ETHICAL ASPECTS OF GENDER SELECTION
FOR NON-MEDICAL REASONS

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# Table of Contents

Abstract .................................................................................................................................................. vii  
Statement of Candidate ................................................................................................................................ ix  
Acknowledgements ........................................................................................................................................ xi  

**Thesis Introduction** ................................................................................................................................. 1  
1. What is Gender Selection? ....................................................................................................................... 2  
2. The International Context of Gender Selection for Non-medical Reasons ............................................. 4  
3. Gender Selection in Australia .................................................................................................................. 7  
4. Thesis Overview ......................................................................................................................................... 13  

1. Debates about Reproductive Autonomy .................................................................................................... 21  
1.1 Libertarian Accounts of Reproductive Autonomy .................................................................................. 23  
1.2 Five Problems with Libertarian Accounts of Reproductive Autonomy ................................................. 29  
1.3 Libertarian Assumptions about Autonomy ............................................................................................. 29  
1.4 Narrow Conception of Harm .................................................................................................................. 34  
1.5 Slippage from Negative Liberty to Positive Claims .................................................................................. 45  
1.6 False Analogy between Natural Reproduction and ARTs ...................................................................... 48  
1.7 Lack of Concern about Social Justice .................................................................................................... 51  
1.8 Conclusion .............................................................................................................................................. 55  

2. Libertarian Justifications for GSFNMR ...................................................................................................... 57  
2.1 The Argument from Natural Gender Selection ...................................................................................... 58  
2.2 The Argument from Reproductive Autonomy ........................................................................................ 60  
2.2.1 The Argument from Women’s Reproductive Autonomy .................................................................... 68  
2.3 The Argument from Family Balancing .................................................................................................... 71  
2.4 The Argument from Children’s Wellbeing ............................................................................................ 83  
2.5 Conclusion ............................................................................................................................................... 91  

3. Investigating the Key Distinctions between Medical and Non-medical Reasons for Gender Selection ................................................................................................................................. 93
Appendix 1: Ethics Approval .................................................................................................................. 305
Appendix 2: Ethics Approval .................................................................................................................. 309
Appendix 3: Ethics Approval .................................................................................................................. 311
Appendix 4: Information and Consent Form .......................................................................................... 313
Appendix 5: Interview Questions .......................................................................................................... 317
Abstract

The thesis investigates the ethical implications of gender selection for non-medical reasons (GSFNMR) with a focus on countries without specific son-preference. I first analyse and critique prominent libertarian accounts of reproductive autonomy which offer justifications for GSFNMR. I then investigate important distinctions that occur within debates about GSFNMR; including that between medical/non-medical reasons for embryo discard; and between sex and gender. The relevance of disability rights scholarship for gender selection is also explored. My analysis draws upon a small empirical study interviewing Australian women who have undertaken or considered GSFNMR. This work fills a gap in empirical data and contributes to a better understanding of the complex, ethical issues raised by GSFNMR.
Statement of Candidate

I certify that the work in this thesis entitled “Ethical Aspects of Gender Selection for Non-medical reasons” has not previously been submitted for a degree nor has it been submitted as part of requirements for a degree to any other university or institution other than Macquarie University.

I also certify that the thesis is an original piece of research and it has been written by me. Any help and assistance that I have received in my research work and the preparation of the thesis itself have been appropriately acknowledged.

In addition, I certify that all information sources and literature used are indicated in the thesis.

The research presented in this thesis was approved by Macquarie University Ethics Review Committee, reference number: 5201200901 on Jan 17, 2013.

Signature...........................................

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Date: ............................................
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Furthermore, I would like to acknowledge the support of my family and friends. In particular, I want to thank my mother, with whom I have shared many discussions concerning her experiences as a GP. These conversations were integral in helping me appreciate the trying dilemmas confronted by medical practitioners in the context of regulatory frameworks. I would also like to express gratitude to my partner Simon Kay for his encouragement, to my colleagues Anke Snoek and Ruby Catsanos for their support, and to many friends for standing by me throughout this period. Finally, special thanks to Caitrin Donovan for her proof reading.

The writing of this thesis was motivated by years of thinking about the social impact of gender selection, particularly the problem of missing women in the world’s population. I hope that my future publications based on this dissertation will contribute to the discussions about ethical issues of gender selection.
"Is it a girl or a boy?" is one of the commonest questions asked of women when they are expecting a child. Children’s names, clothes, toys, books, baby care products or room decorations can be, and frequently are, gendered. "Boy or girl? It’s the question everyone wants the answer to" claims a British pregnancy and parenting website which offers a gender predictor test to parents before they paint “the nursery blue or pink” (BabyCentre 2014, n.p.). There are countless numbers of gender prediction quizzes on the internet. Furthermore, many websites offer tips on how to guess a gestating child’s sex\(^1\) based upon factors such as the types of food a pregnant woman craves, the shape and position of her belly, the results of tests based on mixing urine with baking soda or boiled cabbage, ancient Chinese birth charts, and an old wives’ method of swinging a wedding ring on a strand of the mothers’ hair (Daily Mom 2014; Kidspot 2014; EverydayFamily 2014a; Sanatogen Pregnancy 2014). Gender prediction tips are offered online by companies selling various baby products, such as nappies (Huggies 2014), while highly reliable urinary gender prediction tests are available on Amazon (2014) and ebay (2014) at the price of $20 AUD. These tests can be performed as early as the 10\(^{th}\) week of gestation, some eight to ten weeks before a pregnant woman might learn about the sex of her child from a sonogram (IntelliGender2014). Thus, much interest, activity and business is generated by the question of the future child’s gender; and to some parents the answer appears to matter a great deal.

"Are you dreaming of a little girl or boy?" is a question on the top of a website called Genderdreaming (2014). This page provides free discussion forums to parents who hold strong preferences about their child’s gender. The Genderdreaming editor, using a “nuthinbutpink” nickname, clarifies:

This is a site that supports those that have a Gender Dream. Gender awareness lays [sic] skin deep and is a constant reminder to [sic] our sexual differences.

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\(^1\) Many of these websites (Daily Mom 2014; EverydayFamily 2014) use the term “gender” instead of “sex” which suggests that they perceive gender as a trait unambiguously determined by chromosomal sex. In this manner, some websites use “gender predictor test” (Amazon 2014; BabyCentre 2014; ebay 2014) to refer to tests which determine foetal chromosomal sex.
Indeed, the importance to all of us of a baby’s sex is revealed in the first question we nearly ask upon news of a pregnancy or a newborn: “Is it a boy or a girl?” And in almost every one of us, hidden is a preference or a desire for a particular gender even though we may not admit it to ourselves or others. (Genderdreaming 2014, n.p.)

The website not only supports parents in dreaming about their future child’s gender but also assists them in attempts at its active determination. On the site, prospective parents can find information about prenatal gender selection. First, they learn about natural methods for gender selection called gender swaying, for which they can purchase packages. Second, there is information about methods of gender selection through the use of assisted reproductive technologies (ARTs). In the discussion forums, participants share details about gender selection procedures and advise each other about IVF clinics where gender can be reliably selected (Genderdreaming 2014). Genderdreaming provides a community space where parental dreams of their children’s gender shift from merely holding preferences to taking actions, in what is known as gender selection for non-medical reasons.

1. What is Gender Selection?

Gender selection involves the selection of a future child’s chromosomal sex, for either medical or non-medical reasons. Gender selection for medical reasons (GSFMR) involves selecting embryos for implantation, or foetuses for abortion, based upon chromosomal sex in order to prevent the birth of children with sex-linked hereditary

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2 Genderdreaming defines natural gender selection as: “the process of altering gender ratios by making necessary diet and lifestyle changes to choose the gender of your next child. We refer to this process throughout this site as Gender Swaying- attempting to sway your odds of choosing your next baby’s gender naturally!” (Genderdreaming 2014, n.p.).

3 Genderdreaming’s editor (using the nickname of “Gender Selection Guru”) presents a “Girl or Boy BUNDLE package” which includes personalized swaying plan, coaching and 21-day meal plan for “TTC [trying to conceive] Pink or Blue” (2014, n.p.). The purchase of a package including the swaying plan and meal plan costs $99 US. The plan includes areas such as: foods to eat, supplements for mothers and fathers, beverages for prospective mothers and fathers, glucose level control, exercise advice, diet lifestyle choices, sperm count, controlling cervical mucus and vaginal pH and advice about timing and frequency of intercourse and what to do afterwards (ibid.). Information on natural methods of gender selection can be found on a range of parenting websites (BabyZone 2014; EverydayFamily 2014b; In-Gender 2014).
diseases\textsuperscript{4} (Meseguer et al. 2002; De Wert and Dondorp 2010). Gender selection for non-medical (GSFNMR) reasons, on the other hand, involves embryonic or foetal selection of chromosomal sex based solely on parental preference for a future child of a particular gender. GSFNMR stems from two major motives: a strong preference for offspring of one particular gender; and/or the desire for a family which includes children of both genders (known as “family balancing”). These two different motives for GSFNMR lead to distinct patterns of gender selection that have different ethical implications and social impact, as I discuss below.

Gender selection can be practiced at three stages: preconception, prenatal (which includes pre- and post-implantation IVF), and postnatal (Warren 1985; Sen 2003; De Wert and Dondorp 2010). Preconception gender selection involves sperm selection prior to fertilization. This is a method that increases the probability of having a child of a specific chromosomal sex, particularly female sex. With sperm sorting, the chances of conceiving a child of the desired gender are approximately 85% for female offspring and 65% for male offspring (McCarthy 2001).\textsuperscript{5} Pre-implantation gender selection combines prenatal genetic diagnosis (PGD) with in vitro fertilization (IVF). PGD is used to determine the chromosomal sex of the embryo and only embryos of the desired sex are implanted in the uterus. This is a highly reliable method of gender selection. Post-implantation gender selection involves abortion. Pregnant woman can undertake PGD by methods such as chorionic villus sampling (CVS), amniocentesis or non-invasive prenatal diagnosis (NIPD) and terminate a pregnancy carrying a foetus of the undesired chromosomal sex (De Wert and Dondorp 2010). Post-natal gender selection involves a range of methods such as infanticide or neglect of children of a particular sex (Warren 1985; Sen 2003; Hvistendahl 2011).

My primary focus in this thesis is on prenatal GSFNMR through PGD and IVF, which is the most reliable form of gender selection using ARTs. Gender selective abortion is

\textsuperscript{4} As I discuss in detail in Chapter 3, sex-linked diseases are hereditary diseases linked to sex chromosomes, affecting mainly males. There are approximately 300 diseases related to sex chromosomes (Meseguer et al. 2002). Parents who have a family history of these diseases can undergo in vitro fertilization combined with prenatal genetic diagnosis and select against embryos with potentially affected sex chromosomes.

\textsuperscript{5} An American clinic offering sperm sorting explains: “Sperm which carry the X chromosome contain more DNA than sperm carrying the Y chromosome. Several methods have been developed to use this difference in size and weight to "enrich" sperm with the X chromosome and Y chromosome. Using a technique called "Flow Cytometry," sperm can be sorted by size, and the "girl sperm" separated from the "boy sperm" for use in insemination” (Tyler Medical Clinic 2014, n.p.).
likewise highly reliable and is a widespread method; therefore, I also briefly provide my perspective on the use of abortion for GSFNMR in this thesis.

Finally, I recognize that there are differing views as to the terminology used to refer to the subject of my thesis. I deliberately use the term “gender selection”, and not “sex selection”, because I maintain that in cases of selection for non-medical reasons, parents select for a child for gender reasons. Thus, they do not merely desire a child with particular chromosomes or genitals, but rather a child that will fulfil a specific gender role (Rothman 1998; Seavilleklein and Sherwin 2007; Wilkinson 2010). I recognize that technically, prenatal selection allows for selection based upon sex chromosomes, but in my view, what parents are actually selecting for is gender.

2. The International Context of Gender Selection for Non-medical Reasons

The practice of gender selection for non-medical reasons has had, and continues to have, a severely negative social impact. Without technical intervention, the standard gender ratio at birth\(^6\) is 105 – 107 males born per 100 females (Hvistendahl 2011; Den Boer and Hudson 2004; Sen 2003). However, in several societies around the world, gender ratios are significantly skewed in favour of males. In 1992, Amartya Sen estimated that there were 100 million women missing in Asia and North Africa, women who should have been born or grown up, but are missing because they were selectively aborted, or killed by infanticide or neglect.\(^7\) In 2003, he claimed that the number of missing women had risen to 130 million, with 44 million missing in China and 37 million in India. Sen (1992 2003) claims that these missing women are the result of a preference for male offspring in strongly patriarchal societies. Within such societies, various practices and beliefs lead to son

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\(^6\) The gender ratio at birth differs from the ratio for the total population, which is usually close to 100 males per 100 females but can vary according to the age structure of each particular society, mortality patterns or international migration (Den Boer and Hudson 2004).

\(^7\) Reflecting on the practice of infanticide against female offspring, Mary Ann Warren (1985) came up with the concept of “gendercide.” She made an analogy between the concept of genocide defined by the Oxford English Dictionary definition as the deliberate extermination of a race of people and claimed: “By analogy, gendercide would be the deliberate extermination of persons of a particular sex (or gender)” (Warren 1985, 22). Warren deliberately uses a gender-neutral term to consider both male and female victims of infanticide, yet acknowledges that female children are the majority of victims of infanticide. The selective killing of newborn girls is sometimes referred to as "gynocide" and "femicide" (Jones 2000). Nevertheless, Jones (2000) argues that using the term gender helps to emphasize that gender roles can have lethal consequences, just like racial prejudice.
preference; for example, it may be believed that only a son is capable of providing income for the family, while some traditions might nominate males only to perform a variety of socially and religiously important acts. Furthermore, daughters often require dowry and leave their parental home when married, and thus are seen as a resource for their husband’s family. In this context, the birth of a daughter represents an economical burden on a family, one which many families prefer to avoid.

Currently, it is estimated that the number of missing women is 200 million worldwide (Vlachová and Biason 2005; Hvistendahl 2011), with approximately 163 million of these missing in Asia (Hvistendahl 2011). The population imbalance is most severe in China and India (Chan et al. 2002; Li 2004; Guilmoto 2009; Macer 2009; Nie 2005 2010; Hvistendahl 2011). China reports a gender ratio of 121 males per 100 females at birth and India 112 males per 100 females at birth (Hvistendahl 2011). Furthermore, recent research shows that skewed gender ratios are also prevalent in regions such as Albania, Azerbaijan, Georgia and Armenia (Guilmoto 2009; Hvistendahl 2011; CoE 2011). Therefore, the problem with gender imbalance secondary to preference for the birth of sons is of an international character.

The problem of skewed gender ratios leads to various forms of social crises (Sen 2003; Den Boer and Hudson 2004; Guilmoto 2012). The preference for male offspring is a result of deeply entrenched gender inequality. Gender selection against female offspring further reinforces gender inequality and causes severe violations of women’s rights. These include: discrimination against women; violations of women’s bodily autonomy, reproductive and sexual rights; sexual violence; trafficking; and forced marriages (Li 2004; Nie 2005; Hvistendahl 2011; Guilmoto 2012). However, the most harmful discrimination against women is the act of not allowing them to exist or grow up in the first place. Furthermore, the lack of women in societies due to preference for male offspring leads to

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8 Dowry is a major reason for gender selection against female offspring in India (Sen 2003; Hvistendahl 2011).
10 There are media reports of a rising interest in GSFMNR in the Middle East (Williamson 2013). Procreators can undertake GSFMNR in UAE, Jordan or Egypt (Williamson 2013; Ismail 2013) and anecdotally, couples have a preference for male offspring. There is however a lack of academic studies of GSFMNR in the Middle East. A rare study focusing on gender preferences in Jordan reports low interest in prenatal gender selection (Al-Akour et al. 2009).
reinforcement of women’s oppression because existing women are perceived solely as prospective wives, sexual partners and mothers (Guilmoto 2012). Therefore, gender selection based on preference for male offspring strengthens gender inequality and negatively affects women’s position in society.

Furthermore, Christian Mesquida and Neil Wiener (cited in Den Boer and Hudson 2004) argue that large-scale gender selection against female offspring is a security threat, as the age composition of the male population is a crucial demographic factor influencing society’s tendency to violent conflict. Boer and Hudson find that six countries have both significantly skewed sex ratios and large populations, and thus risk instability: Afghanistan, Bangladesh, China, India, Pakistan and Taiwan (30). Furthermore, as China and India comprise over 38 percent of the world’s population, the impact of social instability in those countries may have ramifications beyond Asia. Den Boer and Hudson state that by 2020 there will be approximately 22-23 million “surplus young adult males” in China and 28-31 million in India, hence 12-15 percent of young Chinese and Indian men will be “surplus men” (36). As well as the risk of conflict, Boer and Hudson also note that these imbalances can lead to a rise in sexual violence against women.

Due to the severe social impact of gender selection based on strong gender preference, many affected countries have banned GSFNMR (Hvistendahl 2011). For example India, China and South Korea introduced legislation banning prenatal gender selection, including bans on disclosure of chromosomal sex by medical staff (Oomman and Ganatra 2002; Puri et al. 2011; Hvistendahl 2011). However, the practice of gender selection in favour of male offspring has only effectively been reduced in South Korea12 (Guilmoto 2009; Chung and Das Gupta 2014). Furthermore, prenatal GSFNMR is banned

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11 This is also manifested by the UNFPA itself. In the report Sex Imbalances at Birth, Guilmoto (2012) mentions the lack of available wives for men as one of the primary harms from gender selection against female embryos. The report fails to perceive women as the primary group harmed by gender selection against women.

12 Chung and Das Gupta (2014) argue that the preference for sons in South Korea fell with development and public policy. In their view, development brought normative and behavioral changes on a societal level, not solely in individuals whose socio-economic status improved. After 1987, the country underwent a transformation from a totalitarian to a democratic state. This change, together with industrialization and urbanization contributed to weaken patriarchal traditions.

13 Oomman and Ganatra explain: "Korea banned prenatal sex detection as early as 1987. China followed in 1989. The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, which came into force from January 1996, made the practice illegal in India. Most of these laws ban the various sex determination tests but not abortions subsequent to a test. All of these countries have liberal abortion laws;
in many countries with standard gender ratios due to its possible harmful impact (Saevilleklein and Sherwin 2007; Darnovsky 2009; CoE 2011b). Some argue that this ban is misplaced, as parents in Western countries do not seem to be concerned with having offspring of a particular gender. Surveys from countries such as the US, England, Germany, and Hungary show that the majority of respondents are not interested in using assisted reproductive technologies for GSFNMR (Dahl et al. 2003; Merhi and Pal 2007). Furthermore, there are claims that Western parents who do wish to select their offspring’s gender are doing so to have both sons and daughters, that is, for family balancing purposes (Dahl et al. 2003; Meister et al. 2005; Fejes et al. 2006; Colls et al. 2009). Family balancing, it is claimed, avoids the harmful effects of GSFNMR motivated by a preference for male offspring, and will not lead to severely skewed ratios. Thus, these theorists argue that the ban on prenatal GSFNMR in Western regions is unjustified. However, others argue that gender selection in favour of male offspring is also practiced in Europe and US, at times by immigrant communities from societies with strong gender preference, and that this is affecting gender ratios at birth in counties like the UK (Dubuc and Coleman 2007; Gleicher and Barad 2007; Egan et al. 2011; Puri et al. 2011; Guilmoto 2012). Moreover, prospective parents with cultural or traditional preferences for sons may travel from their own countries to places like the USA where GSFNMR is available, hence its provision in countries without skewed gender ratios nonetheless contributes to the global problem of missing women. Gender selection is thus an issue of international concern.

3. Gender Selection in Australia

GSFNMR is currently prohibited by regulation in Australia (NHMRC 2007), and by legislation in 3 states. However, this position is not universally popular or accepted.

\(^{14}\) Gender selection is unregulated in the US and the country is a frequent destination for reproductive tourism (Baruch et al. 2008; Fahrenkrog 2006; Birdsall 2010). IVF clinics offer their services to international clientele, including procreators from countries banning gender selection due to high sex ratio imbalance, such as India and China (Darnovsky 2009). Some clinics purposely advertise their services to Indian immigrants (Darnovsky 2003; Puri et al. 2011). Furthermore, several clinics offer information about their services in multiple languages, including Chinese, Japanese and Arabic (e.g. New York based Centre for Human Reproduction 2013).

\(^{15}\) States with legislation banning GSFNMR are Victoria, Western Australia, and South Australia: see http://www.loc.gov/law/help/sex-selection/australia.php.
Voices advocating for the legalisation of GSFNMR are regularly presented in the media; accessing this material provides insights into public discussions about gender selection in Australia. Here I first describe the policy before providing a snapshot of publicly voiced support for GSFNMR, from medical practitioners, IVF clinics, bioethicists and individual procreators as portrayed in mainstream media. Finally, I identify two court cases that stimulated vigorous debate about gender selection in Australia.

The practice was legally available in Australia until 2004 when the National Health and Medical Research Council amended the *Ethical Guidelines on the use of Assisted Reproductive Technology* (NHMRC 2004) to prohibit the use of ARTs for gender selection for non-medical reasons, on ethical grounds. The NHMRC guidelines are not in themselves legally binding, but as all ART clinics must be in compliance with the guidelines in order to be accredited, they have the force of a legal prohibition.

Critics of the ban have been vocal. Some of the most prominent voices are those of IVF specialists such as David Molloy, Michael Chapman and Gab Kovacs. Molloy argues in his blog on the IVF Australia website (2012) that gender selection for family balancing should be legal:

> I am for it. Having worked in the field of reproductive medicine helping infertile couples to conceive for more than 25 years, it is clear that many couples will try anything to help them predetermine the sex of their future child through all sorts of pre-conceptual natural remedies and methods widely publicised and available on the internet. Information about special diets, complementary medicines and the timing of intercourse all claim to offer the solution. To think that people aren’t using these methods already is naïve. Couples have used these techniques for centuries. (Molloy 2012, n.p.)

Molloy’s position is seconded by fertility specialist Chapman (Molloy 2012), who is vice president of the Fertility Society of Australia. Chapman argues that Australian parents should be able to undertake GSFNMR after their first child to balance their family

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16 I discuss Australian policy more in detail in Chapter 3.
17 IVF Australia is “Australia’s leading fertility clinic network” (IVF Australia 2014, n.p.).
18 The Fertility Society of Australia is “the peak body representing scientists, doctors, researchers, nurses, consumers and counsellors in reproductive medicine in Australia & New Zealand” (Fertility Society of Australia 2014, n.p.).
(cited in Marriner 2011). Chapman conducted a survey among 150 female patients of St George Private Hospital: three-quarters were opposed to using IVF to select the gender of first-borns, but half approved selection after the first child for family balancing (Marriner 2013a).

Chapman claims that demand for GSFNMR in Australia is rising. Nevertheless, IVF expert Kovacs says that the cost of ART-assisted GSFNMR will keep demand relatively low. He argues that parents should be free to use ARTs for the purpose if they pay and that legalisation of GSFNMR will benefit children.

These medical views are supported by at least some Australian bioethicists. Julian Savulescu argues that the ban on GSFNMR is ineffective as any woman in Australia can have PGD followed by a gender selective abortion. Furthermore, he claims that the ban is immoral because it limits individuals’ liberty and such restriction is only justifiable if GSFNMR harms anyone. While Savulescu says that there is no evidence of GSFNMR causing harm in Australia, Robert Sparrow disagrees and claims that the practice is problematic as it places a value on gender which sends out a sexist message.

Some IVF clinics have lobbied for the legalisation of GSFNMR in Australia. Genea (previously Sydney IVF) provided GSFNMR in New South Wales until 2004. Currently the clinic offers gender selection for medical reasons and while it complies with the national regulatory framework for ARTs, the clinic disagrees with the ban on gender selection for non-medical reasons. Genea argues that gender selection for family balancing should be available and directs prospective parents seeking GSFNMR to Superior ART clinic in Bangkok:

19 Chapman’s advocacy for GSFNMR was opposed by a spokeswoman from the Australian Family Association Terri Kelleher. She said in The Daily Advertiser that GSFNMR would allow for commodification of children: “If you really want a child, but then you start putting conditions on, you have to start asking questions” (Marriner 2013a, n.p.).

20 Kovacs clarifies: “If a couple so badly want a boy or a girl they are prepared to go through IVF and sex selection at great cost and effort rather than getting pregnant naturally, then maybe if they had the child naturally and it was the wrong sex it may not be looked after as well” (News.com 2010, n.p.).

21 Furthermore, Sparrow suggests that the presumption that harm happens overseas but not Australia is mistaken: “Look, I think it’s naive to think that - you know India’s sexist, China’s sexist and that there’s no sexism in Australia. And that having a technology and an institution that says look, it’s very, very important whether your child is a boy or a girl because boys are like this and girls are like that” (SBS One 2012, n.p.).

22 Genea specifies that it disagrees with NHMRC’s reasoning for the ban. In particular, Genea rejects claims that gender selection reinforces discrimination against women: “Genea’s experience was that there was a 59:41 preference for girls – and that women were the predominant driver of the IVF-based sex selection process” (Genea 2014, n.p.). For the same reason, Genea claims that GSFNMR cannot harm men because it will not lead to a shortage in women they could marry.
Genea’s Fertility Specialists are regularly asked by patients for recommendations of where they can seek IVF for sex selection purposes outside of Australia. Geographically, the clinic that is closest to Australia and which we can recommend is Superior ART in Bangkok. We have an ongoing relationship with the clinic and can be confident that the science and care is of a high quality. (Genea 2014, n.p.)

This kind of advice for off-shore gender selection has led to the formation of Australian companies which facilitate medical tourism, such as the Health Travel company, which assists Australian couples, particularly from Western Australia, to undertake gender selection in Thailand or Malaysia at a cost of $11-15,000 AUD (O’Leary 2013). The demand for GSFNMR is also confirmed by foreign medical staff such as Dr. Potter who sees 15-20 Australian patients a month at his clinic in Los Angeles and says that the numbers are rising at 20 per cent per year (Channel 9 2012; Marriner 2013b).

Several Australian couples who have undertaken GSFNMR have spoken to the media about their views and experiences. Among these are Danielle Morris and Corey Leighton who appeared on the television program Insight (SBS One 2012), speaking about selecting for a son in Bangkok after they had six daughters. One of the most high profile parents offering her views about GSFNMR is Jodi McMahon who travelled to the US and selected for two daughters after giving birth to seven sons. In a current affair TV program 60 minutes (Channel 9 2012), McMahon talks about her desire for a daughter and her experience of undergoing GSFNMR overseas. The TV team follows her and her family to the LA clinic where she has a second frozen embryo stored. Her IVF provided by Dr. Potter is filmed live and McMahon becomes pregnant with her second daughter. In all interviews,

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23 However, provision of IVF services in Thailand may become restricted by local authorities (Diogo Mateus 2014; Murdoch 2014), secondary to widespread publicity about a surrogacy case in which an Australian couple allegedly abandoned their son with Down Syndrome, yet took his twin sister back to Australia. Media reports indicate that All IVF Center, the most popular IVF clinic for Australians in the Thai capital, has been closed down (Murdoch 2014). Nevertheless, new IVF businesses constantly open around the world; recently The Fertility Institutes (2014b) announced the opening of a new IVF clinic in India. GSFNMR is forbidden in India (Government of India 2005), however, The Fertility Institutes can offer the provision of the service at their US branches to wealthy Indian couples. Several US based clinics already have overseas branches in countries such as Mexico (The Fertility Institutes 2014b) or Jordan (The International Institute for Fertility 2009).

24 The West Australian specifies: “Apart from the classic case of a family who have three boys and are desperate for a girl, the company’s promotional blurb also claims a market in parents who have lost a child at a young age and want to use gender selection to have another child of the same sex” (O’Leary 2013, n.p.).

25 Nevertheless, Danielle reveals that she already has a son from a previous relationship (SBS One 2012).
McMahon claims that families should have a choice to undertake GSFNMR (Marrimer 2013abc).

Despite the ban, some parents have tried accessing GSFNMR in Australia. In 2011, Australian media reports emerged about a couple who applied for exception from the ban on the grounds that they had three sons but their daughter had died several days after birth. They applied for permission to undertake gender selection to have another daughter (Hadfield 2011; Victorian Civil and Administrative Tribunal 2011). The woman argued that she was diagnosed with posttraumatic stress disorder and would be able to recover only if she gave birth to a daughter (Victorian Civil and Administrative Tribunal 2011).26

The case was heard by Victoria’s Patient Review Panel (PRP), which is empowered to make exceptions to the ban imposed by that State’s Assisted Reproductive Treatment Act (Victorian Civil and Administrative Tribunal 2011). The PRP heard testimony from various experts, some of which supported the couple’s application. In between the submission by the PRP and the court hearing, the woman terminated an ART pregnancy with twins, upon discovering that the embryos were of male chromosomal sex (ibid). During the hearing, she claimed that having a female child would allow her to avoid further obstetric trauma from terminating unwanted pregnancies, describing the birth of one child (male) and two terminations of multiple pregnancies of male foetuses following her daughter’s death. Furthermore, she argued that her desire for a daughter was so strong that she would continue to terminate pregnancies with male foetuses and if the tribunal rejected her application, she would undertake the procedure in Thailand or US.

The Tribunal dismissed the application, on the grounds that that the claim was based on arguments concerning the wellbeing and interests of the parents, not the interests of the potential future child (Victorian Civil and Administrative Tribunal 2011), stating:

As sad and cruel as their desire is to have a child of the same sex, we do not consider it is in the interests and welfare of a child to be born, that permission should be given to permit the use of an embryo which has been sex selected for the purpose of producing or attempting to produce a child of the desired sex. (Victorian Civil and Administrative Tribunal 2011:

26 In a statement for the press, the woman claimed: "It will help our mindset. We are never going to forget the trauma," (Hadfield 2011, n.p.) and her partner stated: "She will battle through it until she gets what she wants" (ibid).
The Tribunal further stated: "In our view, arguments based on completion of family, replacement of a child, or family balance do not advance the welfare or interests of a child born to fulfil that end" (82).\textsuperscript{27}

A second Australian gender selection case became public in 2013, concerning a Melbourne doctor who refused to provide a gender selective abortion. Dr Hobart was reportedly approached by an Indian couple; the 19 weeks’ pregnant woman requested a termination because she was expecting a female foetus and wanted a male offspring (AAP 2013). Dr Hobart refused to provide a referral for the termination on moral grounds, and also failed to refer the woman to another practitioner without a conscientious objection to abortion, as specified under the Victorian Abortion Law Reform Act (The Parliament of Victoria 2008).\textsuperscript{28} Hobart was investigated by the Medical Board of Australia and the Australian Health Practitioner Regulation Agency (AAP 2013) for malpractice.\textsuperscript{29} The case spurred discussion about the regulation of gender selective abortion. While many critics were appalled by the use of abortion for gender selection, women’s rights advocates argued that any legal restrictions on abortion would limit women’s reproductive rights (Cook 2013; Peatling 2013; Rogers 2013).\textsuperscript{30}

This brief snapshot indicates that GSFNMR is a highly contested practice in Australia. The practice stimulates important ethical debates about gender equality, reproductive rights, and their limits with respect to possible harm caused by the practice. Opinions run strong on both sides of the spectrum. Some argue that GSFNMR in Western countries\textsuperscript{31} is motivated by the desire for balanced families rather than gender bias,

\textsuperscript{27} Thus, the ruling does not accept the interpretation, as expressed by Gab Kovacs, that GSFNMR is good for children because they will be loved more if they are born with the desired sex.
\textsuperscript{28} The woman later had a termination provided by another doctor (News.com 2013a). Dr Hobart reported that doctor to the Medical Board of Australia. However, the Board did not pursue the case because abortion is legal up to 24 weeks gestation in Victoria (Bita 2013; The Parliament of Victoria 2008).
\textsuperscript{29} The results of the investigation of Dr Hobart are not publicly known because AHPRA anonymises the outcomes of their hearings.
\textsuperscript{30} It was later revealed that Dr Hobart was a former anti-abortion Democratic Labor Party candidate (Cook 2013; Knott 2013). Several months before Hobart came forward about the gender selective abortion case, Labor MP John Madigan announced legislation that would remove Medicare rebates for gender selective abortions (Taylor 2013).
\textsuperscript{31} I acknowledge that terms such as “Western countries” or “West” are generalizing because they refer to a range of diverse countries. I use these terms as they are used in bioethics, particularly by libertarian theorists (Savulescu and Dahl 2000; Robertson 2001; Wilkinson 2010). These terms are used to mark a proclaimed
therefore the practice is not harmful and should be legally available. I, on the contrary, argue that GSFNMR in the West, particularly Australia, is a harmful practice and should be banned.

4. Thesis Overview

In this thesis, I investigate ethical aspects of GSFNMR; principally, the use of assisted reproductive technologies. ARTs aim to help those who cannot procreate without such assistance to have children (Segal 2010). The use of ARTs to create a specific type of child based on parental preference may thus be considered a diversion from this original purpose. The use of ARTs for prenatal gender selection raises important ethical questions such as whether the use of ARTs for GSFNMR is justified and on what grounds; whether this use of ARTs causes harm to those involved with their use, including future children; and finally whether the harm involved justifies restrictions of the practice. These are the major questions that I will be answering in this thesis.

The thesis is divided into two parts. The first part (Chapters 1 – 5) engages with theoretical debates about reproductive autonomy and important distinctions that are relevant for discussions about GSFNMR. The second part (Chapters 6 – 8) presents an empirical study based on interviews with Australian procreators who have selected or want to select their child’s gender. The purpose of the empirical study is to contribute to filling the gap caused by lack of empirical data regarding parental motives for GSFNMR. As such, the study is a source of data that can be compared with theoretical justifications for gender selection. The two parts of the thesis are brought together in the final discussion, which allows me to test my theoretical conclusions with empirical evidence in order to reach an informed view about the acceptability of GSFNMR.

In Chapter 1, I discuss reproductive autonomy. Within reproductive medicine, appeals to autonomy are central to debates about access to and the regulation of ethical difference between presumably gender egalitarian Western regions and the rest of the world where gender inequality is prevalent. Throughout the thesis, I offer a critical perspective on this stereotypical view. In my critique, I draw on postcolonial feminist theory and bioethics that interrogate forces of cultural dominance and oppression in transnational contexts (Yuval-Davis 1997; Narayan 1997; Spivak 1988, 1990; Deckha 2007; Namaste 2009; Bhatia 2010).
reproductive technologies. Some of the most prominent conceptions of autonomy in contemporary bioethics are libertarian accounts; I present the views of established thinkers such as John Robertson, Julian Savulescu, John Harris and Stephen Wilkinson. I provide a summary of their accounts of reproductive autonomy, investigate the implications of these accounts for the practice of GSFNMR, and provide a critique.

Libertarian theorists perceive reproduction as an arena in which mentally competent individuals are entitled to make free choices. In this approach, individualism and choice are understood as major values in reproductive decision-making. Thus on their accounts, restrictions of reproductive autonomy are legitimate only if there is evidence of severe harm to individuals involved in the use of ARTs, including the offspring. These authors therefore promote a regulatory framework based on non-interference by the state and unrestricted access to ARTs.

In response, I argue that libertarian accounts of reproductive autonomy are problematic. I claim that they involve a limited individualized conception of reproductive autonomy, rely upon a narrow conception of harm, make a false analogy between natural and assisted reproduction, a slippage from negative rights to positive claims, as well as manifest a lack of concern for social justice. Due to these problems and slippages, I argue that libertarian accounts of reproductive autonomy have significant weaknesses.

Chapter 2 focuses specifically on libertarian justifications for GSFNMR based on parental preferences. The major arguments employed by libertarians are: an analogy with natural gender selection; respect for reproductive autonomy; family balancing; and children’s wellbeing. These arguments represent various perspectives from which libertarians advocate for the availability of GSFNMR as a legitimate reproductive choice.

In response I contend that these arguments fail to provide convincing justifications for the practice of GSFNMR. The argument from natural gender selection is troubling because it slides from natural to assisted reproduction. The arguments from reproductive autonomy, family balancing and children’s wellbeing are unsound because they are grounded in stereotypical assumptions about the harmless nature of GSFNMR in Western societies. I argue that this libertarian assumption is especially problematic because it reinforces a narrow understanding of sexism as gender supremacy, and hence overlooks
harm from gender stereotyping. In conclusion, I argue that the libertarian arguments fail to back up the claim that GSFNMR is ethically permissible.

Chapter 3 focuses on the distinction between medical and non-medical reasons for gender selection, which is a key distinction in ethical debates and regulatory frameworks. The categories of medical and non-medical reasons represent different kinds of gender selection, where ‘medical’ serves as a justification for the practice on the grounds of preventing the births of children with serious health problems, while gender selection for non-medical reasons is banned in many countries. Thus, the distinction is ethically important because it differentiates between what are taken to be ethically permissible and impermissible types of gender selection. As the distinction plays a crucial role in regulation of the practice, it is essential to understand what the categories of medical and non-medical reasons signify.

In my analysis, I argue that the categories of medical and non-medical reasons are inadequately defined in regulatory frameworks. In particular, while the category of medical reasons refers to selection against severe genetic conditions, regulatory frameworks do not further specify what constitutes severe genetic conditions. This ambiguity is troubling because it undermines the regulation of gender selection on health grounds. Therefore, I argue that more guidance is needed to enable effective implementation of the distinction in practice.

Chapter 4 discusses intersections between disability and gender in GSFNMR. In particular, I ask whether GSFNMR can be subjected to the same critiques as selection against disability. Gender selection shares certain features with selection against disability, as both types of selection involve strong parental preferences about the traits or characteristics that are seen as desirable in a future child. The relevance of the disability critique nevertheless depends on particular motivations for gender selection, as there are different implications for selection based on strong gender preference compared with family balancing.

I argue that there are significant differences between disability and gender and these have important implications for the justifiability of selection against disability and GSFNMR. While some forms of impairment impede the capacity for flourishing, gender is
only disadvantaging in societies that stereotype and discriminate based on gender. Thus, gender disadvantage can be fully eliminated by social measures promoting gender equity, while such compensation is not possible for at least some types of severe impairments. In my view, while selection against some severe impairments may be justifiable, all forms of GSFNMR are ethically impermissible.

In Chapter 5, I interrogate the distinction between sex and gender. These terms are often used interchangeably in debates about GSFNMR. They are, however, not synonymous; this is an important observation, given that the discourse of IVF clinics imparts the impression that gender can be unambiguously determined by prenatal selection of sex chromosomes. I argue that this idea is misleading.

Sex and gender are, to a significant extent, socially constructed categories maintained through social conventions. Crucially, gender does not unambiguously follow from chromosomal sex. This allows for variety of sexed embodiments, gender and sexual identities in humans. Therefore, the assumption that gender can be guaranteed through selection of chromosomal sex can be self-defeating.

The second part of the thesis presents an empirical study exploring parents’ motivations for selecting their offspring’s gender. Chapter 6 summarizes the methods of the empirical study, which is based on interviews with nine Australian women who either have selected, or want to select, their child’s gender. I explain strategies of recruitment, describe the respondent sample, present interview questions, provide details about data handling and analysis, discuss weaknesses and strengths of the research project, as well as provide my reflection on the study.

Chapter 7 presents the study results. All of the interviewed women have selected or want to select for daughters. The women provided two main reasons for this selection based on their desires for: a close mother-daughter relationship; and a balanced family, which includes a sister for their sons and a daughter for their husbands. A majority of the women claim that they do not have any gender specific expectations from their daughters. Nevertheless, the interviews suggest that the women make significant assumptions about their child’s gender identity, traits and behaviour. Most of the women state that they can imagine that their daughters might not meet their gendered expectations, while some
admit that they would be disappointed if this occurred. Overall, the women think that gender selection for family balancing does not pose a risk of harm to children. As a consequence, they argue that GSFNMR should be available in Australia and articulate their reasons supporting this view.

In Chapter 8, I provide an extended discussion of the study’s results. In particular, I pose the question as to whether GSFNMR should be legally available, taking account of both the theoretical arguments and the empirical data. In the process of providing an answer, I attempt to balance respect for reproductive autonomy with concern about the harm involved in the practice of GSFNMR. I reach the conclusion that the risk of harm is substantial, and the ban on GSFNMR is justifiable.

The risk of harm stems from possible conflict between women’s stereotypical expectations of the children selected for and the self-defeating potential of GSFNMR. The results of the empirical study provide evidence that women seek selection of chromosomal sex for gender reasons. My inquiry into the participants’ motives for, expectations from and strong feelings about GSFNMR indicate that women make gender stereotypical assumptions about their future children. I argue that these expectations are sexist. Furthermore, they hinder the children’s possibilities for developing autonomous and diverse gender and sexual identities, while children who do not fulfil parents’ expectations risk parental disappointment and pressure to adjust to stereotypical gender roles. As such, the practice of GSFNMR has the potential to reinforce sexism in the family and in society at large. I therefore conclude that GSFNMR should not be legalised in Australia.
Part I.

Theoretical Discussions about Gender Selection for Non-medical Reasons
1. Debates about Reproductive Autonomy

In this chapter, I investigate influential accounts of reproductive autonomy which shape and direct much of the debate about the practice of gender selection for non-medical reasons (GSFNMR). Some of the most prominent of these in contemporary bioethics are libertarian accounts, which advocate for the right of individuals to exercise a wide range of diverse reproductive choices, without restrictions from the state. I provide a summary of key libertarian accounts of reproductive autonomy, discuss their main features and present my critique. I build on this critique of reproductive autonomy in Chapter 2, where I examine specific libertarian justifications for GSFNMR.

In particular, I discuss the accounts of Harris (1992), Robertson (1996), Savulescu (2001) and Wilkinson (2010). I focus on these authors because they present highly influential accounts of reproductive autonomy, and furthermore, they advocate for procreators’ rights to undertake gender selection for non-medical reasons. While there are significant differences between these authors’ theories, I call them libertarians because they have a strong focus on parental autonomy, a permissive approach to assisted reproductive technologies (ARTs) and advocate for a wide range of choices for parents. I am interested in the way these theorists understand reproductive autonomy, and how this understanding is used to advocate for the practice of GSFNMR.

The accounts of reproductive autonomy proposed by these authors are libertarian insofar as they are based on several characteristic assumptions. First, they are based on a conception of individual autonomy as largely independent of social forces and relationships to other people. Second, libertarians argue that autonomy is enhanced by maximising the range of choices available to people and minimising state interference. Third, autonomous individuals are entitled to make autonomous reproductive choices and to act on the basis of their reproductive preferences with minimal state interference. The popularity of libertarian perspectives, mainly in the context of Western societies, stems from their promotion of individualism, unlimited choice and expression of one’s will without interference. These ideas tend to resonate with certain traditions of neoliberal politics and the capitalist economy (Allen and Thomas 2000; Rothschild 2005; Mudde
2010; Seavilleklein and Sherwin 2007). On this view, any restriction of assisted reproductive technologies (ARTs) is deemed illegitimate unless substantial harm is present.

The emphasis placed on non-interference leads libertarians to claim that reproductive autonomy is a negative liberty right, with the consequence that the state is required only to avoid restricting the use of ARTs. At the same time though, libertarians also claim that procreation is itself a right, and that individuals with fertility problems are entitled to use assisted forms of reproduction to exercise this right. This seems to imply that prospective procreators should be provided with the opportunity to access treatment. The same applies to the opportunity to select traits of future children, including gender. Libertarians interpret the right to determination of future children’s genetic makeup as an aspect of the right to procreate. According to them, individuals who are willing to procreate only if they can conduct embryo selection should be entitled to seek the technological means of such selection. Libertarians therefore construct certain claim rights under the concept of procreative liberty that extend beyond the idea of procreative liberty as a negative right. The extension of the right not to be stopped from reproducing by any regulatory policy, to the right to have children, and moreover to have children of a specific type, is an example of this slippage.

Finally, while a regulatory framework requiring unrestricted ARTs is libertarian because it is primarily concerned with non-interference, issues of access to the means enabling procreative liberty remain unattended. As discussed below, libertarians do not address problems of social justice or equal distribution of resources which would guarantee that procreative choices can be practically realised.

Despite the dominance of this view of reproductive autonomy, it is problematic in various ways that are relevant for gender selection. The libertarian discourse about reproductive autonomy promotes unrestricted individual choices, such as the right to practice GSFNMR, while largely overlooking the social context which impacts on individual
choices, as well as the potential for harm which can stem from such choices.¹ This view is problematic because the perception of reproductive choice as a context-free individual enterprise helps to legitimise certain reproductive choices and procedures while bypassing discussions of their ethical implications.

In the next section, I present a summary of accounts of reproductive autonomy developed by Harris (1992), Robertson (1996), Savulescu (2001) and Wilkinson (2010). In the sections that follow, I focus on several problematic aspects of these accounts. The first is that their conception of autonomy, understood as the exercise of unrestricted choice, is overly narrow. Second, their understanding of the potential harms arising from the use of ARTs is limited. Third, these accounts slide from understanding reproductive autonomy as a negative liberty to positive claims. Fourth, their arguments advocating non-interference with assisted reproduction are based on an illegitimate analogy between natural and assisted reproduction. Finally, libertarian conceptions of autonomy neglect issues of social justice. Due to these limitations and unjustified slippages, libertarian accounts of reproductive autonomy are problematic.

1.1 Libertarian Accounts of Reproductive Autonomy

The emphasis placed on autonomy in reproductive medicine and ethics is central to debates about reproductive technologies and their regulation. Advocates of libertarian accounts of reproductive autonomy see procreation as a matter of personal choice that is to be resolved by mentally competent individuals who are entitled to procreative liberty. Libertarians view reproduction through the valuative lens of individualism and choice, which they invoke as central criteria in debates concerning reproductive decision making. Given their focus on liberty, regulations on reproduction are legitimately imposed only when there is evidence that severe harm would be caused to offspring or other agents directly involved in the procreative process. In reproductive processes which do not

¹ I argue in this thesis that GSFNMR is a practice produced within gender hierarchic social structures which reinforce stereotypical binary gender roles and male supremacy. Furthermore, the practice of GSFNMR has the potential to harm future children and society.
involve severe harm, or the risk of severe harm is low, libertarians argue that the value of reproductive autonomy should be given priority.

In this section, I provide an overview of well-established accounts of reproductive autonomy by contemporary libertarian thinkers. These are John Robertson, Julian Savulescu, John Harris and Stephen Wilkinson, whose accounts of reproductive autonomy also entail the right to practice GSFNMR. While the accounts of reproductive autonomy presented by these authors are broadly similar, there are some differences between their views, as well as in their use of terminology.

Perhaps the most frequently articulated defence of reproductive autonomy is the argument from procreative liberty. John Robertson defines procreative liberty as freedom to choose. In *Children of Choice*, he claims that “at the most general level procreative liberty is the freedom either to have children or to avoid having them” (Robertson 1996, 22). In this sense, procreative liberty is associated with control of “the use of one’s reproductive capacity” (Robertson 1996, 16). On Robertson’s account of procreative liberty, procreation is understood as a matter of personal choice. Robertson argues that mentally competent adult humans are entitled to make reproductive choices, and that the range and nature of these choices should be free from state interference. This conception of reproductive autonomy, as freedom to make reproductive decisions without state interference, also underlies the accounts of Harris (1992), Savulescu (2001) and Wilkinson (2010).

Insofar as Robertson’s definition of procreative liberty takes into account the subjective and supposedly diverse foundation of reproductive preferences, both the right to prevent conception and the right to procreate are given serious consideration. This emphasis implies that both the choices to procreate and to avoid procreation are

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2 A certain level of mental capacity can thus be seen as a basis for claiming and exercising procreative liberties. As Robertson specifies: “To have a liberty interest in procreating, one should at minimum have the mental capacity to understand or appreciate the meanings associated with reproduction” (Robertson 1996, 30). As he clarifies, such a minimal standard would “exclude severely retarded persons from having reproductive interests, though it would not remove their right to bodily integrity” (Robertson 1996, 30-31). As manifested in the statement, Robertson distinguishes procreative liberty from the right to bodily integrity that is to be distributed more broadly among individuals.
considered legitimate. Moreover, the provision of the very choice is considered crucial in a liberal society. Hence, it can be deduced that there is no obligation to procreate and every single individual is welcome to act on that recognition.

However, this construal of reproductive autonomy, as freedom to make unrestricted reproductive choices, quickly slips into a discourse accentuating the right to reproduce. Hence, while the decision to avoid reproduction is considered legitimate, the act of reproduction is taken to be of central importance in the lives of individuals. Robertson claims that for many people, reproduction is a “central part of their life plan, and the most satisfying and meaningful experience they have” (Robertson 1996, 24). From this perspective, reproduction is seen as an act of crucial value which warrants legal protection.

In claiming that reproduction has central importance in a person’s life, libertarians are referring to biological reproduction (i.e. genetic and gestational parenthood). The right to reproduce, therefore, translates into the right to have biologically related children. The significance of genetic procreation is most strongly acknowledged in Robertson’s account of procreative liberty. He takes biological parenthood to be the primary form of parental experience providing connection with future generations, which gives this form of procreation personal meaning. The importance of biological procreation then, in turn, is taken to support the right to reproduce. Robertson claims that: “There is a presumptive right to procreate because of the great importance to individuals of having biologic offspring – personal meaning in one’s life, connection with future generations, and the pleasures of child rearing” (Robertson 1996, 152). On this account, reproduction is associated with basic existential and meaning-generating aspects of human life and, significantly, it is defined in genetic terms. Robertson specifies that the terms “procreative liberty” and “reproductive freedom” signify “the freedom to reproduce or not to reproduce in the genetic sense” (Robertson 1996, 22). It is this context of genetic interconnection, in the libertarian imaginary, which makes biological parenthood a substantial experience and source of the pleasures and satisfaction generated by bearing an offspring in the gestational sense.3 Robertson claims: “although the desire to reproduce

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3 Robertson claims that: “In a strict sense, reproduction has always been genetic” (1996, 22) and further claims that reproduction always occurs with provision of one’s gametes to another person. Robertson makes
is in part socially constructed, at the most basic level, transmission of one’s genes through reproduction is an animal or species urge closely linked to the sex drive” (Robertson 1996, 24). Hence, Robertson presents the desire to reproduce primarily as a desire to pass one’s genes on to other generations, which on his understanding gives individual life a specific meaning. Other libertarian accounts of reproductive autonomy (Harris 1992; Savulescu 2001; Wilkinson 2010) also presume that genetic reproduction has special importance for procreators, although they do not focus on the issue as explicitly as Robertson.

The central importance of biological reproduction in libertarian accounts of reproductive autonomy has significant implications. Reproduction, as understood in genetic terms, is constructed as a fundamental right which should not be denied by the state. In particular, the state ought not interfere with natural reproduction. As individuals are taken to have the right to procreate, any limitation imposed on this right by governments is considered illegitimate and in conflict with basic human rights.

The establishment of the right to (biological) reproduction is then used to ground a further claim of a right to access services of assisted reproduction. In general, libertarians argue that when individuals decide to reproduce in genetic terms, not only should they be free from interference, but they should also have the opportunity to receive services which would help them achieve their reproductive goals. Harris claims that: “If parents want children of their own they should have every assistance with childbearing which is consistent with the like assistance for all other citizens” (Harris 1992, 78). On Harris’
account parents who want genetically related children are entitled to seek assistance if they can’t conceive naturally.⁶

Furthermore, libertarians argue that individuals are not only entitled to make choices about (not) having children and using ARTs, but they should also have the opportunity to determine their children’s characteristics. These authors advocate both for the right to select the traits of future offspring, including gender, and the right to undertake selection against disability. Thus, the right to reproductive assistance is taken to extend to the right to determine the traits of one’s offspring.

In particular, these authors argue that procreators⁷ should be free to undertake embryonic selection to ensure that their children are born without disability. Their main justification for selection against disability is that absence of disability is good for children’s wellbeing. On their accounts, parents have good reasons to ensure that they will have children who will flourish and enjoy a certain standard of quality of life (Harris 1992; Robertson 1996; Wilkinson and Garrard 2013a).

The need to consider children’s wellbeing is most strongly emphasised by Savulescu. On his account of reproductive autonomy, procreators should make reproductive decisions using the principle of procreative beneficence (Savulescu 2001; Savulescu and Kahane 2009). Savulescu defines procreative beneficence in the following way: “couples (or single reproducers) should select the child, of the possible children they could have, who is expected to have the best life, or at least as good a life as the others, based on the relevant, available information” (Savulescu 2001, 413). For Savulescu, some embryos are clearly better predisposed for life than others and the measure of these predispositions – understood as prospects for having the best possible life or at least as good as other embryo(s) – should determine parental choices. On this account, procreators are strongly encouraged to undertake genetic tests and to use this

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⁶ Harris claims that the suitability of parents seeking means of assisted reproduction often tends to be questioned, both on medical grounds and general predispositions to parenting. He criticises such practices and claims that prospective parents should not be denied “the right to found a family” (1992, 74).

⁷ I use the term procreators rather than reproducers. This is consistent with Ruth Hubbard’s thesis (1990) that parents do not reproduce themselves when having children, therefore the term procreators may be preferable. However, I use the terms “reproduction” and “reproductive autonomy” rather than “procreation” and “procreative liberty” because these are the terms most commonly used by libertarian theorists (Robertson 1996; Savulescu 2001; Wilkinson 2010).
information in their reproductive decision making. As then follows from the principle of procreative beneficence, individuals or couples should not arbitrarily choose any type of child they desire, but rather the child with the best possible prospects.

Savulescu defines the best life as one with the “most well-being” (Savulescu 2001, 419). His account is normative, specifying what parents ought to seek for their children on moral grounds. As he puts it: “morality requires us to do what we have most reason to do,” ergo “a person who has good reason to have the best child is morally required to have the best child” (Savulescu 2001, 415). Parents are thus morally obliged to select only for the best children they potentially can have, which might limit their reproductive choices.8

Thus libertarian accounts recognise a limit to parental autonomy, and the limit is harm caused to the future child. Harris argues that children can be harmed by intentionally being brought into “existence under adverse conditions” (Harris 1992, 52). By this, he means that parents should prevent the birth of a child who will be harmed by being brought into existence with a severe disability.9

In conclusion, libertarian accounts are based on an understanding of reproductive autonomy as freedom of choice. Procreators are entitled to make diverse choices based on their preference, limited only by harm to the prospective child. In what follows, I analyse and critique central features of libertarian accounts of reproductive autonomy and their ethical implications.

8 In his later formulation of the principle of procreative beneficence, Savulescu further emphasizes the significance of the moral obligation to have children with the best life prospects: “Most people will agree that there is a moral defect in parents who intend to conceive a child but are indifferent to whether their future child will be born with the potential for a good life. If prospective parents have moral reasons to care about the potential for well-being of their future children, then it would seem that they should also have reason to aim to have children who are more advantaged rather than leave this to chance or nature” (Savulescu and Kahane 2009, 276).
9 Harris (1992) makes a distinction between harm and wrong. He claims that the child who is brought into existence with a handicap is being harmed as they will live with an injury and have a life worse than children without such condition, but this child cannot be seen as wronged, unless they have a life not worth living. On his account, births of children with lives not worth living should be avoided, if possible.
1.2 Five Problems with Libertarian Accounts of Reproductive Autonomy

Despite being some of the most prominent accounts of reproductive autonomy in contemporary bioethics, libertarian accounts are problematic. Libertarian authors advocate for unrestricted choices, while paying limited attention to issues of harm and social justice. It is important to discuss the flaws in these arguments as they are relevant to the issue of gender selection. Libertarian advocacy for unrestricted reproductive autonomy, combined with lack of attention to the ethical impact of reproductive practices, leaves little space for debates about the regulation of potentially harmful practices. As I argue in later chapters, gender selection for non-medical reasons is an ethically problematic and harmful practice. In order to provide a critical analysis of the libertarian discourse about gender selection, I first offer a general critique of libertarian accounts of reproductive autonomy.

Here I investigate and critique key issues that are common to libertarian accounts of reproductive autonomy. These are: assumptions about autonomy; a narrow conception of harm; the slippage from negative liberty to positive claims; the slippage from natural reproduction to ARTs; and lack of concerns about social justice.

1.3 Libertarian Assumptions about Autonomy

Libertarians operate with a conception of autonomy as freedom to choose without interference, where such choices are exercised by mentally competent adults. Reproductive autonomy is therefore understood by libertarians as the free exercise of reproductive choice, and is characterised as a negative right: the individual reproductive decisions of mentally competent adults should be free of state interference.

This rendering of reproductive autonomy, as freedom from interference, operates with an understanding of the individual that is characteristic to libertarian theorising. Reproductive decisions are assumed to be autonomous, in so far as individuals make these choices free of any obvious coercion or external control (such as state policies regulating reproduction). Little attention is paid to the social conditioning of procreative choices through socialization, economic circumstances or limited provision of services. Robertson argues that decisions about procreation are personal decisions and that individuals’
autonomous choices and actions should not be compromised by “a majoritarian view of ‘right’ reproduction” (Robertson 1996, 41). However, what Robertson and other libertarian authors (Wilkinson 2010; Savulescu 2001; Harris 1992) do not recognise is that the variety of reproductive decisions or the decision making process itself can be impeded by a range of social constraints. In this regard, women’s seemingly autonomous reproductive choices can be shaped by oppressive gender norms and socially reinforced assumptions about normality (Tremain 2006; Sherwin 2007). The social framing of procreative choices may not be visible to us, yet it can have a significant impact on the procreative decision making process.

The libertarian conception of autonomy as individual choice is problematic because, first, it overlooks the effects of the social context on autonomy and second, it disregards important aspects of human existence in the world. In particular, it overlooks the condition of human interdependence.

First, the conception of autonomy does not take sufficient account of the impact of social context on individual reproductive decisions. Reproductive choices are made in a social environment of hierarchic social structures and forces (Tong, Anderson and Santos 2001; Butler 2008). These forces shape individual choices and individuals’ capabilities for making choices as well as acting on them (Mackenzie and Stoljar 2000; Mackenzie 2010). In consequence, individual reproductive autonomy can be significantly limited. Libertarians overlook the social determinants of the development and exercise of autonomy, as on their accounts individual autonomy is restricted only by the interference of the state in individuals’ otherwise presumably autonomous reproductive decision

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10 Nevertheless, Robertson admits that reproductive choices can be restricted if they do not serve reproductive interests. For Roberson, “cloning, enhancement or intentional diminishment of offspring” (1996, 41) could be considered problematic. I will talk about the issue of reproductive interests below when I focus on Robertson’s views on harm to offspring from parental misconduct.

11 For example, gender oppression can significantly limit women’s reproductive autonomy as it can impede their capacity for making reproductive choices and acting on them. Moreover, gender oppression creates social circumstances in which adjusting to oppressive norms is the most rational choice (Mackenzie and Stoljar 2000; Sherwin 2007). Sherwin (2007) provides an example of a society valuing women if they are beautiful and sanctioning women who do not comply with gendered beauty standards. In such a context, undergoing cosmetic surgery may seem to be a rational option rather than coerced by the prevailing norms.
making. The lack of consideration of social factors which effectively constrain reproductive autonomy is one of the major weaknesses of libertarian theory.

Second, reproductive decisions are not made on a strictly individual level. They are made by individuals who exist in relationships with other people, such as family members. Many theorists have argued that the libertarian understanding of autonomy is largely unresponsive to the conditions of human existence which are characterized by interdependence (Dodds 2000; Donchin 2000 2009, Mackenzie 2010; Segal 2010). This line of criticism suggests that a much more complex view of autonomy is necessary. Such a view is provided by relational theories of autonomy, which consider the constraints and determinants limiting individuals’ exercise of autonomy arising from their relations with other people (Sherwin 2007; Mackenzie, forthcoming). Relational understandings of autonomy acknowledge the existential conditions of human beings characterized by interrelatedness with others, including social institutions. This is especially important in the context of reproduction, which is based on relationships of parenting, dependence and care that often go unrecognized on the libertarian account. For example, a woman’s decision concerning the termination of her pregnancy can be influenced by relational factors such as the biological father’s willingness or unwillingness to be a caregiver for the future child, or by the economic marginalization of single mothers in the society she belongs to. The failure to recognize the relational context of reproductive choices means neglecting crucial factors in complex decision-making processes.

The view of reproductive autonomy as freedom from interference leads libertarians to advocate for liberal state policies regarding reproduction, thereby maximizing reproductive choices. They suggest that procreators need to be provided with maximal freedom of choice to satisfy individual preferences (Mackenzie 2010, forthcoming). For that reason, they also require that legal restrictions on the use of reproductive technologies be minimized, to allow for choices to be exercised freely.13

12 As previously mentioned, on Savulescu’s account of reproductive autonomy, parental reproductive choices should be determined by the principle of procreative beneficence. As such, procreators’ decisions should not be free in an absolute sense, however, they should be free from state interference.
13 The only legitimate reason for regulation of ARTs by the state, on the libertarian account, is substantial harm. However, libertarians claim that there is no evidence that embryonic selection would cause harm. I discuss the implications of the libertarian conception of harm below.
However, this emphasis on lack of state interference is problematic. The libertarian position is based on a presumption that if individuals’ choices are free from state interference, their reproductive autonomy will be guaranteed. This presumption is unsound because it does not acknowledge that an individual’s decisions are shaped by her social relations and interdependencies in ways that necessarily affect her capacity for exercising autonomy. Thus, lack of state interference does not ensure that an individual’s choices are free; choices are shaped by both social context and interrelatedness, in ways that restrict or enable particular options.

While these authors fail to address issues which affect the capacity for exercising reproductive autonomy, they simultaneously advocate for the maximization of choices, including the determination of future offsprings’ traits. This gives parents significant control over the genetic makeup of their children. Savulescu (2001) and Harris (1992) for example, claim that the selection of children’s traits should be to a large extent guided by the imperative of children’s wellbeing. Nevertheless, libertarian accounts of reproductive autonomy leave significant space for the determination of an offspring’s characteristics based on parental preferences. In particular, the selection of non-disease traits provides an opportunity for parents to select for traits which are considered favourable on socio-cultural grounds. But selection of an offspring’s traits is troubling as it may enable undue parental control. Exercising reproductive autonomy to control an offspring’s traits takes advantage of the hierarchic power relationship between parents and children, thereby construing children as passive subjects shaped by their parents’ preferences.

Several thinkers (Habermas 2003; Sandel 2007; Mudde 2010) have criticized the exercise of reproductive autonomy within this asymmetric power relationship, claiming that the determination of offspring traits based on parental preferences is an unprecedented interference with the autonomy of the future children. Habermas (2003) argues that determination of children’s traits by prenatal selection differs from
socialization, as children can refuse or rebel against their upbringing along the way.\textsuperscript{14} However, prenatal selection deprives children of any power to resist their parents’ choices as they cannot reverse or interfere in acts of determination concerning their conception and genetic makeup. In Habermas’ view, this lack of opportunity for subversion or rejection of irreversibly determined genetic characteristics makes prenatal determination of an offspring’s traits ethically impermissible.

In later chapters I argue that the case of gender selection for non-medical reasons is complicated, as gender cannot be unambiguously guaranteed by selection of sex chromosomes. However, parents undergoing gender selection assume that this is possible and they expect that their children will have certain gender specific traits as a result. Therefore, Habermas’ criticism remains relevant for GSFNMR. Moreover, as well as genetic determination, future children are subject to parental expectations concerning their gender performance. This can translate into pressure on children to adjust to gender stereotypical roles, which is a form of harm. As I argue below, the harmful potential of GSFNMR justifies claims about its ethical impermissibility.

The libertarian conception of reproductive autonomy has several significant flaws. These authors construct autonomy as a negative liberty associated with a right to personal freedoms without interference, motivated by the quest to fulfil individual preferences. In doing so, they overlook the broader social context in which reproductive choices are made, including individuals’ relations and interdependencies. These are, however, crucial factors in safeguarding the effective exercise of reproductive autonomy. This suggests that the libertarian conception of autonomy as negative liberty is insufficient.

Furthermore, I have touched on the ethical implications of unrestricted maximization of choices. I have claimed that some of these choices, particularly selection of an offspring’s traits, can be harmful. I will now move on to discuss the libertarian conception of harm and provide a critique.

\textsuperscript{14} On the contrary, libertarians argue that prenatal selection is similar to any other type of conditioning of children, such as upbringing or schooling (Pennings 1996; Savulescu 1999; Robertson 2001). I discuss these views in detail in the next chapter when I focus on libertarian justifications for GSFNMR.
1.4 Narrow Conception of Harm

The risk of harm is of significant concern in libertarian theory as it is the only recognised legitimate limit on reproductive autonomy. On libertarian accounts, the relevant harm is that potentially caused to individuals involved in reproduction, including harm to offspring. While libertarian theorists argue that harm is a legitimate reason for regulation of reproductive processes, e.g. assisted reproduction and ARTs, given the importance ascribed to reproductive autonomy, the corresponding harm must be severe.

The libertarian understanding of harm is problematic for three main reasons. First, the conception of harm is rather narrow. As I discuss below, libertarians consider only limited forms of harm caused to individuals by reproductive processes. Second, in order to impose any regulation, evidence must be provided demonstrating that severe harm is caused by a certain reproductive practice. However, what counts as severe harm is not clear in these accounts. If there is no clear definition of severe harm, it is difficult to provide evidence that such harm occurs. Finally, in cases of uncertainty and disputes over the severity of the harm involved, libertarians advocate for giving priority to exercise of reproductive autonomy. Therefore, the overall commitment to regulation of the reproductive sphere in cases involving harm is rather limited on libertarian accounts.

There are at least four kinds of harm acknowledged in accounts of procreative freedom: harm from the use of ARTs (Robertson 1996); harm arising from parental misconduct (Robertson 1996); harm caused by the commodification of children in the context of selective reproduction (Wilkinson 2010); and harm inflicted on children due to their having been brought into the world with a disability (Harris 1992; Robertson 1996; Savulescu 2001).

The first type of harm considered on libertarian accounts is harm to procreators or offspring from the use of ARTs. According to Robertson, the evaluation of reproductive technologies should start by asking whether or not a procreative interest is involved in their use. If so, the next question under consideration is “whether the harm threatened by reproduction satisfies the strict standard for overriding this liberty interest” (Robertson
From this we can understand that the options for regulation arise in two cases: when the procreative interest is missing, or when the risk of harm posed by the use of ARTs is sufficient to override procreative interests. Lack of procreative interest and risk of severe harm are thus the only two reasons that can justify attempts to regulate ARTs.

Libertarian commentators argue that reproductive autonomy should be given priority in the governance of ARTs if there is no evidence that the use of specific ARTs causes harm (Harris 1992; Robertson 1996; Savulescu 2001; Wilkinson 2010). Robertson argues that even in situations where potential harm might occur, reproductive autonomy should be prioritized unless critics of ARTs prove that harm is involved in their use. While ARTs have been widely assumed to be harmless, but there is emerging evidence that, at least with regard to some forms of ART, this is not the case. Recent studies show a higher prevalence of birth of children with disabilities associated with assisted reproduction. In particular, there is a higher incidence of birth defects in children conceived by intracytoplasmic sperm injection (ICSI) compared with other IVF methods (Hansen et al. 2002; Lie et al. 2005; Davies et al. 2012). As yet, there has been little discussion by libertarian theorists of the increased risk of harm from these assisted reproduction techniques.

Moreover, libertarians argue that any harm resulting from the use of ARTs would need to be sufficiently severe in order to justify regulation and override respect for procreative liberty. At the same time, however, these theorists do not explain what they mean by severe or substantial harm. This lack of specification of what counts as relevant harm makes it difficult to identify exactly what conditions might justify regulation of ARTs. Furthermore, libertarian theorists do not identify any cases of harm caused by the use of ARTs which legitimise their regulation. Libertarians place the onus of proof on critics of ARTs; in cases of dispute over the implications of the use of a certain technology, we

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15 While I find the term “birth defect” problematic (see my discussion of disability rights critique in Chapter 4), this term is used in cited sources. Lie et al. (2005) clarifies that there is no consensus on what a birth defect is: “A common, but vague definition of a major birth defect is an anatomical defect that needs treatment or may have functional implications” (697). However, the authors provide examples of conditions such as “Down syndrome and other malformation syndromes that may be diagnosed based on their phenotype at birth” traditionally understood as birth defects (ibid).

16 For example, Robertson claims that what is meant by substantial harm can often be “contested” (1996, 24).
should err on the side of reproductive autonomy. The interest in reproductive autonomy is thus used to override the criterion of harm.

This limited concern for potential harms caused by the use of ARTs is significant. The advocacy for unrestricted use of ARTs based on respect for individual reproductive autonomy, even when harm is present, provides little space for discussion of the ethical impacts of reproductive procedures. This carries implications for discussion of ethical aspects of gender selection for non-medical reasons. While libertarians claim that only severe harm justifies regulation of reproductive processes, the lack of specification of severe harm makes it very difficult to open a serious debate about harm involved in gender selection and justify its regulation, as I discuss in the following chapter.

The second type of harm recognised on libertarian accounts is harm from parental misconduct. Robertson (1996) recognises a moral duty to avoid parental, in particular maternal, actions that cause harm to offspring. Among the harmful activities he identifies behaviour that, according to him, interferes with procreative interests; these include ingestion of drugs, alcohol, tobacco and exposure to workplace hazards. Robertson argues that not only should women avoid engaging in behaviours which could harm their offspring, they also have a duty to accept minimally risky medical procedures that would prevent harm to a future child. At the same time, he argues that pregnant women should avoid medical treatments aimed at their own health but which could harm their offspring, unless they are necessary life-saving procedures, such as chemotherapy.

Robertson tends to express a willingness to adopt paternalistic measures to stop procreators, particularly pregnant women, from behaving in a way that is considered irresponsible regarding the health of any future offspring. It makes sense to Robertson that these measures apply to women; due to the fact that “the fetus is inside the woman, prenatal actions to protect offspring necessarily restrict her freedom” (Robertson 1996, 174). As he says, once a woman decides to avoid abortion, she has made a decision to reproduce and as such, she should behave responsibly and in the interest of the future child who ought not be harmed. This approach suggests that there are certain constraints built into the concept of procreative liberty which are not explicitly articulated, but arise
when individuals’ lifestyle choices clash with what Robertson takes to be the objective of procreation.17

Robertson claims that liberty and bodily integrity are crucial but not absolute rights and thus, they do not “protect the woman’s choice” (Robertson 1996, 178) where her choices contradict procreative interests, understood as the interests of protecting the offspring against avoidable harm:

At a certain point one’s right to use one’s body as one wishes, including resisting medical intrusion into the body, must take account of the interests of others whose needs those decisions directly impinge. (Robertson 1996, 179)

Clearly, a woman’s liberty is respected on Robertson’s account until she gets pregnant, after which point her liberty is respected as far as it serves reproductive interests (understood as the health or welfare of the pregnancy).

Women’s moral duty to avoid harm to their offspring is justified to an extent. If a woman chooses to carry an embryo to term, then it is reasonable to expect that she should act to minimize harm to the foetus, such as avoiding exposure to tobacco, alcohol or drugs, consistent with protecting her own health. These kinds of restrictions, based upon recognition of the vulnerability of the foetus to maternal actions, are not necessarily autonomy-infringing.

However, some aspects of this duty to avoid harm to the foetus are problematic. First of all, the imposition of responsibility for foetal wellbeing on women is unjustified when it is based on an implicit but perhaps erroneous assumption that contraception and abortion are available and accessible. What is striking in Robertson’s theory is the fact that he is willing to limit women’s liberty in the name of preventing harm to the offspring even in cases when abortion is not available and women cannot exercise their procreative liberty as they lack the means to act on their choice: “If abortion were not available,

17 Interestingly, once procreative interest on the side of the procreator is established, Robertson identifies no solid ground for restricting women, even in cases which are often considered controversial: “Child abusers, HIV women, welfare mothers, and teenagers have interests in procreation or bodily integrity which mandatory use of Norplant violates” (Robertson 1996, 93). He states that these groups whose procreative interests would be violated by mandatory contraception include individuals at genetic risk of producing children with handicaps. At the same time, he proposes that contraception be provided to “mentally retarded” women as he does not consider individuals with “mental retardation” as persons with reproductive interests (Robertson 1996, 90).
actions occurring after conception could affect the welfare of expected offspring, so duties
could attach prior to viability" (Robertson 1996, 180). Thus on Robertson’s account of
procreative liberty, a woman’s liberty is subjugated to her pregnancy, even where this is
forced. Therefore, Robertson justifies impositions on pregnant women who are deemed to
behave irresponsibly. While he prefers preventive measures, he does not rule out coercive
sanctions:

The choice ranges from education and access to treatment to post birth
sanctions and prenatal imposition of treatment on pregnant women.
Because procreative liberty is not involved [in irresponsible prenatal
behaviour], and because the conduct in question poses serious harm to
offspring, coercive sanctions are not in principle excluded. (1996, 180)

Robertson’s justification of significant impositions raises concerns. The duty to
avoid foetal harm is troubling if it permits unwarranted constraints on women’s autonomy
or compromises their health. The duty to care for the foetus should not translate into a
right to use legal force against women. Specifically, it should not be used as a mandate for
forced treatment (such as caesarian section or sterilization) or incarceration. These
impositions represent disproportionate restrictions given the importance of the autonomy
of women. In addition, they may be ineffective at preventing harms.

While Robertson acknowledges the controversial nature of the debate about legal
prenatal parental duties, his argumentation suggests that he is willing to impose
treatments or coercive measures in at least some cases. This is problematic as he is not
always clear as to what degree of potential harm to the foetus may warrant legal

18 For example, many women in the U.S. have been incarcerated for taking drugs during pregnancy based on
legislation protecting the rights of the foetus (Ehrlich 2008). Ehrlich argues that such measures not only
violate women’s rights but also fail to protect foetal health because they put women behind bars instead of
helping them get their addiction under control. Similar conclusions were made by The American College of
Obstetricians Gynecologists (2011) which argues that “Drug enforcement policies that deter women from
seeking prenatal care are contrary to the welfare of the mother and fetus” (2011: n.p.).
19 According to him, courts should order compulsory treatment of pregnant women only if statutes authorize
their imposition, however he writes: a woman’s “unreasonable refusal of a recommended caesarian section
that does severe damage to offspring might still be punished as a form of prenatal child abuse” (Robertson
1996, 190).
impositions. Thus, Robertson seems to be willing to overrule parents’ autonomy without presenting strong evidence to support such proceeding. This is in contradiction with the central role respect for autonomy plays in libertarian theory, and seems to show greater concern for potential harm to the foetus than for harms to the pregnant woman arising from forced impositions

The third form of recognised harm arises from the potential commodification of children by selective reproduction (Wilkinson 2010). Wilkinson, for example, argues that the act of prenatal embryonic selection can treat children as commodities, reducing them to objects of parental satisfaction (2010, 130-131). Wilkinson considers the risk of harm from commodification, but argues that commodification requires using children solely as means to parental satisfaction, which is not the case with assisted reproduction. He claims that children are conceived for parental satisfaction in many contexts, including natural reproduction, and that children are rarely used solely as means to other ends. Furthermore, he argues that there is no evidence to prove that children conceived through ARTs are commodified significantly more and in a worse way than those born naturally. Therefore, while the risk of harm from treating children as commodities is a valid form of moral complaint, he rejects claims that the risk of commodification from the use of ARTs is severe enough to restrict their use.

However, the debate about possible harm from commodification is more complex than Wilkinson allows. Two objections can be raised to Wilkinson’s argument. First, the requirement of children being treated only as means seems too absolutist and represents a narrow understanding of commodification. Second, the claim that selective reproduction does not commodify children more than natural reproduction overlooks some crucial differences between these two types of reproduction.

First of all, it is not clear why commodification requires using children solely as means to parental satisfaction. Wilkinson argues that commodification involves instrumentalisation, i.e. “treating embryos or children as mere means” (2010, 133), and claims that critics need to prove that any reproductive technique “involves not just treating children as means, but treating them only as means” (135). However, there are reasons to think that reproductive practices can involve aspects of commodification even if parents do not regard their children solely as means. For example, a mother desiring a
child may select for a daughter because she believes that she will have a better relationship with a female child. This scenario involves instrumentalisation because the future child is primarily valued for her presumed role in the family. Nevertheless, the child might not be valued for solely for these reasons given that the desire to procreate preceded the desire for that child to be a daughter.\(^\text{20}\)

Secondly, Wilkinson’s argument that there is no reason to think that children conceived through ARTs are commodified more and in a worse way than those born naturally seems unsound. There are significant differences between natural and assisted reproduction that are overlooked by Wilkinson. Here I discuss differences which are relevant to the debate about commodification, as I provide a more detailed discussion about differences between assisted and natural reproduction below in the section on the slippage from natural reproduction to ARTs.

First of all, natural reproduction does not involve reliable methods of selective reproduction. Second, the process of selective reproduction using ARTs, and gender selection in particular, involves investing significant amounts of financial\(^\text{21}\) and emotional resources, and undergoing often time-consuming and invasive procedures such as IVF.\(^\text{22}\) In consequence, the future child can be regarded as a desired product conceived through ARTs. To the extent that parents have strong preferences over the offspring’s traits and undertake selective reproduction to ensure those traits, Leach Scully et al. (2006) claim that this can suggest the child is an object whose traits can be selected according to one’s desires. They explain that while determining “the features of what one gets” (754) is considered permissible when shopping for a car, this level of commodification can be seen

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\(^{20}\) I discuss more examples of instrumentalisation in GSFNMR in Chapter 8 when I discuss results of my empirical study.

\(^{21}\) The use of selective abortion for gender selection does not require similarly high financial investment but can be demanding in other aspects, such as emotionally or physically.

\(^{22}\) I discuss the investments procreators make in order to obtain gender selection, and the ethical implications of these in more detail in chapter 6, based on interviews with parents who have selected or want to select their offspring’s gender. As my empirical study shows, procreators and women in particular, make significant investments to have children of a desired gender.
as problematic when a person is treated like an object, as unlike cars, children should be accepted as unique subjects.\textsuperscript{23}

Besides the investment factors, children can be commodified by being perceived as subjects to fulfil certain parental expectations. Rothschild (2005) and Mudde (2010) argue that selective reproduction in which parents project their preferences on children involves such forms of commodification. While parents project their expectations on children born naturally, the case of children whose traits have been selected through ARTs is different because they are prenatally selected to match those expectations (Mudde 2010; Habermas, 2003).

Therefore, Wilkinson’s categorical rejection of commodification seems unjustified. There are reasons to think that selective reproduction using ARTs can involve aspects of commodification. This is especially relevant because commodification entailing specific expectations can have a harmful impact on children, especially where there is pressure on children to conform to such expectations.\textsuperscript{24}

The fourth form of harm identified in libertarian accounts is that caused to children from being conceived with disabilities. This form of harm is discussed in detail in accounts of reproductive autonomy. As noted previously, libertarians argue that when possible, it is better to have children without disabilities than with them. If individuals have access to ARTs and means of prenatal genetic diagnosis, and if they know that they might conceive a child with disability, libertarians claim that potential parents might want to prevent that form of conception to eschew avoidable suffering (Harris 1992; Wilkinson 2010).

The main justification for selection against disability given by these authors is that absence of disability is good for children’s wellbeing. Wilkinson and Garrard argue 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” (2013a, 25). Therefore, parents have good reasons to avoid having children with disabilities that would undermine their quality of life. Harris

\textsuperscript{23} Similar argument about objectification of children in ARTs is made by Laura Shanner (cited in Ryan 1998). I talk about commodification more in the following chapter when I focus on libertarian justifications for GSFNMR, particularly the argument from children’s wellbeing.

\textsuperscript{24} I discuss this issue in detail in the next chapter on libertarian justification for GSFNMR, when I consider the argument that gender selection is good for children’s wellbeing.
makes the same point when he argues that children’s lives should be spared avoidable suffering (Harris 1992). His account of reproductive autonomy promotes responsible reproduction entailing parental consideration of children’s wellbeing as a guiding value.

This view is most strongly promoted by Savulescu (2001). On Savulescu’s account of procreative beneficence, parents using IVF are advised to undertake PGD, and to choose the embryo with traits most likely to lead to the best life compared to other embryos. Alternatively, in situations of dispute the couple should implant the embryo which will have life of comparable quality with others (Savulescu 2001). Of the libertarian authors discussed, Savulescu provides the most directive account, as he claims that parents have a moral obligation to choose children likely to have the best possible life. Savulescu and Kahane (2009) go as far as to argue that procreators should be legally banned from selecting for children with lives not worth living.25

Clearly, libertarians promote the view that having children without disabilities is better than having children with disabilities. That is further obvious from claims about the wrongness of creating children with disabilities. Thus libertarian theory contains bias against disability which is used to build constraints on individuals’ reproductive autonomy. In contrast with the promotion of non-interference with reproductive autonomy, libertarians themselves are imposing the value of health as they normalize the quest for an offspring without disabilities.

Libertarian discourse also implies that having a child with disability causes harm to parents. In assuming that parents are harmed by the birth of a child with disability, Robertson advocates for the right to selective reproduction. He understands this right as a legitimate extension of the right to reproduction. He claims that selection of an offspring’s characteristics can be “viewed as an aspect of the right to procreate” (Robertson 1996, 25

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25 At the same time, Savulescu (2002) claims that it is sometimes acceptable to create a child with a disability, such as a deaf child who would belong to a deaf community. Robertson (1996), on the other hand, claims that deliberate creation of children with disabilities does not serve the procreative interest which is reproduction: “The fabricator’s procreative liberty would not include the right to create offspring who have fewer capacities than they could otherwise have had [...] even if lesser fabrication were in some sense deemed “reproductive” or “procreative,” it still does not follow that such actions would fall within the core concept of procreative liberty” (Robertson 1996, 170-171).
He further claims that: “genetic screening and selective abortion, as well as the right to select a mate or a source of donated eggs, sperm, or embryos should be protected as part of procreative liberty” (Robertson 1996, 33-34). Robertson calls this type of intervention “quality control” of the offspring. He understands such acts in the context of parental freedoms and independence from the unpredictable contingencies of nature. In so doing, he assumes that the individual is in control of his or her reproductive capacity and can claim access to certain ARTs “to make sure that the foetus meets predetermined standards of acceptability” (Robertson 1996, 12).

Robertson claims that if denied protection against the risk of having children with disabilities, many potential procreators would not reproduce at all (Robertson 1996, 33). Approached from a perspective advocating the right to procreate, this is not acceptable for Robertson. He argues that individuals have a right to make use of techniques of prenatal genetic diagnoses and selection of embryos to ensure that the offspring will be born without disabling traits. ²⁶

As discussed, the libertarian conception of harm is narrow. In consequence, many forms of harm are not mentioned. One such form of harm is the harm from a loss of an open future. This occurs when children’s future options are foreclosed before their birth or in their childhood (Feinberg 1994). Feinberg (1994) argues that children have a right to an open future. In his understanding, the right to an open future belongs to a specific set of rights called ‘rights in trust’, i.e. rights that children cannot exercise until they reach maturity. He claims that parents should not act so as to permanently foreclose their children’s future options, but should leave their options as open as possible to enable them to exercise their autonomy in adulthood. When procreators determine their future children’s traits, they foreclose some options for their children as they carry out an irreversible genetic intervention. Therefore, determination of children’s traits can be understood as a form of harm.

Other theorists claim that genetic determination impedes children’s capacity for becoming fully free moral beings (Mudde 2010; Sandel 2007). Sandel argues that this

²⁶I will discuss the problematic aspects of libertarian understandings of disability in chapter 4 where I provide a detailed inquiry into the debates about harm to offspring from being born with a disability, and harm to parents from having a child with a disability.
capacity “depends on having an origin beyond human manipulation or control” (2007, 94). As selective reproduction involves determination of future children’s genetic makeup, it is a form of control which deprives the child of a morally significant type of freedom. This is because, as Habermas argues, “we experience our own freedom with reference to something which, by its very nature, is not at our disposal” (Habermas 2003, 58) and that gives our life an ethical shape. On this account, as determination of future children’s traits violates an otherwise ambiguous origin that is crucial for a child becoming a free moral agent, it is a form of harm.

Both Sandel’s and Habermas’ claims about the importance of coming to life without having one’s traits preselected are taken by some authors to be built on questionable assumptions about fixed human nature (Fenton 2006). Critics claim that such a presumption is misleading for at least three reasons. First, human nature cannot be perceived as fixed, as it is unavoidably modified by the environment— including technology (Brown 2009). According to this critique, prenatal selection is just one of many legitimate forms of modification. Second, critics claim that technology is an inescapable part of human development and contributes to evolution (Fenton 2006; Agar 1999 2004). Given that what it means to be human changes over time and is shaped by current technologies in all sorts of ways, there is no predetermined human nature, prior to and separate from technological influences, that can be preserved unchanged by eschewing prenatal selection. Third, humans should aspire to improve their nature, particularly through genetic enhancement or embryonic selection, as some believe that it is desirable to strive for most perfection possible (Brown 2009).

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27 Here it is important to note that he understands manipulation and control as selecting an offspring’s genetic makeup, not as undergoing assisted reproduction. In this sense, Sandel makes a distinction between an attempt to have a child and an attempt to have a particular type of child.

28 There are other forms of harm which can be associated with the use of ARTs. I will specifically discuss harms from GSFNMR in chapters 3 and 6.

29 For example, Agar argues that both genes and environment exert effects on human traits, through interactive and parallel processes (1999). He argues that because we allow modifying people through environmental interventions, we should also allow modification through genetic manipulation.

30 Brown states: “[..] unlike Sandel who opposes efforts to intervene in nature to improve the lot of human life, I will suggest that we can and should seek to improve our lives and those of our descendants” (2009, 129). In particular, she argues for improvement “beyond the amelioration of disease and disability” (ibid) and advocates for genetic enhancement in sports.
However, these claims are based on a presumption that the new technologies have a positive impact on individuals’ lives (Prusak 2005). They are seen as forms of enhancement, improving and broadening human capacities. This perspective is problematic as it overlooks harm to children whose traits are selected by parents with strong preferences. These children can be subjected to weighty parental expectations, thereby foreclosing the opportunities to develop their identities as they wish. Therefore, prenatal selection may actually limit these children’s opportunities. Furthermore, the objection that critics of selective reproduction want to preserve nature is not accurate. These theorists do not argue for a strictly natural reproduction (that would rule out infertility treatment which they support). Rather, they argue against selective reproduction on the grounds of harm to children and their future autonomy.

I have argued that the libertarian understanding of harm is overly narrow. Libertarians recognise merely four forms of harm: from the use of ARTs; from parental misconduct; from commodification of children; and disability-related harm caused either to children from being brought into the world with a disability or to parents from having a child with a disability. The problem with this narrow conception of harm is twofold: first, many forms of harm are disregarded on libertarian accounts, and second, the severity of those that are considered is often downplayed. This is the case with harms from the use of ARTs, commodification, loss of open future, harm from selection against disability, and different forms of harm stemming from unequal distribution of reproductive services. I will discuss the issues of social justice below, but first I will enquire into two types of invalid slippages contained within libertarian accounts, which contribute to the generation of some of the problems related to issues of social justice: that from negative liberty to positive claims and from natural reproduction to ARTs.

1.5 Slippage from Negative Liberty to Positive Claims

Libertarians understand reproductive autonomy in terms of negative and positive rights. Negative rights are defined as those “which merely require other persons' non-action or forbearance”, and positive rights as those which demand other persons' positive

31 As I argue in later chapters, gender selection limits children’s possibilities for establishing autonomous and diverse gender and sexual identities and behaviour (see Chapters 2 and 8).
actions (Bunnin and Yu 2004). As positive rights are characterized by a demand, they are understood as claim rights.

On libertarian accounts, individuals should have the right to make reproductive choices without restrictions. Robertson argues: “As a matter of constitutional law, procreative liberty is a negative right against state interference with choices to procreate or to avoid procreation” (Robertson 1996, 23). This guarantee of non-interference from the state is a central imperative postulated by Robertson’s conceptions of procreative liberty, and it is shared by other libertarian theorists (Harris 1992; Savulescu 2001; Wilkinson 2010).

However, the libertarian understanding of reproductive autonomy as a freedom to reproduce, i.e. a negative right, is problematic because it only guarantees the successful exercise of reproductive autonomy to naturally fertile couples who can reproduce without assistance. Nevertheless, libertarians argue that all individuals should have the right to procreate, including infertile individuals who can only exercise the right with the services of assisted reproduction. Therefore, the libertarian argument that infertile individuals should have the right to procreate assumes a dubious understanding of reproductive autonomy; namely, one which conflates a negative right to non-interference with a positive right to assistance.

The claim that infertile individuals have a right to procreate is justified by the proclaimed importance of having biological children, and by reference to the central meaning of procreation in life (Robertson 1996, 24). Robertson argues that loss of the opportunity to reproduce, through infertility or restrictive governmental policies, is a fundamental failure to support the individual’s right to reproduce. Similarly, Harris (1992) argues that procreators who desire to procreate with their own genetic offspring should have the right to seek assistance. However, none of these authors address issues related to the provision of assisted reproduction services.

32 Robertson argues: “The moral right of the coitally infertile to reproduce is based on the same desire for offspring that the coitally fertile have. They too wish to replicate themselves, transmit genes, gestate, and rear children biologically related to them. Their infertility should no more disqualify them from reproductive experiences” (Robertson 1996, 32).
This creates an inconsistency in libertarian accounts of reproductive autonomy. To accomplish one’s reproductive goals as an infertile person, one needs access to assisted reproduction services. Nevertheless, libertarians argue that the right to procreate is a negative right and the state is not responsible for provision of reproductive services. Therefore, while everyone allegedly has a right to reproduce, a libertarian regulatory framework cannot ensure that all individuals will be able to exercise the right. Without provision of services by the state, only the naturally fertile will have the option to exercise the right, together with some infertile individuals who are well off enough to afford privately funded fertility treatment.

Furthermore, in libertarian theory, the right to reproduce also extends to the right to determine children’s characteristics. In that sense, the libertarian conception of reproductive autonomy encompasses not only the right to have a child, but also the right to have a certain type of child. This claimed right to select for a certain type of offspring is grounded in the view that this will ensure the act of reproduction will be meaningful and satisfying to parents.

Yet, the right to undertake selective reproduction requires more from the state than simply non-interference. It would require mechanisms to support using ARTs for such intervention, both for medical and non-medical reasons. Furthermore, understanding selective reproduction as a positive right would require provision of services and the right to access these. However, according to libertarians the state has no obligation to provide individuals with the means required to access certain services. Therefore, a contradiction exists within these accounts of reproductive autonomy, insofar as they simultaneously claim a right to selective reproduction, while also describing reproductive liberties as negative rights.

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33 Robertson clarifies: “As with avoiding reproduction, the right to reproduce is a negative right against public or private interference, not a positive right to the services or the resources needed to reproduce. It is an important freedom that is widely accepted as a basic human right” (Robertson 1996, 29).

34 Robertson argues: “If a person thought that she would realise those benefits only from a child with particular characteristics, then she should be free to select offspring to have those preferred traits. The right to procreate would thus imply the right to take actions to assure that the offspring has the very characteristics that make procreation desirable or meaningful for every one individual. On this theory, both negative and positive means of selection would be presumptively protected” (Robertson 1996, 153).

35 I will discuss the distinction between medical and non-medical reasons in chapter 4.
In summary, libertarians appear to consider reproductive autonomy as a negative right. However, the individual right to non-interference is formulated in a discourse in which the freedom to reproduce is constructed as a right to reproduce. Although reproductive autonomy extends beyond the context of negative rights, these authors argue that the state has no responsibility to provide access to services. This is an inherent contradiction as the fulfilment of the alleged rights claims would require provision of services. Therefore, claims that individuals have a right to reproduce and select their offspring’s traits are inconsistent with the libertarian construction of reproductive autonomy as a negative right. This is relevant for further discussion about gender selection, as no right to select one’s offspring’s gender can be unambiguously claimed based on libertarian conceptions of reproductive autonomy.

1.6 False Analogy between Natural Reproduction and ARTs

Natural reproduction occupies a significant position in libertarian theory as it is used as an example of a private act which should occur without interference from the state. Based on the sovereign character of natural reproduction, libertarians claim that the same non-interference should apply to assisted reproduction.

Libertarians argue that as there are no restrictive measures imposed on natural reproduction, the use of ARTs should be similarly unrestricted. They claim that procreators should be free to use ARTs as they choose. Moreover, the guarantee of non-interference should include protection for all kinds of assisted reproductive techniques, including selective reproduction. However, the claim that procreators should use ARTs without restriction, based on the fact that the sphere of natural reproduction is unrestricted, involves a problematic slippage grounded in several assumptions and misconceptions.

Firstly, libertarian proclamations that natural reproduction is unrestricted and individuals can freely exercise their reproductive autonomy are problematic. These positions are only plausible if we overlook the social context in which natural reproduction occurs. Human sexuality is not a private matter but exists within social hierarchies of
power and gender. As such, it is a sphere subjected to social constraints, such as social pressure on women to produce offspring, or more generally pressure on individuals to engage in heteronormative reproductive sexuality (Butler 2008; Bourdieu 2001). Hence, the construction of natural reproduction as a private process free of constraint is unsound. Consequently, one cannot build a quest for unrestricted assisted reproduction based on the sphere of natural reproduction, which exists in a context of complex social governance and hierarchies.

Secondly, the libertarian position overlooks relevant differences between natural and assisted reproduction. The major difference between the two modes of reproduction is that natural reproduction does not create the same range of choices as those offered by the technologies used in assisted reproduction. It is crucial to acknowledge that the use of certain technologies such as ultrasound or amniocentesis has become a routine part of pregnancies in many countries across the world (Schubert-Lehnhardt 2002; Rothschild 2005; Segal 2010; Karpin and Savell 2012), and that these technologies do increase the range of choices regarding pregnancy outcome. Yet, these technologies are largely used to monitor the pregnancy and development of the embryo, and sometimes to intervene after conception. Natural reproduction does not offer any reliable means of prenatal embryonic selection. In contrast, assisted reproduction involves technologies which enable pre-implantation selection of offspring traits.

This difference is often downplayed by libertarians who claim that methods of selective reproduction are regularly practiced in the context of natural reproduction. Wilkinson refers to natural methods of selective reproduction, such as timing and postponement of conception, as well as choice of a sexual partner for reproductive purposes. He uses an example of a woman who has sex with a specific man “in the hope that some of his advantageous traits will be passed on to her children” (2010, 3). Hence, Wilkinson seems to regard attempts at selective reproduction done naturally as similar to selective reproduction conducted with the use of ARTs.

However, there are significant differences in reliability and scope, as natural methods do not allow for reliable selection of offspring’s traits. The choice of partners can impact on some traits, such as ethnicity, but does not allow for antenatal selection for/against traits such as disability or gender. This is because natural reproduction does
not involve embryonic selection after prenatal genetic diagnosis, which is only available through IVF. In natural reproduction procreators can select against certain traits through selective abortion, but they cannot determine their offsprings’ traits through positive selection between different embryos. In that respect, natural reproduction does not allow for as wide a wide range of reproductive choices and does not involve the same reliability as ART-assisted selective reproduction. Therefore, it is mistaken to ground alleged respect for unrestricted reproductive autonomy concerning assisted reproduction on unrestricted reproductive autonomy in natural reproduction.

It is important to note that the fact that natural reproduction does not result in prenatally determined ideal children does not mean that parents conceiving naturally do not have preferences concerning their children. Parents can have expectations about gender roles, or aspirations to enact certain parenting styles, but these stop short of embryonic selection and determination of their offspring’s characteristics prior to conception.

The libertarian claim that reproductive autonomy in assisted reproduction deserves the same protection and non-interference as reproductive autonomy in natural reproduction is mistaken. There are significant differences between these two modes of reproduction which make the analogy between natural and assisted reproduction unjustified. Firstly, the sphere of natural reproduction is regulated by social norms, hence it cannot be perceived as unrestricted. Secondly, assisted reproduction differs from natural reproduction insofar as it involves reliable means for antenatal selection. This is relevant for debates about gender selection, because the practice of prenatal gender selection cannot be justified based on claims about the lack of restrictions on gender selection in natural reproduction. Natural reproduction does not provide any reliable methods of embryonic selection. These differences between assisted and natural reproduction undermine the libertarian claim that these two modes of reproduction should be equally unrestricted.
1.7 Lack of Concern about Social Justice

In their defence of autonomy as a primary value in the sphere of reproduction, libertarians advocate for a legal framework based solely on non-interference by the state in access to, and use of, ARTs. This framework does not codify any claim rights or rights to treatment. In that respect, libertarians largely disregard issues of social justice, as their main focus is on relaxing regulatory constraints. In so doing, little attention is paid to practical access to services. This approach is typically libertarian, as the main concern is to advocate for a legal framework which will maximize the choices people can make, while ignoring the social context determining individuals’ choices and capacities for acting on them.

The fact that these authors express little concern about equality of access to ARTs creates a paradoxical situation. On the one hand, reproduction, including assisted reproduction, is presented as a basic right, while on the other hand, the emphasis on state non-interference cannot guarantee procreators the exercise of this right. The problem here then is that, owing to the fact that the state has no duty to provide ARTs or ensure equal access to reproductive techniques, some prospective procreators may not be able to access them and consequently exercise their reproductive autonomy.

Just as libertarians overlook the processes of social conditioning which impede individual capacities for making autonomous choices and exercising autonomy, they also overlook other social conditions such as economic circumstances or limited provision of services which further impact upon real opportunities for exercising reproductive autonomy. In this respect, questions as to how individuals can exercise their right to reproduction (especially if they cannot reproduce naturally) remain unresolved.

Some libertarians (Harris 1992; Robertson 1996) acknowledge the existence of socio economic factors that potentially constrain real access to reproductive services, but provide no suggestions about how the problem might be resolved. Robertson refers to social and economic circumstances such as health care or employment, but believes that

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36 This is crucial in the case of women as their procreative liberty is directly determined by their actual opportunity to access abortion and contraception. Without the guarantee of access, women have no real opportunity to make reproductive choices, as the effective choice to avoid having children is not available to them.
these are not to be structured by governmental policy; the state has no duty to provide such services. Significantly, for present purposes, Robertson understands the exercise of procreative liberty and issues of social justice as separate matters: “The exercise of procreative liberty may be severely constrained by social and economic circumstances [...] whether the state should alleviate conditions is a separate issue of social justice” (Robertson 1996, 23).

It is, however, not clear why questions of social justice should be seen in separation from policies on ARTs and the legal frameworks codifying them. Social justice and state policies are not two distinct areas to be considered in isolation, as the conditions that shape access to reproductive medicine are complex and the result of interactions between many socio-economic and political powers (Malin 2003; Segal 2010). Therefore, in order to protect the exercise of procreative liberties, issues of social justice need to be taken into account (Mackenzie 2010 2014). For example, a woman with an unwanted pregnancy is not free to exercise her procreative liberty if safe abortion services are not provided in her country, or if the cost of accessing abortion is beyond her means. Clearly, socio-economic and political issues effectively shape the scope of reproductive autonomy.

Nevertheless, libertarians consider inequalities in access to reproductive services as a fact. Robertson claims: “Most technologies are quite expensive, and are available only to those who can pay” (Robertson 1996, 14). He acknowledges that certain conditions can limit people’s access to ARTs, and mentions the possibility of exploitation of infertile couples due to low success rates of reproductive techniques which are provided at significant costs. However, he has no ambitions to advocate for change:

37 Robertson claims that: “Many assisted reproductive techniques have a low success rate and do not deliver the child that is expected. Huge profits can be made selling or providing reproductive services, and the field is marked by a tendency of professionals to exaggerate success rates and benefits to couples who are vulnerable because of their strong desire to reproduce” (Robertson 1996, 15). Similar points about the exploitation of IVF patients have been raised in popular science magazines and general media. Science Daily reported on the rising prices of IVF in the US, claiming that they were burdening families (Elsevier 2013). A sharp critique of the IVF industry was also provided by a British fertility expert Robert Winston. He told the Guardian that women desperate for having children were being exploited and that the HFEA was complicit as it failed to prevent commercialization of the service (Jha 2007). Similar points appeared in the Australian media. The Sydney Morning Herald claimed that IVF services are becoming increasingly “corporatized” because “private equity funds have moved in on many Australian clinics looking to profit from the booming
Discrimination by wealth, however, seems inevitable if reproductive technologies are to be available at all. While some persons would argue that access to reproductive technology should be a mandated benefit in any health insurance program, the high cost of universal health care for the uninsured makes it unlikely that most reproductive technologies will be covered. (Robertson 1996, 15)

Clearly, Robertson takes the existing inequalities as a given. His acknowledgement of the fact that reproductive care is expensive and cannot in principle be accessible to all is in contrast with his advocacy for individuals’ right to reproduce. Inevitably, without the possibility of access to treatment, reproductively challenged or infertile couples will have difficulties exercising their right to found a family.

Harris (1992) proposes a more systemic solution to the problem of access to ARTs, specifically regarding access to techniques for selecting future offspring’s traits and genetic enhancement. He argues that as many procreators as possible should be given the opportunity to modify their children’s genes for important benefits, so as to protect them against major diseases, because such interventions would be the “most powerful public health measure” (187). Harris realises that these services will not be available to all due to the costs. He therefore proposes a system based on a “first come first served waiting list” (195) principle or an annual lottery, in which all would have an equal chance of ‘winning’. On his account, justice requires equal allocation of resources, without discrimination on the basis of socio-economic status or any other group membership. His vision of a just distribution of resources is thus based on their random allocation.

Harris’ solution does not remedy existing inequalities, yet it does not increase them either. Harris takes inequality between individuals as a given. He accepts that not everybody can have equal access to scarce resources, “because it is unavoidable”; for business of infertility” (Medew and Baker 2013, n.-p.). Likewise, Australian Daily Life published an article by an IVF patient (Edwards 2013) who stated that one of the worst moments during the procedure was receiving the price list.

38 Harris (1992) imagines that in the future, it will be possible to introduce modified genes into the genome which would provide children with antidotes against major infections such as AIDS, hepatitis B or malaria (186).

39 This would require that people postpone reproduction until the resource is available.

40 I will leave aside the questionable implications of genetic enhancement and focus on the issues implied by Harris’ perception of just allocation of resources.
Harris, “natural injustice is just a brute fact about the world, one that we may regret, but one of which it is bootless to complain” (198). Thus, he sees no need to implement any measures which would increase equality in access to existing reproductive services. While Harris’ acceptance of “natural” injustice is questionable, one might want to acknowledge that he is trying to address social equity in a way that gives everyone an equal chance of access, and thereby avoids limiting access only to those who can pay.

However, the acceptance of injustice as “natural” and “unavoidable” is troubling, because libertarians overlook the fact that inequality in access to services of assisted reproduction is a result of man-made policies and socio-economic restraints. As this injustice is not natural but socially constructed, it can be subject to attempts at structural change in favour of a more equal access to ARTs. Nevertheless, libertarian authors do not regard social injustice as a problem requiring solutions. Some fail to address issues of social justice entirely. Savulescu (2001) and Wilkinson (2010), for example, merely focus on the need for state non-interference with procreators’ reproductive autonomy.

This disregard for issues concerning the provision of and access to services – which are crucial factors that enable real exercise of reproductive autonomy – is critical. This flaw in libertarian theory suggests the need to understand the importance of social justice for the exercise of autonomy. In order to talk meaningfully of enabling choices, any satisfactory account of autonomy should address issues pertaining to the provision of, and access to, reproductive services as an important aspect of guaranteeing the exercise of reproductive autonomy.

In addition, there is an interesting imbalance in the distribution of procreative liberty among individuals reproducing naturally and those reproducing with the use of ARTs. Individuals who have access to IVF have, in turn, a larger suite of reproductive choices. Specifically, this would be the case for infertile individuals in jurisdictions where

\[41\] However, my argument in favour of greater equality in access to services in assisted reproduction should not be understood as an argument in favour of the use of ARTs for genetic enhancement. Harris’ pledge for creation of a new breed opens many questions about the risk of harm stemming from genetic modification, and questions about issues of social justice on both individual and global levels. My argument in favour of equal access to ARTs should be understood as a pledge for equal access to services of assisted reproduction that do not pose a risk of harm.
infertility treatment is subsidized. Under such conditions, otherwise infertile individuals reproducing with ARTs have greater opportunities for access to technologies such as prenatal genetic diagnosis. This is in contrast with libertarian claims that individuals have a right to determine their offspring’s traits, as naturally fertile individuals will not have access to the services.

In conclusion, the libertarian disregard for issues of social justice is problematic. While social context crucially determines and shapes opportunities for exercising reproductive autonomy, the right to found a family and use technologies of selective reproduction cannot be guaranteed within a legal framework which disregards issues of access to reproductive services. The libertarian framework based on non-interference can only guarantee a formal entitlement to having children by removing governmental restrictions, while securing the practical exercise of reproductive autonomy requires guarantee of provision and access to reproductive services. As these issues remain unresolved in libertarian accounts, some procreators will not be able to access reproductive services and realise their reproductive autonomy.

1.8 Conclusion

In this chapter, I have investigated influential libertarian accounts of reproductive autonomy, summarised their main features, discussed their implications, and argued that the libertarian understanding of reproductive autonomy is problematic. I claimed that libertarian accounts of reproductive autonomy are characterised by: an individualistic conception of reproductive autonomy; an overly narrow conception of harm; invalid slippage from negative rights to positive claims; an unjustified analogy between natural and assisted reproduction; and lack of concern for social justice which affects the capacity to exercise reproductive choices. In particular, libertarian accounts advocate for unrestricted choice, while paying insufficient attention to issues of harm and social justice. This is critical, as the flaws of libertarian accounts of autonomy are built into their arguments in favour of gender selection for non-medical reasons.

In the following chapter, I focus specifically on libertarian justifications of GSFNMR. I will enquire into particular arguments justifying the practice, and provide my critique.
will show that libertarian arguments in favour of gender selection are significantly flawed and unsound.
2. Libertarian Justifications for GSFNMR

In this chapter, I focus on libertarian arguments advocating for the reproductive right to undertake gender selection for non-medical reasons, based on gender preference.\(^1\) I present four of the most recognized and common arguments used by libertarians to justify the practice of GSFNMR. First, the argument from natural gender selection suggests that, just as interference with natural selection is unacceptable, so too is interference in the selection of children’s traits through ARTs. The second argument, from reproductive autonomy, presents GSFNMR as a reproductive right. The third argument, from family balancing, relies upon the claim that there is no risk of harm in assisted reproductive practices. Finally, the argument from children’s wellbeing holds that gender selection is beneficent to children. Together these represent the various means by which libertarians aim to justify access to GSFNMR as a legitimate reproductive choice.

In response, I contend that these justifications are flawed and often inconsistent, and therefore fail to vindicate the practice of GSFNMR. I will show that the argument from natural gender selection is problematic, due to it being based on an erroneous analogy between natural and assisted reproduction. The arguments from reproductive autonomy, family balancing and children’s wellbeing are unsound because they are grounded in false assumptions about the lack of harm from gender selection in Western societies. I will argue that this libertarian assumption is particularly unconvincing because it is based on a rather narrow understanding of sexism as gender supremacy, and hence disregards the risk of harm from gender stereotyping. In conclusion, I will argue that the libertarian arguments fail to provide a sound justification for the ethical acceptability of GSFNMR.

\(^1\) As I explained in the introduction and discuss further in Chapter 6, parents who want to have either a son or a daughter select for chromosomal sex based on gender grounds. Respectively, they want a son or a daughter because they expect them to perform certain masculine or feminine roles associated with sons or daughters.
2.1 The Argument from Natural Gender Selection

In advocating for reproductive liberty, libertarians acknowledge natural reproduction as a sphere in which respect for individuals’ reproductive choices entails a right to non-interference with respect to the choices in question. They note that in many societies, reproductive autonomy within natural reproduction is considered crucial and is both recognized and protected as a basic human right (Robertson 1996 2001; Savulescu 1999). Based on this observation, they claim that the same rights to protection and non-interference should hold in cases of assisted reproduction. Hence, on libertarian accounts of reproductive autonomy, the freedom to perform assisted gender selection is inferred from the freedom to perform natural methods of gender selection. However, the inference from natural to assisted gender selection is not sound because natural reproduction does not involve techniques of reliable gender selection. The argument from natural selection does not serve as a convincing justification for GSFNMR.

Libertarians claim that it is inconsistent for the state to attempt to regulate assisted gender selection on the basis that natural methods are not subject to state regulation. Savulescu claims: “Paradoxically, it is legal to attempt preconception sex selection by "natural" means, even if these employ technology developed specifically for that purpose” (Savulescu 1999, n.p.). Savulescu does not specify which methods he means, but other authors such as Sureau give examples of attempts “based on diet or on the circumstances of intercourse, timing, position, douches, etc” (Sureau 1999).² Both Savulescu and Sureau agree that natural and assisted methods of gender selection are morally equivalent.

However, this argument is flawed, as there are no reliable methods of natural preconception or prenatal gender selection. Unlike assisted reproduction, natural reproduction does not involve accurate methods of determining the gender of an embryo. On the contrary, procreators are left to nature and its vagaries, and are not able to take

² The website In-Gender.com, where parents share their experiences and discuss different methods of gender selection, offers a list of natural methods of gender selection. These include the timing methods of conception, preconception gender diet, food supplements and astrological methods (see: http://www.in-gender.com/Gender-Selection/natural.aspx).
direct control of their offsprings’ traits including gender. Therefore, the analogy between natural and assisted reproduction is false.

Further, it is inconsistent for libertarians to appeal to nature when they advocate for the availability of assisted gender selection. This inconsistency is illustrated by claims made by libertarian theorists who place respect for nature and respect for reproductive choices in opposition. On Sureau’s account, the exercise of reproductive autonomy involves a choice “between opposing points of view, of respect for nature on one side and respect for individual freedom on the other, i.e. personal choice” (1999, 868). In his view, respect for nature in reproduction involves what he calls a “genetic lottery” (ibid), while gender selection is an attempt to control the unpredictable results of natural reproduction by the active use of technologies. Thus the inference that freedom to undertake assisted gender selection follows from natural reproduction is unjustified given the libertarian view that nature is something to be controlled.

The appeal to natural methods of gender selection is also unwarranted because, insofar as the natural methods do not work, they cannot be used as a precedent. This is indirectly illustrated by Sureau, who notes that if assisted methods of gender selection “are the subject of more violent criticism, one cannot avoid feeling that such criticism is starting only now that an efficient technique has become available” (Sureau 1999, 868). In the context of advocating for assisted gender selection, Sureau implicitly acknowledges that gender selection with natural methods is inefficient. This acknowledgement undermines the claim that assisted gender selection should be available based upon an appeal to natural methods.

Sureau recognises (ibid) that the moral questions raised by GSFNMR should not be resolved on grounds of efficiency, but by reference to moral principles; in particular, the principle of respect for reproductive autonomy. However, there are other morally

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3 The claims made by Sureau serve to illustrate that libertarian theory involves a tension in the way it approaches nature. On one hand, the right to reproductive autonomy within the sphere of assisted reproduction is inferred from the proclaimed guaranteed sovereignty within natural reproduction, yet at the same time, natural reproduction is approached with caution as a sphere characterized by contingency which needs to be directed by techniques of what Robertson calls ‘quality control’ (Robertson 1996). The term quality control is used by Robertson to refer to methods of selecting an offspring’s traits which ensure that children who are born reach certain standards of health and possess traits which were selected for based on parental preferences.
relevant considerations in addition to autonomy. A procedure can be morally problematic if it poses a risk of harm to those involved. In that respect, even if there existed effective methods of natural gender selection, they might nonetheless be ethically impermissible due to harm-based considerations. In particular, harm to children, from being subject to parental expectations to adjust to stereotypical gender roles, relates to both natural and assisted methods of gender selection. This point is even more important, as harm is the only principle that justifies regulation of reproductive autonomy according to libertarian theory. I will discuss these issues in more detail in my critique of the argument from reproductive autonomy.

In summary, the libertarian argument from natural gender selection relies on an illegitimate analogy between natural and assisted reproduction. This analogy which libertarians use to justify the conduct of gender selection is problematic, as natural reproduction involves no reliable means of prenatal gender selection. Thus, the libertarian advocacy for the freedom to use ARTs for GFMNR cannot be grounded in the individual’s freedom to use natural methods of gender selection. Furthermore, even if there were efficient methods of natural gender selection, these might be considered as ethically problematic as assisted methods.

2.2 The Argument from Reproductive Autonomy

Libertarians often claim that parents have strong preferences regarding their children’s gender, and that the gender of a child substantially alters parental experiences of raising children, including the degree of joy and satisfaction (Harris 1992; Savulescu 1999; Savulescu and Dahl 2000; Robertson 2001). It is on this ground that advocates of liberal accounts of reproductive autonomy build their support for GSFNM, focusing on the diverse but widely shared desire among parents for offspring of a specific gender. Insofar as libertarians believe that human reproduction is a sphere which should be free from state regulation, they tend to claim that gender selection for non-medical reasons is one of many legitimate reproductive choices that can be made by individuals. As such,
procreators are entitled to make such choices and should indeed be free to use reproductive technologies to enact them (Harris 1992; Savulescu 1999; Robertson 2001). Here I critically appraise libertarian justifications for GSFNMR that are based on arguments from reproductive autonomy. I also critique libertarian arguments which appeal to women’s rights, which endeavour to justify GSFNMR on the grounds of respect for women’s reproductive autonomy. My overarching criticism is that the argument from reproductive autonomy is problematic, as it largely disregards the harm caused by gender selection.

Libertarians take reproductive autonomy to be a basic human right, and interpret this right as the freedom to reproduce based on personal preference. This includes access to the means of determining an offspring’s traits such as gender (Harris 1992; Robertson 1996; Savulescu 1999). On this view, the experience of parenting and the bond developed between the procreator and child is strongly determined by gender. Women and men are portrayed as essentially different, to the extent that gender differences can significantly affect the relationship between parents and children. To support this claim, Robertson, for example, quotes from an article by Belkin published in the New York Times:

Numerous scenarios are likely here, from the father who very much wants a son because of a desire to provide his child with what he lacked growing up, to the woman who wants a girl because of the special closeness that she thinks she will have with a daughter. (Belkin cited in Robertson 2001, 3)

For some, this is the strongest argument in favour of access to gender selection: it helps procreators realise their parental preferences and hence, makes parental experience more meaningful. Moreover, libertarians claim that the desire to have gender-specified children has always been shared by parents: “The urge to select children’s sex is not new. The Babylonian Talmud, a Jewish text completed towards the end of the fifth century of the Christian era, advises couples on means to favour the birth of either a male or a female child” (Dickens 2002, 335). This is taken as evidence that gender has always been considered a crucial trait in offspring and, moreover, procreators have always made

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Interestingly, these authors argue that GSFNMR is ethically permissible in the West precisely because gender equality exists in the region. However, they build the legitimacy of the desire for a gender specified child on the grounds of its roots in antiquity, with reference to ancient patriarchal societies. This is rather inconsistent.
attempts at determining the gender of their children. Following this line of reasoning, there is no reason to limit reproductive autonomy once the technology finally reaches a point where reliable methods of gender selection are available (Savulescu 1999).

The problem with this view about parental freedom to access GSFNMR is that libertarians present a limited account of reproductive autonomy, in which autonomy is equated with mere freedom of choice. They claim that parents should be free to select the gender of their offspring because gender selection serves their preferences; that is, prospective parents should be free to make choices which help them realise their preferences.

Nevertheless, this argument is questionable as it seems to equate having preferences with the right to act on them. A right to access certain services cannot be inferred from the existence of preferences. The claim that procreators have a right to act on their parental preferences is troubling as rights are meant to protect important values. Nevertheless, it is not clear that a preference, however strongly held, can serve as the basis for a rights claim given that it may arise from a variety of sources, some of them trivial in nature. More justification is required in order to substantiate the claim that preferences about a prospective child’s gender amount to a right.

In equating reproductive autonomy with freedom of choice, libertarian discourse frames GSFNMR as a context-free individual enterprise. Because these authors overlook the ethical and social aspects of gender selection, many problematic issues related to the practice are avoided or de-contextualized. Darnovsky argues that the reduction of the debate to questions of parental choice is problematic. She calls for a more comprehensive approach which takes into account the social context and impact of gender selection:

If wishes, choices, and preferences are to be appropriately balanced with social justice and the common good, they cannot be unthinkingly transformed into protected liberties, much less codified rights. Isolated from social consequences, both wishes and liberties are naive at best. (Darnovsky 2003, n.p.)
According to Darnovsky, if one is to consider the ethical and social ramifications of gender selection, reproductive autonomy should not be understood simply as a matter of individual choice and preference. A more comprehensive view of reproductive autonomy would necessarily connect gender selection with the social context of the practice. This is an important line of criticism as one of the outcomes of global GSFNMR, as discussed in the Introduction, is skewed gender ratios.

Most libertarians agree that if there is a risk of harm posed by GSFNMR, it is primarily related to the danger of distortion in gender ratios caused by the use of gender selection to ensure male offspring. This is important, as on libertarian accounts, the risk of severe harm is the only justifiable reason for regulating ARTs. Therefore, if there are harms from skewed gender ratios, this could be a justifiable reason to regulate GSFNMR.

However, these authors do not recognize the potential for harm in gender bias and discrimination equally across the globe, but rather construct it along regional or ethnic lines. This distinction works to externalize the risk of harm to “non-Western” countries and further justify the call for state non-interference with GSFNMR in Western countries. Savulescu, for example, claims that:

Sex selection is more likely to harm women in Asia. There, sex selection is already common. The male-to-female ratio has risen to close to 1.2 in China and some urban parts of India. This situation has worsened since the advent of prenatal sex determination. It was estimated in 1990 that, globally, there are 100 million women "missing" (died prematurely) as a result of various forms of discrimination. It has been claimed that sex selection would "foster the already existing bias against the female child." (Savulescu 1999)

In this case, Savulescu explicitly points to the problem of missing women in China and India to localize the risk of harm to society, and more specifically to women, from GSFNMR to a particular regional context. The claim is that Asian communities and individuals of Asian descent undertake gender selection as they are motivated by a (sexist) preference for male offspring. The distinction made between Asia and Western parts of the world implies the existence of essentially different gender cultures, some driven by sexism and others more gender egalitarian, which are defined in terms of
geography or in some cases, ethnicity. As Robertson claims: “The danger of sexism is probably highest in those ethnic communities that place a high premium on male offspring” (Robertson 2001, 7).

This distinction between “the West and the rest”\(^5\) works to create a distance between those who are claimed to participate in sexist or harmful uses of gender selection and those who don’t, the latter being described as Westerners or Europeans. According to Pennings, “non-Western couples seem only prepared to invest time, energy and money in sex selection if it gives them a son” (Pennings 1996, 2342). However, according to him this only proves the prevalence of discrimination against women in some parts of the world.\(^6\) Hence, the existence of an inevitable and deeply rooted sexism is explicitly located in the non-Western World and framed as something rather foreign to the Western context.

The assumption made here is that gender equality exists in the West but tends to be violated in other cultures where women are oppressed and marginalized to such an extent that their bare existence is undermined and endangered. Based on this understanding, libertarians conclude that GSFNMR should be legal in the West for one of two reasons: first, to the extent that Western parents (of non-Asian ethnicity) do not value one gender over another, sex selection is not driven by sexist motivations (Robertson 2001; Savulescu 1999); or, second, that despite risks of gender stereotyping, the cultural background of Western countries is not sexist enough to impose a ban on gender selection (Wilkinson 2010). Libertarians claim that the practice of GSFNMR in the

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\(^5\) The term “West and the rest” is used by Allen and Thomas (2000) to refer to the stereotypical tendency to view Western countries as developed while the rest of the world is seen as developing and significantly less civilized. In this light, discourses using a distinction between the West and the rest are orientalist discourses involving the othering of “Them” from “Us”. This distinction is playing a strategic role in legitimising gender selection in the West based on its proclaimed civilised character, shifting attention from “Us” to “Them.”

\(^6\) However, while libertarians claim that women’s rights are violated in non-Western regions, they imply that the social impact of GSFNMR may not be strictly negative. On the contrary, some libertarians claim that skewed gender ratios can indeed have positive implications for the society. “These could include: an increase in the influence and responsibilities of the gender which had become rare; a slowdown in the rate of growth of the world population, and reinforcement of the interbreeding of different populations due to the preferences indicated above, with beneficial consequences from both social and medical points of view” (Sureau 1999, 868). This view is supported by Savulescu, who claims that skewed gender ratios may not be a negative thing, and that “even in Asia, it is not clear that sex selection should be banned” (Savulescu 1999, n.p.).
West will not lead to negative outcomes such as skewed gender ratios, therefore there is no need to ban the practice in the West.

There are several problems with this line of reasoning. First of all, it constructs “the West” and “Asia” as two different places with significantly different values. Secondly, it assumes that gender selection against women is not practiced outside of Asia. And finally, libertarians fail to provide evidence that Western countries are gender egalitarian.

Firstly, there is a problem constructing the world as a place where a clear divide exists concerning attitudes to gender between the West and Asia. On this view, the West represents civilization and Western societies all value gender equality. In contrast, Asia is portrayed as an underdeveloped region where women’s rights are violated. Not only does such discourse stereotype both regions, it also fails to represent the diversity within each one of them, as both the West and Asia are vague generalising terms for large regions consisting of many different societies, communities and cultures. In that sense, the stereotypical portrayals of the West as civilized and morally superior, and Asia as backwards and lacking respect for human rights, are examples of essentialised constructions of “cultural difference” (Yuval-Davis 1997, 40) attributed to heterogeneous regions.

Secondly, the libertarian approach fails to acknowledge that gender selection can have a harmful impact outside of Asia. There is growing evidence to challenge claims that selectively associate negative aspects of gender selection, such as the problem of missing women, with Asia. As discussed in the Introduction, gender-biased selection leading to the elimination of women\(^7\) is practiced in European countries. Recently the Council of Europe (CoE 2011b) drafted a resolution on gender selection, claiming that it is used to ensure male offspring, can be found in several Council of Europe member states, including Albania, Armenia and Azerbaijan.\(^8\) Other sources provide further evidence of skewed

\(^7\) I use “elimination of women” as an abbreviation referring to the elimination of female foetuses and girl children by various practices such as abortion, sperm sorting, embryo selection, infanticide and neglect.

\(^8\) The CoE argues: “There is strong evidence that prenatal sex selection is not limited to Asia. In recent years, a departure from the natural sex ratio at birth has been observed in a number of Council of Europe member states and has reached worrying proportions in Albania, Armenia and Azerbaijan, where boys outnumber girls by 112 to 100 and in Georgia where the sex ratio at birth is 111 boys for 100 girls” (CoE 2011b, n.p.). The Council of Europe further argues that discrimination against women is widespread in the world and announces that: “The Parliamentary Assembly condemns the practice of prenatal sex selection, as a
ratios in European countries (Hvistendahl 2011; Guilmoto 2012; Michael et al. 2013). Furthermore, different sources show that gender-biased selection leading to elimination of women is practiced in Western countries such as the US, UK or Canada (Bhatia 2010; Dubuc and Coleman 2007; Puri et al. 2011; Guilmoto 2012). The use of gender-selective abortions to select for male offspring has also been reported in Australia (Devine 2013; Rogers 2013). It is therefore important to acknowledge that gender selection against women is being practiced in an international context, including Western countries.

The latest UNFPA report *Sex Imbalances at Birth* claims that when it occurs in Western countries, gender selection for male offspring is predominantly practiced by immigrants from Asian societies with strong gender preferences (Guilmoto 2012). This seems to support the view that selection against women in the West is practiced due to Asian migration, thus reiterating a version of the “West against the rest” However, some theorists argue that a key factor enabling this practice is the availability of gender selection in Western countries like the US, in comparison with prohibitions in Asian countries such as India (Puri et al. 2011). Thus it might be the availability and permissive regulatory framework in some countries which is the main driver for Asian immigrants selecting for male offspring.

This snapshot of the international practice of gender selection suggests that in a global world, different regional contexts are inseparable on both the practical level of accessing selection, as well as the symbolical level of deeming a practice acceptable (Darnovsky 2003; Bhatia 2010; Puri et al. 2011). In this regard, it is important to acknowledge the existence of reproductive tourism, and the fact that procreators who have the financial resources travel abroad to access services not offered in their home countries. It is crucial to recognize that legalising methods of prenatal gender selection in one region necessarily affects other regions, as it creates opportunities for reproductive

phenomenon which finds its roots in a culture of gender inequality and reinforces a climate of violence against women, contrary to the values upheld by the Council of Europe” (ibid.).

9 This does not mean that gender selection against women is not practiced in India. Nevertheless, it is to emphasize that the Indian government took steps to tackle the practice based on its negative impact on the population (Hvistendahl 2011; Puri et al. 2011).
Clinics in countries such as the US explicitly market to a global audience. For example, The Fertility Institutes, a chain of clinics with branches in Los Angeles, New York and Mexico explains:

Unlike many programs offering sex selection only to very limited couples with known genetic disorders in the family we make sex selection available to all patients. Parents have come to us from nearly every nation on the planet (we have assisted patients from 147 different nations) seeking to balance their families or assure themselves that a pregnancy will result in ONLY the gender outcome they desire. (The Fertility Institutes 2014a, n.p.)

Implicitly, these clinics do not question procreators’ motivation for gender selection and are willing to provide them with the child of the gender they prefer. Based upon the preceding points, the libertarian claim that gender selection against women does not occur in the West fails to withstand scrutiny.11

Finally, the argument that GSFNMR is not harmful in the West is problematic, as it rests on the assumption that gender equality exists in the region. Libertarians fail to provide evidence that cultures in the West are gender egalitarian. A gender egalitarian society is one with no gender hierarchy, as well as one in which gender is not seen as the single trait determining whether or not a child is wanted. However, gender selection involves the belief that children of different genders are importantly different, and this belief then generates parents’ preference for a child of a particular gender. The fact that parents consider certain children more desirable than others, based on gender, signifies that gender is considered a trait which defines a person in Western societies. Such societies cannot, in light of this, be seen as gender egalitarian.

The practice of assuming that a certain set of traits or particular personality follows from one’s gender is a form of stereotyping. I will argue below that gender stereotyping is a form of sexism, much like the practice of assigning different value to individuals of

10 This is confirmed in my interviews with Australian women who undertake GSFNMR overseas (see Chapters 6, 7 and 8).
11 Some libertarians claim that the practice of selection against women in the West can only be seen as harmful when the practice leads to severely skewed gender ratios, and that to date, there is no evidence of a significant gender imbalance at birth in the Western countries. Nevertheless, Dubuc and Coleman (2007) provide evidence of an increased sex ratio at birth in favour of male offspring to Indian born women living in England and Wales.
different gender (gender hierarchy). I hold that societies where a child’s gender is taken to be of such significance as to warrant selection are societies with gender stereotypical views.

I have examined the claim that procreators should be free to use GSFNMR because selecting one’s child gender is a legitimate reproductive choice, reflecting reproductive autonomy. The problem with this argument is that libertarians use the fact that some parents have strong gender preferences to argue that they have a right to act on such preferences. Furthermore, I claimed that libertarian accounts attribute the harm associated with GSFNMR to non-Western regions, where it symptomatic of discrimination against women. I claimed that this argument is significantly flawed, on the basis that 1) there is no clear distinction between Asia and the West, 2) gender selection against women is practiced in the West, and 3) there is no evidence that Western societies are gender egalitarian. On the contrary, the importance attributed to gender selection shows that gender is considered a crucial trait.

Next, I examine a particular type of libertarian argument from reproductive autonomy: the argument from women’s rights. This argument emphasises freedom to practice GSFNMR on the grounds of respect for women’s reproductive autonomy.

2.2.1 The Argument from Women’s Reproductive Autonomy

In libertarian arguments from reproductive autonomy, there is often a shift in focus from procreators per se to women. The issue is recast as one of women’s rights, on the grounds that advocating for GSFNMR is in accordance with the quest to promote women’s reproductive liberties (Dickens 2002; Robertson 2001; McCarthy 2001). However, the argument is problematic for at least two reasons. First, the authors claim that the fact of women’s participation in gender selection implies that such participation is an autonomous choice. In making this case, however, no account is taken of the context of choice, including the contribution of societal pressures. Secondly, the libertarian position is inconsistent, as it construes Asian women as non-autonomous due to coercion, while
failing to see the relevance of this same issue for Western women. Thus, the libertarian argument from women’s reproductive autonomy fails to serve as a convincing justification for GSFNMR.

First of all, theorists argue that respect for women’s reproductive autonomy requires that women be given the freedom to make diverse reproductive choices, including the determination of their children’s gender. This implies that women need free and institutionally unrestricted choice over the use of ARTs, to guarantee respect for their reproductive autonomy. Dickens (2002), for example, claims that it is highly inconsistent to provide women with the right to abortion, but not the right to gender-selective abortion. Such a double standard, according to him, undermines women’s rights. On Dickens’ view, promoting women’s rights requires giving women access to any reproductive technologies and methods they want to make use of, irrespective of the reasons for their choices.

However, such conceptions of women’s reproductive autonomy are narrowly construed, and do not take account of societal pressures and constraints. Libertarian authors portray women’s autonomy as an abstract right to freedom, a negative liberty that women are entitled to, without reflecting on the social realities that determine, limit and affect their reproductive decisions. In general, gender and its power dynamics, like other categories of power such as race, ethnicity, class or sexuality, are not sufficiently addressed by libertarian theory (Malin 2003; Puri et al. 2011; Schubert-Lehnhardt 2002). This tendency to disregard the impact of the power of social and gender inequalities in the context of reproductive technologies is critical, as restraints on women’s autonomy for gender reasons further intersect with restraints based on other categories of power.

Access to ARTs, including GSFNMR, is taken to be a sign of societal respect for a woman’s right to make the reproductive choices that she pleases. However, this view is predominantly adopted when gender selection is undertaken by Western women, as they are considered autonomous in contrast to women from Asian societies. While Western women are presented as autonomous individuals freely exercising their reproductive choices, Asian women are portrayed as dependent victims trapped in patriarchal oppressive structures, who lack autonomous choices or the capacities required for acting
on them.\textsuperscript{12} These orientalist constructions of Asian or “Third World women” have been criticised by many postcolonial theorists, feminists in particular, who have highlighted the dynamics of intersecting sexism and racism (Spivak 1988 1990; Said 1995; Bhatia 2010).\textsuperscript{13}

It is worth noting that the tendency to frame gender selection in racially stereotyping and orientalist terms is also present in some strands of feminist scholarship. For example, feminist scholar Mary Ann Warren claims that women in non-Western contexts are usually coerced into practicing GSFNMR, which creates grounds for prohibition of the practice in non-Western regions. Warren then provides an example of a presumably uncoerced selection, in which a Western educated single woman avoids pregnancy with a male embryo as it could develop into “a potential rapist, potential batterer and potential Big Man” (Warren 1999, 140).\textsuperscript{14}

In this case, Warren clearly constructs a Western woman as an emancipated individual whose choices are autonomous and gender conscious, which is the very reason why her conduct of gender selection is defined as uncoerced. This allows her to make free decisions which are critical of the patriarchal social order, as evidenced by her rejection of dominant masculinity. In a similar vein to libertarian authors, Warren’s “Western woman” is defined in contradistinction to a non-Western woman. The latter is supposedly determined by her ties to men; insofar as her character is defined by a lack of autonomy

\textsuperscript{12} In this respect, Bhatia (2010) quotes Mohanty who claims that Western women get presented in scholarship "as educated, as modern, as having control over their own bodies and sexualities, and the freedom to make their own decisions" while the Third World woman is portrayed as having "an essentially truncated life based on her feminine gender (read: sexually constrained) and her being 'third world' (read: ignorant, poor, uneducated, tradition-bound, family-orientated, victimized)" (Bhatia 2010, 281).

\textsuperscript{13} Bhatia (building on the work of Chandra Mohanty) claims: "The construct, "Third World women", then, flexibly fits notions of "bad" sex-selection practices in faraway cultures, whether that Third World woman is viewed as an ignorant perpetrator or as oppressed victim of violence against women. Similar to (mis)understandings of other issues of violence against women in India represented across borders, sex selection has become strongly decontextualized in the U.S. popular imagination. Media, professional bioethics, and some academic discourses in the United States reinforce simplistic cultural explanations for what has gone wrong with sex selection in the East" (Bhatia 2010, 281).

\textsuperscript{14} This argument by Warren is rather surprising, as in her earlier book Gendercide: The Implications of Sex Selection (1985), she defined gendercide as a gender-neutral term, claiming that gender-selective killing is equally wrong, be the victims female or male.
and gender awareness, she is coerced and rooted in patriarchal dynamics of male supremacy.\textsuperscript{15}

This conception of women’s reproductive autonomy, held by both Warren and libertarians, problematically involves a double standard in the portrayal of Western and Asian women. This dual approach is unjustified, as it is based on orientalist stereotypes. Furthermore, it lacks verification as theorists provide no evidence that Western women’s reproductive choices are autonomous in the first place.\textsuperscript{16} Given these problems, the argument that GSFNMR can be grounded in respect for women’s autonomy is inconsistent and unsound.

As I have claimed, libertarians argue that regulation of GSFNMR fails to respect women’s reproductive autonomy. However, the libertarian argument from women’s autonomy is inconsistent. The very claim that the provision of access to gender selection is crucial for a woman’s exercise of reproductive autonomy is problematic, as it takes no account of social constraints, such as gender hierarchic social structures. Furthermore, the argument from women’s autonomy is inconsistent, as it construes Asian women as non-autonomous due to gender hierarchic social forces, while at the same time failing to acknowledge the same issues arise in the case of Western women. The libertarian argument from women's autonomy is, for these reasons, flawed and unconvincing.

2.3 The Argument from Family Balancing

The concept of gender selection for family balancing is based on a notion that a family is balanced when it includes children of both genders. Such families are presented as diverse and offering more enriching parental experiences and sibling relationships. Some theorists call these families “balanced” (Pennings 1996; Savulescu 2001) while others acknowledge that such a term could be pejorative, implying that families with children of one gender are unbalanced and thereby inferior. These theorists prefer the

\textsuperscript{15} From that perspective, Warren’s discourse of gender selection is in principle similar to libertarian discourse, reproducing the rhetoric of “othering”, in which the practice of gender selection is judged on different grounds, attributed to essential cultural difference positioned on the boundaries of “the West and the rest” (Allen and Thomas 2000).

\textsuperscript{16} I will come back to this issue when I discuss the results of my empirical study, which suggest that the seemingly free choices of Western women are shaped by societal gender hierarchic structures.
term “gender variety” (Robertson 2001; Wilkinson 2010) which, nevertheless, also implies that families without gender variety are missing something significant. Libertarians claim that gender selection for family balancing should be legal because, insofar as this form of selection is motivated by the goal of creating gender balance, it entails no harm from sexism. In response, I argue that this view relies upon a narrow understanding of sexism, equating it, in the context of GSFNMR, with the elimination of women. However, a broader understanding of sexism includes gender stereotyping. To the extent that gender selection for family balancing is based on the selection of children for preconceived binary gender roles, it reinforces sexism, and therefore causes harm.

Libertarians argue that gender balanced families are better, as they offer more rewarding experiences to both parents and siblings. Pennings argues that “there is something extra rewarding in experiencing parenthood with children of both sexes” (Pennings 1996, 2339) and this reward explains the quest for gender balancing to a certain extent:

On the positive side, the main advantage is the gain in control and greater satisfaction for the parents. The pleasure and happiness generated by the variety of having both boys and girls can be considerable. Being a parent of children of different sexes brings different and more diverse experiences. Moreover, the presence of siblings of the other sex might promote mutual understanding among the children. (Pennings 1996, 2342)

According to this line of reasoning, when pre-conception gender selection is used for family balancing, it is a strategy that helps procreators create the families they desire. The gender of offspring is taken to have a significant impact on both family dynamics and parental satisfaction.

The desire for a gender diverse family is taken to be widely shared in the Western context: “In Western societies, parents wish to have a well-balanced family in terms of sex. A family with an equal number of boys and girls is considered ideal” (Pennings 1996, 2339).

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17 Robertson clarifies in a note that he uses the term gender variety “to avoid the misconception that a family is “unbalanced” if it has many or only children of one gender” (Robertson 2001, 8, note 3).
18 The idea that having a sibling of the opposite gender improves understanding among children comes up in my interviews (see Chapters 7 and 8).
The use of different methods of gender selection is then presented as a strategy to micro-manage gender balance in Western families. As Robertson outlines, in the current Western context, families tend to be traditionally smaller, and access to gender selection might thus significantly determine parents’ willingness to have more children. Savulescu makes a similar claim: “In the US, 90% of couples wanting sex selection wished to balance sex within the family. Parents were in their mid thirties, had two or three children and only wanted one more” (Savulescu 1999, n.p.). In the West, parents with children of only one gender are said to be the main group of procreators demanding GSFNMR (Pennings 1996; Robertson 2001; Wilkinson and Garrard 2013b).

Building on the claim that procreators have strong preferences about the gender of their offspring, advocates of GSFNMR note that such desires are widely shared and hence should be acknowledged: “Moreover, the spread of the wish to have a balanced family gives some indication that the wish is more than a simple whim that can be dismissed without further consideration” (Pennings 1996, 2342). The claim that there is widespread demand for gender selection techniques is used to advocate for their provision (Savulescu 2001; Robertson 2001).

Other libertarians such, as Dickens, claim that the desire to undertake selection of one’s offspring’s gender is actually not widespread. Dickens presents this as a reason to permit GSFNMR, as he claims that the practice will have minimal negative impact. He refers to a Canadian study which shows that the demand for gender selection is actually “very low, and concerned only with family balancing” (Dickens 2002, 335). The evidence of low demand for gender selection, and the fact that the study also showed that Canadians have no preference for one gender over the other, leads Dickens to the conclusion that gender selection should be legal.

According to libertarians, women in particular desire gender balanced families, and should be able to access GSFNMR. Thus claims about women’s reproductive autonomy are also used in the context of gender selection for family balancing. Pennings notes that:

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19 Robertson argues: “A preference for gender variety in offspring would be strongest in families that have already had several children of one gender. They may want an additional child only if they can be sure that it will be of the gender opposite to their existing children. Couples who wish to have only two children might use PGS for the second child to ensure that they have one child of each gender. If social preferences for two-child families remain strong, some families may use PGS to choose the gender of the second child” (Robertson 2001, 3).
“most surveys reveal that women who already have children express a preference for a child of the gender they do not have” (Pennings 1996, 2339). In this respect, should a woman act on her preference, making a choice to have a balanced family is considered an exercise of her legitimate reproductive autonomy (Pennings 1996; Robertson 2001; Wilkinson and Garrard 2013bc).

Regarding the potential benefits and harms from gender selection for family balancing, libertarians believe that selection for family balancing does not pose a risk of severe harm, as it does not raise issues of gender bias and skewed sex ratios (Harris 1992; Robertson 1996 2001; Savulescu and Dahl 2000). For example, Savulescu claims:

In both the US and UK, just over half of couples choose a girl. Sex selection for family balancing would prevent, rather than contribute to, a disturbed sex ratio and harm to women. (Savulescu 1999, n.p.)

Clearly, Savulescu understands the potential harm of gender selection in terms of gender bias. As gender selection for family balancing helps to create families with children of both genders, Savulescu understands it as a strategy which effectively prevents imbalance in gender ratios. Furthermore, he stresses that procreators seeking family balancing in Western countries have a preference for daughters. In this respect, gender selection for family balancing is seen as the opposite of selection to ensure male offspring: it is a practice which aims at relative or absolute gender parity in the family, and which favours female offspring. Thus, Savulescu claims that gender selection poses no harm to

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20 It is important to note that having a preference over one’s child’s gender does not necessarily translate into a commitment to undertake GSFNMR.

21 Furthermore, Dickens claims that the access to GSFNMR avoids harm to women as reliable prenatal techniques spare them of the burden of multiple pregnancies or abortions of children of undesired gender. Therefore, he argues that gender selection is good for women’s health (Dickens 2002).

22 In a text which Savulescu co-authored with Dahl a year later (2000), he claims that parents show no preference for a specific sex. That is rather in contradiction with his earlier statement about preference for girls (Savulescu 1999). Savulescu and Dahl claim: “According to the available empirical evidence, individuals in Western societies do not have a preference for a particular sex. Most couples still wish to leave the sex of their children ‘up to fate’. And those few who would want some control over the gender of their children desire to have a ‘balanced family’” (Savulescu and Dahl 2000, 1879).
women in the West, and should be legalised.\textsuperscript{23} As gender selection for family balancing purposes is motivated by the desire to have children of both genders, concerns about harm and gender discrimination are considered unnecessary.

Robertson supports this conclusion and claims that gender selection motivated by gender variety cannot be regarded as sexist. He uses a definition of sexism from the Oxford English Dictionary: “the assumption that one sex is superior to the other and the resultant discrimination practised against members of the supposed inferior sex, especially by men against women” (1991 edition of OED quoted in Robertson 2001, 5). Robertson argues: “under this definition, if a practice is not motivated by judgments or evaluations that one gender is superior to the other, or does not lead to discrimination against one gender, it is not sexist” (ibid). He understands sexism in terms of gender supremacy, domination and prioritizing of men, claiming that the quest for gender variety is not sexist because children of both genders are desired. However, as I argue below, this understanding of sexism as supremacy is rather narrow.\textsuperscript{24}

While libertarians share the notion that gender selection for family balancing should be legal, the debate about sexism raises policy challenges. In particular, theorists ask how many children of one gender parents need to have in order to be eligible for family balancing gender selection. Most conclude that one child is enough. Some claim that gender selection for the first child is problematic because it can be motivated by a sexist pro-male bias and reinforce the ideal of a male first born (Robertson 2001; Dickens 2002). However, this preference is once again selectively associated with Asian procreators (Roberston 2001; Wilkinson and Garrard 2013bc).\textsuperscript{25} Most libertarians claim that gender selection after the first child causes no harm, therefore it should be available (Pennings 1996; Savulescu and Dahl 2000; Robertson 2001; Dickens 2002). Nevertheless, below I

\textsuperscript{23} Savulescu and Dahl claim that gender selection for family balancing is not driven by sexism, as parental “choice for a child of a particular sex depends entirely upon the sex of the children they already have” (Savulescu and Dahl 2000, 1880). In that case, selection is claimed to be situational and desired for reasons of gender balance.

\textsuperscript{24} Historically, sexism has been defined as “differential valuing of one sex, in this case men, over the other” (Renzetti and Curran 1995, 10), but in the text below and in chapter 5, I argue for a more complex concept of sexism (Butler 2008; Fine 2010; Mudde 2010).

\textsuperscript{25} Robertson argues that Asian procreators, including Asian migrants who are not yet assimilated in Western cultures, prefer male firstborns (Robertson, 2001). However, the selective association of harm from GSNMFR with non-Western procreators was criticised above.
challenge the claim that there is a significant ethical difference between gender selection based on strong gender preference and family balancing.

The problem with libertarian discussions about the harms of sexism is that they understand sexism solely as a form of gender hierarchy which leads to preferring one gender over another and selecting accordingly. However, the reproduction of male supremacy is not the only form of sexism (Butler 2008; Fine 2010; Mudde 2010). Another crucial form of sexism is gender stereotyping, which harms children by subjecting them to expectations regarding gender stereotypical roles.26

This is recognized by Wilkinson (2010), who acknowledges that even gender selection for gender variety can reproduce sexism, not only in terms of gender supremacy but also in the form of gender stereotyping. For him, the gender differences presented as factual are actually an outcome of “exaggerating biological differences and their effects on personal and social traits” (Wilkinson 2010, 224). As far as biological difference is concerned, the bare facts of sexual difference would mean that mothers choose girls to share their “experiences of childbirth and menstruation” and fathers choose boys in order to share the “experiences of beard growing, erectile function (or dysfunction), and prostate enlargement” (ibid.). But on the contrary, Wilkinson claims that the majority of parents are selecting for children based on traits related to the gender roles into which boys and girls are socialized, and these can be clearly motivated by sexist attitudes.

At the same time, Wilkinson claims that while gender selection for family variety is mostly driven by gender stereotyping, in the context of Western societies such as the UK, this is not a major concern (Wilkinson 2010; Wilkinson and Garrard 2013bc). He suggests that we might want to distinguish between substantially harmful and harmless kinds of sexist acts:

26 Berkowitz and Snyder reflect on this aspect in their understanding of sexism. They argue: “Sexism is a consequence of assumed sex appropriate social roles, social roles which are of human invention and not genetically determined. For example, one would be hard pressed to call sexist the situation where only woman can bear children: an irrevocable result of natural law. It would, however, be sexist to assume that women are superior to men at child rearing as this assumes that women are better suited for a particular social task” (1998, 31).

Thus, while there are plenty of clear cases in which sexist acts are and should be banned, these are generally ones which harm individual women, or women as a group [...] whereas it is far from clear (in the particular social context we are looking at here) that permitting social sex selection via sperm sorting will be harmful to women. (Wilkinson 2010, 229)\(^{28}\)

It seems that here Wilkinson reverts to understanding the harm of sexism in terms of male supremacy and furthermore, in common with many other bioethicists, claims that in the context of Western societies the risk of sexism is not a serious concern. As he states: “it does seem that the present real world situation in the UK is not one in which concerns about sexism are sufficient to justify prohibition” (Wilkinson 2010, 228). On his view, in such a context, gender selection is not sexist enough to be morally wrong.

However, Wilkinson underestimates the negative impact of gender stereotyping because he still uses a narrow understanding of sexism. By understanding stereotyping as exaggeration of biological differences, he maintains a biologically deterministic understanding of gender. However, some theorists argue that the very association of traits interpreted as sex with a certain gender role prior to conception is a form of sexism that can cause harm (Rothman 1998; Mudde 2010; Stryker and Whittle 2006).

Rothman (1998) notes that undergoing selection of a child’s gender based on a test for chromosomes means assuming that an embryo with an XX chromosome will necessarily perform a role attributed to females, and possess the associated traits and behaviours, while the embryo with an XY chromosome will automatically perform a role traditionally attributed to males. In this respect, gender selection is based on a biologically deterministic understanding of gender which reinforces gender stereotypes.

The biologically deterministic understanding of gender is problematic, as it implies that: 1) there are two separable genders (female and male) and these are binary opposites, compatible through normative heterosexuality; 2) female gender is complementary with traits interpreted as female sex and vice versa, 3) individuals identify with their gender and act in a gender specific way, and 4) women and men are in principle two distinctive homogeneous groups (Fausto-Sterling 1995; Rothman 1998; Seavilleklein and Sherwin 2007; Butler 2008). I will discuss the problems with these assumptions about

\(^{28}\) In the UK, gender selection for non-medical reasons is illegal (HFEA 2003).
gender more in depth in chapter 5, where I focus on the distinction between sex and
gender. Here, my point is that the libertarian understanding of gender presumes
individuals with normative gender identities, bodies and sexuality, and that such an
imposition of stereotypes reinforces sexism.

The biologically deterministic understanding of gender is broadly shared among
libertarians. The wish to have children of two genders is not seen as biased, but rather a
sign of “appreciation of sexual differences” (Pennings 1996, 2342), or acceptance of
gender variety.\(^{29}\) In this respect, libertarians like Pennings argue that gender differences
are real and deserve acceptance, and that the regulation of related reproductive choices
is not justifiable. Robertson (2001) argues that psychological research shows that there
are differences between girls and boys, and while they might be a product of upbringing
more than biology, they are still factual differences which can legitimately influence
parental preferences over the gender of their offspring.\(^ {30}\) He concludes that some types
of gender selection are sexist, e.g. those which are motivated by selection against one
gender, while others, such as selection motivated by gender variety, are not.

The problematic nature of such an assumption can be illustrated by a comparison
between sex and race made by Dickens who, regarding gender selection, argues that:
“selection based on sex is clearly sexual, but not necessarily sexist” (Dickens 2002, 336). He
claims that this distinction is analogous to the contrast between racist and racial choice,
where the latter is taken to be a legitimate preference, such as when individuals choose
their partners in order to have “racially compatible children.” This kind of racial choice is
contrasted with cases of racist hostility. Dickens claims that:

\[^{29}\text{Following this line of argument, Pennings claims: “in a society where there would be absolutely no
discrimination on the basis of sex, there will still be parents who wish to have a child of a specific sex”
(Pennings 1996, 2342). Clearly, on his account, gender preference is based on real existing differences which
in turn justifies gender selection. However, this is a highly hypothetical argument as there is no way to prove
this claim as we have no experience with such a social order.}\]

\[^{30}\text{As clarified by Robertson: “It has long been established that there are differences between boys and girls
in a variety of domains, such as (but not limited to) aggression, activity, toy preference, psychopathology,
and spatial ability [...] Whether these differences are primarily inborn or learned, they are facts that might
rationally lead people to prefer rearing a child of one gender rather than another, particularly if one has
already had one or more children of a particular gender” (Robertson 2001, 5-6).}\]
A racially based decision may be founded, however, on ethical preference, not unethical attribution of inferior status to non-preferred races. For instance, a person’s choice to marry a partner of his or her own race may be based on the comfort of common culture and the wish for racially compatible children, not hostility to miscegenation or the belief that races other than one’s own are inferior. (Dickens 2002, 336)

However, this example is flawed. First of all, Dickens assumes a real essence of sexual and racial difference. However, it is not clear that race is less of a social construct – in respect to the social implications that are stereotypically attributed to it – than gender (Hall 1997). Clearly, persons with features interpreted as signifying different races can share the same culture or not and vice versa, as much as individuals associated with different gender groups can have similar or different identities depending on the culture they were socialized in. The analogy is therefore not sound, as it is based on attributed sameness, associated with certain traits. Hence, claims about racial and sexual difference are based on stereotyping, which is a major aspect of both racism and sexism (Butler 2008; Fine 2010; Hall 1997).

Understanding gender as a social construct supports the view that the concept of a balanced family is sexist, because it is based on claims about essential differences between males and females, “the belief that only members of one sex are capable of certain actions” (Wertz and Fletcher 2004, 261). Moreover, Hoskins and Holmes ask, in their early work on femicide, what is more sexist than to create a child to fit a sex-gender ideology? (Hoskins and Holmes 1985). This question applies to gender selection for family balancing no less than to other motives.

The libertarian argument from family balancing assumes that gender diversity in the family is achieved when children of two sexes/genders are present because it presumes inherent differences between the genders. However, actual gender diversity may be achieved when children are free to adopt identities, behaviours or hobbies in a

31 Dickens (2002) elaborates: “Similarly, the intention of a couple with a child of one sex to have another child of the other sex is a sexual but not a sexist preference. To suppose that any such choice is necessarily sexist is unjust, and to base laws introducing criminal penalties on such a supposition where the evidence is that an assumption of “a pro-male bias [...] appears to be unfounded” is both unjust and oppressive” (Dickens 2002, 336).
gender unspecific way. As Michael Bayles argues, in families where children have a chance to develop their interests freely, children of the nominally same gender might end up expressing as much gender diversity as children of the traditionally understood opposite genders (Bayles 1990).

Thus despite claims to the contrary, gender selection for family balancing is based on a desire to create children for predefined gender roles. Marcy Darnovsky quotes a mother of several sons who used the MicroSort method of sperm sorting to conceive a daughter, explaining her motivation: "I wanted to have someone to play Barbies with and to go shopping with; I wanted the little girl with long hair and pink fingernails" (Darnovsky 2003, n.p.). According to Darnovsky, this suggests that at least some of the parents who want to conceive a girl and invest into the process of gender selection, “are likely to have a particular type of girl in mind” (ibid.). In the case of the mother quoted above, it is a girl who will perform the traditional gender role ascribed to women in her society: she will comply with social expectations, play with dolls and like to go shopping; furthermore, she will also comply with the social beauty standards for women and have long hair and paint her finger nails pink. Implicitly, from Darnovsky’s perspective, the same can be said about parents who want boys as they are projecting a stereotypical male gender role on their sons.32

This acknowledgement of gender stereotyping as sexist challenges libertarian arguments that selection in favour of women has no sexist implications. Seen as a reproductive choice based on gender stereotyping, both the act of selecting against and selecting for a child of certain gender can be sexist. Evidence in support of this view is provided by studies which observe that in some contexts, such as the Netherlands, Japan or USA, some parents select for girls because they believe that they will be more domestic, easier to raise or will comply with the traditional expectations of gendered behaviours linked to feminine identity, such as liking shopping or having a certain appearance (Darnovsky 2004; Wilkinson 2010; Fuse 2013). Such gender stereotypical preference for

32 I investigate this issue in my interviews, when discussing respondents’ motivations for seeking gender selection (see Chapters 7 and 8).
girls is indeed linked with a set of assumptions about stereotypical male traits/behaviour, which are imagined as opposite to the preferred female gender.

For the same reason, selection against men based on gender stereotypical assumptions about their character is also sexist. From this perspective, so is the example of a presumably uncoerced selection presented by Warren, in which a Western educated woman avoids pregnancy with a male embryo as it could develop into a perpetrator of domestic violence or rape (Warren 1999, 140). As such a decision is based on gender stereotypical assumptions about masculinity and masculine behaviour associated with a son, it is no less sexist than a decision to select against a daughter for gender stereotypical reasons.

It is possible to acknowledge that gender selection might have sexist implications, but nonetheless argue that it should not be banned as it is not the source of sexism; on the contrary, it is the product of sexism. Bonnie Steinbock (2004) makes a similar point comparing gender selection with pornography and crimes against women. She argues that pornography by itself does not cause violence, claiming that it is rather a third factor, machismo, that causes both of them. In that sense, violent pornography only appeals to men who embrace the macho cult. I think that Steinbock is right to claim that gender selection is not the original source of sexism, but a product of gender dominance and gender stereotyping. Nevertheless, this does not imply that gender selection should be legal and practiced. As I have shown, gender selection may reproduce gender stereotyping, and thereby reinforce it. Steinbock’s argument fails to address this dynamic in which gender selection contributes to the perpetuation of sexism, and hence is unconvincing.

Furthermore, it is also important to consider what the practice of family balancing implies about families, such as the problematic notion that families are bad or good based upon the gender of children in that family. The very concept of a gender-balanced family is normative, in that it posits a family with children of two genders as a “better family.” Mudde argues:

The idea of family balancing in terms of sex/gender not only assumes something about gender, it also assumes something troubling about family, namely that there is a “good,” “ideal,” “balanced” family type. (Mudde 2010, 570)
From this perspective, families with children of one gender are supposed to be worse, presumably because they offer less satisfying parental experiences. Mudde, however, disputes this libertarian claim and argues that it is disturbing to think that anyone can predict what experience they will have with any child or family: “the dynamics of a family are much less tightly tied to the sex distribution in a home than the balanced-family model seems to suggest” (ibid.). Thus, the project of a balanced family is in principle self-defeating, because a large part of the family dynamics is beyond procreators’ control.

In addition, and contrary to libertarian claims, the notion of a gender-balanced family is far from being a gender egalitarian concept. Rather, it is a family where children are expected to conform to traditional stereotypical gender roles, to achieve the desired “balance”. Thus rather than accepting any and all gender identifies, procreators seeking balanced families may not be open to gender subversive behaviour in their children, but instead, reinforce gender stereotyping.

In conclusion, the argument from family balancing is based on false assumptions. The apparently clear line between the ‘bad’ type of gender selection based on strong gender preference, and the ‘good’ type of gender selection for family balancing, does not reflect a real ethical difference. The claim that the gender selection for family balancing involves no harm is based upon a narrow understanding of sexism as male supremacy. However, male supremacy is not the only form of sexism; a broader understanding of sexism includes gender stereotyping. On this understanding, it becomes clear that gender selection for family balancing is undertaken in the context of gender stereotyping and, moreover, in the practice of gendering in general. As such, it reproduces normalizing understandings of gender and thus has a potential to reinforce gender stereotypes. Therefore, the libertarian argument that gender selection for family balancing is not sexist can be seen as false.

The implied claim that balanced families are somehow better than others reinforces an unreflective social concept of an ideal family. There is little recognition that the very concept of an ideal balanced family is a social construct, and that procreators can
be subject to social pressures to conform to that normative ideal. What follows is that the ethical implications related to gender selection for family balancing are far more complex than is claimed by libertarian theorists. In particular, there is no notable ethical difference between gender selection based on strong gender preference, and that based on family balancing. They are both socially reinforced types of gender selection.

2.4 The Argument from Children’s Wellbeing

Libertarians maintain that gender selection is good for children’s wellbeing on the grounds that children who come into existence through procedures of selection will be greatly wanted and appreciated. This argument is based on a claim that children conceived after gender selection satisfy parental preferences, and thereby benefit from the fact that their parents are more likely to be happy with them. This is taken as a justification for GSFNMR, as all parties involved in reproduction are claimed to benefit from gender selection. However, there are problems with the claim that GSFNMR is good for children’s wellbeing. First of all, it constructs gender as a dominant quality of a child, as well as a condition of the child being appreciated by parents. This contradicts libertarian claims about the gender egalitarian mindsets of Western procreators. Second, the practice involves a significant risk that it will not produce children with the desired gender identity. Furthermore, it involves the risk that children so selected will be pressured to adjust to rigid gender roles, where this pressure constitutes a form of harm. With these objections in mind, I argue that the alleged justification of gender selection, on the grounds that it benefits children, is unwarranted.

The argument that GSFNMR is good for children’s wellbeing is based on the presumption that respect for autonomy, and free exercise of reproductive preferences, should govern the sphere of reproduction (Harris 1992; Robertson 1996; Savulescu 2001; Wilkinson 2010). As openly stated by Harris, children should ideally come into existence when they are wanted, and in the state in which they are wanted (Harris 1992). This implies that parental enthusiasm about reproduction is conditional, and depends on the satisfaction of parental preferences about the type of child they have. Furthermore, since

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33 I discuss these implications in more depth in Chapter 8 when I discuss my empirical study.
libertarians claim that parents have strong preferences concerning the gender of their offspring, access to gender selection techniques are crucial both for their satisfaction as parents, and for their appreciation of their child.

Savulescu, for example, claims: “Sex selection may be beneficial to the child born if parents will treat a child of that sex more favourably” (Savulescu 1999, n.p.). Moreover, the fact that parents undertake the procedure of selecting children’s traits is taken to indicate that the child is indeed desired (Robertson 2001). This line of argument implies that if procreators have preferences over the gender of their offspring, then gender selection is good for their children’s wellbeing, as they will be valued more than they would be if they came into existence as children of an undesired sex.

This suggests that parents would not love children of the “wrong” gender as much, or might even reject them. Savulescu claims that “if a parent will not be able to accept a child of a certain sex (say, a woman was sexually abused as a child and wants to have a girl), then it may be better for both parent and child if the parent selects sex” (Savulescu 1999, n.p.). Hence, he argues that as some procreators might have very strong antipathies for children of a certain gender, it is in both parents’ and children’s interest that gender selection is accessible. He also points to medical reasons which might serve as a legitimate motivation for parents to select gender (he specifically mentions the case of autism as a condition more common in boys). In Savulescu’s view, such cases only provide further support in favour of the accessibility of gender selection.

The libertarian argument from children’s wellbeing has several problematic aspects. First of all, it constructs gender as a crucial quality of a child, and also a criterion of the child being loved by their parents. This sharply contradicts libertarian claims about the gender egalitarian character of Western societies; in a gender egalitarian society, gender would not be given such emphasis. Libertarians are therefore inconsistent when they claim that in a Western society, gender does not matter, yet at the same time insist

34 The distinction and implications of gender selection for medical and non-medical reasons will be debated in the next chapter in detail.
that gender is so important that parents should be free to access procedures that require significant investment some of which, such as abortion or PGD after IVF, are quite invasive. The emphasis put on the right to select the gender of one’s offspring communicates the exact opposite of what is being claimed: that gender matters very much. Indeed, we are told that the availability of gender selection matters a great deal, since parents may not love a child of the “wrong” gender.

Furthermore, the claim that gender selection benefits children is based on the assumption that selection methods will produce a child with the desired gender. The situation when gender selection fails, for various reasons, differs significantly. Mudde argues that behind gender selection is an idea that it is desirable for parents to determine the outcomes of reproduction. Therefore, when such a process of determination fails to produce the desired child, “children might experience a less-than-ideal life situation if they are not the sex that parents with strong preference would prefer” (Mudde 2010, 570). Hence, such children can be subject to parental disappointment.

Savulescu acknowledges that gender selection might potentially “cause psychological harm if the procedure does not produce a child of the desired sex”, but again he states that “parents inevitably have hopes and expectations for their children which are deflated every day” (Savulescu 1999, n.p.). Savulescu himself does not describe or analyse possible scenarios of disappointment and their implications; rather, he claims that most parents “come to accept and love the child they have” (ibid.). Thus he concludes that the solution to potential disappointment is not to ban gender selection, but to assist procreators in becoming more “tolerant and accepting” (Savulescu 1999, n.p.).

Other theorists, such as Wilkinson, claim that gender selection is possible without the idea of “intending to reject one’s own future child after birth if it turns out not to have all the desired characteristics” (Wilkinson 2010, 29). Here, Wilkinson responds to the criticism that prenatal selection of an offspring’s traits seems to make parental love conditional. He claims that gender selection does not necessarily entail an intention to reject a child. On his account, the problem is not “the desire to select that violates the principle” (ibid.) but the intention to reject a child if it comes into existence without the preferred traits. He thus claims that there is a major difference between having preferences and attempting to select for them, and rejecting a child who does “not live up
to the expectations” (Wilkinson 2010, 29). According to him, parents who undertake
gender selection for a boy might still love “whoever comes along, regardless of sex” while
on the contrary, parents with the same preference who do not use gender selection may
abandon a child if it is of an undesired gender. For that reason, Wilkinson finds the
argument from rejection and conditional love a weak criticism of gender selection.

In a similar vein, Pennings argues that the problem in such cases is not gender
selection, but the fact that parents are not accepting enough:

[..] good parents accept their child as it comes. This does not mean that the
prospective parents should have no preference (only a minority is really
indifferent as to the sex of their future child) but that they should not try to
adapt the child and its sex according to their wishes and desires. (Pennings
1996, 2340)

Yet, if parents accept children as they come, why would they undertake gender
selection in the first place? If parents should not aim to subject children to their wishes
and desires about gender, then gender selection should not be performed. Nevertheless,
that is not Pennings’ point (1996), making his argument seem inconsistent. On the one
hand, his arguments seem to normalize the possession of strong gender preferences and
the practice of gender selection, and on the other hand, he claims that parents should
accept whatever children they come to have.

Gender selection is motivated by the desire to determine a child’s gender, not by
acceptance of any type of child as they come. As Mudde argues (referring to the work of
Jonathan Berkowitz):

Preferring one sex over the other in our future children and acting on that
preference forces parents to place a certain kind of value on gender – and
expresses a kind of desire powerful enough to motivate them to try to
ensure, with reliable methods, the gender of their child. To act on one’s
values, an outcome must seem either urgent or important to do so. (Mudde
2010, 563)
In that sense, libertarian advocacy for access to gender selection, based on claims about the importance of gender, illustrates just how much gender matters, and that it is by no means an arbitrary trait. Some authors claim that these preferences are so significant that, having no opportunity to act on them, some potential parents would be unwilling to reproduce at all. According to Robertson, the fact that some potential parents would not reproduce unless able to determine the gender of their offspring, is actually the primary justification for access to gender selection. He claims: “Although offspring gender is not a genetic disease, a couple’s willingness to reproduce might well depend on the gender of expected offspring” (Robertson 2001, 4). He notes that few procreators will have such an uncompromising stand on reproduction, yet for those who do have strong preferences, access to gender selection would make the difference in their willingness to have a child.

It is crucial to notice that this argument is based on the presumption that a gender-selected child will conform to the preferred gender role. Nevertheless, as has been shown before, the idea that a child with certain sex chromosomes will have specific characteristics is rather problematic. As Barbara Katz Rothman notes, the genetic test determines chromosomal sex, but parents desire children who will play a particular gender role, which is something that prenatal gender selection cannot guarantee (Rothman 1998).

The self-defeating potential of gender selection is discussed by Maura Ryan (1990) who claims that procreators who desire to undertake selection of their child’s gender rarely consider the fact that the child needs to be seen as an autonomous individual. As she says, the desire:

[...] is seldom weighed appropriately against the reality of the child-to-be as a potential autonomous human being. At what point does a being, who has been conceived, gestated, and born according to someone’s specifications, become herself or himself? (Ryan 1990, 8)

Ryan argues that rather than fostering children’s welfare, selective reproduction disregards the emerging autonomy of the child. According to her, a child is principally an autonomous person and a member of a family and society. This “essential autonomy” is

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35 I discuss this issue in detail in Chapter 5 when I investigate the distinction between sex and gender.
disregarded in gender selection, as procreators are trying to manipulate the child’s features. Mudde (2010) points out that children have personalities. Parents who try to project their gender ideas onto their children and actively determine their gender are trying to control their children’s emerging characteristics. Thus, these procreators are not letting their children be themselves, which may be incompatible with securing their wellbeing.

Some libertarians acknowledge that gender selection might pose a conflict between individual wishes and children’s welfare (Robertson 2001). However, they argue that parents inevitably have preferences concerning their children (Savulescu 1999). Furthermore, they argue that having gender preferences is not specific to parents using prenatal gender selection; such preferences can be expressed by parents conceiving naturally (Pennings 1996; Robertson 2001). And finally, they claim that gender selection is just like any other type of gender conditioning, such as that which occurs through upbringing.

Nevertheless, as Mudde argues, having a desire and acting on it are two different things. She argues that many procreators act in ways that try to influence their children’s lives; many also more or less consciously expect different things from sons and daughters. However, she claims that these “do not involve the kind of projection that the selection of a child’s sex necessarily involves” (Mudde 2010, 568).

Similarly, Habermas (2003) argues that determination of offspring traits via embryonic selection differs significantly from other attempts at conditioning children through upbringing. As he claims, the endeavour of embryonic selection positions future children as products of a predefined plan, passively programmed by parents. In Habermas’ view, given the irreversible nature of embryonic selection, children have no chance to reject and so undo the program, whereas they can reject specific forms of socialization.

What makes the difference, on both Mudde’s and Habermas’ accounts, is the act of prenatal interference into a child’s genetic makeup:
Although categorically similar to any application of gender normativity in the lives of our children, such projections are different from, for example, those we might make after finding out, during pregnancy, the sex of a fetus, and they are different from the lives we condition for children of one sex or another. (Mudde 2010, 568)

It is the very act of direct irreversible conditioning, the asymmetric exercise of power, the attempt at disambiguation that makes gender selection different from gender socialization. The act of determining the gender of the offspring is a potentially harmful act that deprives a child of important elements of autonomy and agency. In such cases, the child has been spared the opportunity to be born unconditioned.

In this respect, critics of gender selection raise the commodification objection. Gender selection treats children as material on which parental preferences are projected, such that the potential children are seen as commodities which may be selected according to given traits. Parents no longer want just any child, they want “the perfect child” (Rothschild 2005, 3). The importance of having a perfect child gains significance with the development of more reliable technologies (Rothschild 2005; Segal 2010; Puri et al. 2011). Furthermore, the procedures of prenatal gender selection are costly (The Fertility Institutes n.d.), and the fact that procreators spend large amounts of money acquiring the child of a desired gender can contribute to the commodification of children.

36 As clarified by Mudde: “The assumption of ambiguity structures desire as relational with a given, which I read as acknowledging one’s responsibility for and to a being whose life one necessarily conditions but does not control” (Mudde 2010, 569).

37 This is not to say that a child can determine their own chromosomal sex. However, there is a difference between one’s chromosomal sex being determined by the randomness of natural processes and by one’s parents. In the second case, the child is being selected with an intention which can imply, that the child is being valued as a child of a particular sex (and presumably gender).

38 I discussed libertarian views on commodification in the previous chapter. For example Wilkinson considers this issue but holds that in order to be commodified, children would have to be treated solely as means to an end. However, I argued that this understanding of commodification is narrow as the requirement of children being treated only as means is too absolutist. Furthermore, I criticised Wilkinson’s claim that selective reproduction does not commodify children any more than natural reproduction for it overlooks crucial differences between these modes of reproduction. In selective reproduction such as GSFNMR, children are prenatally selected to match parents’ preferences over their traits which commodifies them.

39 Rothschild argues that “[..] the discourse of the perfect child has almost silently become embedded in the dominant culture. Its locus is in practice. The discourse comes into being in the clinical setting, as prenatal diagnosis has become an increasingly routine part of reproductive medical practice” (Rothschild 2005, 3).

40 In 2013, I ordered a free information brochure 100% Sex Selection from the Fertility Institutes (n.d.). The brochure contained a price list for a basic gender selection package that started at $ US 20,490 (for IVF/PGD, embryology services and lab services). This price did not include the cost of medications ($ US 4,800),
The commodification of children increases as gender selection becomes heavily marketed, entering the consumerist culture to a greater extent (Bhatia 2010; Darnovsky 2003). The marketed discourse of the perfect child works to convince parents that they should act on their reproductive preferences and are free to choose to have the children they desire (Bhatia 2010). “And if a child comes into the world primarily to fulfil parental need, are there limits to what parent may do to ensure that the child will continue to meet the specific expectations?” asks Maura Ryan (1990, 8).

Confronted with procreators’ expectations over the traits of their offspring, and interested in the pre-selected child’s potential for gender autonomy, Ryan questions: “How might parents look upon offspring when they enter the process with the belief that a certain kind of child is owed to them and after they have paid a high price for that child?” (ibid.). Parents who have invested significant resources and gone through procedures to gain the perfect child they desire, may end up rather disappointed if the actual child does not fulfil their expectations. This disappointment might well reduce, rather than increase, the child’s wellbeing. Moreover, Charis Thompson (2005) argues that attempts at determining children’s traits are not so much about making certain children but rather about “making parents”, which, in the context of gender selection, produce identities such as a daughter’s mother or a son’s father. Seen as such, gender selection is not performed for the wellbeing of children, but rather for the benefit of parents.

Thomson’s argument seems convincing, as libertarian theory is primarily focused on advocacy for parents’ reproductive autonomy. Individual reproductive autonomy plays a primary role for libertarians, while children’s wellbeing only overrules reproductive screening ($US 1,800) and genetic screen ($US 200-1,200). With these extra costs included the procedure would therefore amount to $US 27,290 – 28,290.

41 I discussed the financial burdens of selective reproduction in the last chapter and I will provide more details about the costs of GSFNMRI in Chapter 6 when I present descriptive analysis of the data collected in my empirical study.

42 Darnovsky claims: “These pre-pregnancy sex selection methods are being rapidly commercialized - not, as before, with medical claims, but as a means of satisfying parental desires. For the assisted reproduction industry, social sex selection may be a business path toward a vastly expanded market. People who have no infertility or medical problems, but who can afford expensive out-of-pocket procedures, are an enticing new target” (Darnovsky 2003, n.p.).

43 This is the same argument that the Victorian panel made when it refused to grant an exception for gender selection to a couple wanting to select for a female child after their daughter died (see the Introduction).
autonomy when they are affected by severe harm, which is typically mentioned in the context of preventing the birth of children with severe disability. The concern about children’s wellbeing, therefore, plays a rather secondary role in libertarian accounts of reproductive autonomy. This makes the argument from children’s wellbeing fairly weak, as libertarian theorists’ main objective is the defence of procreators’ rights to realise their individual preferences through the exercise of reproductive autonomy.

Overall, the libertarian justification of GSFNMR based on the argument from children’s wellbeing seems problematic. The argument constructs gender as a fundamental quality of a child, and as a condition determining parental appreciation of that child. This contradicts claims about the gender egalitarian mindsets of Western procreators, making the argument from children’s wellbeing inconsistent. Furthermore, constructing gender as a condition for parental satisfaction creates a risk of harm to selected children who might not possess the preferred gender. Moreover, GSFNMR involves the risk that selected children will be subject to pressures to adjust to rigid gender roles, which constitute a form of harm. Because harm, according to libertarian theory, is the only legitimate criterion to regulate the use of ARTs, and because the risk of harm from gender stereotyping is significant, the justification for GSFNMR based on the argument from children’s wellbeing is weak and unjustified. This renders the libertarian claim that gender selection should be justified because it benefits children unwarranted

2.5 Conclusion

In this chapter, I have focused on the most recognized and commonly used arguments made by libertarians to justify the practice of GSFNMR. These were the arguments based on claims about natural gender selection, reproductive autonomy, family balancing, and children’s wellbeing. I inquired into the strength of these arguments which are alleged to support the conclusion that GSFNMR should be accessible to procreators. I found that many of the claims are inconsistent and unjustified. In particular, the arguments are based on overly restricted understandings of autonomy and harm, especially harm from sexism. These narrow understandings, to a large extent, disregard the rather complex social context in which gender selection is practiced. Furthermore, the
libertarian arguments are based on a stereotypical distinction between the West and the “rest of the world”, which uncritically constructs the practice of GSFNMR in Western societies as free of harmful implications. I particularly criticised the libertarian claim that GSFNMR should be legal in the West because these societies are gender egalitarian and the practice has therefore no harmful sexist impact. This claim disregards gender stereotyping and its potential for harm. Overall, I conclude that due to several unjustified assumptions and inconsistencies, libertarian arguments fail to provide a reasonable and convincing justification for access to GSFNMR. In the next chapter, I turn to the distinction between medical and non-medical reasons for gender selection, in order to investigate the extent to which this distinction is ethically and practically significant.
3. Investigating the Key Distinctions between Medical and Non-medical Reasons for Gender Selection

The aim of this chapter is to focus on one of the key distinctions in the debate about gender selection: the distinction between medical versus non-medical reasons, where “medical” signifies some kind of justification for gender selection, which is otherwise lacking. This distinction is used not only in ethical debates but also in the context of regulatory frameworks, which often ban gender selection for non-medical reasons. In order to fully comprehend the debate about GSFNMR, we therefore need to clarify what is meant by the term “non-medical reasons.” After enquiring into the distinction between medical and non-medical justifications in this chapter, in Chapter 4 I investigate similarities and differences between selection practices concerning disability and GSFNMR, and in Chapter 5 I focus on the distinction between sex and gender.

First, I introduce the categories of medical and non-medical reasons for GSFNMR and discuss the role of these categories in regulatory frameworks. Next, I focus on problems with the current definitions, especially that of “severe” medical condition. I argue that the distinction between medical and non-medical reasons for GSFNMR is ethically significant as it differentiates between what is taken to be ethically permissible gender selection for medical reasons, and impermissible gender selection for social reasons. Given the reliance upon this distinction, I claim that regulatory frameworks need to better define the category of medical reasons to ensure that clinical practice reflects the intention of the regulations.

3.1 Medical and Non-medical Reasons for GS: Introduction

In the context of prenatal reproductive medicine, the distinction between medical and non-medical reasons plays an important role in the selection of embryos for discard/implantation as well as foetuses for abortion/continuing pregnancy. This distinction is used to differentiate between procedures which are conducted in order to prevent the birth of children with certain diseases or traits considered disabling on medical
grounds (e.g. Down syndrome, spina bifida), and those conducted on the basis of parental preference concerning the traits of their children (e.g. gender). While the former are classed as medical reasons and are generally tolerated, supported and sometimes even recommended, the latter are known as non-medical reasons, and are proscribed in many jurisdictions- including Australia.¹

Gender selection for medical reasons, i.e. selection which aims to prevent the birth of children with hereditary diseases linked to sex chromosomes, is likewise considered acceptable and may be offered to prospective parents. Gender selection for non-medical reasons, on the other hand, tends to be seen as ethically problematic and for that reason cannot be legally conducted in many countries (Darnovsky 2009; Hvistendahl 2011).²

In the context of foetal gender selection, the distinction between selection for medical and non-medical reasons is meant to differentiate between selection conducted for the health-related purpose of preventing sex-linked diseases, and selection motivated by parental preferences involving their children’s gender. Bayles (1990) draws on this understanding when he claims that gender selection for medical reasons can be understood as an instrumental form of selection; on his view such selection serves certain objective aims related to a medical prognosis, rather than being concerned with gender per se. In contrast, gender selection for non-medical reasons can be understood as selection motivated by concerns about gender, enacted on the basis of gender preference and independent of criteria related to health or disability. While Bayles criticises non-medical gender selection, he accepts gender selection for medical reasons. Bayles believes that parents can have good reasons to select against children with disabilities; looking after children with impairments can be difficult for some parents, because they tend to

¹ This proscription applies to prenatal embryo selection, not to abortion. In Australia, abortion is regulated on the level of individual states. I discuss the use of abortion for gender selection in more detail below.

² De Wert and Dondorp (2010) work with a third category of “intermediate reasons” (81), which are between medical and non-medical reasons. They provide an example of couples where the man has an X-linked disease and requests selection against a carrier daughter. In this case, the motivation is not to prevent the birth of an affected male but of a daughter who might later have to face reproductive dilemmas, given the possibility that 1 in her 4 children could inherit the disease. However, this case of selection is still motivated by preventing the birth of children with X-linked diseases, although indirectly. Therefore, I consider it selection for medical reasons and I do not work with a third category of intermediate reasons.
require more care and resources. On his account, selection against disability is acceptable, and this in turn justifies gender selection for medical reasons.

Like Bayles, I adopt the distinction between medical and non-medical reasons to distinguish between what may be ethically permissible and impermissible forms of gender selection. I have argued in the last two chapters that GSFNMR poses a risk of harm to children and society, and hence the practice is unjustifiable. However, gender selection for medical reasons may be justifiable if it serves to prevent the birth of a child with a serious impairment.3

The distinction between medical and non-medical reasons is of crucial importance in many jurisdictions, as gender selection for medical and non-medical reasons are approached and regulated differently. Many regulatory frameworks accept that gender selection for medical reasons is permissible, and in some cases even laudable, but prohibit gender selection for non-medical reasons. Below, I inquire into the role of the distinction between medical and non-medical reasons in regulatory frameworks before discussing problems with how these categories are construed.

3.2 Regulatory Frameworks and the Distinction between Medical and Non-medical Reasons

The distinction between gender selection for medical and non-medical reasons came to prominence after it became clear that GSFNMR has a serious social impact. As described in the Introduction to this thesis, there are currently approximately 160 million missing women in the world population. Recent evidence has shown that skewed gender ratios and their negative effects are being manifested in diverse regions from Asia to Europe.

Given that GSFNMR has such a severe social impact, many countries have adopted strict legal measures which permit gender selection only insofar as it is motivated on medical grounds, while non-medical selection is considered ethically unacceptable and

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3 Therefore, on my account only severe sex-linked conditions justify gender selection for medical reasons. I discuss the concept of severity in the next section.
therefore, banned. Among these are South Asian countries such as China and India where the problem of missing women has been striking for decades.

Furthermore, a large number of European countries have introduced laws banning GSFNMR. The majority of these countries, such as the UK, Germany, Finland or the Czech Republic, ban gender selection for solely non-medical reasons, while some, such as Austria and Switzerland, have banned all forms of gender selection both for non-medical and medical reasons (Darnovsky 2009). Clearly, the distinction between medical and non-medical reasons is widely used in regulatory frameworks.

It is important to note that Europe is a diverse continent in which individual countries have, to a large extent, independent legislative frameworks. Nevertheless, the Council of Europe⁵ has recently published the report *Prenatal Sex Selection* (CoE 2011a), which calls for prohibition of gender selection for non-medical reasons by any means, and strict limitation of the practice for medical purposes in CoE member states. This approach makes no distinction between selection through abortion or prenatal genetic diagnosis (PGD, leading to embryo selection). While selection through PGD is usually considered ethically more permissible as it does not involve the destruction (or abortion) of a foetus (only the discard of embryos), selective abortion is a widely practiced method of gender selection, as it tends to be both easily available in many countries and much cheaper than PGD. Importantly, while many regulatory frameworks currently prohibit the use of PGD for sex selection, there have been fewer restrictions on abortion, making it possible for women to access abortion after an ultrasound or other method of determining foetal

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⁴ Countries with regulatory frameworks banning GSFNMR in the European region are: Belgium, Bosnia & Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Netherlands, Norway, Portugal, Russia, San Marino, Spain, Turkey, United Kingdom. European countries banning all forms of gender selection, both for non-medical and medical reasons, are: Austria and Switzerland (Darnovsky 2009).

⁵ The Council of Europe (CoE) and the European Union (EU) are two different organisations with different aims. The CoE is an organisation with 47 member states, which “seeks to develop throughout Europe common and democratic principles based on the European Convention on Human Rights and other reference texts on the protection of individuals” (CoE 2007). While the EU has been founded as an “economic and political partnership between 27 European countries” with the aim to “foster economic cooperation” and create a “market with the euro as its common currency”, nevertheless the EU gradually evolved “into an organisation spanning all policy areas, from development aid to environment” (EU 2012a).
Thus the implicit disapproval of sex-selective abortion has not translated into regulation because many regulatory frameworks respect women’s right to access abortion without disclosure of their motives.

However, the CoE’s move to ban all means of GSFNMR, which led to the ratification of Resolution 1829 (2011b) condemning the practice, is a reaction to growing evidence of skewed gender ratios in European countries such as Albania, Armenia, Azerbaijan and Georgia. The CoE states in the Report:

Prenatal sex selection is to be condemned, as a phenomenon which finds its roots in a culture of gender inequality and reinforces a climate of violence against women. It has harmful consequences, including population imbalances, a rise in criminality and social unrest and an increased risk of human rights violations such as trafficking for the purposes of marriage or sexual exploitation. (CoE 2011a, n.p.)

CoE clearly takes the view that gender discrimination against women is at the very core of gender selection for non-medical reasons. Furthermore, prohibiting the practice is seen as a strategy to prevent gender-skewed ratios and their subsequent harms in the European region.

While the CoE resolution draft calls for the member countries to introduce strict legislative measures, it has the status of a recommendation which is not legally binding and cannot be enforced on sovereign states and their governments. Therefore, the legal governance of gender selection in Europe is still a matter for regulatory frameworks in individual countries.

In Canada, gender selection is banned for non-medical reasons (Government of Canada 2004). In contrast, the practice is largely unregulated in the US, both at federal and state levels (Fahrenkrog 2006; Birdsall 2010). The Fourteenth Amendment of the

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6 Legalisation of the use of RU486, a drug that allows for medical termination in early pregnancy (up to 49 days of gestation) can also contribute to increased access to gender selective abortions if a woman can undertake an early gender test, e.g. from a blood test (Government of Australia 2013. See: http://www.pbs.gov.au/info/industry/listing/elements/pbac-meetings/psd/2013-03/mifepristone).

7 Birdsall notes that the lack of regulation earned the US the label of the “Wild West of reproductive technology” (2010, 226). She states that gender selection is a growing “multi-million dollar industry” which calls for state attention, and the possible need for a regulatory framework. Fahrenkrog (2006) argues that the US needs to introduce some regulation of PGD due to the ethical issues it raises.
Constitution establishes a right to privacy which means that all reproductive decisions should be free of state interference. The right to privacy extends to the protection of the decision to select one’s child’s gender. Due to this liberal policy, many international procreator travel to the US to undertake gender selection (Fahrenkrog 2006).

Furthermore, some countries have introduced regulatory frameworks which lack the force of law. This is the case in Australia, where the National Health and Medical Research Council (NHMRC) oversees the regulation of gender selection where this occurs in the context of Assisted Reproductive Technologies (ARTs). The NHMRC is an independent statutory authority “promoting the development and maintenance of public and individual health standards” (NHMRC 2014a). The NHMRC Ethical Guidelines on the use of Assisted Reproductive Technology (2007) must be followed by all clinics providing ARTs in order to obtain the licence that is necessary for them to legally provide services in Australia. The guidelines recognize that gender selection is a “controversial issue” and state that:

The Australian Health Ethics Committee believes that admission to life should not be conditional upon a child being a particular sex. Therefore, pending further community discussion, sex selection (by whatever means) must not be undertaken except to reduce the risk of transmission of a serious genetic condition. (NHMRC 2007, 53)

Therefore, provision of gender selection for non-medical reasons by clinics is not permissible under NHMRC guidelines; gender selection is limited to selection of embryos for sex-linked medical reasons only.

Based on the statements made by CoE and NHMRC, two aspects of the debate can be observed: 1) the institutional commitment to forbid gender selection for non-medical reasons by any means, and 2) the acceptance of gender selection for medical reasons.

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8 Similarly, in the UK regulation of gender selection is overseen by the Human Fertilisation and Embryology Authority (HFEA) which is an independent regulator “of treatment using eggs and sperm, and of treatment and research involving human embryos” (HFEA 2014). The HFEA issued the Human Fertilisation and Embryology Act (1990 2008) that requires mandatory licensing from all clinics creating embryos. The Act bans gender selection for non-medical reasons.

9 The NHMRC Guidelines (2007) use the term “sex selection”.

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First, in the quest to ban gender selection for non-medical reasons, CoE invites the member states to “introduce legislation with a view to prohibiting sex selection in the context of both assisted reproductive technologies and legal abortion, except when it is justified to avoid a serious hereditary disease” (CoE 2011a, n.p.). Specifically in the context of PGD, CoE maintains that “prenatal sex selection should be resorted to only to avoid serious hereditary diseases linked to one sex” (ibid.), which is consistent with the CoE Convention on Human Rights and Biomedicine (CoE 1997).

Similarly, the NHMRC Australian Guidelines comment on the role of PGD in gender selection and specify that PGD should only be used in order to “detect serious genetic conditions” (NHMRC 2007, 55) and further state that PGD is not to be used for “prevention of conditions that do not seriously harm the person to be born; [or] selection of the sex of an embryo except to reduce the risk of transmission of a serious genetic condition” (ibid.).

Nevertheless, in regulatory frameworks where abortion is available on demand, women can have gender selective abortions for non-medical reasons without disclosing their motivation. This is possible due to the development of new direct-to-consumer gender testing methods, such as blood or urine tests, which can detect the chromosomal sex of an embryo in early stages of the pregnancy. This makes it increasingly easy to avoid medical regulatory mechanisms, as women are able to obtain a termination within the legal timeframe, for which they usually do not have to provide any medical reasons. It is becoming more and more obvious that the availability of abortion on demand, together with accessible methods of early gender testing, can lead to GSFNMR that contravenes the spirit, if not the letter, of relevant regulation. Therefore, the regulatory frameworks aimed at banning gender selection for non-medical reasons fail to work in the context of legally accessible abortion.

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10 I do not wish to argue in favour of policies restricting women’s right to abortion. I believe that women have the right to abortion based on their right to bodily autonomy. Nevertheless, I think there is a relevant distinction between decisions about having/not having children and decisions about having/not having a specific type of child. I find the second kind of decision potentially problematic, as I will discuss in detail in Chapter 4.

11 The CoE pays specific attention to the practice of gender selective abortion as it claims that abortion “is the most widespread method of sex selection in low-income countries and for low-income families” (2011, n.p.). While the CoE claims that gender selective abortions are mainly being practiced in low-income countries, there is evidence from the USA (Puri et al. 2011), UK (Dubuc and Coleman 2007) and anecdotal evidence from Australia that gender selective abortions are also being practiced in regions which are traditionally framed as “developed.” Moreover, Hvistendahl (2011) claims that it is not in the poor societies,
The second aspect of the debate concerning the regulation of gender selection is the institutional willingness to accept it for medical reasons. It is important to look at this category in detail as, from the current descriptions in documents such as the CoE Report and NHMRC Guidelines, it is not clear how exactly the medical reasons justifying gender selection should be understood.

### 3.3 What is a Serious Medical Condition?

In regulatory frameworks governing gender selection (NHMRC 2007; CoE 2011ab), the lack of definition of “medical reasons” blurs the distinction between selection for medical and non-medical reasons. Some jurisdictions try to overcome these difficulties by specifying a distinction between selection for medical reasons to prevent a severe genetic disease, on the one hand, and a trivial selection for social reasons on the other. I argue that while this approach is plausible, more guidance must be provided in determining how to define a serious condition if it is to work in practice.

The CoE claims that gender selection for medical reasons occurs when the goal is prevention of a *serious hereditary disease*. The conditions specifically mentioned by CoE as legitimate are “muscular dystrophy and haemophilia, which primarily affect boys” (CoE 2011a). These are examples of sex-linked diseases, but CoE neither provides a full list, nor any guidance for distinguishing between conditions serious enough to warrant gender selection for medical reasons and others that are less severe. This lack of guidance impedes both our understanding of what makes a condition serious enough to legitimise the practice of gender selection for medical reasons, as well as what criteria should govern the decision making process.

Similarly, the NHRMC Guidelines operate with the term “serious genetic condition,” yet do not further specify the respective conditions in terms of gender selection. They do,
however, give an outline of what a serious genetic condition might be in the context of PGD more broadly. The Guidelines call for careful evaluation of any use of PGD (NHMRC 2007, 55) and reflect on some of the associated controversies:

PGD is currently used to detect serious genetic conditions, to improve ART outcomes and, in rare circumstances, to select an embryo with compatible tissue for a sibling. These uses have profound ethical significance including: what counts as a serious genetic condition is controversial; there are different perceptions of disability; the practice of selecting against some forms of abnormality may threaten the status and equality of opportunity of people who have that form of abnormality; the procedures involve the disposal of some healthy embryos; and the procedures have technical limitations (such as the failure to identify the genetic abnormality of interest). Clinics must ensure careful evaluation of these and all other relevant issues before the use of PGD. (NHMRC 2007, 55)

The Guidelines state that defining what constitutes a serious genetic condition is controversial, which implies that the Australian National Health and Medical Research Council is aware of some of the challenges of defining such a category. Nevertheless, the guidelines provide no further assistance on that matter, referring instead to various difficulties that can be associated with the process, such as differing conceptions of disability, effects upon the status of people living with disabilities or technical failures in detecting impairments. The Guidelines mention these issues but do not specify how to prevent the misuse of PGD and ensure that it is used only for what it takes to be legitimate medical reasons. Providing such guidance would require defining what counts as legitimate medical reasons, or at least specifying the criteria for defining them. The Guidelines do not do this, but state that PGD can only be used for preventing the birth of children with genetic conditions that would cause them serious harm.

Clearly, the NHMRC equates a serious medical condition with a condition that seriously harms the person to be born. This approach is plausible as it considers the impact of the condition on a child’s life. However, the NHMRC Guidelines do not assist with defining either the relevant categories of serious genetic conditions or what counts as
serious harm.\textsuperscript{12} Hence, on the one hand, strict limitations are proposed in the use of PGD for gender selection, but on the other hand, no guidance is offered regarding the criteria under which the limits should come into practice. This leaves space for discretionary interpretations of “serious genetic conditions” and “serious harm”, making the category of medical reasons, essential for regulating the practice of gender selection, itself open to interpretation.

The category of medical reasons therefore does not appear to be robust, leaving space for confusion about the borderlines between gender selection for medical and non-medical reasons.\textsuperscript{13} Most of the interpretative work required seems to reside in defining the severity of a particular condition. The NHMRC Guidelines (2007) implicitly understand a severe condition as one that will cause serious harm to a future person to such an extent that it is legitimate to prevent the birth of a child with such a condition. I agree with linking the permissibility of gender selection to the seriousness of the consequences of the medical condition. However, as severity is a central criterion in determining the legitimacy of gender selection for medical reasons, it is crucial that regulatory frameworks provide guidance on how severity is to be measured.

Not only do existing guidelines (CoE 1997 2011b; NHMRC 2007) fail to provide instructions on how to define severity,\textsuperscript{14} they also do not specify who should be responsible for defining severity and hence who should be effectively regulating the

\textsuperscript{12} These terms are not among the terms defined in the “Explanation of key terms” chapter of the Guidelines (NHMRC 2007, 94-99).

\textsuperscript{13} A similar critique is provided by Nie et al. (2012) in their investigation of jurisdictional regulations for surrogacy in New Zealand and Australia. In these countries, women can apply for surrogacy if they have a medical condition which makes pregnancy impossible or harmful to the mother and the child. However, most regulatory frameworks (in Australia surrogacy is regulated by legislation of individual states) do not provide clear guidance regarding what counts as a “medical condition” justifying surrogacy. Furthermore, the authors note that it is not clear if these conditions include health conditions resulting from lifestyle choices (e.g. sterilisation or sexually transmitted diseases) or from natural processes (menopause or age). They conclude that if the jurisdiction works with the requirement of a medical condition to justify surrogacy, it needs to provide a clearer specification of the criteria.

\textsuperscript{14} Van Wagner et al. (2008) inquired into jurisdictions regulating PGD which use the category of “serious” as a threshold between permissible uses of PGD and those seen as “trivial” uses motivated by social reasons (Australia, New Zealand, Canada and the UK work with the distinction). They observed that none of the regulatory frameworks provides a clear definition of ‘serious condition’ or of the criteria for establishing if a particular condition is serious. The authors find it problematic and argue that the lack of guidelines can have significant impact on people with disabilities, their families, and society.
practice of gender selection for medical reasons. The possibilities range from leaving the
definition of severity to medical experts, be it health institutions or doctors or both,
through to determination by procreators themselves.

I will now have a closer look at what might count as a serious medical condition.
There are several sex-linked conditions which can be detected by genetic screening, such
as muscular dystrophy, haemophilia, Klinefelter’s syndrome, Turner syndrome, triple X
syndrome, Fabry disease, Lesch-Nyhan syndrome and colour blindness. Furthermore,
there are genes that can be detected which determine conditions such as breast cancer,
that are prevalent in females, or conditions like autism, which are four times more
prevalent in males.

All these conditions have different levels of severity and come with different
implications for the future child. Nevertheless, many of these conditions would currently
justify gender selection for medical reasons in the UK. The Human Fertilisation and
Embryology Act (HFEA 1990) allows for gender selection for serious sex-linked disorders
and diseases, but the latest amendments broaden the scope by adding more “gender-
related” conditions (HFEA 2008, n.p.). Due to the amendment, gender selection can be
authorised if there is a risk that the child will “have or develop a gender-related serious
physical or mental disability, serious illness or other serious medical condition” (ibid.). This
not only includes conditions directly linked to sex chromosomes but also situations where
there is a “particular risk of gender-related conditions for example a strong family history
of breast cancer where the mother has also been affected (and therefore may be a carrier
of the faulty gene), and wishes to avoid passing on any risk to a daughter.”15 Thus under
the HFEA, the category of serious gender-related conditions is quite broad and may
encompass a range of conditions, some of them less serious than others.16

In order to understand the complexity of the process of defining and measuring the
severity of genetic conditions and their implications in the context of gender selection, two

15 This specification can be found in the explanatory notes to the Human Fertilisation and Embryology Act
16 Furthermore, Van Wagner et al. (2008) note that HFEA newly authorises the use of PGD to test for BRCA1,
BRCA2 (genes related to breast cancer) and HNPCC genes (hereditary non-polyposis colorectal cancer). The
authors claim that this opens up a wider application of PGD which is no longer limited to conditions with high
penetrance (I discuss the concept of penetrance below) and early onset conditions and/or early onset.
examples of sex-linked diseases will be briefly analysed: Duchenne muscular dystrophy and colour blindness.

Duchenne muscular dystrophy (DMD) is considered a severe X-linked disease. It is caused by a recessive mutation on the X chromosome and for that reason it is more prevalent in males, as in females any affected X chromosome is overridden by their other unaffected X chromosome (Pray 2008). Most girls with the gene for DMD are carriers, who themselves are not affected by the disease but can pass it on to their offspring. Males who are born with an affected X chromosome develop DMD. The main symptom, muscle weakness, appears between the third and fifth year of age. Muscles then increasingly deteriorate throughout life, leading to worsening problems with movement and performance of daily tasks. Many DMD affected individuals become wheelchair-dependent as teenagers and die in their twenties or thirties from heart or respiratory problems (ibid.). Based on the severe impact caused by early gradual muscle atrophy leading to premature death, DMD is typically considered a serious genetic condition (Parsons et al. 2004). The disease impedes bodily functions, makes individuals dependent on carers from an early age, and leads to premature death (Pray 2008).

Colour blindness is a sex linked condition which causes vision defects; in particular, defects in the recognition of red and green colours. Like DMD, colour blindness is an X-linked condition, and hence is more prevalent in males: approximately 8% of men of northern European origin are colour blind in contrast to 0.5% women, and the condition is less prevalent in African (3%-4%) and Asian (3%) men (Deeb and Motulsky 2011). Most men with green-red colour vision defects have no problems with naming colours; indeed some have a mild form of colour blindness and only learn about their condition if formally tested. Furthermore, individually adjusted tinted contact lenses can improve the condition and help with colour recognition (ibid.). Colour blindness, in contrast to DMD, is a condition which lacks severe symptoms such as pain or loss of bodily functions, and does not affect life expectancy; for these reasons it can be considered a minor genetic condition. Therefore, while DMD is a paradigm case for gender selection for medical
reasons, colour blindness is a mild condition that does not meet the regulatory criteria for medically-sanctioned gender selection.

This analysis is complicated, however, by the issue of who determines severity. Individual procreators can have distinct preferences about their future children’s traits. Perspectives about what is a severe condition can further differ based on individual beliefs or social context. In this sense, inheritance of specific traits might be seen as a serious problem by some procreators and not by others. Furthermore, a condition can be understood as minor or negligible from a medical point of view, yet it can be interpreted as a severe genetic condition by an individual procreator, for example in the situation when that condition precludes development of certain abilities in the future child which are considered essential or desirable by the procreator. In that regard, the issue of determining severity is complex as there is no clear outline provided by regulatory frameworks as to when a genetic condition starts to be severe.

If severity is interpreted by procreators themselves, a potentially wide range of genetic disorders may be considered severe (Karpin and Savell 2012). For example, in a family of artists, colour blindness might be seen as a severe condition. We can imagine a case of heterosexual visual artists contemplating parenthood, in which the woman has male ancestors with red-green colour blindness. This couple considers visual arts an essential part of their professional and personal life and want their child to participate in all its aspects. Furthermore, they wish that, ideally, their child will share their artistic skills and incline to a career in the arts. Such procreators may then consider colour blindness a severe genetic condition and choose to undertake gender selection in order to avoid the birth of males who have a higher prevalence of colour blindness.17

In my view, a systemic approach to defining “severe” is required in this context. Without a clearly articulated definition of severity, it is not possible to distinguish between minor conditions that can be used to justify gender selection for essentially non-medical reasons, and serious conditions which have a significant negative impact on the life of the child. I acknowledge that defining severity is not an easy task. However, effective

17 As will be explained below, no test exists to detect colour blindness in a particular embryo, as the condition is not caused by an identifiable gene. Therefore, procreators can only choose to select against boys who have a higher probability of inheriting the condition (Deeb and Motulsky 2011).
implementation of the distinction between medical and non-medical reasons requires the provision of criteria for defining severity. It seems plausible to use criteria which take into consideration the future child’s potential for developing capacities to engage with the world and participate in activities that are taken to be fundamental in all human societies. Combining these criteria seems suitable because such an approach considers both the impact on a child’s life and the life of their carers. Thus, colour blindness can be considered a minor genetic condition, while DMD is placed higher on the scale of severity due to its negative impact on the child’s bodily functions and life expectancy.

A further question to be answered by regulatory frameworks is how much weight should be given to individual procreators’ views about the severity of a certain genetic condition in a particular context. Advocates of the primary value of reproductive autonomy might argue that regulatory frameworks should let parents interpret the severity of a genetic condition and hence define the criteria for the legitimate practice of gender selection for medical reasons. Similarly, regulators might be reluctant to tightly define severity in order to provide procreators with space to decide what comprises a condition severe enough to justify gender selection. This approach would benefit procreators as they would have more flexibility in in making procreative choices about gender selection for medical reasons.

However, there are good reasons to argue for a more systemic approach to defining severity. I agree with Van Wagner et al. (2008) who argue that decisions about PGD should not be left solely with parents. While highlighting the importance of women’s autonomy, the authors claim that individuals should not have the primary role in determining the acceptable uses of PGD. Moreover, they argue that “respect for reproductive autonomy should not be invoked to allow policy makers and clinicians to

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18 I discuss the criteria for defining severity more in detail in the next chapter.
19 In the following chapter, I defend a scalar view of disability and discuss criteria for defining a severe genetic condition in more detail.
20 Furthermore, Van Wagner et al. (2008) argue that that the approach advocating for decisions to be made based on discussion between patients and medical staff is insufficient. While institutions such as HFEA claim that this approach provides balance between respect for reproductive autonomy and prevention of unacceptable use of ARTs, the authors argue that it places too much emphasis on individual autonomy.
avoid complex and difficult questions about the potential implications of reproductive and genetic technologies on conceptions of “health” and “normalcy” (48). Given that decisions about the use of PGD have profound impact on individuals, families and society, relevant experts need to be involved in ethical evaluations and governance of these practices. As gender selection has a significant impact and poses a risk of harm, it is my view that systemic regulation is warranted. Moreover, the process of defining severity needs to involve diverse groups, including people with impairments and their families who are most affected by policies on disability. The process should involve procreators, individuals living with disabilities, women’s rights advocates, medical staff, bioethicists and other policy makers. The incorporation of diverse agents would help to ensure that the policy reflects the views and interests of various affected stakeholders, as well as medical experts.

A more precise and stringent definition of “severity” would not necessarily decrease procreators’ autonomy compared with the current situation, and may in fact serve to increase reproductive options. Currently, the NHMRC Guidelines impose limits on autonomy when they specify that PGD must not be used for gender selection, and also preclude its use for “selection in favour of a genetic defect or disability in the person to be born” (NHMRC 2007, 55). Thus, if PGD shows that an embryo has a genetic or chromosomal “abnormality”, the Guidelines indicate that the clinic should refuse to implant the embryo. Without a clearer specification of severity, it can be argued that the current policy is too strict. Not all genetic conditions cause severe harm to children, and some parents might want to raise children regardless of potential impairments (as I discuss in the next chapter). Moreover, if a genetic condition is detected in all of a procreator’s embryos, the NHMRC Guidelines are unclear whether, in such a case, a clinic has a right to reject implantation of all embryos. Therefore, defining severity would also ensure that procreators may choose to have children with minor impairments.

The concept of severity underlying regulatory frameworks is not clearly defined, despite being the central criterion determining the legitimacy of the practice of gender selection for medical reasons. This contributes to confusion concerning what genetic conditions count as severe enough to match the requirements for gender selection for medical reasons. Regulatory frameworks do not distinguish between different sex-linked
conditions in terms of their severity, which undermines their capacity to guide gender selection. Next, I argue that there are problems with the strong genetic determinism underlying the concept of a serious genetic condition in the regulatory frameworks on gender selection for medical reasons.

### 3.3.1 Problems with Strong Genetic Determinism

The focus in regulatory frameworks on the importance of the severity of particular genetic conditions implies an underlying commitment to strong genetic determinism. This emphasis is based on an assumption that all embryos with a particular sex chromosome will develop a severe hereditary sex-linked condition. In what follows, I am going to problematise this supposition. In order to discuss the genetic inheritance of sex-linked conditions in detail, I first explain how some risks of sex-linked diseases are transmitted based upon inheritance of recessive and dominant conditions. Then I explain that even in embryos with an affected gene, there may be wide variations in the manifestation of the disorder.

Some conditions can be traced to a particular affected gene. They have a clear inheritance pattern, which basically involves four scenarios, as presented in the graphic below. The inheritance patterns vary depending upon whether the disorder is recessive or dominant, and which parent is affected.
As the graphic shows, if the gene is *X-linked dominant* and the mother is affected while the father is not, 50% of daughters and 50% of any sons will be affected. In cases where the father is affected and the mother is not, all of their female children will be affected- due to the affected X dominant chromosome passed on to them by their father-while none of the sons will be affected.

In the case of an *X-linked recessive* gene disorder, the pattern changes depending on the status of the parents: if a mother is a carrier and has a son, there is a 50% chance

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that he will inherit the affected X chromosome, while there is a 50% chance of any
daughter being a carrier as the chromosome that she inherits from her mother has a one
in two chance of being affected. If the father is affected and the mother is unaffected, all
their sons will be unaffected, as they will inherit only a Y chromosome from the father
(and only X chromosomes are affected), while all their daughters will be carriers.

Nevertheless, inheritance patterns of many sex-linked conditions are quite complex
as some disorders relate to single gene mutations, while others are more generally linked
to a chromosome rather than specific genes. In some cases, such as DMD, the inheritance
pattern can be predicted as the condition can be traced to a chromosomal mutation and a
particular gene. Therefore, it is possible to have a prenatal test that will detect an affected
allele on a particular gene, making it possible to identify an affected embryo.

For some X-linked conditions, the causal genetic defect is not known and no
reliable test exists, such that procreators have to rely on detection of the chromosomal sex
of the embryo (Pray 2008). Colour-blindness is one of the conditions for which there is no
reliable genetic test able to distinguish between affected and unaffected embryos (Deeb
and Motulsky 2011). Hence, if there is a history of colour-blindness in a family, then as
colour blindness is much more prevalent in males, procreators wishing to avoid the
prospect of conceiving a child with colour-blindness have only the option of selecting
against male embryos, either through PGD or selective abortion. As Pray has stated, this:
“approach in particular touches on some sensitive ethical issues, because half of the
discarded male embryos would not be affected and would presumably be healthy” (Pray
2008).

Furthermore, the impact of X-linked conditions depends on two factors: whether or
not the affected gene/chromosome is present, and once present, the penetrance of the
affected gene. The latter refers to the fact that not everyone with the affected gene will
experience the same degree of disease. Different sex-linked conditions have diverse
patterns of penetrance, i.e. the “likelihood that a given gene will actually result in disease”
 Genetic tests cannot predict penetrance, and therefore cannot distinguish between male embryos with the affected gene who will develop the condition and those who, despite having the affected gene, will either not develop any manifestations of the relevant condition, or show only mild symptoms. The effects of penetrance undermine strong genetic determinism, as there is no guaranteed and consistent effect that can be predicted from the presence of an affected gene.

In the case of some X-linked diseases, environmental factors contribute to the development of the condition, which again means that not every embryo with a certain genetic makeup will result in a future person with a genetic disease. For example, recent research suggests that autism spectrum disorder might have a significant environmental component (Neale et al. 2012; O’Roak et al. 2012; He et al. 2013). According to these studies, there is no single gene responsible for autism; rather, the condition is associated with at least two genes. Furthermore, there are claims that environmental factors such as chemicals and microbes present in the environment contribute substantially to the development of autism spectrum disorder in particular individuals (Insel 2012).

Regulatory frameworks which sanction gender selection for medical reasons based on strong genetic determinism are unsatisfactory. These frameworks disregard the complexity of genetic inheritance patterns and penetrance, the reliability of testing methods and the likely degree of severity of the final condition. Clearly, these factors and the intersections between them need to be evaluated for each single sex-linked condition due to their specific implications.

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22 The National Institute of Health specifies that penetrance refers to the: “probability of a gene or genetic trait being expressed. "Complete" penetrance means the gene or genes for a trait are expressed in all the population who have the genes. "Incomplete" penetrance means the genetic trait is expressed in only part of the population. The per cent penetrance also may change with the age range of the population” (NIH 2013, n.p. available online at: http://ghr.nlm.nih.gov/glossary=penetrance).

23 I discuss further the issue of reliability of testing for inherited conditions in the next chapter when I discuss selection against disability.
3.4 The implications of the Ambiguous Definitions of Medical and Non-medical Reasons

The current lack of clarity as to what counts as a medical condition that is serious enough to legitimise gender selection leaves space for various interpretations of sex-linked conditions. While the distinction between medical and non-medical reasons is important, the category of gender selection for medical reasons is not clearly delineated in regulatory guidelines. In what follows, I examine two consequences of this gap: 1) confusion about the character of gender selection in cases where medical and non-medical factors overlap; and 2) the strategic use of alleged medical justifications in order to conduct gender selection for non-medical reasons.

First of all, there are cases of gender selection in which the borderlines between medical and non-medical aspects of selection are hard to define. Consider the following case study of a couple expecting a child. In the 19th week of a planned pregnancy an ultrasound detected that the foetus was missing a left hand, which is a rather rare condition (Joshi and Uppal 2010). The wrist bones were developed but the foetus had no fingers on the left hand, while the right hand seemed to be well developed. The couple was offered counselling and booked for more prenatal tests. The doctors reported that the couple was “devastated” about the condition and requested a chromosomal sex test which showed that they were expecting a female child (ibid.). They were referred to a Limb Reduction Clinic at Westmead Children’s Hospital in Sydney and consulted with a team possessing a “positive approach to the disability, particularly as the unborn baby appeared to have carpal bones that demonstrated movement” (Joshi and Uppal 2010, 25). They received information about a limb prosthesis, which would minimise the problem. Despite this, the couple decided to terminate the pregnancy in the second trimester, after they learned that the foetus was a female. Their reason for doing so was they believed that “the cosmetic impact would be far greater for a girl” (ibid.).

The nature of the reason for termination seems confused. At first it appears that the termination was conducted for medical reasons, as the absence of a hand counts as a
form of impairment. Nevertheless, the absence of the hand was considered by the parents to be sufficiently disabling to warrant termination only after the chromosomal sex of the foetus was disclosed, indicating that gender was a significant factor in the couple’s decision to abort.

The condition of a missing limb was detected in the second trimester of pregnancy via ultrasound, rather than in the context of PGD, which is regulated under the NHMRC Guidelines (2007). As such, the termination of the pregnancy was carried out under the abortion law, regulated by the NSW Crimes Act 1900. Abortion in New South Wales is not available on demand but is considered lawful when a doctor decides that abortion is necessary to avoid risk to a pregnant woman’s life, or her physical and mental health, while taking into account the economic and social aspects of the woman’s situation (Skene 2003). The woman accessed the abortion at a clinic (Joshi and Uppal 2010) which was legally bound to comply with the legislation, hence, a doctor must have interpreted the condition of a missing foetal hand as a reason for a lawful abortion.

Nevertheless, as argued by Catherine Mills (2011), the case cannot be considered simply from a medical point of view, but needs to be analysed with reference to the social conditions in which the couple made their decision. Mills claims that the procreators’ decision rests on certain assumptions about disability and gender. It is a decision which seems to “exaggerate the importance of sexual attractiveness in female gender identity, and at the same time diminish the possibilities for sexual attractiveness of people with disabilities” (Mills 2011, 3). Mills’ approach shifts the attention from medical conditions to social norms, the constructs of “normal human bodies, of bodies that are desirable, and those that are socially repudiated” (ibid.), hence the “social regulations of the forms of embodiment” (4).

Undeniably, the foetus had a missing hand. Yet Mills asks whether this condition justified termination of the pregnancy. The social norms of embodiment – which are inherently gendered – seem to have played a significant role in the case, which suggest that this may have been a termination for gender rather than medical reasons. First, the

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24 However, it is questionable whether a missing hand counts as severe impairment. As I have argued, a severe condition needs to limit capacities to engage with the world and participate in fundamental human activities. By applying this criterion, it seems to me that the absence of a hand does not count as a severe impairment.
issue of a missing hand became determinative only once the chromosomal sex of the foetus was disclosed. Second, in pursuing abortion after the chromosomal sex was known, it seems that the procreators acted in accordance with gender norms, or were influenced by social pressures and assumptions about traditional beauty standards in women. Thus it seems that the gender implications of the condition played a crucial role in terminating the pregnancy. Indeed, the case report states that the information about the foetus being female “was relevant for their decision making” (Joshi and Uppal 2010, 25). Therefore, the case may be seen as representing abortion for gender reasons, or at least as a case in which the categories of medical and non-medical reasons overlapped.

It seems that the category of disability can be used as a reason for gender selection for non-medical reasons; traits or impairments that might be considered acceptable in a foetus of one gender are nonetheless deemed grounds for termination in a foetus of the opposite gender. This suggests that certain cases of selection may be complex and not fit neatly with the distinction between medical and non-medical reasons. Without further specification of the criteria for identifying medical reasons, there may be numerous cases which will not be easy to evaluate and regulate.

Furthermore, the indistinct boundary between medical and non-medical reasons also creates the possibility of referring to certain medical conditions and their hereditary pattern in a family to conduct gender selection for non-medical reasons. Procreators who desire a child of a specific gender, and request a gender selective abortion or PGD to accomplish the goal, can use the risk of sex-linked diseases as a means of practicing gender selection motivated by non-medical reasons. For example, an increased risk of breast cancer can be used as an apparently acceptable medical reason to select against female offspring, in order to satisfy an underlying preference for sons. Likewise, parents can use the prevalence of less severe genetic conditions such as colour blindness or autism spectrum disorder in their family as a justification for not having male children. Prima facie, these mild conditions do not seem to be in the spirit of regulatory requirements.

In other words, gender can be used as an excuse for selection against disability. Nevertheless, selection against disability is legally accepted without reference to gender. I will discuss different aspects of selection against disability in Chapter 4.
justifying gender selection for medical reasons. Nevertheless, parents could for example argue that they have a strong family history of autism and that for them autism in a child would be a severe disability. Given the lack of clear guidance, it might then depend on the staff of each clinic as to whether such reasoning is given credibility.

While I argue that PGD for non-medical reasons should be proscribed and that it is possible to do so by developing criteria for defining “severity”, the issue of using abortion for gender selection is more problematic, as it is not possible to prohibit gender-selective abortion without also affecting access to abortion for other reasons. In jurisdictions in which a woman’s right to abortion is accepted as important for women’s reproductive autonomy, medical staff can find themselves in an uneasy situation. They are caught between respect for the woman’s reproductive autonomy and being either unwitting or unwilling accomplices to gender selection for non-medical reasons. Abortion is effectively available on demand in much of Australia (Hamblin 2014). In some states and territories, abortion is lawful if continuation of the pregnancy poses a risk to a woman’s mental and physical health. The understanding of risk is open to interpretation, and largely remains a private matter between the woman and her doctor. This leaves open the possibility for women to use abortions for the purpose of gender selection in Australia, and anecdotal evidence suggests that they do.

However, while liberal abortion policy permits the practice of gender selective abortion, in my view, this is something that we must accept because women’s reproductive autonomy can only be exercised if women have access to abortion. Gender selective abortion is ethically problematic as it is based on preconceived assumptions about future children’s gender. However, restricting gender selective abortion or questioning women’s motives for abortion would necessarily lead to restrictions on the

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26 There are anecdotal examples of this is happening in Australia. Furthermore, my empirical study provides evidence as two respondents used their sons’ mild health conditions to access gender selection for medical reasons in Australia.

27 Abortion on demand is available in Victoria, Tasmania and the Australian Capital Territory (ACT). In South Australia (SA), Western Australia (WA), New South Wales (NSW), Queensland and Northern Territory (NT) abortion is lawful only under specific circumstances, such as evidence of the risk of severe harm to a woman’s mental or physical health. What counts as “lawful” abortion largely depends on judicial interpretation. Only SA and NT accept severe disability as a justification for lawful abortion (Hamblin 2014).

28 Anecdotal evidence (Wendy Rogers, private communication with abortion provider) suggests that women have gender selective abortions in Australia. My empirical study also suggests that women seek abortion for the purpose of gender selection and that they are aware of such an option.
availability of abortion. This would seriously undermine women’s reproductive autonomy. As it is not possible to determine any individual woman’s “true” motives for seeking abortion, it is equally impossible to ban only abortions for gender-selection. Thus, the only way to prevent any instances of gender-selective abortion would be to implement a broad ban on abortion. In my view, it is more important to maintain access to abortion than to implement a ban to prevent some instances of gender selective abortion. Gender selection is a product of gender dominance and gender stereotyping, which require systemic approaches to promote gender equity. It is only through systemic change that demand for gender selection will be reduced. The practice of GSFNMR cannot be challenged without addressing sexism.

### 3.5 Conclusion

I have claimed in this chapter that the distinction between medical and non-medical reasons in prenatal selection is important as it differentiates between permissible and impermissible forms of gender selection in many regulatory frameworks. In my view, this distinction can be ethically justified, but only if the category of severe harm is more clearly defined. In addition, predictions about severe harms should avoid strong genetic determinism, taking account of other issues, such as environmental factors and penetrance, which have significant impact on the development of medical conditions in affected individuals. However, the distinction between justifiable and unjustifiable forms of gender selection should not impact on abortion policy. The consequences of prohibiting gender selective abortion would be too damaging for women’s autonomy.

In this chapter, I focused on the distinction between medical and non-medical reasons for gender selection, which plays a central role in regulation of GSFNMR. In the

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29 Similar arguments have been made by many advocates for women’s rights in reaction to recent attempts to restrict the use of abortion for gender selection in Victoria (Cook 2013; Rogers 2013). The legal initiative was introduced after Dr Hobart refused to provide abortion to an Indian woman pregnant with a female foetus (I discussed this case in the Introduction to this thesis).

30 Such measures should include gender sensitive education, socio-economic reforms, equal opportunities and leadership, campaigns raising awareness about gender discrimination and various strategies to promote the rights of individuals with diverse gender and sexual identities.
following chapter I will look at the intersections between the categories of disability and gender. Both disability and gender are traits that are regarded by some people as making children with those traits imperfect and undesired. For this reason, it is relevant to investigate the similarities and differences between the alleged justifications for disability and gender selection practices.
4. Gender Selection through the Lens of a Disability Rights Critique

In the previous chapter, I focused on the distinction between gender selection for medical and non-medical reasons. Here, I inquire into the intersections between gender selection and selection against disability. Both disability and gender are traits which lead to perceptions about certain children as imperfect and undesired. Additionally, both gender and disability promote strong preferences in some parents, leading them to pursue antenatal interventions to avert the births of children with undesired traits. In principle, selection for a child of a desired gender\(^1\) implies selecting against a child with an undesired gender. Therefore, it seems that parents who have a strong desire for children of a specific gender might view a child with the undesired gender (associated with chromosomal sex) as a child with a defect or disadvantage. The “wrong gender” child is perceived as one who has undesirable features, is less than perfect, or less than ideal given procreators’ views about parenting and families. From their perspective, the wrong gender child is viewed as someone who does not fit into the family they wish to have, and who may provide less satisfactory parenting experiences than a child of the desired gender.

Thus it seems that gender selection, to a certain extent, shares some features with selection against disability. Both forms of selection involve strong parental preferences about the traits or characteristics that are desirable in a child. Furthermore, in both cases procreators consider a range of actions including PGD or abortion to try to ensure that a child with the desired traits is born. Moreover, as both selection processes involve framing certain children as undesirable, they both seem to carry the potential for discrimination.

Therefore, it is important to inquire into the similarities and differences between gender and disability in the context of antenatal selection practices. In particular, the aim of this chapter is to investigate whether and how these categories overlap, and determine what the implications are of any overlapping issues in the context of gender selection.

\(^1\) I acknowledge that in prenatal gender selection, parents are actually selecting for embryos. Nevertheless, as I argue in Chapter 5, gender is a social construct which cannot be selected prior to conception, and as procreators undertake selection of sex chromosomes in embryos related to the gender roles they desire their offspring to adopt, I use the term children rather than embryos.
Specifically, I address the question of whether GSFNMR can be subjected to the same critiques as those which apply to selection against disability.

I have shown in the first two chapters that libertarians argue that procreators should have a right to select their offspring’s gender, just as much as they should have a right to select against disability. These authors treat gender selection and selection against disability as similar in many respects. I argue that the analogy between GSFNMR and selection against disability is not justifiable. I begin the chapter with an overview of different accounts of disability and draw on the social constructivist and discursive models. I then analyse the similarities and differences between selection against disability and gender selection and discuss their implications. I will argue that there are similarities between gender and disability in the context of embryonic selection; nevertheless, there are many relevant differences between them. The main difference is that unlike severe disability, gender is not an unavoidably disadvantaging trait. For this reason, I will argue that the analogy between gender selection and selection against disability, which is used by libertarians to justify the practice of GSFNMR, is unsound. Finally, I discuss the relevance of disability critiques in the context of GSFNMR, focusing on four major arguments: from social constructivism; the expressivist argument; the parental attitude argument; and the argument from a life worth living. I will argue that disability rights critiques are relevant for discussions about GSFNMR because they raise issues about the legitimacy of selection against a child with undesired traits. However, some arguments raised by disability critiques have limited relevance for debates about gender selection, as gender is not an unavoidably disadvantaging trait.

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2 In this chapter I will only focus on gender selection for non-medical reasons. Ethical aspects of gender selection for medical reasons have been briefly discussed in a previous chapter.

3 Informed by the social constructivist and discursive critique, I acknowledge the important role of language in debates about disability. My use of terminology is informed by the works of disability rights theorists such as Scully (2003 2008 2010) and Hall (2011). I mostly use the term “disability” to refer to the social disadvantage associated with particular physical or mental conditions (this is reflected in my use of “people with disabilities”), and “impairment” when I refer to the underlying conditions. However, clinics which offer genetic screening and selection against traits taken to adversely affect physical or mental functioning use the term “disability” (i.e. “selection against disability”) and where talking about such clinics, I reflect their use of the term.
4.1 Accounts of Disability

Before I inquire into the similarities and differences between disability and gender, it is first necessary to consider different accounts of disability. Some of the earliest accounts are medical models, which view disability as an objectively existing biological malfunction, or intrinsically disabling characteristic of the body (Scully 2003 2008; Tremain 2006). Medical models characterise disability as a “nominative pathology”, a “disease, degeneration, defect or deficit located in an individual” (Scully 2003, 266) or as Tremain puts it: “the inevitable consequence of personal lack or defect” (Tremain 2006, 39). Medical models understand disability as an individual trait which is diagnosed against objective, universally applicable, physical and mental norms of human functioning (Wendell 1989 1996; Scully 2003 2008; Tremain 2006). The trait is therefore seen as inherent to the individual person, and one which has an inevitably negative impact on their life.

Insofar as disability is framed as a bodily malfunction or defect, it has intrinsically negative connotations. For that reason, and in the context of rapid developments in reproductive medicine and screening technologies, medical models allow for interventions which select against embryos with putatively disabling traits (Scully 2003 2008 2010; Tremain 2006; Kittay 2009).

Disability rights critics, on the other hand, argue that the medical model’s emphasis on prevention of disability has stigmatising implications for people living with disabilities. Parens and Asch (1999), for example, argue that the selective abortion of a foetus with disability not only involves negative judgements about a trait but also about the person who carries that trait. The medical model has been criticised by many theorists who question its inherently negative understanding of disabilities which they understand as largely socially constructed (Parens and Asch 1999; Scully 2003 2008; Hubbard 2006).

Social constructivist models of disability have developed in response to medical models. Endorsed by activist movements and theorists advocating for the rights of people living with disabilities, social constructivist models maintain that no biological trait is intrinsically disabling. On the contrary, disability is a socially constructed concept of an

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4 Some theorists such as Gillam dispute these claims. I discuss her views below.
ableist society which holds that all bodies need to have certain functions perceived as normal for a human being (Parens and Asch 1999; Scully 2003 2008; Tremain 2006; Wendell 1989). Disability theorists tend to criticise normative views of bodily functions as displaying a narrow and limited understanding of the diverse physical and mental conditions of human existence.

Social constructivist models also tend to make a distinction between impairment and disability. Impairment is understood as an “individual biological manifestation”, while disability is the “collective experience of oppression resulting from a disabiling society” (Scully 2003, 267). On this account, disability is viewed as a form of social disadvantage imposed on persons with a particular trait such as lack of hearing or absence of a limb (Tremain 2006). Social constructivist critics of medical models argue that instead of society regarding different forms of embodiment integral to physical and mental diversity in the population, people with impairments are stigmatized and devalued (Scully 2010; Tremain 2006).

Disability theorists holding social constructivist views claim that the actual problem does not lie in the trait but with a society that is organised and structured in a way that normalizes able bodies (Scully 2003 2008; Saxton 2006; Tremain 2006; Karpin and Savell 2012). In that respect, if societies allocated sufficient resources to assist individuals with impairments, the disabling effects of impairments would be minimized (Daniels 2000).

In turn, the social constructivist model of disability is subject to its own set of criticisms. First, it has been claimed that this approach reproduces traditional binaries such as impairment and disability, yet does not acknowledge the interdependent nature of these categories (Tremain 2006). This form of criticism, known as the discursive turn, claims that our very ideas about what counts as impairment are culturally constructed, rather than embedded in objectively existing biological bodily characteristics (Scully 2003 2008). Tremain, who holds a discursive approach to disability, claims that “disability precedes the idea of impairment” (2006, 39) and argues that what one understands as
impairment is shaped by culturally specific notions about proper bodily and mental function.\(^5\)

On a discursive account, impairment is seen as the product of hierarchic social discourses about (dis)ability. Furthermore, the cultural specificity of these discourses renders unintelligible any homogenized, universal category of “disability.” The discursive account emphasises that the experiences of people with disabilities are diverse and cannot be generalized (Scully 2003 2008).\(^6\)

However, this recognition of diversity in the experiences of people with traits understood as disabilities discloses a form of critique that can be applied to both social constructivist and discursive accounts. According to the phenomenological approach, social and discursive theories of disability overlook the actual pain and disadvantage accompanying certain impairments (Scully 2003 2008).

Theorists working in the phenomenological approach reflecting on the very real disadvantages of individuals living with particular forms of impairment, such as severe cognitive deficits, acknowledge that in some cases, particular individuals will always depend on carers, even with assistance provided by society; their impairments are not solely the result of society’s views and structures. Many such observations have been made by disability theorists who themselves are carers for children with intellectual disabilities. Kittay claims: “For persons with severe intellectual disabilities, such as my daughter Sesha, no accommodations, antidiscrimination laws, or guarantees of equal opportunity can make her self supporting and independent” (Kittay 2011, 56). Similarly, Gottlieb explains that while his daughter “can express her feelings and preferences”, she

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\(^5\) Tremain claims: “‘Impairments’ are materialized as universal attributes (properties) of subjects through iteration and reiteration of rather culturally specific regulatory norms and ideas about (for instance) human function and structure, competency, intelligence and ability” (Tremain 2006, 39). Tremain’s view of impairment is similar to Butler’s view as to how sex is produced in a hierarchic society. Tremain (2006) claims that impairment is produced within the framework of disability; likewise Butler (2008) claims that sex is produced within the framework of gender. On a discursive view, the conceptualization of disability or gender precedes and is taken to construct the understanding of impairment or sex. Thus, impairment and sex are seen as categories produced within social hierarchic power structures, and are naturalised as biological facts to camouflage the power dynamics of their very production.

\(^6\) The claim of discursive theorists of disability that “disabled people” are no homogeneous group (Scully 2003 2008) resonates with the claim of discursive feminist theorists opposing the existence of a homogenous universal category of “women” (Butler 2008).
nonetheless “cannot fully comprehend the consequences of life choices, nor assess the effects of her actions on her own future experience” (Gottlieb 2002, 233).

These four models, which dominate current debates about disability, occur on a spectrum with respect to the level of emphasis they place on biology as opposed to social forces. The medical model emphasizes biology, as it takes disability to be an objectively existing physical condition. At the other end of the spectrum, the social and discursive models understand disability as the result of context-specific cultural expectations and practices. Somewhere in the middle stands the phenomenological approach, which recognizes that some conditions have physical manifestations which unavoidably entail suffering and/or serious limitations, but nevertheless also emphasizes societal responsibilities to minimize the avoidable disadvantage experienced by people living with disabilities and their families (Daniels 2000).

In my proceeding analysis of the intersections between disability and gender selection practices, I draw on the social constructivist and discursive models of disability, which provide tools for critiquing purely medical models. I will also use the phenomenological critique of social and discursive models to reflect on the individual experiences of people living with severe disabilities.

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7 As I focus on the dominant models of disability, the list is by no means comprehensive. I am for example not engaging with the minority group model which considers people with impairments as a minority, subject to stigmatization and exclusion. On this view, people with impairments are disadvantaged due to discrimination similar to the disadvantage encountered by, for example, ethnic minorities (Albrecht et al. 2001).

8 Daniels focuses on justice in health care and claims that in order to maintain fair equality of opportunity, health care services need to be distributed in a way that keeps people “functioning as close to normal as possible” (Daniels 2000, 315). Daniels does not provide a clear account of what normal functioning means (1985 2000 2001) but claims that: “The line between disease and disability and normal functioning is thus drawn in the relatively objective and non-evaluative context provided by the biomedical sciences, broadly construed” (2000, 315).
4.2 Similarities between GSFNMR and Selection against Offspring with Disability

Selection against disability and gender selection seem to share a number of features. In what follows, I will argue for the following claims. First, both forms of selection practices work with an underlying notion of a desired ideal child – one which presumes that some types of children are less than ideal. Second, societies support disability and gender selection practices to a greater or lesser extent by offering specific reproductive services. Third, procreators seem to be motivated to use available and emerging technology to achieve the birth of children with traits that they desire. Fourth, given the underlying notion of more-or-less ideal children, disability and gender selection practices carry the potential for discrimination against certain types of individuals. Finally, both practices reinforce dominant societal norms.

Selection practices involve views about desired children, which procreators aim to select for, as well as undesired children that procreators want to avoid having, and therefore select against. Children are desired based on the presence of certain features (e.g. the “right” gender) or in other cases, their absence (e.g. traits which are considered disabling). It is important to acknowledge that in both forms of selection, while procreators decide between different embryos rather than children per se, they are doing so with the idea of these embryos becoming future children. Further, apart from cases where parents select against severe disability due to concerns about their offspring’s potential for wellbeing or flourishing, procreators also select embryos with respect to the social and familial roles they hope their future children will someday play.

Therefore, both forms of selection involve an underlying notion of a desired child, or as Rothschild (2005) frames it, the perfect child. Rothschild argues that selection for a perfect child is driven by the desire to avoid the imperfect, which implies that certain types of children are devalued within procreators’ choices and the social contexts that shape those choices.

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9 I discuss the issues related to severe disability in the section on differences between disability and gender. I discuss the concept of flourishing in the conclusion when I discuss limited justifiability of embryonic selection.
In the context of gender selection, the imperfect child is the child of an undesired gender. Nevertheless, as gender is traditionally bound up with compulsory heteronormativity, the imperfect child is not only one of an undesired gender but may also be a child with an undesired sexual identity (i.e. other than heteronormative). Furthermore, as gender selection involves the idea that gender can be selected through chromosomal sex selection, it assumes that a resulting child will have both intelligible sex and gender,\(^{10}\) as well as an implicitly heteronormative sexual identity. From this perspective, masculine girls, feminine boys, transgender or intersex children, or children who will develop lesbian, gay or bisexual identities, can all be seen as children with a “defect”, and hence imperfect and undesired.

Regarding selection against disability, the imperfect child is one with a physical or intellectual impairment. Nevertheless, what counts as “disability” is largely open to interpretation, and can stem from conditions considered severe (such as Tay Sachs) to conditions which can be seen as mild (such as colour blindness). The concept of a perfect child follows from socially specific views about what counts as disability and what it means to be a child free of disability. For example, a polarized public debate occurred in the UK in 2001 following the post-24 week abortion of a foetus because it had a cleft palate (Allison 2003). The UK Abortion Act allows abortions after 24 weeks only for significant reasons, such as risks to the woman’s health or the risk of serious handicaps to the child, if born (Parliament of the United Kingdom 1967). The case provoked furious debate as to whether a cleft palate is a serious enough handicap to justify late-term abortion. Church of England curate Rev Joanna Jepson took the case to court on the grounds that by carrying out the abortion, doctors committed unlawful killing (Allison 2003). Her solicitor claimed that most people would agree that a cleft palate is not a serious handicap, and therefore, the fact

\(^{10}\) As I explain in Chapter 5 where I discuss different theories of sex and gender, the intelligibility of sex and gender is a core requirement in a traditionally gendered society. In such a society, it is held as a norm that female sex is aligned exclusively with female gender and male sex with male gender (Butler 2008).
that a late term abortion can be carried out shows that the law is uncertain and too flexible in interpreting the meaning of “serious handicap” (Dobson 2003).  

Given socio-cultural interpretations about what counts as a disabling trait or defect, one can see the similarities between selection against disability and selection against a particular gender. Shaped by culturally specific gender norms and related expectations, some procreators will have a strong preference for male offspring due to economic reasons (e.g. as may be the case in China, [Hvistendahl 2011]) and perceive a female child as imperfect, while procreators from different cultural backgrounds (e.g. Japan) may select for daughters as they are considered easier to raise and more suited to assume the role of future carers for their parents (Davis 2001). For these procreators, the imperfect child is the male child. Finally, in some cultures, the normative ideal is a gender-balanced family, so that the imperfect child has the same gender as the already existing children (as often happens in the US, Darnovsky 2004). It seems therefore, that both selection against at least some types of disability (but perhaps not those involving severe impairment) and gender selection are based on underlying notions of ideal types of children.

The second similarity between disability and gender selection practices is the extent to which they are socially supported. In the case of selection against disability, there is significant social support for selection. The negative framing of a range of impairments, which is replicated in medical discourse, reproductive technologies and antenatal care, can significantly impact on parents’ reproductive autonomy and choices. Tremain, for example, claims that the new genetic knowledge which is produced in this context already “implies a certain set of directives and prescriptions for human action” (Tremain 2006, 35).

The very fact that specific reproductive technologies and screening methods are widely available implies that they are socially acceptable. Moreover, the social values underlying the availability of screening technologies make it acceptable to use these technologies for embryonic selection, and to select against embryos with undesired traits in favour of more ideal types of future children. This is also true in the case of gender

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11 Jepson later won the right to challenge the police force’s decision not to prosecute the doctors in court (Allison 2003) but following the police inquiry, the Crown Prosecution Service decided that the doctors acted in good faith and should not face criminal charges (BBC 2009).
selection. In countries where technologies and methods of GSFNMR are either legally available or illegal but widely tolerated, the act of selecting for or against a certain gender can be viewed as socially supported, in virtue of the existence and availability of the relevant technology. The fact that clinics offer gender selection means that gender is considered an important trait and that procreators are socially sanctioned to pursue gender selection to at least some degree. The screening technologies create an implicit directive or persuasion to select for gender (or against disability) and sanction those choices.

Societies vary in the extent to which GSFNMR is supported or socially enforced (Hvistendahl 2011). In societies with strong preferences for male offspring, there are pressures on procreators to conform and use gender selection to produce sons. Even in societies without such preferences, the availability of gender-selective technologies still implies that the practice of GSFNMR is socially acceptable. Furthermore, in many countries, GSFNMR is or has been made illegal, yet it is practiced or desired by procreators, including in Australia (News.com 2013bc, Marriner 2013a). This is because many societies maintain traditional discourses of gender dichotomy, the belief that male and female children are essentially different. In such contexts, gender is viewed as an important trait that can change procreators’ experiences and satisfaction with parenting.

From the discussion above, it is clear that the availability of disability and gender selection practices implies that disability and gender are socially important traits such that it is legitimate to select against/for them. However, as I discuss later, the extent of support varies for selection against disability compared to that for gender.

The third similarity is that, in both cases of selection against disability and gender selection, procreators are motivated to use technology to conceive the children they desire. This motivation exists in the context of the rapid development of biomedical technologies such as genetic screening and their increasingly routine use in antenatal care and reproductive medicine (Scully 2003 2008; Tremain 2006). Both selection against disability and gender selection involve the use of medical methods and technologies such as blood tests, genetic screening or selective abortion. The enterprise of seeking an ideal
child happens within the framework of medical expertise and clinics (Darnovsky 2003; Rothschild 2005; Segal 2010; Karpin and Savell 2012). Medical institutions assist in the procedures leading to the conception of the child desired by procreators, in a framework which emphasizes respect for parental reproductive rights, autonomy and choice (Shildrick 2004; Kittay 2009; Segal 2010). In this context, practices such as genetic screening and other forms of prenatal diagnosis are presented as enhancing reproductive autonomy.

I want to challenge, however, the claim that prenatal selection unambiguously increases autonomy. A predetermined set of options available to procreators does not necessarily enhance autonomy (Sherwin 1992). As I have previously argued, parents make their choices in a culturally loaded environment in which adjusting to dominant norms may be the most rational choice (Sherwin 2007).\footnote{I discuss Sherwin’s arguments in more detail when I analyze my empirical study in Chapter 7.} A society which values able-bodiedness over impairment creates an environment in which the most rational choice is selection against disability. Thus, being given options does not guarantee that procreators can freely choose among them, as some choices are more socially acceptable than others.

In this context, the availability of screening technologies plays a crucial role. Prenatal screening, and testing for impairment have become increasingly routine in reproductive medicine, and this has significant implications in the context of selection against disability (Segal 2010; Tremain 2006; Karpin and Savell 2012). Here it is important to note that screening for impairment is a routine part of gender selection using IVF, as advertised by the websites of clinics which offer GSFNMR (The Fertility Institutes 2014c; The Rainsbury Clinic n.d.; The Silverman Center n.d.). As I later discuss, the same cannot be said about gender selection, which is not a routine part of selection against disability.

Moreover, Tremain argues that the very production of “new genetic knowledge” about the traits of embryos raises new questions about what constitutes a “normal” human being (Tremain 2006, 35). She claims that practices such as genetic screening, technologies which enable them or genetic counselling are produced by discourses about what is normal and what counts as an impairment, such that procreators make their choices in a context which is framed by assumptions about normality, and may be primed to aspire to having children who fit into these normalising assumptions. Screening, and
related practices “increasingly limits the field of possible conduct in response to pregnancy” (Tremain 2006, 37). Drawing upon Foucault’s account of biopower, understood as various techniques aimed at disciplining bodies and controlling populations (Foucault 1978), Tremain sees the “government of impairment in utero” (Tremain 2006, 35) as one of the mechanisms of social control of reproduction.

Tremain argues that these mechanisms have particular implications for women’s autonomy. Rather than enabling autonomy through offering women greater control over their own pregnancies by the use of technology, on her account the use of technology is a way of socially controlling reproduction. This seems plausible, as prenatal screening and selection aim to detect the abnormal and to reinforce the notion of a normal – and hence ideal – foetus which pregnant women should pursue.13 Analysing technologies of prenatal screening and testing through the lens of biopower highlights the social regulation of reproduction, and hence provides grounds for contesting claims that the availability of these services necessarily enhances women’s autonomy.

The relationship between women’s reproductive autonomy and the values underlying prenatal diagnosis is thus complex. Rapp asks:

How is it possible to contest the eugenic and stigmatizing definition of disabilities which seems to underlie prenatal diagnosis, while still upholding the rights of individual women to determine what kind of medical care, and what sorts of pregnancy decisions, are in their own best interests? [...] Can public policy encompass a position of support for disabled children and their families at the same time that it supports women who use prenatal diagnosis and abortion to avoid giving birth to children with some disabilities? (Rapp 1999, 50–1)

The negative implications associated with disability and the social support for the use of prenatal diagnosis seem to create an environment in which avoiding the birth of children with impairments is considered the right choice. This concern is more strongly formulated by Hubbard, who argues that the rhetoric of choice behind these reproductive

13 A similar view is taken by Segal (2010) whose claims I discuss in more detail below in the section on differences between disability and gender.
technologies, which is often framed as a woman’s right to have healthy children, actually translates into: “a duty not to ‘burden society’ with unhealthy ones” (Hubbard 2006, 102). As a consequence, women are under significant social pressure to make choices consistent with the dominant social status quo; and it is within this social climate that they use genetic screening to detect embryos with impairments to pursue the social ideal of a child without disability.\footnote{Economic factors can further limit procreators’ choices, particularly lack of support for families with children with disabilities. Scully et al. investigated lay people’s attitudes about PGD and several participants found freedom of choice illusory. One claimed: “If you have a disabled child you have to battle and struggle and you are mostly unsupported. That’s the context in which parents are potentially making a choice, they are not making a choice in a neutral setting... They are not living in a place where they can be free to make choices” (2006, 25).}

Similarly, the use and availability of new reproductive technologies have driven gender selection. The development of reliable methods of testing for chromosomal sex has created opportunities for gender selection across the world. In particular, the introduction of ultrasound has played a major role in the growing problem of skewed gender ratios in societies such as China and India, because it has enabled gender-selective abortions (Hvistendahl 2011). In a social climate which values men over women, procreators have come under increasing social pressure to terminate pregnancies with female foetuses (Jones 2000; Hvistendahl 2011). In some countries such as the US, the availability of PGD drives the demand for gender selection and contributes to reproductive tourism, at least among procreators who can afford the costs (Birdsall 2010).

The availability of methods of gender selection is based on an underlying belief that gender is a trait which fundamentally determines parental satisfaction; hence it is desirable to select the gender of one’s offspring (Mudde 2010). The recent development of a maternal blood test to determine foetal sex makes gender selection increasingly accessible at a low price. First, women do not have to rely on doctors for tests to determine foetal sex and second, abortion is both widely available and one of the most economical techniques of gender selection. Thus, the development and availability of methods of embryonic selection creates opportunity and may motivate prospective parents to use them.
Fourth, the values underlying selection against disability and gender selection, manifest in their practice, reinforce discrimination. Critics of antenatal practices aimed at eliminating disability claim that medicine has, in moving from the facilitation of birth to reproducing bias and discrimination against certain types of human beings, taken a wrong turn (Saxton 2006; Segal 2010). Moreover, some argue that insofar as embryonic selection is based on “quality control”, normalizing certain types of embryos while eliminating those deemed defective, be it for reasons of disability or gender, it is a form of eugenics (Darnovsky 2004; Habermas 2003; Hubbard 2006). In general, these critics claim that providing methods of embryonic selection has the potential to reinforce discrimination against groups of people with traits considered undesirable.

Similarly, gender selection is based on an underlying notion that men and women are essentially different, and that gender is a crucially important trait. In this context, selection is based on gender stereotypes and has discriminatory potential. Foetuses are selected or rejected based on stereotypical beliefs about the nature of future human beings.

In social contexts which maintain ableist bias, and gender dichotomy and stereotypes, antenatal care replicates this bias and reinforces discrimination against foetuses (future individuals) with undesired traits, such as specific impairments or a particular sex. What counts as a defect, disability or imperfection, is largely open to interpretation. This leaves space for labelling some types of children imperfect according to social norms related to impairment or gender. Selection against such imperfect future children may be socially enforced as they are seen as merely a burden on the family or society, thereby maintaining and reinforcing social norms (Hvistendahl 2011; Segal 2010). Hierarchic social structures marginalize certain groups of people or forms of embodiment. As some reproductive choices are framed as more desirable than others, procreators cannot exercise full reproductive autonomy because they are under pressure to adjust their reproductive choices to social norms. Sandel argues: “When genetic screening

\[\text{Some theorists, such as Gillam contest this claim. I respond to her criticism below when I discuss the expressivist argument.}\]
becomes a routine part of pregnancy, parents who eschew it are regarded as “flying blind” and are held responsible for whatever genetic defect befalls their child” (Sandel 2007, 89). Consequently, within discriminatory social structures, parents who conceive children considered undesirable may be blamed for their irresponsibility.  

I have argued that there are several ways in which selection against disability and GSFNMR are similar. They both work with ideas of imperfection and the elimination of undesired traits; these notions reflect social and technological pressures. Next, I look into areas where the two forms of selection differ in their implications and, potentially, invite distinct ethical debates.

**4.3 Differences between Disability and Gender**

While there are similarities between disability and gender selection practices, some aspects of them differ significantly. The main differences concern the reliability of the two forms of selection, the nature and extent of the consequences of having an impairment or being a particular gender, and the extent to which the selective practices are reinforced in different societies.

It is generally more straightforward to select for chromosomal sex than for lack of any impairment that might lead to disability. Sex chromosomes are detectable with prenatal genetic diagnosis. Children with XY sex chromosomes are usually born with external genitalia understood as male, and are stereotypically perceived as being male, while children with XX chromosomes usually have genitalia seen as female, and are thus regarded as females. Thus, as I argue in the next chapter, although GSFNMR is potentially self-defeating, it is likely that it will result in a child with the desired genitalia, which are taken to signify the desired gender.

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16 As Sandel further argues: “Paradoxically, the explosion of responsibility for our own fate, and that of our children, may diminish our sense of solidarity with those less fortunate than ourselves. The more alive we are to the chanced nature of our lot, the more reason we have to share our fate with others” (Sandel 2009, 89).

17 Furthermore, children with male chromosomes are expected to perform male gender roles and similar assumptions about sex and gender intelligibility operate for children with female sex chromosomes. Moreover, as children born after gender selection are, like other children, subject to gender socialisation and pressure to adjust to respective gender roles, many of them will adjust to gendered upbringing and identify with their prescribed gender roles (Fine 2010).
Selection against disability is more complicated. First of all, prenatal testing for many traits that are considered disabling is not possible, as the traits are not genetically bound, or are heavily determined by environmental factors. Second, as I discussed in Chapter 3, expressivity – the extent to which some genetic diseases or disorders manifest themselves in particular individuals – may not always be predictable in the prenatal phase (Kittay 2012). Kittay argues, for example, that the chromosomal abnormality associated with Down syndrome is easy to detect using amniocentesis but the diagnosis cannot predict to what extent the future human being will be dependent on carers or largely self-sufficient.

The complexity of ante-natal diagnosis was discussed in depth in Chapter 3. Taking into consideration issues such as reliability of testing, complexity of environmental factors and genetic expressivity, many conditions labelled as disabilities cannot be tested for reliably. Some may also go unrecognized in the embryonic phase, and often through a substantial part of a child’s life (as is the case with autism).

While selection against disability lacks surety, given the limits of testing and prenatal diagnosis, prenatal testing for disability is a routine, and often socially enforced, practice (Segal 2010; Scully 2010; Sandel 2009). For example, Segal claims that in the US: “IVF/PGS procedures require that all embryos produced for potential implantation be screened for genetic abnormalities: only embryos free of genetic defects may be implanted or cryogenically preserved for future implantation” (Segal 2010, 90).18

Selection against disability is, however, marked by a significant tension. On the one hand, medicine cannot guarantee procreators a “healthy child” as it is not possible to identify antenatally all sources of impairment. Yet at the same time there is strong social pressure to select healthy embryos to the extent possible, and to undertake tests (e.g. for spina bifida, Down syndrome etc.), especially if there is a history of genetic disorders in the family (Kittay 2009).

18 In note 1 Segal refers to 10 American clinics (Segal 2010, 105). She claims that it is clear from the description of the IVF process and from the consent forms available online (which she accessed in 2009) that these clinics discard embryos displaying abnormalities.
Second, both gender and disability are categories which are largely socially produced, in the sense that both acquire meaning within culturally specific discourses and hierarchic social structures (Butler 2008; Parens and Asch 2000; Tremain 2006). While certain traits are valued/devalued in social contexts, individuals can be subject to disadvantage based on their gender or disability. Nevertheless, the extent to which the ensuing disadvantage can be minimized with appropriate social measures differs in respect to gender compared with various types of impairments.

Individuals of certain genders are disadvantaged in societies only to the extent that those societies replicate gender hierarchic structures and discriminatory practices, thus any disadvantage is socially produced. While Rothschild (2005) claims that parents aborting a foetus for being of the “wrong” gender act like they are classifying gender as a form of defect, gender is only disadvantaging as far as one lives in a society in which disadvantage tracks gender. Gender discrimination can be effectively overcome by eliminating hierarchic social structures based upon gender and gender-stereotypical attitudes.

In that respect, disability (at least that associated with severe impairments such as major cognitive deficits) and gender are different in the ways they lead to disadvantage. While individuals of all genders can participate fully in society once discriminatory social structures are eliminated, individuals with some severe impairments cannot. Certain forms of impairment are disadvantaging even in societies which take legal and social measures to counter discrimination against people with impairments (Gottlieb 2002; Kittay 2011; Overall 2012). Some people experience physical suffering or severely limited intellectual powers related to their impairments, and these are not mitigated by the provision of social support or implementation of antidiscrimination measures (Scully 2003–2008).

This difference between disability and gender can be observed in the context of their impact on capacities for self-support and independence (Kittay 2011). Gottlieb (2002) and Kittay (2011) argue that their own children would not be capable of self-sufficient existence due to their intellectual impairments, which limit their capacity for decision

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19 Typically, societies value able bodies and male genders and consequently people with disabilities and women become disadvantaged and may suffer discrimination (Parens and Asch, 2000; Rothschild 2005; Scully 2003–2008).
making and success in basic activities of daily living. Some individuals with severe intellectual impairments are just not able to live without being dependent on assistance from other people, even with extensive support and in the absence of discrimination. Given that the nature and extent of the consequences of having an impairment or being a particular gender are different, a parallel between gender and disability as socially disadvantaging categories cannot be drawn; gender is not unavoidably disadvantaging whereas some impairments may be.

A third difference resides in the extent to which disability and gender selection practices are socially supported or enforced varies. Selection against disability is a routine part of assisted reproduction, including that involving gender selection, while GSFNMR does not seem to be a routine part of selection against disability.\textsuperscript{20} Parents screening for disability can be offered testing for gender and subsequent selection, but this practice is not a routine part of antenatal care in the US and most European countries.

Selection against disability is a standard practice when procreators undertake gender selection of their offspring. Clinics offering gender selection publicly guarantee procreators that they will not only conceive a child of the desired gender, but a \textit{healthy} child of a desired gender (The Fertility Institutes 2014c; The Rainsbury Clinic n.d.; The Silverman Center 2011).

Clinics use various reasons to explain why they do not offer gender selection on a stand-alone basis but only in combination with selection against disabling traits. For example, The Silverman Center in the US emphasizes that delivering healthy embryos is merely a part of satisfying procreators’ preferences and demands because, the clinic claims, procreators want both balanced families and children without genetic diseases.\textsuperscript{21}

\textsuperscript{20} Nevertheless, it is important to note that while this is true when we talk about routine practice and gender selection for non-medical reasons, the situation is more complex concerning the practice of gender selection for medical reasons or the fact that disability selection may reveal gender options amongst the healthy embryos (see discussion of this in Chapter 3).

\textsuperscript{21} The Silverman Center argues: “More and more frequently, couples are seeking to select the sex of their next baby. They do so mainly for two reasons. First, couples who have children of the same gender want to experience the joy of raising a child of the opposite sex. Second, couples want to shield their future children from inheriting a genetic disease” (The Silverman Center 2011, n.p.).
The UK based Rainsbury Clinic goes further and claims that selecting embryos free of disability is the very purpose of PGD:

The purpose of prenatal genetic diagnosis is to select only healthy embryos (for the chromosomes we can so far test for) for implantation in the hope of achieving more pregnancies, less spontaneous abortions and less affected offspring. (The Rainsbury Clinic n.d., n.p.)

Thus, selection against disability can be seen as endorsed by society and medical institutions to an extent that gender selection is not (at least in communities without a strong preference for male offspring). Furthermore, as Segal’s arguments imply, unlike gender selection, selection against disability can be enforced to the extent that procreators have little opportunity to select for a child with impairment (Segal 2010). Therefore, it seems that the social pressures for reproduction to lead to the birth of children without impairments are more prevalent and institutionalized than pressure for GSFNMR. It is assumed within medical practice, at least in societies where preference for male offspring is not dominant, that most parents desire impairment-free children, but only some desire children of a specific gender.

So far I have considered similarities and differences between selection against disability and gender selection for non-medical reasons. Both forms of embryonic selection are underpinned by ideas about ideal children, are socially accepted to a certain extent, and supported by the availability of technologies to achieve the selection of desired children. Additionally, both forms of selection carry the potential to discriminate against people with certain traits and reinforce dominant social norms. However, selection against disability and gender selection differ in regard to their reliability, the nature and extent of the consequences of having a disability or being a particular gender, and the extent to which the selective practices are reinforced in different societies. Next, I discuss the relevance for GSFNMR of arguments criticising the practice of selection against disability.
4.4 The Relevance of Disability Critiques in the Context of GSFNMR

The practice of selecting against children with disabilities has been subject to various criticisms. The most influential arguments are those from social constructivism, expressivism, parental attitude and a life worth living. Here I examine these arguments and assess their applicability to GSFNMR.

4.4.1 The Critique from Social Constructivism

The social constructivist model of disability holds that the ensuing disadvantage is a product of the stereotypically negative framing of impairment in an ableist society. This means that social norms maintain a specific type of hierarchy, which values able bodies and their needs, while bodies with impairments are considered abnormal. In consequence, social structures typically reflect the needs of able bodied people while the needs of people living with impairments are disregarded. The argument from social constructivism claims that the disadvantaging effect of impairment (the disability) is a consequence of such discriminatory social practices, rather than anything inherent or unavoidable in having a differently-abled body.

According to social constructivism, the very framing of impairment as abnormal is produced from the perspective of ableist privilege, which ignores the perspectives of people with disabilities. Saxton (2006) notes that many people living with impairments do not hold a negative view about their bodies and some take pride in their identity as people with disabilities. She claims that the disability rights movement has reframed the experience of living with a disability to a great extent:

In part, through developing a sense of community, we’ve come to realize that the stereotyped notions of the “tragedy” and “suffering” of “the disabled” result from the isolation of disabled people in society. (Saxton 2006, 107)
The disabled community has thus shifted the emphasis from the disabling trait to social conditions. Many members of the community claim that the most disabling thing about living with an impairment is social oppression (Saxton 2006). Selection against disability can be viewed as a product of socially oppressive practices and the negative framing of impairment. This negative framing is then used to justify selection against the birth of children with impairments.

As I discussed earlier, while some forms of disability can involve disadvantage or suffering which cannot be compensated for by antidiscrimination measures or social support, gender works differently. Gender does not involve any unavoidably disadvantaging aspects, and as such, any disadvantage based on gender can be viewed as entirely socially produced. Thus the argument from social constructivism applies very directly to GSFNMR, because gender disadvantage exists only in societies which maintain a socially constructed gender dichotomy and practices such as gender stereotyping and gender discrimination.

This applies to all forms of GSFNMR. In the case of gender selection motivated by strong gender preferences, a particular gender, usually female, is framed as a defect within a gender hierarchic social status quo. In a society which maintains misogyny, women are discriminated against and living as a woman can be experienced as disadvantaging. Selection against female children stems from misogynous social forces. Nevertheless, as gender is not inherently disadvantaging, but only as far as one lives in a society in which disadvantage tracks gender, gender disadvantage can be addressed and eliminated through the implementation of social measures addressing gender stereotypes and discrimination, and is thus consistent with social constructivist claims about disability.

Several features about gender selection for family balancing suggest that the critique from social constructivism is applicable in multiple ways. First, gender selection is based on socially constructed gender dichotomies, which maintain that human beings can only be male or female, and that males and females are essentially different. Secondly, because male and female children are claimed to be inherently different, it is argued that being a parent to a child of either gender involves different parenting experiences. Finally, it is argued that gender balanced families offer richer parenting experiences, because they
involve children of both genders. In that respect, the ideal of a gender balanced family is as socially constructed as the category of gender.

Gender selection for family balancing reinforces dominant social views, as the practice is based on gender stereotyping. As such it can cause harm to children who are pressured into assuming rigid gender roles. Furthermore, both gender selection for family balancing and gender selection based on strong gender preference are based on an assumption that gender can be reliably selected for. While I argue (in Chapter 5) that gender selection can be self-defeating, the practice can subject children to harm arising from parental disappointment over the failure to produce a child of the desired gender. This is due to the fact that selection for sex chromosomes does not unambiguously guarantee that the child will have an intelligible gender.

The argument from social constructivism presented by disability critiques is that the disadvantage associated with impairment is a product of ableist social forces. While the social constructivist critique certainly applies to GSFNMR, it may be inadequate for some forms of impairment. While gender is only disadvantaging in a society maintaining gender-disadvantaging structures and practices, the same cannot be said about some impairments, such as cognitive deficits, which cannot be socially compensated for.

4.4.2 The Expressivist Argument

According to Adrienne Asch’s expressivist argument, the practice of selection-against-impairment and its associated technologies have symbolic importance, insofar as they communicate to people living with disabilities that their lives are less worthy than others. On this view, the practice of screening for impairment communicates “a hurtful attitude about and send a hurtful message to people who live with those same traits” (Parens and Asch 2000, 13). Parens and Asch emphasise that selective practices not only express a negative attitude towards specific traits, but also the bearers of those traits. One putatively disabling trait stands for the whole person, whose life is considered worse than the lives of people without disability. Furthermore, these practices imply that the lives of people with disabilities are considered worse to such an extent that it is desirable to
prevent the birth of more people with those same impairments. Parens and Asch claim that this attitude can potentially lead to distortions in the way parents regard their children, because it is based on the rejection of both social and familial diversity.

Furthermore, Parens and Asch argue that technologies of genetic screening and selection-against-impairment replicate discrimination against people living with disabilities. The practice of selection-against-impairment is conducted in the context of antenatal medical care in which it is considered legitimate, or even desirable, to prevent more people with disabilities coming into existence, especially when a reliable and relatively accessible technology enables doing so (Parens and Asch 1999 2000; Rapp 1999; Segal 2010). Regarding the births of children with impairments, Saxton claims to have heard people express views such as: “Too bad that the baby with [x disease] didn’t ‘get caught’ in prenatal screening” (Saxton 2006, 110). Saxton, who herself has spina bifida, explains what ambivalent and difficult feelings such statements conjure in people living with impairments that are screened against. More specifically, she claims that “those of us with screenable conditions represent living foetuses that didn’t get aborted” (Saxton 2006, 110). In many such cases, what turns the potentially “unwanted foetuses” into actually existing babies is procreators’ refusal to undertake screening or their making a conscious choice to have a child with a disability (ibid.).

Thus, the message sent by the availability of genetic screening is not only symbolic but has practical ramification. Prenatal tests to select against impairment not only send a hurtful message to people with disabilities, but also contribute to minimizing their numbers. Insofar as the selection practices imply that some people are less welcome to enter the world, they practically contribute to the reduction of people coming into existence and living with impairments (Parens and Asch 1999 2000). This is where the eugenic impact of ableist social discourses can be clearly observed.

However, some dispute the claim that prenatal diagnosis expresses discriminatory attitudes towards people with disabilities. Gillam (1999) identifies and contests two versions of the expressivist argument, the “slippery slope”, according to which prenatal diagnosis will increase discrimination against people with disabilities, and the “conceptual version” which holds that selective abortion implies discrimination against people with disabilities (163). In critiquing Gillam, I defend the expressivist argument on the grounds
that it makes significant claims about the implications of screening and selection against a specific trait and about people living with the trait. Moreover, some aspects of this critique are applicable to selection against a specific gender.

To counter the slippery slope argument, Gillam denies that there is a causal connection between selection against disability and discrimination against people with disabilities. According to her, “a mere reduction in numbers of people with disabilities cannot in itself cause more discrimination against such people, any more than an increase in numbers can bring about less discrimination”(164). Furthermore, she argues that attitudes towards people living with disabilities in the West have improved over recent decades due to disability rights activism and anti-discriminatory legislation.

While it seems plausible that anti-discriminatory legislation has improved the lives of those living with disabilities, prenatal diagnosis perpetuates discrimination by reinforcing negative attitudes about disability, which in turn leads to fewer births of people with impairments. Gillam claims that the decrease in numbers does not lead to more bias against people with disabilities. The practice and normalization of selection against disability leads to a reduction in the diversity of forms of embodiment in a society. A consequence of this is that the ideal of an able body is further normalized in line with discriminatory social norms. This leads back to Saxton’s claim that individuals living with detectable traits often face comments suggesting that their existence is unfortunate. These expressions of bias against people with disabilities suggest that the expressivist critique of prenatal diagnosis is justified. Furthermore, Gillam makes a valid point when she observes that the majority of disability does not stem from prenatally detectable conditions but injuries or illness later in life. Nevertheless, prenatal diagnosis aims to screen for detectable impairments and thus still contributes to reduction in some forms of embodiment.\footnote{Gillam herself provides rates proving that significant numbers of women choose to terminate in case of foetal abnormality, for sickle cell anemia and sex chromosome abnormality the rate ranged from 38 to 79% (164). Furthermore, in regards to the rapid development in prenatal diagnosis, it is reasonable to expect the introduction of new methods of screening and testing which will detect more conditions and allow for selection against them.}
The expressivist critique also applies in the context of GSFNMR, in societies where preference for children of a particular gender is prevalent. Specifically, in the many countries where significant numbers of women are missing due to preference for male offspring, the availability of methods of gender selection expresses a hurtful attitude about women. Methods of gender selection support the misogynous social status quo, in which women are less valued than men and are subject to discrimination. The availability and practice of gender selection helps to reproduce a climate in which selection against women is normalized and misogynous attitudes are replicated. Moreover, the reduction in numbers of women reinforces discrimination against existing women. While some libertarians claim that fewer women will lead to an increase in women’s status due to their rarity (Savulescu 1999; Sureau 1999), evidence suggests that this hypothesis is unsound. In many regions, the problem of missing women not only violates the human rights of female children in the form of infanticide or neglect, but also places pressure on existing women to enter forced and early marriages, and adjust to the traditional role of a wife and mother in a male-dominated society (Hvistendahl 2011; Guilmoto 2012). In consequence, the skewed gender ratios reinforce oppression of women.

Furthermore, in some societies or communities, procreators might want to select for a daughter (Darnovsky 2003; Warren 1999). The hurtful message sent by the availability of methods of GSFNMR is not exclusively limited to women; men can also be selected against for gender stereotypical reasons. The expressive critique is thus relevant when parents select their offspring’s sex on grounds of strong gender preference. However, when gender selection for family balancing is concerned, the relevance of the expressive critique is limited.

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23 Wertz and Fletcher argue: “Although sex selection might ameliorate the situation of some individuals, it lowers the status of all women in general and only perpetuates the situation that gave rise to it [...] If we believe that sexual equality is necessary for a just society, then we should oppose sex selection” (Wertz and Fletcher 1992, 244).

24 The UNFPA report *Sex Imbalances at Birth* (Guilmoto 2012) arrives at the same conclusion, claiming that the deficit in women leads to the reinforcement of the traditional role of the woman in the family. Furthermore, because women in patriarchal societies are seen primarily as brides for men, the lack of available brides leads to rise in cases of “kidnapping, forced marriage, trafficking, sexual exploitation, and abuse of women” (55).

25 The results of my empirical study confirm this hypothesis. All respondents wanted to select in favour of daughters and many expressed attitudes which suggested that their decisions are underlined by stereotypical assumptions about traditional masculinity. I discuss this issue below in Chapters 6 and 7. Furthermore, in the next chapter, I argue that gender stereotyping is a form of sexism, and therefore is harmful to the child and to society.
Regarding gender selection for family balancing, it is clear that such selection does not necessarily send a hurtful message about a specific gender and people with that gender, given that balancing may lead to selection for boys or girls. It seems more plausible that gender selection for family balancing implies that chromosomal sex is a trait of some importance (Harris 1992; Robertson 2001; Savulescu 1999; Wilkinson 2010). Implicitly, such selection suggests that the gender of future children is a factor significant enough to be considered in one’s reproductive decision making. Thus, the expressivist argument about disability is not relevant to all types of GSFNMR.

Gillam’s second argument (1999) is that the conceptual version of the expressivist argument is unsound, as selection against impairment involves judgements about the quality of the offspring’s life, not discrimination against foetuses or existing people. While this is plausible in cases of severe impairment, decisions to select against less serious forms of impairment do incorporate negative social attitudes. Crucially, these decisions are not purely individual but informed by discourses about impairment, such as those promulgated by medical staff in clinics providing reproductive services. Segal (2010) argues that many clinics aim to prevent the birth of children with a range of impairments. Furthermore, studies suggest that medical professionals have more negative perceptions of life with an impairment compared to people living with disabilities and their families (Parens and Asch 1999). This suggests that procreators’ decisions to select against less severe impairments are not unambiguously based on judgements about quality of life but are informed by normative assumptions about disability and social pressure to comply with ableist ideals of embodiment. Therefore, the expressivist critique is relevant in case of selection against less severe forms of impairment.

As with mild forms of impairment, gender can affect quality of life, in societies that discriminate on the grounds of gender. Nevertheless, gender involves no intrinsic disadvantage that would directly cause a decrease in the offspring’s quality of life. Decisions to undertake GSFNMR are thus based on normative assumptions about gender. Similarly, decisions to undertake gender selection for family balancing involve normative assumptions about gender (such as the gender binary) and family (the ideal of a gender
balanced family). The conceptual version of the expressivist argument is therefore also relevant in case of GSFNMR.

In conclusion, the expressivist argument about disability is not relevant to all types of GSFNMR. It is indeed relevant when we consider gender selection in societies with strong preference for offspring of a specific gender. In that context, it is obvious that the availability of gender-selective practices sends out a hurtful message about that gender and people of that gender. In consequence fewer of them come to existence, which reinforces discrimination against existing people of the same gender. Nevertheless, in case of gender selection for family balancing, the message is more nuanced. It is not directed against a specific gender per se, but it implies that gender as a trait is of crucial importance in parenting. Yet, the message can still have hurtful implications as it can distort parental attitudes towards children, a distortion which Parens and Asch consider morally problematic (1999). I discuss these issues in the next section on parental attitude.

4.4.3 The Parental Attitude Argument

According to the parental attitude argument, selection against certain traits indicates a problematic idea of parenthood (Parens and Asch 1999). Advocates of this view claim that the appropriate parental attitude is acceptance (McDougall 2005 2007). However, parents who undertake selection do not accept their child *per se*, but instead seek a particular *type* of child. Selection against undesired traits is based on a view of children as vehicles towards parental satisfaction, which is seen as ethically troubling.

On this account, the problem is that in selecting against an embryo with a particular trait, procreators let the trait stand for the child as a whole. This attitude is troubling as every child has many traits. Parens and Asch claim: “If prospective parents imagine that disability precludes everything else that could be wonderful about the child, they are likely acting on misinformation and stereotype” (1999, 5). Selecting against a future child based on one trait is thus problematic.

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26 I discuss the issues of gender stereotypes and gender binary in the next chapter, as well as the implications of a gender balanced family.
McDougall (2005 2007) takes a similar approach based on her commitment to flourishing. According to her, the right parental action is what a virtuous parent would do, and the virtuous parent is one whose primary goal in parenting is the child’s flourishing. Thus, selection for anything other than traits which affect flourishing is incompatible with virtuous parenthood. She identifies three essential parental virtues: acceptingness, committedness and future-agent focus (2007).

First, the virtue of acceptingness binds the parent to embrace the unpredictability of their child’s traits and to accept them for who they are, rather than who they ought to be. Second, the virtue of committedness demands that parents acknowledge children’s dependency, which requires parents to be caregivers. Finally, the future-agent-focus virtue requires parents to perceive children as future moral agents and to act in ways that allow them to develop as such. McDougall argues that observing these virtues does not require accepting any child. On her account, it is justifiable to select against conditions which decrease a child’s flourishing.27 In such cases, the commitment to flourishing overrules the virtue of acceptingness.

However, critics such as William Ruddick (cited in Parens and Asch 1999) argue that the parental attitude argument is grounded in unreasonable expectations, namely the “maternalist assumption” that a woman who desires a child should desire any child she could have. While Ruddick acknowledges that many women hold maternalist values, he nevertheless claims that procreators can hold different views of parenthood, such as projectivist or familial conceptions.

On the projectivist view, procreators understand their children as elements of their parental projects and may therefore select against traits, including gender, which might

27 McDougall claims that prenatal selection against severe disability or a medical condition is justified, however she does not clarify what she means by these terms. This is problematic because these categories can potentially include impairments in which any disability is due to discrimination rather than unavoidable disadvantage. Furthermore, her stand on selection in favour of impairment, particularly deafness (2007) is characterized by ambivalence. On the one hand, she claims that deafness decreases children’s flourishing and narrows down possibilities in a hearing world (e.g. availability of jobs). On the other hand, she claims that from the future-agent-focus virtue perspective, a child flourishes when it is born deaf into a deaf family and community. However, she concludes that selecting for a deaf child is on balance impermissible as it is incompatible with the virtue of acceptingness.
compromise the future child’s “fit” with parental plans.\textsuperscript{28} My aforementioned example (see Chapter 3) of an artistic couple selecting against colour blindness in their son would represent a legitimate form of selection on the projectivist account. The projectivist conception of parenthood justifies selection against a range of traits, including gender selection for non-medical reasons. On the familial conception, a parent sees their child as a future parent or sibling, a member of a nuclear family. On this view, selection against foetuses with conditions that could jeopardize fertility in the ensuing child would be justified. The child, once adult, could decide not to reproduce, nevertheless, Ruddick argues that the act of selecting for a child with better fertility prospects is justifiable on the grounds of a familial conception of parenthood. Therefore on his account, parents should have the choice to select for children who would best fit into their parental projects and notions of family.

McDougall rejects the claim that observing parental virtues entails the maternalist assumption and thereby means accepting any child.\textsuperscript{29} As described, her account sanctions selection against conditions which may decrease a child’s flourishing, such as serious disability. However, she argues that sex\textsuperscript{30} is not such a category. According to her, “sex falls within the scope of parental acceptance” (2005, 602), and therefore GSFNMR is ethically impermissible.\textsuperscript{31}

The parental attitude argument is relevant for GSFNMR. Parents acting on gender preference fail to accept the child as he/she comes and only desire a child of a particular gender. By exaggerating the role of gender in their future child’s persona, parents let gender stand for the whole child as the most significant trait and act on stereotypical assumptions about gender. McDougall argues that even procreators who have a preference for a child of a particular sex, but do not expect them to perform traditional

\textsuperscript{28} William Ruddick considers GSFNMR justified. In his later text “Prejudice against ‘Unbalanced’ Families” (2001) Ruddick argues that respect for reproductive autonomy requires that gender selection should be available to all types of families and for any child. He claims that libertarian advocacy for gender selection within the limits of family balancing, in particular John Robertson’s version of this position, imposes unjustified restrictions on procreative liberty, including heterosexist constraints. Ruddick argues that limiting GSFNMR to “gender-balancing” couples (34) discriminates against single parents or same sex families.

\textsuperscript{29} McDougall also claims that the parental virtues perspective accommodates parental interests, particularly because parental wellbeing also contributes to children’s wellbeing. For this reason, she claims that parents do not need to provide unconditional love, for example when the child is violent.

\textsuperscript{30} McDougall uses the category of sex instead of gender (2005).

\textsuperscript{31} McDougall (2005 2007) does not address the points made by Ruddick.
masculine or feminine roles, act wrongly because they choose to parent conditionally on the grounds of sex. Therefore, the notion of parenthood underlining GSFNMR is questionable as it violates the value of acceptingness.

Virtue-based critiques are useful as they draw our attention to some of the ethically troubling aspects of gender selection for all types of GSFNMR. By acting on their preferences, procreators fail to act in accordance with the virtue of acceptingness. The value or worth of being accepted for who they are, rather than for who their parents hope they are, seems important for the child to live a flourishing life. Lack of acceptance may be further increased if children do not develop the gender identities and behaviour desired by their parents.

The parental attitude argument holds that good parents accept their children for who they are. From this point of view, parents should not select their children’s traits, unless these traits jeopardize children’s flourishing, such as in the case of severe impairment. However, as gender is not a trait which necessarily limits flourishing, parents who undertake GSFNMR act on what may be termed a distorted, and ethically problematic, notion of parenthood.

4.4.4 The Argument from a Life worth Living

The fourth influential disability rights argument refers to which lives are worth living. This argument claims that the presence of a trait understood as a disability should not be seen as unequivocally diminishing the quality of life of a future child (Hubbard 2006; Saxton 2006). Thus it is based on a belief that the life of a person with an impairment is as worth living as any other life. From this point of view, thinking that

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32 Although some parents do not expect their children to perform stereotypical feminine or masculine roles, they have expectations concerning their gender identities. Those who fail to establish such identities or perform their gender in a “wrong way”, and those who, in spite of an attempt at gender selection, possess the undesired sex, gender or other than heteronormative sexual identity, can be met with parental disappointment. This, on McDougall’s account, contradicts the notion of good parenthood based on acceptance of the child. My empirical study provides evidence that parents undergoing GSFNMR have expectations concerning their children’s gender identities (see discussion in Chapter 7 and Chapter 8).
children with impairments should not be brought into existence involves making many assumptions about what constitutes a life that is not worth living (Hubbard 2006).

Hubbard claims that ideas about which lives are worth living stand behind the technologies of screening for disability. Furthermore, she also argues that these ideas are underlined by eugenic ideology:

Eugenic principles are part of our largely unexamined and unspoken preconceptions about who should and who should not inhabit the world and scientists and clinicians provide the ways to put them into practice. (Hubbard 2006, 102)

In this respect, prenatal diagnosis works as a filter through which society attempts to select for future able-bodied members. The availability of prenatal testing and methods of selection against disability are based on at least two assumptions: that the lives of people with impairments are not worth living; and that having a child with an impairment is a negative experience (Hubbard 2006; Saxton 2006).

First, the availability of prenatal testing for impairment and subsequent disposal of affected foetuses does indicate that they are not considered valuable enough to protect and bring to birth. In turn, their perceived lack of value may relate, at least in part, to views about which lives are considered worth living. Saxton claims that technologies of screening and selection against disabilities promise to “eliminate the births of disabled children”, like those with “Down’s syndrome, spina bifida, muscular dystrophy, sickle cell anemia and hundreds of other conditions” (Saxton 2006, 105). The public accepts the technologies on the “commonsense” assumption that the screening will decrease the incidence of inherited disease and improve the quality of life (ibid.). Nevertheless, Saxton claims that the dominant ableist views contrast with the views of people living with disabilities, which are often much more nuanced (Saxton 2006). People with disabilities often rate their own quality of life higher than do health professionals, and have a more positive outlook on their condition (Parens and Asch 1999).

The second assumption behind technologies of screening and selection against disability is that having a child with impairment is a negative experience. Hubbard argues that: “society promises much grief to parents of children it deems unfit to inhabit the world” (Hubbard 2006, 102). Positive representations of having children with disabilities
are rarely provided which strengthens the idea that parenting children with disabilities is undesirable (Rothschild 2005).

Many women terminate pregnancies with impairment-affected foetuses. According to Hubbard, this happens due to the negative framing of impairment which makes women afraid of having a child with disability. She argues that to secure real reproductive choice, procreators, and women in particular, need adequate information. First of all, they need to be provided with complex and balanced (i.e. not stereotypically negative) information about life with a certain condition; and they also need to receive detailed information about the actual reliability of genetic testing.  

Both Hubbard (2006) and Saxton (2006) argue that a woman must always have the right to abortion, and she must have a right to abort a foetus for any reason, because she should be the only person to make decisions about her body. Nevertheless, they claim that at the same time there is a significant difference between choosing whether or not to have a child and choosing what type of child to have. In that respect, Hubbard and Saxton emphasize that while a woman should always have a right to abortion, she should also always feel empowered to decide not to terminate a pregnancy and feel secure that society will support her and her child. For that reason, women should have the choice to refuse testing for disability and feel free to make a decision to conceive a child with impairment if they so wish. Finally, both Hubbard and Saxton claim that the focus on

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33 Hubbard claims that women are often not informed about the lack of accuracy of tests for some conditions (e.g. in case of a blood test for neural-tube defects) and are often not told that the test does not predict how severe the condition will be (Hubbard 2006, 101). I have discussed the problems with the reliability of testing for disability in Chapter 3.

34 Saxton says that she often gets asked if she would force a woman, e.g. a black woman without white privilege, to have a child with an impairment. She claims: “That question reinforces what feminists of color have been saying, that the framework of ‘choice’ trivializes the issues for nonpriviliged women” (Saxton 2006, 112). First of all, she claims that many poor women do not have access to genetic screening and subsequent reproductive choices. Secondly, the difficult socio-economic conditions of many women carers of children with disabilities are caused by gender discrimination and ablest bias in the first place. Therefore, we should rather ask how to tackle the bias and provide all women with real reproductive choices.

35 Saxton claims that while the population of people with disabilities is diverse, so are the ways they approach genetic screening. She argues that some consider screening technologies oppressive while others might use them, yet many tend to use them in a different way than procreators who fit into social definitions of able bodies. For example, she claims that couples where both procreators have dwarfism might choose to use genetic screening. In such situations, when both parents have dwarfism, there is a high chance that the offspring will get two dwarfism dominant genes which leads to early death. Procreators with dwarfism might
preventing the birth of children with impairments limits reproductive choices and fails to respond to the needs of children with disabilities and their carers, mainly women. Decisions about what type of child one will bear are, according to them, always informed by stereotypical views of impairment, infused with ideas about what lives are worth living and what kinds of people should (not) inhabit the world. Instead of trying to find ways to assist people with special needs in order for them to be able to participate fully in the society, such an approach reinforces neglect of the needs of people with disabilities and minimizes attempts at social change.

I now turn to examine whether the claim that some lives are not worth living is relevant to GSFNMR.\textsuperscript{36} This claim raises slightly different issues for different types of GSFNMR with respect to their motivation. I will look separately at gender selection motivated by strong preference for children of a specific gender, and gender selection for family balancing.

In some communities with strong gender preferences, extreme bias against female children might suggest that the lives of women in such communities are seen as not worth living (Warren 1985, Jones 2000; Abrejo et al. 2009). Nevertheless, it is the social conditions which render those women’s lives miserable to the point of not being worth living, rather than anything to do with gender per se. In such contexts, selection against female children reinforces discrimination against women while failing to address the misogynist social status quo. Therefore, and consistent with disability rights arguments, the solution to the problem is not the elimination of women but social change and implementation of measures such that women’s lives do feel worth living.

In social contexts where the desire for a child of one specific gender is not widely reinforced, procreators face less pressure to select for a gender specific child. Nevertheless, most societies maintain a hierarchic gender order and gender dichotomy. These social forces produce the ideal of a gender-balanced family, a normative family with children of two genders, presented as essentially different and complementary. In this

\textsuperscript{36} The claim that life is not worth living is relevant when gender selection for medical reasons is considered. In that case, procreators select against disabilities linked to sex chromosomes. I have previously discussed gender selection for medical reasons and its implications in Chapter 3.
respect, procreators can feel under pressure to adjust to the ideal and to have children of both genders.\textsuperscript{37}

In such cases of gender selection for family balancing, the life worth living argument does not apply. While children are selected on the basis of their gender, they are selected to complement the gender of existing children in the family. Hence, it does not seem to follow that the lives of children of the other gender are seen as not worth living. Family balancing is nevertheless ethically problematic in the sense that the worth of future children is seen to depend on their gender, and on the expectation that the future children’s gender will balance that of already existing children. Therefore, with family balancing, children may not be valued as children per se but only as children of a particular gender. The practice can thus be seen as reinforcing gender stereotypes and subjecting children to pressure to adjust to traditional dichotomous gender roles.

In this section I have argued that assumptions about which lives are worth living are relevant for at least some forms of GSFNMR. In cases of gender selection based on strong gender preference, the lives of children with a particular gender, usually female, are framed as not worth living, while ignoring the social context which produces gender disadvantage. In the case of gender selection for family balancing, the lives of children of both genders are considered worth living as the presumption is made that the gender of future children balances the gender of the already existing ones.

\textbf{4.5 Conclusion: the Limited Justifiability of Embryonic Selection}

In this chapter I have investigated the extent to which selection against disability and GSFNMR overlap, and looked at the relevance of disability critiques for the practice of GSFNMR. I conclude by considering the difficult question of when, if ever, selection against disability or gender is justified. In doing so, I will critique Daniels’ account of normal functioning and draw on Overall’s scalar view of disability to argue that selection against

\textsuperscript{37} The results of my empirical study confirm this hypothesis. Several respondents said that they felt under pressure to have a balanced family. I discuss this issue in Chapters 6 and 7.
disability may be justified in the case of severe impairment. The two justifications for this are incapacity for affected individuals to flourish, and the incapacity of the parents to cope and/or flourish.

When women (and their partners), decide whether or not to carry a pregnancy to term, they tend to ask questions such as whether they want to have a child and if the child is going to have a good life. One way of looking at disability and its impact on one’s life is by understanding disability in relationship to the concept of species-specific normal functioning (Daniels 1985 2000 2001). Daniels understands both physical and intellectual disability as “adverse departures from or impairments of species-typical normal functional organization” (2001, 3). He does not specify criteria of normal functioning, but he argues that the biomedical sciences are able to draw a line between disability, disease and normal functioning (2000 2001). Daniels recognizes both “natural and socially induced disadvantages” (2001, 315) and acknowledges that different impairments require different levels of social measures to balance the potential disadvantage. On his account, assuming that it is possible to provide the criteria for normal functioning, the impact of a specific impairment on a child and family could be estimated based on the degree of departure from normal functioning entailed by the impairment, and the potential for balancing any disadvantage stemming from the particular condition with social measures.38

Daniels’ view distinguishes between more and less severe impairments, however his reliance on medical models of disability is troubling. Daniels’ account of disability presumes a normative state of physical and mental functioning which fails to acknowledge the diversity of human embodiment and reinforces an ableist normative standard. For these reasons, Daniels’ view has been heavily criticised (Amundson 2000; Venkatapuram and Marmot 2011; Venkatapuram 2013).

In my view, a better way of looking at disability is by perceiving it as a matter of scale, and distinguishing between different impairments based on the severity of their effects, without postulating able-bodiedness as a norm. Overall’s scalar view of disability is

38 There are other influential perspectives on disability, such as the capability approach of Martha Nussbaum (2010). She presents a set of 10 basic capabilities that she argues are important in human development. On her account, selection against disability may be permissible as some forms or disabilities, e.g. intellectual disability, can limit some or several of these capabilities. I do not have space here to provide a detail account of her theory, or other perspectives on disability.
one such account (2012). Her approach rejects medical models of disability as it does not posit a normative standard of embodiment, yet it also stands in contrast to strong social constructivist views of disability, as it challenges the claim that all disadvantage related to impairment is socially constructed.

Overall holds that many parents want their children to be born without conditions that are considered disadvantaging:

> Whatever egg and whatever sperm a child is made from, parents want that child to be in good physical and mental condition. They want that child, the child who will have a particular place in their family, to have as many advantages (and avoid as many disadvantages) as possible. (Overall 2012, 154, emphasis in original)

According to Overall, parents want their children to come to life with the greatest possible advantages, which she explicitly links to physical and mental capacities. I will now consider how such a view relates to disability and gender.

The level of disadvantage associated with disability tends to depend on the severity and type of impairment (Kittay 2011). It seems plausible to think of disability as a matter of severity and scale, as different impairments have different impacts on an individual’s life. Some, such as deafness or disorders of speech or mobility, are experienced as disabling due to the effects of ableist social views. Others, such as severe intellectual impairments, have a significant impact and can involve limited potential for developing capacities to engage with the world, live independently of carers and partake of activities that are taken to be fundamental in human societies (Gottlieb 2002; Kittay 2011; Overall 2012).

Overall argues: “Impairments come in a range of severity. Some are so severe as to compromise or eliminate an individual’s capacity to care even for herself” Overall 2012, 170). She claims that the birth of children with severely disabling impairments should be prevented (however she does not specify exactly where the line should be being drawn). In contrast to strong social constructivists, Overall recognizes that some aspects of
disability can be experienced as real, such as limited capacity for engagement with the world, or physical suffering, and these may not be fully compensated by social supports.

On Overall’s account, procreators should prevent the birth of children with impairments that involve certain suffering. Like McDougall, Overall holds the view that virtuous parents want their child to flourish. Overall does not provide a definition of flourishing but one can infer that she understands flourishing to involve a balance between pain and suffering and happiness and fulfilment, which determines an individual’s quality of life (ibid.). For Overall, an excess of pain and suffering over happiness and fulfilment leads to poor quality of life. Nevertheless, Overall admits that it is difficult to predict the amount of suffering a future child will experience in their life, and whether they will experience enough happiness and fulfilment to compensate for it. Her view justifies some selection against severe impairment but admits of a grey area in defining where the line should be drawn.

If we accept arguments about the limits of compensating for some impairments, then a number of implications follow. First, embryonic selection or selective abortion is only justifiable if traits so selected will severely impede flourishing in affected individuals. In this respect, I see a difference between some severe forms of impairment and gender, as with the latter the effects on flourishing are all socially constructed and can therefore be remedied by means other than selection against a particular gender, such as antidiscrimination policies. In contrast, some forms of disability severely impede the capacity for flourishing and cannot be ameliorated by societal responses. Therefore, in some cases, selection against embryos with severe impairment may be justified. That by no means implies that the society should not implement antidiscrimination policies or measures aimed at assisting individuals with disabilities and their families.

Before going any further in the debate about the justifiability of selection against some forms of disability, I want to confess that I find it hard to specify which impairments in particular are severe enough to justify selection against embryos, and what criteria

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39 Similarly, McDougall (2005 2007) does not provide a detailed account of flourishing. She understands flourishing as what virtuous parents want for their children and argues that the parental virtues of acceptiness, committedness and future-agent-focus contribute to children’s flourishing. The future-agent-focus virtue also involves concern about children’s wellbeing which leaves space for selection against severe disability.
should inform such decisions. I am not trying to resolve this question as I acknowledge that it is a challenging area and outside my main concerns in this thesis. I also acknowledge the complexity of the problems in respect to reliability of testing, and making predictions about degrees of future impairment. Furthermore, I recognize that disability is not the only factor which can affect or diminish one’s quality of life. Finally, I believe that the process of defining severity needs to involve people with disabilities and their families who have an experience of what life with disability is like.

Nevertheless, in some cases, I think that selection against embryos with disability can be justifiable because the effects of the impairment are such so as to severely and significantly reduce the capacity for leading a flourishing life. Furthermore, it is important to acknowledge that the process of making decisions about embryos with traits understood as disabling involves both predictions and judgments about lives of potential future human beings and lives of procreators as providers of care. In this respect, predictions about the life of a child with disability must be considered in the context of procreators’ capacities for caring for such children, given existing social contexts. Making reproductive decisions then involves questions concerning whether future parents, in particular mothers, can or are able to provide care for a child with disability, i.e. taking account of predictions about how the care of a potential being with an impairment or a congenital disease would impact on the life of existing individual(s) and the quality of their life (Overall 2012).

Parents’ inabilities to cope with having a child with impairment may therefore be a justification for selection against some forms of impairment. Potential parents’ concerns may relate to that child’s capacity for reaching independence, i.e. the ability to live without being dependent on carers at some point in life, or the demandingness and scope

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40 Overall claims that the procreators, especially the mother, are entitled to make a decision if they provide care for a child with disability. Furthermore, she states: “However, a decision not to procreate such a child does not necessarily reflect disrespect for the prospective child’s future judgment that his life is worthwhile; instead, the decision is at least in part an expression of the parents’ judgment about their own material, physical and psychological capacities” (Overall 2012, 167).
of care involved (Overall 2012; Saxton 2006). While some disabling conditions can have trivial impact on the lives of future human beings and their carers, some impairments can have severe impact. The question that is to be answered in such cases is whether and to what extent procreators and societies can compensate for any limitations on flourishing. Answering this question involves considering the potential suffering of the child and the kind of permanent life-long care that might be required from care-givers, which makes them unable or unwilling to provide care for the child. Such a question does not need to be asked in regards to gender as gender is not a condition which involves physical suffering or dependency on carers.

At the end of this inquiry into procreators’, and primarily women’s decision making dilemmas over pregnancies, I would like to emphasize that I support a woman’s right to abortion because I recognize women’s right to bodily autonomy. Decisions about the existence of potential human beings should always be made in the context of the right to bodily autonomy of an existing woman. I argue that this right is sovereign precisely because pregnancy occurs in a woman’s body and the woman is an existing human being with basic human rights such as the right to bodily autonomy (UN 1948). At the same time, I recognize that there is a difference between deciding whether to have children and deciding what type of children to have. While I argue that in the first case, a woman has the right to abortion based on her bodily autonomy, I claim that in the second case, selection against certain types of children is justifiable only if their traits severely impede their likely capacity for flourishing, or the procreator, most often the mother, cannot care for them. While selection against some severe forms of disability can be recognized as justifiable, GSFNMR is not.

In this chapter, I have claimed that there are both similarities and differences between GSFNMR and selection against disability. On the one hand, both forms of selection involve concepts of ideal and imperfect children which are largely socially constructed. On the other hand, while some forms of impairment are disabling and impede flourishing even in societies which counter discrimination against disability and provide adequate support, the same cannot be said of gender. The disadvantaging effects

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41 It is also important to acknowledge that having a child with disability puts greater responsibility on women as primary providers of care for children (Kittay 1998).
of gender are not unavoidable but socially contingent; they only obtain in societies that are structured around gender stereotypes and gender discrimination. In that respect, the potential disadvantageous of gender can be fully eliminated by implementing social measures ensuring gender equity in practice. I have concluded that selection against embryos with a particular trait may be justifiable if the severity of that impairment impedes the child’s capacity for flourishing; however any forms of GSFNMR are unjustifiable.

In the following chapter I will focus on the distinction between sex and gender. This distinction is important to the argument of this thesis because both these terms are used in respect to gender selection, often interchangeably. I argue, however, that they are not synonymous. The inconsistent use of the categories of sex and gender is troubling because it creates confusion about what is being selected when parents undertake prenatal gender selection. The language used by many bioethicists and clinics offering GSFNMR creates the impression that gender can be unambiguously determined by prenatal selection of sex chromosomes. I will argue that this impression is misleading.
5. Investigating the Conceptualisations of Sex and Gender

In this chapter, I will focus on the distinction between the categories of sex and gender. Both these terms have been used in the debate on gender selection, often in a manner that would imply their interchangeable character and without further commentary on what these terms are meant to signify. This inconsistent use of the categories of sex and gender creates confusion regarding what is actually being selected when gender selection is practiced. My aim in this chapter is to clarify the distinction and explain its significance for gender selection for non-medical reasons (GSFNMR). In doing so, I will not attempt to narrowly define the relationship between sex and gender. There has been an ongoing and complex debate about this relationship in feminist scholarship and offering a resolution to this debate is beyond the scope of this thesis. Rather, my aim is to investigate salient issues raised by claims about the distinction.

The understanding of sex and gender in feminist scholarship has evolved over time. Early feminist frameworks adopted the categories as introduced by John Money¹ (Germon 2009; Sullivan forthcoming); sex was understood as a biological trait while gender was seen as a category referring to the social meanings and roles attributed to biological sex (Oakley 1972). As such, the category of gender was seen as socially constructed, hence open to re-interpretation, while sex was thought of as a biological given. Nevertheless, over the decades many feminist theorists have criticised the distinction, claiming that the category of sex, and definitions of female and male sex, are no less socially constructed than the category and definitions of gender (Fausto-Sterling 1995; Butler 2008). Moreover, these scholars argue that the experience of living in a sexed body is more complex than a binary understanding of two sexes and two genders defined as fixed oppositions permits (Fausto-Sterling 1995; Butler 2008; Germon 2009).

My discussion of the categories of sex and gender reflects this long and complex debate. I first examine a number of different accounts in order to clarify what the

¹ Money introduced the concept of gender in 1955 through his work on “hermaphroditism.” As a sexologist, he was interested in questions of establishing gender identity in individuals with ambivalent genitals (Money 1955; Germon 2009; Sullivan forthcoming).
categories of sex and gender are meant to signify; to what extent they are founded in nature or socially constructed; and how they relate to each other. I investigate different theoretical perspectives, including biological determinism; social constructivism; discursive theories of sex and gender; and new materialism. Drawing on Judith Butler’s discursive account of sex and gender, I argue that both sex and gender are largely discursively constructed categories. Third, I focus on how these categories relate to each other and discuss Butler’s concept of the heteronormative matrix, which holds that bodies and genders are held coherent through the requirement of compulsory heterosexuality. Fourth, I investigate the implications of the debate about sex and gender and the relationship between them for the practice of gender selection for non-medical reasons. I will argue that gender cannot be unambiguously determined through prenatal gender selection because this process consists of selection of chromosomal sex. As chromosomal sex and gender are two potentially independent categories, they can combine in various ways. Therefore, I will argue that attempts at selecting gender through selection of chromosomal sex can be self-defeating.

5.1 Different Conceptualisations of Sex

The category of sex is traditionally understood as referring to the physical body and its biological functions (Fausto-Sterling 1999; Butler 2008). Usually, biological accounts of sex distinguish multiple levels on which sex traits develop: chromosomal sex (the combination of X and Y chromosomes), gonadal sex (the development of testis or ovary), foetal hormonal sex (the production of sex hormones); and internal and external morphologic sex, which refers to the development of internal and external sex organs or genitalia (Fausto-Sterling 1995). Biological accounts of sex maintain that sex traits are either male or female; a normally sexed human is one whose chromosomal, gonadal, hormonal, internal and external morphologic sex are of the same kind, either all male or all female.
While the category of sex is complex and multi-layered, a specific sex is usually assigned to a person on the basis of the appearance of the external genitalia at birth (Fausto-Sterling 2000; Hausman 2000; Gilbert 2009). Many societies maintain that there are two sets of normal genitalia, and biological accounts of sex presume that self-identification as a man or woman will track biological features, especially external genitalia (Fausto-Sterling 1993 1995; Rupp 2002; Renzetti and Curran 1995). In what follows, I will refer to the claim that sex is either male or female as the “dichotomy of the sexes” (Renzetti and Curran 1995). From the perspective of biological accounts of sex, this dichotomy is usually presented as a given, a fact embedded in nature, and one which primarily revolves around the anatomy or appearance of the genitals (Fausto-Sterling 1995; Butler 2008; Fine 2010).

The practice of dichotomising based on the appearance of the genitals serves as a foundation for dividing people into two groups, males and females. In many societies, the two sexes are understood as opposites, and their bearers, men and women, are seen as bearers of differently sexed bodies, where men have male sexed bodies and women have female sexed bodies (Bourdieu 2001; Seavilleklein and Sherwin 2007; Butler 2008; Germon 2009). Furthermore, men and women are understood as biologically complementary in their sexed difference. The idea of complementarity refers primarily to the requirement of differently sexed bodies for naturally-occurring reproduction, in which the existence of two distinct sets of genitals and reproductive organs is traditionally understood as playing a crucial role (Fausto-Sterling 1999).

Social constructivist gender theory holds that sex is a biological given, while gender is a socially constructed role based on sex (Friedan 1963; Oakley 1972; Renzetti and Curran 1995). These theorists focus on a critique of gender stereotypes attributed to women and men based on their biological sex, arguing that sexual dimorphism should not be used to justify the attribution of essentialist, gender-stereotypical roles. While this kind of criticism focuses solely on the imposition of rigid gender stereotypes, it does not, however, question the underlying dichotomy of the sexes. As such, social constructivism merely reinforces, rather than challenges, a biological understanding of sex.

Proponents of a discursive understanding of sex (Butler 1990 2008), and scholars of new materialism (Grosz 1994), criticise social constructivism for its understanding of sex, in
which bodies are seen as ahistorical and naturally given facts, or raw material devoid of meaning (1994). In contrast, Grosz and Butler claim that, insofar as no human bodies exist prior to or outside of culture, the body is necessarily shaped by social forces.

Nevertheless, social institutions, such as traditional medicine practiced in many Western countries, reproduce biological accounts of sex and the dichotomy of the sexes by postulating that the two forms of embodiment, male and female, are the norm. Variations from the norm are framed as abnormalities, and bodies differing in appearance from the norms of sexed embodiment, such as intersexual bodies, are often subjected to surgical corrections in order to maintain the two-sex system (Fausto-Sterling 1995 2000).²

However, the need for surgical intervention to correct variability in sexed embodiments is an indication that the dichotomy of the sexes is not absolute; variations exist, and thus a strict sex dichotomy is (at least to some extent) socially enforced. Given this variability in sexed embodiments, as well as social pressure to maintain the two-sex system, feminist critics question biological accounts of sex and the dichotomy of the sexes reproduced by such accounts.

Anne Fausto-Sterling (1995 1999 2000), scholar of biology and gender studies, was one of the first to take a critical approach towards the two-sex classification. Fausto-Sterling argues that, although sex is in part a social construct, insofar as it is also in and of the body, it is simultaneously biological. On her account, the dichotomy of the sexes is false because there are complex variations in human embodiment. Based on inquiry into these variations, Fausto-Sterling argues that classification into two sexes does not acknowledge the diversity of sexual variations in nature. She therefore suggests substituting the traditional sex binary with a system that would allow for at least five sexes. Besides males and females, she identifies ""herms" (named after true hermaphrodites, people born with both a testis and an ovary); "merms" (male pseudohermaphrodites, who are born with testes and some aspect of female genitalia); and "ferms" (female pseudohermaphrodites, who have ovaries combined with some aspect of male genitalia)” (Fausto-Sterling 2000, 78).

² I discuss surgical corrections for intersex further below.
In later work, Fausto-Sterling (2000) clarifies the intentions guiding her provocative attempt to challenge the two-sex system. Her ambition was not to substitute a two-sex system with a five-sex system; rather, by claiming the existence of at least five different sexes, she wanted to emphasise the diversity in the sexing of bodies. Moreover, she aimed to highlight the complex nature of human sexed embodiment, and to argue against pressures to narrow this complexity down to two rigidly defined options.

For Fausto-Sterling, acknowledging multiple forms of human sexed embodiment provides an opportunity to broaden the dualistic understanding of sex, and challenge the traditional thesis about the essential dichotomy of the sexes maintained by many societies and their institutions. According to Fausto-Sterling, the two-sex distinction is an outcome of a “cultural need to maintain clear distinctions between the sexes” (Fausto-Sterling 1993, 24) which is not empirically based in biology (where diversity exists) but is socially reinforced.

The cultural need for preserving the dichotomy of the sexes is well illustrated by the example of surgery on people with intersexed bodies. Within societies which only accept male and female sexed bodies, individuals with ambivalent genitalia are subject to pressure to undergo genitalia normalising surgery (Fausto-Sterling 1995 2000).³ Fausto-Sterling claims that ambivalent forms of sexed embodiment inevitably pose a major threat because they challenge the traditional sex dichotomy; they do so by combining male and female traits, which are traditionally understood as markers of what are claimed to be two distinctively different sexes. More precisely: “society mandates the control of intersexual bodies because they blur and bridge the great divide” (Fausto-Sterling 1993, 24). Fausto-Sterling took the fact of neonatal surgery to be evidence of the seriousness of the threat of sexual ambiguity, arguing that the threat of sexed ambivalence is considered so significant, that operations on newborns are necessary to eliminate uncertainty from the beginning of their life.

³ Genitalia normalising surgery is “cosmetic surgery performed to achieve a social result – reshaping a sexually ambiguous body so that it conforms to our two-sex system” (Fausto-Sterling 2000, 80). Fausto-Sterling purposefully uses the term cosmetic surgery in order to clarify her claim that this type of surgery serves no medical therapeutic purpose, and is conducted solely to maintain the dichotomy of the sexes. This form of surgery is distinct from surgeries which serve to maintain the physical health of children with intersex bodies and which are generally accepted as serving a medical purpose.
Surgeries performed in order to normalise ambivalent looking genitalia used to be carried out routinely. Nowadays, and mainly due to pressure from patient groups, there is a tendency in many countries to wait until the child is old enough to develop or express their gender identity,\(^4\) unless there are urgent medical problems to correct (EU 2012b; Law Council of Australia 2013). However, problems remain. First of all, medical practice is not the same in all countries. The UN, in its recent Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment refers to corrective surgeries on intersex infants and condemns their prevalent practice in some regions (Human Rights Council 2013). Furthermore, some types of cosmetic surgeries such as clitoroplasty are still being offered to parents of children with genitals considered atypical by medical experts (Yang, Felsen and Poppas 2007; Dreger and Feder 2010; Romao et al. 2012).\(^5\)

The debate about treatment of intersex people is important, as medical interventions and “normalisation” of intersex bodies illustrate the deep-rooted social pressures underpinning the maintenance of a strict sex dichotomy.\(^6\) The existence of children with ambiguous sex is seen as a potential challenge to the two-sex system and the society which is structured around it (Fausto-Sterling 1995 2000). In consequence, individuals with ambivalently sexed bodies are pressured to fit within the proper male and female sexed categories. Nevertheless, the very existence of variability in sexed embodiments can, as claimed by Fausto-Sterling (1993 1995 2000), be seen as evidence that the dominant dichotomy of the sexes has its limitations.

\(^4\) Intersex advocacy groups claim that cosmetic surgeries should be postponed to an age at which an intersex person can make their own decision, and that treating doctors should ensure that the patient’s decision is fully informed, given the irreversible and potentially harmful nature of the surgeries (Organisation Intersex International Australia 2012; Androgen Insensitivity Syndrome Support Group Australia 2014; Intersex Society of North America 2008ab; The UK Intersex Association 2011).

\(^5\) Contra the views of intersex advocacy groups, at least some medical experts suggest childhood surgery with the consent of the infant’s family, such as performed on children with congenital adrenal hyperplasia (CAH) which alters the appearance of genitalia rather than the function. The surgery is elective, however its performance in childhood may be recommended by medical staff (Romao et al. 2012). CAH is the most common cause of intersex in individuals with XX chromosomes. The condition typically leads to a larger than average clitoris or labia that resemble a scrotum (Intersex Society of North America 2008b).

\(^6\) Bornstein argues: “The choice between two of something is not a choice at all, but rather the opportunity to subscribe to the value system which holds the two presented choices as mutually exclusive alternatives. Once we choose one or the other, we’ve bought into the system that perpetuates the binary” (1995, 101).
Furthermore, Fausto-Sterling (1999) argues that sex should not to be seen as a fixed category, staying constant over a lifetime. She claims that besides the diversity of sexed traits and their combination, a human body is not, indeed, a permanently fixed entity. Rather, a human body should be seen as a changing, living organism in virtue of the fact that its characteristics, from anatomy to the structure of the brain, are subject to change over time. As argued by Fausto-Sterling, the body is “continuously being born and remodelled in an environment that starts before birth and continues until death” (Fausto-Sterling 1999, 56).

For that reason, claims Fausto-Sterling, we need to stop thinking of the body as “something prior that is unchanging and that becomes the base on which some sort of cultural framework is built” (ibid.). From this point of view the body and the sexual identity ought not be seen as fixed over time, but as shaped by social and environmental factors (Fausto-Sterling 1999; Lane 2009; Fine 2010). As Fausto-Sterling sees it, there is social pressure to maintain a fixed sexual identity within the two sex dichotomy.

Fausto-Sterling’s criticism of the two-sex system raises important arguments about the complexity and diversity of sexed embodiments. Her approach has initiated many debates about the proclaimed naturally embedded dichotomy of the sexes, and the social pressures preserving two distinct categories of unambivalent sexes. Since Fausto-Sterling published her first critical texts on this topic (1993 1995), the social structures and processes which entrench the two-sex system have been analysed by many theorists such as Butler (2008) and Fine (2010). They claim that the category of sex is less based in nature and actual anatomy, and more socially produced than tends to be recognised. Like Fausto-Sterling, these theorists critically assess the traditional view that sex is something naturally given or fixed.

Butler argues in Gender Trouble ([1990] 2008) that sex is a discursively produced category which is defined in a specific way to help maintain a particular hierarchic order in a society. In such a social framework, Butler claims, it is actually gender that works as:

[..] the discursive/cultural means by which “sexed nature” or “natural sex” is produced and established as “prediscursive,” prior to culture, a politically neutral surface on which culture acts.” (Butler 2008, 10, emphasis in original)
As she argues, society is predicated on a two-gender system and the two genders have been equated with two sexes. The two-gender system is legitimised by the claim that gender naturally follows from the universal and fixed two-sex system. Consequently, all human beings are required to adjust to one of two sexed identities, where male gender coheres with male sex and female gender coheres with female sex. On Butler’s view, the category of sex is socially constructed to maintain and regulate the gender order:

If the immutable character of sex is contested, perhaps this construct called “sex” is as culturally constructed as gender; indeed, perhaps it was always already gender, with the consequence that the distinction between sex and gender turns out to be no distinction at all. (Butler 2008, 9-10)

On Butler’s account, it is gender that creates the “cultural significance” of a sexed body, and that is why sex and gender cannot be viewed as distinct from each other (Butler 1988, 524). Butler’s account stands in opposition to biologically deterministic views of sex, where gender identity is taken to follow from biology. On the contrary, Butler claims that socially regulated, dichotomous gender identities are what give meaning to the dichotomous category of sex, and in that respect, Butler views sex as a discursive product. On her understanding, bodies only exist inside the gendered social context that gives them meaning as sexed bodies (1988 1993). Therefore, the way one understands sex is determined by the way one understands gender in a particular society.

In Bodies that Matter (1993), drawing on a Foucauldian notion of power, Butler theorises sex as a normative regulatory ideal. She argues that insofar as sex not only serves as a norm but functions as a part of a regulatory practice that produces particular kinds of bodies, it is a form of productive power. Materiality then is a site where “sexual difference plays itself out” (22). On this understanding the category of sex functions in a normalising way to regulate bodies, and sexed difference is a construct resulting from regulation, not a biological given.

7 Butler ([1990] 2008) calls this normative connection between male sex and male gender (or female sex/female gender) the intelligibility of sex and gender. I discuss this below.
8 I note that Moira Gatens (1983) argued this view before Butler.
While Butler understands sexed difference as a construct, theorists of new materialism (Grosz 1994-2010; Cheah 1996; Barad 1998-2003; Kerin 1999) construe the sexed body as determined both by society and nature. New materialists criticise Butler’s account of sex on two grounds: first, because she takes language to shape or determine material reality, a move known as linguistic monism; and second, because she does not pay enough attention to the physical body.

First, some new materialists imply that Butler’s discursive account of sexual difference is a result of linguistic monism, an ontological commitment which reduces matter to discourse (Grosz 1994; Cheah 1996). This criticism is based on a rejection of Butler’s notion that the body or its sexed difference⁹ is the sole product of social forces. According to new materialists, both the psychical interior and social inscriptions play a role in the constitution of bodies. Grosz argues that a discursive approach largely disregards the material body and thus fails to take account of some of the limits and specifics of sexed difference imposed by nature. In her later work, she argues that feminist theory considers matter, but in a distorted way: “Feminist theory has allowed the body to enter discourse, but only, ironically, through its reduction to discourse” (2010, 50). For Grosz, this is unjustified. Similarly, Cheah (1996) argues that Butler’s discursive approach cannot explain how the bodily materiality of sex can be produced by language or discourse.

The objection from linguistic monism, however, is unwarranted. Butler does not claim that bodies are immaterial discursive products, but that their meaning is produced through discursive practices. In Bodies that Matter (1993), written as a response to new materialist criticism of her earlier work, Butler acknowledges that there certainly are aspects of bodies which cannot be seen as a construct, such as experiences of pain, pleasure or the fact that bodies are mortal and will inevitably die (Butler 1993, xi). Nevertheless, she claims that sexual difference is a construct materialised through regulatory cultural norms. According to her, our understanding of physical manifestations is produced by culture (i.e. discursive practices), in the sense that we do not access matter prior to or outside of discursively produced meanings of that matter. While Butler does acknowledge the existence of matter, she nevertheless claims that it is discursively materialised.

⁹To grasp the process of differentiating bodies into two different sexes, Grosz uses the term sexed difference (1994) while Butler uses the term sexual difference (1993).
determined as to which bodies are considered socially acceptable and why (1993, xii). As such, Butler’s points about matter are of an epistemological rather than an ontological nature. She does not say what matter is but how we come to understand it. In my view, the objection from linguistic monism is based on a misreading of Butler.

Second, new materialists criticise Butler for paying inadequate attention to matter or the physical body. For them, the body is both constituted by, and a ground for, cultural forces. Thus, Grosz claims a “radical inseparability of biological from psychical elements” (Grosz 1994, 85), arguing that the biological and psychical are mutually dependent and, furthermore, that the body cannot be thought of as separable from the environment. Grosz analyses the body as an entity existing in interaction with the outside world (society and environment) and one’s psychical elements. Moreover, these interactions and dependency are mutual rather than one way processes.

Grosz questions biologically deterministic accounts of sex which largely overlook cultural and environmental conditions and impacts on the body, and which focus on biological factors as the sole producers of dichotomously sexed humans. At the same time, Grosz rejects those accounts that perceive sex as largely shaped by social forces because, according to her, they overlook the importance of the sexed body as a condition of one’s social existence. Thus she argues:

We need to return to the question of matter, its forms, nature, and capacity, in order to address the direct objects of feminist investigation—the differences between men and women, for men and women, all subjects, are material objects. While materialism has directed our focus to questions of the

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10 Fraser recognises this when she writes: “Butler neither opposes matter and language, nor reduces matter to language. Instead, matter and language are understood to be irreducible and inextricably related: in Butler’s post-structuralist reading (2000, 34), it is the inability or failure of language to capture the material referent which is the originary difference on which language itself is premised” (2002, 613).

11 Some theorists argue that Butler distinguishes between bodies and materiality. Fraser (2002) argues that the title Bodies that Matter implies that some bodies matter while others don’t. According to her, Butler is only interested in human materiality. Similarly Barad (1998) argues that Butler’s account of materiality does not apply to non-human materiality.

12 Grosz tends to use the term “psychical” rather than psychological, e.g. when she speaks of the body as a product of the interaction of physical and psychical inscriptions in Volatile Bodies (1994).
body, the body still remains elided and covered by representation. (Grosz 2010, 50)

Grosz claims that feminism has refused to explore matter out of fear of essentialism, while arguing that biology contests essentialism by pointing at the very real diversity of embodiments (Grosz 2010). Yet while, in Gender Trouble ([1990] 2008), Butler acknowledges that she did not pay enough attention to matter, she is concerned with materiality in Bodies that Matter (1993). She takes a new perspective on matter, not viewing it as a “surface or site” but instead as “a process of materialization that stabilizes over time to produce the effect of boundary, fixity, and surface we call matter” (1993, 9, emphasis in original). Thus, she is no longer asking “how is gender constituted through a certain interpretation of sex?” (10), as she admits that such a question fails to engage with matter. Instead her questions become: “Through what regulatory norms is sex itself materialized? And how is it that treating the materiality as a given presupposes and consolidates the normative conditions of its own emergence?” (ibid.). These questions illustrate that Butler’s aims in the exploration of bodies are significantly different from those of theorists of new materialism. While new materialists are interested in ontology, Butler is interested in the cultural norms through which sex is materialised.

My own understanding of sex is largely critical of biologically deterministic views. On the basis of Fausto-Sterling’s claims about the diversity of sexual difference, it seems unlikely that the dichotomy of the sexes is a naturally given fact. Recognition of variety throws into question any strictly dichotomous conceptualisation of sex. Sexual embodiments are diverse, incorporating such variations as intersex or hermaphrodite bodies. This indicates that sexual difference is complex and multilayered.

By multi-layering, what I mean is that sex cannot simply be equated with genitalia, but has many other aspects. Beside the physical aspects (related to chromosomes, gonads or internal and external morphologic sex), an important aspect is that of one’s identity, i.e.

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13 However, Grosz’s reference to differences between men and women could be interpreted as implying that Grosz assumes the existence of inherent sexual difference.

14 Kerin argues: “the problem of matter cannot be adequately approached merely by analysing the discursive modes through which it is interpreted. Insofar as an alternative schema is required, I will argue that the question of ontology must continually be raised in order to demonstrate that matter exists in multiple modalities” (1999, 91).
whether one identifies as a man or a woman or neither. Furthermore, I agree with Fausto-Sterling that bodies and sexes are not inherently fixed and unchanging. On the contrary, one’s physical appearance and identity can change and develop over time. In particular, phenomena such as transgenderism, or certain intersex conditions which manifest over time, demonstrate that sexual embodiments can be complex and dynamic. The complexity and diversity of sexual embodiments challenge the two-sex system and provide evidence that the sex dichotomy is a normative social construct.

I wish to challenge the narrow understanding of sex as biologically determined, immutable, and thus either diagnosable or detectable, through examination of sex chromosomes or morphological features. Reflecting on the cultural pressures to limit legitimate bodies to two exclusive options, I agree with Butler that the traditionally dichotomous “nature” of sex is conventional. It is an outcome of socially produced discursive practices, the means by which we learn which bodies are supposed to be male and female and what this implies. In that sense, I view sexual difference as discursively produced.

5.2 Different Conceptualisations of Gender

The concept of gender was adopted in early feminist theory to mark the distinction between sex traditionally defined in biological terms, and the expectations and roles socially ascribed to sexed bodies. Gender was defined as “a collection of attributes that a particular culture found appropriate for individuals who inhabited a particular body (or sex)” (Fausto-Sterling 1999, 53) and these attributes included a wide range of traits such as the behaviour, looks, body posture or social roles stereotypically expected from men and women (Oakley 1972; Bem 1993; Renzetti and Curran 1995; Bourdieu 2001).

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15 Earlier I mentioned that the first use of the term is ascribed to sexologist John Money who applied it in his publication “Hermaphroditism, Gender and Precocity in Hyperadrenocortism: Psychologic Findings” in 1955. However, there is disagreement over the utility of the original concept for feminist theory. While some claim that the distinction Money made between sex and gender represents a social constructivist view, and thus can be used critically, Sullivan argues that Money’s understanding of gender is based on biological determinism (forthcoming).
There are several theories of gender which hold substantially different perspectives on how gender is established. In what follows, I analyse biologically deterministic and socially constructivist theories, as they represent two oppositional views about the constitution of gender and its role in society.

At the core of the biologically deterministic and dichotomous view of gender is the postulate that men and women are essentially different, physically and psychologically, and therefore they are assigned different roles in society (Bourdieu 2001; Fine 2010). According to Bornstein (1995), traditional biologically deterministic conceptualisations of gender postulate it as stable, either male or female, and essentially derived from visible biological (genital) differences between the sexes. In that respect, gender is understood as naturally following from sex, and therefore, one’s membership in a gendered group is postulated as a biological necessity that conforms to certain gender rules.

Reflecting on the rules of gender described by Bornstein, Gilbert proposed the concept of “bigerenderism” which she defined as “the view that accepts the rules of gender and does not permit or allow for variations, exceptions, and/or deviations from the norm” (Gilbert 2009, 95). As traditional gender rules reproduce the gender dichotomy, they leave minimal space for ambivalence or uncertainty about one’s membership in a gendered group. At the core of such traditional gender systems is the thesis that gender, like sex, is essentially “natural.” Proclaiming gender as a natural fact aims to create a social reality in which the gender order is accepted as a given, without questions or attempts at subversion.

In contrast with traditional biologically deterministic theories of gender, social constructivist theories maintain that gender is not a natural fact but is socially constructed.

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16 Traditionally, men are claimed to be generally stronger which makes them presumably biologically destined to perform physically challenging tasks and leadership roles while women’s bodies are claimed to have generally less muscular mass and the potential to give birth, hence they are predestined to perform more domestic and nurturing tasks (Renzetti and Curran 1995; Bourdieu 2001; Fine 2010). Early feminist theorists challenged this traditional interpretation of male and female physiognomy and argued against a rigid stereotypical approach to men and women and their roles with respect to their bodily differences (Friedan 1963; Oakley 1972). Nevertheless, these theorists argued merely for a more inclusive social order, while not challenging the two-sex system in principle and its normative understanding as a natural fact.

17 Kate Bornstein summarized the rules of gender as follows: 1. There are two and only two genders; 2. One’s gender is invariant; 3. Genitals are the essential signs of gender; 4. Any exceptions are not serious; 5. There are no transfers from one gender to another except ceremonial ones; 6. Everyone is one gender or the other; 7. The M/F dichotomy is a “natural” one; and, 8. Membership in one gender or the other is “natural” (Bornstein 1995, 46).
Bourdieu, for example, claims that gender is socially reproduced, and that individuals categorized as men and women learn appropriate gendered patterns of behaviour from an early age through a process of gender socialisation (2001). From his point of view, in most societies, members are socialised as gendered beings—men and women—and are ascribed essentially different gender roles based on their sex. These gender roles and gendered tasks are often assigned different value in society, such that a traditional gender order usually manifests as a hierarchic social order. Typically, the roles and tasks associated with men and masculinity tend to be assigned a higher value and are considered the normative standard against which women are judged, suggesting that masculine dominance is embedded in the traditional gender order (Bem 1993; Renzetti and Curran 1995; Bourdieu 2001; Gilbert 2009).

Bourdieu makes the case that, while gender roles and their hierarchic character are socially constructed, their arbitrary character is constantly denied. Bourdieu calls this essentialising process the “naturalisation of gender” (Bourdieu 2001). He claims that gender is naturalised through constant references to the “natural” differences between two kinds of sexed bodies which provide the basis for differentiation between genders. Thus respective social roles seem to follow necessarily from biology. Furthermore, as men and women repeat assigned gender behaviour, gendered roles and practices become literally somatised in their bodies. The process of somatisation can be observed, for example, in the different dress codes women and men adopt, or in the different gender specific ways in which they occupy physical space in society (e.g. how men and women tend to sit, walk or gesticulate). According to Bourdieu, gender socialisation produces women who act in a feminine way and men who act in a masculine way, and their somatised gender roles express a somatised gender hierarchy (e.g. women tend to take less space or talk in a less aggressive manner).  

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18 Similar claims were previously made by Simone de Beauvoir in The Second Sex (1952). In her critique of traditional femininity, Beauvoir emphasizes that one is not born a woman but becomes a woman through social indoctrination. Thus, Beauvoir is critical of any claims about an essential femininity.

19 Bem (1993) comes to similar conclusions in her theory of gender formation. From her perspective, males and females are considered fundamentally different from one another (she calls this phenomenon gender polarization), and these differences constitute a central organising principle for the social life of the society.
Both the conceptualisation of gender as a construct, and the very concept of gender itself, have been subject to criticism. Grosz claims that the category of gender is used in feminist theory to avoid biological essentialism, that is, the view that there are real, essential, naturally encoded and biologically determined differences between men and women. However, she claims that such an approach can be misleading, as from her perspective “gender is not an ideological superstructure added to a biological base” (Grosz 1994, 58); and gender does not get attributed to bodies in an arbitrary manner. This means that gender is not solely grounded in socialisation, but also bodies: “in agreement with Gatens (1990), it becomes clear that the “masculinity” of the male body cannot be the same as the “masculinity” of the female body, because the kind of body inscribed makes a difference to the meaning and functioning of gender that emerges” (Grosz 1994, 58). Similarly, Fausto-Sterling (1999) claims:

> While there were positive political results from the separation of sex and gender, this rhetorical move was also deeply problematic, because to a great extent our bodies’ physical appearance (i.e., their physical sex) locates us in our gendered culture. (Fausto-Sterling 1999, 53)

Taking into account Fausto-Sterling’s criticism of the dichotomous account of sex, her observation can hardly be seen as advocating for gender essentialism in the biologically deterministic sense which maintains that gender follows from sex. Rather, she is acknowledging, just like Grosz, that while human bodies are subject to pressure to adjust to social expectations, different expectations are imposed on differently sexed bodies. This is a compelling critique of social constructivism, which tends to perceive bodies as raw material on which (any) meaning is inscribed (Grosz 1994; Fraser 2002).

While discursive theories of gender hold that gender is a product of social forces, they perceive gender and the body as intertwined. Butler develops a concept of gender understood as a series of performative acts (Butler 1988 2008). To her, a gendered body is

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Bem uses the term androcentrism to refer to both the notion that males are superior to females, and to the persistent idea that males and the male experience are the normative standard against which women are judged. And finally, on her account, biological essentialism is the lens that serves to rationalize and legitimate gender polarization and androcentrism by portraying them as the natural and inevitable products of the inherent biological differences between the sexes. From her point of view, the process of gender acquisition is simply a special case of the process of enculturation or socialisation in general.
an entity with possibilities that are constantly materialised by re-enactment and repetition of gendered roles. Thus, she argues that: “the body becomes its gender through a series of acts which are renewed, revised, and consolidated through time” (Butler 1988, 523) Therefore, Butler does not understand gender as a superstructure added to a biological base, but as the discursive force which produces bodies as masculine or feminine.  

Furthermore, Butler acknowledges that gender is not ascribed to bodies in an arbitrary manner. She claims that in a gender traditional society, individuals with bodies which are ascribed male sex are required to perform male gender and vice versa. In that sense, the performance of gender is not arbitrary but follows strict norms. To illustrate this, Butler claims that gender does not work as a closet from which one picks out different genders on different days. On the contrary, gender is constructed by power relations and “normative constraints that not only produce but also regulate various bodily beings” (Butler 1993: x). While Fausto-Sterling (1999) claims that our bodies’ sex locates us in our gendered culture, Butler would say that sexual difference is produced by gender norms. Nevertheless, both agree that individuals are subject to pressure to conform to normative gender roles.

Butler’s performative account of gender has at least three implications. First, gender does not follow from sex or biology, but is a discursive construct. Second, insofar as gender is seen as a performative act, it is “real only to the extent that it is performed” (Butler 1988, 527). Third, as gender according to Butler has no real essence, it can be performed in a subversive way. I explore these implications below.

Butler claims that gender is not a natural attribute of human beings; humans are discursively shaped to perform gender roles prescribed for their particularly sexed bodies, which are never neutral but known only through their “gendered appearance” (Butler 2008, 34).

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20 Furthermore, Butler elaborates: “From a feminist point of view, one might try to reconceive the gendered body as the legacy of sedimented acts rather than a predetermined or foreclosed structure, essence or fact, whether natural, cultural, or linguistic” (Butler 1988, 523).

21 This aspect of Butler’s account of gender is acknowledged by theorists of new materialism (Grosz 1994; Cheah 1996; Kerin 1999).

22 Butler claims that gender is a: “set of free-floating attributes, for we have seen that the substantive effect of gender is performatively produced and compelled by the regulatory practices of gender coherence” (Butler 2008, 34).
On Butler’s account, in a gender stratified society, individuals cannot exist outside the gender order as gender neutral. Moreover, social practices of regulation and punishment make the performance of gender a “strategy of survival” (Butler 1988, 522).

Gender, according to Butler, can be imagined in terms of theatrical roles which are performed, and through the continuous repetition of the performance a “cultural convention is embodied and enacted” (Butler 1988, 525). In this respect, gender performance is not to be seen as an isolated individualized act, but as one which is performed within a specific historical and culturally embedded context. Consequently, gender acts are not original but conventional in the form of “a shared experience and 'collective action'” (Butler 1988, 525). As such, they exist prior to individual actors, they have “been going on before one arrived on the scene” (Butler 1988, 526) and become materialised as gender through repetition.

Butler’s claim that gender is discursively constructed, and real only to the extent of performance, implies that there cannot be any fixed category of “men” and “women.” She argues that there are no such culturally or historically universal identities. Nevertheless, she recognises that as much as cultural and historical contexts differ in many aspects, they usually share the practice of punishing the individuals and bodies who do not comply with appropriate historical and cultural gender expectations (Butler 1988, 521).

As Butler claims that gender has no essence, it can therefore be performed in a subversive manner. This happens when individuals with bodies traditionally categorised as “male” or “female” perform an “opposite” gender. This can be observed in the phenomenon of transvestitism and drag. Butler argues that transvestites not only enact the difference between sex and gender but also challenge (if only symbolically) the difference between appearance and reality, which stands behind common thinking about gender identity (Butler 1988, 527). She therefore claims that the conventionally opposite

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23 Butler presents a concept of gender as an activity that one does, nevertheless, one does gender within a certain environment which is far from arbitrary and which entails certain existing power structures and forces. At the same time, Butler emphasizes the active role of an individual in enacting a gender role, while acknowledging that the role is played according to certain socially produced rules (Butler 1988, 526).

24 Butler claims: “If the 'reality' of gender is constituted by the performance itself, then there is no recourse to an essential and unrealized 'sex' or 'gender' which gender performances ostensibly express” (Butler 1988, 527). Furthermore, she claims: “Because there is neither an 'essence' that gender expresses or externalizes nor an objective ideal to which gender aspires; because gender is not a fact, the various acts of gender creates the idea of gender, and without those acts, there would be no gender at all” (522).
gender an individual takes on for a performance of drag is no less real than the “proper”
gen...
possibility of change. However, this criticism seems misguided, as Butler is aware of the cultural and historical embeddedness of the contexts in which gender is performed. According to Butler, both gender and gender order are historically changing structures which constitute the subject, and which are simultaneously maintained and transformed by the subject. Butler views the constitution of gender as a process of repetition through which subjects emerge. The performativ nature of gender allows for the possibility to re-enact gender in subversive ways. Hence, while individuals cannot fully escape the constraining gender norms, they can exercise agency within their cultural context to perform parodic gender performances (Butler [1990] 2008).

Similarly Nussbaum in “The Professor of Parody” (1999) argues that one major shortcoming in Butler’s theory is that it provides limited potential for political change. According to Nussbaum, Butler does not make it clear exactly what should be resisted, on what grounds it should be resisted, or what the resistance should entail. Nussbaum thinks that Butler’s account of subversive performance, which holds that individuals cannot escape oppressive gender structures altogether, sends out a pessimistic message that real change is not possible. Moreover, as Butler lacks a normative account of oppression, she cannot fully explain resistance.25

However, Butler consciously refrains from providing detailed guidance for organised resistance, because she largely refuses universalistic claims grounded in common epistemological standpoints such as “women” (2008, 19).26 She does not want her theoretical approach to prevent resistance, arguing that if politics comes from a place acknowledging diversity, it will be more productive:

25 According to Nussbaum: “Gender Trouble and Bodies that Matter contain no detailed argument against biological claims of “natural” difference, no account of mechanisms of gender replication, and no account of the legal shaping of the family; nor do they contain any detailed focus on possibilities for legal change” (1999, n.p.)

26 Nevertheless, Butler also recognises that practices such as gender selection against women legitimise the use of the term “women” for political reasons. “Feminists might well worry about the political implications of claiming that women do not exist” (1988, 529), says Butler reflecting on the deep-rooted discrimination manifested in gendercide. “She [Marry Anne Warren] argues that social policies regarding population control and reproductive technology are designed to limit and, at times, eradicate the existence of women altogether” (ibid). In that light, Butler says that feminists might as well not fight over the metaphysical status of the term. That said, she sees a vast difference between acknowledging the ontological insufficiency of the term and the postulation of a normative essence or nature of womanhood, which according to her cannot be found.
Without the compulsory expectation that feminist actions must be instituted from some stable, unified, and agreed-upon identity, those actions might well get a quicker start and seem more congenial to a number of “women” for whom the meaning of the category is permanently moot. (Butler 2008, 21)

Thus, while Butler’s main aim is to interrogate the processes of gender identity formation, she does not give up on social change. Her claim that individuals cannot fully escape the gender order is an acknowledgement of the larger social forces within which individual gender identities form. The subversive potential of Butler’s gender theory comes from her assertion that gender order has no natural basis:

Regardless of the pervasive character of patriarchy and the prevalence of sexual difference as an operative cultural distinction, there is nothing about a binary gender system that is given. As a corporeal field of cultural play, gender is a basically innovative affair, although it is quite clear that there are strict punishments for contesting the script by performing out of turn or through unwarranted improvisations. Gender is not passively scripted on the body, and neither is it determined by nature, language, the symbolic, or the overwhelming history of patriarchy. (Butler 1988, 531)

The strength of Butler’s perspective lies in her rejection of generalisation based on the presumed universal binary categories of men/women. As such, her account opens up space for radical forms of self-determination, such as trans lives and trans choices (Butler cited in Williams 2014). This approach might have more radical implications than perspectives that maintain the dichotomous understanding of sexes and genders.

Furthermore, the radical potential of Butler’s approach can be seen in her advocacy for individual rights to self-determination in spite of social pressure to adjust to an

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27 This awareness about larger social structures indicates that Cotters’s claim (1994) that Butler’s theory is cut off from larger social context is misguided.

28 For Butler, it is actually the assertion that all women are oppressed that treats their oppression as natural. In an interview for TransAdvocate, Butler clarifies: “I never did like the assertion of the “innate” inferiority or women or Blacks, and I understood that when people tried to talk that way, they were trying to “fix” a social reality into a natural necessity” (Williams 2014, n.p.). This does not mean that Butler thinks that the acknowledgement that women tend to be discriminated against is a source of the discrimination, rather that maintaining that all women face the same struggles involves an unjustified disregard for difference.
imposed gender role. This is seen in the way she approaches cases of individuals who are assigned a gender with which they do not identify, such as that of David/Brenda (initially known as John/Joan prior to disclosure by the person concerned). In this case, David’s penis was severely injured during a medical procedure in early childhood (Butler 2004). Approximately a year after the accident, Dr. John Money recommended that David have a surgical sex change, and the first part of this (including removal of the testes) was performed. From this point, David was ascribed a female gender identity and raised as Brenda. Nevertheless, at the age of 14, Brenda refused vaginal surgery and decided to live as David. The case has become famous as apparent proof of the biological roots of gender identity. However, Butler challenges this interpretation and offers a critique of the social forces pressuring individuals to adjust to assigned gender roles.

There are multiple viewpoints concerning the significance and implications of this example. Some theorists claim that this case proves that hormonal and chromosomal factors override social constructivist factors in gender development, hence it supports a biologically deterministic theory of gender development (Diamond and Sigmundson 1997). Others claim that gender identity is much more complex than this, and attend to the personal experience of gender transition, while also considering the context in which the transition occurs (Hausman 2000; Butler 2004).

Butler’s approach to the case is compelling because of her close attention to the social context of David’s transition. She claims that it is difficult to reach conclusions about what exactly caused David to refuse to live as Brenda. She argues, however, that what is obvious about the case is the intensity of the norm of gender dichotomy David was subjected to – by medical experts who insisted that a child with an injured penis cannot live as a male. She argues that the rigid pressure to adjust to his newly assigned gender identity as a girl was a factor in his refusal of the imposed identity.\footnote{Butler (2004) argues that in his reflection on his preference to live as a man, David does not express a belief that the preference stems from biology, i.e. him being born with XY chromosomes. However she does not interpret this fact as a distinct proof of the social construction of gender identity. Rather, she claims that the process of David’s gender identification is complex.} In her interpretation,
Butler offers a critique of gender dichotomy and the social requirement of unambiguously sexed bodies, imposed irrespective of the individual’s wellbeing.\footnote{In cases of gender assignment after an accident, it is hard to determine exactly how many individuals reject the assigned sex as there is lack of reliable data. Some personal stories of intersex people and their experiences are available on the website of Intersex Australia (2013, see: \url{http://oii.org.au/22686/the-age-intersex-call-end-non-consensual-genital-surgeries/}).}

The productive potential of Butler’s approach can be seen in her radical acceptance of each individual’s right to self-determination. Butler holds that “every person is in an active position of figuring out how to live with or against the constructions – or norms – that help to form us” (Butler, cited in Williams 2014, n.p.). For Butler, gender assignment (at any point in life) is a clear example of a construction;\footnote{In \textit{Gender Trouble}, Butler even goes so far to say that binary morphologies of sex constitute normative violence ([1990] 2008).} individuals should have the possibility to refuse/affirm it without social sanctions. This emphasis on self-determination shows that Butler presents a radical account of gender transgressing the stereotypical dichotomy of sexes and genders, and that she is invested in political change.

The cases of individuals with gender diverse identities provide evidence about how gender identity is constructed in society. It is often not “physical sex” but the performance of one’s gender that defines an individual as a man or a woman in everyday situations. While gender is typically assigned based on genitals, in most social interactions genitalia are covered with clothes, and individual gender is identified based on diverse physical traits associated with femininity and masculinity (Schilt and Westbrook 2009), which can be performed to a greater or lesser extent, including in ways that are inconsistent with assigned sex, such as occurs with transgenderism. Furthermore, in people who undergo sex reassignment, the process of transition from one gender and sex to another provides evidence of the multilayered nature of gender performance.\footnote{Also, due to the process of transition; i.e. the period between the start and completion of surgical and hormonal interventions when individuals can appear as people of ambivalent gender.} For example, Elliott (2003) describes how transgender individuals develop their new gender and bodily identity by training their voice to sound like a “real” woman or man. In such cases, an individual’s preferred gender identity is socially recognised based on a learned way of gendered speaking, and this is enough for gender recognition in the absence of visual cues.
Thus, it can be claimed that in daily social interactions it is gender performance rather than the physical appearance of the genitals which establish one’s gender identity. Furthermore, the very existence of transgenderism can be interpreted as evidence that gender does not unambiguously track genitals (Hausman 2000; Stryker and Whittle 2006).

I agree that gender is a discursive construct. Specifically, my perspective is informed by Butler’s view of gender as a performative act which can be performed in coherence or dissonance with socially dominant gender expectations. At the same time, individuals are under pressure to perform gender in coherence with their genitals understood as sex. Butler’s approach is inspiring, as she not only acknowledges the deep rooted social forces maintaining gender dichotomy but at the same time, her account of gender allows for subversion. Moreover, a key strength of Butler’s account is its emphasis on gender subversion and non-binary gender identities. Consistent with my view that the diversity of sexed embodiments challenges a strict sex dichotomy, Butler’s account of gender thus enables us to understand gender in its complex diversity, and to challenge the socially normative postulate of gender dichotomy.

5.3 The Relationship between Sex and Gender

My own understanding of sex and gender is influenced by Judith Butler’s account of gender as performative and sex as a largely discursively produced category. Informed by her theory, my claim is that the relationship between sex and gender is not arbitrary, but neither is it immutable. Next, I look at the social forces which, according to Butler, produce a specific combination of sex and gender, what she refers to as the heteronormative matrix (Butler 2008). The debate is important, as I will later discuss the implications of these forces for the debate about GSFNMR.

Traditionally, in societies that reproduce a gender dichotomy, female gender is claimed to cohere with female sex and vice versa. Furthermore, as has been noted, biological accounts maintain that gender follows from sex, and this coherence is usually presented as a natural fact (Bourdieu 2001; Butler 2008; Gilbert 2009). Contrary to this, social constructivist theories of gender maintain that the coherence of sex and gender is maintained through social forces. The normative coherence of sex and gender seem to
follow a strict dichotomy of male and female which, in a gender traditional society, is based on the biologically deterministic understanding of women and men as essentially different, literal opposites predestined to perform binary gender roles. In what follows, I inquire into how coherence is established, and the implications of such processes. Specifically, the question that needs to be addressed is: how are the “different gender groups” to relate to each other and what social processes ensure their cohesion?

According to Butler, social forces ensure a specific combination of sex and gender. Typically, male gender is paired with male sex and female gender with female sex. Butler calls this the intelligibility of sex and gender (Butler 2008). She links her understanding of sex and gender with sexuality, specifically heterosexuality, claiming that in gender traditional societies, i.e. societies maintaining a gender dichotomy, individuals are subject to pressure to adopt compulsory heterosexuality (Butler 2008). Furthermore, Butler claims that the requirement for compulsory heterosexuality is the social force which produces sex and gender as intelligible, and therefore reinforces the dichotomy of sexes and genders.

Butler argues that the two oppositional genders are constructed within a heteronormative matrix, which she defines as a “cultural intelligibility through which bodies, genders and desires are naturalised” (2008, 208).33 In her understanding, the heteronormative matrix presupposes a fixed sex expressed through a corresponding fixed gender. The sex expressed through gender can be either male or female, and the two sexes/genders are constructed as hierarchic opposites regulated through the practice of normative heterosexuality (Butler 2008).

On Butler’s account the heteronormative matrix functions as an organising social force which produces specific constellations of sex and gender, constructs male and female as complementary opposites and maintains this order as stable. Furthermore, this process ensures that men and women are perceived as necessarily complementary in their proclaimed sexed and gendered differences. As such, compulsory heteronormativity can

33 Butler defines the heteronormative matrix as a: “hegemonic discursive/epistemic model of gender intelligibility that assumes that for bodies to cohere and make sense there must be a stable sex expressed through a stable gender [...] that is oppositionally and hierarchically defined through the compulsory practice of heterosexuality” (Butler 2008, 208).
be viewed as the central organising force behind the construction of sex and gender into oppositional binaries.

The heteronormative intelligibility of sex and gender requires not only a specific patterning of sex and gender but also of desire. In order to maintain dichotomous heteronormative gender identities and the proclaimed complementarity of men and women, it is necessary that women only desire men and vice versa. On Butler’s view, it is the coherence of sex, gender and desire which is presupposed in a gender traditional society (2008). While the requirement of compulsory heterosexuality regulates how dichotomously gendered humans relate, it serves to regulate bodies, sexes, genders, desires and identities. In that respect, individuals with female sexed bodies are ascribed female gender and are required to desire individuals with male gender and bodies, and hence identify as heterosexual women (and vice versa). As such, compulsory heteronormativity presumes heterosexual practice as the only legitimate sexual encounter; such that individuals with male gender identity and sexed bodies have sexual encounters only with similarly gendered and sexed females.

According to Butler, the requirement for heteronormativity plays a crucial social role, as the limitation of appropriate sexual conduct to heterosexual interactions ensures the reproduction of the very society:

To guarantee the reproduction of a given culture, various requirements, well-established in the anthropological literature of kinship, have instated sexual reproduction within the confines of a heterosexually-based system of marriage which requires the reproduction of human beings in certain gendered modes which, in effect, guarantee the eventual reproduction of that kinship system. (Butler 1988, 524)

In order to ensure the maintenance of a culture through the reproduction of society, bodies are disciplined within the two-sexed system, in which a natural status of male and female bodies and their heterosexual dispositions is claimed (Butler 2008). Butler argues: “the heterosexualization of desire” is the very force which “requires and institutes the production of discrete and asymmetrical oppositions between “feminine” and “masculine,” where these are understood as expressive attributes of “male” and “female”” (Butler 2008, 24). These oppositions become compatible through heteronormative practice.
The heteronormative matrix can also be recognised as the source for maintaining the strict sexed stratification of bodies, establishing normal and abnormal forms of sexed embodiments. The pressure to adjust to the two-sex norm explains why intersexual and hermaphroditic bodies are considered such a significant threat to a gender-traditional society. Fausto-Sterling further clarifies:

Inasmuch as hermaphrodites literally embody both sexes, they challenge traditional beliefs about sexual difference: they possess the irritating ability to live sometimes as one sex and sometimes the other, and they raise the specter of homosexuality. (Fausto-Sterling 1993, 24)

On this view, the strict heteronormative gender matrix can only be maintained as far as clear boundaries between male and female sexed bodies are ensured. This not only requires the presence of respective sets of genitals and organs but also for these to be of a proper shape and size. In her article “How to Build a Man”, Fausto-Sterling (1995) describes how traditional Western medicine regulates otherwise standard sexed male and female bodies in cases when men are born with penises too small to penetrate a woman and women are born with oversized clitorises. These seemingly minor alterations from the “norm” are often considered crucial enough to perform corrective surgeries on newborns (Fausto-Sterling 1995; Romao et al. 2012). According to Fausto-Sterling, male infants with small penises tend to be seen as inadequately sexed to grow up as men as they would not be able to perform penetrative heteronormative sex with a woman. For that reason, she claims that a body tends to be accepted as normal in so far as it can participate in heteronormative sexual practices. Similarly, Butler claims:

\[\text{Germon also argues this point (2009) and quotes Dreger: “if you don’t know who is male and who is a female, how will you know if what you have is a case of heterosexuality or homosexuality?” (Germon 2009, 7).}\]

\[\text{Romao et al. claim that “Even in patients with normal-appearing male genitalia, a penis shorter than 2.0 to 2.5 cm with a narrow breadth should be considered a micropenis and warrants further investigation” (2012, 857). Furthermore, they add that: “… it is important to palpate the phallus for the presence of corpora (erectile tissue) and measure its stretched dorsal length, which can be compared with normalised data” (2012, 856).}\]

\[\text{The fact that bodies can participate in heteronormative practices does not unambiguously imply that they can perform a heteronormative role, since children who undergo sex reassignment surgeries stop being fertile because the sex organs assuring fertility tend to get surgically removed (Fausto-Sterling 1995).}\]
The cultural matrix through which gender identity has become intelligible requires that certain kinds of “identities” cannot “exist” – that is, those in which gender does not follow from sex, and those in which the practices of desire do not “follow” from either sex or gender. (Butler 2008, 24)

Nevertheless, Butler argues that both sex and gender are culturally produced to maintain a traditional gender order and have no material essence, as they do not exist independently from culture and social forces. As such, they cannot be seen as an exclusive source of specific gender identities. Likewise, Butler claims that the requirement of compulsory heteronormativity can also be recognised as a cultural construct that is meant to maintain the intelligibility of sex and gender (Rupp 2002; Butler 2008).

Furthermore, as the heteronormative matrix, according to Butler, is the social force which produces sex and gender as intelligible, counteracting the stereotypical hierarchic gender order would require the subversion of compulsory heteronormativity, as well as an undermining of the traditional conceptualisations of sex and gender as fixed and universal dichotomous traits of human nature.

Here it needs to be acknowledged that compulsory heteronormativity is a normative ideal. The requirement for compulsory heterosexuality is meant to limit human sexuality in order to maintain a gender hierarchic social order and reinforce the dichotomy of sexes and genders. Nevertheless, human sexuality is diverse and exceeds the socially imposed limits of heterosexuality. The existence of individuals with non-heteronormative sexual preferences and identity implies that heterosexuality is not a universal fact based in nature, but a socially enforced norm (Butler 2008; Rupp 2002; Fausto-Sterling 1999). Nevertheless, the very existence of non-heteronormative sexualities in turn threatens the normative social order. Therefore, individuals who identify as gay, lesbian or bisexual are stigmatized and labelled as abnormal within heteronormative social structures in order to reinforce the normative status of heterosexuality (Fausto-Sterling 1999; Rupp 2002; Butler 2008; Germon 2009).

While intersexuality and transgenderism challenge the traditional dichotomous understanding of sex and gender, and their presentation as a natural fact, non-heteronormative sexualities challenge the norm of compulsory heterosexuality, which is
also constructed as natural and fixed (Bourdieu 2001, Butler 2008; Gilbert 2009). Fausto-Sterling (1999) acknowledges the extent to which LGBTQI individuals and movements push against dichotomous constructions of sex and gender, and compulsory heteronormativity. She argues that LGBTQI individuals not only subvert the normative expectations about their identities but they also challenge the dominant theories of identity formation, stemming from traditional gender norms.

Specifically, lesbian, gay and bisexual individuals hold different views about the extent to which their sexual preferences are a matter of choice or a result of biological factors (Fausto-Sterling 1999; Lane 2009; Stryker and Whittle 2006). Nevertheless, the very fact that their sexual identities and preferences differ from the norm is perceived as a threat to the gender traditional social order, which tries to preserve heteronormativity as the only socially appropriate form of human sexuality.

Informed by Butler’s and Fausto-Sterling’s scholarship, I acknowledge that heteronormativity plays a crucial role in maintaining and reinforcing the dichotomy of sexes and genders, and the hierarchic social gender order. Thus individuals whose bodies, gender identities and sexual preferences do not comply with the heteronormative gender binary may be subject to stigmatization and labelled abnormal. These stigmatizing social practices work to limit diversity in sexed embodiments, gender and sexual identities. As such, they serve to maintain the norm, precisely the dichotomy of sexes and genders in which the requirement for compulsory heteronormativity plays a fundamental constitutive role.

5.4 Sex, Gender and the Debate about Gender Selection for Non-medical Reasons

The view that sex and gender are to a large extent socially constructed categories produced to maintain a specific gender hierarchic system has significant implications for the debate about gender selection. Given that the intelligibility of sex and gender is largely conventional, and that sexed embodiments and gender identities are more diverse than
the traditional dichotomy of male and female, it follows that determination of a particular
gender through selection of chromosomal sex can fail. Consequently, attempts at
determining gender by selecting sex are potentially self-defeating.

The analysis of sex and gender presented above shows that neither sex nor gender
can be understood as fixed, dichotomous categories with universal natural essences.
Furthermore, it has been noted that a diversity of human bodies and identities exists, and
this diversity means that individual human beings will have various combinations of sexed
traits and gender identities (Fausto-Sterling 1995; Rupp 2002).

If one accepts the claim that sex and gender, to a significant extent and especially
with respect to their socially enforced dichotomy and the requirement for intelligibility,
are social constructs, it follows that they, and their traditional coherence (the combination
of male gender with male sex and vice versa), cannot be unambiguously determined prior
to birth.

Sex can be determined by the selection of XX and XY chromosomes only to the
extent that these chromosomal combinations usually result in a certain type of genitals.
Nevertheless, what is traditionally understood as sex within gender selection – the
presence of XX or XY chromosomes – does not necessarily secure a certain type of sexed
embodiment or identity. In the first instance, disorders of sex development known as
intersexuality can be genetic, chromosomal or hormonal in origin (Intersex Society of
North America 2008b). However, prenatal gender selection through IVF allows solely for
selection based on chromosomes. For this reason, gender selection does not rule out at
least some intersex conditions with non-chromosomal causes, such as Partial Androgen
Insensitivity Syndrome, Androgen Insensitivity Syndrome, Congenital Adrenal Hyperplasia,
or 46XY DSD (Romao et al. 2012; Intersex Society of North America 2008b). Similarly, the

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37 In that respect, parents’ quest for a particularly gendered child is based on a problematic belief that a
gender identity can be determined by selection of chromosomal sex. In many cases, gender can be
successfully selected on the basis of chromosomes as the social pressure on individuals, post conception, to
perform appropriate gender is so enormous (Fine 2010; this point was also been raised by Cordelia Fine in a
personal conversation after her lecture “Gender and the brain” at Macquarie University, 13 May, 2011). However,
selection of sex chromosomes by itself cannot unambiguously guarantee a child with specific and
stereotypical gender traits and behaviour.

38 Intersex Society of North America (2008a) provides a list of conditions of disorders of sex development and
their causes (see http://www.isna.org/faq/conditions).
presence of unambiguous genitals does not secure a certain type of sexed identity as manifested in cases of transgenderism. Therefore, a child of a particular sex cannot be unambiguously guaranteed by selection of embryos with particular combinations of chromosomes.

While genitals of a certain type do not necessarily secure a certain sex, they also do not secure a certain type of gender identity, as gender does not unambiguously follow from chromosomal sex (Butler 1988 2008; Seavilleklein and Sherwin 2007; Germon 2009). While prenatal gender selection can only provide procreators with the option of selecting XX/XY chromosomes, procreators tend to select these chromosomes for gender-based reasons. What they typically desire is a certain role and gendered traits that their future child will perform and possess (Rothman 1998; Seavilleklein and Sherwin 2007; Mudde 2010). In that sense the practice of selecting gender through selection of chromosomes seems to be aiming to “reaffix” and “renaturalize” gender in sex (Bhatia 2010, 272-273). However, as I have argued above, the complex ways gender and sex combine are not this straightforward.

Furthermore, the expectation of a traditional intelligibility of sex and gender is bound to heteronormativity. However, insofar as heterosexuality is a socially enforced norm, as opposed to a universal natural fact following from biology, it also cannot be determined by selection of sex chromosomes (Butler 2008).

As sex cannot be determined through pre-conception selection of sex chromosomes with absolute reliability, and gender is likewise not bound to chromosomes, gender selection represents an overly-ambitious and potentially self-defeating project. This has significant implications in the context of practicing gender selection. We can observe at least four potential problems with gender selection for non-medical reasons. First of all, no absolutely reliable connection between chromosomes and sex exists. Second, no consistent connection between sex and gender traits can be established. Third, there is no reliable way of ensuring a particular or specific gender identity even given a specific sex. Fourth, there is no reliable way of ensuring a particular sexual identity even given a specific gender.
These four problems mean that the practice of GSFNMR is potentially self-defeating. Nevertheless, the practice of GSFNMR is based on a belief in the heteronormative intelligibility of sex and gender, as well as its amenability to pre-conception selection. This belief involves projecting certain expectations onto children who have not yet entered the world. This imposition of expectations reflects a certain way of understanding future human beings; as Mudde (2010) puts it, the idea that one can determine a future child and their characteristics assumes the disambiguation of a being that is necessarily ambiguous.

In this light, attempts at disambiguating children seem troubling. What procreators are doing in GSFNMR is attempting to treat an ambiguous and potentially fluid child (a child whose sex embodiment, gender identity and sexual preference are unknown) as a problem, and trying to rule out ambiguity by postulating “human (sexed) experience” as fixed and universally true (Mudde 2010, 558). That is, in contrast with ambiguous human conditions which do indeed involve diverse forms of embodiment, gender and sexual identities (Fausto-Sterling 1995; Butler 2008; Germon 2009).

By having a gender preference, and moreover, by acting on it, procreators place a significant value and importance on gender. That is troubling in itself, as it presumes the fixity of male and female identities and the heteronormative gender dichotomy (Butler 1993 2008; Mudde 2010; Seavilleklein and Sherwin 2007). But Mudde claims that gender selection also mobilises the desire to take control over future human beings. In the process of GSFNMR, gender preference is taken to a further level by procreators actively seeking and undergoing procedures to create a certain gendered type of child. In doing so, they not only express a preference for a specific child, they reach out to ensure that they will have only that type of child. Moreover, the creation of a child through gender selection seems to involve a feeling of entitlement to control processes which will lead to the existence of a specific person. By taking that action, “Parents materially project, in other words, what is for them a disambiguated being, a fixed and knowable thing” (Mudde 2010, 569).

39 Butler criticizes the notion that genetics determines sex or gender identity. She argues that there is no strict causality between genes and sex/gender: “Even if a gene structure could be found, it would only establish a possible development, but would in no way determine that development causally.” (Butler in Williams 2014, n.p.).
Nevertheless, the expectations of parents who practice gender selection are in conflict with their future child’s unavoidable ambiguity. This ambiguity is manifested in terms of traits and characteristics which cannot be in principle determined with absolute reliability (Mudde 2010; Butler in Williams 2014). It is then possible that the project of gender selection can end up being self-defeating for parents, as their expectations concerning their child’s gender can be unmet.\(^{40}\) Despite this, however, procreators selecting their child’s gender believe that highly reliable selection of gender is possible.

Furthermore, procreators must expect a particular gain, and Mudde argues that such an act “requires assuming things about one’s future child” (Mudde 2010, 563) which are to be related to the child’s (chromosomal) sex.\(^{41}\) Such gender-based assumptions are inherently problematic because they presume a predictable and fixed gender identity in the future child. This is different from gender socialisation, as Mudde explains:

Parents engage in many practices that aim to control or determine the outcome of their children’s lives [...] many people certainly, if unconsciously, expect and require different things from boys and girls – but these [...] do not involve the kind of projection that the selection of a child’s sex necessarily involves. (Mudde 2010, 568)

What makes gender selection different from socialisation is the power dynamics underlying the processes. While the process of gender socialisation involves an existing child who interacts with the procreato(r)s, in gender selection procreato(r)s determine, or attempt to determine, the child’s traits prior to birth.

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\(^{40}\) The fact that parental preferences over their children can be unmet within GSFNMR can lead to harm to children. I discussed the risk and different aspects of harm in depth in Chapter 2 and the results of my study confirm my hypothesis (see Chapters 6 and 7).

\(^{41}\) Seavilleklein and Sherwin (2007) also make this point when they claim that the fact that couples are willing to make significant effort to undertake GSFNMR means that they believe that significant differences attach to having a child of a particular sex. “This belief is not adequately captured by differences in physiological sex and can only be explained in terms of assumptions about the different social roles, including behaviors, interests, and practices, that are considered appropriate for boys and men and for girls and women” (11). Precisely, parents assume that the child will conform to desired gender roles. Seavilleklein and Sherwin also suspect that a desired sexual identity is implicit in parental gender expectations.
Therefore, the process of gender selection involves a specific power asymmetry. As I have previously mentioned when presenting criticisms of libertarian justifications of GSFNMR, Habermas (2003) claims that in any form of selection of embryos, parents are in the position of those who determine, while the children are determined. In that sense, parents are active while their future children are powerless. Like Mudde, Habermas claims that in the case of socialisation, children do not have an absolutely passive position, as they can actively refuse the imposed program and establish an increasingly autonomous identity.

Habermas also claims that selection of embryos differs from socialisation in the sense that it is irreversible. Nevertheless, claiming the irreversible character of gender selection would imply that gender can be selected. Based on the previous discussion, I would reformulate the claim made by Habermas and argue that gender selection is intended to be irreversible, but its self-defeating potential limits the actual possibilities for prenatal gender selection.

Nevertheless, as infants born after gender selection grow up in a gendered society (i.e. a society which expects a certain gender identity from individuals of certain sex), being subject to pressures to adjust to a specific gender identity can often ensure that the child will, at least to some extent, perform the gender role for which their parents selected (Fine 2010). However, such adjustment may be the result of post-natal gender socialisation rather than pre-natal gender selection (Butler 2008 2014).

5.5 Conclusion

I have attempted to show in this chapter why gender selection is a potentially self-defeating endeavour. First of all, selection of sex chromosomes cannot unambiguously guarantee a child of a specific sex, as selection of XY/XX chromosomes does not absolutely rule out diversity of sexed embodiments. Second, there is no highly reliable connection between sex chromosomes and gender. This argument has been based on the understanding of gender as discursively constructed, and hence lacking an exclusively biological essence determined by sex chromosomes (Butler 2008; Germon 2009; Fine 2010). Third, because gender does not track biology, a specific gender cannot be reliably
ensured, even when the child is of the preferred sex. Fourth, I have claimed that there is no reliable way of ensuring a particular sexual identity, even given a specific gender. Thus, in my view gender selection cannot guarantee that parents will gestate a child that will unambiguously comply with traditional dominant expectations about their sex, gender role and sexual identity.

As I discussed the inconsistent use of the terms sex and gender, I clarified some of the commonly drawn distinctions made between them, and explored how these distinctions at time collapse. I have not attempted to offer a resolution to questions concerning the relationship between sex and gender as this is not the aim of this dissertation. The purpose of my discussion was to explore the significance of the complex relationship between sex chromosomes and gender for debates about GSFNMR.

The potentially self-defeating character of gender selection has implications both for parents and children. These implications will be further discussed in Chapters 7 and 8, where I focus on the results of interviews with parents who have selected or desire to select their child’s gender. I will inquire into the motives that drive parents’ choices to undertake GSFNMR, their expectations of selected children, and the possibilities for parental disappointment. The interviews show that parents select their children’s chromosomal sex for gender purposes, thus showing that my argument concerning the self-defeating potential of GSFNMR regarding parental gender expectations is important. In particular, the potential for disappointment has implications for harm to children, which is a major issue in debates about the ethical aspects of gender selection for non-medical reasons. In the next chapter, I summarize the methods of my empirical study, in Chapter 7 I present the results, and in Chapter 8 I discuss these results in light of the theoretical analysis developed in these first five chapters.
Part II.

Empirical Study about Gender Selection for Non-medical Reasons
6. An Empirical Study Investigating Parent’s Views about GSFNMR: Methods

This chapter describes the methods used to perform a short series of interviews with Australian women who have selected, or want to select, their offspring’s gender. The main aim of this empirical study is to explore parents’ motivation for selecting their offspring’s gender, in order to compare these with justifications for gender selection existing in the literature.

In this chapter, I describe the method of recruitment and difficulties with recruitment, respondent sample, data handling and analysis, limits and strengths of the study, and provide reflection on the study.

6.1 Recruitment

Recruiting participants to the study proved difficult. My recruitment strategy relied upon a recruitment notice with wording approved by the Macquarie University Human Research Ethics Committee (ref: 5201200901):

*Have you ever considered choosing the sex of your children? If so, we’d like to hear from you as part of a research project being conducted at Macquarie University. The aim of the research is to understand the reasons people have for wanting to choose the sex of their children.*

I used several strategies for disseminating the notice. First, I contacted a Sydney-based clinic (Genea [former Sydney IVF] which is affiliated with Superior Art Clinic in Bangkok, and assists Australian procreators to access gender selection in Thailand. I also contacted two Australian medical doctors who are openly in favour of gender selection and who express their views in the media or on their websites. I provided information about my research, details of the ethics approval by the Macquarie University Human Research Ethics Committee.

1 I purposefully formulated a gender-neutral advertisement as the study was open to participants of all genders. I used the term “sex” rather than “gender” as it seems to be more commonly used in mainstream discussions about gender selection.
3 For more information, see: http://www.thaisuperiorart.com/links.php.
Research Ethics Committee, my supervisors’ names and contact details, and the
Information and Consent Form for potential participants. I asked Genea and the two
doctors to disseminate the call for participants among their present and past patients.
However, without providing any reasons, both the doctors and Genea refused to assist in
disseminating my call for participants.

Second, with permission, I posted my recruitment notice on two online gender
selection forums. I knew that many procreators interested in GSFNMR used online forums.
I located the forums using Google searches, and by contacting the authors of articles about
gender selection published in the mainstream media (Sidhu 2012ab; Marriner 2013abc).
By doing this I identified two popular gender selection forums: Genderdreaming5 and In-
Gender.6 I contacted the administrators of these online gender selection forums and asked
them to upload my advertisement for the study. While the administrator of In-Gender did
not respond to me, the administrator of Genderdreaming uploaded my notice several
times. I also posted information about the study on Gumtree7 and popular Australian
parenting related websites BubHub8 and Essential Baby.9

Third, I contacted a journalist who had published a story in an online newspaper
about an Australian couple who had selected for a daughter. With the help of this
journalist I made contact with the woman in the couple. She agreed to participate in the
study.

Finally, I used snowballing. This involved asking respondents to disseminate
information about my research project to other people whom they knew to be interested
in gender selection.10

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4 Copy of the emails, Call for Participants and Information and Consent Form can be found in appendices
attached at the end of the dissertation.
8 See www.bubhub.com.au
10 Initially, I limited recruitment to Australian procreators. However, as I was not successful in recruiting any
respondents I widened the selection criteria to procreators of any nationality. Nevertheless, all recruited
participants are Australians.
Data collection took 8 months during which time 9 women agreed to be interviewed. The first participant responded to an advertisement on the gender selection forum Genderdreaming. The second participant was the woman contacted on the suggestion of a journalist. The other 7 participants were aware of the project from Genderdreaming. Snowballing contributed to their recruitment as some of the participants discussed my research project with former study participants before consenting to take part in the research.

All participants were sent the Information and Consent Form to read before deciding whether to participate in the research. Consent was given over email and in the recording of the interview.

6.1.1 Difficulties with Recruitment

I faced significant difficulties with finding and recruiting respondents for the empirical study. I obtained ethics clearance for my study in January 2013 and started disseminating calls for participants shortly after that. However, it took 8 months to find 9 respondents for the study, and all of them were recruited in the last month of the data collection phase of the study. This difficulty with recruitment suggests that gender selection for non-medical reasons is controversial and that procreators have reservations about discussing their experiences. This hypothesis was later confirmed by respondents in individual interviews.

Potential respondents were concerned about confidentiality. In March 2013, three people contacted me based on the advertisements placed on the Genderdreaming forum, asking for further information about the project; specifically regarding confidentiality. I emailed them further information about the research and assured them that anonymity was guaranteed to all respondents. I attached the Information and Consent Form for them to sign but none of these potential respondents replied. While I was considering potential factors contributing to the low response rate, I realised that potential participants might feel uneasy about the formality of signing the Information and Consent Form. Following discussion with my supervisors, I obtained approval from the MqHREC to receive consent
by email\textsuperscript{11} and in the recording. This strategy proved successful as all respondents who were given this opportunity agreed to participate in the study.\textsuperscript{12} Some respondents told me during the interviews that they decided to participate in the study because they knew women I had already interviewed. I discuss issues related to trust below in my reflection on the study.

6.2 Characteristics of the Respondent Sample

The empirical study is based on interviews with 9 Australian women who have either selected their offspring’s gender or are considering doing so.\textsuperscript{13} Most of the respondents were in their 30s, and the overall age range was 31-40. All women lived in heterosexual nuclear families. Each woman had at least 2 sons (range 2-6) and wanted gender selection for family balancing. At the time of the interviews, 4 women had successfully accessed gender selection. Of these, 3 had one daughter and 1 had two daughters, both through gender selection. Two of these women had initially undertaken gender selection for non-medical reasons abroad, nevertheless these attempts were not successful. Both women then used their sons’ health issues to access gender selection for medical reasons in Australia, leading to the birth of daughters. The four women traveled to Thailand, the United States, Greece and South Africa to undertake gender selection. Most women went to more than one country, and usually more than once, as they had to undergo more than one IVF cycle.

Of the remaining five participants, four were in the process of gender selection at the time of the interview. One was about to begin the process, while three had had several

\textsuperscript{11} Respondents who were willing to participate in the research had an option to send an email in which they would state that they “have read and understood the Information and Consent Form and agree to participate in the research project.” Eight out of nine respondents chose this option, one respondent sent a scanned copy of a signed Information and Consent Form. All respondents also expressed their consent on the recording.

\textsuperscript{12} One person declined immediately after I informed them that I offer no financial compensation for participation in the research.

\textsuperscript{13} The call for participants was gender neutral. I would have welcomed men in the respondent sample to present their experiences and views, however, no men responded to the call for participants.
unsuccessful IVF cycles but were planning to continue. One of these three women had undergone IVF cycles in the US, Thailand, South Africa\textsuperscript{14} and Greece (Cyprus).

Finally, one woman had seriously considered gender selection but had decided not to proceed with it. This was because she had ethical objections regarding IVF, particularly the discarding of excess embryos, which she objected to on the grounds of her beliefs about the beginning of life.\textsuperscript{15}

\textbf{6.3 Qualitative Interviews}

The main aim of the research project was to understand procreators’ motives for undergoing GSFNMR. I therefore chose qualitative methodology to explore and understand the respondent’s views and motives – what gender selection meant to them. Guba and Lincoln argue that: “Human behavior, unlike that of physical objects, cannot be understood without reference to the meanings and purposes attached by human actors to their activities” (1994, 106). As well as exploring meanings, qualitative research allows for a complex analysis of social context or the conditioning of individual positions (Letherby 2003; Reinharz 1992), factors which were very relevant to my research questions.

I used semi-structured interviews to collect data. The method offers a compromise between structured interviews that use a predefined set of questions and unstructured interviews (e.g. used in grounded theory) that give space to respondents to tell their stories with questions limited to clarification (Reinharz 1992). Specifically, I used a predefined set of several thematic questions with additional questions based on respondents’ answers to clarify interviewees’ perspectives.

The strength of this method is that the use of a set of thematic questions allowed me to explore key themes and issues regarding gender selection from the literature, while also giving space to respondents to influence the structure of the interview and its content. In addition, this method is commended by some feminist scholars for supporting

\textsuperscript{14}This was right before gender selection for non-medical reasons was banned in South Africa in 2012 (Government of the Republic of South Africa 2012).

\textsuperscript{15}During IVF, both female and male embryos can be produced. PGD is then used to test for XX and XY chromosomes, while for the purposes of gender selection only embryos of the decided chromosomal sex are implanted. The excess embryos are discarded, unless the procreator decides to donate them.
the agency of interviewees and providing them with a strong voice (Reinharz 1992; Ramazanoğlu and Holland 2002; Trier-Bieniek 2012). Overall, the method provides a more egalitarian dynamic between researcher and subject, which allows for building a relationship based on trust. As a consequence, interviewees may be more likely to disclose their views to the interviewer, thereby allowing for a deeper and more complex understanding of issues under investigation.

6.3.1 Interview Questions

The interview questions were structured to cover eight areas. The first set of questions covered respondents’ backgrounds, including their nationality, age and gender. The second set of questions focused on procreators’ motivations for GSFNMR. I asked them to tell me their story and how they came to desire gender selection and if and how they had acted on that desire. The third set focused on respondents’ expectations, particularly on their hopes about the kinds of traits that might be present in their preferred child. This section also contained questions about how respondents would feel if the child did not fulfil their expectations. The fourth set of question explored interviewee views on the potential benefits and harms associated with GSFNMR. The fifth set of questions focused on respondents’ understanding of family balancing. The sixth set looked into views on the legal status of GSFNMR in Australia. The seventh inquired into respondents’ views on the status of GSFNMR as a choice or a right of parents. Finally, in the last part of the interview I asked respondents if they had any comments or if they wanted to add anything to the discussion.

The interviews were conducted in person or by telephone. Respondents were offered the choice of a face to face interview (for respondents living within the Sydney

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16 Reinharz claims that: “The use of semi-structured interviews has become the principal means by which feminists have sought to achieve the active involvement of their respondents in the construction of data about their lives” (1992, 18, emphasis in original).
17 The involvement of intimacy and trust also has its risk factors. Reinharz (1992) talks about the risk of higher engagement of the researcher, which can raise ethical dilemmas such as identification with the respondent. This issue was relevant to my research and I will discuss it in more detail bellow.
metropolitan area), or an interview via Skype or phone. As most of my respondents were from remote areas in Australia and several lacked reliable internet reception, 7 out of the 8 interviews were conducted by phone. All interviews were recorded with the consent of participants.

Some scholars argue that phone interviews are less effective than face to face interviews when collecting data on sensitive topics as they do not allow the building of rapport prior to the interview, which may limit opportunities for creating a comfortable relationship between the participant and the researcher (Shuy 2002; Trochim and Donelly 2007). However, I agree with Trier-Bieniek (2012) who argues that phone interviews can result in rich data because participants might feel at ease discussing sensitive topics as phone interviews may offer greater anonymity. Several of my participants were concerned about confidentiality and the fact that they remained anonymous during the interviews may have positively impacted on their willingness to share their views on GSFNMR. Trier-Bieniek also argues that the greater anonymity and the nature of the phone interviews in which both the researcher and the participant are simultaneously senders and receivers can further empower the participant and create a less hierarchic dynamic between researcher and participant. Finally, the major advantage of phone interviews in my study is that they played a crucial role in data collection as I would have not been able to interview participants in remote areas due to lack of funding.¹⁸

6.4 Data Handling and Analysis

All interviews were transcribed in full, either by myself or by professionals from a transcription agency specializing in academic transcription. In some places the recordings were of such poor quality that the participants’ words were unclear; these instances are identified in any quotes as [unclear]. All the interviews were anonymised, by changing the

¹⁸ Moreover, the method of phone interviews also seemed to be convenient to the participants with small children because it allowed the women to participate in the research and attend to their children during the interview. Several women were interviewed from their homes while their children were asleep. This could have further contributed to the women feeling comfortable during the interview.
names of the participants in accordance with their wishes. Furthermore, I also changed the names of participants’ children mentioned in quotes. This anonymisation helps to protect the women’s confidentiality.

My approach to the interview data was structured by my preceding discussion of theoretical debates about the ethical aspects of GSFNMR. Hence, I entered the data analysis with knowledge about some of the key ethical issues in GSFNMR. This meant that I had “prior conceptions before entering the field” (Dey 1993, 97). For example, based on the theoretical debates, I was interested in key issues such as attitudes about gender expectations or potential harm. These key issues were incorporated in the research questions and then addressed in the analysis. Hence, I approached the analysis with several pre-existing categories. Other analytic categories are based on respondents’ answers to questions (e.g. women’s perceptions of masculinity).

In the data analysis I used both predetermined and emergent codes (Coffey and Atkinson 1996) to develop a descriptive account of the participants’ experiences. I used NVivo software to organise the data to look for “patterns or variations in the data” (Dey 1993, 95). I organised the codes hierarchically in several levels of classification: research topic (GSFNMR), types of gender selection, key issues and sub-categories. In the second category set, I coded for the type of GSFNMR undertaken by procreators. This was straightforward as all respondents undertook GSFNMR for family balancing reasons and selected for a female offspring. The set of key issues resulted in 6 categories (as listed in Chapter 7), with relevant themes nested below these. This hierarchic categorization of codes enabled me to look for similarities and differences between respondents’ statements.

In Chapter 7 I provide a thick description of the results of my analysis (Geertz 1973; Dey 1993). I have aimed to interpret the data in context and reflect on the meaning assigned to different concepts or issues by respondents. In some cases, such as

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19 One participant was not concerned about anonymity and chose to be identified by her first name.
20 There is a possibility that participants will be able to identify each other because they were recruited through snowballing and are known to each other. I aim to decrease this risk in published manuscripts by minimising any potentially identifying information, i.e. by not providing the numbers and ages of children.
respondents’ understandings of family balancing, I was able to develop a very detailed account of respondents’ views. In other cases, my understanding of what respondents understood by concepts such harm or reproductive rights was limited by the nature of the responses. In those cases, I reflect on the ambivalence and provide my interpretation of these concepts based on respondents’ statements.

In Chapter 8 Discussion, I link women’s attitudes about GSFNMR with the theoretical debates about its ethical aspects. I then provide my own critical analysis of the data.

6.5 Limits of the Empirical Study

The main limit of this empirical study is the small sample size (9 respondents) and the homogeneity of the respondents. All are female Australians with English as their first language, and most disclosed their non-Indigenous background. Therefore, the sample is not representative of the Australian population, which is ethnically and culturally diverse. Last but not least, all of the respondents desired daughters. Despite a number of procreators desiring male offspring being active on gender selection discussion forums, no-one who desired sons contacted me during recruitment.21 Clearly, therefore, the sample does not represent the views and experiences of all parents undergoing gender selection.

The recruitment method of snowballing seemed to play a role in generating a homogeneous sample. It became obvious in the interviews that participants knew who I had interviewed before them, and that they knew each other from online discussions on gender selection forums. This phenomenon may explain why I recruited only women who selected for daughters.22

The small size and homogeneity of the sample suggests the need to conduct further qualitative studies with procreators who select their offspring’s gender. Ideally, these

21 Mainly, I am familiar with the gender selection forms genderdreaming.com and in-gender.com. These forums are international, participants use nicknames but many specify the country of their origin when they discuss their experiences or comment on the availability of gender selection in their home countries. Some parents on the forums identify themselves as Australians.
22 Most of my respondents discussed gender selection on genderdreaming.com which has separate forums for procreators selecting for daughters and sons.
studies should include respondents of diverse cultural backgrounds, respondents who desire male children, and men whose partners are undergoing gender selection treatment. Men’s views may to some extent be represented by their partner’s, however, I am aware that views can be misinterpreted, and/or their complexity distorted in a second person perspective.

6.6 Strengths of the Empirical Study

Despite the aforementioned limits, the study also has two significant strengths. First, it is an important contribution to debates about the ethical aspects of GSFNMR. Second, despite the small numbers, the data reached a point of saturation with respect to participants’ views; that is, by the ninth interview, no new themes, motivations or other findings were forthcoming.

The study represents an important contribution to debates about GSFNMR because it is the first qualitative study inquiring into the motivations of procreators selecting their offspring’s gender. To date, no research has been conducted with the people who are the primary actors in gender selection, the procreators themselves. Their voices were thus missing from discussions about the practice. This research project thus adds an important perspective to the debate and can inform future analysis of gender selection.

Furthermore, within the sample, which represents a group of Australian women who select for daughters, the study reached a point of saturation on two levels. Firstly, the interviewees expressed very similar views and spoke of similar motives for selecting their offspring’s gender. Secondly, the study reached a stage in which the same issues were repeatedly mentioned by different interviewees, while no new areas or themes emerged. Therefore, I believe that the study has some representative value for the particular respondent sample. In the following chapter I present the findings.
6.7 Reflection on the Study

Looking back at the recruiting process, confidentiality and trust played an important role in the conduct of interviews. Furthermore, respondents’ trust in me as a researcher and their willingness to participate in the research seem to be connected to their expectations from the study.

A number of respondents expressed concerns about confidentiality and trust, and were unsure about participating in the research. Mainly, they were concerned about confidentiality and being negatively judged. Most respondents had experienced some backlash against their decision to undertake gender selection, such as disapproval voiced in online discussions, in the media or by their friends and family members. Thus some respondents informed me that they had decided to participate in the study only after they were assured by other participants that the interview was not unpleasant.23

I acknowledge that participants invested a lot of trust in me as a researcher. While most of the respondents were not willing to share their views publicly, and many did not inform their friends or family members that they were undergoing gender selection, they were willing to talk to me. It seemed, based on respondents’ comments, that the fact that the research project was academic in nature and affiliated with Macquarie University played an important role in their decision. For most respondents, the guarantee of confidentiality was crucial. Some expressed the belief that their views would not be distorted or manipulated in an academic research project, as opposed to an interview given to the media.

The development of trust and intimacy in a research context does, however, present certain drawbacks. Reinharz (1992) addresses the risk of higher engagement of the researcher, which involves emotions and can raise ethical dilemmas related to a researcher’s inclination to identify with the respondents. This was, to a certain extent, an issue in my own research project. A number of interviewees mentioned that they had never had a chance to openly express their views and feelings, and despite the fact that

23 One respondent told me: “Well it was on the site that’s how … and I … the only reason I did it was ‘cause I knew a couple of people that we … I seen to … they did it and, you know, knowing people have done it, it wasn’t that bad, it made you go oh it’s not that bad, we’ll do it. A lot of people are against it so, you know, you don’t want to be judged and you don’t want to be told you’re doing the wrong thing, you know. We made up our mind to do it and obviously we thought about it.”
some of the interviews were emotionally trying (especially for those respondents whose IVF cycles did not result in pregnancies), respondents said that they were glad for the opportunity to talk about their experience. For some respondents the interviews had a cathartic aspect to them.

The emotionally charged nature of the interviews created a complicated situation for me in my capacity as a researcher. Respondents invested trust in me as a researcher and possessed expectations related to my research. Furthermore, they were expressing emotions and feelings, such as a strong desire for a daughter and for the legalisation of gender selection. In consequence, some interviews were rather difficult insofar as I felt empathetic towards the respondents and was inclined to identify with them at times. This was problematic, as I needed to find my own voice as a researcher. Several factors helped in resolving the tension. First, the fact that I conducted 8 interviews over the phone made them easier to conduct (especially when my respondents expressed emotional distress or cried). Second, the period of time between the completion of the data collection phase and finalization of the analysis and submission of the thesis (nearly 11 months) helped to establish distance between myself and the subjects. Finally, the structure of the thesis itself helps to distinguish between two different positions. In presenting the results, I give voice to my respondents, whereas in the discussion I express my own voice as a researcher using respondents’ testimonies as a source for critical analysis.

Finally, it is important that I acknowledge that respondents had significant expectations related to the research project. A number of respondents spoke to me in a manner that implied that they were hoping that my study would help legalise gender selection for non-medical reasons in Australia. Some participants explicitly encouraged me to submit the results to the public review of the NHMRC Ethical Guidelines on the Use of Assisted Reproductive Technology in Clinical Practice and Research (2007), which prohibit GSFNMR in Australia. The aim of the review is to determine the usefulness of the current
ethical guidance. As all respondents expressed the view that GSFNMR should be legal, I assume that they expected that I would submit a statement in favour of its legalisation.

These expectations made me feel uneasy as, due to my own rather critical views on the matter, I have at no point intended on using the results to advocate for gender selection. I did not disclose my critical views to respondents, as I believed that it would have had a negative impact on their willingness to express their views. At the same time, however, I did not mislead my respondents. When asked about my views, I responded that the main aim of the study is to add procreators’ views into the debate and inform the discussions. This is a major part of the research. I am therefore confident that the project maintains its academic and ethical credibility.

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24 The public review commenced in May 2014 and the results of the review have not been finalized at the time of this thesis submission. I have submitted a public comment for the review in which I argued that GSFNMR should not be available in Australia.
7. Results (“Gender’s on everybody’s mind, you’re just not allowed to talk about it” Samantha)

In this section, I provide the results of my descriptive analysis of interviews with 9 Australian women, 31-40 years of age, who have selected, or wish to select, their offspring’s gender. In particular, all respondents have either selected for, or wish to select for, daughters. I provide brief information about each participant below.

Following the birth of two sons, Alice (40) underwent a failed IVF cycle in Thailand. She then turned to South Africa for gender selection using donor eggs, but was unable to proceed when a change in South African legislation brought about a ban on gender selection before the planned implantation. Subsequent IVF in the US resulted in male embryos only. Her first IVF cycle in Greece failed, while her second one led to a pregnancy with a female embryo that miscarried. She hopes to try again, but her partner is no longer supportive for financial reasons; as to date they have invested $120,000 in gender selection procedures.

Claire (31) has five sons. She is planning to travel overseas for gender selection, either to Thailand or the US.

Hannah (37) has two sons. She has been to the US three times for IVF gender selection. Three attempts have resulted in: hyper-stimulation such that she could not finish the procedure; an ectopic pregnancy; and a miscarriage. She is planning to try again, probably in the US.

Jodi (39) has six sons and two daughters, the latter born after IVF gender selection in the US.

Nicole (32) has two sons. She is planning to go to the US for gender selection.

Matilda (40) has two biological sons, two step-sons, one step-daughter and one biological daughter. Matilda had one IVF cycle in the US resulting in pregnancy with an embryo with Down syndrome which she did not carry to term. She then used concerns about her sons’
health issues\(^1\) to access GSFRM in New South Wales, Australia, resulting in the birth of her daughter.

Olivia (39) has three sons and one daughter. She had a failed IVF gender selection cycle in Thailand followed by a successful cycle in the US.

Ruth (34) has two sons. She tried selecting for gender using natural methods, and then considered but decided against IVF due to her discomfort with the practice of discarding excess embryos.

Samantha (37) has three sons and one daughter. She experienced three failed cycles for gender selection in Thailand before accessing GSFRM in New South Wales, Australia, on the grounds of her sons’ health problems.\(^2\)

The following descriptive analysis is structured in six sections: motives for GSFRM; gender expectations; experience of GSFRM; gender disappointment; attitudes about potential harms; and women’s reasons why GSFRM should be available in Australia.

7.1 Motives for GSFRM (“There’s someone missing from my family” Claire)

All respondents expressed a strong desire for having daughters. They provide two main reasons for this desire: first, a close mother-daughter relationship, and second, a balanced family which provides a sister for their sons and a daughter for their husband. In what proceeds I present their reasoning.

7.1.1 Desire for a Mother-daughter Relationship (“[I] didn’t want to miss out on that mother/daughter bond like later on” Jodi)

The majority of respondents describe a strong desire to have a daughter with whom they could share a close relationship. Seven out of nine women wish to create a

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\(^1\) Matilda says that her sons are on the “autism spectrum” but do not have autism. They have behavioural and learning issues and underwent occupational and speech therapy.

\(^2\) Samantha’s sons have asthma and ear infections. Her doctor at a fertility clinic said that she will implant female embryos first.
mother-daughter bond similar to the one that they had with their own mothers. One woman desires a daughter because she has a poor relationship with her own mother, and believes that the only way she can experience a “good” mother-daughter relationship is if she has a daughter of her own.

Respondents describe the mother-daughter relationship as a strong, intimate bond that is maintained over life-time. This relationship is described as playing a crucial role in women’s lives and is valued, by some respondents, over relationships with other family members. The desire for daughters stems from respondents not wanting to “miss out” on sharing such a bond with their child. Alice explains:

[...] one [reason], that is highest on the list is the relationship that I have with my mum as an adult. She’s my best friend, she’s the person that, you know, whose opinion counts to me the most, she’s the one that I will first ask advice for and that is the number one driving factor that I want that for myself when I’m older.

Alice describes her mother as her primary confidant, and this sentiment is shared by other respondents; many are seeking a bond with an adult daughter rather than the experience of raising a female child, per se. Hannah says that she wants to: “replicate the friendship that my mother and I have, as in adulthood.” Several women want a daughter who is able to relate to them as they relate to their mother.³

Respondents’ conviction that they need a daughter for a strong relationship is underpinned by the belief that the mother-daughter bond is unique and therefore unattainable with their sons. The main reason articulated by respondents for this belief is the idea that girls and boys are different in the way they relate to their family. Ruth explains:

³ One respondent, Matilda, wants a daughter to make up for a “dreadful relationship” she had with her own mother. She says: “My own mother is … we’re just from different planets and I’ve tried to fix that relationship, I cannot even tell you how many times over the years […] she will never be proud of anything I do, everything I do is wrong and that’s just how she is, and I’ve made my peace with that. But I realise though that the only shot I was ever going to get at the kind of mother-daughter relationship that I want to have is with a daughter of my own.”
I have a very close relationship with my mother and I would like to have the opportunity to have that with a child and obviously, my children are ... my boys are still little but my perception is that you don’t have that same ... like boys ... though let’s go really stereotypical but boys grow up and fly the coop and make their own lives, have their own families kind of thing, whereas girls, my perception, is that they stay a little bit more closely aligned with their family. Girls are more family-oriented than boys necessarily. So I feel that I am ... with my boys, I’m raising my children to have them leave me and I feel that a girl would ... that I would have the opportunity, because you’re the same sex essentially, have the opportunity to have more in common with them.

Here Ruth expresses her belief that sons are more self-oriented and gradually distance themselves from their family while daughters remain proximate in meaningful ways. This expectation is shared by Jodi:

I just sort of think that ... like your daughter is your daughter, like, you know, she’ll always come back to you, you know, your mum, the mum. But like your sons will sort of, you know, go with their girlfriends’ kind of parents, you know what I mean?

This suggests that Jodi anticipates having different relationships with her children based on their gender.

Shared life experiences are cited as one reason why women expect a strong relationship with their daughters. Nicole says:

I guess, as a woman going through getting married, having kids, I really sort of appreciated the relationship I had with my mum. And I also got to see the relationship with my husband with his mum and it was a very different type of involvement in those types of scenarios.

The belief that having a child of the same sex means sharing common features, which leads to a stronger bond, is widely shared among respondents. They imagine that daughters will enjoy the activities that they themselves like, such as shopping and talking,
and that they will share a mutual understanding. For example, as Claire explains about her relationship with her mother: “[..] it’s different with us, like we go shopping and we understand each other and we talk about stuff that she doesn’t talk to my father about and things … I just want to be able to have that as well.” The respondents imply that they cannot engage in similar bonding activities with sons. For them, the mother-daughter relationship is special and based on an intimacy shared exclusively among women.

Finally, the close mother-daughter relationship is a type of gender-specific expectation that the women have of their (potential) daughter. Several talk about the relationship when asked how they imagine their daughter, including women who at the same time claim that they do not harbour any gender expectations. This illustrates that while the mother-daughter relationship is gender specific, it is not recognized as a gender specific expectation by a proportion of the participants.

In conclusion, the women desire daughters because they want to experience a strong mother-daughter bond. They expect to share a special relationship with their daughter based on intimacy and the mutual possession of traditionally feminine traits. Implicit to their responses is the expectation that they expect that they cannot have a similar bond with their sons.

7.1.2 Balanced Family (“… to get some pink in the house” Olivia)

Several women speak about their desire to have a balanced family. All of the participants are selecting for daughters following the birth of one or more sons, a choice that is consistent with notions of family balancing. While only one woman mentions family balancing as a primary motive for gender selection, others describe desiring sisters for sons and daughters for husbands as motives, which raises similar considerations about the

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4 For example, Claire claims: “I don’t actually have any expectations [..] I did it to have that mother/daughter relationship and I guess the chance to raise both genders.” Furthermore, Matilda said that she does not expect a stereotypically feminine daughter and only wants the mother-daughter relationship. These statements involve a tension between a proclaimed lack of gender specific expectations and women’s gender specific assumptions that went largely unrecognised.

5 I discuss gender expectations from GSNMR in more detail below.

6 Olivia strongly desires gender variety in her family as she grew up with a sister and had little contact with boys.
desirability of gender variety amongst children. Most women speak positively of the opportunity to raise both genders.

The participants understand balanced families as nuclear families with at least one child of either gender\(^7\), rather than those in which the number of boys and girls is strictly equal. Samantha says: “Family balancing. I don’t know, I think it’s a strange kind of word because it ... you think by family balancing it’s even but most of us just want one, you know, just to sort of even it up a bit.” Most spoke of a balanced family as both normal and ideal. Balanced families are normal because, according to them, most families include children of both genders. Olivia, for example, claims that it is normal to desire a balanced family because: “most people naturally do get balance.”

And ideal, because the ideal family includes gender variety. Matilda justifies her desire for a balanced family because everyone had one when she was growing up:

I mean when I was growing up there was just me and my brother and pretty much everyone I knew had one of each, a boy and a girl, I didn’t know anyone who just had boys. And it was just not ... it was just ... I don’t know, I just couldn’t see that [boys only] would be my family makeup.

For several women, the main benefits of a balanced family accrue to the parents. They mention at least three types of benefits for themselves as mothers: the opportunity to raise different genders; having another female in the family; and being a more contented mother. They also mention the benefits of having a daughter for their husband and sister for their sons, which I discuss below.

Respondents desire the opportunity to raise both boys and girls because they believe that they will have different parental experiences with children of different genders. This view is most strongly expressed by Ruth who says:

I don’t think my boys would particularly benefit from having a sister or I don’t think they’re missing out from not having a sister. I’m sure they would benefit but it’s not about them, it would be a selfish reason, let’s be

\(^7\) All study respondents were asked what they understand by a balanced family.
honest, it would be about … the benefit of a balanced family would be about me as the parent having the opportunity to parent both sexes.

Similarly, Hannah says: “I want the opportunity to raise both sexes.” These quotes reflect the view that a balanced family offers a wider range of parenting experiences. One respondent claims that managing gender differences makes the family stronger (Samantha).⁸

The colour pink is sometimes used not only in reference to girls’ clothes but also as a metaphor for having a daughter. This is clear when Olivia talks about her desire for a gender balanced family:

It’s been lovely to have a son, I love the boys but I just thought it would be nice to have daughter, it’s nice … you go shopping and you get a bit sick of blue and red and orange and brown. Well, I just thought it would be nice to get some pink in the house.

In this statement, the phrase “getting some pink in the house” is used as a metaphor for giving birth to a daughter and bringing gender balance to the family.

Several women want another female in the family due to feeling outnumbered by males. Claire says: “And I’m not getting a house full of homely boys, I get to have at least one girl in the house with me as well.” She misses “female energy” in the house. Similarly, Samantha wants to even up her family as she is overwhelmed by living with only males and feels left out.⁹

Some women connect their lived experience of alienation from males to deep-seated differences pertaining to gender. Ruth describes difficulties in relating to her sons because she is not “wired” to think like boys:

Like I said, my boys are still little but they’re still starting to get a lot more into sport and dinosaurs and rough play and just stuff that I … and not … I didn’t have a brother either, so my understanding of their sex is just going to be fundamentally different, I’m not wired to think like them.

⁸ Samantha puts the strength of her balanced family down to different relationships among parents and children. She mentions the different ways her husband relates to their sons and daughter, and the fact that having a sister makes her sons more caring.
⁹ I discuss women’s feelings in more detail when I talk about the strength of their longing for GSFNMR.
At the same time she says, with only sons, her husband would not know what to do with a daughter. Similarly, Nicole believes that it is “natural” to desire a child of one’s own gender. She goes on to acknowledge that not all people have that desire, but claims that it is a nice “experience having the different genders.” She mentions that she and her husband have different bonds with children of their own genders: “I see my husband with my sons, you know, running out and playing football and it’s not a bond that I don’t think I’m missing out on, but it’s just different, I suppose.” The view that parents have stronger bonds with children of their own gender was part of the motivation to have a balanced family.

Finally, some women think that having a balanced family will make them happier. Claire speaks of an emotional benefit. Similarly, Hannah is unsatisfied with having only sons and says that a balanced family would make her more “content,” which would also benefit her children: “I’m in a pit at the moment just bringing up one gender and wondering if I’m ever going to have that ... have the experience of bringing up a girl as well.”

All respondents think that having a gender-balanced family has positive outcomes. Some think that the benefits are mainly parental, and include the experience of raising children of each gender, having another female in the family, and being a more contented mother. Furthermore, the opportunity to provide sisters for sons and daughters for husbands is one of the perceived benefits of family balancing. As the women themselves differentiated between benefits to them as mothers and benefits to other family members, I discuss the latter separately below.

7.1.2.1 Sister for sons (“Be nice to have the boys looking after a little sister.” Hannah)

Most of the women I interviewed think that children benefit from a balanced family, as it provides the opportunity to learn to relate to the other gender. In particular, many of the women desire a sister for their sons; this is the second most common reason

10 As I discuss in the next subchapter, many women say that they are the main initiators of gender selection as their partners are content with having sons.
to select for daughters identified by the respondents. Several interviewees think it is important that their sons grow up with a female sibling, on the grounds that this will lead them to become “better” men.\(^\text{11}\)

Olivia, who identifies family balancing as her primary reason for gender selection, desires gender variety in her family. She grew up with a sister, went to a same sex school and “didn’t have any exposure to boys.” She thinks that her children would benefit from gender variety, as they would learn about each other:

I suppose the family is the ideal teaching ground for ... about how to relate and all that and it was really about that, just about having that variety in the family that the genders do have different characteristics, physical as much as anything, but also often different likes and dislikes and different ways of communicating and ... so yeah, it’s about balance and that variety to learn about each other.

The perceived benefit for children is in learning to relate to the other gender in spite of any differences. This view is shared by Matilda, who expresses the view that having siblings of the opposite gender “demystifies” each gender for the other.\(^\text{12}\)

Some of the respondents expect that the experience of having a sister will transform their sons. They assume that in growing up with a sister, their sons will have a more enriched upbringing than they would in a family with only brothers. Ultimately, the women are hoping that this experience will transform their sons and positively change their behavioural patterns. Participants indicate their belief that boys with sisters will better understand women, be more empathetic and, in consequence, be better behaved—especially around women. Jodi explains:

I just think that it teaches ... like it teaches our boys like to be a bit less ... like a bit ... I don’t know, like not girly, but like it sort of teaches them like how to treat, you know, girls and vice versa. Like ‘cause they’re all boys, like

\(^{11}\) Respondents expect that sons who grow up with a sister will better understand women and emotions, behave politely around women and learn to look after women.

\(^{12}\) She says: “[...] having a sister is definitely good for my other boys like watching my two older step-sons with their sister, it demystifies the whole girl thing for boys, and vice versa, I think with my step-daughter she’s a lot less awkward around boys because she’s got so many brothers, she knows there’s nothing special about them, whereas a lot of my friends with an all-girl family, whatever, are quite silly around boys, you take them out and they’re all giggling and whatever [...] I think it’s healthy for them to be exposed to that.”
it’s very ... like it all ... like becomes loud and rough and, you know, they wrestle and they’ll swear and stuff like that which isn’t allowed, but like when Ruby and Elena are around they’re much calmer and they do act a bit different, like ... ‘cause, you know, there’s girls around.

Jodi says that having a sister teaches boys how to treat girls and they act differently in their sisters’ presence. Other women with daughters, such as Matilda, claim that sons are instinctively more caring, calmer and less aggressive around sisters: “for my boys, having seen them with their sister and they need to be gentle with her, they can’t rough-house and touch heads the way that they do with each other and wrestle and stuff.”

Several respondents also assume that their sons will perform the role of caring older brothers and protectors. Hannah says: “Obviously the dynamics would be different. Be nice to have the boys looking after a little sister. I can see them with her in my mind.”

Many respondents speak of the impact of gender selection on their sons as one of the main benefits of family balancing.

Women’s expectations are underpinned by the idea that boys and girls are essentially different, and that growing up with sisters makes sons better men. Alice captures most of the aforementioned expectations when she speaks about her desire to give her sons a sister:

I want men to grow up having some understanding of girls and females and how we work and I want that experience for them desperately. My husband grew up in an all boy family and he’s just hopeless, he has no idea about women or emotions or ... he just has [unclear] few understanding of females and I want my boys to be the best men that they can be for any women that come into their lives. I said I want him to have the whole spectrum of experience [unclear]. Having a brother is awesome, but I really, really, really want a sister for them as well.

Alice emphasizes that her sons need a sister to understand women and emotions, in order for them to become good men in the eyes of women. Similarly, Olivia expects that growing up with a girl will make her sons better husbands:
it would be nice to ... see how the boys ... how it changes the boys having a ... growing up with a sister. Is it going ... was it going to change how they ... as husbands and I just thought it would be good for our family, basically.

While it is mostly mothers wanting a sister for their sons, Claire mentions that her sons also desire a sister: “oh mum, we really want a sister, how come we don't have a sister, how come there's only boys in the house?” Of all the respondents only Ruth believes that her sons would not particularly benefit from a balanced family; rather, the benefits of having a girl are primarily maternal benefits.

In conclusion, most respondents want daughters because they believe that growing up with a sister will transform their sons by enhancing their emotional competency and behaviour. Sons with sisters are expected to understand and treat women better, and these competencies are seen to be desirable characteristics in men.

7.1.2.2 Daughter for husbands (“he would grow so much as a person” Alice)

Wanting a daughter for their husbands is the third most commonly mentioned reason for undergoing GSFNMR in my study. Most of the women expect that having a daughter will transform their children’s father and make him a better man.

This sentiment is most strongly expressed by Alice who complains about her husband’s lack of understanding of women. She is hoping that having a daughter will change that:

I think my husband needs a daughter. He doesn't know that he needs one, he doesn't even really want one, I mean he's going along with this because he knows I want to, but he said he would love any child that comes into our lives, obviously, but he doesn't know that he needs this, but he does. I think that he would learn so much from having a daughter and he would grow so much as a person himself as well from having a daughter.

Alice expects that having a daughter will contribute to her husband’s development as a man. She wants a daughter for him despite his apparent indifference to the gender of any future children. Hannah also expects that a daughter will change her husband’s
behaviour, particularly in enhancing his fathering skills: “I love the thought of how he’s going to be with a daughter ’cause I see him with his sons and he’s so soft and gooey with them but yeah, with a daughter, you know, it’s just another extreme.” She thinks that fathering a daughter will make him a gentler carer.

Most respondents claim that their husbands are going ahead with selection for a daughter only because of their partner’s desire to do so. It is only Hannah’s husband who also desires a daughter. While it is she who initially suggested gender selection, her husband’s motivation increased upon witnessing his twin brother’s relationship with his own daughter. The rest of the women claim that while their husbands are supportive, gender selection is not their priority. Some women such as Claire say that their husbands would be happy with just having sons. Others claim that their partners would appreciate having a daughter, but would not go as far as gender selection if it weren’t for their wife’s preferences. Nevertheless, several respondents assume that their partners would push for gender selection if the situation were reversed and they had had only daughters up until now: “I think if he had ... if we had two girls then he would want a boy but at the end of the day he got what he wanted and he will say that: he wanted his boys, he got boys” (Ruth).

Overall, the women in this study are the primary initiators of selection for daughters; while their husbands support the women, having a daughter is not their own priority. The women have various expectations about the effect of having a daughter on their husbands. These anticipated effects include an improvement in their husband’s behaviour as fathers and, more generally, as men, as well as the acquisition of a deeper understanding of women.

13 Hannah says: “And also for my husband I know he really desperately wants a daughter as well. So I mean he’ll go to the ends of the earth to get her as well and he knows how much my desire is.” This suggests that at least partially, the man’s desire for a daughter was informed by the fact that his wife desires a female child. Hannah further explains: “So it’s ... ultimately it was me that asked him if we could do it but I think in the time that I’ve been doing it, which is around about two to three years he’s of the thoughts that he can’t wait as well and, you know, this could happen sort of thing. So yeah, I ... it’s definitely my desire more than his but I can see that now that he’s thinking about it and it’s in his head he also wants it.”
7.2 Gender Expectations ("She has no agenda for me" Olivia)

After respondents spoke about their reasons for seeking gender selection, I inquired after their expectations about the procedure, such as what they expect from their daughter and whether there are any particular traits they desire her to have.

Most respondents claim that they have no specific expectations. However, the interviews reveal various assumptions related to their daughters’ gender identity and behaviour which underlie respondents’ motives for gender selection. The participants’ statements are therefore characterized by a tension: on the one hand, women claim they do not have specific expectations, on the other hand, the interviews reveal that they harbour some unacknowledged gender-specific assumptions.

These expectations fall into three types: first, they expect that children selected for XX chromosomes will be girls. Second, they imagine that their daughters will differ from their sons at least in some aspects, mainly regarding behaviour but also concerning the absence of disabilities. Finally, as I have previously discussed, the women assume that daughters will have a close relationship with them.

The majority of women take it for granted that the selected embryo will result in a girl: “I actually don't have any expectations of how she's going to be or who she's going to be, just I would like to be able to have a girl” (Claire). Only one woman acknowledges that the child might have a gender identity that differs from the chosen one.\(^{14}\)

Furthermore, the interviews reveal expectations with regard to gender specific behaviour and traits. Several women imagine that their daughters will wear different clothes to their sons (Jodi), such as nice dresses (Alice) and the colour pink (Olivia); go to dance classes (Alice); like shopping, and enjoy talking (Claire); understand emotions (Alice); and be more family oriented (Ruth). Hence, these women imagine their daughters possessing traits stereotypically associated with the female gender.

Nevertheless, some respondents insist that they do not expect traditional femininity from their daughters. Matilda is not concerned with pink dresses: “I don’t dress my daughter in pink, I think she’s lucky if she’s got three pink things in her wardrobe. She

\(^{14}\) I will talk about this case more specifically when I discuss the issue of gender disappointment.
doesn’t actually own any dollies, she’s got … she likes cars and trains and all the things that my boys played with when they were babies. I haven’t really bought all that much new baby stuff for her. I don’t tend to dress her in dresses and frilly things and stuff.” Hers and Olivia’s children all play with the same toys, which are mostly those of their elder brothers. This freedom at play leads Olivia to claim that the roles around her house are rather “gender neutral.”

However, respondents’ claims that gender roles did not matter in their household are in contradiction with claims describing how much they enjoy their daughters’ femininity. For example Olivia describes how she enjoys dressing up her daughter in feminine clothes:

[...] my mother-in-law came over yesterday and had bought this faux fake fur … purple fur coat from Target and it’s fun putting that on her, the … it’s not really that much fun dressing the boys because the clothes just aren’t as cool. So that’s just a real change in our family and when the … when Eliza comes out dressed and all with her hair in a hair bow or whatever, the boys are all wow, look at her mum, it’s so cute. It’s amazing how it does … it is different.

This suggests a lack of sophistication in at least some of the women’s views about gender roles.

Furthermore, while some respondents deny that their children are receiving a gender-traditional upbringing, most still imagine their lives within the limits of normative heterosexuality. When Jodi explains why she wants a daughter, she says: “I just didn’t want to miss out on, you know, when she was 20 or 25, like that sort of age, and, you know, when she was getting married and having babies and all that kind of stuff.” Assumptions about heterosexual marriage extended to sons. For example Jodi says: “your sons will sort of, you know, go with their girlfriends’ …” and Alice says about her sons: “they get married, they end up more involved in their wives’ family.” This illustrates that respondents assume that both their sons and daughters will be in heterosexual relationships.
The second expectation identified by respondents is the lower incidence of disabilities in girls. Several respondents have sons with health issues and assume that any daughters will not share the same conditions.\textsuperscript{15} For example Nicole who is about to undertake GSFNMR abroad mentions that her older son has hearing loss that may have a genetic cause. She used to worry that her second son would have the same condition, yet assumes that the risk would be lesser in a girl.\textsuperscript{16} While their sons’ health conditions are not a significant reason for these women seeking gender selection, their anticipated good health is identified as an advantage of selecting for girls.\textsuperscript{17}

To conclude, while most respondents claim that they do not have gender-specific expectations about daughters, the interviews reveal several tacit assumptions. The women expect that the child selected for will have a female gender identity, including traditionally feminine traits and behaviour. Furthermore, they imagine that their adult daughter will have heterosexual relationships.

\subsection*{7.3 The Strength of Feeling for GSFNMR (“[T]hey’ve never known what it was like to have that desire” Olivia)}

When speaking about their motives for and expectations about gender selection, the women reveal a variety of feelings that inform their overarching desire for daughters. Two women speak of their longstanding desire for a daughter as well as their disappointment at having only had sons. Several women speak of a strong feeling of incompleteness attributed to a “missing” daughter.\textsuperscript{18} Others describe the way in which these feelings negatively impact upon their life.

The two women who have always wanted a daughter emphasise the strength and depth of their desire. Alice says: “I’ve always wanted a daughter and I always thought that I would have one, I always thought that would be my future, you know, that I would raise a daughter.” Hannah reports that she always felt that a daughter was her destiny, hence she

\textsuperscript{15} As I will discuss below, two women used their sons’ health issues to access GSFNMR in Australia.
\textsuperscript{16} Nicole does not mention having any medical evidence which would substantiate her assumption.
\textsuperscript{17} Nicole does not consider using her first son’s condition as a means of accessing GSFMR at the time of the interview. She also says that she does not consider her son’s disability as a major issue, however she still mentions it as one of the differences she expects between sons and daughters in her family.
\textsuperscript{18} Some women actually speak of the daughter they desire as if she is missing.
was “going to the extreme” of gender selection. It is evident that these women feel that they are in some sense destined to have daughters.

The feeling of missing something is shared by many respondents. Claire for example, says: “I feel like a piece of my heart is missing, I feel like there's someone missing from my family.” Similarly Matilda and Jodi say that the longing feels like there is a hole in their life:

[...] there was a hole there, like and I just would ... like I’d even look out at the clothesline and look at all the boy clothes and just think oh, there should be girl clothes out there as well, like little girl clothes. It was just something missing (Jodi).

Samantha and Hannah describe feeling as if a part of them were missing, and Hannah further specifies that it feels like a gap in her heart. Women use metaphors which frame their desire in terms of physical incompleteness and loss.

Several women talk about the impact of these strongly held feelings. Jodi says: “... it’s like a feeling of desire that sort of just doesn’t go away, like it just sort of lingers around”. She describes this feeling as a “true” and “genuine” feeling that is “always there” and while it can get weaker when another son is born, it always comes back. Similarly, Hannah describes the strength of her longing: “it’s not just about oh, I want a baby girl and that’s it, there’s a lot of ingrained psychological reasons for it and it’s something that haunts you every day.” She speaks about her uneasiness when encountering people with daughters\(^\text{19}\) and the negative effect that her feelings have on her family as she spends a lot of time researching gender selection instead of being with her sons.

The strength of their longing makes some women determined to try all options to have a daughter. Alice has had a particularly difficult experience. She travelled for gender selection to the US, Thailand, South Africa, back to the US and Cyprus, with no success. She

\(^{19}\) Hannah explains: “I know I get caught up in a lot of jealousy, I see the perfect pair and not to say that if I had have had the perfect pair that I wouldn’t have stopped because I’ve always wanted three kids but I want the opportunity to raise both sexes so I guess there’s a lot of jealousy when I see that sort of thing and a lot of anguish from ... just from day-to-day, seeing friends, seeing people announce one of each on Facebook or, you know, that sort of thing.”
underwent several IVF cycles and at least one miscarriage, which she characterises as “very difficult,” describing herself at one point as “an absolute pickle.” Her husband stopped being supportive, mainly for financial reasons, as the couple have spent over $120,000. At the time of the interview, she is not sure if they will continue, but her desire for a daughter remains unabated. Similarly, Nicole, who is about to undertake gender selection, says that she wants to try everything and “give it every shot” so as to have no regrets in the future.

Women who have been able to have daughters also describe this strength of longing. Olivia says that selecting for a daughter “has cured the feeling of longing” and that she feels “totally at peace” with her life now. Samantha expresses a similar relief:

I just felt like a part of me was missing, like it just felt like our family wasn’t finished (crying) and it just ... I don’t know, it just ... I could feel that she should be here and she wasn’t. But she's here now.

Jodi notes that it took a year until she realized that “the hole in her life” was filled. For these women, the birth of a daughter means a relief from their longing.

In conclusion, most women describe strong feelings about gender selection. Some report having always wanted a daughter, and many say that “her absence” makes them feel incomplete. Several women claim that they have strong emotions of loss or longing that have a negative impact on their life. Women who conceived daughters claim that gender selection cured their negative feelings.

7.4 Gender Disappointment (“[E]verybody just assumes they'll get what they want” Jodi)

I asked respondents if they can imagine having a daughter who will not fulfil the expectations that they describe. Women offer various answers; some say that they would be disappointed, while others say that such a possibility is a standard risk of parenting. Mostly, they imagine two situations: lack of a close mother-daughter relationship, and their daughter not being feminine.

Two women say that they will feel bad if their daughter does not fulfil their
expectations. Both Jodi’s and Matilda’s primary motivation for gender selection is to have a mother-daughter relationship. Matilda says that she would be “pretty devastated,” especially because she is selecting for a daughter to make up for a “dreadful relationship” with her own mother. Jodi suggests that disappointment would be intensified by the time-consuming nature of the procedure:

I’d imagine I wouldn’t feel very nice. But, yeah, no, it’s just ... I guess it’s one of those things you just have to wait and see. And like obviously everybody just assumes they’ll get what they want. But, yeah, no, I can’t imagine that it would be a very nice feeling. Like especially when you wait so long for it. Yeah.

Others were more measured in their responses. Nicole claims that she might not be disappointed per se, but might wonder whether she had missed out on the desired bond. Samantha and Alice say that the possibility of not having a close relationship is a normal part of parenting. Claire can imagine the possibility; she had “lengthy discussions” about it with her mother, and says that she would accept things as they come. She admits that she would feel regret if her daughter did not want to have a close bond. Finally, Hannah cannot imagine not having the desired relationship:

Not really, only because like I’m thinking of my family background and the way that I was raised. I had two older brothers as well and I guess maybe I’m just thinking that my mother and I were close because we were the only two females in the house and I’m also hoping for the same relationship in the future with my daughter, if I happen to get her.

While most women are able to imagine not having the desired mother-daughter relationship, all hope that it is something that they will be able to experience with the child they are selecting/have selected for.

20 Matilda explains: “I think I’d be pretty devastated, I guess. But Maria’s going to grow up as she is and be her own person and I’m hopefully not going to make the same mistakes that my mother has made and that I’ve made with my mother so I hope that’s in that position that I can avoid that same situation but ... yeah, at least, I know that I’ve done everything that I can do, [unclear - that’s it ?], to make my dreams come true.”
Regarding gendered behaviour and traits, five women acknowledge the possibility that their daughter might be a “tomboy”, mainly due to her growing up with several brothers. Olivia expects that she only has a few years to style her daughter in feminine attire. She would not mind having a tomboy, however, and Jodi, Matilda and Alice also express similar views. Nicole herself grew up with brothers and was not “girly”, while Samantha states that she is not concerned about the matter.\footnote{Nicole suggests that she would actually have more difficulties with an overly feminine girl. She explains: “[..] if she ended up being totally girly-girl, that’s fine, I’d have to get used to it ‘cause I don’t know it myself, not being one.”}

For these five women, having a “girly girl” is not a primary concern. Most of them emphasize the importance of the mother-daughter relationship over traditionally feminine traits. However, they still assume that their child will have a female gender identity. For example, Claire says about her desire for a daughter: “If I didn't have the knowledge that I have got an opportunity to guarantee myself a girl, I'd probably be quite devastated and heartbroken.” This suggests that Claire assumes that prenatal gender selection will guarantee her a child who will conform to her views about female gender identity.

Most respondents do not acknowledge the possibility that the child selected for could have an identity that differs from the chosen gender. Only Alice is aware of it:

I've been around a lot of transgender people and that sort of thing and so we [Alice refers here to her best girlfriend] joke all the time about, you know, I'll finally get my wish and she will be a transgender and become a man anyway.

Alice acknowledges that her dream about a daughter could turn out differently, and says she would accept her children as they come.\footnote{Alice was close to her mother as a child and very distant and rebellious in her 20s, and their relationship improved later. She says about a potential conflict with her daughter: “If you raise your children with lots of love then you accept them for whoever they are, they will always come back to you. I think that ... I don't think you'll ever, you know, completely lose, hopefully, hopefully completely lose them. As long as you ... as long as you're accepting for whatever they become.”} However, her statements indicate a tension between her stated goal of gender acceptance and tacit adherence to some form of biological determinism:
But even if the, you know, even if my daughter ... if I ever do ... if I get lucky enough to have one, but grew up as a tomboy, it would still be a daughter, a [unclear] daughter born [unclear]. There's something different about it.

This suggests that Alice expects at least some ingrained feminine traits in a child born with female anatomy, such as the capacity for a close relationship with the mother.\textsuperscript{23}

Most women can imagine that their daughter may not fulfil all of their expectations. Several say that they will be disappointed in such cases, especially if there is no close relationship or the daughter is unfeminine. Of these concerns, the former is most important. However, the majority of women nonetheless expect that their child will have what they take to be some inherently feminine traits.

7.5 Attitudes about Potential Harm from GSFNMR ("I don't see the harm in it." Ruth)

Women’s expectations about, and possible disappointment from, gender selection led to a discussion about the potential harms of GSFNMR.\textsuperscript{24} My analysis reflects what participants identify as harm (although they were not explicitly asked to specify what they understand by “harm”). Furthermore, throughout the interviews women talk about costs and burdens of GSFNMR, which I broadly interpret as “harm to parents.”

Most respondents think that there is no harm to children born following GSFNMR in Australia. They make three main claims: gender selection is not harmful to the children so selected; harm to children is not a gender selection specific problem; and gender selection is not harmful in the West. Some women have concerns about potential harms to children, mainly from parental expectations and from children’s awareness about the

\textsuperscript{23} She says: “When I look at my relationship that I have with my mum and the relationship that my brother has with my mum, and my brother is a very loving man. He's very respectful of mum and he loves her dearly, but they just ... they still don't have that closeness that we do.”

\textsuperscript{24} In particular, women were asked if they think that there is any harm to children from GSFNMR.
selection of their own gender. One respondent has concerns about harm to excess embryos.

With regard to harm to parents, women mention the emotional burden of not being able to have the desired child, as well as burdens from undergoing GSFNMR. The latter are mainly related to financial costs of the procedures, reproductive tourism, and social backlash against GSFNMR.

### 7.5.1 Harm to Children (“It’s no different, you know, having it naturally and having expectations.” Jodi)

Most respondents argue that GSFNMR is not harmful to children. Hannah claims that her undergoing gender selection “doesn’t hurt anybody.” Most women cannot imagine any harm to their children from gender selection, and insist that they would love the children they selected for just as much as they love their already existing children.

First, several women argued that gender selection is unlikely to be harmful because selected children, in virtue of being deeply desired, would be cherished rather than harmed in any way: “I mean how can a child that is wanted so badly, you know how could there be anything bad about that?” (Alice). To her the question seemed absurd. Similarly, Jodi cannot imagine an example of a harm that selected children would be especially vulnerable to. According to her, the risk of harm from not having access to gender selection is a bigger concern. She argues that if parents desire children of one gender, having one of the other gender might cause harm to that child from the parents’ disappointment.  

Hannah believes that GSFNMR will lead to her being a better mother:

> I believe that if I do have the opportunity to have a daughter as well my mothering skills would be ten thousand times more better than what they are now. Because I’ll feel complete within myself. I mean my sons don’t go without by any means but I’ve also ... I spend a lot of time on the computer researching, this is time that could be spent with my children.

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25 Jodi says about the potential harm to children from GSFNMR: “I don’t understand why ... how they sort of think that. I don’t know what an example of what they would think would be harmful for a gender selection baby. Like I don’t know. Like they’ve never given an example. Like to me ... like I don’t know, if you’re longing for a daughter, a daughter, a daughter, and you had a son it would be more harmful to that son because you wanted a daughter so much, or vice versa.”
As well as disputing any possible harm to the selected child, several women indicate that successful GSFNMR will not affect their love for their existing children. Nicole insists that gender selection does not raise the likelihood of favouritism:

[...] just because you’re choosing a high tech way to get the child or the gender that you like doesn’t necessarily mean that you would treat that child any differently to the child or children you’d conceive naturally because you weren’t able to predict what they were going to be like either.

Olivia claims that all children have their part in a gender-balanced family and several women emphasize how much they love their children.\(^{26}\)

However, some women express concerns that their existing children may be harmed by the knowledge that their siblings have been gender-selected. Several women do not, in fact, want to tell their sons about their decision to engage in GSFNMR. Alice explains:

I won't want my boys to know that I went through all of this to have a girl. They know that I'm going through this to have a third child, but I don't want them to know that it was specifically to have a daughter because I don't ever want them to feel that they weren't enough for me.

Several respondents worry about their children finding out about gender selection and drawing the conclusion that one of them is being favoured over the others. Some intend on telling their children when they grow older. In particular, some wish to inform their daughters when they reach childbirth age, in case they face similar dilemmas concerning gender imbalance in their own families.

Second, most women claim that harm-based concerns are not specific to gender selection. In their comments, women consider two aspects of GSFNMR: the strength of their expectations, and the degree of effort made by parents. Mainly, the women argue that all parents possess expectations and are vulnerable to disappointment. Jodi says:

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\(^{26}\) Several women feel slightly guilty about their feelings of disappointment upon discovering the (undesired) gender of previous children and took pains to emphasize that they love their sons.
Like I just sort of ... like it’s just ... you can’t ... it’s like even if you naturally have a daughter and you expect her to do that like and she doesn’t do it. It’s just the same with a boy, like, it’s you know, the dad wants a boy to, you know, be a rough and tumble footballer, hunting, hiking, and they grow up and they, you know, want to play the piano or something. It’s no different, you know, having it naturally and having expectations.

Olivia says that anyone can “turn their daughter into a princess or their boy into a sports jock.” According to her, some parents can select for wrong reasons but most just want “healthy happy kids.” Claire admits that any parent having specific expectations is a “very dangerous situation,” however she says that many women opting for GSFNMR are not like that. Overall, the respondents do not think that parents utilising GSFNMR have stronger, and hence more harmful, expectations than other procreators.

Furthermore, several women stress their disagreement with slippery slope arguments about GSFNMR. Hannah finds claims that GSFNMR will lead to selecting for eye colour misleading as no such possibilities are available and according to her, nobody needs to undertake eye colour selection. Similarly, Matilda says that she cannot stand arguments about “designer babies” and finds claims comparing gender selection to selecting for attractiveness or sport skills “ridiculous.” According to her, most parents are not creating a “Barbie doll,” they just want a girl or a boy. The respondents do not equate sex selection with “unreasonable” preferences about offspring.

Similarly, respondents deny that the potential for harm to children is proportionate to the degree of effort, and corresponding expectations, invested in GSFNMR. Alice argues that similar efforts are made by parents undergoing IVF:

27 Claire says about other women undergoing GSFNMR: “[..] I’ve met a lot who have done the gender selection, they’re all wonderful characters, they’re boys and [unclear] girl, and yeah, I don’t think that could possibly create any kind of harm to a child, I mean you want that child, you’re going to love that child no matter what, because it ... yeah, it doesn’t make any kind of sense that it would cause harm to a child.” However, there seems to be a tension between loving any child as they come and selecting for a specific type based on gender preference in Claire’s statement.

28 In her view, it is hard enough for women to have healthy children. She explains that most of the women who undertake GSFNMR are in their 30s and have difficulties conceiving: “most women doing this are between 35 and 40, if you knew how hard it was to get one healthy or two healthy embryos, let alone a healthy embryo of the desired gender that you want because you’re already cutting half of them out by saying well, I only want girls or I only want boys.”
But does that then apply to all the people that are having to do IVF, because I had to have fertility treatment to have my first child, so does that apply to me for him or, you know, does that apply to every woman that has to use donor eggs or that every woman that has to go through surrogacy or, you know, every [unclear] couple that have to get a sperm donor or, you know, they ... men have the ... use surrogates, you know, it’s not ... that is not a gender selection for specific argument.

Furthermore, she argues that most parents need to make an effort to have children: “If you’re talking about the degree of effort that you have to put in to having a child then it applies to anybody who has to do more than just have sex one time.” Thus, some women think that for parents undergoing gender selection, the process of selection does not constitute a disproportionately large effort compared to those made by parents reproducing naturally. Hence, they reject the idea that the more effort is expended, the higher the risk there is of additional (unreasonable) expectations.

Third, several respondents argue that harm from GSFNMR is not a concern in the West. Most women refer to the harm of selection in favour of male gender, and mention China and Japan as examples of societies with skewed gender ratios. Hannah claims: “Well [we] wouldn’t be in the Western world if we’re thinking about ratios of men to women and all that sort of thing.” According to her, most Australians want a balanced family. Nicole says that parents selecting for gender balance, especially when people cannot afford to have many children, are doing it “for the right reasons.” Samantha who mainly associates harm with skewed gender ratios says that Australians wanting girls lowers the risk of harm: “I mean most people want a girl and not a boy, so ... and most people can’t afford it so the balance isn’t going to be out.” Similarly, Matilda claims that GSFNMR is not harmful because it is mostly initiated by women desiring daughters.29 Therefore, the majority of these respondents think that GSFNMR in Australia is largely unproblematic.

Nevertheless, one respondent has reservations about harm to embryos in prenatal gender selection. Ruth does not agree with the discarding of embryos of the undesired

29 However, she also mentions that she has girlfriends of Armenian and Greek background who strongly desire sons for their husbands. This suggests that motives for gender selection are more diverse in Australia.
gender due to her beliefs about the beginning of life. For that reason, she decided not to proceed with gender selection, yet believed that it should be available to other procreators.

In conclusion, most respondents claim that there is no harm to children from GSFNMR. They argue that highly desired children will not be at risk of harm. Several women argue that harm to children is not a gender selection specific issue. Many claim that harm from GSFNMR is not a concern in the West. Nevertheless, several women have concerns about harm, mainly related to parental expectations from children, harm to embryos and children’s awareness about gender selection in the family.

7.5.2 Harm to Parents (“The backlash I received was just shocking” Olivia)

During the interviews, the women describe two types of harm that they have experienced related to GSFNMR: harm from not having the desired child; and harm related to undergoing GSFNMR. Under the first category, they mention emotional distress, while the second includes experiencing social backlash against GSFNMR, the rigours of reproductive tourism and financial costs. This section describes my analysis of the negative impact of GSFNMR on respondents which can be broadly interpreted as a form of harm to parents.  

The claimed harm from not having the desired child is mainly an emotional one. The strong longing for a daughter described by participants caused them emotional distress. Hannah reveals that she is on medication that helps her cope with her feelings. Furthermore, Matilda claims that not having the desired child is “a bit like depression.” She argues:

[...] I think it’s a bit like for some people, not myself, but I think for some

30 Respondents were not asked about harm caused to them from GSFNMR. However, I draw information about burdens from GSFNMR from women’s statements throughout interviews. In this section, I focus primarily on women’s burdens, but several (e.g. cost related burdens) might have impact on their partners too.

31 She also says that the harm to others from undergoing gender selection is incomparable with the harm she is undergoing, not having the child of a desired gender: “Nobody knows in my family except for my mother what I’m doing and it doesn’t hurt anybody, it’s going ... and it helps me, it’s going to help me psychologically for the rest of my life, so yeah.”
it can be a bit like post natal depression or some other kind of mental illness. It’s real and people get really depressed, people are really miserable [...].

Clearly, some women frame the distress from not having a child of a desired gender in terms such as depression and mental illness. This suggests that the feelings of longing exert a strong negative impact in the lives of some women.

Second, a major burden from undergoing GSFNMR derives from the negative reactions towards GSFNMR from family, friends and members of society. Most of the women have experienced social backlash, including criticism in online forums. Olivia gave an interview to the media before she traveled abroad for gender selection:

[...] the backlash I received was just shocking. People were saying I hope she does get a daughter and that she’s Down syndrome ...... oh, she should lose weight before she even worries about having more children. You know, really nasty.

Ruth mentions that some of the most negative comments in online discussions come from infertile women.

Several respondents describe critical reactions from people in their social environment. Samantha tried not telling people about GSFNMR but had to do 10 IVF cycles and go overseas several times: “It was hard to cover that up so the more times we went the more kind of people we had to let in.” During the process, she received some “harsh criticism.” She was told to be happy with whatever she had, that she was playing God and that she did not love her sons. The fear of being seen as parents who do not love their existing children is shared by a couple of respondents. Hannah explains: “[...] you worry about if somebody finds out are they going to think that your children aren’t loved enough or are they going to want to take your children off you.”

Many women do not talk about making public statements. She also mentions that similar worries might drive people away from participating in academic studies: “maybe the girls that have got the babies that they’ve had through high-tech aren’t willing to talk because they don’t want people to find out that they’ve had a baby through high-tech.”
gender selection openly and some choose not tell their families.\textsuperscript{33} Several only told their mothers and others are giving the information selectively to people to whom they are close. Some women have the support of their families\textsuperscript{34} but difficulties with their in-laws.\textsuperscript{35}

Many women are surprised by the harsh reactions. However, several consider them hypocritical because they feel pressured by society to have balanced families. The women described the paradox that society acts in a way that suggests that parents should aim for balanced families, yet judges those who act on these expectations. Olivia says:

I find society because when I had my third son, I had lots of people saying, oh, no, you know? Oh, bad luck, I hope ... maybe you’ll get your girl next time. Are you going to go again? It’s like at one point society wants you to have that balance but as soon as you say ... [unclear] they’ll say did you want a girl? And you say, well, yeah, I would have really liked a girl. They say oh, that’s terrible, that’s terrible that you wanted a girl, you should be happy that you’ve got healthy boys and some people can’t have any children at all [...] But you know what I mean? When you’re pregnant they’re going oh, keep going then, try one more.

She finds it strange that people call her daughter “a cherry on top or the icing on the cake” but vilify Olivia if they know that she selected for her. Samantha describes a similar experience:

[...] it’s funny because before I had her I’d go out and people would say to me, oh three boys you’ve got three boys, are you [are] going to go again, are you going to try again, but now I have a girl it’s all, you know, everybody says oh you have your daughter, are you going to go again, you don’t need to. Gender’s on everybody’s mind you’re just not allowed to talk about it and if I go out with my younger son and her because the other two are at

\textsuperscript{33} Hannah explains that she doesn’t speak out about gender selection because of the backlash: “[...] you know, people are strange. You know, you can get given death threats, I don’t want my ... anyone to believe that my children aren’t any less loved because they’re boys and I guess I would worry about my children as well if I did go ahead and spoke with the media and showed my face.” Similarly, Olivia says that while she is open, most women she knows from online forums do not tell anybody, not even their families.

\textsuperscript{34} Claire says: “My family are amazing, my mum is even going to help me like fund some of the ... like she knows how important ... my mum always says, you know, it’s very important that you have a little girl.” She is also one of a few women who speaks about the matter openly.

\textsuperscript{35} Nicole is not going to tell her in-laws. Olivia says that her in-laws disapprove of GSFNMR because they are Greek and orthodox while she is Catholic. She also mentions that her Greek sister in-law did not talk to her for months after she learned about gender selection.
school I get [it] all the time, oh you have a boy and a girl you’re so lucky, you know.

She describes being under pressure to have a gender-balanced family, while at the same time being silenced on the subject of gender selection.

Due to their experiences of a backlash (only Claire says that her family and friends are supportive) the women emphasize the importance of public discussion. Many feel tired of not being able to speak about gender selection, even with family and friends. Several women want their voices to be heard in the debate. Subsequently, many are hoping that the discussion will lead to the end of stigmatization of parents undergoing gender selection and to the legalisation of the practice.

Other burdens mentioned by many respondents are cost-related. Women spend between $AUD 30,000 – 120,000 on their IVF cycles and international travel. Most women have to undergo more than one cycle and some traveled to more than one country on multiple occasions. Some mention that they have problems covering the fees and rely on family support.

Despite the costs, several women say that the investment is worth it. Hannah explains her decision making process:

So and the thing is though too you’ve got to weigh up the fact that it costs a lot of money to raise a child, it costs upwards of $150,000 to raise a child from birth to adulthood and I guess with me I just sort of weigh that up against how much it’s going to cost to do gender selection rather than, we’ll raise another boy and then go the gender selection. I’d rather just go straight to gender selection.

36 At one point, Hannah who does not openly speak about GSFNMR says: “Look to be honest I’m at the point where I just think I don’t care, I want people to know how I’m feeling and I want people to know that there are a lot of people that are feeling the same way I am.” Nicole says that the discussion should be encouraged: “you can’t have an open and honest conversation because you tend to get overwhelmed by the people talking the loudest, which often the people that are negative, you know, strong, moral objections to things that they aren’t necessarily either educated on or they might … their situation might be that they don’t have to worry about that situation or that, I’m not trying to pigeonhole people who are negative about it, but I just think there’s a benefit for everyone in having everyone’s voice being heard rather than being drowned out by the negatives.”
Similarly, Nicole explains that she’d rather spend the money to avoid regrets about not trying for a daughter. She weighs the expenses of GSFNMR against the costs of raising another son and preferred paying for gender selection.

However, most women see the financial burden as a downside to GSFNMR. Matilda mentions that she knows women who’ve spent up to $150,000. Nevertheless, the respondents do not believe that the service should be subsidised.\(^\text{37}\) But they would rather pay fees in Australia and save on travel.

Emotional and physical distress from reproductive tourism is mentioned several times. Some respondents had fertility issues requiring IVF anyway, but they found that having to travel during IVF cycles led to extra stress.\(^\text{38}\) They found IVF coupled with reproductive tourism more invasive and burdensome than IVF in Australia.

In conclusion, interviewees identify several burdens associated with GSFNMR. Women speak of emotional distress from not having the desired child, as well as the negative effects of social backlash, financial costs and distress from reproductive tourism.

### 7.6 Women’s Reasons as to why GSFNMR Should be Available (\[“\text{T}he reasons that the government ... give are not good reasons”\] Ruth)

In this section, I discuss women’s views on the availability of GSFNMR in Australia. All respondents think that GSFNMR should be accessible. First, I briefly describe how women find their way around the Australian regulatory framework prohibiting GSFNMR. Second, I present women’s arguments as to why GSFNMR should be available in Australia. The women advocate for availability of GSFNMR on the grounds of reproductive autonomy; the permissibility of family balancing; balancing for natural disadvantage; the

\(^{37}\) However, Matilda makes a critical remark: “I don’t have any issue with being made to pay for it and not having it on Medicare. Although, I think it’s unfair that it seems like every man and his dog does IVF these days, whether they need it or not. I guess [unclear] the fact that people are working longer, people are delaying starting their families until they’re in their late 30s and then they find they have issues.”

\(^{38}\) Samantha also emphasizes that she wants to have her children in Australia: “[..] people just want to do it in countries where it’s their own country, and their own state, they don’t ... you know, travelling to Thailand it’s not the nicest thought to think of that’s where you’re going to get your baby from and you know. Cycling here was totally different, you know, I was totally happy with how it went and I was ... ‘cause some of these countries you wouldn’t know if it was your baby and, you know [..].” Samantha expresses her discomfort about undergoing gender selection in Asia. She also wants to spend money in her own country.
availability of technology; the availability of abortion; and the potential benefits from gender selection.

7.6.1 Navigating the Australian Regulatory Framework ("I don’t want to have a soccer team to have a daughter." Hannah)

Respondents have diverse approaches to managing the prohibition of GSFNMR in Australia. The majority of women choose to undertake the procedure abroad. However, two women undertook several IVF cycles abroad without any success, and ended up using their son’s health problems to qualify for gender selection for medical reasons in Australia.

Interestingly, the sons’ health conditions are not X-linked diseases, but behavioural problems (including possible autism spectrum), unspecified suspected genetic conditions and hearing loss. None of these conditions is described by the respondents as severe. Furthermore, the women do not mention any presumed connection between the conditions and male chromosomal sex. However, despite the NHMRC Guidelines (2007) permitting GSFMR for severe genetic conditions only, it appears that Australian doctors accepted the above-mentioned conditions as justifications for gender selection for medical reasons. The women claim that the justification for the approval was the alleged lower risk for the particular conditions in girls.

7.6.2 Arguments in Favour of GSFNMR ("[W]e’re the ones who would never have an abortion, you know.” Samantha)

All respondents think that gender selection for non-medical reasons should be legal in Australia. All say that it should be available within the limits of family balancing. Seven respondents say that it should be available after two children and three respondents say

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39 I have previously discussed in chapter 3 on the distinction between of medical and non-medical reasons that medical evidence suggests that autism is not straightforwardly genetically caused. Similarly, many medical conditions have other than genetic causes, e.g. the impact of environmental factors is significant.
40 The conditions are not described as severe in the interviews. It is not clear if women described them in the same way in communication with medical staff.
that it should be available after the first child. 41 I will now present the women’s reasons for supporting the legalisation of GSFNMR in Australia.

Three women speak explicitly about reproductive autonomy, saying that Australian women should be able to choose to undertake gender selection. Olivia says that parents should have the option to choose their children’s gender just as they can choose the size of their family. 42 Jodi is against the government telling parents that they cannot undertake gender selection. Matilda says that she finds the Australian government patriarchal: “I find it ridiculous, they think that we can't think for themselves [sic]” She thinks that the government is wrongly controlling women’s reproductive choices.

While all women think that GSFNMR should be available to them, I asked them whether they consider it a reproductive choice or a right and they differed in their opinions. A majority of the women (six) perceive GSFNMR as a legitimate reproductive choice and argue that it should be available to them. Two women say that it is both a choice and a right and one says that it is a right. While women speak in terms of rights, it is not always clear what they understand by “rights.” Some of the women’s statements suggest that they associate a reproductive right with an entitlement to access services and provision of funding.

Claire argues that GSFNMR is a reproductive right as she thinks that prospective parents should have the right to make reproductive choices. She uses the analogy with infertility, and says that as she seems unable to have a daughter naturally, she should have a right to undertake gender selection:

[...] people that are going through IVF can’t have children, it’s ... they ... the way I see it, I can't have a girl, I've tried, I've tried, and I'm unable to

41 Ruth, Nicole and Olivia think that gender selection should be available after one child. No respondents think that it should be available for the firstborn. Hannah provides a personal example illustrating the importance of not offering selection for the first child: “if I had of been able to choose first up I probably would have chosen a girl, I never would have gone to the extreme of going gender selection first up anyway, but if I did have the choice I would have chosen a girl and probably never realised how beautiful your sons can be.”

42 Olivia also emphasises the importance of being good parents. She says that there are “lots of people that have children that shouldn’t have children at all, nothing to do with which sex they have.” She says that she and her husband are not perfect but “pretty good parents who love their kids.” She further explains that their choice to undertake gender selection is influenced by the desire to limit its size: “to us it was just about having another child to choose our family, the size of our ... you’re allowed to choose the size of your family, we were just looking at the makeup of it, that was the difference, I suppose.”
physically have a girl that's obviously ... you know, my body ... I can't do it, like I don't know what it is, but I can't do it and I feel that it's my right to be able to [unclear] choice.

Claire believes that she is physically unable to have a daughter. Moreover, she says that as a woman she has the right to decide what to do with her reproductive organs.

Two women argue that GSFNMR is both a choice and a right. Hannah says: “I just have this yearning and I have this need, so I think it’s a right and I also think it’s a choice.” In her view, a felt strong need for gender selection makes it both a right and a choice. Alice claims that it is both, within some regulatory restrictions, but does not provide more details.

Women who say that GSFNMR is a matter of choice consider issues of optionality, access and funding. First, they argue that it is a voluntary procedure. Matilda makes two points: that not all parents desire a gender balanced family, and that many procreators do not want to go through IVF. Matilda explains:

I know a lot of people who would love to have a boy and a girl and most people if you ask them, that’s what they want, they want a girl and a boy and once they’ve got one of each, they stop having kids. But having said that, there are a lot of people who would not go to the extent of having IVF to do that [..]

She emphasizes that IVF is an invasive procedure, without a guaranteed outcome, and should only be available for people who choose to go through the risks.

43 I also discuss her view below when I talk about the argument from naturally-occurring disadvantage.
44 Women who had unsuccessful IVF cycles were asked if they considered alternatives to gender selection, such as adoption of a daughter. They thought about the possibility but find the Australian process for adoption very complicated and time consuming. For example Alice says that adoption takes 6-8 years and she is not willing to go through the difficulties. This view is shared among this group of respondents.
45 A similar view is shared by Jodi: “I just think that, you know, families should be able to choose what they want to do. If they want to do it, they should be able to do it and not, you know, a government body tell them no, they can’t do it. So ... like it’s sort of not a right I guess, but like they should be allowed to ... if they choose to use it I think they should be allowed to use it.”
One woman (Nicole) says that perceiving GSFNMR as a right would give everyone a right to access the service and she objects to it. Similarly, Olivia argues that while having children is a right, choosing their gender is a luxury. She disagrees with the notion of a right to have children of a certain gender, as she believes that such an approach would open the door for other claim rights over children’s makeup. Furthermore, women link the issues of access to issues of funding. Most respondents believe that GSFNMR should not be covered by Medicare, or otherwise subsidised by the government, but funded by parents. Some acknowledge that it is an expensive procedure available only to the few. Nicole says: “So I guess it then becomes, well, it’s only available to people who can afford it.” Nevertheless, most interviewees can afford the costs of gender selection abroad and accept it as a procedure for wealthier procreators. None discuss issues related to socio-economic inequality which would hinder the access of less well-off women to GSFNMR.

However, while women perceive GSFNMR through the lens of their own reproductive choices/rights, several respondents make statements that reveal rather patriarchal structures in their families. A couple of women mention that they are pushing for gender selection as they know that their partners will only let them have a limited number of children, usually three. This suggests that women’s reproductive choices are limited by their husbands. In consequence, it seems that the background of women’s reproductive decisions is more complex than a discussion of rights and choices might suggest.

The second argument in favour of increasing access to GSFNMR relates to family balancing, and is based on the proclaimed lack of harm from the practice discussed previously. To minimise the possibility of harm from family balancing, the women think

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46 Furthermore, she argues that decisions about GSFNMR should be made between doctors and families, not by distant ethicists or random people who may have naturally balanced families. Otherwise, people should have the option to go abroad without judgment.

47 As I have pointed out in the discussion about harm to children, Samantha mentions the fact that most people can’t afford GSFNMR to argue that the practice won’t cause harm from skewed gender ratios in Australia.

48 For example, Olivia says: “I hadn’t actually really thought about it before when I started having children but once I had children and I had my first boy and then that was excellent ’cause I always thought that it would be good to have a boy and then I had my second boy and I thought oh, I really would like a girl and I thought I’ll probably only going to be able to convince my husband to have three so I’d better get a girl next, you know, was my plan in my head?”

241
that the government should regulate the eligibility for gender selection based on the number of existing children of one gender.

Third, two women make claims about the need for GSFNMR to redress what they take to be a naturally-occurring disadvantage. They claim that they need to undertake gender selection because they cannot have a girl naturally. Claire, having had five sons, compares her situation to that of the naturally infertile. She says that her “feeling of loss” for a daughter is similar to the loss of an infertile person who cannot conceive.49 Hannah, with two sons, is not willing to risk the “natural route” again: “I don’t want to have a soccer team to have a daughter.” Both women defend the option to access GSFNMR in Australia based on the fact that they have not conceived daughters through natural reproduction.

Fourth, some of the women are of the view that as the technology for GSFNMR exists, it should be used. Hannah asks: “if the technology is there why can’t we use it?” Claire says that today’s women are lucky to have the means to undertake gender selection, while older generations lacked the option and had regrets. Alice hopes that the backlash against GSFNMR is similar to the backlash against every new technology (she gives the example of organ donations).50 Finally, Olivia backs up the technology argument from a Christian position. She understands the argument about “God’s will” (her sister in law criticised her for “playing God” for undergoing GSFNMR) but says that the technology is around and should be used within some parameters.

49 However, other respondents think that discussions about GSFNMR should be separated from discussions about infertility. This is mainly due to the backlash against parents undergoing gender selection in online discussions and media. Ruth says that the discussions need to be less polarized: “no woman with infertility would like to hear a story of a woman saying that she … that one baby was better than another baby because if you’ve got no baby you don’t understand that. But having been someone that has had infertility and then has had two babies of a particular sex, I can be … I just feel like I was able to a little bit more open-minded than some of it.” She implies that infertile women are too harsh in their critique of GSFNMR.

50 In her opinion, Australians are less prone to progress than many individuals of other nationalities. She says: “But Australians are like that, you put anything to a referendum and we will say no, no, no, no, no, until it’s eventually 10 years down the track or 20 years down the track when we might say … eventually say yes to it. We don’t do change very well, we don’t do progression very well […] but I’m hoping that in the future it will be easier for other women in the same boat that eventually we will just come around to the idea and accept that the technology is there and let’s use it so, that’s the way I see it, that’s the way my family sees it.” Clearly, Alice equates gender selection with technological progress.
Fifth, four women argue that the ban on GSFNMR through IVF is inconsistent with the availability of abortion. Claire and Matilda say that given the availability of abortion for any reason including gender selection, the ban on using IVF for the same purpose is “hypocritical.” Samantha describes the situation as she sees it: “But they tell us we’re not allowed to do gender selection but they tell us we are allowed to abort up to 20 weeks, that’s gender selection. It’s happening, it’s happening left, right and centre and we’re the bad people because we want to do gender selection. We’re not, we’re the ones who would never have an abortion, you know. We’re the ones who … and that’s everybody’s right and choice but we’re trying to do the right thing […]” She acknowledges women’s right to abortion but posits that women undergoing GSFNMR are “trying to do the right thing” by choosing prenatal gender selection rather than gender-motivated abortion. Matilda argues that it is particularly wrong that by banning GSFNMR, people without significant finances are “forced” to undergo selective abortions. According to her, the ban on prenatal methods does not stop “desperate” procreators in their quest for gender selection. Several of the women claim that it is unfair to them to be banned from choosing a child’s gender by prenatal selection, when others are choosing by termination. They are familiar with CVS technology to detect foetal sex chromosomes. Hannah would consider abortion if she fell pregnant with another son: “psychologically and mentally I don’t want to go down that path but I know if I have to I will and so this is another reason why I want it legalised. Why can we not choose when people are choosing every day to abort their children?”

Finally, several women claim that GSFNMR should be available in Australia because it would benefit the local population in three ways: payments would be kept within the Australian economy; any excess embryos could be donated to Australians; and families

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51 She explains: “I mean the thing I find most awful is that there are people who don’t have the money who feel this desperate and are then forced to go the route of having CVSs and terminations just [unclear - as long as it’s all they’re doing?] and I just think it suits them that it facilitates that rather than helping them do gender selection is wrong.”

52 Hannah explains: “I could have a termination up until I’m about 21 weeks and I know this, like I know that I can have a CVS, which is … I don’t … do you know what a CVS is? So they put a needle into your stomach when you’re 10 weeks pregnant you have some amniotic fluid withdrawn into the needle and that will tell you what you’re having, so I know I can do all this yet I’m still opting for the high-tech route because I don’t want to go down that path, I don’t…” She emphasizes that her desire for a daughter is so strong that she does not want more sons.
would avoid the extra emotional stress caused by the need to travel abroad to access GSFNMR.

First, three women argue that Australia would benefit economically from de-regulating GSFNMR. Jodi, Matilda and Samantha say that the ban does not stop anyone, it just forces people to spend their funds abroad: “IVF is a business, doctors want to earn money, clinics want to earn money, and yet, we’re going overseas and paying all these doctors and taking these holidays [...].” (Matilda).\(^{53}\) In contrast, lifting the ban could keep the funds in the country. Claire emphasizes that the medical system is losing a lot of money due to significant demand for the service among Australians.

Second, Olivia argues that legalisation of GSFNMR in Australia would increase embryo donations. While she acknowledges that not everyone donates their spare IVF embryos following gender selection, those who do donate their embryos “to childless couples in America and Thailand that could be going to childless couples in Australia.” Moreover, she claims that by selecting her child’s gender and paying for the service, she could get someone else “through the system.” Hence, she argues that infertile Australian families would benefit from legalisation of GSFNMR.

Third, respondents emphasize the benefits for women and children. Jodi and Olivia say that women undertaking GSFNMR would not have to undergo the stress of travelling while doing IVF.\(^{54}\) Furthermore, respondents emphasize the advantages for women of not leaving existing children in Australia while travelling abroad for GSFNMR.\(^{55}\)

Overall, respondents provide six reasons as to why they believe that GSFNMR should be available in Australia. They claim that women should have the choice to undertake the procedure in their country based on their reproductive autonomy; for

\(^{53}\) Matilda emphasizes that people who undertake pre-conception GSFNMR are wealthy and will select their child’s gender anyway, only outside Australia. Similarly Jodi makes the argument about profit for Australian business: “’Cause if people want to do it, they’ll do it like we did, we’ll just take our, you know, I guess business elsewhere if you want to sort of do it business wise.”

\(^{54}\) Olivia also mentioned the inconvenience of having to take IVF injections on the plane.

\(^{55}\) According to Olivia who had access to GSFNMR abroad, not having to leave the children is the only benefit of accessing it in Australia. Some women took their children abroad with them but most had to undergo several IVF cycles and travels and could not afford travelling with children for all of them.
family balancing; to compensate for the inability to naturally conceive a daughter; because the technology is available; for consistency, given the availability of abortion for GSFNMR; and because providing the service in Australia would benefit the local medical system and families.

7.7 Conclusion

In this chapter, I have provided the results of my descriptive analysis of interviews with 9 Australian women who have selected or wanted to select their offspring’s gender. I focused on six major issues: the motives for seeking GSFNMR; the experience of desiring GSFNMR; gender expectations; gender disappointment; concerns about harm; and the availability of GSFNMR in Australia.

Respondents provide two major motives for selecting for a daughter. First, they desire a close mother-daughter relationship, which is seen as unique amongst familial relationships. Second, they want a gender-balanced family to provide gender variety and richer experiences to all family members; they desire a sister for their sons or a daughter for their husbands.

The majority of respondents claim that they do not have any gender specific expectations from daughters. However, the interviews suggest that the women make many assumptions, such as that their desired child will have a female gender identity, traits and behaviour. They also imagine that their daughter will have heterosexual relationships.

Most of the women say that they can imagine their daughters not fulfilling their expectations. Some say that they will be disappointed if their expectations are not met, especially if there is no close mother-daughter relationship, or if their daughter is not feminine. Of these, a close bond with their daughter has more significance than the presence of stereotypically feminine traits.

The respondents believe that there is no risk of harm to children from GSFNMR. They think that the process will not harm the desired children, that harm to children is not specific to gender selection, and that harm from gender selection is not a concern in the
West. Some women express concerns about harm to children from parental expectations and children’s awareness about gender selection.

At the same time, the women are concerned about harm to themselves as procreators. They speak about emotional harm caused by having the desired child, as well as harms from undergoing GSFNMR. These include the financial costs of GSFNMR, stress from reproductive tourism, and being subjected to a social backlash against GSFNMR.

The women believe that GSFNMR should be available in Australia, providing six reasons to support this view. Their reasons include reference to reproductive autonomy, the perceived lack of harm from GSFNMR, the need to redress a natural inability to have daughters, the availability of existing technology, for consistency given the availability of abortion, and perceived local benefits.

I have described the respondents’ views on GSFNMR. Next, I will present my own discussion of women’s arguments. In my analysis, I will inquire into the ethical implications of GSFNMR based on respondent’s views. I will pay special attention to issues of women’s reproductive autonomy and risk of harm associated with the practice of GSFNMR.
8. Discussion

In this chapter, I discuss the implications of the results from my empirical study in the light of the theoretical material of the earlier chapters. The central question that motivates this thesis is: should GSFNMR be legally available? To provide an answer, I pay particular attention to issues of reproductive autonomy and the risks of harm stemming from its exercise. I maintain that respect for reproductive autonomy is an important value in the provision and use of assisted reproductive technologies (ARTs). Nevertheless, the risk of harm involved in their use justifies their regulation. I argue- based on close investigation of women’s motives for, expectations from, and feelings about GSFNMR- that GSFNMR is a harmful practice because it perpetuates and reinforces gender stereotypes. I therefore conclude that GSFNMR should not be legally available in Australia.

The ensuing discussion is divided into four parts: women’s strategies for accessing GSFNMR; concerns about reproductive autonomy; concerns about harm; and policy implications for regulation of GSFMMR. First, I inquire into women’s approaches to the ban on GSFNMR in Australia. I investigate the strategies they use to secure the birth of a child of the desired gender, and argue that the empirical evidence suggests that there are loopholes in the current Australian regulatory framework. In particular, the distinction between medical and non-medical reasons is not well implemented in practice. I thus argue that the current regulatory framework fails to provide effective regulation of gender selection.

Second, I inquire into the subject of reproductive autonomy. The women argue that they should be free to make a wide range of reproductive choices, including GSFNMR. This emphasis on unrestricted choice resonates with libertarian understandings of reproductive autonomy, which support women’s right to choose GSFNMR. However, the empirical evidence suggests that women’s reproductive choices are to an extent limited and shaped by their relations to family members and the social environment. This observation lends credence to the criticisms of libertarian conceptions of reproductive autonomy discussed in Chapter 1, and has implications for debates about GSFNMR.
Third, I inquire into the subject of harm. I have argued throughout this thesis that GSFM is a harmful practice as it reinforces sexism. My findings about women’s motives for, expectations from and feelings about GSFN support my argument. The results suggest that women select their child’s chromosomal sex because they desire a child of a particular gender and with appropriate gender-specific traits.\(^1\) If GSFN is based on gender stereotypical assumptions about the child selected for, I claim that four types of harm may ensue: harm from reinforcing sexism; harm from commodification; harm from disappointed parental expectations; and harm from pressure to adjust to the binary sex-gender roles.

Finally, I discuss the implications of my analysis for policy regulating GSFN. My empirical evidence suggests that GSFN is a harmful practice, and the risk of harm involved is substantial enough to justify the ban on the practice. Furthermore, I claim that a more robust definition of medical and non-medical reasons for gender selection is required in order to effectively implement policy concerning GSFN and GSFM.

### 8.1 Women’s Strategies for Accessing GSFN

My study shows that respondents take two approaches to the ban on GSFN in Australia. They either undertake the procedure abroad, or they use their existing children’s health conditions to qualify for gender selection for medical reasons. Furthermore, the study provides evidence that respondents are aware of the possibility of gender selective abortion in Australia, and some see this as a fallback option in their efforts to obtain a child of the desired gender.

The majority of women chose to undertake GSFN abroad. Many of them undertook multiple journeys, and to several different countries. This shows that women are willing to undergo, often repeatedly, invasive procedures such as IVF, and spend

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\(^1\) While respondents’ accounts of GSFN clearly showed that they select chromosomal sex for gender purposes, the small size of the respondent sample does not permit me to make generalisations. Therefore, more empirical research is needed to verify this thesis.
significant amounts of money and time on reproductive tourism in order to bear a child of their preferred gender.

Furthermore, the study provides evidence that women can bypass the ban on GSFNMR by using their existing children’s health issues to apply for gender selection for medical reasons (GSFMR). The two women who qualified for GSFMR in Australia were able to do so on the grounds of their sons’ health conditions, which were neither X-linked diseases, nor had a clear genetic cause. In addition, respondents did not describe them as serious. The acceptance of various and ill-defined conditions without clear genetic causes as justifications for gender selection for medical reasons, suggests that there are loopholes in the current regulatory framework. Further, it suggests that parents seeking GSFNMR are aware of these loopholes and know how to exploit them. The distinction between medical and non-medical reasons does not seem to be effectively implemented in practice.

Finally, women are aware that it is possible to access gender selective abortion under current Australian legal frameworks governing abortion. Termination was considered an option of last resort rather than a preferred one, yet some women contemplated gender selective terminations rather than bearing more children of the undesired gender. This shows that at least some of the women considered undesired sex chromosomes a justification for termination of a pregnancy. Furthermore, respondents provide anecdotal evidence that other women use selective terminations for gender selection in Australia. Respondents’ statements suggest that this practice is not unusual among procreators with strong gender preferences.

The study shows that women have various strategies for accessing GSFNMR which undermine the policy intentions to regulate against it. These findings support my arguments in Chapter 3 that the lack of clear definition of medical reasons hinders effective implementation of this policy. I discuss the policy implications of the study’s findings in a later section of this chapter.

8.2 Concerns about Autonomy

The justifications offered by the women in my study for GSFNMR reflect many aspects of the libertarian understanding of reproductive autonomy explored in Chapters 1
and 2. While the women do not talk about the concept of autonomy *per se*, their statements about GSFNMR reveal their viewpoints about what they take to be the freedom to make reproductive choices. I argue that the women’s views about reproductive choice are similar to libertarian accounts of reproductive autonomy. However, their understanding of reproductive choice is characterised by a tension between their proclaimed reproductive liberty and real constraints on their choices stemming from patriarchal family structures and social pressure on them to have a balanced family. This suggests that the women’s reproductive decisions are not free from social pressures but rather shaped by them. I therefore criticise the idea that autonomy is synonymous with free choice, as well as individualistic understandings of autonomy that overlook social constraints on individual choice. I also criticise the limited regard for issues of harm implied in the women’s justifications for GSFNMR.

The understanding of reproductive choices described by participants is consistent with libertarian accounts of reproductive autonomy. As with these accounts, the women assume that they should be free to exercise diverse reproductive choices, and that the state should not interfere with those choices. They also accept that the state has no responsibility for providing funding for GSFNMR, and that procreator who desire it should cover the costs by private means.

Insofar as the women’s views fit within the libertarian understanding of reproductive autonomy, they are subject to similar criticisms. I have previously identified the problems with libertarian conceptions of reproductive autonomy (see Chapter 1). These include a narrow conception of autonomy understood as the exercise of choice; limited understanding of harm from the use of ARTs; slippage from understanding reproductive autonomy as a negative liberty right to positive claims; arguments advocating for non-interference with assisted reproductive that slide invalidly from natural to assisted reproduction; and lack of concern about issues of social justice in access to ARTs. All of these problems can be identified in the women’s statements about GSFNMR. Here I focus on three main problems with the women’s justifications: the reduction of autonomy to
free choice, the reliance on an individualistic understanding of autonomy that overlooks the social context; and limited attention to issues of harm.

First, the women’s statements about GSFNMR reflect a libertarian understanding of reproductive autonomy as freedom of choice. Reproductive decision making is framed as a set of choices, ranging from choices over the size of the family and timing of conception, to choices determining the child’s characteristics, such as the absence of disability or being of a particular gender. The women justify this view through an appeal to personal feelings of yearning and need. According to them, the desire for a particular type of child legitimises acting on the desire.²

The very same libertarian understanding of GSFNMR as a socially acceptable practice and merely a tool to realise individual dreams is perpetuated by the media. Bhatia (2010) notes that media texts covering gender selection maintain the view of reproductive autonomy as individual choice. From her perspective, the echoing of this libertarian perspective in the media is important, as the media help to shape public understanding and acceptance of the practice. Based upon her analysis of media discourse about GSFNMR in the United States, Bhatia argues that gender selection has become heavily marketed, and that the media are full of sensational stories over-exaggerating the impact of GSFNMR on individual and family life, framing gender selection as “an "enhancement" of personal liberty” (2010, 265). These are sentiments echoed by my participants.

However, this view that reproductive autonomy is exercised through unrestricted choices is troubling. I have previously argued that libertarian conceptions of autonomy are too narrow. Critics of libertarian accounts argue that respect for reproductive autonomy does not require the provision of the means to fulfil all and any consumer choices (Sherwin 2007). This is mainly for two reasons: first, these choices may be the result of oppressive social forces rather than fully autonomous; and second, due to their potential for harm.³

² The women in my study have a rather positive outlook on reproductive choices. This is in contrast to more critical views expressed by participants in another empirical study based on lay focus groups about choice and social justice. Scully et al. (2006) argue that the participants, who were not involved in undertaking gender selection, expressed ambivalence “towards the idea of choice” and few made “unambiguously positive statements” (24). They were generally of the opinion that free choice is an illusion and impossible due to social factors such as economic inequality. The authors of the study found this an “an important observation” as “appeals to the value of consumer or patient choice are ubiquitous in modern healthcare and often go unchallenged” (ibid).

³ I will discuss the harmful potential of GSFNMR in more detail below in a separate section focusing on harm.
Thus, my second point of criticism is that women’s statements about GSFNMR are indicative of an individualistic understanding of autonomy that overlooks social constraints on choice. Individualistic views are troubling insofar as they disregard the impact of the social environment on autonomy, and overlook the importance of relations of interdependence. Bhatia argues that the major result of such approaches is a “decontextualized "freedom of choice" narrative that evades relevant social issues” (2010, 265); this effect can be observed in women’s accounts of GSFNMR.

The women in my study portray their choice to undertake GSFNMR as an individual enterprise based on their strongly held desires. Furthermore, some indicate that they are making a choice contested by other people who are critical of gender selection. Therefore, the women see themselves as targets of a harsh critique that disregards their reproductive desires. This sets up their decision to undertake GSFNMR as a rebellious decision, made against (at least some) mainstream views. This approach is consistent with the libertarian portrayal of Western women as empowered and entitled to reproductive liberty. However, this viewpoint overlooks the social conditioning of reproductive choices in a gendered environment.

I found that my participants’ statements about GSFNMR are characterised by a tension. While the women presented their choices as autonomous and free from obvious external control, the interviews reveal at least two kinds of social constraints shaping their decision making processes: patriarchal family structures; and social pressures to have a gender-balanced family. I will now have a closer look at these dynamics.

First, I found that the women’s choices were shaped by gender inequality, namely hierarchic family structures. In the interviews, women spoke about their reproductive decisions in a way that suggests that traditional patriarchal family structures may be impacting on their reproductive choices. Several women mentioned that their partner would permit only a certain number of children. This created pressure to ensure that the next and final child was of the desired gender. Thus, men’s reproductive preferences play a significant role in women’s decisions to seek gender selection. In consequence, the
study suggests that the libertarian view of Western women as fully autonomous agents fails to take account of the effects of patriarchal family structures.

Second, the women’s statements about GSFNMR are indicative of social pressures on women to deliver a gender-balanced family. My participants spoke about their experiences with comments made by individuals in their social environment, including random strangers, who passed judgements on their gender imbalanced families. Women described being told that they are unlucky to have multiple children of one gender, and of receiving encouragement to keep trying for a child of the opposite gender. These comments seem to involve sentiments of disapproval of gender imbalanced families and made the women feel inadequate for having only sons. Furthermore, the comments of disapproval contrast with expressions of enthusiasm received by women after undergoing gender selection for a daughter. Once their daughters were born, some of the women were congratulated for achieving gender balance in the family. Thus, my research suggests that there are social pressures which reinforce the ideal of a gender-balanced nuclear family. While the pressure on women to pursue the ideal of a gender-balanced family often contrasts with people’s formal criticism of technologies of gender selection, its existence nevertheless shows that some segments of society perceive a balanced family as an ideal family, and therefore one that should be pursued by procreators.

This pressure to have gender-balanced families indicates that women’s choices are not free from external pressures but rather shaped by them. Thus, the evidence of social pressure positing the gender-balanced family as an ideal family challenges libertarian claims that only gender selection based on strong gender preference is a result of social pressures. Furthermore, it suggests that the gender-balanced family is not a gender-neutral concept, but an idealised type of family based on the presumed complementarity of opposite genders in the framework of a heteronormative nuclear family. The emphasis on having children of two binary genders, which is presented as the only way to create gender variety, shows that the concept of family balancing is based on the normative binary view of sex and gender. I will argue below that there are other ways to ensure variety in the family, e.g. by giving children the freedom to establish various gender identities.
My empirical study suggests that social factors play a significant role in women’s reproductive choices. Both patriarchal family structures and social pressures to have a balanced family are examples of social factors shaping women’s reproductive decisions. By providing empirical evidence of these social pressures, the study shows that reproductive choices are more complex than suggested by the libertarian understanding of autonomy as freedom of choice. Theorists of relational autonomy argue that autonomy should not be viewed solely as a matter of non-interference with individuals’ preferences (Sherwin 2007; Mackenzie forthcoming). The evidence presented by the study is consistent with this critique. Acknowledging that individual values are shaped by society, Sherwin suggests that instead of asking “What does a person want to do now?” a more appropriate question is: “What are the processes by which he/she has come to hold his current preferences?” (2007, 177). Analysis of the decision to undertake GSFNMR thus requires interrogation of gender dynamics in the society, including the family; my study provides evidence that these social factors shape women’s reproductive choices. This has significant policy implications. I argue that as the practice of GSFNMR is both shaped by and perpetuates harmful norms about gender and sexuality, its regulation is justified.

Finally, the women’s framing of their reproductive decisions to undertake GSFNMR is indicative of limited regard for potential harm. My participants underestimate the risk of harm involved in GSFNMR, and some dismiss the idea of harm as absurd. This is consistent with the libertarian view that there is no significant harm entailed by GSFNMR that would legitimise restrictions of reproductive autonomy. Furthermore, libertarians maintain that respect for reproductive liberty should play a primary role in disputes about the use of ARTs. This view is shared by the women who think that respect for their reproductive choices should be given priority over concerns about harm, which they think is minimal.

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4 The finding that social pressures play a significant role in procreators’ decision to undertake GSFNMR is also a reason not to stigmatise individual parents for their choices. Doing so would mean decontextualizing their decisions which is unjustified as social context plays a significant role in the formation of procreators’ values. In choosing to undertake GSFNMR, parents act on common gender stereotypes perpetuated by the society. I talk about these in more detail below when I discuss concerns about harm.
In this part of the discussion, I have argued that the women’s statements about GSFNMR are consistent with a libertarian understanding of autonomy. I claimed that the women’s views are problematic, mainly for three reasons: they reduce autonomy to free choice, assume an individualistic understanding of autonomy that overlooks social constraints on choice, and show limited regard for issues of harm. My analysis suggests that the choice to select one’s child’s gender may be the result of social practices perpetuating gender stereotypes, rather than the exercise of reproductive autonomy as described in libertarian accounts.

8.3 Concerns about Harm

I have argued throughout the thesis that GSFNMR, including family balancing, is a harmful practice because it reinforces sexism. Earlier in the thesis I identified theoretical harms; here, I link them with my research findings. First, I argue that GSFNMR is harmful because it reinforces sexism. A closer look at the women’s motives for, and expectations from, GSFNMR shows that they make gender stereotypical assumptions about their children. This potentially harms children, as they are expected to develop stereotypical gender traits irrespective of their individuality. Furthermore, harm from sexism stemming from GSFNMR also manifests on a social level, as the practice reinforces gender binary views in society. Second, GSFNMR poses risk of harm to children from commodification. I argue that children are instrumentalised because they are desired upon the condition that they will perform a particular gender role. Third, I argue that subsequent risk of harm stems from the conflict between parental gender-specific expectations, as well as the fact that the presence of particular chromosomes cannot unambiguously guarantee a child with a particular gender identity and its attendant traits. Thus children who do not fulfil expectations may be subject to parental disappointment. Finally, gender nonconforming children may be subject to pressure to adjust to stereotypical sex-gender roles. Overall, I conclude that GSFNMR poses a substantial risk of harm.
8.3.1 Harm from Sexism

GSFNMR, including family balancing, is a harmful practice because it reinforces sexism, understood as encompassing both gender supremacy and gender stereotyping. The results substantiate my view, as the women’s decisions to undertake GSFNMR are based on gender stereotypical assumptions about their children’s bodies, gender and sexual identities and their role in the family. By reinforcing the stereotypical gender binary, gender selection for family balancing, I suggest, denies rather than creates gender diversity in the family.

Gender selection for family balancing is a harmful sexist practice because it perpetuates gender stereotypes. The women’s decision to undertake GSFNMR is motivated by the desire to have a child of a particular gender. This involves two assumptions about the child’s body and gender identity. First, women assume that a child with XX chromosomes will have female sex (genitals) and second, that the child will have a female gender identity. These stereotypical assumptions suggest that women’s pursuit of GSFNMR is underpinned by a biologically deterministic understanding of gender as a trait determined by chromosomal sex.

Nevertheless, it is not solely the making of gender stereotypical assumptions or having gender specific preferences that makes GSFNMR sexist. It is the aspect of acting on these preferences and expecting an unambiguous realization of the gender specific assumptions that creates potential for harm. I have argued that acting on gender stereotypical preferences is troubling because it disregards the diversity of human embodiment and gender identities, and thus contributes to the marginalisation of intersex as well as sex and gender diverse persons. This disregard for diversity in gender selection for family balancing denies, rather than establishes, gender variety in the family. The lack of concern for diversity manifested in the participants’ accounts of GSFNMR supports my view.

The practice of GSFNMR also perpetuates the normative requirement of heterosexualuality. The women in the study assume that their selected child will identify as a
heterosexual woman. This is made explicit in the women’s fantasies about their daughters getting married and establishing a heteronormative nuclear family. I have argued that the requirement of normative heterosexuality is troubling because it ignores the full range of human sexuality and contributes to the marginalisation of people with non-heterosexual identities. Moreover, the practice of compulsory heterosexuality is problematic, because it holds the binary categories of sex and gender as intelligible and thus reinforces the dichotomy (Butler 2008; Germon 2009). The women’s stereotypical expectations about their daughters’ sexual identity are therefore troubling because they perpetuate a heteronormative binary understanding of gender.

Implicit in GSFNMR is the women’s expectation that their presumably female child will have traits consistent with traditional femininity. While women deny having preconceived notions of what their daughters will be like, they nonetheless make several gender-specific assumptions. They assume that the daughter will like feminine clothes, the colour pink, understand emotions, and enjoy activities such as shopping and talking with the mother. While some women suppose that the daughter might be a tomboy, they still assume that, unlike sons, she will have a special relationship with her mother and stay closely aligned with the family. It is the idea of an essential feminine nature that makes the women expect that they will have a close relationship only with a daughter. This expectation is the major motive driving women’s desire to undertake GSFNMR, and it is based on a stereotypical presumption that a shared femininity will create a special bond between the mother and the daughter.

The stereotypical expectations about daughters reflect dichotomously gendered expectations associated with sons. The participants assume that sons’ traits will be consistent with hegemonic masculinity; boys will be self-centred, independent and less attached to their family. These traditional masculine traits stand in sharp opposition to feminine traits, which is why women imagine that they cannot have a close relationship with their sons. However, it seems plausible that the beliefs about their sons’ attributes and likely future behaviours are based on traditional expectations about masculinity, rather than real life experiences with male children, since only one of the respondents had grown-up sons. Therefore, it seems that the women’s expectations are based on an assumption of a largely fixed masculinity. At the same time, the women assume that the
presence of a daughter in the family will shape their sons’ and husbands’ masculinity, and make them more understanding and better behaved around women. These assumptions are problematic because they are based on stereotypical assumptions about girls’ roles in the family.

The perpetuation by GSFNMR of the binary view of gender is harmful because children are presumed to develop characteristics within the limits of rigid gender roles. This view does not take into account children’s individuality, and can hinder development of their attributes and skills. Importantly, this view harms both the children selected for and the already existing children. This is obvious in the example of the women’s gendered views on relationships with children. The desire for a strong relationship with a daughter harms sons, as it potentially deprives them of the development of a strong emotional bond with their mother. It is plausible that these expectations work as self-fulfilling prophecies: as women do not assume the development of a strong bond with sons, they might not seek it, and therefore, the bond does not develop. Furthermore, the desire for a strong mother-daughter bond can harm daughters as it subjects them to gender stereotypical expectations. These can involve assumptions that daughters will be domestic, less adventurous and more dependent. This shows that gender selection for family balancing involves gender stereotyping.

The interviews demonstrate that family balancing is no less sexist than gender selection based on strong gender preference. It is the stereotypical belief that children come in two genders and have essentially different traits that makes families with children of only one gender count as imbalanced. However, the study shows that women assume that their children will adjust to rigid gender roles considered appropriate for their chromosomal sex. Thus the perpetuation of gender stereotypes in GSFNMR limits, rather than creates, gender diversity in the family. Real gender diversity can only be achieved when children are free to develop non-conformist gender identities and behaviour (Bayles 1990; Butler 2008; Germon 2009). Moreover, establishment of gender variety requires acceptance of diverse forms of human embodiment and sexual identities.
Finally, the harm from sexism associated with GSFNMR also manifests on a social level. This is because the practice of GSFNMR reinforces the binary view of gender and gender stereotypes associated with femininity and masculinity. This has significant implications for debates about the regulation of gender selection. If GSFNMR becomes legally available, the practice of imposing the sex gender binary and gender stereotypes on children might become further normalised.

My analysis of women’s motivations and expectations driving GSFNMR shows that they desire a particularly gendered child. This subjects children to harm from sexism as parents expect that children will adjust to stereotypical sex-gender roles. Moreover, the practice of GSFNMR also causes harm on a social level, as it reinforces the sex and gender dichotomy and gender stereotypes in the society to which they belong.

8.3.2 Harm from Commodification and Means to an End

Gender selection treats children as a material on which parental expectations are projected. Children are seen as commodities that are selected according to particular traits; parents do not want any child, but a child of a preferred gender. The study provides some substantiation for my claims. The women in this study each possess a strong desire for daughters, and are willing to go to considerable effort and cost in order to realise their desires. Their resulting children are brought into being as part of a commercial process, which in turn implies that the parents will get a particular kind of product; the parents are investing financially to secure a child of a particular chromosomal sex. This process also involves instrumentalisation as children are perceived as vehicles to parental satisfaction.

Children are commodified by GSFNMR because the process of selecting gender treats children like a product that may be available to the consumer in the particular form that they desire. Rather than accepting any child that is conceived, GSFNMR treats gender as a trait that can be engineered to order. Commodification can be intensified by the financial and other investments into GSFNMR. The interviews show that women pay large amounts of money to undergo often multiple cycles of IVF abroad. One respondent invested no less than AUD $120,000. These large investments can thus contribute to the commodification of children, as daughters can be viewed as expensive and highly desirable.
products. Furthermore, Berkowitz and Snyder (1998) argue that it is implausible that parents would go to such efforts without an anticipated gain. This leads back to Maura Ryan’s argument that parents may come to assume that a particular kind of child is owed to them in return for their large financial and personal investments (1990). This can in turn intensify the view of a gender-selected child as a kind of product with certain, gender stereotypical traits.

In this regard, the commodification objection is also relevant to selection against disability, at least when parents select against less than severe impairments. In these cases, procreators can be motivated by the desire for a perfect child, a child without a disability (Rothschild 2005). However, in the case of selection against severe impairment, the concern for the child’s flourishing may play a larger role than concern with the satisfaction of parental desires for perfection. Therefore it seems that selection against severe impairment does not necessarily involve commodification in the way that gender selection does.

Selecting particular features in children for parental satisfaction is ethically problematic because it involves treating children like objects, as means to the ends of others, when they should be treated as unique subjects (Scully et al. 2006). The perception of a child as someone who is created to fulfil another person’s expectations is in contradiction with the ethical requirement to respect children as future autonomous humans beings (Habermas 2003), and risks treating them instrumentally.

This instrumentalisation can be traced in the women’s motives for GSFNMR, such as when women want to create a daughter to secure a mother-daughter relationship, or to exert a feminine influence over their sons and husbands. One of the women’s major motivations for GSFNMR is having a daughter who will be close to them. Women believe that if they conceive a female child, she will fulfil their yearning for such a relationship. Being selected to serve a pre-defined purpose, the daughter is treated as an instrument to realise parental goals. The dimension of instrumentalisation in GSFNMR is well expressed by the respondent who says that she wants a daughter to replicate the relationship she has with her mother. In this case, the daughter’s individuality or uniqueness is denied in
favour of a pre-determined purpose, which is the mother’s strong desire for a close mother-daughter bond. Therefore, the daughter is seen as a means to an end, and not as an end in herself. This view is harmful, as it denies daughters that have been selected the status of autonomous individuals who can develop their own personalities and relationships outside of the realm of parental preferences.

Furthermore, some of the women want a daughter because they believe that a female child in the family will orchestrate a change in their sons and husbands. Thus, they are trying to facilitate a character improvement in their men through the daughter. Seeking to have a daughter to play a particular role in the family is a form of instrumentalisation. The scenario involves placing high expectations on daughters, by assuming that they will serve as vehicles for the satisfaction of maternal preference; namely, for the improvement of husbands and sons through exposure to their daughter’s feminine influence. This is harmful because the mothers’ expectations are based on disregard for their daughters’ actual characters and interactions with male family members. There is the risk that the daughters will be valued for their anticipated feminine influence rather than for themselves, and thereby treated as less than autonomous persons.

Gender-specific desires are potentially present in many cases of reproduction. However, parents undergoing GSFNMR take their longing a step further and act on their desires. By acting, they are trying to control the outcome of reproduction. It is the active attempt at determination of future children’s traits that makes GSFNMR different from parental aspirations about the gender of their children in natural reproduction (Mudde, 2010).

I have argued that GSFNMR involves commodification. Children are created through high cost, international IVF procedures in order to provide parents with the gender-stereotypical child of their dreams. Furthermore, the process of commodification involves instrumentalisation when children are selected as a means to achieving certain parental goals and preferences. Both commodification and instrumentalisation have the potential to harm children, by subjecting them to high parental expectations concerning their conformity to a preferred and stereotypical sex-gender role.
8.3.3 Harm from Parental Disappointment

The gender-specific expectations associated with children come with the possibility of parental disappointment, given that the selection of sex chromosomes will not guarantee a child of a particular gender, sexual identity, or the development of gender-specific traits (see Chapter 5). As GSFNMR is potentially self-defeating, gender non-conforming children may be subject to harm from parental disappointment. Some of the women’s statements suggest that my concern is well-founded. Furthermore, I argue that the degree of parental disappointment may be amplified by the women’s strong feelings of longing for a daughter (with feminine traits).

The women in my study did allow for some variation from traditional femininity when discussing expectations about their daughters. They can imagine that their daughter might be a tomboy, or that she will not play with stereotypically feminine toys. Nevertheless, they still presume that a child with XX chromosomes will have female sex, gender, heterosexual identity and at least some traditionally feminine traits. This shows that the women make a range of gender-specific assumptions.

However, as selection of sex chromosomes cannot guarantee that these assumptions will be realised, the conflict between these expectations and the potentially self-defeating nature of GSFNMR produces a risk of harm to children from parental disappointment. Several of the women admit that they would be disappointed if the selected daughter did not fulfil their expectations, particularly their desire for a strong mother-daughter bond. Some women say that they would be very disappointed, especially as they have been longing for a daughter for many years and have tried different methods of gender selection without the desired outcome.

Daughters born from GSFNMR lacking traits desired by their parents may be met with parental disappointment. This can be harmful; parents might not feel as close to, or be willing to recognise and support, sex and gender diverse children, or children with nonconformist gender and sexual identities. The fact that many respondents reported a strong desire for a daughter with particular traits, suggests that the potential
disappointment from having a child who does not fulfil the expectations might be significant. It is not possible to know how this disappointment may manifest, but disappointed parents may distance themselves from the child, withdraw their unconditional love, or fail to acknowledge or welcome gender diversity. Furthermore, parental disappointment may be intensified by the fact that most of the women’s gender-specific expectations are not acknowledged as stereotypical assumptions. The women’s expectations are tacitly based on a biologically deterministic understanding of gender, which makes women expect that their daughters will naturally possess typically feminine qualities. This view is further strengthened by IVF clinics, which promise parents children of their desired gender (see Chapter 2).

In conclusion, the self-defeating nature of parental expectations involves the possibility of parental disappointment. This can harm gender non-conforming children, as parents with strong gender preferences might fail to remain close to them or accept their individuality.

### 8.3.4 Harm from Pressure to Adjust to Binary Sex-gender Roles

Finally, some nonconforming children might be harmed by being pressured to adjust to stereotypical sex-gender roles, especially if the parents find it hard to accept that their gender-selected child does not fulfil their expectations. Respondents did not make statements that suggest that they would be willing to impose pressure on their children to override any non-conforming gender or sexual behaviour. Nevertheless, they made comments that suggest that they are providing, or will provide, their children with gender-conformist socialisation, which would help shape their gender identity into the desired outcome.

The fact that women undertake GSFNMR in order to have a particularly gendered daughter makes them prone to nurture femininity in that child. The women who have daughters conceived from gender selection planned to raise their children in a way that is

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5 However, Berkowitz and Snyder (1998) point out that given the controversy associated with gender selection, it is plausible that some parents will not be fully honest when discussing GSFNMR. It is plausible to assume that respondents in my study might prefer to present themselves in a good light, especially considering their strong interest in promoting access to GSFNMR in Australia.
consistent with binary gender roles. Several of these women describe how they enjoy dressing their daughters in traditionally feminine clothes, and provide them with feminine toys and activities. A small proportion of the participants argue that they practice gender-neutral upbringing, citing freedom at play and dressing-up as examples. However, the examples they provide do not equate to a gender-neutral upbringing. Gender-neutrality would require much more, starting with providing children with freedom to develop autonomous and potentially gender queer identities. Cordelia Fine (2010) argues in her book *Delusions of Gender* that many parents claim that they do not raise their children in gender stereotypical ways. Nevertheless the same parents make decisions about their children’s upbringing based on the binary understanding of sex-gender roles. This is very much the case with my respondents, who not only have different expectations about children’s traits and behaviour based on their sex, but their decision to undertake GSFNMR in the first place was informed by a gender binary view about children.

It is hard to speculate about the extent to which respondents are prone to pressure their children to adjust to gender-conforming roles against their will. Nevertheless, it is obvious that they are providing their children (boys at least) with gender-specific socialisation that supports the development of gender appropriate behaviour. Children are thus primed to become feminine girls and masculine boys.

In conclusion, the study can neither provide empirical evidence that parents will pressure gender non-conforming children to adjust to stereotypical sex-gender roles, nor rule out such possibility. It does, however, suggest that at least some parents who undertake GSFNMR raise their children in gender stereotypical ways. The possibility that these parents raise their children in gender stereotypical ways, coupled with their intense desire for a child of a given gender, gives us some reason to worry about how these parents will deal with potential sex-gender non-conformity.
8.4 Policy Implications of my Study

Last but not least, I discuss the implications of my discussion about autonomy and harm for policy regulating GSFNMR. I make two arguments. First, the empirical evidence suggests that GSFNMR involves at least four kinds of harm, and these harms are substantial enough to justify the ban on the practice. Second, any regulatory framework for gender selection needs to provide a clearer distinction between medical and non-medical reasons in order to be an effective regulatory mechanism.

I have argued that GSFNMR is a harmful practice. Furthermore, I have claimed that the harm from sexism manifests both on the individual level as a harm to children, and on a social level as a harm brought about through the reinforcement of the gender binary and gender stereotypes. In my view, these harms are substantial enough to justify the ban on GSFNMR. I provide three major reasons to support this contention. First, the legalisation of GSFNMR would send out a message that gender is a trait of some importance in children, and that it is desirable to select children based on gender preferences. Second, it would normalise the imposition of the gender binary and gender stereotypes on children. And finally, legalisation of GSFNMR would reinforce sexism on a social scale.

First, legalisation of GSFNMR would communicate that gender is a significant trait in children, such that its importance warrants selection. Berkowitz and Snyder (1998) argue that the placement of value on gender is probably the most damaging aspect of GSFNMR. This is plausible because acceptance of gender as a crucial trait in children opens the door for placing different values on individuals based on their gender, and thereby preferring one gender over another. Thus, the legalisation of GSFNMR, if only for family balancing, would imply that valuing children differentially based on their gender is socially acceptable.

Furthermore, Berkowitz and Snyder (1998) also rightly point out that legalisation of GSFNMR would make medical staff complicit in the reinforcement of sexism in society. They argue that this contradicts their obligation to provide health care without prejudice. Moreover, insofar as both governments and medical staff symbolically represent authority, their participation in GSFNMR provides an illusion of legitimacy to sexism. Taking the argument a step further, Charis Thompson (2005) and Susan Sherwin (2007)
both argue that legalisation of the use of ARTs for ethically troubling purposes implies that it is reasonable and even desirable to use them for such purposes. It is plausible that the legalisation of GSFNMR would have the same effect.

Second, the legal practice of GSFNMR would further normalise the imposition of the gender binary and stereotypes on children. Bhatia (2010) argues that the practice of GSFNMR re-naturalises gender in sex. This is a valid point, as the empirical evidence shows that the practice of GSFNMR is largely based on a biologically deterministic understanding of gender. The imposition of binary sex-gender roles on offspring prior to their conception involves making assumptions about children before they are born, and before parents know anything about their personalities (Berkowitz and Snyder 1998; Mudde 2010). I have argued that doing so means disregarding children’s individuality, and limits their possibilities for living with intersex, transgender and gender diverse identities. The legalisation of GSFNMR would reinforce the dichotomy of sex and gender.

Finally, the legalisation of GSFNMR would reinforce sexism on a social scale. Berkowitz and Snyder (1998) argue that legalisation of GSFMMR implies that ARTs can be legitimately used as a vehicle for expressions of sexism. Furthermore, they claim that this emphasis on gender is in sharp contradiction with the larger social good of dismantling of sexism, which requires individuals to stop discriminating and stereotyping on gender grounds. Their argument is justifiable, as the study provides evidence that legalisation of GSFNMR would allow parents to act on gender stereotypical assumptions about femininity and masculinity, which would in turn reinforce sexism in the society to which they belong. While I have repeatedly stated that I maintain that respect for reproductive autonomy is important, the harmful impact of legalizing GSFNMR for children and society is substantial enough to keep the prohibition in place.

Next, in order to ensure an effective regulatory framework for gender selection, a clearer distinction between medical and non-medical reasons is required. I have argued (see Chapter 3) that more precise guidance is crucial for effective implementation of policy based on the distinction between GSFNMR and GSFMR. At the beginning of this chapter I showed that the study substantiates my earlier arguments, as it provides empirical
evidence that women can use loopholes in the current regulatory framework to access GSFMR for less than severe medical conditions. This undermines the purpose of the distinction between medical and non-medical reasons, which is meant to distinguish between ethically permissible and impermissible kinds of gender selection.

An effective regulatory framework for gender selection requires provision of better guidance on how to define gender selection for medical reasons (GSFMR). This requires at least two steps. First, the NHMRC should define severity with regard to genetic conditions. Second, the guidelines need to identify who should be responsible for deciding whether or not the criteria apply in particular cases.

The empirical study provides support for my views. The evidence that women can access GSFMR for ill-defined and relatively innocuous conditions suggests that the current guidelines are not specific enough with regard to deciding what constitutes “severity”, or in terms of who should interpret this. I have also previously argued that leaving decisions about which conditions count as severe solely to parents and/or practitioners would allow too much space for individual interpretations of ‘severity’. Parents might hold various views about what counts as a severe condition, and these views might be based on individual preferences rather than the impact of a particular condition on the child’s life. Thus I suggest that medical staff should play a more responsible role in the process, together with other actors including people with disabilities and their families.

The study also supports my argument that without further guidance about medical reasons, the ethical distinction between GSFMR and GSFNMR cannot be implemented in practice. Nevertheless, even if there is a legal ban on GSFNMR and a tighter definition of severe genetic conditions, women can still access gender selective abortion. I have previously argued that this is the price of a liberal abortion policy. Respect for women’s reproductive autonomy requires that women have access to abortion, despite the fact that this provides a means of gender selection. A prohibition of gender selective abortion would be unworkable as it would be impossible to identify women’s reasons for any particular abortion. More importantly, restrictions on gender selective abortion could potentially limit women’s access to abortion per se. This would jeopardize women’s reproductive autonomy to an unjustifiable extent.
8.5 Conclusion

In this chapter, I have addressed the question of whether or not GSFNMR should be legally available. In order to provide an answer, I tried balancing respect for reproductive autonomy with the risk of harm inherent in the practice of GSFNMR. I have arrived at the conclusion that the risk of harm is substantial, and so the ban on GSFNMR is justifiable. I have based my argument on both the results of my empirical study with parents who desire to select or have selected for their offspring’s gender, as well as the theoretical analyses I undertook earlier in the thesis.

Descriptions of women’s strategies for accessing GSFNMR in Australia support my hypothesis that there are loopholes in the current policy, and that the current NHMRC Guidelines do not provide an effective regulatory framework for GSFNMR. My findings about both familial and social pressure to have a balanced family undermine claims about the proclaimed freedom of women’s choice to undertake GSFNMR, while evidence about women’s motives, expectations and feelings concerning GSFNMR suggest that the practice is based on gender stereotypical assumptions and therefore reinforces sexism. Finally, GSFNMR involves the risk of harm to children from commodification, instrumentalisation, parental disappointment and pressure to adjust to stereotypical sex-gender roles.

Two major implications for policy follow from this discussion. First, I claim that the harmful potential of GSFNMR is sufficiently substantial to justify the ban on the practice. Second, an efficient regulatory framework requires better guidance on how to define and implement the distinction between GSFMR and GSFNMR. Policy which supports these conclusions will help to assure effective regulation of gender selection in Australia, thereby permitting gender selection to prevent severe genetic conditions, while banning gender selection for social reasons.
Thesis Conclusion

Gender selection for non-medical reasons raises a range of philosophical, regulatory, and practical issues, which I have investigated in this thesis. Following detailed examination, I have concluded that GSFNMR is a harmful practice. I have reached my conclusion in two stages. First, I analysed theoretical discussions about the ethics of GSFNMR. Second, I explored my theoretical findings in a small empirical study conducted with Australian women who have selected or want to select their children’s gender. This allowed me to reach my final view that GSFNMR is ethically impermissible.

First, I examined libertarian conceptions of autonomy, which claim that restrictions upon reproductive autonomy are justified only to avoid severe harm, and that GSFNMR, at least as practiced in Western countries for family balancing, is not harmful. However, my detailed examination of libertarian justifications for GSFNMR found a number of weaknesses, and I concluded that that these arguments fail to serve as persuasive justifications for the practice of GSFNMR. In particular, these justifications rely upon a misguided understanding of the harms of sexism. In contrast to a narrow conception of sexism as gender supremacy, I adopt a broad understanding which acknowledges the harms of gender stereotyping. Overall, I concluded that libertarian accounts fail to establish the ethical permissibility of GSFNMR.

There are a number of conceptual distinctions that are relevant for debates about the ethics and regulation of gender selection. These include the distinction between medical versus non-medical reasons for gender selection; potential similarities and differences between selection practices for disability compared with gender; and the concepts of sex and gender. These are important distinctions because they signify differences between selection based on what are taken to be biological traits as opposed to socially reinforced characteristics. However, as the categories of sex and gender are used inconsistently in debates about GSFNMR, I found it important to investigate their complexities.

The distinction between medical and non-medical reasons for gender selection plays a key role in regulation, serving as a rationale for distinguishing between ethically permissible and impermissible types of gender selection. Despite its regulatory
importance, the category of medical reasons is poorly defined and, in consequence, the distinction cannot be effectively implemented in practice. If regulatory frameworks seek to rely upon this distinction, better guidance is required as to what count as justifiable medical reasons for gender selection.

Both selection against disability and gender selection involve parental perceptions about ideal and undesired children, making this a useful focal point for comparison. Nevertheless, I found significant differences between disability and gender which have crucial implications for the justifiability of selection against disability and GSFNMR. In particular, while some impairments impede flourishing in ways that cannot be compensated, gender is only disadvantaging in societies that stereotype and discriminate on gender grounds. As gender disadvantage can be eliminated by social measures, gender selection for social reasons is ethically impermissible.

My examination of the distinction between sex and gender showed that while these terms are used interchangeably, they are not synonymous. I argued that both sex and gender are, to a certain extent, socially constructed categories, and that gender does not unambiguously follow from sex chromosomes. I therefore concluded that the assumption that gender can be guaranteed through selection of chromosomal sex can be self-defeating.

These theoretical arguments have been complemented by my interview study of women seeking or considering GSFNMR. The results of this study showed that the participants make significant assumptions about their child’s gender identity, traits and behaviour, and some admit that they would be disappointed if their children failed to fulfil the expectations that attend these assumptions. The potential for parental disappointment, given the lack of a guaranteed gender identity following GSFNMR, creates a risk of harm; children may fail to meet expectations and be pressured to adjust to rigid gender roles. Furthermore, the gender stereotypical nature of GSFNMR reinforces sexism, which is harmful both on an individual and a social level.

Overall, I have argued that GSFNMR is harmful, and that the harm is significant enough to justify a ban on using pre-conception technologies for gender selection in
Australia. As I noted, such a ban will not prevent gender selective abortions. It will however, prevent selection of embryos based on chromosomal sex with the view to fit a particular gender role. Attempts to determine a child’s gender along a rigid gender binary are inconsistent with respect for gender diversity and are thus ethically impermissible.

My qualitative study provides a modicum of much-needed insight into the perspectives of Australian procreators who have selected or want to select their child’s gender. Future research with a broader cross-section of potential parents seeking gender selection would allow my findings to be further explored. Nevertheless, despite the limited nature of the empirical study, it does raise important issues relating to the harm involved in GSFNMR that may be applicable beyond the Australian context. The issues raised here provide some warrant for concern about GSFNMR in an international context.

Finally, legalising GSFNMR in Australia would be a retrograde step if we consider recent legal and policy developments regarding gender. In 2013, the High Court ruled in the case of Norrie v NSW Registrar of Births Deaths and Marriages that a person can formally identify as of unspecified gender (High Court 2014). This ruling is a result of a four year long court process, which began when Norrie\(^1\) made their first application for their sex to be registered as non-specific at the NSW Registrar of Births, Deaths and Marriages in 2009.\(^2\) The ruling effectively institutionalises a third category of non-specific gender in Australia. The Court’s decision signifies a step away from the dominant binary understanding of gender insofar as it acknowledges the diversity in gender identities in Australian society.

At the time of this thesis submission, Part B of the Ethical Guidelines on the Use of Assisted Reproductive Technology in Clinical Practice and Research (NHMRC 2007), which regulates gender selection using ARTs, is under review. The aim of the consultation is to

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\(^1\) Norrie only uses their first name (Supreme Court of New South Wales 2013; High Court of Australia 2014).

\(^2\) Norrie was born as a male and underwent a partial sex reassignment surgery later in life to eradicate ambiguity in relation to their sex (Supreme Court of New South Wales 2013). In 2009, Norrie applied at the NSW Registrar of Births, Deaths and Marriages for a name change and for their sex to be recognised as not specified. The Registrar first approved both applications (February 2010), however a month later informed Norrie that the Recognised Details (Change of Sex) Certificate was invalid and issued in an error: “The reissued Certificate had, however, been altered so that the entry "not specified", in relation to "sex", had been replaced with the words "not stated"” (Supreme Court of New South Wales 2013, n.p.). Norrie applied for a series of reviews and appeals until the High Court of Australia ruled in their favour in 2013 (High Court 2014).
identify what it calls the usefulness of the current policy and any gaps.\(^3\) The review process has two phases. First, the public is given the opportunity to submit comments on the existing guidelines (this phase occurred between March and April 2014).\(^4\) In the second phase, a working group of the Australian Health Ethics Committee evaluates the public submissions in order to inform any revisions. The results of the review have not yet been published. However, it is possible that the NHMRC will amend the current \textit{Guidelines} given the kind of public support noted in the Introduction of this thesis, as well as suggested by my interview findings.

In my view, the current regulatory framework is insufficient. I believe that the \textit{Guidelines} require an amendment in order to provide more guidance on how to define a severe medical condition. Without this amendment, the Guidelines cannot safeguard the effective regulation of gender selection, based on the distinction between ethically permissible selection for medical reasons, and ethically impermissible selection for non-medical reasons.

However, a reversal in the guidelines to deregulate GSFNMR would have largely negative social implications. Any deregulation of prenatal GSFNMR would represent a move back towards the dichotomous understanding of sex and gender. This would be inconsistent with the High Court’s ruling in Norrie’s case. I have shown in this thesis that gender selection reinforces the gender binary and gender stereotypes. Thus, legalising GSFNMR would reinforce disregard for gender diversity and open up space for harm stemming from the practice. Furthermore, permitting GSFNMR would perpetrate the view that it is justifiable to create children for particular gender roles. This step would re-affirm the notion that gender is a trait of fundamental importance in a child, and one that may be viewed as a condition determining parental appreciation of that child. Reinforcement of the gender binary, as well as potential harm resulting from deregulation of GSFNMR, are


\(^4\) I made a submission to the public review in which I argued in favour of the ban on GSFNMR, based on the evidence gathered in my PhD research project.
undesirable and avoidable consequences, with negative social impact. I therefore maintain that the ban on the practice should prevail.
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www.essentialbaby.com.au
www.gumtree.com.au

Gender Selection Forums:
www.in-gender.com
www.genderdreaming.com
IVF Clinics:
Genea: www.genea.com.au
Superior ART: www.thaisuperiorart.com/links.php
The Fertility Institutes: www.fertility-docs.com
The Rainsbury Clinic: www.genderselection.uk.com
The Silverman Center for Gender Selection: www.genderselection.com
Appendixes
Appendix 1: Ethics Approval

Approved- Ethics application- Rogers (Ref No: 5201200901)

Ethics Secretariat <ethics.secretariat@mq.edu.au> Jan 17

Dear Prof Rogers

Re: "Ethical aspects of gender selection for non-medical reasons" (Ethics Ref: 5201200901)

Thank you for your recent correspondence. Your response has addressed the issues raised by the Human Research Ethics Committee and you may now commence your research.

This research meets the requirements of the National Statement on Ethical Conduct in Human Research (2007). The National Statement is available at the following web site:


The following personnel are authorised to conduct this research:

Ms Tereza Hendlova
Prof Catriona Mackenzie
Prof Wendy Rogers

NB. STUDENTS: IT IS YOUR RESPONSIBILITY TO KEEP A COPY OF THIS APPROVAL EMAIL TO SUBMIT WITH YOUR THESIS.

Please note the following standard requirements of approval:

1. The approval of this project is conditional upon your continuing compliance with the National Statement on Ethical Conduct in Human Research (2007).

2. Approval will be for a period of five (5) years subject to the provision of annual reports.

Progress Report 1 Due: 17 January 2014
Progress Report 2 Due: 17 January 2015
Progress Report 3 Due: 17 January 2016
Progress Report 4 Due: 17 January 2017
Final Report Due: 17 January 2018

NB. If you complete the work earlier than you had planned you must submit a Final Report as soon as the work is completed. If the project has been
discontinued or not commenced for any reason, you are also required to submit a Final Report for the project.

Progress reports and Final Reports are available at the following website:

http://www.research.mq.edu.au/for/researchers/how_to_obtain_ethics_approval/
human_research_ethics/forms

3. If the project has run for more than five (5) years you cannot renew approval for the project. You will need to complete and submit a Final Report and submit a new application for the project. (The five year limit on renewal of approvals allows the Committee to fully re-review research in an environment where legislation, guidelines and requirements are continually changing, for example, new child protection and privacy laws).

4. All amendments to the project must be reviewed and approved by the Committee before implementation. Please complete and submit a Request for Amendment Form available at the following website:

http://www.research.mq.edu.au/for/researchers/how_to_obtain_ethics_approval/
human_research_ethics/forms

5. Please notify the Committee immediately in the event of any adverse effects on participants or of any unforeseen events that affect the continued ethical acceptability of the project.

6. At all times you are responsible for the ethical conduct of your research in accordance with the guidelines established by the University. This information is available at the following websites:

http://www.mq.edu.au/policy/
http://www.research.mq.edu.au/for/researchers/how_to_obtain_ethics_approval/
human_research_ethics/policy

If you will be applying for or have applied for internal or external funding for the above project it is your responsibility to provide the Macquarie University's Research Grants Management Assistant with a copy of this email as soon as possible. Internal and External funding agencies will not be informed that you have final approval for your project and funds will not be released until the Research Grants Management Assistant has received a copy of this email.

Please retain a copy of this email as this is your official notification of final ethics approval.
Yours sincerely
Dr Karolyn White
Director of Research Ethics
Chair, Human Research Ethics Committee
Appendix 2: Ethics Approval

re request for amendment to recruiting methods: Ethical Aspects of Gender Selection for Non-medical Reasons (Approval No 5201200901)

Ethics Secretariat <ethics.secretariat@mq.edu.au> 19 March

Dear Wendy

Thank you for your email and amendment request. The following amendment has been approved:

1. The snowball recruitment method will be used. Participants will pass on copies of the previously approved advertisement to other people who may be interested in participating in the project.

Please do not hesitate to contact me if you have any questions.

Kind regards
Fran

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Ethics Secretariat
Research Office
Level 3, Research Hub, Building C5C East
Macquarie University
NSW 2109 Australia
Appendix 3: Ethics Approval

Ethics Secretariat <ethics.secretariat@mq.edu.au> 14 June

Dear Wendy

Thank you for your email and amendment request. The following amendment has been approved:

1. Advertising will continue on English-language forums and also include people from other nationalities who participate in forums. Participants will not be asked to speak about behaviour which could be illegal in their countries.

2. A change in the recruitment of participants. Staff at IVF clinics will be asked to publicise the research by disseminating an announcement about the research.

3. Participants will be recruited via the advertisement posted on the following websites:

   www.gumtree.com
   www.esentialbaby.com.au
   www.bubhub.com.au

4. The research will be advertised on Twitter using hashtags such as #IVF, #gender or # sexselection using parts of the text from the advertisement. Information will be tweeted at different actors such as fellow academics, media, or indicatives/individuals tweeting about IVF and sex selection to spread information across a wide range of Twitter profiles. Links to a press release and Macquarie University posts will be inserted to the posts and tweets (or re-tweet them).

Please do not hesitate to contact me if you have any questions.

Kind regards
Fran

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Appendix 4: Information and Consent Form

Information and Consent Form

Name of Project: Ethical Aspects of Gender Selection for Non-medical Reasons

You are invited to participate in a study which aims to understand the reasons people have for wanting to choose the sex of their children. The purpose of the study is to include the perspective of parents in the debates about sex selection.

The study is being conducted by Tereza Hendlova1 (Department of Philosophy, Faculty of Arts, tereza.hendlova@students.mq.edu.au) to meet the requirements of a PhD under the supervision of Professor Wendy Rogers (Ph 02 9850 8858; wendy.rogers@mq.edu.au) of the Department of Philosophy, and Professor Catriona Mackenzie (Ph: 02 9850 8865; catriona.mackenzie@mq.edu.au), of the Department of Philosophy.

1 The author of this thesis formally changed her surname from “Hendlová” to gender neutral “Hendl in January 2014.
If you decide to participate, you will be asked about your views and preferences about sex selection and whether it should be available in Australia. The interview should take no longer than 1 hour and will be held at a time and place of your convenience. The interview will be audio-recorded.

Any information or personal details gathered in the course of the study are confidential (except as required by law). No individual will be identified in any publication of the results unless they have agreed to be identified. The interview tapes and transcripts will be kept by the student and only she and her supervisors will have access to them. A summary of the results of the data can be made available to you on request.

Participation in this study is entirely voluntary: you are not obliged to participate and if you decide to participate, you are free to withdraw at any time without having to give a reason and without consequence.

I, (participant’s name) have read (or, where appropriate, have had read to me) and understand the information above and any questions I have asked have been answered to my satisfaction. I agree to participate in this research, knowing that I can withdraw from further participation in the research at any time without consequence. I have been given a copy of this form to keep.

Participant’s Name: ______________________________ (Block letters)
Participant’s Signature: ___________________________ Date: __________________
Investigator’s Name: ______________________________ (Block letters)
Investigator’s Signature: ________________ Date: ________________

The ethical aspects of this study have been approved by the Macquarie University Human Research Ethics Committee. If you have any complaints or reservations about any ethical aspect of your participation in this research, you may contact the Committee through the Director, Research Ethics (telephone (02) 9850 7854; email
ethics@mq.edu.au). Any complaint you make will be treated in confidence and investigated, and you will be informed of the outcome.

We understand that views about sex selection can be highly personal and that discussion of these matters may raise emotional issues. If you feel distressed following the interview we suggest that you contact your general practitioner for further advice or assistance, or call a support service such as the Mental Health Line (1800 011 511) to access counselling.

(PARTICIPANT'S COPY)
Appendix 5: Interview Questions

Introduction:
Thank you for your interest in the research project
Informed consent on record: have you read the consent form and agree to be interviewed by me?

General information about the research and the sorts of questions to be asked
(If any question makes you feel uncomfortable, please tell me and we will skip it)

Personal background:
General questions about the background of the participant
Can I ask you what your background is (e.g. Australian)?
Can I store data such as your age and gender?

Individual story:
Can you please tell me your story? How did you come to desire gender selection?

Motivation for sex selection for non-medical reasons:
What were the motives that lead you to/want to select your child’s gender?
Can I ask you about your expectations? Are there any specific characteristics or traits that you wish your daughter to have? What do you imagine her to be?

Potential parental disappointment
How would you feel if your daughter grew up and became different from what you expected her to be?

Availability of GSFNMR in Australia
Do you think that gender selection should be available in Australia?

Benefits of GSFNMR
What do you think the benefits are of accessing gender selection for you (or parents in general)?
Potential harm from GSFNMR

In the public debates, harm to children is often mentioned as a reason why GS should be banned, do you personally think that there is any potential of harm to the child involved (or in general)?

Family balancing:

If I understand correctly, you wanted gender selection for family balancing. Can I ask you how you understand the concept of family balancing? What does a balanced family mean to you?

What are the benefits of a balanced family?

GSFNMR as a right or a choice:

Do you see gender selection as a reproductive choice or as a right?

Conclusion

Do you have any other comments or things that haven’t been mentioned that you find important (or any questions)?

Confidentiality

This study is confidential, do you have any preferences on how you would like me to address you in the study?

Thank you for participating in the research project.