

## article

*Are Sex Selective Abortions Wrong?*

J.M. Johnston

Masters Student, Bioethics Centre, University of Otago,

**'THIRD WORLD GIRL ABORTIONS HERE - DOCTORS'.****'WARNING OVER FOETAL SEX TESTS'.****'FAMILY PLANNING WARNS OF SEX TEST'.****'EXPERT URGES FEWER FOETUS SEX TESTS'.**

So read the headlines of *The Dominion* and *The New Zealand Herald* in early April 2000. Identification of the sex of a fetus is possible as early as six weeks into a pregnancy and based on anecdotal evidence from the Family Planning Association, the New Zealand Medical Association believes that '[a] third world practice of couples aborting baby girls has spread to New Zealand' (*The Dominion*, 6 April 2000, p.1). New Zealand Medical Association Chairwoman Pippa MacKay has said that although it is illegal to perform abortions in New Zealand on the grounds of sex of the fetus, it is difficult to police (*The New Zealand Herald* April 2000, p.8).

The abortion of a fetus because it is the 'wrong' sex may seem a repugnant use of what many feel is a last resort measure to prevent pregnancy. If the New Zealand Medical Association is right, and demand for sex testing and sex selective abortions exists in New Zealand then we as a society need to ask whether the sex of the fetus is a good enough legal and moral reason to abort. The following is an examination of the arguments for and against using abortion as a means of selecting the sex of children. In the first part of the paper arguments focusing on consequences and arguments based on other ethical principles are considered and assessed. In the second part the legality of such abortions under New Zealand law is analysed.

**How Reasons are Often Determinative of Legal and Moral Rightness**

Prenatal diagnostic techniques allow fetal sex identification at 16 weeks gestation by amniocentesis and at around

8 weeks by chorionic villus sampling — a test checking chromosomal abnormalities that, like amniocentesis, is also able to accurately identify the sex of the fetus (Morgan, 1988, p355). There seem to be two main reasons why a woman or a couple would want to use prenatal diagnosis and abortion to select the sex of their child. The first, and less controversial, reason may be to avoid the birth of a child with sex linked diseases such as haemophilia or Duchenne muscular dystrophy (Morgan, 1988, p356). The second reason for sex selective abortion is to eliminate a fetus of the 'wrong' sex — for instance the abortion of a male fetus by a woman who wants to have a daughter. It is with this second use of sex identification and abortion that I am concerned, although I do note that abortions performed for the first mentioned 'therapeutic' reason are not without their critics (see for instance Harris, 1985). It seems that the reason behind a request for an abortion is relevant in deciding the moral rightness of the measure. Why is it then that only some reasons to abort are considered adequate?

*The Relevance of Reasons*

When a woman has an abortion there are people who do not care why the woman chose to have the abortion, and there are those who must know why *before* they can judge the rightness of the decision. For people totally opposed to abortion, no reason is enough to justify the measure. Similarly, for those favouring abortion on demand, no reason is necessary - the sole issue is the wishes of the pregnant woman. Reasons, to the parties at the extreme edges of the abortion debate, are irrelevant. But for everyone else, sitting somewhere between those who support a right to life position and those who support an absolute freedom of choice position, the reason for the abortion is the crucial factor in deciding whether the decision to abort is right or wrong. A satisfactory reason may be required by those who believe that abortions should sometimes be allowed, even if there is no agreement on whether (or when) the fetus is a

human being, or a person. To require a reason is to believe that the fetus is something worthy of protection from indiscriminate destruction, even if one cannot state the exact nature of this 'something' which is protected.

Whatever views individual New Zealanders may hold on the relevance of reasons to abortion decisions, adequate reasons are certainly required at law in this country. Under New Zealand law the fetus does not have an absolute right to life, but it may not be indiscriminately destroyed either — abortion on demand is not permitted. The reasons behind the request for an abortion determine its legality, and, it is proposed, its moral rightness. The position under New Zealand law will be more fully examined in the second part of this paper.

That the pregnancy is the result of rape or incest, or that the foetus has anencephaly, spina bifida or Down's syndrome, constitute for many people good enough reasons to justify performing an abortion. On the other hand, to borrow an example from Judith Jarvis Thompson, the abortion of a fetus of seven months' gestation so that the pregnant woman need not postpone her overseas trip will seem to many indecent (Thompson, 1971, p.747). Some reasons, we may say, are just not morally sufficient. So what are the reasons given for and against sex selection and are these reasons enough to justify abortion?

### Consequentialist Arguments For and Against Sex Selective Abortions

There are a number of reasons why a parent may wish to choose the sex of her child. Some reasons focus on the inherent 'worth' of a son over a daughter or vice versa, while others focus on reproductive rights and individual choice in family composition. Whether abortion is a morally acceptable method of exercising reproductive choice may depend on how one weighs the positive effect on couples of being able to control the composition of their families, against the negative effect sex selective abortions may have on sex ratios in society and on gender equality. Much academic discussion of sex selection focuses on the positive and negative consequences of allowing such abortions, while other arguments appeal to ethical principles for their own sake. Arguments from consequences are assessed below.

### *Sex Selection Makes Parents and Children Happy*

In her book *Gendercide* Mary Anne Warren canvassed some of the possible benefits of sex selection, which she suggested could include increasing the happiness of parents and children. By practising sex selection parents can control not only the number and spacing, but also the sex of their children. Thus parents can satisfy their individual preferences and conform to any social pressure to produce a family with a particular gender composition.

According to such a utilitarian analysis, the happiness of the children themselves should also be increased as they will be 'wanted' children, both in terms of their sex and their very existence (Warren, 1985, pp.172-175).<sup>1</sup> Children born to parents who have consciously chosen to have a child of a particular sex ought to stand a better chance of being properly cared for and loved. In addition, when parents ensure that their family contains a child of each sex they can help their children 'to respect sex-based differences and to learn fairness to the opposite sex by practising it at home' (Wertz and Fletcher, 1989, p.23). Parents can therefore raise their children to have a good understanding of the opposite sex.

However, there is little to show that control over the sex of a child results in parental satisfaction with the person that child grows up to be. Parents who think that by selecting a son they will have an All Black or that by selecting a daughter they will have a child who loves to wear pink frilly dresses, seem doomed to disappointment. Intentionally having children of both sexes in order to teach tolerance seems commendable, until one realises that the very selection of sex through abortion is itself an act of intolerance. Wanting or loving a child solely because of their gender flies in the face of modern day conceptions of equality (see below).

### *Sex Selection Trivialises Prenatal Diagnosis and Abortion*

In addition to damaging sexual equality, sex selective abortion undermines the major moral reasons that justify most prenatal diagnoses and abortions. One of the main reasons for prenatal diagnosis is to prevent serious and untreatable disease in the fetus and to protect the life of the pregnant woman. As Wertz and Fletcher have said: 'Gender is not a disease. Prenatal diagnosis for a non-medical reason makes a mockery of medical ethics' (Wertz and Fletcher, 1989, p.24). To use prenatal diagnosis for the implementation of preferences, rather than to promote health is a perversion of this medical technique.

In a similar vein, it may be argued that allowing women to abort their 'wrong sex' fetuses threatens societal acceptance of abortion *per se*. Allowing abortions for what are seen by most people as trivial matters, such as sex, or by extension on account of height, eye colour or probable IQ, may trivialise the very real and distressing reasons which cause most women to choose to have an abortion. Access to abortion was a hard won right in New Zealand, and allowing abortion for unjustifiably discriminatory reasons could endanger women's access to abortion generally.

#### *Sons are Better*

Many consequentialist arguments assume that parents will choose to have sons and outline the negative consequences of such a preference. A preference for sons may be based on a desire to continue the family name, to have the son inherit family property where property descends through the male line (Morgan, 1988, p.356), or to protect the parents from economic hardship in their old age, as for example in some parts of India where daughters traditionally leave their parents after payment of a substantial dowry to live with their in-laws, while sons continue to live with and financially support their aging parents (Wertz and Fletcher, 1989, p.25). Parents in such a situation may want to use sex selective abortions to ensure that they have sons, and also to minimise the number of 'costly' daughters in their family.

However, these reasons ought not exist in New Zealand where a woman can easily carry on her family name herself and through her children. The inheritance laws of New Zealand do not give any preference to sons, thus allowing inheritance regardless of the heir's sex. Finally, the elderly in New Zealand are supported by a state funded pension (many also have private superannuation arrangements), and so need not rely on their sons alone for financial support.

#### *Sex Selection Would Result in a Gender Imbalance in Society*

If parents were to favour sons over daughters, as much academic discussion assumes, a gender imbalance in our society would result. Such a bias in favour of sons would appear to be the case in China and India (Morgan, 1988, p.355, Marie Claire, 2000, p.33, Williamson, 1983, pp.133-134, Wertz and Fletcher, 1989, p.25). However, a strong preference for male children has not been shown to exist in western countries, where, according to one study, couples view their ideal family as composed of one boy and one girl,

although it should be noted that there is evidence to suggest a secondary preference for boys if the parents were to have an odd number of children (Williamson, 1983, p.133).

If a pattern of sex selection were to emerge, it would change the ratio of men to women in society. In Korea male children are generally more desired than female children and it is thought that sex selection by abortion or at birth is practised (Morgan, 1988, p.358). A study of seven large hospitals in Seoul over 10 months in 1985 recorded the births of 8,307 boys and 7,582 girls, a ratio of 117 boys for every 100 girls (Morgan, 1988, p.358). This ratio should be contrasted with the internationally expected ratio of 106 male births for every 100 female births (Davis *et al.* (1998), p.1018). If the results of this study are indicative of a country wide sex ratio imbalance, many Korean men will not be able to marry or have families. In addition, in a society which has substantially more men than women, some commentators have predicted a rise in crime,<sup>2</sup> prostitution and homosexuality and less 'culture' and churchgoing (Powledge 1983, p.205).

#### *Sex Selection Could Curb Population Growth*

Creating a society with a gender imbalance could help curb population growth (Warren, 1985, p.166 and Powledge, 1983, p.203). If striving for children of a particular gender is a major cause of over population then sex selective abortions will lower the number of live births required to achieve the desired family composition.

Sex selection would have an especially pronounced effect in countries like India, where many couples try to have at least two sons; sex selection would halve the number of children the average couple need to produce in order to have two sons (Singer and Wells, 1984, p.170).

Also, if sex selection resulted in a sex ratio imbalance, population growth will be limited simply because there would be fewer heterosexual couples and, if present birth rates remain constant, therefore fewer births. While this reason may be important in countries with unsustainable population growth, it holds little weight in New Zealand which needs to use immigration to help it achieve its population targets.

*Sex Selection Will Lead to a Society Which Devalues Women*

It is conceivable that an initial son preference pattern which resulted in a shortage of women would, following a supply and demand model, lead to women being valued and later to a reversal of the son preference. The application of a market model to this non market driven area is questionable, both as to its accuracy and as to whether such a model is morally appropriate. If sons are valued inherently, regardless of whether they go on to find wives, then a shortage of women in itself will not necessarily result in women attaining added value.

In fact, there is no agreement on how an increase in the number of men would affect the status of women in society. One theory on this matter suggests that the results of a scarcity of women will depend on the intensity of male power which already exists in any given society:

Where men hold the balance of political and economic power, excluding women from direct participation, high sex ratios often make matters worse. Women are apt to be controlled by men and to have few rights of their own (Guttentag and Secord, 1983, p.29).

Therefore, the less patriarchal the society, the less women have to fear from any change in the sex ratio. On this basis, New Zealand women, whose last two Prime Ministers have been female, should have less to fear if men were to outnumber women than women in more traditional societies where the patriarchy is still extremely strong.

*Consequentialist Arguments are Hard to Prove*

The problem with the above consequentialist arguments is that many are based on an assumption about the kind of patterns which will emerge if sex selective abortions were legal, accepted as morally right and carried out on a large scale. There is no particular evidence to show that sex selective abortions would ever be widely practised in this country, or that allowing sex selection abortion in New Zealand would lead to any of the consequences outlined above. There are, however, reasons against allowing such abortions which are not based on assumptions about consequences.

**Arguments Which Focus on Autonomy, Freedom and Equality***Sex Selection Promotes Reproductive Freedom and the Right to Choose*

Perhaps the most convincing argument in favour of allowing sex selective abortion is made by those who see sex selection as a logical part of women's reproductive freedom (Robertson 1996, p.434 and Warren, 1985, pp.179-191). If a woman can choose when in her life to have children, should she not also be free to choose whether to have a boy or a girl? In many ways one's view on whether reproductive freedom should extend to abortion for the purposes of sex selection will depend on one's overall view on abortion. If abortion is solely a matter of the woman's wishes then abortion for sex selection must be tolerated along with abortion for any, or no, other reason. Abortion on demand does not allow an anti-sex selection caveat.

As New Zealand law does not permit abortion on demand, I wish to do no more than to point out that a major, and in my view the most convincing, argument in favour of sex selection is based on the asserted absolute right of women to abortions and the corresponding desire to avoid any measure which introduces limits on this right. Much American literature supports allowing sex selection precisely because to oppose it would be to curb a women's reproductive freedom (see for example McCullough and Chervenak, 1994, pp.210-211, Warren, 1985, p.190, Robertson, 1996, p.448). However, such arguments do not address the rightness of the sex selective abortion itself, but rather point to the negative consequences of enforcing what may otherwise be the morally correct response to the measure.

As will be explained below, New Zealand does not allow abortion on demand. There is no absolute right to protect and there is not an absolute right which would be harmed by enforcing a ban on abortions for unacceptable reasons. The fact that New Zealand law requires particular kinds of reasons means that doctors must legally refuse to perform abortions which are not supported by these particular reasons. In effect, the law requires doctors to take a stand against certain reasons for requesting an abortion. In the case of sex selection, doctors will generally be legally required to take such a stand against a reason which is morally repugnant.

*Sex Selection Harms Equality*

In its 1984 report on assisted reproduction England's Warnock Committee was concerned about the use of sex selection on a wide scale for a number of reasons, including the effect sex selection may have on the ratio of males to females in society, but also because of the negative view of women which a pattern of son selection could promote (Committee of Inquiry into Human Fertilisation and Embryology, 1984, p.51). Allowing parents to choose the sex of their children sends the message that sex matters. If a pattern of son preference emerges, then the practice says that male children are better than female children. Even where parents choose to have one boy and one girl, where they appear to be saying that they value both sexes, they have, in the case of any child whose sex was selected, said 'for this one child, sex matters and for this one child one sex is preferable to the other'.

In order to achieve true equality between the sexes, we should be encouraging people to see past sex, just as we encourage people to see past race, and to assess people based on their individual qualities rather than on random factors such as sex. Sex is not a relevant discriminating factor. All sex selection, even if carried out on a small scale, sends damaging messages about the relevance and importance of sex, and sees a fetus and the resultant child as a means to an end, rather than as something to be valued for its own individuality.

*Sex Selective Abortions Accept Cultural Diversity*

One troubling issue for those opposed to sex selective abortions is the claim that such opposition is merely a form of cultural paternalism. Is son preference (common in some cultures), like female genital mutilation, something so wrong that it is indefensible even if done for cultural reasons? Or are we in our condemnation seeing the world through western eyes and therefore unqualified to say what is right or wrong for another cultural group? Is gender preference on an individual, rather than a cultural level, like preferring chocolate ice-cream to strawberry ice-cream, or is such a preference an indication, as Grant Gillett asked of genital mutilation, that there is something wrong with you? (Gillett, 1997, p.244).

Much has been written about cultural relativism and this paper cannot do justice to the topic or the arguments which

it generates. I wish to do no more than to raise this issue and to point out that in the New Zealand context the general view of abortion and gender equality, the country's domestic laws on those issues and its international treaty and convention obligations indicate the climate in which sex selection for cultural reasons would be received. As Derek Morgan wrote:

The recognition of a multi-cultural ethnic plurality in a given society does not mean that the moral or legal codes of that society need to be moderated to accommodate cultural practices of which there is widespread revulsion (Morgan, 1988, p.359).

There is no argument against extreme cultural relativism, except to refuse outright to allow everything in the name of ethnic plurality. Some lines must be drawn in favour of more fundamental concepts, such as the prevention of physical cruelty in the case of female genital mutilation and the promotion of gender equality in the case of sex selective abortions.

As has been shown, there are consequentialist arguments on both sides of the sex selection debate. However, the two strongest arguments in the matter focus on the symbolic effect of prohibiting or allowing sex selective abortions. There is a convincing case for allowing such abortions in countries which have abortion on demand. However, this is not the case in New Zealand. If we are to enlarge the acceptable grounds for abortion to include sex we must justify this criterion on its own merits. But to allow discrimination based on sex introduces an irrelevant factor into the abortion decision.

If sex selective abortion is morally wrong as argued above, one may expect it also to be illegal. At least that is what Pippa MacKay of the New Zealand Medical Association believes. While in most cases she will be right, sex selective abortions are not inevitably illegal, as is illustrated below.

**The Law Covering Abortion in New Zealand**

The grounds for lawful abortion in New Zealand are exhaustively contained in section 187A of the Crimes Act 1961. Under section 187A(1) procuring an abortion (called a miscarriage in the section) before the fetus is of 20 weeks' gestation is unlawful unless the person doing the act believes:

- (a) that the continuance of the pregnancy would result in serious danger to the life, or to the physical or mental health of the woman, or
- (aa) that there is a substantial risk that the child would be so physically or mentally abnormal as to be seriously handicapped, or
- (b) that the pregnancy results from incest, or
- (c) that the pregnancy is the result of sexual violation, or
- (d) that the pregnant woman is severely subnormal.

Carrying out an abortion where the fetus is of more than 20 weeks' gestation is permitted where the person doing the act believes that it 'is necessary to save the life of the woman or girl or to prevent serious permanent injury to her physical or mental health'.<sup>3</sup> Inducing an abortion other than in accordance with section 187A of the Crimes Act 1961 is unlawful and constitutes an offence punishable by up to 14 years imprisonment.<sup>4</sup>

*But is the Law Followed in New Zealand?*

Of the 15,029 abortions carried out in New Zealand in 1998, 14,753 (98.2%) were on the basis of serious danger to mental health, as set out in section 187A(1)(a) above. It is commonly alleged that doctors in this country interpret the ground of serious danger to mental health extremely liberally, effectively providing abortion on demand. As the former Minister of Health, Bill English, said in an Assignment documentary on abortion in New Zealand: 'We have the paraphernalia of restricted abortion, but pretty much the reality of abortion on demand' (Assignment Documentary, 1998). Of the corresponding ground for abortion under English law, Lord Denning MR has said:

This has been interpreted by some medical practitioners so loosely that abortion has become obtainable virtually on demand. Whenever a woman has an unwanted pregnancy, there are doctors who will say it involves a risk to her mental health (Lord Denning MR in *Royal College of Nursing v DHSS* [1981] 1 All ER 545 at 554).

These statements suggest that reasons are not, in practice, as crucial to the authorisation of abortions in New Zealand, or in England under very similar legal conditions, as the law would indicate. Suffice to note that any doctor who does not

observe the requirements of 187A(1)(a) breaks the criminal law. If enough doctors ignore the legal requirements for abortion then the law ceases to have real meaning and doctors will be operating under their own self-made law.

Although doctors may in practice apply the requirements of the law very loosely, there is no evidence that they perform abortions for just any reason. As long as section 187A continues in force it may be supposed that medical practitioners faced with women requesting abortions on grounds that they consider highly immoral, for example because of the fetus's sex, will use section 187A to test these reasons against those required by law. That doctors allow some reasons that are not specified in section 187A does not necessarily mean that just any, or no reason will in practice suffice. But before assuming that doctors who perform such abortions are criminals, it is worth properly considering whether the sex of the fetus could ever be a legally sufficient reason to abort.

*Sex Selective Abortion May Often be Immoral, but it is not Inherently Illegal*

The sex of the fetus is not an explicit ground for an abortion under New Zealand law. Nevertheless, the sex of a fetus could under extreme circumstances cause a woman such distress that one of the section 187A grounds could be fulfilled. The fact that a she is carrying a fetus of a certain sex could create a real risk to her mental and/or physical health. Sex selective abortion in New Zealand is not necessarily illegal.<sup>5</sup>

*Section 187A(1)(aa).*

As discussed above, the sex of the fetus may indicate the possibility of serious abnormality, for which an abortion could be legally justifiable, although legal fulfilment of this criterion does not necessarily follow from mere identification of fetal abnormality.<sup>6</sup>

*Section 187A(1)(a):*

In considering the standard of danger required to satisfy section 187A(1)(a) the doctor is required to consider the severity of the injury which could be done to the woman's physical or mental health if the pregnancy were allowed to continue (*R v Woolnough* [1977] 2 NZLR 508, 5187 and 521). Let us, therefore, imagine two cases where pregnant women want to abort due to the sex of the fetus and assess

the severity of any injury which continuing the pregnancy would cause. The first case, I believe, shows sufficient danger of severe physical and mental harm to the woman if the pregnancy were allowed to continue. The second case does not.

Imagine a woman who belongs to a community that prizes sons. Imagine that this woman already has 5 daughters. Pregnant with a sixth female fetus, the woman seeks a termination. After the birth of her fifth daughter, her husband beat her and refused to be seen in public with her. He accused her of shaming him and bringing dishonour on his family name. If she has another daughter her husband has threatened to abandon her and their children. She fears further physical violence from her husband and exclusion from her family and social groups if she fails once again to produce a son. This woman could suffer serious danger to her life, or her physical or mental health if she does not terminate her pregnancy. She has satisfied the requirements of paragraph (a).<sup>8</sup>

By comparison, consider a woman who has one son and who has been trying for 3 years to have another child - she wants a daughter so that she can have a family consisting of one child of each sex. Finally pregnant, she has a prenatal test and discovers that her fetus is male. She requests an abortion intending to try again for a daughter. There is no known risk of danger to her life or to her physical health if her baby is a male, it is just that the birth of another boy would upset this woman's vision of an ideal family structure. Another son will not endanger this woman's mental health, other than to cause her a certain amount of disappointment. She is not under extreme social or family pressure. It is just that her preferences will not be fulfilled. The grounds for a legal abortion are not established.

Both women described above are under pressure, from society, family or themselves, to abort their fetuses. They both have reasons for their preferences. However, the first woman is under a great deal of pressure and is at risk of a great deal of harm if she cannot abort her fetus, while the second is free from coercion and danger. The first woman satisfies the degree of risk required by the law, the second woman does not.

Sex selective abortions will not invariably be in breach of section 187A of the Crimes Act.<sup>9</sup> In some cases a risk to

life, or physical or mental health may indeed be shown by the woman requesting the termination and the abortion will be lawful. However, in most cases the test set out in section 187A(1)(a) will not be met and an abortion for sex selection will be a criminal, as well as an immoral, act.

### Conclusion

Pregnant women in New Zealand today have access to medical procedures which can identify the sex of their fetuses at approximately 8 weeks into pregnancy. There is anecdotal evidence of women demanding these procedures to identify fetal sex and then terminating fetuses of undesired sex.

Sex selective abortion is not, as some people may assume, inherently illegal in this country. However, in most cases it will be inherently wrong. I have examined above many of the ethical arguments for and against sex selection by abortion. Arguments in favour of allowing sex selective abortions highlight the utilitarian value of the procedure to parents and children, and the importance of promoting a woman's reproductive freedom, her absolute right to seek an abortion regardless of her reasons. On the other side of the argument, many of the most shocking arguments against sex selection are based on the assumption that a pattern of son preference will emerge, which will in turn have negative consequences for society in general and for women in particular.

However, there are good arguments against sex selective abortions which do not rely on a pattern of son preference and which are compatible with New Zealand law. These arguments attack sex selection for its symbolism. Sex selection encourages discrimination based on sex — it says that being male or female matters and that sex is an appropriate factor to use when deciding whether to abort a fetus. However, sex is not a morally appropriate differentiating factor and allowing sex selective abortions will mean allowing abortions for trivial and unjustifiably discriminatory reasons, thus undermining the serious and strong reasons most women have for seeking the procedure.

In jurisdictions where abortion is available on demand, sex selective abortion, as with abortion for any reason, must be tolerated. In countries such as New Zealand, where abortion law requires evidence of risk to the woman if the pregnancy

were to continue, abortions due to fetal sex which are not accompanied by such risk, will be illegal. And in view of the negative effect such sex selection would have on gender equality, such abortions should also be regarded as immoral.

Notes

1. Similar arguments are put by Tabitha Powledge (Powledge, 1983, p.202-203).
2. This risk also concerns Mary Anne Warren who devotes a whole chapter of her book to considering the likelihood of a rise in crime in a society with more men than women. Warren eventually concludes that there is insufficient evidence of a correlation between the predominance of violence and a mainly male society (Warren, 1985, p.128).
3. Section 187A(3) of the Crimes Act 1961.
4. Section 183 of the Crimes Act 1961.
5. In this regard only paragraphs (a) and (aa) of section 187A(1) are relevant. I will not separately consider whether foetal sex could fulfil the criteria for section 187A(3). Any conclusion I reach on section 187A(1) will be applicable by analogy to the subsequent subsection 3 where the fetus is of more than 20 weeks' gestation. However, in order to fulfil section 187A(3) the risk of harm to the women will need to be far greater than is required by subsection 1 in order to justify such a late termination.
6. In the words of the 1977 Royal Commission of Inquiry into contraception, sterilisation and abortion in New Zealand, 'the risk that the child will have an abnormality when born must be more than a remote risk, and the abnormality from which it will suffer must be of a serious kind' (Royal Commission on Contraception, Sterilisation and Abortion, 1977, p.177).
7. This Court of Appeal decision was made before section 187A was inserted by the Crimes Amendment Act 1977. However, the direction of the trial judge, which was accepted as generally correct by the Court of Appeal judges, is very similar to the wording of section 187A(1)(a) and offers the only New Zealand case law guidance on the interpretation of the paragraph (Robertson, 1992, pp.11-77).
8. Derek Morgan has advanced a similar argument in relation to the English Abortion Act 1967. Considering a provision similar to section 187A(1)(a) of our Crimes Act, Morgan argues that anecdotal evidence of the circumstances surrounding some women's requests for termination due to fetal sex shows that 'for some women, the misery which awaits their lives following the birth of a girl, or another girl, into her family, is intolerable' (Morgan, 1988, p.357).
9. Compare this view to the view expressed by New Zealand Medical Association Chairwoman Pippa MacKay in The New Zealand Herald (8 April 2000, p.8) and Bernard Dickens (1986, p.143) that abortion on the ground of fetal sex would necessarily be illegal.

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