ABSTRACT. The practice of sex selection for social reasons has raised serious criticism. Advocates of this practice, however, insist that objections to it are unfounded and that legal bans are ethically unjustified. Usually, proponents use a rights-based liberal approach as the framework to evaluate this practice. Under this framework, reproductive choice is a basic freedom and interference with individuals’ autonomous reproductive choices is illegitimate, unless their actions are shown to seriously harm others. As persuasive as this framework might be in relation to many aspects of reproduction, I argue that it is inappropriate when dealing with sex selection for social purposes.

INTRODUCTION

Although surprising to some proponents of sex selection for non-medical reasons (Dahl 2005), a considerable amount of critical debate has been raised by this practice (Blyth, Frith, and Crawshaw 2008; Dawson and Trounson 1996; Dickens 2002; Harris 2005; Heyd 2003; Holm 2004; Macklin 2010; Malpani 2002; McDougall 2005; Purdy 2007; Seavilleklein and Sherwin 2007; Steinbock 2002; Strange and Chadwick 2010; Wilkinson 2008). While abortion or infanticide has long been used as means of sex selection, a new technology—preimplantation genetic diagnosis (PGD)—has become a highly efficient, and arguably less controversial, way of ensuring the birth of a child of a particular sex. PGD, used in combination with in vitro fertilization, is most frequently utilized to test for specific genetic disorders and chromosomal abnormalities (Geraedts and De Wert 2009; Simpson 2010). This technology allows for the identification of the sex chromosomes, usually in order to diagnose possible X-linked disorders. But PGD is now also used to select embryos of a particular sex for social or cultural reasons (Colls et al. 2009; Sharp et al. 2010; Sills and Palermo 2002). Although sex selection for medical purposes
is generally accepted as ethically appropriate, concerns about endorsement of sexist practices, disruption of the sex ratio, or exacerbation of sexist discrimination has led the overwhelming majority of countries regulating PGD to prohibit its use for sex selection for social reasons (BioPolicyWiki 2009). Professional societies and international policy documents have also joined the opposition to this practice on similar grounds (ACOG 2007; ASRM 2004; Council of Europe 1997; FIGO 2006).

This broad agreement notwithstanding, advocates have insisted that the objections to sex selection for nonmedical reasons are unfounded and legal bans are ethically unjustified (Dahl 2003; Dahl 2005; Harris 2005; McCarthy 2001; Robertson 2001; Robertson 2003b; Savulescu 1999; Savulescu and Dahl 2000). Usually, advocates of sex selection for social reasons use a rights-based liberal approach as the framework for evaluating reproductive technologies in general and PGD for sex selection in particular. Under this framework, reproductive choice and parental autonomy are basic freedoms. Interference with individuals’ autonomous reproductive and parental choices is illegitimate, unless their actions can be shown to clearly and seriously harm others (Dahl 2004; Harris 2005; Robertson 2003b; Savulescu 2001a). Because reproduction is seen as central to people’s identities and as a significant aspect of people’s life plans, the requirement for a strong presumption against interference with people’s reproductive choices seems justified. Nonetheless, as persuasive as this framework might be in relation to many aspects of reproduction, I will argue here that such a framework is inappropriate when dealing with the use of PGD for nonmedical sex selection.

Although, as mentioned, other methods of sex selection exist—abortion, sperm sorting technologies, and timing methods—I focus here on sex selection by means of PGD. Also, advocates of sex selection have defended as ethically appropriate the selection and manipulation of many other characteristics (Harris 2007; Robertson 2003b; Savulescu 2001b), but my concern here is limited to the selection of sex. Most of the arguments I present here regarding sex selection, however, are applicable to the selection of other characteristics. Finally, for simplicity’s sake, and unless otherwise stated, in what follows I use the term “sex selection” to refer to the practice of using PGD for sex selection for social or cultural reasons.

**PROCREATIVE LIBERTY**

Advocates of sex selection take reproductive liberty to be well grounded on moral or constitutional bases (Dahl 2004; Dworkin 1993; Harris 1998;
Robertson 1994). Whether or not one agrees that reproductive liberty warrants strong protection against intervention, what exactly procreative liberty entails is certainly a matter of significant ethical and legal debate (Attanasio 1986; Conly 2005; Danis 1995; Patterson 1999; Pearson 2007; Ryan 1990; Sparrow 2008). Here, I assess the view that procreative liberty entails the liberty to use sex selection, and I find that view wanting. If sex selection cannot reasonably be understood as falling within the scope of reproductive freedom, then this practice need not be accorded the presumptive protection that proponents of sex selection endorse. There might well be other grounds to argue for the moral permissibility of sex selection, but those are not under consideration here. Because John Robertson has offered the most detailed defense of sex selection as constitutive of procreative liberty, I use his account in this paper.

Robertson acknowledges that not everything involving reproduction implicates procreative liberty (Robertson 1994; Robertson 2003b). For him, whether a particular reproductive activity, such as sex selection, is included within the scope of procreative liberty is determined by evaluating the role that the activity plays in avoiding or engaging in reproduction. That is, whether or not procreative liberty entails a right to select one’s offspring’s sex depends on determining whether sex is a characteristic that is central or material to a reproductive decision and thus whether having a child of a particular sex determines whether reproduction will occur (Robertson 1994; Robertson 1996; Robertson 2001; Robertson 2003b). If parents will not reproduce unless they can use sex selection, then the activity is constitutive of procreative liberty and therefore deserves a strong presumption against interference. Thus, for procreative liberty to implicate sex selection, the preference for a child of a particular sex cannot be simply a mere preference. It needs to be a necessary condition of a decision to have a child at all (Robertson 1994; Robertson 1996; Robertson 2001; Robertson 2003b).

Although this criterion for determining whether sex selection is an aspect of reproductive liberty might appear initially plausible, it presents us with several problems. First, it is not clear whether this determination should be made as a matter of principle or on an individual basis. At times, it seems that this will be a moral or legal determination made by carefully identifying the competing reproductive and social interests at stake (Robertson 1994; Robertson 1996), and thus a matter of principle. That is, one might reflect on whether—given what we know about human nature or human practices perhaps—it is plausible to think that human
beings might well have a preference for choosing not to procreate unless they are allowed to use sex selection. However, to the extent that the issue is a matter of principle, it seems that the strength of the preference would be grounded on the value that sex selection advances. If so, then from a moral or legal point of view what one needs to establish is simply whether sex selection is necessary to promote the particular kind of value that procreation presumably produces and for which strong protection is warranted, or whether there is some other right that we think basic that entails a right to sex selection.

Advocates do contend that sex selection is entailed by reproductive freedom because of its close connection with decisions about whether or not to have offspring. But they also acknowledge, as mentioned earlier, that not all reproductive decisions about whether or not to have offspring are implicated by procreative freedom. For instance, Robertson explicitly indicates that adoption, reproductive cloning by persons who are sexually fertile, or home birthing—although they are actions that are closely connected to reproductive decisions—are not part of procreative liberty (Robertson 2003b). But, if this is the case, then claiming that sex selection falls within the scope of procreative liberty because it is tightly linked to decisions about whether to reproduce or not simply begs the question. Furthermore, thus far, no proponent of sex selection has offered compelling arguments showing that this practice is indeed entailed by some other basic right, like the right to privacy.

At times, however, Robertson’s language about couples’ preferences, their decisions, or their reasons to choose sex selection—or some other reproductive activity—clearly suggests that the determination should be made on an individual basis rather than as a matter of principle. If so, then we are faced with an epistemological problem: How can we be sure that the preferences of a particular couple seeking sex selection are not mere preferences but necessary conditions for reproduction? Clearly, how much money people are willing to pay for a particular choice, how distressed they are about it, or how strongly they express their desires might be indications of the strength of their preferences, but they are all inadequate to determine whether using sex selection is a \textit{sine qua non} for them to reproduce at all (Robertson 2003b). One possible option would be to wait until the end of the couple’s reproductive life and see whether they have chosen to reproduce or not without sex selection. Obviously, this would be of little help to the couple in question. Of course, there may
be a way to reliably ascertain how strong a particular preference for sex selection might be. But that it is not such an easy task.

A second problem with this criterion stems precisely from the fact that it uses the strength of people’s preferences—however one might establish such strength—as the basis to determine whether sex selection falls within the scope of procreative liberty. As mentioned earlier, for Robertson the question to ask, in order to ascertain whether sex selection is within the scope of procreative liberty, is whether such choice “serves the needs of couples who have strong preferences about the gender of their offspring and who would not reproduce unless they could realize those preferences” (Robertson 2001, p. 3, my emphasis). This is certainly an odd way to determine the scope of a particular right. Indeed, as I indicated earlier, it seems that determinations about whether some activity is constitutive of a particular right should be grounded on whether the activity in question is essential to advance the values or interests that the right is intended to protect. Take for instance the question of whether money spent to influence elections falls within the scope of protected free speech. Arguably, that should be determined by providing reasons for whether the activity of using money to influence elections is necessary to promote the values and interests that are protected by a right to free speech. How strong someone’s preference might be in using money to influence elections—indeed even if interfering with the use of money to buy political speech meant that a person would actually choose not to exercise her right to free speech at all—would appear irrelevant to the matter under consideration.

The peculiar, and problematic, aspect of using the strength of people’s preferences to ascertain whether an activity is constitutive of a particular moral right becomes more evident when one attempts to employ this criterion when assessing other rights. Take the liberty of the right to education. Let us assume that this is indeed a basic moral right. Imagine that we are trying to determine whether a particular activity related to education—attending the same university as one’s friends—falls within the scope of the liberty right to education. If so, then constraints—other than ability to pay—on attending that university would be legitimate only provided that harms can be shown. Let us now apply the criterion used to include sex selection within the scope of procreative liberty to this case. To answer the question of whether attending the same school as one’s friends falls within the scope of a right to education—and thus deserves protection against interference—we should determine the role that such activity plays in avoiding or engaging in education. That is, we need to assess whether
attending the university in question determines whether education will occur at all. Now, it seems clear that no matter how strong someone's preferences for attending the same school as one's friends might be, even if the preference were so strong as to dictate whether or not they would embark on further education at all, it is unlikely that we would espouse attending the same university as one's friends as falling within the scope of the liberty right to education. Clearly, the right to education entails a right to attend a school, not a right to attend a particular school.

Or take the right to free speech. To determine whether an activity related to free speech—expressing one's opinions on the pages of the New York Times (even on the Web)—falls under the scope of the right to free speech, and thus whether it should be protected against interference, we need to determine whether publishing in the New York Times is central or material to a free-speech decision and thus whether it would determine whether one would exercise a right to free speech at all. Again, as in the case of education, it seems clear that regardless of the strength of the preference to publish in the New York Times, we would be unlikely to agree that a right to free speech entails the right to publish in the New York Times. One has a right to articulate and present one's beliefs, arguments, and opinions, but that does not entail a right to do so in any particular forum.

If my arguments are correct, then even assuming that there is a right to procreate, advocates of sex selection have not shown that this right involves a right to procreate a child of a particular sex. If this is so, then sex selection would not warrant the presumed strong presumption against interference. Moreover, if sex selection cannot be said to fall within the scope of procreative liberty, then unless arguments are offered that it is implied by some other fundamental right, its advocates are mistaken to argue that the burden of proof falls on those who believe that limitations on it are appropriate.

THE HARM PRINCIPLE

As mentioned earlier, the framework used by advocates of sex selection is two-pronged. First, they assert that sex selection is constitutive of procreative liberty, and thus deserves strong protection against interference. Second, they acknowledge that although sex selection is constitutive of procreative liberty, it is not an absolute liberty. They thus argue that limits to sex selection can be imposed, but only to prevent serious harm to others.

Although, as I have argued, no compelling reasons have been offered to believe that sex selection falls within the scope of procreative liberty, I will
assume in this section that it does. I will focus here on the issue of harms and show that the “very simple” harm principle is less useful, even if quite powerful rhetorically, in the matter under discussion than advocates of sex selection acknowledge. It is beyond the scope of this paper to offer a critical evaluation of the harm principle itself (Feinberg 1984; Hart 1963; Rees 1960; Ten 1980). I merely call into question the apparent force of this principle when used by advocates of sex selection. My concern is that sex selection proponents use the enticing appeal of the harm principle to advance their values and views while avoiding a substantive defense of these values and views.

Advocates of sex selection often cite John Stuart Mill when defending their claims that the prevention of harm to others is the only legitimate ground for interference with reproductive liberty (Dahl 2003; Harris 2005; Robertson 2003b; Savulescu 2002). In *On Liberty*, Mill does indeed defend what has become known as the “harm principle,” according to which, “The only purpose for which power can be rightly exercised over any member of a civilized community, against his will, is to prevent harm to others” (Mill [1859] 1978, p. 9). However, neither Mill, nor most other defenders of the harm principle, have interpreted the principle in the absolutist way that this language might imply. In fact, it is not clear that Mill understood harm to be either a necessary or a sufficient condition for interfering with someone’s actions (Brink 2007; Jacobson 2000). In any case, one need only read *On Liberty* to see that the society that emerges from Mill’s famous work is actually a highly regulated one. Indeed, it is ironic that Mill actually thought that state regulations of reproductive activity were perfectly justified under the harm principle. In his own, spirited, words:

> The fact itself, of causing the existence of a human being, is one of the most responsible actions in the range of human life. To undertake this responsibility—to bestow a life which may be either a curse or a blessing—unless the being on whom it is to be bestowed will have at least the ordinary chances of a desirable existence, is a crime against that being. And in a country either over-peopled or threatened with being so, to produce children, beyond a very small number, with the effect of reducing the reward of labor by their competition is a serious offense against all who live by the remuneration of their labor. The laws which, in many countries on the Continent, forbid marriage unless the parties can show that they have the means of supporting a family do not exceed the legitimate powers of the State; and whether such laws be expedient or not (a question mainly dependent on
local circumstances and feelings), they are not objectionable as violations of liberty. Such laws are interferences of the State to prohibit a mischievous act—an act injurious to others, which ought to be a subject of reprobation and social stigma, even when it is not deemed expedient to superadd legal punishment. (Mill [1859] 1978, pp. 106–07)

The irony is illuminating. It illustrates the difficulties of brandishing the harm principle as a simple way of determining what human activities might or might not be regulated. In fact, as appealing as the harm principle might be, it cannot by itself answer necessary questions such as what constitutes harm, whether the principle restricts only conduct that is harmful to someone, that threatens to cause harm to others, or that fails to prevent harms to others. Clearly the answer to these questions can produce very different applications of the harm principle. Thus, if one takes the principle to justify interference with someone’s actions only so as to prevent that person from harming others, the restrictions allowed would be much more limited than if one takes the principle to justify interferences with someone’s actions in order to prevent harm to others regardless of who caused the harm (Brown 1972; Lyons 1979). Moreover if, as some have indicated, most or perhaps all human activity could be deemed to cause harm to others, then the principle of harm would certainly lose its appeal and its force (Epstein 1995; Harcourt 1999). Furthermore, in addition to questions of what counts as harm, we also need to determine who or what might be subject to harm and deserving of protection. The harm principle then appears to work as a threshold determination, but once one can reasonably show that some nontrivial harms might result from a particular activity, then the harm principle ceases to be useful (Harcourt 1999).

It seems then that appeals by advocates of sex selection to the harm principle will not provide sufficient support for their cause. Clearly, without appeal to some other substantive normative considerations, the harm principle cannot justify the inclusion of some nontrivial harms and the exclusion of others. It cannot explain why proponents of sex selection acknowledge that distortions of the natural sex ratio, creation of “designer babies,” promotion of sexism, reinforcement of intolerance against people with disabilities, or misallocation of medical resources can count as harms, but not such possible outcomes as threats to valuable notions of parenthood, or promotion of commodifying practices. This is not to say that sound arguments cannot be offered justifying just such distinctions. It indicates that the grounds for such arguments cannot be the harm principle, but must rather be some ethical or political theory or
some vision of the good life (Harcourt 1999; Smith 2006). Such a view might then make use of something like the harm principle, and what would count as harm would be that which threatens the substantive vision of a good life. Similarly, advocates of sex selection would need to enlist normative considerations other than appeals to the harm principle in order to establish that fears about distortions of the natural sex ratio, the promotion of sexism, or about any other of their acknowledged harms are unjustified or unsubstantiated. Again, this is not to say that arguments cannot be offered in this regard, but rather that the harm principle alone is not helpful in this respect and that a defense of those other normative considerations needs to be provided.

However, advocates of sex selection do not do this. They merely appeal to the harm principle without providing a defense of their particular understanding of harm, the way to balance harms, or what count as serious harms (Dahl 2004; Dahl 2007; McCarthy 2001; Robertson 2003b). They appeal to the presumption in favor of liberty and contend that under this presumption interference with people’s free choices is legitimate only to prevent serious harm to others. Given this, they claim, the burden of proof is always on those who wish to restrict a particular action. Moreover, they maintain, the evidence that the harm will occur should be clear and persuasive, even when they fail to show what would count as clear and persuasive evidence. Some proponents of sex selection simply presume that psychological assumptions do not meet these requirements (Dahl 2004; Dahl 2007). Moreover, they also take it as settled, and again in need of no argumentation, that the simple fact that some might see an action as contrary to their moral or religious beliefs is not sufficient to warrant constraints on the activity in question. They thus assume, without defense, that actions contrary to one’s moral or religious beliefs can never be said to constitute harms, and of course ignore the fact that the presumption in favor of liberty is very much a moral belief.

Let us examine concerns about whether sex selection might promote sexism, for instance. Proponents of sex selection acknowledge critics’ concerns about the possibility that allowing people to choose the sex of their offspring might lead to sexist practices, and thus that it would be harmful. But clearly, the acceptance of sexism as harmful is independent of the harm principle. That both proponents and opponents of sex selection agree that sexism is indeed harmful certainly simplifies the debate—and limits the discussion to whether sex selection contributes to sexism. But that is only because both proponents and critics are bound to have some ethical
values in common, not because the harm principle does any work here.

Of course, that both sides recognize that sexism is harmful does not mean that they agree that sex selection practices would sanction, increase the risk of, or actually cause the promotion of sexism. Indeed, advocates of sex selection reject these claims. The reason they offer in support of their conclusion is that there is no compelling evidence to believe that parents choosing sex selection are motivated by the sexist belief that one sex is more valuable than, or superior to, the other (Dahl 2003; Harris 2007; McCarthy 2001; Robertson 2003b; Robertson 2005; McCarthy 2001; Robertson 2002; Robertson 2003a; Savulescu and Dahl 2000). Proponents of sex selection, then, seem to accept that sexist motivations can be harmful, even though they do not believe that parents using sex selection have those motivations. But no argument is provided as to why such motivations are harmful. Clearly, the harm principle by itself cannot determine this. Moreover—and here we have another epistemological issue—how can one determine the motivations of those who wish to use sex selection? Similarly, the fact that, as proponents claim, there might be all sorts of nonprejudicial reasons for preferring children of one sex rather than another in no way shows that those choosing sex selection do not actually hold motivating prejudicial beliefs. Again, the harm principle cannot help us determine how to balance claims about harm in a context where actions can have different motivations.

Additionally, advocates’ assertions that those who use sex selection are motivated by the desire to balance their families (Dahl 2003; Dahl 2005; McCarthy 2001; Robertson 2002; Robertson 2003a; Savulescu and Dahl 2000) would count as evidence for a lack of sexist motivation only if we made several unsubstantiated assumptions, such as that people’s declarations of their motivations are reliable, and that these motivating desires for balance are in no way sexist. Clearly, people are generally guarded about the public pronouncement of immoral beliefs—whether or not they have such beliefs. Similarly, that those using sex selection choose girls with the same frequency as boys counts as compelling evidence of lack of sexist motivations only if one assumes that people cannot choose persons of a particular sex even when they firmly believe that the chosen sex is inferior. Obviously, even “inferior” people can be useful for all kinds of things. Notice, that I am not claiming that good arguments cannot be offered to support the proponents’ claims. My point is that the harm principle does not provide such arguments.

Furthermore, one can reasonably claim that the harms of sexism that might be attached to sex selection practices need not come from moti-
vational beliefs about the superiority of one sex, but from problematic beliefs about rigid gender roles (Seavilleklein and Sherwin 2007). Given the lack of discussion about this issue, it appears that advocates of sex selection deem such beliefs, and presumably the actions that such beliefs might ground, as nonharmful. In fact, they deem that sex selection practices are legitimated precisely by the belief that raising a girl is different from raising a boy and on the interest people presumably have in these diverse experiences. This might be the case, but substantive ethical views are presupposed here. Clearly, such interests are unlikely to be grounded in physiological differences between the sexes, but on the different social roles, behaviors, and practices that are considered appropriate for boys and men and for girls and women (Seavilleklein and Sherwin 2007; Wilkinson 2008). That clinics offering sex selection usually refer to this practice as “gender selection,” and that advocates of the practice recognize that gender—and not sex—is what is at stake with this technique (Robertson 2001), only underscores the importance that beliefs about gender roles play in the use of sex selection techniques. The use of sex selection techniques not only takes these desires and beliefs in an unquestioning way, it uses science and technology to legitimize false ideas that selection of sex is sufficient to determine gender. Whatever the relationships between biological sex and the normative psychological and behavioral characteristics associated with a particular gender, it is clear that biology is not determinative of gender characteristics (Butler 2004; Caplan and Caplan 2009; Fausto-Sterling 1992; Fausto-Sterling 2000). Why should we not take the promotion of these beliefs as harmful? There is little doubt, and a considerable amount of evidence, that gender expectations have historically been used to limit the life options of men and, particularly, of women. Moreover, the traditional expectations that attach to standard gender roles are not unrelated to existing patterns of gender discrimination and sexual oppression. Given this evidence, it seems reasonable to believe that the consolidation—through the blessing of modern science and medicine—of such expectations can serve only to perpetuate this limitation of life choices and to further injustice.

Additionally, concerns about sex selection extend not only to the negative social effects of this practice. One can reasonably argue that the problematic beliefs about rigid gender roles underlying the practice of sex selection can also result in harms to the individual children born through this technique. It is plausible, as advocates of sex selection claim, that someone who would not have reproduced unless given the opportunity to
choose the sex of a child might come to love that child even when it does not fulfill the gender role expectations (Green 2007; Robertson 2001). But it is at least equally plausible to believe that someone who has spent the amount of time, energy, money, and health risks that sex selection requires in order to have a child of a particular sex is not going to be particularly accepting if the child fails to fulfill his or her preconceived gender expectations. After all, we do have evidence of parents rejecting children who do not meet gender expectations.

This leads to another related unsupported assumption made by proponents of sex selection. Often, sex selection advocates respond to claims about the possible harms of sex selection by pointing out that, for instance, it is not the case that all people who would like to choose the sex of their children are motivated by sexist beliefs. Advocates claim that desiring the different rearing experiences that one has with boys and girls does not mean that the parents are sexist, or they maintain that many parents choosing sex selection will love their children no matter what (Dahl 2007; Green 2007; Robertson 2003b). This might be the case, and whether it is or not is very much an open empirical question. Nonetheless, presenting these claims as arguments against restrictions on sex selection presupposes that as long as we can find some cases of people who do not have the problematic motivations, beliefs, or desires in question, then we do not have grounds for restricting sex selection practices. But this again involves normative assumptions about balancing harms, considerations about how many people need to have a problematic belief in order for it to generate legitimate concerns about harms, and normative presuppositions about the seriousness of harms as somehow related to the number of people who share problematic desires or motivations about sex selection.

Let me reiterate that the point here is not to determine whether the beliefs in rigid gender roles that arguably underlie sex selection can have harmful effects or whether the fact that some people might not hold such beliefs is sufficient to eliminate concerns about harms. Rather, the point is that acceptance (or rejection) of such conclusions is distinct from acceptance of the harm principle. The harm principle, by itself, cannot be used to resolve competing claims of harm, to determine the relative importance of particular harms, or to judge their seriousness. To fulfill this task other normative considerations need to be enlisted. By invoking the “very simple” harm principle as the criterion to determine when interference is legitimate, advocates of sex selection ultimately attempt to advance their values and views without troubling to provide a genuine defense of such values and views (Smith 2004).
It seems then that the appeal by advocates of sex selection to the harm principle is less than successful. First, as mentioned earlier, it is not clear that harm to others is either a necessary or a sufficient condition for legitimate interference with people’s liberties. Second, if one grants that harm is at least necessary to justify interference—as advocates of sex selection indicate—appealing to the harm principle tells us nothing about when harm matters, why it matters in some cases but not in others, what constitutes harm, or how to compare, balance, or judge the seriousness of different harms. Third, if one dismisses all these difficulties with the harm principle and acknowledges that other value considerations are at stake when determining whether sex selection practices can result in harmful effects, then it is difficult to see how one can reject the reasonableness of claims that at least some nontrivial harms are likely to result from the use of sex selection. Of course, that such would be the case might not show that the practice should be regulated. But on this too, the harm principle is silent.

CONCLUSION

In this article, I have called into question the framework of procreative liberty that advocates of sex selection use to defend their position. I have argued that, even if one were to accept that procreative liberty is a fundamental moral or legal right, no compelling reasons have been provided for believing that sex selection falls within the scope of procreative liberty. Proponents of this position either beg the question or force us to accept absurd activities as being constitutive of particular rights. But if sex selection cannot be properly said to fall within the scope of procreative liberty, then advocates of sex selection fail to persuade when they claim that the only legitimate reason to interfere with the use of this practice is the causing of harm to others. Nonetheless, I have here also considered the option that sex selection does indeed fall within the scope of reproductive liberty, and that the only legitimate reasons to limit its use would be harm to others. However, a careful examination of the “very simple” harm principle established that the principle is anything but simple. The contention by advocates of sex selection that sex selection practices cannot be shown to result in harmful effects is grounded on ethical theories or notions of the good life that actually lurk behind the harm principle. Thus, to the extent that distortions of the natural sex ratio, creation of “designer babies,” promotion of sexism, reinforcement of intolerance against people with disabilities, or misallocation of medical resources can reasonably count as harms—and advocates clearly admit that they can—then in at least some
cases different, but reasonable, normative considerations about seriousness of harms, about their weighting, and about what counts as legitimate evidence for harms can be offered to show that the use of sex selection could indeed be harmful to others.

REFERENCES


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