

# *Asian Journal of Comparative Law*

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*Volume 3, Issue 1*

2008

*Article 2*

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**Recommended Citation:**

Tan, Liang Ying (2008) "Changing Mindsets: How China's Abnormal Sex Ratio Is Turning Its Government into a Champion of Gender Equality," *Asian Journal of Comparative Law*: Vol. 3: Iss. 1, Article 2.

**DOI:** 10.2202/1932-0205.1039

# Changing Mindsets: How China's Abnormal Sex Ratio Is Turning Its Government into a Champion of Gender Equality

Liang Ying Tan

## Abstract

A combination of factors has led to an increasing imbalance in the sex ratio of China's population. China's sex ratio at birth is 119 boys per 100 girls, far above the global norm of 106. This paper will focus on the abnormal sex ratio as a consequence of traditional Chinese gender attitudes holding women inferior and subordinate to men, which have been brought to the fore by a combination of fertility decline and technological advancement. Accordingly, any solution to the demographic problem must address these prevalent, entrenched mind-sets. The government appears to realise that existing laws prohibiting sex-selective abortion and infanticide will fail to correct the sex ratio. This paper examines the trend in government responses towards efforts to address traditional gender attitudes and argues that the demographic crisis may have turned the Chinese government into an unlikely champion of gender equality.

**KEYWORDS:** socialist law, China, population and family planning policy, gender equality, gender attitudes, sex ratio, extra-legal incentives

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## I. INTRODUCTION

A combination of factors has led to an increasing imbalance in the sex ratio of China's population. Its immediate causes may be in dispute, with some attributing the abnormal sex ratio to the one-child policy and others arguing that "its status as a legal requirement may be largely irrelevant."<sup>1</sup> The proliferation of ultrasound technology, which has facilitated an increase in sex-selective abortions, can also explain the abnormal sex ratio only as a contributing factor. However, it is clear that the fundamental, most important cause of the abnormal sex ratio is traditional gender attitudes holding women inferior and subordinate to men. Accordingly, any solution to the demographic problem must address these prevalent, entrenched mind-sets. This paper examines the trend in government responses towards efforts to address these attitudes and argues that the demographic crisis may have turned the Chinese government into an unlikely champion of gender equality.

China's population policy, recently codified in the Population and Family Planning Law,<sup>2</sup> ("the Family Planning Law") is generally credited with achieving its primary goal of keeping the population in check. China recently celebrated the birth of its 1.3 billionth citizen,<sup>3</sup> whereas it is estimated the population would have surpassed 1.6 billion otherwise.<sup>4</sup> However, this success has come at heavy social and demographic prices, not all of which were fully anticipated.<sup>5</sup> The dilemma persists: "Chinese economists and environment researchers are usually more inclined to prefer a smaller population and rigid population policy, while demographers and sociologists are in favour of a more balanced population."<sup>6</sup> Despite the controversy and calls by Chinese academics to "mull [the] population

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<sup>1</sup> Yilin Nie & Robert J. Wyman, "The One-child Policy in Shanghai: Acceptance and Internalization" (2005) 31 *Population and Development Review* 313 at 314 [Nie].

<sup>2</sup> Population and Family Planning Law of the People's Republic of China of 2002, online: [http://english.gov.cn/laws/2005-10/11/content\\_75954.htm](http://english.gov.cn/laws/2005-10/11/content_75954.htm) [Family Planning Law]. Previously, the population policy was implemented by Communist Party of China directives and protocol. For a fascinating perspective on the concepts of population quantity and quality in China, see Ann S. Anagnost, "A Surfeit of Bodies: Population and the Rationality of the State in post-Mao China" in Faye D. Ginsburg & Rayna Rapp, eds., *Conceiving the New World Order: The Global Politics of Reproduction* (Berkeley: University of California Press, 1995) at 22.

<sup>3</sup> The baby boy was born in early January 2005. Jim Yardley "Now, China Puts More Value on Girls" *International Herald Tribune* (1 February 2005).

<sup>4</sup> *Ibid.*

<sup>5</sup> Chief among these consequences are an ageing population, an abnormal sex ratio at birth, and the unique social and cultural problems of a generation of only-children. See generally Xizhe Peng & Zhigang Guo, eds., *The Changing Population of China*, (USA: Blackwell, 2000).

<sup>6</sup> Xizhe Peng, "Is it Time to Change China's Population Policy?" (2004) 2 *China: An International Journal* 135 at 144 [Peng].

policy in a more scientific way and seek a proper resolution,”<sup>7</sup> the government is not making significant changes to the policy for the time being.<sup>8</sup>

This paper will focus on the abnormal sex ratio as a consequence of traditional Chinese gender attitudes, which have been brought to the fore by a combination of fertility decline and technological advancement. Given the magnitude of the abnormality, the government appears to realise that existing laws prohibiting sex-selective abortion and infanticide will fail to correct the sex ratio. Its responses indicate a move towards efforts to address the fundamental cause of the problem, gender attitudes. If successful in righting the sex ratio, the somewhat unexpected achievement of the government would be to effect gender equality in China.

Part II of this paper will explore the implications of the abnormal sex ratio and discuss its immediate and fundamental causes. Part III will analyse the government’s legal and extra-legal responses to the demographic problem, indicating a trend towards efforts to address its fundamental cause. Part IV will evaluate these governmental efforts on two levels: the practical difficulties of enforcement and theoretical issues. This paper concludes that the government has embarked on the path to success, but still has a long way to go.

## II. SETTING THE PROBLEM: CHINA’S ABNORMAL SEX RATIO

China’s sex ratio at birth is 119 boys per 100 girls, far above the global norm of 106.<sup>9</sup> The trend has been increasing since the 1980s,<sup>10</sup> corresponding to the proliferation of ultrasound technology and the decline in fertility.<sup>11</sup> Experts agree that misreporting has not caused significant inaccuracy in the sex ratio; the reality is that there are far fewer girls than boys.<sup>12</sup>

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<sup>7</sup> “China Focus: Family Planning Policy – a Controversial Topic in China” *Xinhua News Agency* (29 December 2005).

<sup>8</sup> “China says it has a population of 1.3 billion, and the government wants to make sure it is below 1.4 billion in 2010. Beijing leaders think any changes that would compromise this goal might threaten economic growth and stability.” “Researchers Urge China to Relax Its One-Child Family Planning Policy” *Voice of America News* (26 September 2005).

<sup>9</sup> “Jail for Those who Help Sex Selection” *China Daily* (26 December 2005).

<sup>10</sup> In 1982 the sex ratio was 107.5 boys for every 100 girls. Nicholas D. Kristof “The Chosen Sex – A special report; Chinese Turn to Ultrasound, Scorning Baby Girls for Boys” *The New York Times* (21 July 1993) [Kristof]. In 1985 the sex ratio was 108. “Researchers Say China’s Sex Ratio at Birth is Normal” *BBC summary of world broadcasts* (9 November 1985).

<sup>11</sup> Rachel Murphy, “Fertility and Distorted Sex Ratios in a Rural Chinese County: Culture, State, and Policy” (2003) 29 *Population and Development Review* 595 at 602 [Murphy].

<sup>12</sup> Peng, *supra* note 6 at 141. It has been argued that the sex ratio is inaccurate because many parents merely choose not to report their daughters rather than killing them, resulting in “missing girls” who actually exist but do not turn up on national censuses and records. Peng refutes this argument by comparing the sex ratios at birth and for children of different age groups. He argues

It must be noted that China's sex ratio is not uniform across provinces of varying economic and social circumstances. The sex ratio varies across urban and rural areas: in 1989, the reported sex ratio at birth was 109.9 in urban areas and 111.6 in rural areas.<sup>13</sup> As of 2000, Hainan province had a ratio of 135<sup>14</sup> and Jiangxi province recorded a ratio of 138,<sup>15</sup> while Shanghai municipality "maintained a normal sex ratio at birth of 106 boys per 100 girls, compared to the national rate of 117."<sup>16</sup> The reasons for this rural-urban variation relate to the very causes of China's abnormal sex ratio and may therefore illuminate possible solutions. These issues will be discussed in exploring the causes of the abnormal sex ratio.

### A. Consequences of the Abnormal Sex Ratio

The obvious consequence of the abnormal sex ratio is a worsening shortage of women in years to come, resulting in millions of Chinese men being unable to marry.<sup>17</sup> As of 2002, men already outnumbered women by close to 100 million.<sup>18</sup> While it might be thought that the scarcity of women relative to men would enhance their status at least in terms of choosing whom to marry, this has not been the case. Hudson explains that women cannot use their scarcity to improve their condition because their fates are determined by men.<sup>19</sup> Instead, women now face increased dangers of being kidnapped, with an increase in prostitution and woman-trafficking. It is estimated that tens of thousands of women aged 13-24 are abducted each year to be sold or traded as wives or prostitutes.<sup>20</sup> Hansel describes the worrying trend: the one-child policy has greatly exacerbated the chronic

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that if girl babies merely went unregistered, they would turn up in censuses for older age groups. However, the sex ratio does not change across age groups for children.

<sup>13</sup> China, State Statistical Bureau, "Tabulation on the 1990 Population Census of the People's Republic of China" (China: State Statistics Press, 1993) at 530-535, cited in Chu Junhong, "Prenatal Sex Determination and Sex-Selective Abortion in Rural Central China; Statistical Data Included" (2001) 27 *Population and Development Review* 259 at 262 [Chu].

<sup>14</sup> Peter Kammerer "Too Many Boys Means Trouble" *South China Morning Post* (8 August 2004) [Kammerer].

<sup>15</sup> Josephine Ma "Countering Skewed Sex Ratio a Priority, Warns Official" *South China Morning Post* (13 July 2004) [Ma].

<sup>16</sup> Nie, *supra* note 1 at 329.

<sup>17</sup> "Gender Disparity Needs Work" *China Daily* (19 March 2004). By 2020, there may be 30 to 40 million bachelors.

<sup>18</sup> Mary Hansel, "China's One-child Policy's Effects on Women and the Paradox of Persecution and Trafficking" (2002) 11 *S. Cal. Rev. L. & Women's Stud.* 369 at 383 [Hansel].

<sup>19</sup> David Glenn "A Dangerous Surplus of Sons?" *The Chronicle of Higher Education* (30 April 2004) quoting Valerie M. Hudson [Glenn].

<sup>20</sup> Hansel, *supra* note 18 at 384.

shortage of women throughout Chinese history, and China's giant population further magnifies the problem.<sup>21</sup>

However, Hansel suggests that the one-child policy "may also have a silver lining" apart from its clear negative effects. She sees three possibilities: the amelioration of women's conditions as China develops, a "Madonna" effect of reverence and respect for women as caretakers of the precious only child, and greater freedom to pursue employment and non-domestic interests with fewer children to raise. On the other hand, Peng writes that Chinese women have become "more vulnerable than before" as the "incompatibility between women's reproductive and productive roles has become more serious with the economic reforms in China and the establishment of a market economy in which efficiency, rather than equality, is becoming the major societal focus."<sup>22</sup>

Further, commentators warn that the sex imbalance will create social calamity. Single men are statistically more prone to violent crime than their female counterparts.<sup>23</sup> A surplus of single men may become "the raw material of rebellion in China" and contribute to "a more combustible society."<sup>24</sup> Prostitution is likely to increase as millions of young men, mostly poor, are unable to marry.<sup>25</sup> American political scientists Hudson and den Boer report "in 1999, the Chinese academy of social sciences admitted that the birth-sex ratio in that country had reached 120 boys for every 100 girls, and that the number of surplus Chinese males was now 111 million."<sup>26</sup> While their argument that "[t]he only way for countries to absorb the growing surfeit of young males... might be to amass huge armies and go to war to use up the excess men" may indeed be "nothing more than an imaginative worst-case scenario,"<sup>27</sup> it is difficult to completely dismiss

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<sup>21</sup> *Ibid.*

<sup>22</sup> Xizhe Peng, "Population Policy and Program in China: Challenge and Prospective" (2000) 35 *Tex. Int'l L.J.* 51 at 61. Similarly, Xiaoxian Gao argues that "rural modernization... [has created], to a varying extent, new problems for women" due in part to their low levels of education. Xiaoxian Gao, "China's Modernization and Changes in the Social Status of Rural Women" trans. by S. Katherine Campbell in Christina K Gilmartin *et al*, eds., *Engendering China* (Cambridge, Mass.: Harvard University Press, 1994) 80 at 95 [Gao].

<sup>23</sup> Hansel, *supra* note 18 at 384. See also Carl M. Cannon, "Too Spoiled, Too Male" *The National Journal* (6 August 2005) [Cannon].

<sup>24</sup> Hansel, *ibid.*

<sup>25</sup> Dudley L. Poston Jr. & Peter A. Morrison, "China: Bachelor Bomb" *International Herald Tribune* (15 September 2005) [Poston Jr.].

<sup>26</sup> Valerie M. Hudson & Andrea M. den Boer, *Bare Branches: Security Implications of Asia's Surplus Male Population* (Cambridge, Mass.: MIT Press, 2004). "Bare branches" (光棍) is the Chinese term referring to poor young men with no prospect of finding wives and starting families. James Harkin "Big Idea: A Bias Towards Boys is Unbalancing Asia" *The Guardian (London)* (14 January 2006) [Harkin]. See also Poston Jr., *supra* note 25.

<sup>27</sup> Harkin, *ibid.*

them as alarmists.<sup>28</sup> China is reportedly “already co-opting poor unmarried young men into the People's Liberation Army and the paramilitary People's Armed Police.”<sup>29</sup> Similarly, the government should not ignore warnings that the “impending surplus of unattached young men could be a driving force behind increased crime, explosive epidemics of HIV and other sexually transmitted diseases, and even international threats to the security of other nations.”<sup>30</sup>

In 1992 Sen “argued that sex selection both reflects and reinforces women’s low social status, which – beyond its intrinsic cruelty – impedes the development of democracy and prosperity in male-skewed nations.”<sup>31</sup> Since the sex ratio at birth started to skew in the 1980s,<sup>32</sup> these social and economic consequences are about to manifest as these “bare branches” enter adulthood.

## B. Causes of the Abnormal Sex Ratio

### 1. Traditional Gender Attitudes

As in many other Asian societies,<sup>33</sup> there is a traditional preference for sons in China.<sup>34</sup> Insofar as Confucian gender attitudes may have evolved over time and the Confucian tradition been mitigated by the government’s efforts to promote gender equality,<sup>35</sup> it might be simplistic to attribute son preference wholly to Confucianism. The traditional gender attitudes discussed here thus refer to persisting Confucian values coupled with economic and cultural factors. Sons are economically more valuable to their parents because of patrilineal<sup>36</sup> descent and

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<sup>28</sup> Hudson and den Boer argue that in the 1850s and 1860s, when there were 129 men for every 100 women in the Huaipai region of northern China, bands of young men unable to find women to marry staged a rebellion during a famine. Kammerer, *supra* note 14.

<sup>29</sup> Poston Jr., *supra* note 25.

<sup>30</sup> *Ibid.*

<sup>31</sup> Glenn, *supra* note 19. See also Amartya Sen, “Missing Women” (1992) 304 *British Medical Journal* 586.

<sup>32</sup> The sex ratio increased from 108.5 in 1981 to 111.9 in the first six months of 1990. See Chu, *supra* note 13.

<sup>33</sup> See generally Monica Das Gupta et al, “Why is Son Preference So Persistent in East and South Asia? A Cross-country Study of China, India and the Republic of Korea” (2005) 40 *Journal of Development Studies* 153 [Das Gupta]; Baochang Gu and Krishna Roy, “Sex Ration at Birth in China, with Reference to Other Areas in East Asia: What We Know” (1995) 10(3) *Asia-Pacific Population Journal* 17 [Gu].

<sup>34</sup> *Ibid.*

<sup>35</sup> See Nie, *supra* note 1.

<sup>36</sup> “For all their other striking differences, Northern India, China, and South Korea have strong commonalities in their kinship system, which is rigidly patrilineal.... Patrilineality includes passing on the main productive assets through the male line, while women may be given some movable goods in the form of dowry or inheritance....Patrilocality involves a couple residing at the man’s home, which goes hand in hand with inheritance – especially in peasant societies where land is the

inheritance. They are seen as social security for elderly parents.<sup>37</sup> In contrast, a daughter is “generally seen as costing more to her parents than they would ever get back from her”<sup>38</sup> because she would marry out of her own family, working and caring for her husband’s relatives.<sup>39</sup> This remains the case in rural China, where the majority of the population lives.<sup>40</sup> The rigidity of the patrilineal kinship system<sup>41</sup> has persisted despite the “government advocat[ing] men moving to their wives’ homes at marriage”<sup>42</sup> since the early 1990s.<sup>43</sup> This may be explained by the organisation of rural villages by surname lineage.<sup>44</sup> “Peasants see women who move in to marry as conceptually of their own lineage, and all their descendants are welcomed as part of the lineage...[in contrast, women do not] have the privilege of choosing to remain in their natal home, because their village will not be willing to distribute any land or residence to their husbands and children.”<sup>45</sup> Strict exogamy dictates that wives marry into the clan from outside, and daughters marry out permanently. It is therefore also “difficult... for a woman in rural China to return to live with her parents once she has been married and her land entitlement reallocated among village residents.”<sup>46</sup>

Culturally, men in general have higher status than women in Confucian, patriarchal Chinese society. They also perform ancestral rites and carry on the family name. In a genealogical record or in an ancestor worship hall: “one can literally see each generation of men, and the generations of men to whom they gave rise. Women are recorded, if at all, only in the capacity of the wives of the men who gave rise to succeeding generations of men.”<sup>47</sup> Daughters therefore are not perceived to continue the family line at all, though they clearly do in terms of

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main productive asset that is inherited.” Das Gupta, *supra* note 33 at 160.

<sup>37</sup> Murphy, *supra* note 11.

<sup>38</sup> Judith Banister, “Shortage of Girls in China Today” (2004) 21 *Journal of Population Research* 19 at 22.

<sup>39</sup> Das Gupta, *supra* note 33.

<sup>40</sup> Chu, *supra* note 13.

<sup>41</sup> Das Gupta, *supra* note 33.

<sup>42</sup> Gao, *supra* note 22 at 95.

<sup>43</sup> To this end also, paragraph 20 of the Decision of the Standing Committee of the National People’s Congress about Amending the Law on the Protection of the Rights and Interests of Women (2005) amends the Law to add Article 33 which provides:

No organization or individual may trespass upon a woman’s rights and interests in the rural collective economic organization on the ground that she hasn’t got married, is married, is divorced or has lost her spouse.

If the husband settles in the domicile of the wife because of marriage, the husband and the children of the couple shall enjoy the same rights and interests as the members of the local rural collective economic organization do.

<sup>44</sup> Gao, *supra* note 22 at 95.

<sup>45</sup> *Ibid.*

<sup>46</sup> Das Gupta, *supra* note 33.

<sup>47</sup> *Ibid.*

genetics. Das Gupta et al put it starkly: “Thus it is that only men constitute the social order, and women are the means whereby men reproduce themselves.”<sup>48</sup>

With the lower cultural and economic status of women, this results in a vicious circle of sex inequality. The knowledge that women are of lower economic and social status strengthens the desire for sons because they will be more successful in the workforce and thus better able to provide financially for their parents. Also, couples might perceive that it is in the child’s best interests to be born a boy in such a society, since a girl would likely have fewer opportunities and face subordination. The normal sex ratios in metropolitan areas such as Beijing and Shanghai, where the economy is driven by secondary and tertiary industries rather than primary industries such as agriculture, may suggest that economic factors are most responsible for son preference. On the other hand, the experience of South Korea suggests “a greater association of high sex ratio with the cultural setting of strong son preference rather than the size of the city.”<sup>49</sup> The relative absence of son preference in metropolitan areas may be attributed in part to non-patrilineal family structure<sup>50</sup> and the equal valuing of daughters and sons as a result. However, this valuing is not purely economic, but also cultural and psychological. As experts at the International Symposium on Issues Related to Sex Preference for Children in the Rapidly Changing Demographic Dynamics in Asia (“International Symposium on Sex Preference”) observed:

Taiwan and South Korea are some of the most developed places in Asia, yet sex-selective abortion is very widespread.... Iqbal Alam argued that economic development is not the solution. Rather, changes in cultural norms are required. This observation is supported by evidence that in South Korea, parents want boys primarily not for economic reasons but for emotional (prestige, family harmony) and traditional (family lineage) reasons.<sup>51</sup>

The prevalence of such present-day social attitudes is not alone in perpetuating sex inequality; the population policy, in particular, interacts with these attitudes to worsen the situation for girls and women. Murphy argues that “population policies introduce new sources of inequality into local culture, while, conversely, gender inequalities embedded in culture influence population policy and practice, generating a two-way process that continually reinforces distortions in sex

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<sup>48</sup> *Ibid.*

<sup>49</sup> Gu, *supra* note 33 at 23.

<sup>50</sup> “[U]rban parents and their daughters can give each other much more financial, emotional and physical support. Sons-in-law also interact with them and can sometimes be called upon for assistance. Moreover, sons' employment may take them to a city other than that of their parents.” Das Gupta, *supra* note 33 at 177.

<sup>51</sup> Judith Banister, “Son Preference in Asia – Report of a Symposium,” (1994) online: U.S. Census Bureau <<http://www.census.gov/ipc/www/ebSpr96a.html>>. See Observation 6 [Banister].

ratios.”<sup>52</sup> For example, “male bias is embedded in all government institutions... including those responsible for birth planning work, and this contributes to the gendering of population policy and implementation.”<sup>53</sup> The exceptions to the population policy from the 1980s allowing couples to have a second child if the first was a girl<sup>54</sup> are an example of the possibly unwitting reinforcement of the belief that not only are sons preferable, but that daughters do not fully count as children at all. Economic factors, therefore, likely are not largely responsible for son preference. Furthermore, economic incentives may reify the perception that daughters are intrinsically less valuable to their families than sons.

Chu notes that where ultrasound technology is equally available, rural folk are more likely to use it for sex-selective abortion than urban dwellers.<sup>55</sup> This may be because people in cities are more educated and no longer subscribe to antiquated notions of the importance of having a son to carry on the family name, or because living in cities disrupts the traditional kinship system which perpetuates the preference for sons.<sup>56</sup> This suggests that the accessibility of ultrasound technology per se is not a cause of the abnormal sex ratio, nor is the population policy solely responsible; in fact rural inhabitants are more likely to be exempted from the strict one-child rule than urban residents.<sup>57</sup> Where people value daughters as much as sons, the sex ratio will remain largely balanced.<sup>58</sup>

Conversely, where gender discrimination is strong, a rigid population policy is not necessary to throw the sex ratio out of kilter. South Korea and India have abnormal sex ratios, despite the absence of any state-imposed limits on the number of children a couple may have.<sup>59</sup> Das Gupta et al argue that this is because the kinship system in these countries perpetuates the importance and preference for sons.<sup>60</sup> For example, in Confucian Korean society, where there is a hierarchy in the order of sons,<sup>61</sup> there is a greater desire for eldest sons to have sons themselves.<sup>62</sup>

The traditional gender attitudes of Confucian China thus remain very much entrenched especially in rural areas, and have been reinforced or at least left intact by the population policy. The examples of urban areas within China with normal sex ratios, as well as the abnormal sex ratios of South Korea, Taiwan and

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<sup>52</sup> Murphy, *supra* note 11 at 595.

<sup>53</sup> *Ibid.* at 599.

<sup>54</sup> *Ibid.*

<sup>55</sup> Chu, *supra* note 13.

<sup>56</sup> See text accompanying note 50, above.

<sup>57</sup> Peng, *supra* note 6.

<sup>58</sup> Nie, *supra* note 1.

<sup>59</sup> Das Gupta, *supra* note 33.

<sup>60</sup> *Ibid.*

<sup>61</sup> The eldest son has the most familial and ancestral responsibilities. *Ibid.*

<sup>62</sup> *Ibid.*

India where no population policy is in place, show that these attitudes are not only fundamental but also extremely significant as a cause of the abnormal sex ratio at birth.<sup>63</sup> An exploration of the immediate causes also points back to the importance of people's gender attitudes.

## 2. Immediate Causes

There is little consensus about the immediate causes of the abnormal sex ratio. Chu identifies four factors that make sex-selective abortion inevitable: a strong preference for sons, people's unwillingness to have more than two or three children, affordable modern technology for prenatal sex determination and the availability and acceptability of abortion as a means of birth control.<sup>64</sup> Of these four, the traditional preference for sons has been discussed above as a fundamental cause of the abnormal sex ratio. Fertility decline is another important factor: Gu and Roy characterise "the distorted sex ratio at birth [as] a new demographic phenomenon that accommodates both the parents' sex preference for children and the small-family norm."<sup>65</sup> Chu's framing of the limit on fertility as people "not want[ing] to have more than two or three children"<sup>66</sup> is interesting because it suggests that the population policy is not solely responsible for smaller family size. Economic concern may be more significant: people simply cannot afford to raise more than two or three children.<sup>67</sup>

There is some debate over the extent to which the decline in fertility should be attributed to the population policy or to other factors such as economic constraints.<sup>68</sup> It is plausible that the state-imposed decline in fertility from the 1980s has caused son preference to resurface, if this preference had been suppressed in the 1960s-70s, when the sex ratio was closer to the global norm.<sup>69</sup> Peng notes that there is "some correlation between the abnormal sex ratio at birth and the population program."<sup>70</sup> However, as of 1996 there had been no governmental recognition that the population policy was a primary cause of the

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<sup>63</sup> *Ibid.*; Gu, *supra* note 33 at 23.

<sup>64</sup> Chu, *supra* note 13.

<sup>65</sup> Gu, *supra* note 33 at 21.

<sup>66</sup> Chu, *supra* note 13.

<sup>67</sup> "In [Chu's] survey many women responded they no longer believe 'more children, more happiness,' primarily because of financial constraints. The rapid increase of school fees and living costs limits the number of children families can support... 'One son is fine, two sons are acceptable, but three sons will eat their parents.'" Chu, *supra* note 13.

<sup>68</sup> For example, Siri Tellier, the UN Population Fund's representative in Beijing, argues that the one-child policy is not entirely to blame, since imbalanced sex ratios "happen in many countries where there is no population policy at all." Ma, *supra* note 15.

<sup>69</sup> Gu, *supra* note 33 at 18-19.

<sup>70</sup> Peng, *supra* note 22.

high sex ratio.<sup>71</sup> In major cities like Shanghai, fertility decline may be a natural trend: Nie and Wyman argue that the “one-child policy seems to reflect Shanghainese current preferences; its status as a legal requirement may be largely irrelevant.”<sup>72</sup> However, this argument cannot be made for all parts of China given that the most pronounced imbalances in the sex ratio are to be found in rural areas.<sup>73</sup> Also, the sex ratio began to skew soon after the one-child policy was implemented in 1979.<sup>74</sup> It is highly unlikely that economic and other factors would combine to produce the same coercive limits on fertility that the one-child policy did. People who would have preferred to have several children are more likely to stop at one child out of fear of legal sanction than because of financial difficulties. This paper will thus assume a causal link between the one-child policy and the abnormal sex ratio without taking a position on its relative significance *vis-à-vis* other factors.<sup>75</sup> As an additional, coercive reason for fertility decline unique to China, the population policy may explain why in South Korea, where son preference seems similarly strong, the sex ratio is less skewed than in China.<sup>76</sup>

It may be concluded from this brief survey of the possible immediate causes that no one contributing factor is decisive. Fertility decline is in itself worth studying as an important social, economic and cultural phenomenon. However, it is less essential to the present discussion. As the International Symposium on Sex Preference found, “[i]n areas where there is little or no son preference, fertility decline does not bring it on. But where son preference existed alongside high or moderately high fertility, even a modest decline in fertility may exacerbate the existing discrimination against female babies, children, and now, foetuses.”<sup>77</sup> Therefore, the immediate causes of the abnormal sex ratio serve only to exacerbate the problem; the fundamental cause is still traditional gender attitudes.

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<sup>71</sup> Xiaorong Li, “Licence to Coerce: Violence against Women, State Responsibility, and Legal Failures in China’s Family Planning Programme” (1996) 8 *Yale J.L. & Feminism* 145 at 147. Li examines the denial of government responsibility for coercive measures against women and female infanticide and abandonment.

<sup>72</sup> Nie, *supra* note 1.

<sup>73</sup> Chu, *supra* note 13.

<sup>74</sup> *Ibid.*

<sup>75</sup> Guanghui Li, “Effects of the One-Child policy on the Number and Sex Composition of Children in China” University of Washington, The Center for Research on Families working paper (April 2002), online: <<http://smye2002.univ-paris1.fr>> [Li] concludes that “analysis on community level sex ratios shows that the One-Child policy is highly correlated with skewed sex ratios. Families with son preference correspond to a limited family size by manipulating the sex composition of their children.”

<sup>76</sup> Das Gupta, *supra* note 33.

<sup>77</sup> Banister, *supra* note 51.

### C. The Rising Prevalence of Sex-Selective Abortion

The use of ultrasound machines was popularised in the mid-1980s as a diagnostic healthcare tool,<sup>78</sup> for purposes such as monitoring pregnancy and checking IUD placement.<sup>79</sup> China manufactured its first ultrasound machine in 1979 and by the end of the 1980s it was making 10,000 annually and importing more than 2,000 each year.<sup>80</sup> In 1987, over 13,000 ultrasound machines were being used in hospitals, an average of six per county.<sup>81</sup> In 1989 alone 2,175 high-quality colour ultrasound machines were imported.<sup>82</sup> Ultrasound tests make it possible to visually determine the sex of the foetus as early as 16 weeks, allowing for sex-selective abortions from the second trimester.<sup>83</sup> With the rising prevalence of ultrasound technology, sex-selective abortion is a highly viable though indirect means of achieving the birth of a son. Ultrasound testing poses no risk of miscarriage and deformity unlike amniocentesis,<sup>84</sup> is relatively cheap and technologically uncomplicated and therefore quite readily available, and the prospect of abortion is much more easily accepted than infanticide or abandonment.<sup>85</sup>

The abnormal sex ratio is a demographic manifestation of people's efforts to have sons instead of daughters. These efforts have historically taken the form of female infanticide, abandonment and neglect.<sup>86</sup> While such acts have not completely ceased,<sup>87</sup> sex-selective abortion appears to be the primary means of exercising control over the sex of couples' progeny.<sup>88</sup> Most experts say infanticide is not widespread;<sup>89</sup> mere neglect also accounts for a higher mortality rate for young girls than young boys.<sup>90</sup> Chu cites the inland spread of the abnormal

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<sup>78</sup> *Ibid.*

<sup>79</sup> Chu, *supra* note 13.

<sup>80</sup> Kristof, *supra* note 10. According to this article, "one Chinese demographer estimates that 100,000 ultrasound scanners were in place around the country by 1990."

<sup>81</sup> Chu, *supra* note 13.

<sup>82</sup> *Ibid.*

<sup>83</sup> Banister, *supra* note 38.

<sup>84</sup> See e.g. Miranda Hitti, "Amniocentesis risk overrated?" *WebMD* (1 November 2006), online: <<http://www.webmd.com/content/article/129/117333.htm>>.

<sup>85</sup> According to Chu, *supra* note 13, citing Qiu, the Chinese "do not consider the fetus to be a living person; they believe instead that a person's life begins with a live birth."

<sup>86</sup> Banister, *supra* note 38.

<sup>87</sup> *Ibid.* Banister argues that sex-selective abortion is additional to, not substitutive of, infanticide, abandonment and neglect.

<sup>88</sup> Chu, *supra* note 13.

<sup>89</sup> Daniela Deane "The Little Emperors; a Generation of Spoiled Brats, a Tidal Wave of Abortions and Thousands of Missing Girls – These are Some of the Unintended Consequences of China's Revolutionary One-Child Policy" *Los Angeles Times* (26 July 1992).

<sup>90</sup> *Ibid.*, quoting Scruggs of the UN Population Fund who says neglect is a more common cause of early female mortality.

province-wide sex ratio at birth<sup>91</sup> and the continuous rise of the nation-wide sex ratio at birth<sup>92</sup> as “evidence of the rapid diffusion of prenatal sex determination technology.”<sup>93</sup>

The dramatic increase in sex-selective abortions has been attributed to a deadly combination of technological developments, people’s loss of procreative liberty and traditional attitudes.<sup>94</sup> However, the attitudes toward abortion and its role in the implementation of the family planning policy<sup>95</sup> have been largely overlooked. Abortion in China is not as controversial as in other countries such as the US, and arguably the widespread and government-sanctioned use of abortions as a family planning measure in implementing and enforcing the population policy<sup>96</sup> has contributed significantly to its persisting prevalence. There appears to be relatively little moral debate on the protection of the foetus’s right to life, at least outside academic circles.<sup>97</sup> Where women used to be coerced or “counselled” into having abortions if they became pregnant after already having had one child, they are now turning to abortion as the means of exercising control over the sex of their baby and, despite their qualms, many may abort several female fetuses in a row.<sup>98</sup> This paper argues that the government’s efforts should not focus on suppressing the use of technology, since ultrasound tests are important in prenatal care,<sup>99</sup> and attempts to regulate the use of readily available technology in a manner contrary to social norms are likely to fail. It may also be suggested that efforts to change social norms to dissuade people from engaging in sex-selective

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<sup>91</sup> Chu, *supra* note 13, reports that in 1986, coastal and central provinces had the highest sex ratios at birth; in 1989, more inland provinces began reporting higher than normal sex ratios at birth.

<sup>92</sup> *Ibid.*, Chu cites the increase from 111.3 in 1989 to 116.6 in 1995.

<sup>93</sup> *Ibid.*

<sup>94</sup> Banister, *supra* note 38.

<sup>95</sup> Marion Baillot “U.S., Groups hit China’s “One-Child” Policy” *The Washington Times* (24 December 2004), online: The Washington Times <<http://washingtontimes.com/world/20041223-093138-7992r.htm>>.

<sup>96</sup> “During an unauthorized pregnancy, often a woman is visited by family planning agents and pressured to terminate the pregnancy. There were credible reports that several women were forced to undergo abortions of unauthorized pregnancies in Fujian.” US Department of State, *China Country Report on Human Rights Practices for 1996*, February 1997, online: <[http://www.state.gov/www/global/human\\_rights/1996\\_hrp\\_report/china.html](http://www.state.gov/www/global/human_rights/1996_hrp_report/china.html)>.

<sup>97</sup> Ma, *supra* note 15, quoting Xie Zhenming, “it is not just about men not being able to find wives. It is about 30 million women losing their rights to live.”

<sup>98</sup> Chu, *supra* note 13, gives an eye-opening account of women’s perceptions of abortion: 92 percent of the women interviewed said it was not right to abort female fetuses, and only 18 percent of those acknowledging they had had sex-selective abortions said the practice itself was right, while 19 percent said it was fair to girls. However, the belief that sex-selective abortions represents unfair treatment of girls often did not withstand peer pressure, pressure from husbands or mothers-in-law, and the women’s own desperation for a son. The 820 women surveyed reported 301 induced abortions, 109 of which were acknowledged to be sex-selective.

<sup>99</sup> Banister, *supra* note 38, calls ultrasound technology a “valuable diagnostic tool in health care.”

abortion may introduce the discourse of a right to life in the context of gender equality, namely that female foetuses have as much right to be born as male foetuses, and should not be aborted for the sole reason that they are female.<sup>100</sup> This discourse would in turn introduce notions of equal rights for girls and women in society, expanding the government's efforts to correct the abnormal sex ratio beyond simply solving a demographic imbalance in isolation.

### III. RESPONSES TO THE ABNORMAL SEX RATIO

The need for immediate action has been recognised for more than two decades. As long ago as the Fifth Session of the National People's Congress in 1982, then-Premier Zhao Ziyang demanded that the courts deal harshly with those who murdered baby girls or harmed their mothers.<sup>101</sup> Zhao declared that the government must work to "change radically the feudal attitude of viewing sons as better than daughters, and regarding more sons as a sign of good fortune."<sup>102</sup>

The government has made both legal and extra-legal efforts at correcting the abnormal sex ratio. These measures are in turn a combination of sanctions, incentives and ideological campaigns. Their ultimate goal is to right the demographic sex imbalance, so as to prevent the social instability that a surplus of men will cause. The government's efforts are not directed to achieving gender equality for its own sake.<sup>103</sup> These measures are aimed at improving the opportunities and status of women and girls, so as to eradicate the preference for sons and encourage people to give birth and care for their children regardless of sex. While the intended beneficiaries of the government's efforts are female foetuses of the future, today's girls and women also stand to gain tremendously. It is fascinating that the problem of China's abnormal sex ratio has deconstructed the perception of gender equality as an abstract ideal in conventional discourse and posed it as simply the means to the end of demographic balance. As a result, gender equality is more attainable precisely because it is to be attained for the good of the entire country, including the Communist Party of China, and not just for the sake of oppressed women. In this remarkable coincidence of interests among the dominant and oppressed groups, the government's efforts manifest a

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<sup>100</sup> See text accompanying note 97, above.

<sup>101</sup> Cannon, *supra* note 23.

<sup>102</sup> *Ibid.*

<sup>103</sup> Despite the Chinese Communist Party's supposed commitment to gender equality (discussed briefly in Nie, *supra* note 1), as well as pronouncements such as Mao Zedong's "Women hold up half the sky," it is evident that the sexes are far from equal. The Care for Girls campaign is very much rooted in the implementation of population policy; its website is accessible from the National Population and Family Planning Commission's site, online at <<http://www.chinapop.gov.cn>>. The government's appears to be aimed at correcting the sex ratio rather than advocating gender equality as a general social ideal.

dramatic departure from the patriarchy and misogyny implicit in, if not synonymous with, Confucianism and the present Chinese social-political climate.

This part will analyse the government's attempts to address the abnormal sex ratio as a combination of (i) legal sanctions prohibiting discrimination against female fetuses, babies and women, and (ii) the extra-legal Care for Girls campaign.<sup>104</sup> The Care for Girls campaign is in turn analysed as (i) a combination of incentives or compensatory measures and (ii) efforts to change informal but entrenched social attitudes (ideology). As the Care for Girls campaign gathers momentum, there is a discernible trend in governmental efforts from punitive sanctions to increasingly ideological efforts. This supports the argument that the problem posed by the sex imbalance is compelling the government to become an unlikely champion of gender equality.

### **A. Sanctions: Prohibitions on Sex-selective Abortion**

The problem of prenatal sex selection was recognised in the 1980s,<sup>105</sup> prompting a string of attempts to prohibit it. In 1986 the Ministry of Health and the State Family Planning Commission jointly handed down to all provinces the Notice on Forbidding Prenatal Sex Determination, originally formulated by the Family Planning Commission and the Bureau of Health of Beijing Municipality.<sup>106</sup> This was followed by a May 1989 Ministry of Health emergency notice issued to all health administrative organisations and institutions enjoining all health institutions including private practitioners from performing prenatal sex determination except to diagnose hereditary diseases.<sup>107</sup> The notice was distributed to all family planning organisations and service stations by the State Family Planning Commission in 1990, and in 1993 the order forbidding prenatal sex determination was reiterated.<sup>108</sup>

The Regulation Prohibiting Foetal Sex Identification and Selective Termination of Pregnancy for Non-medical Reasons<sup>109</sup> was adopted at the Ninth Standing Committee of the Fifth Session of Shandong Provincial People's

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<sup>104</sup> 关爱女孩行动 Guan Ai Nǚhai Xingdong (Care for Girls campaign), online: <<http://www.chinapop.gov.cn/girl/index.htm>> [关爱女孩行动].

<sup>105</sup> Chu, *supra* note 13.

<sup>106</sup> *Ibid.*

<sup>107</sup> *Ibid.*

<sup>108</sup> *Ibid.*

<sup>109</sup> Regulation On Prohibiting Foetal Sex Identification and Selective Termination of Pregnancy for Non-medical Reasons, adopted at the Fifth Session of the Ninth Standing Committee of Shandong Provincial People's Congress on 21 November 1998, online: <[http://www.unescap.org/esid/psis/population/database/poplaws/law\\_china/ch\\_record021.htm](http://www.unescap.org/esid/psis/population/database/poplaws/law_china/ch_record021.htm)>. [Shandong Regulation].

Congress on November 21, 1998; similar regulations have been enacted across the nation.<sup>110</sup> Sex-selective abortions are allowed only if the foetus has a sex-specific hereditary disease, and a medical certificate issued upon diagnosis is required.<sup>111</sup>

Article 35 of the Family Planning Law<sup>112</sup> strictly prohibits the use of ultrasound technology or other technological means to identify the gender of a foetus for non-medical reasons, as well as “[the abortion of] a pregnancy based on the gender of a foetus without medical needs.” Article 36, which provides for the consequences<sup>113</sup> of violations of the Family Planning Law, classifies the identification and/or abortion of a foetus based on gender for non-medical reasons as a crime to “be investigated according to law.” These provisions show that the government has recognised that a problem exists, and is addressing it in principle. However, implementation is another matter. The Family Planning Law does not specify what penalties will follow the investigation of these crimes “according to law,” nor does it refer to provisions in other statutes such as the Criminal Law. A lack or inconsistency of enforcement is thus likely to undermine these legal pronouncements. This has been the case with prohibitions on female infanticide. Even though the Marriage Law<sup>114</sup> and Law on the Protection of the Rights and

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<sup>110</sup> See Chu, *supra* note 12 at 278. These include Liaoning Province’s “Regulation on Forbidding Prenatal Sex Selection” 27 May 1999; Hainan Province’s ban on prenatal sex determination 28 May 2000; Guangxi Zhuang Autonomous Region’s “Regulation on Forbidding Prenatal Sex Determination and Sex Selective Abortion” 1 October 2000; and a similar regulation passed in Anhui Province on 1 November 2000. Most recently, Henan province in central China “will institute a law to strictly supervise and control prenatal sex determination and sex-selective abortion.” This law will prohibit “prenatal sex determination or termination of pregnancy without approval of sanitary administrative authorities or population and family planning commissions.” Zhu Xiaojuan, “Henan to Legislate Against Prenatal Sex Determination” *China News* (7 April 2006), online: <<http://www.chinanews.cn/news/2005/2006-04-07/21357.html>>.

<sup>111</sup> See Shandong Regulation, *supra* note 109 at Articles 3-5.

<sup>112</sup> Family Planning Law, *supra* note 2.

<sup>113</sup> Article 36 provides that:

One who has committed any of the following acts in violation of this Law shall be ordered to make corrections or be given a warning by the administrative department of family planning or the administrative department of health, and the illegal gains shall be confiscated; where the illegal gains are not less than 10,000 yuan, a fine of not less than 2 times but not more than 6 times of the illegal gains shall be imposed; where there is no illegal gains or the illegal gains are less than 10,000 yuan, a fine of not less than 10,000 yuan but not more than 30,000 yuan shall be imposed; where the circumstances are serious, the original certificate-issuing organ shall revoke the practice certificate; where a crime is committed, the criminal acts shall be investigated according to law:

- 1) Illegally performing family planning operations for others;
- 2) Identifying the gender of a fetus or aborting the pregnancy based on gender by using ultrasound technology or other technologies for those without medical needs;
- 3) Performing false operations of birth control, using false medical identification or providing false family planning certificates.

<sup>114</sup> Under Article 21(4) of the Marriage Law of 1981, “It shall be forbidden to drown or desert infants or commit any other act of killing infants.”

Interests of Women<sup>115</sup> (“the Women’s Rights Protection Law”) both prohibit female infanticide, weak prosecution and enforcement undermine the laws.<sup>116</sup>

Peng notes that decentralised implementation and provincial autonomy are characteristic of the population policy.<sup>117</sup> In fact, the amendments to national laws often follow regulations that have already been enacted in the provinces.<sup>118</sup> The decentralisation is probably sensible given the different economic and social climates of each province and locality. However, the lack of uniformity may pose a problem when coupled with people’s increasing mobility: couples may escape regulation by giving birth or getting abortions in other provinces where they are likely to succeed undetected.

Xinhua News Agency reports that in early 2005, the 16<sup>th</sup> meeting of the Standing Committee of the 10th session of the National People’s Congress considered for the first time an amendment to the Women’s Rights Protection Law.<sup>119</sup> This amendment was proposed to fill a lacuna in the law by prohibiting the use of ultrasound and other technologies to determine the sex of a foetus or to conduct sex-selective abortions for non-medical reasons.<sup>120</sup> The proposed amendment provided for administrative punishment as decided by the relevant central and provincial health agencies and family planning commissions.<sup>121</sup> This amendment was reportedly proposed following recognition that an important reason for the persistence of sex-selective abortions has been the lack of relevant legislative sanctions and punishment.<sup>122</sup> The Women’s Rights Protection Law was subsequently amended on 28 August 2005, effective from 1 December 2005.<sup>123</sup>

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<sup>115</sup> Law on the Protection of Women’s Rights and Interests (1992), Article 38 provides that “Women’s right of life and health shall be inviolable. Drowning, abandoning or cruel infanticide in any manner of female babies shall be prohibited”.

<sup>116</sup> Hansel, *supra* note 18 at note 86, referring to Gendercide Watch, *Case Study: Female Infanticide*, March 14, 2001, online: Gendercide Watch <[http://www.gendercide.org/case\\_infanticide.html](http://www.gendercide.org/case_infanticide.html)>. Gendercide Watch reports that “In September 1997, the World Health Organization’s Regional Committee for the Western Pacific issued a report claiming that ‘more than 50 million women were estimated to be ‘missing’ in China because of the institutionalized killing and neglect of girls due to Beijing’s population control program that limits parents to one child.’”

<sup>117</sup> Peng, *supra* note 6.

<sup>118</sup> For example, the Women’s Rights Protection Law was amended in 2005, a few years after the enactment of provincial regulations. The proposed amendment to the Criminal Law was also considered only in 2005. The entire Family Planning Law came into effect only in 2002, four years after the Shandong Regulation was adopted.

<sup>119</sup> 禁止胎儿性别鉴定或选择性别的人工终止妊娠行为, 新华网, 2005年6月27日, (“Prohibition on pre-natal sex determination and induced termination of pregnancy” Xinhua News Agency 27 June 2005), online: <<http://www.china.org.cn/chinese/renkou/900146.htm>>.

<sup>120</sup> *Ibid.*

<sup>121</sup> *Ibid.*

<sup>122</sup> *Ibid.*

<sup>123</sup> Decision of the Standing Committee, *supra* note 43.

However, neither the amendment nor the Law itself addresses sex-selective abortion; it thus appears that the section concerning prenatal sex determination was left out of the amendment.<sup>124</sup>

In December 2005, the Standing Committee of the National People's Congress was reported to be considering an amendment to the Criminal Law that would punish those who assist others with foetal gender selection that leads to abortion, providing for the imposition of heavy fines and a three-year jail sentence.<sup>125</sup> However, the amendment has not been passed, and it is unlikely that it will be reconsidered.<sup>126</sup> Committee member Xing Chunying strongly opposed the amendment, arguing that the ultrasound technology is and should be available to pregnant women for purposes other than sex determination. Since the sex of the foetus can be made known to the couple by a wink or a smile, it would be practically impossible to enforce such an amendment to the Criminal Law, and its dignity would be undermined.<sup>127</sup> Committee member Wan Xuewen, arguing that determining the sex of the foetus should be sanctioned per se,<sup>128</sup> pointed out that since the proposed amendment only prohibits sex determination resulting in abortion, only half the people who use ultrasound technology to find out the sex of their unborn child would potentially be in violation of the law.<sup>129</sup>

The treatment of the proposed amendments to the Criminal Law and the Women's Rights Protection Law marks a change from government attitudes in 2004, when "China's vice-minister of the National Population and Family Planning Commission, Zhao Baige, announced... a tightening of measures she hoped would lead to a normal balance of newborn boys and girls by 2010."<sup>130</sup> The

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<sup>124</sup> *Ibid.* Paragraph 21 of the Decision comes closest to addressing the abnormal sex ratio:

Article 35 shall be changed into Article 38 and shall be amended as: "Women's right of life and health shall be inviolable. Drowning, abandoning or cruel infanticide in any manner of female babies shall be prohibited;" see Law on the Protection of Women's Rights and Interests, *supra* note 115.

<sup>125</sup> "Jail for Those who Help Sex Selection" *China Daily* (26 December 2005).

<sup>126</sup> 分组审议刑法修正案(六)草案时有委员提出刑事制裁鉴定胎儿性别有效性堪虞, 法制日报 2005 年 12 月 26 日, ("Committee members concerned about efficacy of proposed amendment to Criminal Law" Fazhi Ribao (Legal News Daily) 26 December 2005) online: <<http://www.npc.gov.cn/zgrdw/common/zw.jsp?label=WXZLK&id=343704&pdmc=110106>> [Legal News Daily].

<sup>127</sup> *Ibid.*

<sup>128</sup> *Ibid.* Article 35 of the Family Planning Law does sanction sex determination per se.

<sup>129</sup> *Ibid.*

<sup>130</sup> Kammerer, *supra* note 14, quoting Ms Zhao, "Illegal sex determination and sex-selective abortion must be strictly banned." In 2004 the National Family Planning Commission's state population and development research centre also called for increased disciplinary action against medical practitioners who perform sex-selective abortions, perceiving it to be more effective to regulate the medical industry than to penalize pregnant women who want to choose the sex of their children. Ma, *supra* note 15.

arguments presented by Xing and Wan suggest that the government has begun to realise that mere prohibitions on sex determination and sex-selective abortion will be ineffective<sup>131</sup> and perhaps also inappropriate in dealing with the demographic problem. However, as a matter of principle the prohibition on sex-selective abortion should perhaps have been added to the Women's Rights Protection Law because female foetuses have a right not to be discriminated against, just like women have a right to equal treatment in the workforce. The omission of this prohibition may lend some support to the argument that the government's efforts are purely motivated by the quest for a solution to the abnormal sex ratio, and not by a desire to effect true gender equality in China.

## **B. Extra-legal Measures: The Care for Girls Campaign**

The Care for Girls campaign, organised by the National Population and Family Planning Commission,<sup>132</sup> was implemented in 2003 and seeks to “improve the environment for girls’ survival and development”<sup>133</sup> by equalising the opportunities available to girls and promoting the view that girls are as valuable as boys. Its stated objectives are to eradicate sex discrimination and protect girls’ legal rights, and it is promoted as a central component of the population policy.<sup>134</sup> The Care for Girls campaign offers various incentives and attempts to address people’s gender attitudes, with a focus on rural areas where such attitudes are more prevalent. These measures will be discussed in a framework of incentives and ideological campaigns.

### *1. Incentives*

#### *(a) Pensions for Elderly Couples with One Child or Two Daughters*

In 2004, China implemented a test bonus policy in five pilot provinces and municipalities, as well as ten cities selected from other provinces.<sup>135</sup> Farmers like Li Guangren of Mengzhou city, Henan province, are eligible for an annual lifetime bonus of 600 yuan for following the state family planning policy.<sup>136</sup> The reward mechanism is expected to help resolve the imbalanced sex ratio by changing the traditional view that boys are responsible for supporting their

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<sup>131</sup> “Post-ban sex ratios show no change.” “Ultrasound Effects” *The Economist* (5 August 1995).

<sup>132</sup> 国家人口计生委宣教司 (Guojia Renkou Jisheng Weixuanjiaosi).

<sup>133</sup> “Care for Girls’ Gaining Momentum” *China Daily* (8 July 2004) [China Daily].

<sup>134</sup> 关爱女孩行动, *supra* note 104.

<sup>135</sup> “Reward Policy Targeting Population Control Welcomed by Chinese Farmers” *Xinhua General News Service* (4 June 2005).

<sup>136</sup> *Ibid.*

parents.<sup>137</sup> However, this approach may be problematic: clearly the state cannot support all families without sons. Yet if it does not extend such pensions to all eligible parents, the incentive effect of the policy will be greatly weakened.

In Fujian province, the government has also introduced a test program providing annual pensions of \$180 to about 300,000 rural elderly people who have only one child or only daughters.<sup>138</sup> This is an attempt to address the practical cause of the preference for sons: farm families want boys for labour; daughters marry out of the family and therefore cannot provide the social security that sons should.<sup>139</sup> These fiscal incentives “were intended to give monetary value to girls, and by doing so, to reduce the incentive to abort them.”<sup>140</sup>

However, the policy applies to couples with one son as well as those with no children, or one or two daughters. This policy thus appears to be a more generic incentive to keep in line with population policy, rather than directed specifically at encouraging couples to value daughters as much as sons. There is therefore no incentive for couples to refrain from ensuring that their only child is a boy through sex-selective abortion, since they would also be eligible for the reward-pension.

This problem is not present in the application in Henan province of the national “a new wind on marriage and family planning blows into ten thousand homes” campaign.<sup>141</sup> In Jincheng village, the village Party committee awarded 30 daughter-only families with an annual grant of 200 yuan in its grand inaugural ceremony on 7 April 2006.<sup>142</sup> However, it remains to be seen whether the grant will be awarded every year as promised, and whether the village’s resources can support such a policy if more daughter-only families are eligible each year.

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<sup>137</sup> *Ibid.*

<sup>138</sup> Jim Yardley “Fearing Future, China Starts to Give Girls their Due” *The New York Times* (31 January 2005) [Yardley].

<sup>139</sup> *Ibid.*

<sup>140</sup> *Ibid.*

<sup>141</sup> 2006 年全国婚育新风进万家活动. 河南: 女孩家庭放宽心 政府发给奖励金——博爱县金城乡“雨露计生”系列工程润泽计生女孩家庭, 2006 年 4 月 11 日 (“2006 National ‘a new wind on marriage and family planning blows into ten thousand homes’ campaign. Henan: daughters-only households receive government awards; families in Bo Ai province, Jincheng village encouraged to bring up daughters.” 11 April 2006) online: <<http://www.chinapop.gov.cn/rkxx/gdkx/t2006041058221.htm>>.

<sup>142</sup> *Ibid.*

*(b) Equalising Education Opportunities for Girls*

In Fujian province, where the sex ratio is an extreme 134,<sup>143</sup> the government has implemented a pilot program giving free tuition to female students from poor families and families with two girls.<sup>144</sup> However, the “limited scope of the program has reduced its impact”: Anxi is one of only 24 cities in China where girls are getting financial aid, and the budget is not expected to increase significantly.<sup>145</sup>

*2. Ideology: Changing Traditional Attitudes*

The government’s efforts at propagating “scientific” and “civilised” mindsets of equality between the sexes are direct and unsubtle. On the Care for Girls website,<sup>146</sup> which is linked to the main page of the National Population and Family Planning Commission,<sup>147</sup> news of the latest activities is given prominent attention and updated very promptly. Each article is liberally peppered with slogans that present a 180-degree turn from traditional attitudes. Slogans like “girls can also carry the family line”<sup>148</sup> directly challenge patrilineal mindsets. In Henan province, the Care for Girls campaign has been promoted in villages since 2005, with the proliferation of slogans such as “realise gender equality for social development progress”; “son or daughter, let nature take its course”; “daughters can also achieve success”; and “to love today’s girls is to be concerned about the future of the people.”<sup>149</sup>

In Tianjin municipality, the authorities have jointly issued a notice regarding improving wealth and nurturing the talent of girls in one-child

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<sup>143</sup> Yardley, *supra* note 138.

<sup>144</sup> *Ibid.*

<sup>145</sup> *Ibid.*

<sup>146</sup> The Care for Girls campaign website, *supra* note 134.

<sup>147</sup> The National Population and Family Planning Commission website, online: <<http://www.chinapop.gov.cn/>>.

<sup>148</sup> “女儿也是传后人” (Nǚer yeshi chuanhouren). See article on Jincheng village, *supra* note 141.

<sup>149</sup> Respectively, “实现男女平等，推动社会文明进步” (Shixian nan nǚ pingdeng, tuidong shehui wenming jinbu), “生男生女顺其自然” (Shengnan shengnǚ shunqi ziran), “女儿也能成才” (Nǚer yeneng chengcai), “关爱今天的女孩，就是关注民族的未来” (Guan ai jintian de nǚhai, jiushi guanzhu minzu de weilai). 河南：漯河市郾城区关爱女孩行动在流动人口中展开 2006年4月13日 (“Henan: Care for Girls campaign ongoing among mobile population in Leihe city Yancheng district” 13 April 2006), online: <[http://www.chinapop.gov.cn/rkxx/gdkx/t20060412\\_58318.htm](http://www.chinapop.gov.cn/rkxx/gdkx/t20060412_58318.htm)>.

families<sup>150</sup> ostensibly to persuade parents that it is not necessary to try for a son after having a daughter because she will have equal opportunities. 100 families fulfilling the conditions listed in the notice will be publicly conferred a plaque of recognition.<sup>151</sup> These conditions include being active proponents of the “scientific and civilised” notions of letting nature take its course as it is equally good to have a daughter or a son.<sup>152</sup> It will be interesting to observe the effects of such a policy: on the one hand the lack of financial reward may mean that families who receive recognition truly believe that daughters are as good as sons and are not motivated by money. On the other hand, a financial incentive might encourage more families to try to fulfil the conditions.

As one of the initiators of the Care for Girls campaign, Professor Zhu Chuzhu of Xi'an Jiaotong University has made substantial improvements to the living conditions of girls and increased women's awareness of their value and rights in Chaohu City where her team has carried out a pilot project since 2000.<sup>153</sup> Professor Zhu's projects include visiting families with daughters twice a year and giving the girls health checkups to ensure they are being treated well by their parents, empowering women economically by making small loans and teaching them income-generating farming and production technology, and raising self-awareness by giving lectures to change women's ideas about life and birth.<sup>154</sup> Such localised projects are essential to the attempts at correcting the sex ratio because they directly address the birth culture and humanise the government's policy. As a role model, Professor Zhu is the most effective advocate for equal treatment of daughters, “show[ing] that women can be successful in their career and have a higher social status.”<sup>155</sup> Her twice-yearly meetings also provide regular interaction and follow-up with families, making them more likely to commit to changing their mindsets about sons and daughters.

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<sup>150</sup>天津：蓟县在农村独女家庭开展创建“致富、育才双标兵”活动 2006年4月14日 (“Tianjin: Wealth and education promotion movement for single-daughter families in Ji county” (14 April 2006), online: <[http://www.chinapop.gov.cn/rkxx/gdkx/t20060413\\_58422.htm](http://www.chinapop.gov.cn/rkxx/gdkx/t20060413_58422.htm)>).

<sup>151</sup> *Ibid.*

<sup>152</sup> *Ibid.* This is translated from the phrase in the article: 积极倡导和落实男女平等、生男生女一样好、生男生女顺其自然等科学文明进步的新型生育观念 (Jiji changdao he luoshi nannü pingdeng, shengnan shengnǚ yiyanghao, shengnan shengnǚ shunqi ziran deng kexue wenming jinbu de xinxing shengyu guannian).

<sup>153</sup> China Daily, *supra* note 133.

<sup>154</sup> *Ibid.*

<sup>155</sup> *Ibid.*

#### IV. EVALUATION

The responses presented by the legal prohibitions on sex-selective abortion face practical enforcement difficulties and theoretical problems. The practical enforcement difficulties render the law largely ineffective in the short term and are largely due to the administrative challenge of implementing public policy in a country as vast as China. The theoretical problems with the government's approach are more fundamental and may prevent a real solution to the abnormal sex ratio if the supporting extra-legal efforts and movements fail to engage the people's self-interests and even reinforce existing gender attitudes.

##### A. Practical Enforcement Difficulties

Despite the numerous reiterations of the prohibition on sex-selective abortion and its almost exhaustive permutations as policy, regulation and law, the problem of enforcement has never been solved. As Chu notes, prenatal sex selection "is not easily subject to government regulation."<sup>156</sup>

The obstacles to effective enforcement are obvious: China is a huge country, and ultrasound machines are cheap to acquire and easy to operate.<sup>157</sup> Corruption is a big problem: many private clinics charge more than public clinics for ultrasound scans and include the extra service of letting the anxious parents-to-be know the sex of the fetus.<sup>158</sup> As Chu notes, higher-order pregnancies are more likely to result in sex-selective abortion as couples' desperation to have a son increases.<sup>159</sup> The clinicians are also apt to oblige out of sympathy, private connections or bribery, especially since they only need smile or frown without exchanging a word:<sup>160</sup> "sympathy or money often induces disclosure by township clinicians, despite the illegality of such disclosure."<sup>161</sup>

Both clinics providing ultrasound scans and parents-to-be thus have an interest in violating the prohibition on sex determination and sex-selective abortion. Private clinics and even individuals employed in public clinics stand to profit financially from couples desperate to know the sex of their unborn child.<sup>162</sup> Couples anxious for a son and unwilling to have a daughter are unlikely to obey the law if the perceived benefits of flouting it outweigh the perceived costs. As a result, the state has a difficult task enforcing the law against either party. One

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<sup>156</sup> Chu, *supra* note 13.

<sup>157</sup> See text accompanying note 169, below.

<sup>158</sup> Chu, *supra* note 13.

<sup>159</sup> *The Economist's* statistics support this. See *infra* note 179.

<sup>160</sup> Chu, *supra* note 13.

<sup>161</sup> Murphy, *supra* note 11.

<sup>162</sup> Chu, *supra* note 13.

difficulty is proving a violation of the law. As Xing points out, it is practically impossible to prove that clinics providing ultrasound tests have also facilitated sex-selective abortion by letting couples know the sex of the foetus.<sup>163</sup> A complete ban on ultrasound technology would not only probably be difficult to enforce, but also absurd, since ultrasound technology is important in monitoring pregnancy.<sup>164</sup> This results in the dilemma of how to regulate the use of ultrasound technology.

Part of this dilemma is on whom liability should be imposed. In 2004 the National Population and Family Planning Commission's State Population and Development Research Centre called for increased disciplinary action against medical practitioners who perform sex-selective abortions, perceiving it to be more effective to regulate the medical industry than to penalise pregnant women who want to choose the sex of their children.<sup>165</sup> It probably is more efficient to regulate the medical industry than to pursue each couple: clinics are less mobile than couples and thus easier to monitor; each clinic also has the means to facilitate numerous sex-selective abortions, whereas each couple is unlikely to engage in more than a few. It might also be easier to bring a case against a clinic: while a couple could cite various reasons for deciding to abort a foetus which turns out to be female, it would be harder for a clinic to point to coincidence if many of its patients abort female foetuses. However, the determination that it would be more effective to target medical practitioners does not go far toward solving the difficulties of enforcement.

A second problem is the weakness of the threat of sanction. National laws prohibiting sonograms for gender detection are known to be "spottily enforced"<sup>166</sup>: some clinics borrow licenses to conduct ultrasound tests and abortions,<sup>167</sup> while others solicit off-duty doctors from the hospitals.<sup>168</sup> Ultrasound machines are very cheap at 10,000 yuan, and one can learn to operate them in three to six months.<sup>169</sup> From 2003 to 2005, only 3,605 cases of illegal sex determination were investigated in China, with 2,409 persons involved punished and 978 ultrasound machines confiscated.<sup>170</sup> Given the prevalence of the practice of sex

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<sup>163</sup> See Part III, above.

<sup>164</sup> See Legal News Daily, *supra* note 126 and accompanying text on Xing's opposition to the proposed amendment.

<sup>165</sup> Ma, *supra* note 15.

<sup>166</sup> Howard W. French "Chinese Crack Down on Illegal Abortions; Local Laws Attempt to Stem Male Surfeit Resulting from Nation's One-child Policy" *International Herald Tribune* (18 February 2005).

<sup>167</sup> *Ibid.*

<sup>168</sup> *Ibid.*

<sup>169</sup> *Ibid.*

<sup>170</sup> "China Intends to Redress Sex Ratio Imbalance by Amending Criminal Law" *People's Daily Online* (12 January 2005), online: <[http://english.people.com.cn/200501/10/eng20050110\\_170200.html](http://english.people.com.cn/200501/10/eng20050110_170200.html)>.

determination,<sup>171</sup> it is unfeasible, if at all possible, to devote state resources to complete enforcement of the law. Enforcement against a minority of those in violation is unlikely to be effective since individuals know their risk of being punished is low. This does not mean that the government should make examples of the few violators who are caught by meting out excessive punishment. The deterrent effect might increase somewhat, but punishment perceived as disproportionate might undermine the legitimacy of law enforcement and related efforts to correct the abnormal sex ratio. More significantly, this would do nothing to change people's preference for sons.<sup>172</sup>

## **B. Theoretical Issues**

### *1. Theoretical Problems with Legal Sanctions*

Given the practical difficulties discussed above, the odds are clearly stacked against effective enforcement of the numerous prohibitions on sex-selective abortion.<sup>173</sup> Attempts to pursue more complete enforcement by coercion or a deterrent effect from harsher penalties are also unlikely to succeed because the laws all require public enforcement by government authorities. For example, in Shandong province the "effective measures" to safeguard the right to life of baby girls comprise a list of the usual prohibitions on prenatal sex-selective abortion and a resolution to deal harshly with the organisations and persons who facilitate sex-selective births.<sup>174</sup> The nature of public enforcement is such that the state as law-enforcer is pitted against the self interests of medical practitioners and couples who are consensually engaging in transactions (sex determination for an extra fee) for mutual benefit. Given the plethora of social issues competing for the state's limited resources, public enforcement is extremely difficult in such a scenario, as opposed to prosecution for crimes like murder, where at least the victim's family is likely to be cooperative in enforcement efforts. Since

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<sup>171</sup> Chu, *supra* note 13.

<sup>172</sup> See *infra*, discussion on theoretical issues.

<sup>173</sup> The government's attempts to curb infanticide have also been undermined by weak enforcement. See text accompanying note 116, above. Infanticide is prohibited under the Marriage Law, as amended in 2001. Paragraph 12 of the Decision on Amending the Marriage Law of 2001 provides that: Article 15 shall be changed into Article 21. Paragraph 4 shall be revised as: "It shall be forbidden to drown or desert infants or commit any other act of killing infants."

<sup>174</sup> 山东：宁阳县实施“七关爱、七推进”开展“关爱女孩 关爱母亲套餐行动” 2006年4月11日 (“Shandong: Ningyang county implements ‘Seven Care and Love, Seven Development’ in launching care for girls and mothers set meals campaign” 11 April 11 2006), online: <[http://www.chinapop.gov.cn/rkxx/gdkx/t20060410\\_58180.htm](http://www.chinapop.gov.cn/rkxx/gdkx/t20060410_58180.htm)>.

enforcement is effective only as far as the threat of sanction is real, these safeguards are not strong.

Instead, for the law to be effective the power of enforcement should lie with private parties whose interests the law protects, and who therefore have an interest in enforcing the law. In the context of couples choosing to have sons over daughters, there is clearly no private party in such a position: the net private benefit to couples of having a son far outweighs the net social benefit.<sup>175</sup> Since the only private beneficiaries of the law are the aborted female foetuses, the state is left with the uphill task of enforcing the law on their behalf. However, this analysis suggests that a solution might be to create private causes of action for non-governmental organisations such as women's rights groups to sue those who facilitate sex-selective abortion.<sup>176</sup> Damages awarded in successful lawsuits should then go to funding projects such as Professor Zhu's. Unfortunately this innovation would still be subject to the practical difficulties of proving responsibility for or complicity in sex-selective abortion, since ultrasound technology can not and should not be banned.

The sanctions also fail to deal with the root of the problem i.e. entrenched gender attitudes. In the 1980s, following increases in female infanticide and abandonment in rural areas, many provincial governments created exceptions to the strict one-child policy to allow couples to have a second child if their first was a girl,<sup>177</sup> so that they did not have to hide, abandon or kill their daughters in an attempt to try legally for a son.<sup>178</sup> However, this exception did nothing to correct discriminatory attitudes toward girls, and appears to have backfired as far as it was intended to reduce the imbalance in the sex ratio. What would couples desperate for a son do after giving birth to a second daughter? The *Economist* reports that "most of the lost girls would have been second or third children, in

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<sup>175</sup> For example, couples perceive the private benefit of having a son to be financial security in their old age. Social benefit is probably negative since the sex ratio at birth is already alarmingly skewed, and the costs to society of the abnormal sex ratio may include increased crime and other social and economic consequences. See *supra* note 26, discussion on "bare branches" in part II. To illustrate, a couple desperate for a son to carry on the family name and support them in old age is unlikely to refrain from sex-selective abortion just because they are slightly more likely to be victims of crime in 2020.

<sup>176</sup> An example is the All-China Women's Federation. According to a government White Paper on the Situation of Chinese Women, "[m]ore than 5,800 mass women's organizations in China undertake to report women's views and their problems to the authorities and make suggestions on how to solve them." China Development Gateway, *Section VII Organizational Guarantees of the Rights and Interests of Chinese Women, White Paper on the Situation of Chinese Women*, online: <<http://www.china.org.cn/e-white/chinesewoman/11-7.htm>>. However, there is no indication at present that women's rights groups have legal standing to bring actions for violations of the Family Planning Law.

<sup>177</sup> Li, *supra* note 71.

<sup>178</sup> *Ibid.*

families that already had at least one girl. A count of births in Chinese hospitals found that, for first babies, the ratio of boys to girls was a predictable [normal] 105.6, but where a mother already had one girl it was 149.4 and where she had two, it rose to an amazing 224.9.”<sup>179</sup> Another example of ideological ambivalence in the law is Article 22 of the Family Planning Law, which prohibits the discrimination or maltreatment of women who bear female babies, or “of the women who are incapable of bearing.” This provision clearly acknowledges the preference for sons and the reality of sex discrimination: bearing a daughter is as undesirable as being completely infertile. With particular regard to sex-selective abortion, the legal prohibitions simply dictate that couples must accept their child regardless of sex. The prohibitions do not challenge or even consider the underlying assumption that it is preferable to have a son.

Superficial stop-gap measures to curtail individual couples’ liberty to choose the sex of their offspring are therefore bound to fail because of the impossibility of a sufficient degree of enforcement of the laws, as well as a failure to address gender attitudes. Technology is advancing with such speed that people will be able to find new ways to circumvent the law if they are determined to have a son. What would happen if couples could choose the sex of their child pre-implantation, or even pre-conception?<sup>180</sup> Couples would be able to ensure that their first pregnancy would produce a son, and new regulatory dilemmas would arise.

## *2. Theoretical Problems with the Care for Girls Campaign*

Fortunately, the government’s recent and current efforts have come closer to addressing the fundamental causes of the abnormal sex ratio. The Care for Girls campaign appears to be enjoying some degree of success: in a village in Yaomiao town, Anhui province, “75 percent of the families have expressed a desire to have only one child, regardless of the baby’s sex,”<sup>181</sup> attributing the change in attitude in part to the Care for Girls program which includes “lectures to grandparents on gender equality to help them give up bias against girls.”<sup>182</sup>

However, the Care for Girls campaign may also be critiqued in terms of its ideology. In particular, the government’s concerted efforts specific to “daughters-only households” may unwittingly attach a stigma on such families and perpetuate the perception that it is indeed a form of hardship to only have daughters.<sup>183</sup> Such

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<sup>179</sup> “The Lost Girls” *The Economist* (18 September 1993) [The Economist].

<sup>180</sup> Hansel, *supra* note 18 at 388, discussing the Microsort example in Japan.

<sup>181</sup> China Daily, *supra* note 133.

<sup>182</sup> *Ibid.*

<sup>183</sup> Murphy, *supra* note 11.

a signal would undermine the promotion of gender equality by reinforcing the perception that couples who do not have sons are disadvantaged.<sup>184</sup>

It is therefore insufficient to simply provide state compensation for a lack of sons by “expand[ing] welfare programmes so poor couples rely less on producing a son to care for them in their old age.”<sup>185</sup> As discussed above,<sup>186</sup> the incentives may become a burden on state resources if they are to be effective. They also tacitly affirm the perception that parents without sons are disadvantaged to the point of needing compensation or assistance. Efforts to dispel the myth that sons are more filial than daughters and can ensure their parents’ well being might go further to addressing traditional attitudes and making people’s perception of the value of sons more realistic. Perhaps the government should support localised women’s interest groups such as Professor Zhu’s rather than hand out monetary incentives to daughters-only households. It is difficult to quantify people’s preference for sons such that monetary incentives will be efficient: people’s desire for sons varies, so some couples will receive more than necessary, while others will hardly be persuaded. Thus funding efforts such as Professor Zhu’s will be a more efficient allocation of government resources, because these efforts have a more holistic approach: they directly address gender attitudes and empower women by imparting skills.<sup>187</sup>

There are strong arguments that the abnormal sex ratio was less an underestimated consequence of the one-child policy (and other socio-economic factors contributing to fertility decline) than a necessary evil ignored because of the government’s misogynistic attitudes and the lack of outrage or concern that 30 million women would lose their right to live.<sup>188</sup> Hansel argues that the “lack of foresight” in failing to recognise the “potential for such misogyny [as women trafficking, for example]... seems unlikely in light of China’s historical preference for sons. It is therefore safe to assume that they predicted these effects, and nevertheless decided they were necessary evils... the policy would never have been promulgated in the first place without the prior subordination of women. Women had to have been seen already as secondary citizens for the government to decide to risk their lives so recklessly.”<sup>189</sup> Similarly, Li argues that “incoherence in the state policy has exacerbated clashes between tradition and the birth-control policy and has evoked social violence against women and children... [D]iscriminatory and/or coercive methods are straightforwardly prescribed in

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<sup>184</sup> See Part III.B.1 above, discussion and critique of incentives.

<sup>185</sup> Jonathan Watts “China Offers Parents Cash Incentives to Produce More Girls: Beijing Forced to Tackle Effects of One-child Policy” *The Guardian (London)* (16 July 2004).

<sup>186</sup> See Part III.B.1.i above, discussion on incentives such as the pensions awarded in Mengzhou city, Henan province.

<sup>187</sup> See Part III, above, *supra* notes 153-155.

<sup>188</sup> See text accompanying note 97, above.

<sup>189</sup> Hansel, *supra* note 18 at 377.

provincial family-planning regulations. Considering the centre's strong effort to control the provinces, it is implausible that these regulations are hidden from, or enforced in defiance of, the central authorities.<sup>190</sup> Furthermore, there is a lack of specific statutes to punish officials who abuse the rights of women and girls, as well as substantial prosecutorial laxness in applying the criminal code toward offences related to the family planning policy.<sup>191</sup>

On this level, the Care for Girls campaign does not fully tackle gender discrimination because it fails to address the fundamental patrilineal structure of Chinese families.<sup>192</sup> By improving educational and employment opportunities, women can become economically productive.<sup>193</sup> However, because they marry out of the family, they will be useful to their husband's family, not their own parents.<sup>194</sup> This creates a gap between the status of girls and women, with girls still possibly perceived worthless or even a burden. "Daughters, destined to marry, can bring no benefit to their natal families, whereas a son, aside from having his own land, will also bring in another portion when he takes a wife."<sup>195</sup> Parents with a daughter and a son therefore have no incentive to invest as much in their daughters' well-being and education as in their sons' since only the latter will remain to look after them. On the other hand, the scholarship opportunities<sup>196</sup> and localised efforts such as those undertaken by Professor Zhu<sup>197</sup> mean that parents do not have to invest as much if the state and other organisations take on responsibilities for girls' education. Therefore, such efforts do contribute meaningfully to improving girls' status. Nevertheless, while an improvement in the status of women can only be a good thing, it is crucial to address girls' status in their own families if they are to be born at all.

More importantly, the family structure should be reformed to make daughters as valuable to their parents as sons.<sup>198</sup> Article 33 of the Women's Rights Protection Law provides for equal treatment where a husband settles in the domicile of his wife.<sup>199</sup> However, for this provision to be meaningful the government must build upon this formal, legal equality with awareness campaigns to adjust people's attitudes.<sup>200</sup>

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<sup>190</sup> Li, *supra* note 71.

<sup>191</sup> *Ibid.*

<sup>192</sup> Das Gupta, *supra* note 33.

<sup>193</sup> Professor Zhu's project is an example. See text accompanying note 153, above.

<sup>194</sup> Chu, *supra* note 13.

<sup>195</sup> Gao, *supra* note 22.

<sup>196</sup> See text accompanying note 144, above.

<sup>197</sup> See *supra* note 153 and accompanying text.

<sup>198</sup> Das Gupta, *supra* note 33.

<sup>199</sup> See *supra* note 43 and accompanying text.

<sup>200</sup> Gao, *supra* note 22, discusses discrimination against men who settle in their wives' domicile.

The root cause of the problem is son preference perpetuated by society, in particular the kinship system.<sup>201</sup> The one-child policy served to perpetuate this chauvinism.<sup>202</sup> The government's attempts to curb sex-selective abortion have done nothing to challenge such beliefs.<sup>203</sup> Even the Care for Girls campaign may also suffer to some extent from the defect of operating within the system of patriarchy. Without addressing the kinship system, gender attitudes cannot be changed simply by hanging huge banners proclaiming various egalitarian slogans. It appears that the Chinese government's attempts at present fall short of a full commitment to effecting gender equality.<sup>204</sup> To be sure, few if any other governments have achieved this, despite various feminist movements among the populace. However, whether the abnormal sex ratio may still be corrected despite these defects remains to be seen.

## V. CONCLUSION

China's government has been "reasonably candid"<sup>205</sup> about the common practice of sex-selective abortion, and appears to be addressing the discriminatory attitudes which lie at the root of the problem, on top of attempting to control its superficial manifestation by banning ultra-sound sex determination for non-medical reasons. The implementation of the Care for Girls campaign in 2003 came after a considerable lag, given that the practice of female infanticide has been around for centuries,<sup>206</sup> that experts have been warning of the abnormal sex ratio since the 1980s<sup>207</sup> and that the prevalence of sex-selective abortions has been noted with alarm since 1993.<sup>208</sup> However, the government has demonstrated more flexibility and responsiveness in addressing the abnormal sex ratio in the last few years. The decisions in 2005 not to amend the Criminal Law and the Women's Rights Protection Law despite calls for tighter legal prohibitions just the year before,<sup>209</sup> coupled with concerted efforts to equalise the status of girls and change people's

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<sup>201</sup> Das Gupta, *supra* note 33.

<sup>202</sup> Hansel, *supra* note 18; Li, *supra* note 71.

<sup>203</sup> See Part IV above, on practical enforcement difficulties and theoretical problems with legal sanctions.

<sup>204</sup> Interestingly, however, the Marriage Law was amended in 2001, *supra* note 173. Paragraph 13 provides: Article 16 shall be changed into Article 22 and shall be revised as: "A child may take the surname of either the father or mother."

<sup>205</sup> Frank Langfitt "Ultrasound Noted in China's Gender Gap; Abortions of Baby Girls Identified During Test Affect Census, Official Says" *Baltimore Sun* (29 March 2001).

<sup>206</sup> Kammerer, *supra* note 14.

<sup>207</sup> Chu, *supra* note 13.

<sup>208</sup> The Economist, *supra* note 179.

<sup>209</sup> See text accompanying notes 130 and 165, above.

attitudes under the nationwide Care for Girls campaign, show a shift in focus from prohibitions and sanctions to encouragement and ideological campaigns.

There still exists a gulf between the laws that proclaim the rights and protection of women,<sup>210</sup> and the actual experience of women in China. By focusing on equal education opportunities for today's generation of girls, China's government may yet bridge this gulf by truly empowering the female population. The budding discourse of girls' equal rights to be born,<sup>211</sup> in dissuading people from resorting to sex-selective abortion, will also contribute to an ideologically coherent commitment to gender equality. However, the results will not be immediate,<sup>212</sup> and it remains to be seen if traditional attitudes so fundamental to Chinese culture can be changed in time to rescue the economy and society from the demographic disaster of an abnormal sex ratio.

Prior to the enactment of the Family Planning Law in 2002, the population policy had been implemented successfully<sup>213</sup> without strict positive legal basis, based on politicians' pronouncements and government directives. Given the persuasive nature of extra-legal governmental efforts,<sup>214</sup> a full commitment by China's leaders to promoting gender equality might succeed in correcting the sex imbalance in its population.<sup>215</sup>

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<sup>210</sup> Article 48 of the Constitution of the People's Republic of China of 1982, online: <<http://english.people.com.cn/constitution/constitution.html>> proclaims that

Women in the People's Republic of China enjoy equal rights with men in all spheres of life, in political, economic, cultural, social and family life.

The state protects the rights and interests of women, applies the principle of equal pay for equal work to men and women alike and trains and selects cadres from among women.

Similarly, Article 3 of the Family Planning Law provides that

The implementation of the population and family planning work shall combine with an increase in opportunities in education and employment for women, and the enhancement of women's health and the promotion of their social status.

<sup>211</sup> See text accompanying notes 95-100, above.

<sup>212</sup> It has taken more than a decade for the government to heed then-premier Zhao's warnings in 1982. See text accompanying notes 101-102, above.

<sup>213</sup> Peng, *supra* note 6.

<sup>214</sup> Li, *supra* note 71, observes that Chinese Communist Party directives are "equivalent or superior to legislation and codified laws... [and] can change existing laws or supersede them, determining whether a particular law is to be enforced."

<sup>215</sup> An example is Pan Guiyu, deputy director of the National Family Planning Commission, quoted as asserting that eradicating gender discrimination begins at birth at the 2004 Care for Girls dialog session. 男女不平等在出生问题上的反映应引起全社会重视, 人民网北京 2004年2月5日 ("Gender inequality manifested in birth problems attracts society's attention" 5 February 2004), online: <<http://www.people.com.cn/GB/14739/14740/21474/2322523.html>>.

This paper has argued that legal sanctions have proved ineffective, and appear to have been abandoned even by the legislature.<sup>216</sup> With the development of the Care for Girls campaign, the government's responses have shifted towards efforts to address people's attitudes. While the government's extra-legal measures have achieved significant progress in the last couple of years, they are presently insufficient because they do not satisfactorily address people's gender attitudes. In particular, incentive schemes may stigmatise daughters-only households and reinforce the perception that a lack of sons is a real disadvantage. It is no small task to undo traditional gender attitudes as culturally entrenched as Confucianism itself. In order to succeed, this paper suggests that the government must address the kinship structure<sup>217</sup> and fully commit to the protection of women's rights by supporting women's rights groups and following through on the formal guarantees in the laws.<sup>218</sup> The one happy result of this demographic problem may thus be the Chinese government's transformation into a sincere advocate for women's rights.

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<sup>216</sup> See Part III, above, discussion on sanctions and the decisions not to amend the Criminal Law and the Women's Rights Protection Law to prohibit sex determination and sex-selective abortion.

<sup>217</sup> Das Gupta, *supra* note 33.

<sup>218</sup> See text accompanying notes 198-200, above.