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Sex selection and disability avoidance: is their opposed treatment conceptually consistent?

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ABSTRACT

Sex selection and disability avoidance receive opposed treatment in bioethics literature, legislative practice and public opinion. However, some theorists question this state of affairs by drawing analogies between the harmful consequences of these practices. This paper shares their disapproval of gender selection and disability avoidance, but bases its resistance to these practices on an examination of the concepts of gender and disability. Here it identifies conceptual confusions as another cause of approval of sex selection and disability avoidance. Further, in clarifying the nature of the concepts at issue, and their relationship with the subjects that they apply to, this discussion highlights the existence of relevant analogies between the concepts of gender and disability. Here the social construction and universality of gender and disability allow their differential treatment to be resisted at the conceptual level, creating a strong foundation for more consequentialist arguments against sex selection and disability avoidance.

Bioethics literature, legislative practice, and public opinion show considerable support for using preconceptual or prenatal technologies to identify and avoid the birth of an offspring with a physical disability. However, there is great opposition to utilizing these same technologies to select a child’s sex for non-medical reasons.

Although analogies between these issues are generally avoided in the literature, some draw linkages between their consequences. Among these theorists, arguments are advanced both for and against the opposed treatment of sex and disability. Adrienne Asch argues that just as sex selection reinforces discrimination against existing women, selective decisions on the basis of disability reinforce discrimination
against existing persons with disabilities. Contrarily, Julian Savulescu notes that regardless of its effect on existing persons with disabilities, disability avoidance is met with overwhelming acceptance in the community. Because of this, he feels that the resistance to sex selection that exists amounts to an inconsistency, regardless of whether this practice may have an impact on existing women.  

Meanwhile, in support of the status quo, Dorothy Wertz and John Fletcher argue that because sex does not present the inherent limitations that disabilities do, selective termination is permissible only in the latter case.6

This paper will focus on the type of argument raised by Wertz and Fletcher. That is, while Asch and Savulescu acknowledge analogies between the consequences of the practices of sex selection and disability avoidance, Wertz and Fletcher's position relies on a judgement about the inherent limitations posed by sex and disability. 7 However, their conclusion is suspect on the basis of two arguments that follow from a conceptual analysis of gender and disability. First, the approval or disapproval of the practices of sex selection and disability avoidance is often influenced by the conflation of two sets of concepts: sex and gender, and impairment and disability. Second, avoiding these conflations establishes relevantly analogous criteria for the concepts of gender and disability. This discussion will focus on social construction and universality as examples of these criteria, and argue that they suggest that the opposed treatment of sex selection and disability avoidance is conceptually unwarranted.

**How the conflation of “sex” and “gender” supports sex selection**

Those supportive of sex selection often remove the contestability of their claims by way of conceptual means. This occurs via a conflation of “sex” as the physical subject of selective decisions, and “gender” as the motivation for making them.

When a patient requests testing for the purpose of determining fetal sex, it is relatively uncontroversial that their choice is based on gender. That is, the individual’s choice is based not on a preference for a particular chromosomal pairing, but rather the social roles and norms that are ascribed to the sex that it identifies. While XX or XY pairings are the physical subjects of selective decisions, the reasons and motivations for choices between them are not discerned from genetic structure, but rather the social constructions built on this foundation.

Conflating the reasons and motivations for testing with its physical subject artificially removes the contestability surrounding selective decisions. The most prevalent argument against sex selection is that patriarchal views about women’s roles will lead it to become a means of avoiding the birth of female offspring. This in turn may reinforce societal attitudes and conditions that unjustly discriminate against women.8 To suggest that one is merely choosing between two