The background is a light green color with a subtle pattern of a DNA double helix and a molecular structure. The DNA helix is rendered in dark green/black lines, and the molecular structure consists of white lines connecting various sized circles, representing atoms or molecules. The overall aesthetic is scientific and modern.

Eugenics and the Ethics of Selective Reproduction

Stephen Wilkinson and Eve Garrard

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While those listed above have informed this work with their comments, the views described here are mine and not theirs.

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December 2012

About the Authors

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She has a long-standing interest in teaching philosophy to those who don't have a background in the subject, and worked part-time for many years for the Open University.

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She has been a member of a number of ethics committees, including that of the Royal College of Pathology, and has been involved in GP ethics and clinical ethics training.

Stephen Wilkinson became Professor of Bioethics at Lancaster University in January 2013. Before that, he was based at Keele University between 1994 and 2012.

His most recent research is on reproductive ethics and the regulation of reproductive technologies, especially the ethics of selective reproduction (practices that involve choosing between different possible future people). A book on this topic (*Choosing Tomorrow's Children*, Oxford University Press) was published in 2010.

A previous phase of work focussed on the commercial exploitation of the human body and culminated in his first book, *Bodies for Sale* (Routledge, 2003). He has also written on various other ethics topics including: biomedical research, conjoined twins, futility, mental illness, passive euthanasia, and resource allocation.

He has served on grant awarding panels for the AHRC and the Wellcome Trust, is a member of several editorial boards (including those for *Bioethics*, *Clinical Ethics*, and the *Journal of Medical Ethics*), and was a member of the Ethical Advisory Sub-Group of the Organ Donation Task Force.

He is the holder of a Wellcome Senior Investigator Award (jointly with Professor Rosamund Scott of King's College London) which funds a five-year programme of work (2013 - 2017) on the donation and transfer of human reproductive materials.

Introduction

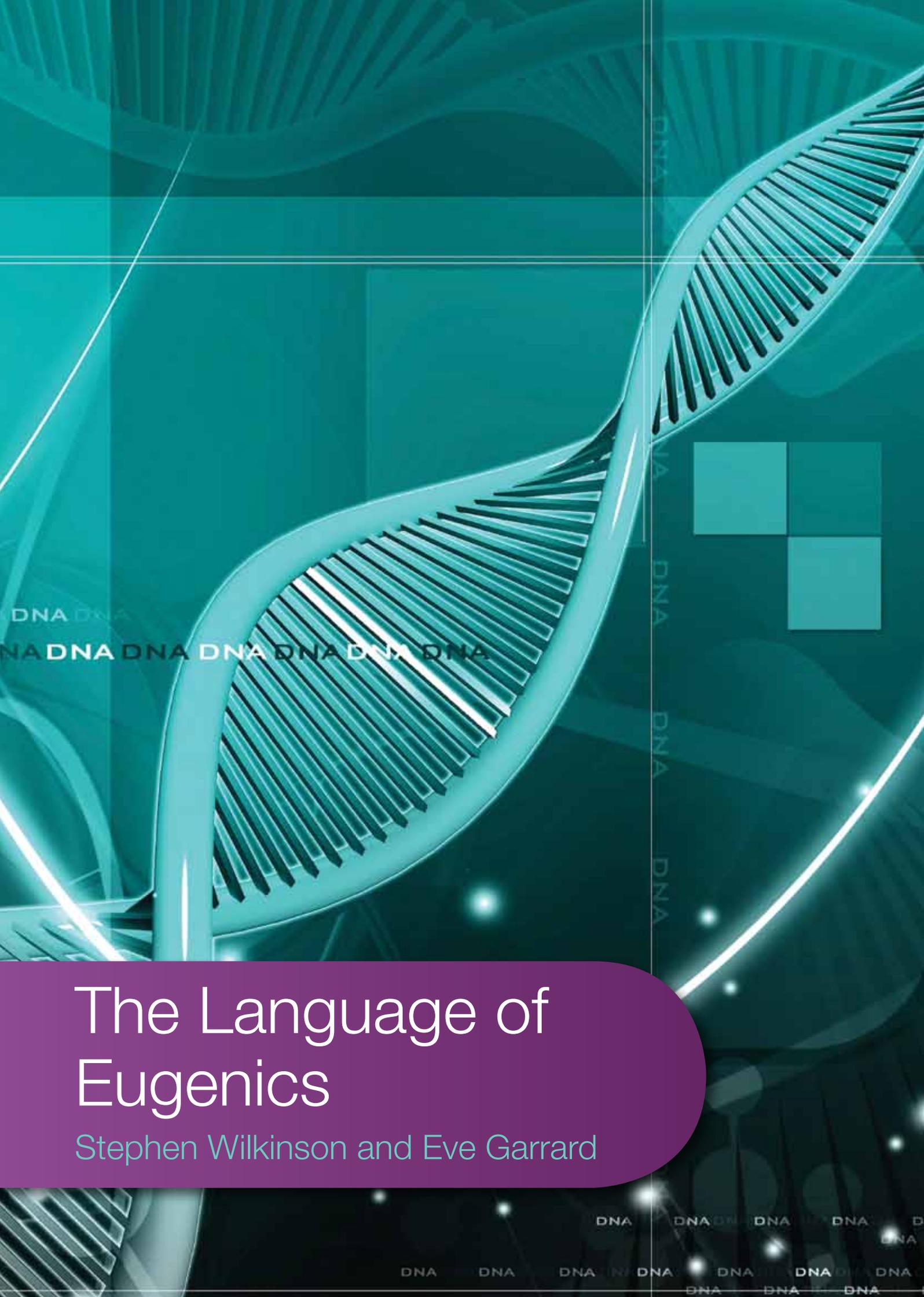
Modern biomedical science is capable of giving people more choice than ever before about what their future children will be like. Embryo selection techniques, for example, can enable people to choose the sex of their child, to avoid the birth of a child with a disability, or even to choose deliberately to create a disabled child. Such possibilities raise important ethical issues – questions about which of these choices, if any, are morally wrong – along with closely related questions about the extent to which law and regulation should restrict these areas of medicine. Each of the four essays in this volume tackles such questions. Specifically:

- (1) What is eugenics? Which, if any, of our current practices actually are eugenic? Is ‘eugenics’ a helpful term to use when discussing human reproduction?
- (2) What moral objections are there to using embryo selection techniques to avoid disease and disability in our children? Are any of these objections really sound?
- (3) Should people who positively want to have a child with a disability (some members of the Deaf community, for example) be allowed to use embryo selection to achieve this?
- (4) Is choosing the sex of your future child wrong? Are there any circumstances in which people should be allowed to do this?

Our approach to these questions is broadly philosophical: we use the methods distinctive to philosophy to address these issues. So first we seek to elucidate the moral principles which are appealed to in these debates (such as the idea that we have an obligation to create the ‘best possible’ children, or that children should be treated as ‘gifts’), and aim to evaluate these principles by spelling out their implications and looking at the extent to which they cohere with other beliefs, policies, and values. Second, we seek to uncover the form or structure of people’s ethical arguments or reasoning. Third, we analyse these arguments to see which are valid and which are confused or mistaken. Finally, we seek to explain what some of the key terms in the debate mean and how they’re used – for example, what’s meant by ‘eugenics’, or by ‘sexism’.

As philosophers, we’re generally more interested in the structure and workings of people’s moral arguments than in defending particular policy positions. So while we do often conclude by saying that certain actions or policies are, or are not, defensible such conclusions are not the most important thing. Rather, it’s the illumination of arguments, concepts, and principles that is our more fundamental aim. Some of the conclusions that we arrive at, such as the suggestion that there are circumstances in which prospective parents should be allowed to select their child’s sex, or allowed deliberately to create a child with a disability, are controversial and our readers may well not agree. Nonetheless, even when our conclusions are not accepted, we would still hope to have improved the quality of the debate, and of the way we think about these issues, by investigating whether even some rather unpopular ethical positions may not be as indefensible or abhorrent as they at first appear, and conversely whether some commonly used arguments are in fact flawed.

We can all learn a great deal from respectful open-minded ethical debate and we very much hope that these papers will help to promote this.



The Language of Eugenics

Stephen Wilkinson and Eve Garrard

The Language of Eugenics

“ Advances in PGD ... are tending towards a new era of eugenics. Unlike the State sponsored eugenics of the Nazi era, this new eugenics is an individual market-based eugenics, where children are increasingly regarded as made-to-order consumer products.¹”

“ On the face of it, it would seem laudable to prevent a baby having a disabling condition, but there are some challenging realities to the PGD procedure. It is not simply a case of ‘preventing’ the disabling condition. In PGD, early human embryos are examined under the microscope. Those who are affected by the disabling condition in question are immediately discarded (i.e. thrown away). One of those not affected is then implanted in the mother’s womb. The eugenic philosophy behind the procedure is clear. Those who have a disability will always be thrown away.²”

Eugenics is commonly cited as a major concern about, and objection to, contemporary genetic and reproductive science, but there is a lot of confusion and disagreement about what exactly ‘eugenics’ means.

This is regrettable, and the stakes are high, since contemporary genetic and reproductive science is capable of delivering substantial benefits to humankind. So if we allow its development to be

held back by unsound objections, based around vague worries about ‘eugenics’, unnecessary and unjustified harm may be inflicted on those who stand to benefit from new interventions. On the other hand, if there really are sound eugenics arguments in play then we need these to be clearly and unambiguously articulated. Only then will we know which technologies to ban or restrictively regulate, and understand properly the reasons for doing so. This is vital if we are to avoid permitting or encouraging dangerous or unethical eugenic practices.

So what exactly is eugenics? Why do so many people find it so objectionable? Is calling a practice ‘eugenics’ so contentious, so derogatory, that really we should just give up on using the term at all – should we stop talking about eugenics altogether, and find some other way of describing the medical and social practices which we want to discuss? Each of these three questions is tightly connected to the other two, and though we’ll be focussing on the third question here, in order to deal with it properly we’ll have to spend some time on the other two questions first.

What is eugenics?

To begin with, we need some idea of what eugenics actually is – we need a good definition. There are various different definitions of eugenics, but the common core which most of them share seems to be this.

Eugenics is the attempt to improve the human gene pool.³ People can agree on that definition, even if they disagree considerably about what counts as eugenics.⁴

¹ Tania Simoncelli, ‘Pre-Implantation Genetic Diagnosis and Selection: from disease prevention to customised conception’, *Different Takes*, No.24 (Spring 2003).

http://genetics.live.radicaldesigns.org/downloads/200303_difftakes_simoncelli.pdf

² Alison Davis, letter to *The Daily Mail*, June 10th 2008.

³ Ruth Chadwick, ‘Genetics and Ethics’, in Edward Craig (ed.), *The Routledge Encyclopaedia of Philosophy* (London: Routledge, 1998).

⁴ One objection to this definition is that it has intention built into it whereas, some people suggest, eugenics can occur even if no one intends to alter the ‘gene pool’. Being eugenic could, on this view, be an emergent property of a system: e.g. a system in which individuals have a great deal of reproductive choice, don’t generally have eugenic aims, but

yet act together (unintentionally) in ways that are similar in their effects to intentionally eugenic acts.

Our reply to this is that unless intention is built into the definition of ‘eugenics’, it will be difficult to distinguish between eugenics (thought of as the deliberate alteration of the genetic makeup of a population) and unintended natural processes, notably evolution through ordinary sexual reproduction and natural selection – and we don’t want to end up having to say that the latter are eugenic.

Also, at least some of the supposed ethical significance of the idea of eugenics (which is what interests us here) is reliant on its being intentional: the thought being that deliberately altering humanity’s genetic makeup is more morally problematic, or morally controversial, than merely allowing natural or social evolution to run its course.

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And they do disagree about this: one of the things they disagree about is the significance of parental choice in the matter, with some people believing that only procedures enforced by the state, using authoritarian coercive methods, can really be classed as eugenics, so that if there's free parental choice (so-called 'liberal eugenics') that won't really be eugenics at all. But other people think that some procedures which prospective parents can choose, such as pre-implantation genetic diagnosis (PGD), with embryo testing and the subsequent disposal or donation of unwanted embryos, are clearly cases of eugenics, even where events are entirely a matter of parental preference and there's no state coercion at all.⁵

As well as disagreeing about the *methods* which a selective reproductive practice must have in order to count as eugenics, people also disagree about what the aim of the practice must be if it's rightly to be classified as eugenic. The aim of selective reproductive practices can be to reduce undesirable traits, such as genetic disease, or it can be to increase purportedly desirable ones, such as athletic ability or effective immune systems or intelligence. Some people think that only the latter counts as eugenics: in their view, it's the attempt to enhance children, to create 'supernormal' (better than normal) individuals with cognitive or physical capacities above the normal range of functioning, which is really what eugenics amounts to, and attempts merely to avoid disease or 'subnormal' traits aren't eugenics at all. But others see the difference between avoiding disability on the one hand, and enhancing ability on the other, as occurring *within* the general practice of eugenics. On this view, the practice of eugenics is divided into two different categories - positive eugenics aiming at enhancement, and negative eugenics aiming at the elimination of disease and disability.⁶

So these two distinctions - authoritarian versus liberal methods, and negative versus positive aims - can be treated in two very different ways. They can be treated broadly, where both

terms in each distinction are seen as *differing forms* of eugenics. On this view, there can be authoritarian eugenics and liberal eugenics; there can be positive eugenics and there can be negative eugenics. Alternatively, eugenics can be given a narrow treatment, which insists that it's confined to one term only of each distinction: eugenics involves authoritarian methods, say, rather than parental choice; it involves enhancement, rather than elimination of disability or disease. In some cases, the decision about how broadly or narrowly to treat these distinctions may be a political choice about what usage is most effective. So, for example, people who wish to dissociate parental reproductive choice from eugenics may claim that, in order for something to count as eugenic, it has to involve State coercion. Conversely, those who wish to restrict parental reproductive choice may take a more expansive view of eugenics, arguing that it can occur even if no coercion is involved.⁷

Finally, some people want 'eugenics' to be a moral term, to have wrongness built into it, so that to call something 'eugenics' is inevitably to condemn it; while others want it to be a more neutral term that leaves open the possibility that eugenic practices may in some circumstances be appropriate and justifiable. The advantage of having a morally neutral definition of 'eugenics' is that it leaves room for discussion about whether or not any form of eugenics can be morally right. A morally loaded definition, that has wrongness built in, won't allow us to do this - if we define eugenics as, say, 'morally unjustified attempts to improve the gene pool' then we won't be able to consider whether any particular case of eugenics might be morally right. By categorising it as 'eugenics' we'll already have determined that it's wrong.⁸

So if we want to leave the issue of whether eugenics can ever be justified open for consideration, we need to find a definition of what eugenics is that's neutral about whether it's right or it's wrong. If we don't have that kind of definition it's hard to see how people with different views about the morality

⁵ 'Pre-implantation genetic diagnosis (PGD) is a technique that enables people with a specific inherited condition in their family to avoid passing it on to their children. It involves checking the genes of embryos created through IVF for this genetic condition.' Human Fertilisation and Embryology Authority, <http://www.hfea.gov.uk/preimplantation-genetic-diagnosis.html#1>.

⁶ Habermas apparently takes the former view, contrasting "the prevention of the birth of a severely afflicted child" with "eugenic choice". Jürgen Habermas, *The future of human nature* (Cambridge: Polity, 2003), p21.

⁷ Those who wish to restrict parental reproductive choice may instead concede that, in order for something to be a case of eugenics, there must be a degree of involuntariness (caused by coercion, deception, or manipulation) - and then go on

to argue that what appears to be voluntary reproductive choice often isn't in fact voluntary. This could be because of misinformation or subtle forms of pressure exerted on the choosers.

We suggest a 'case by case' approach to this line of argument. It will almost certainly be true of some cases of parental reproductive choice, but it is difficult to say in advance, or in the abstract, whether this applies to many or most cases, or to just a few.

⁸ Stephen Wilkinson, *Choosing Tomorrow's Children: the ethics of selective reproduction* (Oxford: Oxford University Press, 2010): 149-158.

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of eugenics can even be sure that they're talking about the same thing. For these reasons, 'the attempt to improve the human gene pool' is a reasonably satisfactory definition of eugenics, since it leaves open the issue of whether we're morally justified in making any such attempt.

Why do so many people think that eugenics is wrong?

There can be general agreement on the definition of 'eugenics' as the attempt to improve the human gene pool, even among people whose views about the morality of eugenics differ widely. But why exactly is it that some people find eugenics so morally objectionable? One major cause of this is a very understandable one: the infamous Nazi eugenic practices – involving mass murder by the State of targets ranging from children with disabilities to whole ethnic populations – were so horrifying that they gave eugenics a very bad name indeed, so that now to label a practice 'eugenic' is to suggest immediately that there's something wrong with it.

This tainting of the term, this automatic association with authoritarian coercive methods, means that those who support a biomedical practice such as PGD may very likely want to prevent it being regarded as eugenic. In contrast those who condemn PGD may well want to label it in this hostile way, and may welcome the association with utterly unjustifiable Nazi practices, since they regard PGD itself as also being entirely unjustifiable.

However the assumption that eugenics *must* be authoritarian is surely misplaced. There are many different methods by which selective reproduction aiming to improve the gene pool can in principle happen, ranging from gamete or embryo selection to selective abortion, the voluntary sterilisation of adults, the coerced sterilisation of adults, selective infanticide, or even the selective killing of adults. These various methods differ enormously in the degree to which they are authoritarian, and clearly raise very different kinds of moral issues. Some are among the worst crimes that can be committed. However we can't just take it for granted that *all* forms of eugenic selective reproduction are like that – other methods prevent the birth of children with terrible disorders, who would have been doomed to early and painful deaths, and it's not obvious that that is an immoral thing to do. Although force

and coercion in these matters must always be condemned, we can't simply assume that practices such as PGD should share that condemnation, since they needn't in any way involve authoritarian methods. If we want to condemn PGD, it can't be on the grounds of authoritarian methods, since such methods need never be used, and would indeed be prohibited in any broadly liberal social system.

In the midst of all this disagreement about the extent and justifiability of eugenics, there is however one claim about which there is widespread consensus: everyone accepts that 'eugenics' is always a very emotive term. A series of interviews with experts and stakeholders conducted in 2005 showed this very clearly.⁹ Not surprisingly, the most enthusiastic users of the term were people who are critical of reproductive and selection technologies:

“ We use it ['eugenics'] whenever we can and we won't be distracted or diverted into using any other word, not least because it's not a popular word. It's not a word that people like to hear; it's got a lot of nasty connotations. So we're not going to try to find a more palatable word. ”
(Campaigner)

On the other side, those with what might be termed 'pro-choice' or 'pro-science' views generally avoid the word:

“ I almost think that we should ban the term. If you just say 'eugenic' nobody knows what you mean. We should say what it is about the statement or the policies that we object to, and examine that. It's like saying 'you're a fascist!' It's an unexamined assertion that's used for rhetorical effect, so it just seems lazy to me. It's not a coherent or well-specified critique. And it's very insulting to doctors... ” (Academic)

⁹ See Stephen Wilkinson, "Eugenics talk" and the language of bioethics', *Journal of Medical Ethics*, 2008, 34(6), 467-471; Stephen Wilkinson, *Choosing Tomorrow's Children: the*

ethics of selective reproduction (Oxford: Oxford University Press, 2010): chapter 6.

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“ I think on any occasion when the issue might be raised there would probably be a desire to avoid using [the term ‘eugenics’] because of its pejorative connotations. It suggests Nazis before we even start to consider the issues.”
(Healthcare Professional)

So nearly everyone agrees that ‘eugenics’ is a profoundly emotive and negative term. But whereas for some this is a reason to avoid it, so that its awful connotations won’t become attached to biomedical techniques they approve of, for others the use of the word ‘eugenics’ is a good way of getting across their negative message about practices they regard as deeply objectionable. This suggests that ‘eugenics’ may be such an emotive and politicised term that its use is unlikely to foster a calm and rational exchange of views between those with different perspectives or positions.

So, in the light of this, should we simply abandon the term altogether when discussing the ethics of selective reproduction?

Should we stop talking about eugenics?

This is the central question: should we give up using this term altogether? To answer this question, we need to think about what general reasons might be given for abandoning the use of any particular term in bioethics. There are three general proposals which we might consider, to see if they offer us convincing reasons for getting rid of the language of eugenics from our discussions.

First proposal:

We should abandon a term if using it gives *offence*, at least where the offence is reasonable.

(We mustn’t be prepared to give up a word simply because it causes *unreasonable* offence, for that would mean that our language was entirely at the mercy of anyone who wanted to take offence, however groundlessly.)

Second proposal:

We should abandon a term if it’s used to make statements, even true ones, which are *misleading*.

Third proposal:

We should abandon a term if using it, perhaps by being emotive or manipulative, encourages people to form beliefs irrationally and non-autonomously.

The use of such terms may thereby fail to respect people’s *autonomy* – that is, their ability to reflect and consider and choose for themselves.

If any of these proposals is to amount to a convincing argument for abandoning eugenics talk, it needs to be neutral about the moral rightness or wrongness of particular reproductive practices. Why? There are at least two reasons for wanting morally neutral proposals about how we should use our terms. First, if arguments about terminology such as ‘eugenics’ depend on particular moral views, then in areas such as reproductive ethics, where there’s widespread moral disagreement, there won’t be any prospect of people agreeing on the terms in which the debate should be conducted. This means that each side will use its own partisan concepts and terms—a situation which will make clear balanced debate very difficult. Very often when we’re having a debate about the rightness or wrongness of a particular biomedical procedure the first thing we have to do is to make sure that we’re all using words in the same way, with the same meanings. If we aren’t, then there’s little hope of our being able to reach any rational resolution – we’ll simply be talking past each other much of the time. Perhaps there are occasions when we can’t escape the use of morally loaded language in our debates, but we should at least make some attempt to avoid it in areas where there’s genuine room for, and need of, further debate.

The second reason for wanting a morally neutral proposal about whether to abandon talk of eugenics is that people who are genuinely unsure about how to answer substantive moral questions about whether a supposedly eugenic practice is right or wrong still have to decide what concepts and terms to use, and it doesn’t help them to be offered nothing but competing partisan terminologies. (This kind of problem arises frequently in the debates about abortion, where people may for example have to decide whether to talk about ‘the fetus’ or about ‘the unborn child’, and in so doing may find themselves using terminology which is already covertly partisan.)

So we’re looking to see if there’s a reason against using the language of eugenics which doesn’t in itself presuppose any particular answers to the moral questions in which such talk is used, such as the question of whether eugenics can ever be morally justified, or whether PGD is a case of eugenics.

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First, the proposal that we should avoid talk of eugenics if it gives (reasonable) offence:

The term 'eugenics' is indeed likely to give offence, first and foremost to the healthcare professionals who are engaging in any practice being called 'eugenics'. The negative connotations of the term are likely to spill over on to anyone whose activities are labelled eugenic. The use of this term for biomedical practices such as PGD may also give offence to surviving victims of Nazi eugenic practices, or their relatives, who might feel that Nazi atrocities are trivialised by putting them in the same category as procedures such as PGD.¹⁰

However this argument from offence only requires us to consider *reasonable* offence, since otherwise irrational offence-taking might be able to muzzle the use of many medical terms. Someone might be offended at having her proposed medical treatment classed as 'minor surgery', on the grounds that it's very important to her and she feels very strongly about it. But this wouldn't be a good reason for abandoning the use of the term 'minor surgery' - it's unreasonable to suppose that the classification of surgical practices into minor and major should depend on how strongly a particular patient feels about them, and her offence at the use of the classification is an irrational offence.

So what would it take for someone to be offended by being labelled a 'eugenicist', and crucially for this reaction (being or feeling offended) to be reasonable? One thing that could make the offence reasonable is if the allegation of 'eugenics' were untrue; someone could take offence, and reasonably so, if they were *falsely accused* of practising eugenics. One problem that this raises is that, given how contentious defining and applying the term 'eugenics' can be, it will often be very difficult to settle the question of which accusations are false, and therefore which cases of offence are reasonable.

False accusation is however not the only thing that can give rise to reasonable offence. There are also cases where it's reasonable to take offence at the application of a term even if it's used to make statements that are, in one sense, true. These include instances where the descriptively accurate terminology used is nonetheless hateful - such as the use of the term 'whore' to refer to a sex worker, or much of the sorry litany of racist hate speech,

or when someone who is in fact obese is called 'fat'. These cases can be complex but normally what's going on is that some kind of (mistaken or unfounded or just rude) evaluative judgement is *implied* by the statement. This is perhaps most clear in the case of racist hate speech and may also apply to calling someone a 'whore' or 'fat' in certain contexts. For this reason, calling someone a 'black x' or a 'fat x' cannot usually be justified merely by citing the fact that the person really is black or fat, even if the person would apply those terms to themselves.

So, turning back to eugenics, a second way in which someone (a doctor, or a parent exercising reproductive choice, for example) could be reasonably offended at being called a 'eugenicist' is if that label implied something further which was itself false or unjustified: such as that they have evil intentions (when they don't), or that they subscribe to Nazi ideologies (when they don't). And this may apply even if the person accused of eugenics is, at least in a descriptive or technical sense, really practising eugenics.

What both types of reasonable offence have in common is that something untrue is being said or implied. In the first case, what's said is itself untrue: calling the person a eugenicist is a false accusation. In the second case, 'eugenics' is not strictly a false accusation but (arguably) it is still misleading because it suggests or implies some further statement which is itself false or unjustified, which takes us onto the next proposal (below) concerning misleadingness.

Second, the claim that we should avoid talking about eugenics because it's liable to be misleading: What this proposal amounts to is that even if PGD is technically a form of eugenics, we shouldn't say so, because the public will be misled into thinking that people practising PGD are doing something that they're not (e.g. behaving like Nazis).

However, those who think that PGD is wrong won't necessarily agree that this outcome is misleading, since they believe that PGD is in fact significantly akin to (some) Nazi practices. So we can't settle whether the use of the term 'eugenics' is misleading without settling the substantive question about whether PGD is eugenic - that is, we need to know whether the claim that PGD is eugenics

¹⁰ We also note here that euphemism can cause offence. When, for instance, a manager refers to what is essentially a programme of cuts and redundancies as 'cost savings', 'restructuring', or 'rationalisation', employees often find this language morally repugnant, owing to the dishonesty involved in using such terms to mask the true nature of what's happening. Someone could make the same point about eugenics. If a practice *really* is eugenics and yet it

is described (for example) as 'parental choice' or 'public health', this may seem offensively euphemistic to some. Arguments from (reasonable) offence therefore can 'cut both ways'; they may count either in favour of or against using particular terms. This is hardly surprising given the many and varied range of things that might cause reasonable offence.

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is true or false. So the claim that the use of the term 'eugenics' is misleading isn't morally neutral: it will only be accepted by those who think that there's nothing morally wrong with practices such as PGD. Those who object to such practices will think there's nothing misleading about calling them 'eugenic'. So suggesting that we should abandon the term 'eugenics' because it's misleading is no more convincing, because no more neutral, than the suggestion that we should abandon it because it's offensive.

A different reason for thinking that talk of eugenics is misleading derives from the fact that there is a great deal of disagreement about what the term means, and so people are liable to talk past each other and get confused if they use the term.¹¹ But we can always get people to define their terms, to say exactly what they mean, in order to avoid just this sort of confusion. And, in any case, there are many ethically loaded terms about which there is also a great deal of confusion and disagreement among users. One of the most notable examples is euthanasia, where people often disagree about whether a particular procedure is really euthanasia, or whether it's just a case of 'letting the patient die' or 'letting nature take its course'. Some people think that only deliberately and actively killing a patient (for her own supposed good) counts as euthanasia; others point out that it's hard to see a morally significant difference between deliberately killing a patient, and deliberately letting her die when we could save her life, so long as both are done for the patient's own good. If one is euthanasia, on this view, then so is the other. Another example about which people often disagree is the phrase 'informed consent' – what one person regards as a genuine consent sufficient to legitimise an invasive medical procedure ('She signed on the dotted line, didn't she?') another person may think of as so uninformed as to be incapable of legitimising anything. If we gave up using all the bioethical terms about which there's disagreement or confusion we'd have a very impoverished vocabulary indeed. So again, even if the use of the term is misleading because of disagreements and confusion, this doesn't seem to give us a good reason to completely abandon the term 'eugenics'.

Third, the claim that talk of eugenics fails to respect people's autonomy, because it encourages people to form beliefs in a non-autonomous way:

What does this assertion amount to? The heart of it seems to be that

talking about eugenics is so emotive that it can bypass people's rational faculties, in something of the same way that gruesome images of abortion or perhaps war do.

Such depictions have so strong an effect on the viewer that they're very ready to believe that such things must be wrong, without leaving room for critical rational thought about the matter. (Such things may indeed be wrong; the problem here is that people come to believe that they're wrong without using their powers of reason properly.) Because of the association with terrible Nazi practices, the use of the term 'eugenics' arguably now has a similar kind of effect; it can undermine people's autonomy by influencing their beliefs without the use of reason. In doing this, it fails to respect their autonomy.

This proposal seems stronger than the first two which we considered, since foisting beliefs on people by circumventing their critical and rational capacities does seem objectionable. This is partly because the use of our rational capacities is usually our best way of approaching the truth (that's one of the reasons why respecting people's autonomy is so important); but another way in which it's objectionable is that someone who's ready to use non-rational persuasive techniques seems to be both arrogant and cowardly, in that he's unwilling to subject his own views to rational critique by his hearers. So there does seem to be some reason, based on respect for autonomy, to avoid using the term 'eugenics' with its strongly emotive nature. This reason doesn't in any way depend on whether practices such as PGD really are eugenic, or whether they're morally objectionable, so considerations of autonomy do seem to provide us with a neutral reason against using the term 'eugenics'.

However it's also true that there's another way in which emotive language can be used, a way in which there's no undermining of the hearer's autonomy at all. Many of our beliefs and attitudes are so comfortably familiar to us that we never really question them at all; we simply take their truth for granted. (Political beliefs are quite often like this.) But sometimes we oughtn't to take their truth for granted, and

¹¹ Diane Paul, 'Is Human Genetics Disguised Eugenics?', in Michael Ruse and David Hull (eds.) *Biology and Philosophy* (Oxford: Oxford University Press, 1998):536-49.

emotive language can, in some circumstances, be used to shock people into thinking critically about matters which they've previously left unquestioned.

“ We use it [‘eugenics’] in the same way as we use the word ‘apartheid’ to talk about the discrimination that we face because that is, from our perspective, the reality. It does shock, and it *needs* to shock people into looking at the real situation for disabled people. One of the major problems is that we’re really not seen as human beings, and therefore people’s attitudes to us need to be startled...¹² ”

When emotive language is used for this purpose there’s no autonomy-based objection to it – encouraging people to think critically about an issue doesn’t present any threat to their autonomy. On the contrary, it may help them to think freshly and independently about the issues at hand.

So the objection to eugenics talk which says that that it may threaten people’s autonomy is partially successful. It provides us with some reason to avoid talk of eugenics, but only where such language is a means of circumventing people’s critical-rational faculties – that is, their ability to reflect and reason for themselves. Eugenics talk is often used in this way, but it’s also true that it can be used in the opposite way, to arouse and engage people’s critical-rational capacities; in these cases there’s no failure to respect autonomy, and hence no reason to refrain from talking about eugenics.

It should also be noted that ‘eugenics’ is far from being the only emotive term in discussions of bioethics and so there may be similar reasons to be cautious about many other terms. Indeed, a great deal of our communication and language engages and affects the emotions to some extent, and acts on us through non-rational – or not wholly rational – processes. So the problem with ‘eugenics’ is not so much that it is different in kind from other terms in bioethics; rather the problem is with the extent to which it arouses strong feelings, combined with the concerns about ambiguity and confusion mentioned earlier.

Conclusions

We’ve seen that ‘eugenics’ can be neutrally defined as ‘attempts to improve the human gene pool’, and that defining it in this way allows us to discuss whether any form of it can be morally acceptable (although we haven’t engaged in that substantive discussion here). People’s objections to eugenics stem in part from the horrors practised by the Nazis in their pursuit of eugenic aims, but there’s no reason to think that attempts to improve the gene pool must necessarily involve the hideous force and coercion of the Nazi methods or the racism of their aims, nor need we suppose that all such attempts must involve the creation of so-called ‘designer babies’ or lead to human enhancement.

However there’s no doubt that the language of eugenics can be highly emotive, and hence is very susceptible to confusion and to manipulative use: we have good reason to be cautious about using strongly emotive language in these debates, since its use can easily confuse people and drive them to unreasonable or unjustified beliefs. On the other hand we shouldn’t overlook the fact that sometimes the use of emotive language can shock people into reconsidering what their views really are or should be.

In the light of this, there’s no overwhelming argument for completely abandoning the term ‘eugenics’, but concerns remain about ambiguity, confusion and manipulation, and the consequent failure to respect people’s autonomy.

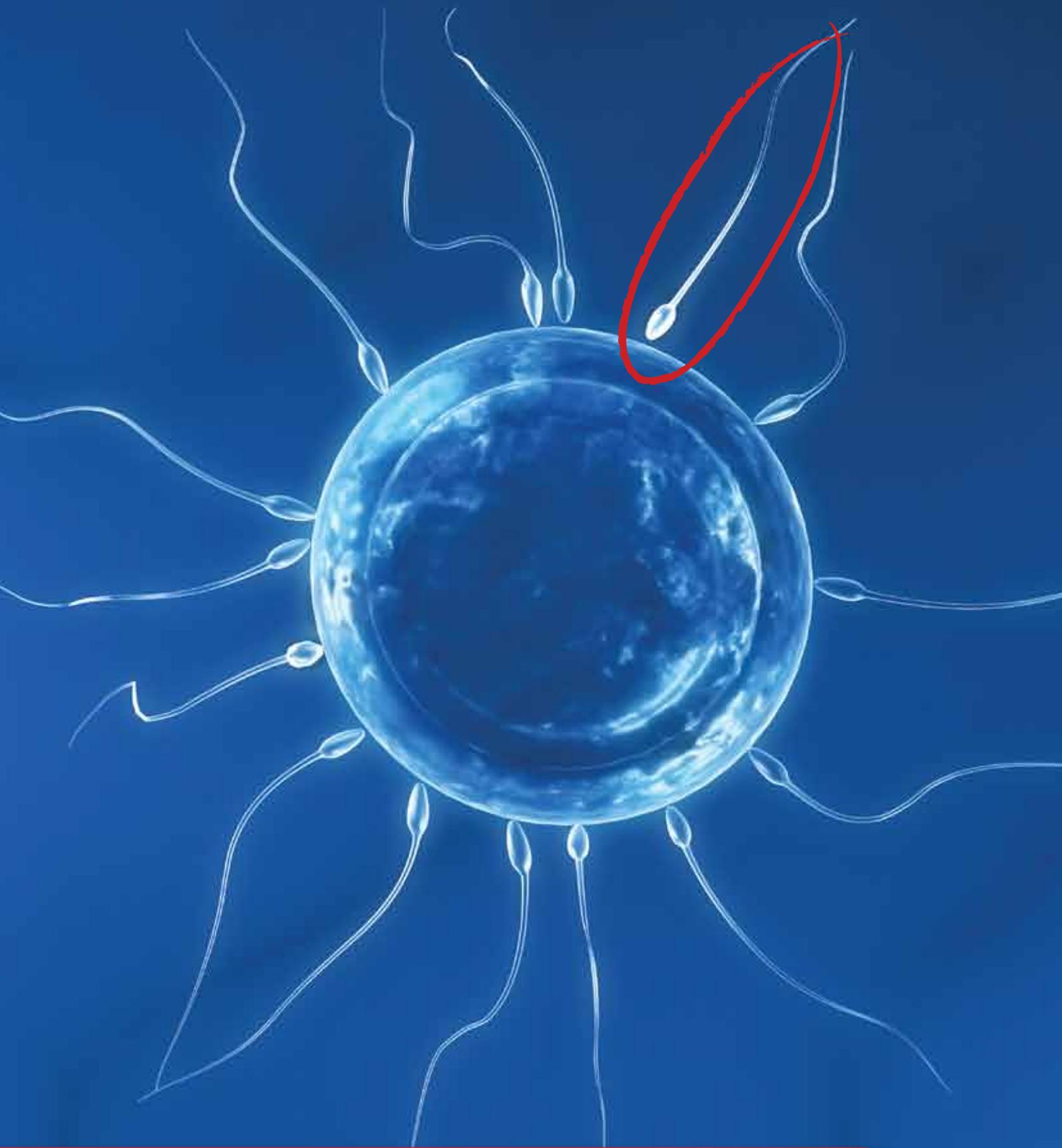
We may not be able to resolve these concerns, and to decide whether the use of eugenics talk is legitimate, until we find satisfactory answers to questions about the moral acceptability of our selective reproduction practices.

In the meantime, anyone using ‘eugenics’ in policy or philosophical debates must at least be clear about what *they* mean by it and be prepared to offer a clear definition. Otherwise unnecessary confusion and disagreement may ensue.¹³

¹² Anon, *Interview with Campaigner* September 2005

¹³ Many of these arguments are discussed in greater detail in Stephen Wilkinson, “Eugenics talk” and the language of bioethics’, *Journal of Medical Ethics*, 2008, 34(6), 467-471.

Stephen Wilkinson, *Choosing Tomorrow’s Children: the ethics of selective reproduction* (Oxford: Oxford University Press, 2010): chapter 6.



Selective Reproduction

Stephen Wilkinson and Eve Garrard

Selective Reproduction: 'Selecting Out' Disability and Disease

Developments in medicine and genetics have made it increasingly possible for prospective parents to choose not to have a child with a disability. There are various methods for doing this, including prenatal genetic testing, and the use of pre-implantation genetic diagnosis (PGD). In PGD, which is our main concern here, embryos are created using in vitro fertilisation (IVF), and are then examined for the presence of genes likely to cause disabilities or diseases.¹

PGD can already be used to 'select out' over 100 conditions including early onset Alzheimer's disease, BRCA1 (which causes increased susceptibility to breast cancer), cystic fibrosis, haemophilia, Huntington's Disease (Huntington's chorea), and sickle cell anaemia.²

These techniques, and others like them, therefore have the potential to prevent a great deal of illness and suffering. And what, one might ask, could possibly be wrong with that?

Selective reproduction: methods and aims

The answer to that question is complex, and we should start by noting that many people have very serious reservations about using PGD and other methods to 'select against' disability or disease in future children. Their reservations are sometimes about the methods chosen for selecting against disability, but often they're about the goal itself, about the very aim of producing fewer children with disabilities. Where people are mainly concerned about the *means* for doing this, their worries can often be alleviated by choosing the least morally problematic methods – avoiding abortion, say, and focussing on PGD (which is not to say that the latter is completely uncontroversial); but for

many people, concerns about these choices would remain, even if morally unobjectionable means of delivering them could be found. For these people, it's the *goal* of selective reproduction itself that is morally dubious.³

What exactly is selective reproduction? It's the attempt to create one possible future child rather than another possible future child.

In the contexts we're considering here, the aim of the selection is to avoid disease or disability: if one possible future child would have a disabling, excruciating and life-shortening disease, while another would not, then choosing to create the child who would not have the disease would be a case of selective reproduction.⁴ So what are the objections to selective reproduction for the purpose of avoiding disease and disability – why is it that some people feel that selecting against disability is morally very problematic?

Objections to selective reproduction (1): eugenics

Firstly let's look at concerns about eugenics. Eugenics is something that many people strongly disapprove of; if PGD, and choosing against disability generally, turns out to be a form of eugenics then it too is likely to fall under that same disapproval. So we need to know what eugenics is, and what (if anything) is wrong with it, before we can understand this eugenics worry.

There are many different definitions of eugenics, so we'll use the most 'neutral' one, to avoid making any unwarranted assumptions about whether it is or isn't morally wrong. Eugenics, on this straightforward descriptive definition, is the attempt to 'improve the human gene pool'.⁵ The goal of improving the human gene pool has in the

¹ For a more detailed account of what PGD involves, see the information given on the Human Fertilisation and Embryology Authority website at <http://www.hfea.gov.uk/preimplantation-genetic-diagnosis.html#1>

² <http://www.hfea.gov.uk/cps/hfea/gen/pgd-screening.htm>

³ In the UK, the use of PGD is restricted to cases where there is a significant risk of a serious genetic condition being present in the embryo. See the Human Fertilisation and Embryology Authority (HFEA) *Code of Practice* (8th edition), April 2012.

http://www.hfea.gov.uk/docs/8th_Code_of_Practice.pdf

⁴ In this paper, for brevity, we'll use 'selective reproduction' to refer specifically to cases in which diseases or disabilities are 'selected against' or 'screened out'. The term 'selective reproduction' can however be used more widely to refer to (for example) choosing to have a child *with*, rather than a child *without*, a disability, or to choosing your child's sex – both of which are the subjects of other papers in this volume. For a fuller discussion of selective reproduction see Stephen Wilkinson, *Choosing Tomorrow's Children* (Oxford: Oxford University Press, 2010): chapter 1.

⁵ Ruth Chadwick, 'Genetics and Ethics', in Edward Craig (ed.), *The Routledge Encyclopaedia of Philosophy*, (London: Routledge, 1998).

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past been pursued in many different ways, most notoriously by the Nazis, who used compulsory sterilisation programmes and systematic mass murder to eliminate individuals, and whole ethnicities, deemed by their ideology to be ‘unfit’. For many people, the horrifying Nazi eugenics programme has tainted the very idea of eugenics.⁶ But attempts to improve the gene pool need not be driven by the appalling racist ideologies of the Nazis, nor need they take the terrible form of violent state coercion. And there are other ways in which people and societies may reasonably pursue aims that may ultimately be (at least partly) eugenic. These include incest avoidance; providing genetic counselling to people with inherited genetic disorders; discouraging cousin marriage; or encouraging women to have children only in the optimum years for doing so (avoiding both teenage pregnancy and ‘post-menopausal motherhood’). None of these need involve any state coercion or violence, and many such practices would be widely accepted or even praised. Yet each in its own way is an attempt to improve population health, or improve the ‘gene pool’, and so could be classed as eugenic.⁷ However some people nonetheless object to eugenics of any kind, whatever the means used to pursue it, and that’s the kind of objection we’ll concentrate on here, leaving to one side further discussion of the various possible means of achieving eugenic goals.

So assuming that only morally acceptable *means* were used, involving no coercion or violence, what might be wrong with eugenic *aims* – why might it be wrong for doctors, or the National Health Service, to try to improve the gene pool by, for example, giving parents the opportunity to avoid the birth of children who, if created, would have inherited disabilities and diseases? One main worry is with the very idea of genetic improvement: the things that are supposed to improve the gene pool, so it is argued, aren’t really improvements at all. If we aimed to increase the number of girls with curly blonde hair and blue eyes, or decrease the incidence of homosexuality, these wouldn’t actually be improvements – the gene pool would be no better than it was before the supposedly eugenic intervention, just different. So the aim of improving the gene pool, the objectors say, is mistaken from the start.

Now it’s true that we can be very mistaken about what counts as improvement, in genetic matters

just as in education or housing or sports or politics. But it doesn’t follow that there’s no such thing as improvement, in any of these fields. Reducing the number of people who suffer from debilitating diseases, such as those which practices like PGD might enable us to avoid, might seem like a real improvement in the face of the pain and misery such diseases can cause.⁸

The avoidance of suffering which such a reduction would bring about is a reason for thinking that it would be a genuine improvement, not merely a change. And so long as we make it clear what *reasons* there are for thinking that a certain genetic intervention would count as an improvement, for thinking that it would make things *better*, then there seems to be no reason to rule out the possibility of, in this sense, improving the gene pool. Reducing the prevalence of genetic disorders through selective reproduction does seem to be a genuine improvement, for reasons to do with human wellbeing, and hence it fits the definition of ‘eugenics’ given above. So it does seem possible that we have here, in the non-coercive attempt to reduce the prevalence of genetic disease and impairment, a genuine case of eugenics which is morally defensible, and indeed for those people who think that we ought to reduce the amount of suffering in the world, it’s an actively good practice (even though, as we have seen, other cases of eugenic practices may be far less morally innocent.)

Eugenics doesn’t seem always to be immoral, and so the fact that PGD, and other forms of selective reproduction, might sometimes technically be eugenic, isn’t sufficient to show that they’re wrong.

Objections to selective reproduction (2): the Equal Value Principle

However, even if there are some ethically acceptable instances of eugenics, there are other objections to selecting out disability that must be considered. One of these draws on the Equal Value Principle, which says that we ought to value disability and non-disability equally.⁹

Now it seems that procedures such as PGD, which reduce the chances of having a child with a

⁶ See our paper on Eugenics in this volume and Stephen Wilkinson, “‘Eugenics talk’ and the language of bioethics”, *Journal of Medical Ethics*, 2008, 34(6), 467–471.

⁷ There may be other non-eugenic reasons for pursuing such policies as well. For example, one might think that incestuous relationships are morally wrong even where there is no chance of them resulting in childbirth.

⁸ As mentioned earlier, the list of possible conditions that PGD can already help parents to avoid includes Alzheimer’s disease, BRCA1 (which causes increased susceptibility to breast cancer), cystic fibrosis, haemophilia, Huntington’s disease (Huntington’s chorea), and sickle cell anaemia.

<http://www.hfea.gov.uk/cps/hfea/gen/pgd-screening.htm>

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disability, do fall foul of this principle, for if people really valued disability and non-disability equally, why would they try so hard to avoid creating children with disabilities? However as well as asking that question, we also have to ask, how convincing is the Equal Value Principle itself? Because if the principle isn’t plausible, then the fact that selective reproduction goes against it may not matter.

How convincing the Equal Value Principle is depends on how exactly we interpret it. For there are two very different possible interpretations. First, we can take it to mean exactly what it says, that we should attach the very same value to being *unable* to walk or see as we would to being *able* to do those things; similarly, on this interpretation, we should value dysfunctional immune systems the same as immune systems which can fight off infections. But on this literal interpretation, the Equal Value Principle is a mistake. Why would anyone believe that an immune system so compromised that it leaves a person undefended against any opportunistic life-threatening disease is as valuable as a healthy functional immune system? And wouldn’t (nearly) everyone with good eyesight and fully functioning limbs feel that they had lost something of great value to them if disease or injury took away or diminished either of those things?¹⁰ Furthermore if the Equal Value Principle, when interpreted in this way, were correct, we’d have no reason to try to cure people who have acquired disabilities (for example, through accidents at work or on the roads), or to make people pay taxes to support a National Health Service which (amongst other things) aims to cure people with impairments, since we’d value these impairments as highly as unimpaired organs or systems. So the fact that selective reproduction flouts the Equal Value Principle, on this unconvincing interpretation of it, doesn’t tell against selective reproduction at all.

However there’s another, much more credible, way of interpreting the Equal Value Principle. On this better interpretation, it tells us to value disabled *people* equally to non-disabled ones. Unlike the previous interpretation, this is a very convincing moral claim: we should treat people with disabilities as having needs and sensitivities and rights which are just as important as those of people without disabilities. But on this far more attractive account of the Equal Value Principle, the practice of selective reproduction doesn’t come into conflict

with the principle. The fact that we sometimes try to avoid bringing a child with a disability into the world says nothing at all about how we should treat existing people who already have disabilities; just as the fact that we may attempt to cure some of them has no implications for how we should treat those who can’t be cured.

Although there’s nothing morally wrong with assigning a negative value to the functional limitations which disability often involves, this is entirely independent of questions about how we should or do value the *people who* have the disability – we should of course value them equally to non-disabled people and afford them the same treatment and rights. So selective reproduction isn’t in conflict with the only form of the Equal Value Principle which is at all persuasive.

Objections to selective reproduction (3): harmful consequences

A quite different kind of worry rests on the view that success in reducing the incidence of disability and disease might have harmful consequences for people with disabilities.

Various kinds of harmful consequence flowing from selective reproduction are sometimes predicted: one is that if the number of people with disabilities were significantly reduced, then those who remained disabled would experience less acceptance and inclusion. This is because they would be more unusual, and consequently treated as more ‘alien’ by the non-disabled population. Another possible harmful consequence is that if there were fewer people with disabilities then fewer resources might be allocated to making social institutions and the built environment accessible and ‘disability-friendly’. If the number of people with disabilities were reduced then those remaining would represent a smaller proportion of the population, and this fact would alter both the economic and the political calculations upon which these allocations are often made. A further concern is that if people were able easily to choose to avoid the birth of a child with a disability, then the parents of those children who do have disabilities might (rightly or wrongly) be *blamed* for failing to

⁹ See, for example, the Disability Rights Commission: ‘Throughout its programme of work on ethical issues, the DRC will be guided by two principles: valuing disability and non-disability equally, and the right of individuals to make informed, autonomous choices.’ *DRC Statement on Section 1(1)(d) of the Abortion Act 1967*. (The Disability Rights Commission was subsequently replaced by the Equality and Human Rights Commission in October 2007.)

¹⁰ There are exceptions to this, such as people with ‘body integrity identity disorder’ who often have a desire to amputate one or more healthy limbs and/or feel that they would be better off living as amputees.

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avoid their births: for making their children suffer and, in some cases, for imposing extra health and social care costs on the wider community and the taxpayer.

The first of these concerns (about effects on attitudes) is hard to assess, since the likelihood of increased intolerance towards any group rests on so many context-specific considerations that it's difficult to make accurate predictions. The second concern is more convincing, since investment in accessible structures and devices does quite legitimately rest in part on the number of people who will use them. So this objection does provide us with a reason against selective reproduction. But that reason would have to be weighed against the benefit produced by reducing the prevalence of disability: in particular, the reduction in pain and functional limitation in the population. The reduction of suffering is a major reason for favouring this form of selective reproduction, but weighing these different reasons against each other is notoriously difficult. However this problem is not unique to this issue; in general it's hard to work out how to distribute resources, or the alleviation of suffering, across populations with members in very different situations. For example, should we allocate resources to treating childhood diseases, or to providing care services for older people? Should we pour money into public health schemes to prevent infectious diseases, or into fundamental research on how to cure them? There is perhaps no general answer about how to make these decisions, so we should acknowledge that any harm to those who continue to live with disability is a reason, though not usually a decisive one, against the practice of selective reproduction against disability. One important point to bear in mind though is that the extent to which this concern tells against selective reproduction will depend very much on the numbers involved. If only a handful of parents chose to use PGD to avoid a given condition this would make no significant difference to the overall numbers of people living with that condition. And in such cases there would be little reason to believe that people living with the condition would be adversely affected. Also, we should remember that many disabilities are caused by environmental factors (e.g. disease and injury) or by the effects of ageing and PGD will have no direct effect on these.

Objections to selective reproduction (4): the Expressivist Argument

Finally, we must consider what's sometimes called the Expressivist Argument - the claim that choosing not to conceive or bear a child with a disability expresses and sends out a very negative message about people with disabilities, one that says that it would be better if they had not been born.¹¹

Does selecting against disability really send out this message? And if so, is that always morally objectionable (and why)? We can't answer these questions properly unless we know just what this message is supposed to be. Does the message say to disabled people that the world would be a better place if they were killed? Or does it say to disabled people that the world would have been a better place if, rather than conceiving and bearing them, their parents had conceived and borne healthier children instead? Or does it say to disabled people that the world would have been a better place if they hadn't been born? These are three very different messages, and each one has to be considered on its own merits.

Take the first version of the message, that it would be better if existing disabled people were killed. Is this what selecting against disability, by (for example) choosing not to implant embryos with genetic disorders, really says to disabled people? If it does, then this message is clearly false, and morally horrific. But selective reproduction needn't imply that at all. People who are already in existence have all kinds of needs and rights which must be respected by others, and no decision to engage in selective reproduction, for any reason whatever, entails that existing people should be killed. If we try to discourage teenage pregnancies, for example, this really doesn't entail that we think that the children of teenage mothers should be killed; similarly if we try to discourage, by PGD or other voluntary means, the birth of children with disabilities, this really doesn't entail that we think that people with disabilities should be killed. So that can't be the message that selective reproduction sends to existing people with disabilities.

How about the second version then, where the message to people with disabilities is thought to be that the world would be a better place if their parents, instead of conceiving and bearing them, had conceived and borne non-disabled children instead? Suppose for a moment that this is

¹¹ See Tom Shakespeare, *Disability Rights and Wrongs*, (London: Routledge, 2006); also Steven Edwards, 'Disability, Identity,

and the "Expressivist Objection"', *Journal of Medical Ethics*, 2004, 30(4), 418-420.

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indeed the message. Is it a morally objectionable one? The first thing to note about it is that the underlying rationale here is a principle that applies to everyone, not one which singles out disability. For it's true of all of us that (other things being equal) less functional limitation makes for more well-being (and less suffering) in life, and likewise it's true of all of us that (other things being equal) a life with less pain is preferable to a life with more. So just as one might claim that, given a choice, it would be better for parents to choose to create a child without rather than with a disability (at least for those conditions that cause functional limitation and/or pain), one might similarly claim (and on the very same grounds) that, for *any* choice between possible future children, we should always choose the one within the lowest likely levels of functional limitation and pain – even in cases where none of the options involves substantial disability. So, to take a purely hypothetical example,

if my mother had been able to select an alternative child (instead of me) who was more athletic, or cleverer, or more musical, or kinder in its nature than I am, or one who was less inclined to suffer from moderate back pain, then she should have done so.

The underlying motivation here is the welfare of the child (in this case, an ‘alternative’ child who could have been even happier than I have been) and it is this fundamental commitment to welfare that gives us reason to prefer to minimise functional limitation and pain (which generally have bad effects on welfare). Disability only becomes relevant when and insofar as it is correlated with significantly lower levels of welfare (via its effects on functional capacity and pain).

So the world would be a better place (other things being equal) if the whole human race were healthier and happier. This thought applies to all of us, not only to people with disabilities. But a message that applies to everyone doesn't present a special problem for people with disabilities: it doesn't discriminate against them, because it doesn't single them out in any special way.¹² So if that's the message of selective reproduction, then it doesn't seem to amount to a strong ‘expressivist’ argument against it, since it doesn't express anything distinctively bad or disadvantageous about people

with disabilities. And nothing follows from this message about how all existing people, disabled or otherwise, should be treated, especially since we all have rights and needs which merely possible people don't have, however happy and healthy they would be if they came to exist.

So far, we haven't found any message being given out by selective reproduction that's both genuinely implied by this practice, and also morally objectionable. So now we must consider a third possible version of the message, to see if, unlike the other two, it does amount to an objection to selective reproduction. In this third version, the practice of choosing against disability is thought to send a message to people with disabilities saying that the world would have been a better place if they hadn't been born. But as we have seen, parents who choose to create a child without, rather than a child with, a disability aren't normally saying this. What they're saying is that it is better, other things being equal, to create children with fewer, rather than more, functional limitations. But (again) this is something that could be said of any one of us, and hence it sends out no message exclusively to people with disabilities. So are there any prospective parents, or any practices, which might be sending out this third message, that the world would have been a better place if children with disabilities hadn't been born? The only time when selective reproduction might imply this is when prospective parents choose *not to create a child at all* in preference to creating a child with a disability.¹³ In some circumstances this could indeed suggest that the world would be a better place without people with disabilities in it.

In fact, even parents who make that choice don't *necessarily* give out this message – it depends on their own reasons for preferring not to have any child rather than have a disabled one.

Suppose they decide not to have a disabled child just because they feel it would be too burdensome for them: they know themselves well, perhaps know how readily they get tired and irritated, and how much they enjoy the wealth and freedom to travel that they currently possess; and they think that they just wouldn't want to live the lives of people caring for a child with a disability. In those

¹² Some readers have raised the following objection: *perhaps it's true that what we call the ‘fundamental commitment to welfare’ ought to apply both to people with and people without disabilities. But in fact it gets applied unequally or unfairly only to the ‘selecting out’ of people with disabilities.* This may well be true and, if it is, this is discriminatory and wrong – for it can't be right for a general principle which ought to apply to everyone to be selectively applied only to

some people. The unequal application of this principle may also reveal that people's motives are not always as defensible as they at first sight appear: e.g. perhaps they are motivated by a dislike or fear of disability and not, as they claim, just welfare considerations. Our main point however still stands. If ‘selecting out’ disability and disease is (genuinely) done for welfare reasons then this needn't send out a morally problematic message about existing people with disabilities.

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circumstances the message they send out is mainly about themselves and about what kind of people they are.

They're not saying that the *world* would be better without disabled people in it; they're saying that *their own lives* would be better with no child than with a disabled child. But it can't be morally wrong of them to think or say that, since anyone has the moral right not to have children. Of course, they may be quite mistaken about what it's like to look after a child with a disability, and about how fulfilling their freedom to travel and spend money really is, but that's another matter – people have the right to make these mistakes about themselves.

However sometimes people make that decision – to have no child rather than have a disabled one – for a very different kind of reason. Sometimes they make the decision just because they think it would be better in general to bring no child into the world rather than to create one with a disability. In that case, they really are sending out the message that the world would be better if it contained no disabled people (or at least no one with the particular disability in question). Their choice is based on their views about disability and its negative contribution to general welfare, and these views do indeed imply that the world would be better without children with disabilities in it. Such views are perhaps not very common, and acting on them in this way is relatively unusual. Nonetheless it can happen, and in those particular circumstances, the practice of selective reproduction does send out that troubling message.

Is the message morally objectionable? Yes it is, since unless the child with a disability has a life which is so dreadful, so full of suffering, that it's not worth living (which is rarely the case) then it simply won't be true to say that a world which doesn't contain that child, is better than one which does. Children with disabilities who have lives worth living (which is nearly all of them) make the world a better place just as non-disabled children do, by living lives which have value for themselves and others. The message given out by choosing against disability, in cases where the prospective parents decide not to have any child rather than to have a disabled one, *and* where they make this

decision on the grounds of general welfare, is indeed morally objectionable, firstly because the message is false, and secondly because it devalues something which is of great value, the worthwhile lives of disabled people.

To this extent the Expressivist Argument does have some force: in a very restricted number of cases of selective reproduction, a message which is both objectionable and false is sent to (and about) people with disabilities.¹⁴

So there is some reason to avoid or condemn selective reproduction in those cases.

Conclusions

Selective reproduction (such as PGD) when used as a means of 'selecting against' disease and disability, has the potential to prevent the occurrence of considerable amounts of suffering – both for children and parents. However, it also raises a number of ethical concerns.

In particular, there are fears:

- (1) that these attempts to 'select out' disease and disability are eugenic;
- (2) that they are inconsistent with valuing people with and without disabilities equally;
- (3) that they could harm existing people with disabilities; and
- (4) that they send out a negative message to and about existing people with disabilities.

This paper has, we hope, revealed that some of these fears and objections are sounder than others. In particular –

- (1) The argument that selective reproduction is eugenics seems not, on its own, to be a particularly strong objection. This is partly because, depending on the intentions of the people involved and on the means used, arguably not all cases of selective reproduction are eugenic (for example, it may not be eugenics when the aim is not to 'improve the gene pool'). But even where selective

¹³ Avoiding the birth of a child with a disability through abortion may therefore be rather more vulnerable to this Expressivist Argument than PGD (because the latter more often and more straightforwardly involves 'same number' choices). This issue is however complex. See the following for further discussion: Sally Sheldon and Stephen Wilkinson, 'Termination of Pregnancy for reason of foetal disability: Are there grounds for a special exception in Law?', *Medical Law Review*, 2001, 9(2), 85-109.

¹⁴ For a more detailed discussion of the Expressivist Argument, see Stephen Wilkinson, *Choosing Tomorrow's Children* (Oxford: Oxford University Press, 2010), chapter 6.

Selective Reproduction: 'Selecting Out' Disability and Disease

reproduction is eugenic (which it sometimes is) it does not follow automatically from this that it's wrong (despite the fact that many instances of eugenics historically have been morally abhorrent). For provided that the means used are ethically acceptable, and that people freely consent, it's not clear that attempting to improve population health ('the gene pool') is a bad thing for us to be doing. On the contrary, it seems on the face of it to be a good thing – given the high value that most of us place on good health, and on preventing ourselves and our loved ones from acquiring diseases or impairments.

- (2) Selective reproduction needn't imply that people with and people without disabilities aren't valued equally. This is because of the important distinction between attaching negative value to impairment and pain (which do seem to be bad things) and attaching negative value to *people with* impairment and pain. Doing the first of these needn't and shouldn't imply the second
- (3) As for the suggestion that selective reproduction could harm existing people with disabilities we found that there is probably some truth in this. For example, if there were fewer people with disabilities then fewer resources might be allocated to making social institutions and the built environment accessible and 'disability-friendly'. These dangers are real but need to be weighed against the benefits of selective reproduction and, in particular, the reduction in the amount of functional limitation and pain that might ensue if the prevalence of impairments and painful conditions in the population could be reduced.
- (4) Finally, we considered the Expressivist Argument, which says that what's wrong with selective reproduction is that it sends out an unacceptably negative message about people with disabilities. We concluded that this argument does work successfully against a particular narrow range of cases – those in which both (a) the prospective parents would rather have no child at all than a child with a disability and (b) their reason for that preference is the belief that the world would be better if it contained no disabled people (or at least no one with the particular disability in question). But most cases of selective reproduction are not like this. More often, people are motivated by fears about not being able to cope, or about (in one sense, 'selfish') desires not to have to provide lifelong care for a child with a serious illness, or (perhaps most commonly of all in the case of PGD) by a preference for a child with

less functional limitation and pain rather than more functional limitation and pain.

There don't therefore seem to be any knockdown arguments that would tell against *all* forms of selection via PGD. However, some of these arguments may be successful against some particular forms of selection in some particular contexts: for example, where prospective parents (or doctors or policymakers) are motivated by unjustifiably negative attitudes towards disability.



Choosing Disability

Stephen Wilkinson and Eve Garrard

Choosing Disability

In 2002, an American lesbian couple, Sharon Duchesneau and Candy McCullough, both of whom were deaf, deliberately chose to have a deaf baby.¹ They attracted fierce criticism.² So did Tomato Lichy and his partner Paula Garfield in the UK in 2008 when they publicly expressed their desire to do something similar via IVF.³ Duchesneau and McCullough didn't have to use any advanced biomedical techniques to ensure that they had a deaf child; they had as a sperm donor a friend with five generations of deafness in his family. But there are now embryo selection techniques which could (in principle) be used by parents wanting to create a child with a disability. UK law specifically prohibits the selection of an embryo with a genetic disability or disease in preference to a 'healthy' one.⁴ In what follows, we're going to explore whether this ban is justified, and also whether parents who prefer and seek to create a child with a disability are doing anything morally wrong.

Harm to the child (Part I) - existence vs. non-existence

Why, we might ask, would anyone want to do this? What reasons could parents have for choosing to have a child with a disability, in the face of one very obvious objection: that this choice harms the child?

It would surely be utterly abhorrent to deliberately deafen a hearing child, or to cut off the hands or legs of a healthy child, so how can it be right to deliberately implant an embryo knowing that it will develop into a child with a disability, and wanting it to do so?

There is an answer to this question. Certainly it would be profoundly wrong deliberately to mutilate a healthy child, or to make it deaf, and that's because it would harm the child, make that child

worse off. But where it's a matter of choosing which embryo to implant, which embryo will develop into a child, there's a difficulty in saying that implanting an embryo which will eventually become a child with a disability actually harms that self-same child. Why? Because the only alternative to implanting that embryo – the embryo which will become Baby Alice, let's say, who will be deaf – is not to implant *that* embryo, and to choose *another embryo instead*. But if a different embryo were implanted instead of the one that would become Baby Alice, then the child that it develops into may not be deaf, that's true; but neither will it be Baby Alice at all. It will be another, different, child – Baby Barbara, let's say.

There are only two alternatives for the embryo which could become Baby Alice: either it's implanted, or it isn't. If it's implanted, then (if all goes to plan) it will grow into Baby Alice, who will be deaf; her genetic makeup will cause that to happen. Alternatively if it isn't implanted, Baby Alice will never come into existence – instead another, different, embryo will get implanted, which will grow into Baby Barbara, who won't be deaf. There is no way in which Baby Alice can come into existence without being deaf, since that's what her genetic makeup guarantees. This is quite unlike the case of a hearing child who has been deafened: he could perfectly well have continued to live as a hearing child, and so he is truly harmed – made worse off – by the choice to make him deaf. But Baby Alice, if she gets born, won't have been harmed by being implanted, since it won't have made her worse off. For the only alternative for her is, in effect, never to have been born. So when the choice is between deafness and non-existence, we can't say that the deaf child has been harmed by being chosen for existence: she hasn't been harmed because she hasn't been made worse off. And that's because existence as a deaf child isn't usually worse than never having been born at all.

¹ David Teather, 'Lesbian Couple Have Deaf Baby by Choice', *The Guardian*, 8th April 2002.

² See Jeanette Winterson, 'How would we feel if blind women claimed the right to a blind baby?', *The Guardian*, 9th April 2002.

³ See Clare Murphy, 'Is it wrong to select a deaf embryo?', BBC News, Monday 10th March 2008, <http://news.bbc.co.uk/1/hi/health/7287508.stm>

⁴ The Human Fertilisation and Embryology Act 2008 (Part 1, s.14, 4.9) introduced a prohibition on deliberately 'selecting in' disease or disorder. Specifically, what it says is that: "Persons or embryos that are known to have a gene, chromosome or mitochondrion abnormality involving a significant risk that a person with the abnormality will have or develop— (a) a serious physical or mental disability, (b) a serious illness, or

(c) any other serious medical condition, must not be preferred to those that are not known to have such an abnormality."

Given this wording, while the HFE Act forbids 'selecting in' disease or disorder in cases of *choosing between* affected and unaffected embryos, there seems to be no parallel restriction where no unaffected viable embryo is available for implantation. Thus, people with genetic-based disabilities could perhaps lawfully use IVF and embryo testing to help them deliberately create a child with their disability, but only in the absence of unaffected viable embryos.

If Baby Alice says to her parents: ‘*Why did you allow me to be born deaf?*’ their answer might be: ‘That was the only way you could have been born at all. We couldn’t have had you without the deafness; the only alternative was to have a totally different child altogether’.

But if a different child who had been deliberately deafened during its lifetime – Baby Andrew, let’s say – were to ask his parents why they allowed this to happen, no such answer could be given. For whereas Andrew could perfectly well have existed (and continued to exist) as a hearing person, Alice could not. So it doesn’t seem as if preferring to create a child with a disability to one without, and then using IVF and embryo selection to bring about that preference, would actually harm the child created. The reason for this is that (as in the case of Alice) the only alternative to being selected (for the child in question) is of course not being selected and hence never being born – and in very few cases of disability, if any, are the effects so bad that *not* existing would be preferable.⁵

Harm to the child (Part II) - is deafness really a disability?

Other attempts have been made to fend off the claim that selecting for disability harms the child.

Some people have argued that deafness, for example, isn’t a disability at all: deaf people have a perfectly good language of their own (Sign language) and a rich and satisfying culture of which that language is a part.

Indeed, some people claim that deafness is entirely socially constructed – that it has no intrinsically negative features in itself, with any disadvantage stemming from social attitudes and discriminatory practices. They compare deafness with being black in a predominantly white country. In such countries, black people are less well off than whites, but this is purely a matter of social discrimination: no-one (except the most extreme racists) would think that being black is in itself an impairment, nor would anyone object to a black couple preferring to have a black child. Duchesneau and McCullough, for example, state:

“Our view ... is that being deaf is a positive thing, with many wonderful aspects. We don’t view being deaf along the same lines as being blind or mentally retarded; we see it as paralleling being Jewish or black. We don’t see members of those minority groups wanting to eliminate themselves.”⁶

Therefore, so the argument goes, people shouldn’t object to, or try to prevent, parents who are members of the Deaf community⁷ choosing to have a child just like them, one who can participate fully in the rich culture which Deaf people have created. Thinking along these lines, the idea of ‘audism’ has been developed by some Deaf people, to express the view that a preference for hearing/speaking people is a form of discrimination, structurally comparable to racism or sexism.

Lichy and Garfield, whose case we mentioned earlier, argue that if the State or doctors insist that embryos which carry ‘deafness genes’ must be discarded in favour of unaffected embryos, then this discriminates against deaf parents, who only want the same amount of choice as hearing parents – that is, to have a child like themselves. They have also suggested that insisting on choosing the non-deaf child over the deaf one is actually a form of eugenics.⁸ On standard accounts of eugenics, which define ‘eugenics’ as attempts to improve the human gene pool, this may well be correct and, what’s more, if this policy is forced upon unwilling members of the Deaf community by either law or health professionals then it looks like *authoritarian* eugenics. However, as noted elsewhere, this may not settle the ethical issues and we would need further argument to show that all cases of eugenics are wrong.⁹

In some circumstances, aspects of this argument may be legitimate. Deafness does involve a physical limitation, an inability to hear; but that will only amount to an actual disability if it reduces the person’s capacity to flourish, to have a high level of wellbeing. The disadvantages of being unable to hear won’t reduce the individual’s overall wellbeing so long as they’re outweighed

⁵ Stephen Wilkinson, *Choosing Tomorrow’s Children* (Oxford: Oxford University Press, 2010): 4-7.

⁶ See Dominic Lawson, ‘Of course a deaf couple want a deaf child’, *The Independent*, 11th March 2008.

⁷ Members of the Deaf community are ‘people with audiological deafness who use sign language as their major means of communication and who identify as a sociolinguistic group

with their own distinctive culture’. Jackie Leach Scully, ‘“Choosing Disability”, Symbolic Law, and the Media’, *Medical Law International*, 2011, 11(3), 197-212: 197.

⁸ See: BBC interview with Tomato Lichy and Paula Garfield, <http://www.youtube.com/watch?v=O7aFE9kPD14>

⁹ See our discussion of eugenics earlier in this volume.

by the social and cultural advantages of being a member of the Deaf community. But in other circumstances a deaf child may not be extensively exposed to Deaf culture, and with nothing to outweigh the physical limitation of deafness she may truly be disabled by her inability to hear. Furthermore, a person needn't be deaf in order to participate in Deaf culture: many people learn two languages and can move smoothly from one to the other; so a hearing child of Deaf parents may be able to learn Sign, and participate in Deaf culture, without herself being deaf. So Deaf parents needn't always necessarily have a deaf child in order to have a child who shares their language and culture.

What we can infer from all this, specifically thinking for now about the case of deafness which gets discussed the most, is that

the effects of deafness on the welfare of the child created are likely to vary considerably from case to case and from context to context. Certainly, it seems plausible to suppose that in some cases its effects are neutral or even positive (bearing in mind the social and cultural effects mentioned above). But there will be others in which its effects are negative, all things considered.

Is all disability 'socially constructed'?

Some people want to go further and argue that all disability (not just deafness) is primarily a matter of social discrimination, and that if society were to treat people fairly then what we would have is not disability but merely impairment. For example, UPIAS states:

“ In our view it is society which disables physically impaired people. Disability is something imposed on top of our impairments by the way we are unnecessarily isolated and excluded from full participation in society. Disabled people are therefore an oppressed group in society.”¹⁰

But is this view a plausible one?

If we ask whether the disadvantage associated with disability is the result of social

discrimination, or whether it stems from the nature of the disability itself, surely the answer is that it's "a bit of both".¹¹

For something to count as a disability at all (rather than mere difference) it must involve some limitation or incapacity which, potentially at least, reduces the individual's flourishing, even though this potential isn't always realised. Of course social discrimination such as mockery or assault, or the refusal to alter the built environment to enable people with disabilities to make use of it more easily, can greatly add to disadvantage. However, although social arrangements can make an enormous difference to how much the physical limitation actually affects a person's welfare, some impairments at least are independent of social arrangements: even on a desert island where there are no social pressures at all, someone who's had a stroke (for example) will still be limited by its effects.

So this argument in defence of selection for disability doesn't seem to be very successful, but the principal argument against choosing disability – the claim that it harms the child – is also problematic. In order to understand more fully why, we need to look closely at the concept of harm itself.

Harm to the child (Part III) - what is harm?

What does it take to harm someone, to make them worse off? One way in which a person can be harmed is by being made *worse off than she was before*. If someone accidentally runs over your bicycle, leaving it a total write-off, they've harmed you, because they've made you worse off than you were before the accident – you no longer have a bike to ride. If someone assaults you, beating you so badly that your eyesight is damaged for life, they've harmed you, because you're worse off than you were before. Prior to the attack you could see; now you can't.

But being made worse off than they were before isn't the only way in which people can be harmed: they can also be harmed by being made worse off *than they would otherwise have been*. If you're waiting for some money, which you really need, to be sent to you, but it doesn't arrive because the sender forgot to put it in the post, then this may

¹⁰ UPIAS (Union of the Physically Impaired Against Segregation), quoted in Michael Oliver, *Understanding Disability: from theory to practice*, (Basingstoke: Palgrave, 1996): 33.

¹¹ Richard Hull, 'Cheap Listening? Reflections on the concept of wrongful disability', *Bioethics*, 2006, 20(2), 55-63: 56.

Jonathan Glover, *Choosing Children: genes, disability, and design* (Oxford: Clarendon Press, 2006): 7-8.

indeed harm you, even though it doesn't make you any worse off than you were before. What it does do is make you worse off than you would otherwise have been, if the sender had put the money in the post on time. That's another way of harming people, by making them worse off than they would otherwise have been. Suppose you win a million pounds on the lottery, but before you even hear about it another person steals your ticket and claims the money. He hasn't made you worse off than you were before, since you didn't have a million pounds before the theft and you certainly don't have it now; but he's harmed you, because he's made you worse off than you'd otherwise have been, if the theft hadn't taken place.

Has a child deliberately created or selected for its disability been harmed in either of these ways? Has she been made worse off than she was before? Has she been made worse off than she would otherwise have been?

She certainly doesn't seem to have been made worse off than she was before, since she didn't exist at all before the decision to implant the embryo which she eventually developed out of. So she hasn't been harmed in that way, at any rate. To decide whether she's been made worse off than she would otherwise have been, we have to consider what the 'otherwise' amounts to – what the alternative to implantation would have been for the child who developed from that embryo. And the alternative is clear: if that embryo hadn't been implanted, that child would never have come into existence. Another embryo would have been chosen instead for implantation, developing into a different child; the child who was selected for disability wouldn't have existed at all. So she hasn't been harmed in that way, either – we can't say that she's been made worse off than she would otherwise have been. Either way, the child selected for disability doesn't seem to have been harmed by it.

There is however one further argument focussing on harm to the selected child, that has sometimes been made against selecting for disability. What happens if we consider the complete life-span of disabled individuals – if we look across their whole lifetime? Surely then we can understand that they have indeed been harmed: we can just see how being disabled has made them worse off when we look at all the negative experiences they have which stem from their disability (either directly or because of social discrimination, which – wrong though it may be – is a fact of life). The child who has to use a wheelchair all her life, due perhaps to

spinal abnormalities, will not be able to join in her non-disabled peers' physical activities, and may suffer considerably more pain than a child who has no disability, for example from pressure ulcers, or urinary tract infections. These are indeed genuinely negative experiences. But forceful though this argument may seem it still won't do the work we want it to: it won't show that the selected child has been *harmed* by being selected for disability. The argument focuses on the fact that people with disabilities undergo many negative experiences, and nobody would want to deny that; however it overlooks the fact that *all* lives contain negative experiences, and most of the time this certainly doesn't make the life in question not worth living.¹² Negative experiences aren't usually enough to justify saying that the person who undergoes them has been harmed by being brought into existence – some far more radical argument would be needed to show any such thing. Most disabled people have lives which contain many positive experiences as well as many negative ones, and they're emphatically well worth living.

Our closer look at the idea of harm simply doesn't show that children selected for disability have been harmed thereby. This is perhaps an unexpected and counter-intuitive result. Many people who object to selecting for disability feel quite strongly that it involves some harm to the child concerned; but it just doesn't seem possible to show that this is really what's happening.

Whatever (if anything) is wrong with selecting for disability, it doesn't seem to be that it harms the selected child, whose only chance of existence is to be born with a disability.

A different argument about harm: general levels of wellbeing

However there is another, quite different, kind of argument about quality of life which may carry more weight against selecting for disability. This is a much more impersonal argument than the ones we've looked at so far, which have all been about harm specifically to the child created. This new argument isn't directly about harm to that child, but about the overall amounts of wellbeing in a society. Here we might generally feel that we should try to increase the overall amount of wellbeing in the world, where we can. Selecting for disability seems to involve bringing into existence people who will have more suffering and less happiness in their lives than alternative choices which we could make.

¹² Stephen Wilkinson, *Choosing Tomorrow's Children* (Oxford: Oxford University Press, 2010): 84.

If we bring Baby Sandra, who will spend her life in a wheelchair, into the world, the chances are that she'll have more suffering in her life than Baby Thomas, who won't have a disability. As we have seen, this doesn't mean that Baby Sandra would be harmed by being selected. But it does mean that choosing Baby Sandra entails choosing to have a lower overall level of wellbeing in the world than choosing Baby Thomas.

But, so this argument goes, we should surely choose, where we can, to bring into existence more wellbeing rather than less; higher quality of life rather than lower.¹³

This is a welfare argument, though it's a very impersonal one, since it doesn't make the claim that there are any individuals who would be harmed by selecting for disability – a claim which, as we have seen, can't be justified. All this argument claims is that more wellbeing in the world is better than less wellbeing; and when we can choose, that's what we should aim for. Hence, on this view, we shouldn't select for disability.¹⁴

This argument sounds quite convincing, until we look at it a little more closely. For a start, is it really true that selecting for disability involves selecting for lower rather than higher quality of life? If the implication is that all disabled people have a lower quality of life than any non-disabled person, then that's clearly untrue. When we looked at the triumphant faces of some of the great paralympian athletes who had just won medals in London 2012, for example, we weren't looking at people who were living thin impoverished lives. Some disabled people lead fuller, richer and happier lives than some non-disabled people. So being disabled clearly doesn't *inevitably* mean having a lower quality of life.

Perhaps the argument means that on *average*, disabled people have worse lives than non-disabled people? There are reasons why there may be some

truth in this: the very idea of disability contains an implication of reduced capacity to flourish, since a feature of a person won't even count as a disability unless it in some way undermines a person's capacity to have a high quality of life.¹⁵ But this in no way rules out the possibility that there are individual cases in which the disabled person, or her circumstances, can overcome her disadvantages and have a flourishing and highly worthwhile life; and in fact there are many such cases (some of the most famous examples include the profoundly deaf Beethoven, who gave humanity such incomparable music; the blind poet Homer; the paralysed physicist Stephen Hawking, and countless other less dramatic but no less genuine cases of lives containing both disability and high levels of wellbeing). Furthermore, the extent to which a person's quality of life is reduced by her disability may depend to some degree on her own preferences (being colour-blind may not reduce a person's quality of life at all if she doesn't want to take up activities which rely on precise colour identification), or by the extent to which her social and physical environment does or does not include helpful and supportive arrangements, such as the general provision of ramps and automatic doors to help people who use wheelchairs.

So people who are disabled don't always have lower levels of welfare than those who are not disabled, and in those cases where individuals do have a poorer quality of life on account of their disability, much of this differential can be reduced by appropriate physical and social arrangements (such as the provision of Sign interpreters for films and television programmes, or Braille versions of documents, or wheelchair-accessible toilets).

So even this more impersonal objection to selecting for disability based on overall levels of wellbeing will only apply to some cases of choosing for disability. And furthermore, there is a serious problem with the impersonal welfare argument: it may have an

¹³ The underlying idea here is what Derek Parfit calls the *Same Number Quality Claim*. According to this principle, for same-number choices (choices between creating Population A and Population B, where A and B are the same size), it would be worse (and therefore wrong) to choose to create B if choosing A would result in higher quality of life overall. Crucially, this would be the case (according to the Same Number Quality Claim) even if choosing B did not harm any individual (e.g. in cases where A and B have no members in common). Individual reproductive decisions may be thought of as choices between different 'populations', each with one member, for these purposes. See: Derek Parfit, *Reasons and Persons* (Oxford: Oxford University Press, 1984): 360.

¹⁴ It is important to mention (or reiterate) two important qualifications here. First, if it could be shown that, in certain

circumstances (e.g. some cases of deafness), selecting in favour of disability was unlikely to have any deleterious effects on quality of life, then even this impersonal argument would not apply. Second, disability (and even health generally) are not the only potential targets of these 'impersonal' arguments and they could, for example, be used to defend funding fertility treatment selectively only for the prospective parents who are most able to provide an environment conducive to high child welfare (perhaps those that have better parenting skills or more money).

¹⁵ Jonathan Glover, *Choosing Children: genes, disability, and design* (Oxford: Clarendon Press, 2006): 9.

Stephen Wilkinson, *Choosing Tomorrow's Children* (Oxford: Oxford University Press, 2010): 57-67.

implication that many people find morally very objectionable.

Higher welfare and ‘designer babies’

If we really think that having more wellbeing in the world is better than having less; and that when we can choose, that’s what we should aim for, then it seems that we must accept that when we can choose to create children with higher abilities and capacities, then that’s what we should do. If we ought always to select in favour of higher quality of life, it seems as if we ought always to choose the embryos with the greatest chance of a high quality of life. And if we discover how to enhance these chances, so much the better, according to this argument. So if a woman is choosing between several embryos, most of which are ‘average’, but one of which is much ‘better than average’, such that it will develop into a person with exceptional sporting or intellectual abilities, or perhaps with an exceptionally effective immune system – all features which might be thought to improve a person’s chances of having a high quality of life – then that’s what the woman ought to choose.¹⁶ It would, according to this argument, simply be wrong to choose to implant a normal rather than an exceptional embryo whose chances of high welfare levels are much better than average; and if we can learn how to enhance embryos to make more of them exceptional in this way, then we should go right ahead and do it.

But there are considerable problems with this view. Even where the enhancement is relatively minor and cosmetic, such as the choice of hair or eye colour, some people are concerned about the possibility of, as it’s sometimes put, sliding down a slippery slope to alarming brave new worlds in which ‘designer babies’ will be created, disability will be stigmatised, and the normal and the natural are devalued and disrespected:

“The concern is that we’ll be creating a society with new sorts of discrimination. Now it’s hair and eye colour. What happens if it’s height and intelligence? Some parents may have qualms, but still feel under pressure.”¹⁷

Many people would find this prospect a morally obnoxious one – normal is quite good enough, they say, and the idea that we might coerce parents into having the ‘best possible’ child in all cases is really abhorrent. But this is indeed an implication of the impersonal welfare argument: it says we ought always to choose to produce higher welfare rather than lower welfare, where we can; and if that rules out choosing in favour of disability, it may also rule *in* choosing in favour of enhancement. The argument in both cases is the same: we ought always to choose to produce higher welfare rather than lower welfare, where we can.

Embryo enhancement is morally very contentious, to say the least. If we want to preserve a blanket prohibition on selecting for disability we need to look for an argument or principle capable of justifying the view that selecting for disability is especially morally bad, so bad that it should be prohibited, without requiring us to support embryo enhancement to produce extraordinarily gifted children – something which many people would find morally repugnant. Arguments to do with wellbeing, either that of the specific child selected for disability, or more impersonal considerations to do with overall levels of welfare, have not so far provided us with what we want. So far, unless we’re prepared to endorse embryo enhancement, we don’t seem to have a good argument against selecting for disability.¹⁸

¹⁶ It should be noted that these are hypothetical examples, not choices that are presently available.

¹⁷ Marcy Darnovsky (Director of the Centre for Genetics and Society), quoted in Philip Sherwell, ‘LA delivers first designer-baby clinic’, *The Age*, 3rd March 2009. <http://www.theage.com.au/world/la-delivers-first-designerbaby-clinic-20090302-8meq.html>

¹⁸ Eve Garrard and Stephen Wilkinson, ‘Selecting Disability and the Welfare of the Child’, *The Monist*, 2006, 89(4), 482-504.

Some people have questioned whether wishing to avoid creating people with disabilities, for impersonal welfare reasons, really does commit one logically to the maximisation of welfare, or to human enhancement. Some such arguments are discussed in Stephen Wilkinson, *Choosing Tomorrow’s Children* (Oxford: Oxford University Press, 2010): chapter 3.

See also the following for information on the philosophical background.

Arrhenius, Gustaf, Ryberg, Jesper and Tännsjö, Torbjörn, ‘The Repugnant Conclusion’, *The Stanford Encyclopedia of Philosophy* (Fall 2010 Edition), Edward N. Zalta (ed.), <http://plato.stanford.edu/archives/fall2010/entries/repugnant-conclusion/>.

Roberts, Melinda, ‘The Nonidentity Problem’, *The Stanford Encyclopedia of Philosophy* (Fall 2009 Edition), Edward N. Zalta (ed.), <http://plato.stanford.edu/archives/fall2009/entries/nonidentity-problem>.

Sinnott-Armstrong, Walter, ‘Consequentialism’, *The Stanford Encyclopedia of Philosophy* (Winter 2012 Edition), Edward N. Zalta (ed.), <http://plato.stanford.edu/archives/win2012/entries/consequentialism>.

Further reasons against banning selecting for disability

Furthermore, we need also to consider whether there are good reasons for *not* outlawing selecting for disability; whether, that is, there's any serious moral objection to preventing parents from choosing to have, say, a child who is deaf like themselves. One obvious general reason is that

we should be reluctant to stop people from doing what they want to do if it doesn't cause significant harm – and as we have seen, it's very hard to show that selecting for disability actually harms the children involved.

Another reason against having laws banning selecting for disability is the possible effect of the mere existence of such laws on people who already have disabilities, and on the attitudes towards disability of the whole population.

Law, whether or not it is fully enforced, sometimes has a powerful symbolic effect: it sends out a message to the members of a society about what the moral norms and values of that society are, or are hoped to be.

Laws against hate speech are like this: even where they aren't strictly enforced, they communicate a message to everyone about what kind of behaviour towards members of our diverse society is to be considered thoroughly undesirable and unacceptable. Similarly, prohibiting by law the selection of an embryo because it will develop into a deaf child may send out the message that deafness is a seriously undesirable condition which leads to so intolerably low a quality of life that it's morally wrong to prefer to have a deaf child rather than a hearing one. But many Deaf people would deny this, and would regard the symbolic force of the law in expressing this message about deafness as itself harmful to Deaf people.¹⁹

Admittedly deafness may be a special case, since it's possible to argue that it isn't a disability (or isn't harmful) in some circumstances. If that's right, then perhaps we don't have a strong argument for preventing parents from selecting in favour of deafness. Another such condition may be achondroplasia (a type of dwarfism), where again it may be argued that this needn't always be a

disability, and that parents should be able to choose to have a baby like themselves if they so wish.²⁰ But there are many other conditions that can be detected using PGD and which could therefore (if the law allowed it) be positively selected for, and a lot of these clearly are disabilities or disorders. The list includes early onset Alzheimer's disease, BRCA1 (which causes increased susceptibility to breast cancer), cystic fibrosis, haemophilia, Huntington's disease (Huntington's chorea), and sickle cell anaemia.²¹ Why are these things (arguably unlike some cases of deafness or achondroplasia) clearly disabilities or disorders? Because of their likely negative effects on quality of life, on health, and on length of life. People with these conditions generally have lives very well worth living, of course. So we can't argue that they have been harmed by being created. So if we feel, as many do, that we should not allow parents to select for these disabilities in future children (and if the reason is to do with levels of wellbeing) then it looks as if the impersonal welfare argument is doing the work. This says that we should choose to bring about higher levels of wellbeing rather than lower ones, where we can. But we've seen that it doesn't apply at all convincingly to some cases of disability, and especially not to characteristics such as deafness.

Conclusions

Many people's first reaction is that seeking deliberately to create a child with a disability is morally repugnant and obviously wrong. This reaction is more often than not driven by a very proper concern with the welfare of the child created, the thought being that 'choosing disability' through embryo selection is akin to injuring an existing child. As we have seen however this view, on deeper reflection, is hard to maintain, for two key reasons.

Firstly and most fundamentally this is because normally the only alternative for the child would be non-existence and so (except perhaps in a small number of cases involving intolerable suffering) it is hard to maintain that the child has been harmed by being created. Most people with disabilities are glad to be alive and would prefer to exist than never to have been born. So, in the light of this, it seems perverse to attempt to prevent such people from existing in the future for their own good, or in order to avoid harming them.²²

¹⁹ For a much fuller treatment of this issue see: Jackie Leach Scully, "Choosing Disability", *Symbolic Law, and the Media*, *Medical Law International*, 2011, 11(3), 197-212.

²⁰ See Darshak Sanghavi, 'Wanting Babies Like Themselves, Some Parents Choose Genetic Defects', *The New York Times*, 5th December 2006.

²¹ <http://www.hfea.gov.uk/cps/hfea/gen/pgd-screening.htm>.

Choosing Disability

Secondly, there are some disabilities (including arguably some cases of deafness) which do not always have a significant adverse effect on overall quality of life; indeed, it has been argued that some members of the Deaf community are better off deaf. Hence, again, the harm-based rationale for preventing such people from existing in the future seems flawed.

Having said that, parents do have some reason morally to create children with more rather than less wellbeing, which is hardly surprising given the importance we attach to raising children in ways that will enable them to flourish. And this may sometimes (though by no means always) be a good reason to prefer to create a child without to a child with a disability – depending of course on the nature of the disability and the circumstances into which the child will be born.

As regards the question of whether the law should prevent prospective parents from ‘choosing disability’, it seems that – given the absence of harm to the child in most cases – a specific ban on this, such as has existed in the UK since 2008, is unjustified.

And this lack of justification is amplified by concerns over the symbolic harm caused by enshrining such a restriction in legislation, about what this might seem to say about people with disabilities. The Human Fertilisation and Embryology Act 1990 (as amended) in any case places on clinicians a general obligation to take account of “the welfare of any child who may be born as a result of the treatment (including the need of that child for supportive parenting), and of any other child who may be affected by the birth”.²³ This may be sufficient to filter out the most extreme cases of selecting for disability (if indeed there are any such cases) including those in which the child’s life would be so awful that it would be ‘harmed by being created’.

²² Consider, for example, the following comment by Ed Smith (who has himself been has been quadriplegic since 1998): “I know several people with quadriplegia who swear up and down that they are really happy. Some of them have even said they’re glad they had the accident because it changed their lives for the better. A friend who is also quadriplegic assured me not long ago that he didn’t have a complaint in the world.” ‘Death, Not Disability is the End of the World’, Sunday 6th December 2009, <http://asonginthisworld.blogspot.co.uk/2009/12/death-not-disability-is-end-of-world.html>.

See also G. Albrecht and P. Devlieger, ‘The Disability Paradox: high quality of life against all odds’, *Social Science & Medicine*, 1999, 48(8): 977-88.

²³ The Human Fertilisation and Embryology Act 1990 (as amended) s.13(5) states: “A woman shall not be provided with treatment services unless account has been taken of the welfare of any child who may be born as a result of the treatment (including the need of that child for supportive parenting), and of any other child who may be affected by the birth”.

http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_080206.pdf



Sex Selection

Stephen Wilkinson and Eve Garrard

Sex Selection

Methods Old and New

Choosing – or at least trying to choose – the sex of your baby is nothing new; people have tried many different things in various times and places in an attempt to affect the sex of their future baby. Eating more bananas, using alkaline douches, conceiving close to ovulation, increasing the intake of breakfast cereal, and using some positions for sexual intercourse rather than others, have all been thought to increase the likelihood of conceiving a son rather than a daughter. There is even some research support for the effectiveness of certain ‘folk’ methods of selecting the sex of a baby: bananas and breakfast cereal may increase the chances of conceiving a son, though not by very much; whereas limiting caloric intake may make a daughter more likely.¹

Whether or not these ‘folk’ methods work, many people would find nothing to object to in these ways of attempting to influence the sex of your baby, and certainly wouldn’t support any moves to make such practices illegal. But nowadays there are far more effective methods of choosing the sex of your baby, such as embryo selection and sperm sorting, and some, perhaps many, people have reservations when they consider the use of these clinical procedures for sex selection.

Is it the method – the means used to achieve sex selection - that people object to, or is it the goal of sex selection itself which seems so morally dubious?

Some of the methods which could be used to ensure that parents get a child of the sex they want do indeed raise significant moral issues, the

most obvious one being abortion of a fetus of the unwanted sex.² But there are other less obviously problematic clinical methods of sex selection, such as embryo selection, where a number of embryos are created from the parents’ eggs and sperm outside the womb, by in vitro fertilisation, and only ones of the desired sex are chosen for implantation into the mother; or sperm sorting, which is a method of ensuring that only sperm which are likely to produce male babies are used to impregnate the mother.³ Neither of these methods raises quite the same moral issues as abortion but nonetheless some people are reluctant to countenance sex selection even by these means. This suggests that they find something morally problematic about sex selection itself, even if the means of producing it aren’t themselves totally objectionable.⁴

What, if anything, is wrong with choosing the sex of your children? The fact that some people object to this practice isn’t, of course, enough to show that it’s wrong – we need to look at the reasons that they give for the view that it’s morally unacceptable, and also at the reasons that other people give for disagreeing with them, and for supporting this choice for those parents who want it.

Reasons for sex selection: medical and social

In the UK, sex selection (specifically sex selection by means of embryo selection) is allowed only for ‘medical reasons’: i.e. in order to allow ‘at risk’ parents to be confident that their child will be born free from serious sex-linked diseases or disabilities, such as muscular dystrophy or haemophilia. Sex selection of embryos for any other reason (sometimes known as ‘social’ sex selection) is banned.⁵

¹ Roger Highfield, ‘Diet before pregnancy can affect baby’s sex, new research suggests’, *The Telegraph*, 23rd April 2008.

Ian Sample, ‘Bananas and cereal – scientists reveal what little boys are made of: Pregnancy diet influences baby’s gender, study says fewer calories mean greater chance of a girl’, *The Guardian*, 23rd April 2008.

² Sex selection is neither specifically prohibited nor allowed by the Abortion Act 1967. See the following for an interesting discussion of the legal status of sex selective abortion in Great Britain. (Different law applies in Northern Ireland.) Sally Sheldon, ‘Abortion for reason of sex: correcting some basic misunderstandings of the law’, *Abortion Review*, 1st March 2012.

<http://www.abortionreview.org/index.php/site/article/1143/>

³ According to the HFEA, “The only method of sperm sorting that is currently permitted in the UK is flow cytometry, which uses fluorescent dye to separate sperm carrying male

chromosomes from those carrying female ones. This method is not 100% reliable, so it is not used in practice.”

<http://www.hfea.gov.uk/pgd-sex-selection.html>.

⁴ Some people believe that even very early human embryos have a strong right to life. Such people are generally opposed to all embryo selection techniques, regardless of the purpose to which they are put, and indeed to all forms of IVF (since this normally involves creating some ‘spare’ embryos which aren’t implanted). Believing in the embryo’s right to life however is not a reason to oppose other forms of sex selection (e.g. through sperm sorting, or if we could find a drug for prospective parents that dramatically improved their chances of having a girl). For this reason, the status of the embryo is not something examined in any detail here; sex selection needn’t involve embryo selection and arguments against embryo selection therefore don’t apply to all (possible) forms of sex selection.

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But what grounds are there for this prohibition? What makes the practice so objectionable? In trying to answer that question, we'll be working with an important background principle, namely that

we shouldn't condemn people, or prevent them from doing what they want to, unless we can give a good reason for doing so.

One important kind of reason in the context of sex selection and elsewhere is harm: is sex selection sufficiently *harmful* (and, if so, to whom) to count as a good reason for preventing parents who want to choose the sex of their child from doing so? But there may be other reasons too, not directly connected with harming people, which are worth looking at.

Before we look at the reasons against permitting sex selection, we should first consider why it is that some parents do very much want to choose the gender of their next child. One very powerful reason is to avoid having a child with a serious sex-linked disease or disability. Some diseases are genetically transmitted, but only to children of a particular gender, so that though children of the opposite gender may carry the disease-producing gene, they won't actually suffer from the disease, though they may pass it on to their own children. Haemophilia, in which the blood's ability to clot and hence prevent extended bleeding after injury is compromised, is a case like this; although girls may carry and transmit the damaged gene, only boys actually contract haemophilia. Parents who know that they themselves carry the haemophilia gene may want to ensure that they have a girl child, in order not to inflict this painful, debilitating and sometimes fatal disease on a boy child. The law in the UK recognises and allows sex selection (through embryo selection) for this kind of reason.

Even where there's no medical reason for considering sex selection, parents may nonetheless have a strong preference for having a child of a particular sex, either boy or girl, and there can be a wide variety of reasons for this preference. Sometimes there's a background cultural privileging of one sex over another, leading parents to feel that a child of that sex is more important and therefore more worth having. Sometimes individual parents strongly

want to have the kind of relationship they feel will only be possible with a child of one sex rather than another. This is not necessarily because children of that sex are felt to be more important, but simply in recognition of the fact that the sexes differ, and may offer different possible kinds of parent-child relationships. These parental feelings may be very strong indeed: women who already have several sons and very much want a daughter may express their feelings in terms of an overwhelming desire for a girl, and for a mother-daughter relationship different from that which is possible with their sons, much-loved though they are.

Consider, for example, the following remarks (reported in *The Sun* newspaper) from a woman who has five sons but is desperate to add a girl to their family:

“Don't get me wrong, my boys are my world and I love them to pieces. It's not about not wanting my boys. It's about wanting a girl to join them. I've already chosen the name for my long-awaited girl - Patience ... My boys don't like shopping and couldn't care less when I buy them surf style necklaces and trendy shirts. They don't want pretty clothes; they want toy guns and computer games ... [but] I love my boys for who they are and embrace their characters.”⁶

Similarly, another woman writing on *In-gender.com* says:

“There will be no girl... I will never be the one helping my daughter decide what to wear, teaching her all the amazing stuff about the female body or sharing her life. I am very sad I will miss out on all this.”

In the face of these strong feelings, and in the light of the principle mentioned above – that we shouldn't stop people from doing what they want to do unless there's a good reason for it – we need to consider carefully what reasons there might be for banning sex selection in all but serious medical cases.

⁵ The Human Fertilisation and Embryology Act 1990 (as amended), Schedule 2 1ZA(c), allows embryonic sex selection to take place only if there is a “particular risk that any resulting child will have or develop (i) a gender-related serious physical or mental disability, (ii) a gender-related serious illness, or (iii) any other gender-related serious medical condition”. Gender-related conditions (as defined by the Act) include both those which only affect one sex and those which affect one sex

significantly more than the other.

http://www.legislation.gov.uk/ukpga/2008/22/pdfs/ukpga_20080022_en.pdf

⁶ Kim Willis, ‘Why I will use an illegal procedure to ensure I have a baby girl’, *The Sun*, 16th February 2011.

Objections to sex selection (1): bad consequences

When people are reluctant to see sex selection permitted, two reasons often seem particularly important to them. First, they think that bad social consequences are likely to flow from allowing it, and second, they think that the motives and attitudes which lie behind the desire to have a child of a particular sex are morally dubious. We need to consider how persuasive these reasons are, and whether there's good evidence to support them.

One of the main bad consequences that could follow from permitting sex selection is population sex imbalance (i.e. substantially more males than females, or females than males). There is a fear that most parents who want to select the sex of their child will choose to have sons, and that this will lead to a population skewed in favour of male children, many of whom won't be able to find partners when they grow up. Girl children (it is sometimes argued) may also suffer in the case of population imbalance, because if they're relatively scarce, this may lead to their being treated as commodities to be bought (or kidnapped) and sold, rather than as full persons with their own preferences and rights.

In some countries where sex selection is widely practised it has indeed led to population imbalance.⁷ For example, in China in 2005, it was estimated that more than a million 'extra' males were born and that the number of males under the age of 20 exceeded the number of females by around 32 million.

In some Chinese provinces, there are more than 130 boys under 5 years for each 100 girls.

Similar problems are reported in parts of India and in South Korea.⁸ However, this isn't enough to show

that it should be banned in the UK. Such evidence as there is suggests that unfettered sex selection wouldn't in fact lead to a skewed population in the UK, even though it has done so in some other countries.⁹ The likely consequences of a policy of permitting sex selection are highly context-sensitive: they vary from one culture or country to another, with differing cultural features leading to very different outcomes. In cultures where sons are strongly favoured, and where there's a strong commitment to heterosexual monogamy within the framework of marriage, then permitting sex selection may indeed lead, and in some cases has already led, to imbalance in the population. But the UK is not overall such a culture, and so the bad effects which a sex-selection policy might have or has had elsewhere needn't happen here. Bad effects from the policy elsewhere aren't enough to show that it should be banned here.

There are ethnic subgroups in the UK who do possess the cultural features which favour the production of an imbalanced population.¹⁰ But this result won't necessarily affect the majority of people in the UK, since members of such subgroups may choose to have children with other members of the same group. If they do marry outside their subgroup, then these cultural features are likely to be diluted; if they don't do so, then the population imbalance will only occur inside that sub-group. And though that imbalance may well be harmful to the members of that group, that doesn't seem a sufficient reason for constraining the reproductive liberties of all of the rest of the population.¹¹

In any case as the examples of India and China show, legal prohibition does not guarantee that sex selection will not take place; it appears to have occurred in those countries *despite* laws prohibiting fetal sex determination and sex-selective abortion.¹²

⁷ See Wendy Rogers, Angela Ballantyne and Heather Draper, 'Is sex selective abortion morally justified and should it be prohibited?' *Bioethics*, 21, (2007), 520-24: 522.

⁸ Therese Hesketh and Zhu Wei Xing, 'The Consequences of son preference and sex-selective abortion in China and other Asian Countries', *Canadian Medical Association Journal*, 2011, 183(12): 1374.

⁹ Human Fertilisation and Embryology Authority (HFEA), *Sex Selection: Options for Regulation* (2003): 10-11.

¹⁰ Dubuc and Coleman, for example, argue that "circumstantial evidence strongly suggests that since the 1990s, sex-selective abortions have become sufficiently prevalent among India-born mothers in England and Wales to alter the secondary sex ratio, especially among higher-order births. No other explanation seems possible." Sylvie Dubuc and David Coleman, 'An Increase in the Sex Ratio of Births to

India-born Mothers in England and Wales: Evidence for Sex-Selective Abortion', *Population and Development Review*, 2007, 33(2), 383-400: 394-5.

¹¹ According to the Office of National Statistics (2001 Census Data), "non-White ethnic groups" make up less than 8% of the total population. 4% are "Asian or British Asian" (which includes Bangladeshi, Indian, and Pakistani) and just 0.4% are Chinese. ONS, Focus on Ethnicity and Identity, 2004.

<http://www.ons.gov.uk/ons/rel/ethnicity/focus-on-ethnicity-and-identity/focus-on-ethnicity-and-identity-summary-report/focus-on-ethnicity-and-identity-summary-report.pdf>.

¹² Therese Hesketh and Zhu Wei Xing, 'The Consequences of son preference and sex-selective abortion in China and other Asian Countries', *Canadian Medical Association Journal*, 2011, 183(12): 1376.

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Furthermore, banning sex selection can cause so-called 'reproductive tourism': the practice of seeking treatment overseas in order to escape restrictions in one's own country.¹³ Indeed, there is evidence now that prospective parents from the UK have been travelling to the USA, where it's possible to access sex selection procedures, though at considerable cost.¹⁴ The willingness of prospective parents to seek sex selection elsewhere if it isn't available at home suggests that prohibition may not be very effective and one might argue that if people are going to access sex selection anyway then we may as well allow them to do this in their own country within a properly regulated healthcare system, rather than forcing them to suffer the cost, inconvenience, and risks of treatment overseas.¹⁵

This argument has some force but is not a decisive argument for allowing sex selection. Why not? One reason is that, even if it is often circumvented by people going abroad, the UK ban on sex selection may still be partially effective, sufficient to discourage many people from taking steps to choose the sex of their baby (for example, those who can't afford the time or money needed to travel overseas). A second (more important) reason is that, if it could be shown that sex selection were seriously morally wrong, then we might still be justified in banning it *even if* that ban could be circumvented by people going overseas. For when something is seriously morally wrong (the sexual exploitation of children, for example) we may still have good reason to ban it here *even if* people can evade that ban by going to other parts of the world where it's allowed or tolerated. So this argument about sex selection and 'reproductive tourism' may well depend on the more fundamental question of whether sex selection actually is ethically objectionable. Concerns about the rise of 'reproductive tourism' will only provide us with a good reason to allow sex selection, if sex selection is not itself seriously morally wrong or harmful.

Irrespective of the possibilities of 'reproductive tourism', however, it seems clear that banning sex selection is not guaranteed to eliminate it, and permitting it may not have the bad effect of creating population imbalance. In addition, concerns about population sex imbalance could be dealt with through regulatory measures: for example, we could require clinics providing sex selection procedures to balance each couple selecting a boy with another couple selecting a girl, such that

each sex selection clinic generated roughly equal numbers of boys and girls.

Alternatively, we could encourage or require sex selecting parents to donate any viable spare embryos to others who need them, thus almost completely eliminating any unbalancing effects, while also benefitting the recipients of the embryos and allaying some people's concerns about embryos being 'discarded'.

So even if there are legitimate worries about population imbalance, it doesn't seem that we would need to forbid sex selection in order to deal with them.

Objections to sex selection (2): bad motives

Concerns about population imbalance are however only one kind of objection to choosing the sex of your child; there are other quite different ones which focus on the motives and attitudes of those who want to make such choices.

Firstly some people feel that children are a great gift to us, and argue that we should accept them as they are, without trying to determine their features too closely.

“ To appreciate children as gifts is to accept them as they come, not as objects of our design or products of our will or instruments of our ambition. Parental love is not contingent on the talents and attributes a child happens to have.”¹⁶

Is this a convincing objection to sex selection? There are many other gifts that life can bring us and we don't always think that there's anything objectionable about choosing some aspects of these over others: think of a person with many talents who reluctantly but definitely chooses to become an artist rather than a scientist, even though she has the capability to do either. There's nothing morally problematic about her consciously choosing between these different 'gifts' and we wouldn't expect anyone to make such important

¹³ 'Cross-border reproductive healthcare' would be a more accurate expression.

¹⁴ Stephen Adams, 'British couples flying to US for banned baby sex selection', *The Telegraph*, 28th August 2012.

¹⁵ Obviously some countries' healthcare systems are better (and better regulated) than others, and so the extent of any

additional risk will vary considerably, depending on where the prospective parents choose to go.

¹⁶ Michael Sandel, 'The Case Against Perfection', *The Atlantic*, April 2004, <http://www.theatlantic.com/magazine/archive/2004/04/the-case-against-perfection/302927/>

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choices at random, based on the toss of a coin. So even if something is a gift, it may be acceptable consciously to choose some aspects of it over others, or to choose one gift over another. Perhaps the same might be said of (as yet non-existent) future children. Whichever one is eventually born should be cherished and cared for but – before any child is created – there's not necessarily anything wrong with having a preference for one possible gift over another.

A rather different kind of concern is expressed in the view that parents who try to choose the sex of their child are overly controlling, and are closing off avenues for the child's future development.

However all education – moral, intellectual, practical – will have some effect on the child's character, and we can't really hope to avoid shaping our children in some ways rather than other ways. Parents commonly bring their children up to share their own religion, or lack of it; to find enjoyment in reading certain kinds of books (or not) and in playing or following certain kinds of sports (or not); to have strong commitments to some values (such as honesty or kindness) or perhaps to other ones (such as competitive success or sexual modesty). In each of these cases, some ways of developing are made easier and more likely for the child, and other ways are made harder and more alien. If this were to count as an argument against sex selection, then it would count as an argument against a huge swathe of other parental practices, which are impossible to control, and where it would be undesirable even to attempt to do so. Unless we are to remove autonomy from a large area of the lives of parents and their children then we have to accept that when parents open up some avenues for development for their children then they'll also and inevitably close off some other ones.

Yet another objection to sex selection is the claim that it is sexist, and hence discriminatory.

How is it sexist? Because, so it is thought, it relies either on beliefs about the innate *superiority* of the selected sex, or at the very least on *stereotyped* views about the sexes, without which the choice of one sex rather than the other would be hard to understand. People prefer to have a boy, say, because they associate boys with physical energy and intellectual ambition, and associate girls on the other hand with domestic virtues such as tidiness

and gentleness and affection. But such views are unwarranted, so the argument goes: they're the product of discriminatory attitudes to women, and indeed it's sometimes claimed that permitting a practice like sex selection, supposedly driven by stereotypical views, actually encourages sexism and discrimination against women elsewhere.

But this argument is not an entirely persuasive one. People may prefer a child of one sex rather than the other without believing in the innate superiority of that sex – they may simply like some of the features associated with children of that sex, or they may value the kind of relationship that they think will be possible with a child of the sex they favour. Or they may simply want to have the experience of bringing up a child of a particular sex because they already have the experience of rearing children of the other sex.¹⁷ This is what happens in cases of family balancing, where parents who already have more than one child of one sex seek to have a child of the other sex.¹⁷ There need be nothing sexist in such an aim; it may in fact be a clear case of valuing diversity. (We'll return to the issue of family balancing below.)

None of this is to deny that sex selection may in some, perhaps many, cases be driven by sexist attitudes. But even where this is so, it's not clear that this form of sexism causes serious harm to any specifiable individuals. Sexism which isn't substantially harmful, while still of course morally objectionable, isn't necessarily bad enough to warrant a legal ban on the practice of sex selection, with all the implications for reproductive liberty that that would involve, along with the monetary, practical, and social costs of policing (and, in some cases, criminalising) doctors and parents.

However there's one worry about sexist attitudes which does claim that the sexism involved in sex selection would significantly harm other people. This is the view that, even if sex selection in this country wouldn't lead to population imbalance or be harmful to specific individuals here, it would have a damaging effect on countries where bad outcomes of that kind were more likely. It would, in short, set a bad example, and could lead to serious population imbalance and the growth of sexism elsewhere.

This claim is a directly factual one, about the effect on other places of our permitting sex selection here, but there are good reasons to doubt whether it's true. As was mentioned earlier, sex selection is currently being widely practised in other parts of the world, even where it's illegal, and even where the

¹⁷ Bonnie Steinbock, 'Sex Selection not obviously wrong', 2002, 32(1), *Hastings Center Report* 23-28: 25.

bad consequences have in fact already occurred. The presence of our supposedly good example of not permitting it doesn't seem to be acting as a major influence on such cases, nor does it seem to have prevented the widespread occurrence of seriously sexist attitudes to women. Our practices here may simply not be particularly influential elsewhere. It may well be that people in China or India or Korea know little and care less about what the UK laws on sex selection are; and even if they did know we shouldn't assume that they would have any desire to copy them – on the contrary, there might in some places be a reaction against such laws on general anti-Western grounds.

So such sexism as might be involved in the use of sex selection in this country doesn't seem harmful enough to ground a plausible case for legal prohibition, even though, where the sexism occurs, it would be morally objectionable.

There's one final worry about social sex selection which we should consider: some groups are hostile to it because they regard it as eugenics, which they see as always being wrong.¹⁸ It's difficult however to see how this classification can be correct. Although 'eugenics' can be defined in various ways, the core feature of most definitions is that eugenics is the attempt to improve the human gene pool. But social sex selection doesn't seem to involve anything like this. Sex selecting parents don't seem concerned about the whole gene pool at all (and they almost certainly *don't* desire an all-male or all-female population). Rather, their motives are, in a sense, more selfish than that: they simply *want* or *prefer* a boy or a girl because they think that they (or perhaps their families) will be better off, happier, with a child of that sex. In fact interestingly it's medical sex selection (selection to avoid sex-linked genetic disorders) which is more vulnerable to the charge of eugenics, since that form of sex selection really is an attempt to reduce the incidence of genetically-determined disease in the population, but many people find this less morally problematic than social sex selection (as is reflected in the present legal position, which permits sex selection for the purposes of avoiding genetic disorders).¹⁹

Family balancing: is it a special case?

Let's now consider the case of sex selection for family balancing, where parents who don't have a child of one particular sex want to select for that sex, in order to balance their family: e.g., a mother with three daughters may decide that she really wants a son. It's sometimes thought that this form of sex selection is free of the worries about population imbalance and colluding with sexism which arise in other cases of sex selection. Could we perhaps justify permitting family balancing cases, alongside medical ones, while still banning other cases of social sex selection?

We can only justify a difference in our practice here if it's clear that family balancing is morally different from 'regular' social sex selection. But this isn't at all obvious. It's true that family balancing cases are unlikely to lead to population imbalance in the UK, but then (as has been mentioned) the evidence suggests that regular social sex selection won't lead to that imbalance anyway (and if it did, we could deal with the problem by regulation). It's also true that family balancing practices won't set a bad, sexist example for countries which would be threatened by population imbalance but, as we've already seen, our own practices in this area probably aren't particularly influential elsewhere anyway. Finally, although family balancing considerations needn't be driven by sexist attitudes, in some cases they may be, just as other types of social sex selection may be: we simply can't say in advance which requests will be driven by sexist beliefs and which won't.

So while some family balancers will just desire a mixture of boys and girls without being in any way sexist, we can also imagine less innocent cases in which (for example) a sexist father with three daughters thinks of them as a disappointment and as inferior to boys and decides that he can't stand the prospect of 'yet another girl'.

So it doesn't seem that sex selection for family balancing is so very different, morally speaking, from 'regular' social sex selection. Hence it would be hard to justify a policy which favoured one but not the other.

¹⁸ See for example comments by Anthony Ozimic (Society for the Protection of Unborn Children) speaking on a recent Voice of Russia radio debate ('UK parents are leaving Britain to choose sex of unborn baby'), 4th September 2012.

¹⁹ A much fuller treatment of these and other issues connected with eugenics can be found in Stephen Wilkinson, *Choosing Tomorrow's Children* (Oxford: Oxford University Press, 2010), especially chapter 6.

Conclusions

Sex selection may have significant negative consequences in some countries and cultures and, where these are likely to occur, they must be taken seriously as objections to the practice. But there's no reason to think that such consequences (in particular, population sex imbalance) would occur in the UK, and hence no reason to ban it on those grounds here. Sex selection may sometimes be driven by sexist attitudes, but it needn't be, and often isn't, and it would be unfair simply to assume that everyone who wishes to choose the gender of their baby is a sexist. Even where there are sexist beliefs and attitudes in play (such as gender stereotyping by parents), sex selection is unlikely to be substantially harmful in the UK context so, although such cases may be morally objectionable, that isn't (on its own) a strong enough reason to prohibit the practice – we don't generally expect or want law to enforce morality in every case. However, the fact that legal prohibition wouldn't be justified in the UK doesn't mean that sex selection should be paid for by the taxpayer, nor does it warrant a complete lack of regulation: indeed a proper regulatory regime would help to minimise any harmful effects.²⁰

²⁰ For a much more extensive treatment of these issues, see Stephen Wilkinson, *Choosing Tomorrow's Children* (Oxford:

