stigmatise some of them.[40]

However, suppose we think on balance that this policy would be better than nothing – perhaps because it makes SSA a rarer and less noticeable practice overall. The key point here is that even this more restrictive policy is an abandonment of the claim that there ought to be an outright ban on SSA. An outright ban cannot be justified on grounds of the expressivist objection. For this would require us to argue what is implausible, to wit, that there are no costs too high for women to be expected to bear them in the name of contributing (even marginally) to the breaking down of sexist prejudice.[41]

---

[40] This point parallels an argument often made by disability theorists, who oppose attempts to 'draw lines' between serious and non-serious disabilities, and insist that, if prenatal screening and selective termination is to be made available, it ought to be available for *all* detectable fetal traits, without distinction. This they do on grounds that line-drawing stands to worsen the stigma attaching to those disabilities deemed officially to be serious. For elaboration, see, e.g., Asch (2003, p. 337ff), and Wasserman (2003).

[41] An anonymous reviewer asks me to consider an alternative policy, under which the state permits recourse to SSA, whilst simultaneously condemning and discouraging it. I believe that, *mutatis*

C. The gynecide objection

The third and last of the major feminist objections has it that SSA is an instance of *gendercide* – and, when used to prevent the birth of females, of *gynecide*.[42] These terms are, of course, intended to invoke an analogy between SSA and *genocide*, to wit, the systematic and intentional eradication of persons of a particular racial, ethnic, or national group. Genocide is agreed to be one of the most repugnant of all moral wrongdoings, and, as such, the accusation that someone is guilty of participating in genocide, or a wrongdoing equivalent to genocide, ought not to be made lightly. Mary Anne Warren, who coined the term 'gendercide' in her 1985 book of that title, is arguably prepared to make it (or assent to its being made) *too* lightly, and in such a way as to deprive it of its special condemnatory power. She suggests that, even if it is determined that sex selection constitutes gendercide, it is still a further question whether it ought to be legally prohibited.[43] Yet even though, as a number of philosophers have argued, we can have 'rights to do wrong', it seems scarcely credible to suppose that a wrongdoing could, at one and the same time, be so serious as to warrant being likened to genocide, and yet not so serious as to warrant coercive

---

mutandis, the arguments put forward above against prohibition also apply to the alternative policy. That is, if it is true that the state ought not to interfere with women who aim to avoid harm to themselves, by banning SSA, then by the same token it ought not to make it more difficult for them to do so by exposing them to heightened social censure. Moreover, to condemn women for giving legitimate priority to their own interests seems again to be a denial of their moral status as persons, and therefore stigmatising.

[42] For the claim that SSA is gynecidal, see, e.g., Corea (1985, p. 206), Hanmer and Allen (1982), and Steinbacher (1984).

[43] Warren (1985, p. 25).

sanctions.

Let us explore the wrongdoing of genocide further. Clearly, not all acts which have the effect of reducing or holding back the size of a racial, ethnic or national group are appropriately regarded as genocidal. If they were then, as Warren notes, any woman practicing family planning would be complicit in genocide, insofar as the group to which she belongs would be deprived of a new member.[44] At least one philosopher, Chandran Kukathas, prefers to reserve the term genocide so that it refers strictly to the total or partial annihilation of a group through the targeted mass killing of persons.[45] Others have understood genocide more broadly, as an offence that can also be perpetrated via acts short of killing – for instance thinning a group through compulsory sterilisation.[46] But it appears that, on any understanding of the term that is congruent with our existing sense of the sheer enormity of the wrongdoing of genocide, it must involve widespread violations of fundamental rights, such as the rights to life and bodily integrity.[47] To clarify this, consider the example of an ethnic group that, by unanimous agreement, brings about its own end by abstaining from further procreation. If cultures have intrinsic moral value, as Ronald Dworkin has suggested, then the members of this group could be guilty of a non-

[44] Ibid., p. 23.

[45] See Kukathas (unpublished).

[46] Under the definition of genocide offered in Article II of the United Nations 'Convention on the Prevention and Punishment of the Crime of Genocide' of 1951, a number of acts apart from killing can be genocidal, if carried out with 'intent to destroy, in whole or in part, a national, ethnical, racial or religious group', including '[i]mposing measures intended to prevent births within the group.' See further Kukathas (unpublished).

[47] Cf. Warren (1985, p. 23).

grievance (i.e. non-rights-correlated) wrongdoing.[48] However, few if any would think that they were guilty of genocide.

With these remarks in mind, consider now the wrongdoing of gynecide. Gynecide could be waged by a state that, for instance, adopted a policy of forcibly aborting women's female fetuses. However, does gynecide occur if the state merely makes SSA available, and some women choose to avail themselves of it? Even if the result is a significant decline in the number of females, the answer seems to be 'no', for at least three reasons. First, if the abortions happen within the first 20 weeks, the reduction in the female population does not occur via any violation of a fundamental right. Second, it does not occur through coordinated action, but instead as a result of the independently-made decisions of individual women. And third, there is typically no intent to bring about the destruction of the group on the part of those involved.

These mirror the replies that I think we would certainly be minded to give if someone were to aver that the selective abortion of disabled fetuses represents a mass wrongdoing tantamount to the systematic liquidation of disabled people under the Nazis. If they are sufficient to dispel *that* claim, as I think they are, then they must also be sufficient to show that SSA is not gynecidal.

Although SSA is not plausibly likened to a wrongdoing of the magnitude of genocide, however, there may be more to be said on behalf of the gynecide objection. For consider: on one view, the wrongdoing of genocide is exacerbated by the fact that, as well as involving the violation of fundamental *individual* rights, it also deprives the remaining group members of certain *communal* goods that they would have derived from the group's continuing to exist and flourish – for instance a sense of

[48] Dworkin (1994, p. 72).

belonging and solidarity, shared traditions that give meaning to their lives, and so on.[49] Someone might think that, if depriving group members of such goods adds to the wrongdoing of genocide, it can also be objectionable when it is done independently of genocide. If that thought is correct then, by analogy, SSA, even if not gynecidal, might still be accounted objectionable, on grounds that it interferes with the ability of women to enjoy certain goods that are dependent upon their collective existence and strength *as a group*.

What goods are available to women as members of their gender group, which might be compromised by widespread SSA? Feminist critics of SSA seem concerned in particular by the danger which declining female numbers may pose for women's collective political power and influence. Warren writes:

> It seems highly probable that large increases in sex ratios (i.e., in the relative number of males) would be detrimental to the cause of gender justice. Other things being equal, there is power in numbers, whether within families, communities, or nations. Given that males often retain a near hegemony of economic and political power even when women are slightly in the majority, it seems unrealistic to hope for significant progress when women are greatly in the minority.[50]

The alternative to the original gynecide objection that I am sketching might claim, on grounds of Warren's concerns, that women have a right that their group continue to constitute (roughly) half the population, so that they are able to muster an effective

[49] This possible explanation of the distinctive wrongdoing of genocide is criticised in Kukathas (unpublished).

[50] Warren (1999, p. 139).

defence against patriarchy, and actively prosecute the political case for gender equality. This right, if it exists, would be a *collective* right – a right that women possess as a group, in virtue of interests which they share *qua* group members.[51] Call this the *strength-in-numbers objection*. Does it make a successful case for the prohibition of SSA?

The first thing to note about the strength-in-numbers objection is that disability rights advocates have been known to argue for a very similar position. On the disability variant of the objection, selective abortion for disability ought to be disallowed, on grounds that when disabled people are made less numerous, and consequently less socially and politically visible, and more isolated from one another, their ability to press their legitimate claims against others for resources and other forms of assistance will be limited, and those claims will therefore not be met.[52] However, on the assumptions of this paper, selective abortion for disability ought to be legally permitted, in which case we are already committed to rejecting the idea that disabled people's interests in maintaining their numbers, and thereby their political power and influence, are sufficient to justify abridging women's abortion choice. In evaluating the objection in the context of SSA, we should ask ourselves why it seems not to move us in the disability context.

One problem with the objection when made in relation to disability may be that we doubt its underlying assumption of a link between a decline in the numbers of disabled people, and societal neglect of those that remain. Steinbock observes that '[a]s a matter of fact, the rise of prenatal screening has coincided with more progressive attitudes toward the inclusion of people with disabilities, as evidenced in

[51] On the notion of a collective right, see especially Jones (1999).

[52] For descriptions of the objection, see McMahan (2005a, p. 83), and Buchanan *et al* (2000, pp. 266-9).

the United States by the passage of the Americans with Disabilities Act.'[53] There is also room to question, in the same vein, the empirical assumptions behind the strength-in-numbers objection as applied to SSA. Some research seems to suggest that SSA may correlate with a *lessening* rather than a worsening of postnatal discrimination against females, insofar as it helps to ensure that fewer females are born into families where they are not wanted, and are at risk of being mistreated.[54] Recent victories for gender equality and women's rights in India cannot easily be attributed to the prohibition of SSA, rather than to other factors, since there the law continues to be widely flouted. And it hardly needs to be noted that the period prior to the advent of modern methods of sex determination was not a golden age of gender equality.

Even if it could be demonstrated that a decline in their strength and numbers would indeed make things worse for disabled people, however, few who are sympathetic to a Pro-choice position would be persuaded to abandon their support for a woman's right to selectively terminate an impaired fetus. The reason, I believe, is that, as Allen Buchanan *et al* write, the argument for prohibition 'only considers the interests of those who will have disabilities in a world in which disabilities are less common.'[55] This mirrors a reply given earlier in response to the expressivist

[53] Steinbock (2000, p. 121). Steinbock in fact makes this point in response to the expressivist objection, but it applies here too.

[54] See Goodkind (1996).

[55] Buchanan *et al* (2000, p. 267). Buchanan *et al* note that, if selection is held to be objectionable on grounds that it deprives the disabled of reinforcements (as it were), then by implication curing disabilities, which also deprives the disabled of extra members, is also objectionable. The authors then focus on the interests of people of being cured of disabilities in order to rebut the objection, and not, as I do in the text above, on the interests of women.

objection. Intuitively, it is a matter of legitimate partiality for a woman to choose to selectively abort her disabled fetus to avoid setbacks to her own interests, even if this makes things somewhat worse than they would otherwise have been for disabled people. Nobody, that is, ought to be constrained to choose between either not having a child at all, or running a risk of having a child which she believes she cannot afford, just on grounds that disabled people would benefit from having an extra person to help them lobby the government, demolish harmful stereotypes, and so on. To deny women the option of selective abortion for this purpose is to ask them to shoulder an unfair burden in the struggle for justice for disabled people. Indeed, the unfairness is compounded by the fact that, under prohibition, women are being asked to accept high and perhaps devastating costs in order to compensate for an unjustifiable failing on the part of others – to wit, their propensity to act unjustly towards the disabled. If all this is right, however, the same reasoning applies to the strength-in-numbers objection to SSA. For how would we go about arguing that the interests of women in maintaining their numbers, power and influence in the face of unjust treatment are more important than the similar interests of disabled people? I submit that this is an impossible task.

Note that, as in the case of the expressivist objection, the foregoing counter-argument might be qualified by the thought that only some users of SSA do so for reasons that are strong enough to outweigh the interests of women generally in maintaining the strength and size of their group. However, unless we believe, implausibly, that women can be asked to make limitless sacrifices to the latter end, the strength-in-numbers objection cannot justify the outright prohibition on SSA.

To finally bring section III as a whole to a close, we have seen that disability and feminist perspectives evince strikingly similar concerns about the effects that

permissive policies on selective abortion do or would have upon, respectively, disabled people and women. I have argued, as against liberals who have assumed otherwise, that the feminist objections cannot persuade us that SSA ought to be prohibited if, in spite of the parallel complaints of disability theorists, we are committed to allowing the selective termination of disabled fetuses.

IV. THE CONSEQUENCES OF SKEWED SEX RATIOS

In this paper I have defended SSA, which remains highly controversial, even among those who otherwise identify as Pro-choice. My position is likely to be welcomed by some of the more unwavering Pro-choice advocates. But others will continue to find it troubling, I suspect. After all, insofar as my argument holds that an outright prohibition on SSA would involve the imposition of burdens upon (at least some) pregnant women that are unacceptably onerous, from the point of view of justice, it implies that even in India and other parts of the world in which, owing to a durable preference for sons, sex ratios have become significantly skewed, blanket prohibitions on SSA ought to be lifted. In completing my argument, then, let me turn to the issue of sex ratios.

First, consider the view that Frances Kamm calls 'threshold deontology'.[56] This says that rights only provide a bulwark against consequentialist reasoning *to an extent*: if the consequences of respecting a right would exceed some critical level of badness, the right may be suspended. If we are threshold deontologists, and we have serious concerns about the consequences of an unbalancing of the sex ratio, then we may think there is a case for abridging women's rights to choose, and prohibiting

[56] See Kamm (2007, p. 231).

SSA, notwithstanding the (deontological) arguments above, which appeal to fairness in the distribution of burdens, and the limits of the sacrifices we can impose on some for the sake of others.

Now, it clearly lies beyond the scope of this paper to resolve the question of how far we ought to respect rights in general, or a woman's right to choose in particular, in the face of consequentialist pressures to do otherwise. However, irrespective of the answer to *that* question, there are serious reasons to doubt that concerns about the consequences of an unbalanced sex ratio will point unambiguously in the direction of abridging women's rights to choose, by prohibiting SSA.

The problem is not merely that the consequences for different people in society of, alternatively, allowing and prohibiting SSA are many and varied, and frequently poorly understood or merely speculative. That is true too, but there is another, deeper problem. This is that, when we are comparing a policy that prohibits SSA and one that permits it, we are comparing policies that result in changes to the size of the population. Under prohibition, there will be some extra people – to wit, those (mainly girls) who would otherwise have been aborted. Some of these may have a relatively poor quality of life, as a result of the neglect they experience from being unwanted (though they are unlikely to be so bad as to be not worth living). How are we to decide if the world is a better place, in consequentialist terms, with or without the existence of these extra people? To do so, we must appeal to a consequentialist theory that can cope with, and give guidance on, so-called 'different number choices' – that is, choices about actions and policies that result in different numbers of people existing. This is the theory that Derek Parfit famously refers to as

Theory X.[57] However, as things stand, we do not have access to X, and this is not likely to change. As Parfit shows, the most obvious contenders for X imply seriously counterintuitive conclusions. In the absence of X, it is difficult to know whether a prohibition on sex selection would lead to an improved state of the world, in consequentialist terms.

Suppose that, in spite of these theoretical obstacles, we become convinced that consequentialist considerations favour a ban on SSA. The argument of this paper suggests that, in doing so we will have burdened some women, to a degree that justice forbids, in order to produce an overall better state of the word, thereby compromising our insistence on the separateness of the person. I think, at the very least, that the debate over SSA would benefit from open acknowledgement that this is what the utter prohibition of the procedure amounts to.

ACKNOWLEDGEMENTS

Earlier versions of this paper were presented to audiences in Reading, Manchester and the London School of Economics, for whose feedback I am grateful. I am thankful also to Cécile Fabre and Anne Phillips for both verbal and written comments, and to two anonymous reviewers for this journal, for a large number of extremely helpful suggestions.

REFERENCES

Arora, D, 'The Victimising Discourse: Sex-Determination Technologies and Policy',

[57] Parfit (1986, p. 361).

Economic and Political Weekly 17 February 1996: 420–4.

Asch, A, 'Disability Equality and Prenatal Testing: Contradictory or Compatible?', *Florida State University Law Review* 30 (2003): 315-42.

Asch, A, and Wasserman, D, 'Where's the Sin in Synecdoche?', in D Wasserman, J Bickenbach, and R Wachbroit (eds.), *Quality of Life and Human Difference* (Cambridge: Cambridge University Press, 2005), pp. 172-216.

Bubeck, D, 'Sex Selection: The Feminist Response', in J Burley and J Harris (eds.), *A Companion to Genethics* (Oxford: Blackwell, 2002), pp. 216-228.

Buchanan, A, Brock, DW, Daniels, N, and Wikler, D, *From Chance to Choice* (Cambridge: Cambridge University Press, 2000).

Chambers, C, 'Autonomy and Equality in Cultural Perspective: Response to Sawitri Saharso', *Feminist Theory* 5 (2004): 329-332.

Corea, G, *The Mother Machine* (London: Women's Press, 1985).

Dworkin, R, *Life's Dominion* (New York: Vintage Books, 1994).

Efrat, Z, Perri, T, Ramati, E, Tugendreich, D, Meizner, I, 'Fetal Gender Assignment by First-Trimester Ultrasound', *Ultrasound in Obstetrics and Gynecology* 27 (2006): 619 – 621.

Every Disabled Child Matters (EDCM), *Disabled Children and Child Poverty* (London: EDCM, 2007).

Goodkind, D, 'On Substituting Sex Preference Strategies in East Asia: Does Prenatal Sex Selection Reduce Postnatal Discrimination?', *Population and Development Review* 22 (1996): 111-125.

Hanmer J, and Allen, S, 'Reproductive Engineering: The Final Solution', *Gender Issues* 2 (1982): 53-74.

Jackson, E, *Regulating Reproduction* (Oxford: Hart Publishing, 2001).

Jones, P, 'Group Rights and Group Oppression', *Journal of Political Philosophy* 7 (1999): 353–77.

Kamm, FM, *Intricate Ethics* (New York: Oxford University Press, 2007).

Kukathas, C, 'Genocide and Group Rights', unpublished ms.

McMahan, J, *The Ethics of Killing* (New York: Oxford University Press, 2002).

McMahan, J, 'Causing Disabled People to Exist, and Causing People to be Disabled', *Ethics* 116 (2005a): 77-99.

McMahan, J, 'Preventing the Existence of People with Disabilities', in D Wasserman, J Bickenbach, and R Wachbroit (eds.), *Quality of Life and Human Difference* (Cambridge: Cambridge University Press, 2005b), pp. 142-171.

Overall, C, *Ethics and Human Reproduction: A Feminist Analysis* (Boston, PA: Allen and Unwin, 1987).

Parens, E, and Asch, A, 'The Disability Rights Critique of Prenatal Testing: Reflections and Recommendations', in E Parens and A Asch (eds.), *Prenatal Testing and Disability Rights* (Washington, D.C.: Georgetown University Press, 2000), pp. 3-43.

Parfit, D, *Reasons and Persons* (Oxford: Clarendon Press, 1986).

United Nations Population Fund (UNFP), *Report of the International Conference on Population and Development*, Cairo, 5-13 September 1994 (New York: United Nations, 1995).

Saharso, S, 'SSA: Gender, Culture and Dutch Public Policy', *Ethnicities* 5 (2005): 248–281.

Savulescu, J, 'Sex Selection: The Case For', in H Kuhse and P Singer (eds.), *Bioethics: An Anthology*, Second Edition (Oxford: Blackwell, 2006), pp. 145-9.

Saxton, M, 'Why Members of the Disability Community Oppose Prenatal Diagnosis and Selective Abortion', in E Parens and A Asch (eds.), *Prenatal Testing and Disability Rights* (Washington, D.C.: Georgetown University Press, 2000), pp. 147-164.

Shakespeare, T, 'The Social Context of Individual Choice', in D Wasserman, J Bickenbach, and R Wachbroit (eds.), *Quality of Life and Human Difference* (Cambridge: Cambridge University Press, 2005), pp. 217-236.

Steinbacher, R, 'Sex Preselection: From Here to Fraternity', in C Gould (ed.), *Beyond Domination* (Totowa, NJ: Rowman and Littlefield, 1984), pp. 274-82.

Steinbock, B, *Life Before Birth* (New York: Oxford University Press, 1992).

Steinbock, B, 'Disability, Prenatal Testing, and Selective Abortion', in E Parens and A Asch (eds.), *Prenatal Testing and Disability Rights* (Washington, DC: Georgetown University Press, 2000), pp. 108-123.

The Economist, 'Gendercide: The Worldwide War on Baby Girls', 4 March 2010.

Thomson, 'A Defense of Abortion, *Philosophy and Public Affairs* 1 (1971): 47-66.

Tomlinson, S, 'Genetic Testing for Cystic Fibrosis: A Personal Perspective', *Harvard Journal of Law and Technology* 11 (1998): 551-64.

Visaria, L, Ramachandran, V, Ganatra, B, and Kalyanwala, S, 'Abortion in India: Emerging Issues from Qualitative Studies', *Economic and Political Weekly* 39 (2004): 5044-52.

Warren, MA, *Gendercide: The Implications of Sex Selection* (Totowa, NJ: Rowman and Allanheld, 1985).

Warren, MA, 'Sex Selection: Individual Choice or Cultural Coercion?', in H Kuhse and P Singer (eds.), *Bioethics: An Anthology*, First Edition (Oxford: Blackwell, 1999), pp. 137-42.

Wasserman, D, 'A Choice of Evils in Prenatal Testing', *Florida State University Law Review* 30 (2003): 295-313.

Wertheimer, A, *Coercion* (Princeton, NJ: Princeton University Press, 1987)

Wertheimer, A, *Consent to Sexual Relations* (Cambridge: Cambridge University Press, 2003).

Wertz, DC, and Fletcher, JC, 'Sex Selection Through Prenatal Diagnosis: A Feminist Critique', in HB Holms and LM Purdy (eds.), *Feminist Perspectives in Medical Ethics* (Bloomington, IN: Indiana University Press, 1992), pp. 240-53.