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I. INTRODUCTION AND BACKGROUND

In 1990, Amartya Sen uncovered a global epidemic of over one hundred million missing women—women that, given statistically normal birth rates, should exist in the world but do not.1 Sen and others have suggested three main contributors to this crisis: sex selective abortions, the related practices of female infanticide and abandonment, and inadequate medical care for female children.2 China provides an interesting and particularly important challenge in combating the missing women phenomena, for a few reasons. First, a focus on China provides more potential value than addressing the problem elsewhere. Sen has suggested that over fifty million Chinese women are missing which accounts for 45 percent of the missing women worldwide.3 Even given undercounting and other problems in data collection, Chinese and foreign demographers alike agree that a significant problem exists.5 Second, most regions in the world are experiencing a relative improvement in the eradication of the missing women phenomena, but China's male to female sex ratio at birth is rising.6 Third, given the ongoing restructuring of the Chinese government and reformation of the

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3 Sen, More than 100 Million Women, NY Rev Books at § 1 (cited in note 1).
4 Valerie M. Hudson and Andrea M. den Boer, Bare Branches: Security Implication of Asia's Surplus Male Population 63 (MIT 2004).
5 Banister, 21 J Pop Rsrch at 19 (cited in note 2).
country, the active liberalization of reproductive policy provides an "important experiment in state-society relations." Unlike many countries, China has created a separate agency for reproductive policy, and the government has a long-standing tradition of dictating desired outcomes in this area. Policy changes here can provide a model for the reformation of other Chinese agencies.

Despite the Chinese government's vocal commitment to women's rights, China is experiencing an increasing shortage of girls and young women. In a world with no widespread preference for either boys or girls, we should expect to see about 104 male births for every 100 female births—yielding a sex ratio of 1.04. Yet at the time of the 2000 China census, national statistics revealed about 118 male births for every 100 female births. The sex birth ratio is particularly skewed for second and successive births. So while some Chinese couples may not demonstrate a significant preference for their first child to be a son, most demonstrate a marked preference for sons as second children if their first child is a girl. While much variation exists among provinces, as a whole, the disparity in the sex ratio is growing in both rural and urban areas as well as in both rich and poor provinces.

Alternative explanations for the prevalence of missing women are not ultimately compelling and more importantly, do not disprove the need for government action. The best counter account, offered by Harvard doctoral student Emily Oster, contends that hepatitis B may explain up to 75 percent of the so-called missing women in China. She relies on evidence that female carriers of hepatitis B are more likely to give birth to boys than girls. Some demographers have challenged her results, suggesting that the high sex ratios in given provinces correspond better to the cultural explanation of son preference than the prevalence of hepatitis B. Even if hepatitis B were responsible for an underlying imbalance, Oster concedes that the increasingly skewed sex ratio in many places is likely attributable to technological advances and the resultant

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10 Id at 229. The pressures for sex selective abortions may be higher in rural areas, though both cities and the countryside display skewed sex ratios with higher female mortality from birth to age four. Banister, 21 J Pop Rsrch at 28, 29 (cited in note 2).
11 Oster, 113 J Pol Econ at 1163 (cited in note 8).
decreased costs of exercising a son preference. In addition, vaccinations for hepatitis B have become nearly universal, so even if it explains an existing ratio, Oster's theory fails to predict future trends. In fact, if the son preference remains constant, the decline of hepatitis B incidences should create a compensating mechanism of increased sex selective abortions.

Chinese families possess multiple mechanisms for daughter discrimination. While Chinese couples once relied on faulty folk methods for determining fetuses’ sex, advancements in reproductive technology allow most couples to accurately assess their fetuses’ sex relatively early in the pregnancy. The active governmental role in promoting family planning means that even the poorest, most rural facilities possess ultrasound equipment. Armed with a definitive outcome, a couple with a strong son preference may elect to abort its female fetus(es). For those without access to doctors willing to reveal the sex of the fetus, a couple may instead choose to terminate a female child shortly after birth. While such practice may seem strongly objectionable, few Chinese families or communities view this practice as murder. Other families may abandon their female children shortly after birth. Finally, for those couples with a son preference but unwilling to engage in sex selective abortion or female infanticide, they may decide to under-invest in their female children’s development. This underinvestment may include a failure to provide adequate health care, a reluctance to educate, and the creation of a second class status for daughters within the family. Additionally, daughters may be forced to sacrifice

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13 Oster, 113 J Pol Econ at 1165 (cited in note 8).
14 Id at 1165. For evidence that China has routine hepatitis B vaccinations, see Jay H. Hoofnagle, Hepatitis B—Preventable and Now Treatable, 354 New Eng J Med 1074, 1074 (Mar 9, 2006).
15 As girls and women who might once have been much more likely to naturally conceive boys get vaccinated, they may now face the need to decide what to do with a female fetus. Oster, 113 J Pol Econ at 1207 (cited in note 8).
17 Ultrasounds may soon be replaced with at home blood tests that reveal the sex of the fetus even earlier in the pregnancy.
20 Elisabeth Croll has noted that daughters in China are considered a “double loss or no-profit commodity.” Elisabeth Croll, Endangered Daughters 122 (Routledge 2000). Chinese sayings reflecting this view include: “a daughter is someone else’s property” and “providing for your daughter is like watering a shade-giving tree in someone else’s garden.” Id at 119, 122. See also
their development to free up resources or directly contribute to their brothers. For instance, a daughter might be pulled out of school and put to work in the fields to facilitate her brother’s education.

A strong son preference and the resultant skewed sex ratio create three types of harms: to the individual girls, to families, and to society as a whole. From both Western perspectives and universal human rights approaches, female infanticide constitutes murder. Sex selective abortions are not costless either—women suffer from the health and emotional harms of abortions as well as from the additional pregnancies which risk maternal mortality and morbidity. Relatedly, abandoned children, of whom an overwhelming majority are girls, face a very high mortality rate even if they eventually make it to an orphanage. Moreover, those undesired girls who are kept by their natal families often receive fewer physical and emotional resources than other family members. Their undervaluation within both their natal and marital families often leads to severe psychological harms and affects the development of the overall society. For instance, China is unique in the world with its high rates of female and rural suicides. Many suggest this deviation from normally low female suicide rates stems from females’ feelings of worthlessness in a patriarchal society and more specifically, the difficulties of living in a patrilocal kinship structure. For instance, women from China’s provinces and urban areas believe that they will face discrimination if they bear only daughters. Such discrimination may extend to physical abuse and even murder. Similarly, wives living with their husbands’ families experience extreme levels of conflict in trying to fulfill their in-laws’ expectations.

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21 A fairly substantial debate exists about the ethicality of sex selective abortions. Regardless of whether sex selective abortions are inherently problematic, obvious practical problems arise in societies where families commonly favor one sex.  
23 Johnson, 22 Pop & Dev Rev at 77 (cited in note 19).  
26 Id at 221, 231.  
Despite a logic that would suggest otherwise, imbalanced sex ratios are not self-correcting. One might predict that a dearth of female children would eventually lead to a rise in women’s value since their scarcity enhances the difficulty of men in finding wives. The marriage market, however, does not respond in this manner. Although some women may make substantial one-time economic gains in the marriage market, their families seem unlikely to prefer them to sons since the marriage will just be a possible one-time monetary transfer while sons provide ongoing support. Moreover, both in historical and modern times, such a shortage has contributed to the rapid increase of kidnapping and sexual trafficking of women in China. In addition, the growing population of young men unable to find wives creates conditions that foster high crime rates, engagement in vice, and general societal instability. Thus the strategy of waiting out the problem until daughter discrimination naturally declines is not a viable option.

Unfortunately, daughter discrimination is deeply rooted in the Chinese family kinship structure and parts of the Confucian value system. Many Confucian practices value and honor men over women—only men may perform many religious and ancestral rituals. For most of Chinese history, only men could continue a family’s lineage through the family name and only men were allowed to hold property. In addition, the practice of patrilocality, in which women generally left their natal families at marriage and joined the husband’s family, created separate reasons for families to undervalue their daughters. As a daughter would not contribute to the care of her natal family once her marriage had taken place, her birth was viewed as a double loss to the family.

Similar reasons exist for the ongoing son preference in China. Non-economic considerations include the ability to carry on the family name and particular forms of ancestor worship—both of which must still be carried out by

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30 Mary Anne Warren, *Gendericide: The Implications of Sex Selection* 133 (Rowman & Allanheld 1985); Banister, 21 J Pop Rsrch at 23 (cited in note 2).
32 Id; Hudson and den Boer, *Bare Branches* at 203–04 (cited in note 4).
33 Id at 192–202.
a son. The presence of a strongly enforced family planning policy exacerbates these underlying rationales. For instance, citizens who have children in violation of birth policies must pay a social compensation fee that often exceeds their annual incomes. So, rather than have several children until a boy is born, some families kill, abort, or abandon female children. Although some very wealthy provinces view social compensation fees as a mere inconvenience, they too display a high level of son preference—whereas some very poor provinces display comparatively lower sex ratios. Evidence from multiple countries indicates that greater wealth can enhance the son preference as couples prefer smaller families. This suggests economic development and greater wealth alone cannot effectively combat son preference or sex selective abortions.

Empirical evidence suggests that the related problems of missing women and daughter discrimination are not intractable. Despite the longstanding and deeply embedded nature of daughter discrimination, a combination of high fertility, land reform, and strong governmental intervention in support of gender equality allowed the Maoist regime to massively reduce the gap in sex ratios both at birth and throughout childhood. By the 1950s, with the Maoist government at the height of its powers, the government had nearly eliminated the disparity in the new birth ratios. Unfortunately, with the introduction of the one-child policy, more aggressive implementation and enforcement of family planning goals, and decreased emphasis on the equal value and contributions of women, both female infanticide and imbalanced sex ratios began to rise again.

In the 1990s and 2000s, the People’s Republic of China (“PRC”) has undertaken a sustained effort to reform the family planning program. These reforms include: (1) rectification, which combats coercion in enforcement and misappropriation of funds; (2) normalization, which focuses on sex selective abortions and the distorted sex ratio; and (3) incentivization, which provides monetary and other benefits for those in compliance with birth goals. Yet these reforms have not been accompanied by strong enforcement mechanisms or a
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decline in the sex birth ratio. Thus, this Article aims to develop some supplemental proposals to help ameliorate daughter discrimination.

II. LEARNING FROM THE PAST: LESSONS FROM FOOTBINDING

Before looking ahead, looking back at China's past may provide some useful lessons for future policies. In particular, footbinding provides an important indigenous example of the quick dissipation of undesirable social norms. Despite repeated efforts to outlaw the practice, Chinese footbinding was common for over a thousand years. By the 1800s, a majority of Han Chinese women bound their feet. Yet by the 1900s, the practice virtually disappeared within one generation.

In order to understand how norms changed so quickly, one needs to investigate the contextualized meaning of this social practice. One reason footbinding became so popular was because it created an effective mechanism for mothers to transmit the value of obedience and self-sacrifice to their daughters. Footbinding was incredibly painful and required numerous resettings; girls had to learn to engage in daily life despite the pain and without complaining. This prolonged suffering helped prepare a daughter for her roles in society and in her future husband's family.

As the practice filtered from elites downward, footbinding also became a marker of prestige. A daughter's bound foot signaled conspicuous leisure—that a family could afford to preclude a daughter from toiling in heavy labor. Over time, the practice was imbued with sexual and spiritual meaning. A bound foot became transformed into an erotic marker which concurrently demonstrated chastity—a bound woman could not physically sneak around her husband's

46 For example, the Manchus tried to ban footbinding but quickly rescinded the edict when they realized the difficulty of changing the cultural practice. Howard S. Levy, Chinese Footbinding: The History of a Curious Erotic Custom 66 (Walton Rawls 1970).
48 Levy, Chinese Footbinding at 91 (cited in note 46).
49 C. Fred Blake, Foot-Binding in Neo-Confucian China and the Appropriation of Female Labor, 19 Signs 676, 685 (1994).
50 Id.
Bound feet were also thought to help ensure a woman’s honorable reincarnation, perhaps as an implicit payoff for her chastity and obedience.

Two competing accounts attempt to explain the quick change away from footbinding. The norms-based account suggests that antifootbinding reforms succeeded where others had failed through a combination of: (1) a widespread dissemination of the opinion that China was losing international face for its unique practice; (2) a modern education campaign which compellingly explained the costs of bound feet and the benefits of natural feet; and (3) the formation of natural foot societies with members who pledged not to bind their daughters’ feet and not to allow their sons to marry women with bound feet. Although Chinese governments had banned footbinding before, such bans had limited commitment and enforcement mechanisms, whereas the ban that followed the education campaign proved much more successful.

Both foreigners and Chinese reformers played a role in eradicating footbinding. Although the United States government did not take an active role, the Chinese reformers did initially rely on foreign leadership. Western missionaries publicized their opposition to footbinding and barred girls with bound feet from entering their schools. Foreign women also helped develop an international anti-footbinding movement and provided funding for domestic operations like the Natural Foot Society. Chinese scholars credit these foreign leaders with “first rolling the stone.”

Foreign leadership quickly transitioned toward domestic control. This shift to immanent criticism helped provide a better framing of the relevant issues so that the reforms would strike a chord with a widespread domestic audience. Chinese reformers changed commonly held ideas about footbinding’s links with sexuality and marriageability into beliefs that footbinding abused the body and caused China to lose international face. Reformers drew on traditional Confucian sayings and values to transform the understanding of this practice.

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52 Fan Hong, Footbinding, Feminism, and Freedom: The Liberation of Women’s Bodies in Modern China 48 (Frank Cass 1997).


54 Mackie, 61 Am Sociological Rev at 1011 (cited in note 45).

55 Keck and Sikkink, Activists Beyond Borders at 65 (cited in note 47).


57 In modern parlance, these reformers might be properly characterized as norm entrepreneurs given their ability to signal commitment to social change, create coalitions, and highlight the benefits of adherence to a new norm. For a general description of norm entrepreneurs, see generally, Cass Sunstein, Social Norms and Social Roles, 96 Colum L Rev 903, 909 (1996).

58 Tao, The Anti-footbinding Movement in Late Ch'ing China at 163–64 (cited in note 56).
The Natural Foot Society, a domestic group, also sought the support of law to reinforce their message. By 1911 they were victorious, the Nationalist government banned footbinding and the practice was basically eradicated by 1920.

The economic account suggests instead that the shift away from footbinding was predominantly motivated by a change in labor conditions. This hypothesis contends that in communities where women were needed to conduct heavy labor, footbinding was economically prohibitive. In contrast, in areas where women could contribute through light labor such as spinning, weaving, and other related activities, women practiced footbinding as a way to increase their families’ status. With the mechanization of light industries, some women had to shift away from light domestic labor to outside heavy labor. Thus, footbinding fell into disfavor in rural areas.

Neither account fully explains the quick and widespread dissipation of the practice. Many rural areas lacked direct exposure to either Western missionary campaigns or domestic anti-footbinding societies. Occasionally rural areas gave up footbinding before wealthier areas—casting doubt on the trickle down nature of social change and status markers. On the other hand, many elite and wealthy families faced no change in economic circumstances, but still chose to renounce footbinding. Domestic reformers seemed to model their foot societies and pledge associations on Western campaigns and produced anecdotal evidence of their successes. In addition, most (but not all) cities renounced footbinding and changed their practices prior to rural areas. Thus, it seems fair to suggest that both economic and non-economic factors helped produce the norm cascade away from footbinding.

The practice of footbinding and the larger phenomena of daughter discrimination share many similarities. Footbinding created perceived economic and reputational benefits. Families bound girls’ feet both to evidence their social status and to help their daughters marry into good families. Likewise, in modern days, many Chinese families believe male children are necessary to

63 Drucker, 8 Historical Reflections at 189 (cited in note 60).
64 Levy, Chinese Footbinding at 93, 205–10 (cited in note 46).
65 Blake, 19 Signs at 683 (cited in note 49).
provide for parents in their old age and increase the status of the mother and the family within the community.66

Under both systems, Chinese families also systematically undervalue daughters’ actual and potential economic contributions. During the time of footbinding, families viewed women’s work as filial piety and more specifically, obedience to the mother-in-law. Yet daughters’ and daughters-in-laws’ work often extended beyond child care and cooking to field work, food processing, the making of cloth, and the creation of luxury goods for sale67—even so, these contributions were not seen as bringing economic value to the household. Similarly, daughters in modern day rural China often make comparable contributions. Many others work in good paying factory or office jobs in the city. The wage gap between Chinese men and women is relatively small,68 so many women need not inherently contribute less to their families. Even if families correctly conclude that under the current kinship system, men produce more for their natal family over the long-term, that determination is dictated by cultural constructs that can be changed.

Under both the norm-based account and the economic account of either practice, Chinese families may be caught in a belief trap. A belief trap is one where the belief cannot be tested because the perceived costs of testing the belief are too high.69 In particular, studies suggest that gender-based norms may emerge to support a solution to a coordination problem, but those norms may persist even after the underlying condition that created the coordination problem no longer exists.70 Yet because of the presence of the norm, families may get caught in a gender-related belief trap. For footbinding, communities accepted the high physical and emotional costs to girls as normal, and many families found the costs of choosing an alternate practice and hoping for their daughters’ continued marriageability to be prohibitive. The presence of anti-footbinding societies with community members who pledged to allow sons to marry unbound girls helped families escape their belief trap by lowering the costs of changing conventions. In fact, this shift was so successful so quickly that bound women caught in the transitional phase were shamed and many lost their marriage prospects.71 As for the son preference, families may perceive the

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69 Mackie, 61 Am Sociological Rev at 1009 (cited in note 45).
70 Gillian K. Hadfield, A Coordination Model of the Sexual Division of Labor, 40 J Econ Behavior & Org 125, 130, 144, 146 (1999).
71 Levy, Chinese Footbinding at 210 (cited in note 46).
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[57x672]economic and status risks associated with having daughters as similarly prohibitive even though the economic and cultural conditions that created a son preference may no longer exist or could be changed through coordinated action. The next section offers some proposals to overcome this belief trap.

III. SOLUTIONS

Both scholars and the Chinese government are taking notice of the interrelated problems of missing women and daughter discrimination. Despite the dire picture drawn so far, the Chinese government seems likely to respond positively to suggested legal changes to combat this problem. As noted earlier, China has previously proved itself successful at using government reform to quickly change sex ratios. China was also an early signatory and is an active participant in the Convention to Eliminate Discrimination Against Women. In 1995, it hosted the Fourth World Conference on Women, which in turn has fostered much domestic activism. The PRC has taken many discrete actions to recognize and enhance the value of women, such as discouraging footbinding, outlawing infanticide, and forbidding child marriage and concubinage. China recently revised the groundbreaking 1992 Law on the Protection of Women’s Rights and Interests to emphatically express the state policy that men and women are equal, increase female representation in government, outlaw sexual harassment in the workplace, and reinforce female farmers’ right to contract, purchase, and own farmland.

Not surprisingly, Chinese women and girls have experienced some concrete improvements in living and societal conditions in recent years. Data suggest that girls who survive to the age of four have similar mortality rates to boys throughout their adolescence. China also performs well on the UNDP Gender-Related Development Index relative to its income. In particular,

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76 See Rong Jiaojiao, Law Revised to Protect Women’s Rights, China Features (Sept 20, 2005), available online at <http://www.chinese-embassy.org.uk/eng/zt/t213042.htm> (visited Apr 22, 2006).

77 Banister, 21 J Pop Rsrch at 27 (cited in note 2).

female literacy is rising and women enjoy a relatively high rate of employment with a surprisingly narrow female to male income gap.  

The Chinese government has also launched a “Care for Girls” campaign specifically targeted at dislodging daughter discrimination. Existing government proposals to address daughter discrimination include: liberalization of family planning programs; elimination of formal barriers to women’s education; criminalization and economic sanction of daughter discrimination; and financial incentives to increase a girl’s value to her family. Even with these proposals, however, the problem of skewed sex ratios and other instances of daughter discrimination are still on the rise. This final section identifies some of the shortcomings of existing programs to combat daughter discrimination and offers some modest complementary suggestions. These proposals include the development of daughter-friendly associational societies, the provision of economic incentives to people outside as well as within the family, and highly focused de-biasing education extolling the virtues of daughters.

A. LIMITATIONS OF EXISTING PROPOSALS

1. Changing Family Planning Targets

Some scholars advocate the loosening or abandonment of China’s one child policy. Total renunciation of family planning goals, however, defies existing political realities. China still cares deeply about maintaining a low and stable fertility rate into the foreseeable future, as the government is wedded to a neo-Malthusian belief that low population rates are essential to protect the environment as well as to maintain strong economic growth. Persuading the government otherwise would be a Herculean task.

As for loosening family planning targets, the Chinese government has already informally abandoned the one child policy in rural areas in favor of

79 Id.


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something better described as permitting either (1) one son or (2) one first born daughter and a second child. Some signs suggest societal pressures for even more exemptions. Such exemptions may help, but no consensus exists on the relative importance of the one child policy to China's missing women. Although a few scholars believe that lifting governmental fertility restrictions would virtually eradicate the imbalanced sex ratios, the strength of the son preference would likely still create significant numbers of missing women, to say nothing of other forms of pervasive daughter discrimination.

Demographic studies support the contention that the strong son preference is at the root of the missing women problem, even as the one child policy exacerbates the underlying preference. The fact that many other countries experience similarly skewed sex ratios without compulsory fertility limits or a one child policy strongly supports this theory. Moreover, Chinese family planning is facially sex neutral—the state does not dictate particular sex ratios within families or communities. Only preexisting preferences and cultural structures create the demand for a boy within the permissible allotment of children. Even if Chinese families could have more children than currently permitted, many parents will still employ a sex stopping rule—in other words, they will have only have children until they have a boy. Prior girl children may still be aborted, abandoned, eliminated or discriminated against regardless of the motives created by the one child policy. At best, then, changes in family planning targets unaccompanied by a change in social norms may reduce sex selective abortions and female infanticide in the first or second child for those

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86 For a sampling of scholars who think the one child policy is largely responsible for the problem of missing women, see Klasen and Wink, 28 Pop & Dev Rev at 303 (cited in note 6).
89 While some may want more children than allowed now, few Chinese want very large families. Some suggest that “a complete removal of the existing monetary penalties in rural China would only result in relatively small increases in fertility of 0.33 cumulative births per woman.” McElroy and Yang, 90 Am Econ Rev at 389 (cited in note 82).
who want a larger family. They do little to address the underlying reasons for daughter discrimination.

2. Enhancing Enforcement of Criminal Schemes

Other scholars advocate stronger penalties for law-breaking families and increased enforcement of China's existing ban on sex selective abortions and female infanticide. They do little to address the underlying reasons for daughter discrimination.

Yet under the existing prohibitions, the government rarely prosecutes families for seeking out information to facilitate sex selective abortions, and no doctors or technicians have been convicted for providing such information.

Enforcing criminal sanctions on such actions proves quite difficult. For instance, most family planning clinics own ultrasound scanners making information about the fetus's sex quite accessible. Law enforcement officials will have a hard time knowing if doctors performed ultrasounds for legitimate medical reasons or to determine the sex of a child. Rather than openly flout the ban on assistance, doctors have already taken to coding their responses to surreptitiously let families know whether they are expecting girls or boys. Similarly, police may encounter substantial difficulty in distinguishing between cases of female infanticide and other common causes of infant death. Of course, devoting resources to catching and prosecuting sex selective abortions and female infanticides may yield some benefit, but given the practical difficulties, a serious change in practices seems unlikely. As an empirical matter, similar laws in India have not deterred sex selective abortion or other instances of daughter discrimination.

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91 Parry,干燥的女孩, 《电讯报》(引自注85)。
94 Parry, Shortage of Girls, Telegraph (cited in note 85).
In fact, some theoretical and empirical work on the persistence of social norms suggests that harsh criminal penalties for socially acceptable practices can be counterproductive.\(^9\) Beyond detection difficulties, hard shoves to change family and community behavior may be met by a reluctance to enforce and a failure to change opinions. In turn, this lax law enforcement reinforces the underlying behavior. So in this instance, most doctors and families see nothing wrong with determining the sex of the child and making subsequent decisions accordingly. If the Chinese law dictates harsh punishment for sex selective abortions and female infanticide, but governmental officials fail to investigate and prosecute because they believe the law is too strict, the government ultimately reinforces people's belief that daughter discrimination is legitimate. This "hard shove" theory suggests both that: (1) changes in the criminal penalties should be modest rather than severe increases; and (2) changes in the civil rather than criminal law would better allow the government to alter social norms.

Even if effective penalty and enforcement schemes were possible, they would likely fail to change the underlying preferences that drive the various practices of daughter discrimination. Although effective enforcement may deter some couples from sex selective abortions and female infanticide, families may still choose to under-invest in those females that are born, since the economic and social incentives still favor male children. Similarly, criminal law cannot adequately address the societal harms that stem from patrilineality and patrilocal living arrangements.

3. Promoting Anti-Caste Principles

The first generation approach to the problem of missing women, as typified by Amartya Sen and Cass Sunstein, suggests that improving women's status through equal access to education, employment, and property ownership should help weaken the son preference.\(^7\) For instance, Sunstein encourages governments to promote anti-caste principles, such as sex equality, and to seek these changes through alterations of markets and social norms, rather than just through top down command and control regulations.\(^8\) These abstract


admonitions complement the predictions made in the 1980s that expanding women’s economic opportunities would diminish the son preference.  

As mentioned earlier, China has already done much to eliminate discriminatory barriers based on sex, such as the creation of equal legal and inheritance rights, the provision of compulsory basic education, and the promotion of women in government. Some evidence, however, suggests the direct link between women’s status and daughter discrimination is tenuous at best—many countries with long traditions of low women’s status experience relatively normal birth (and subsequent) sex ratios. In addition, formal status improvements raise enforcement problems. Despite governmental regulations promoting women’s land rights, many localities resist the enforcement of these regulations as they conflict with preexisting social norms. Without taking additional steps, the government lacks the ability to guarantee many of the women’s rights it has codified. On other fronts, efforts to enhance women’s status may have contributed to lower fertility rates or more agreeable birth spacing, but such changes have been accompanied by an increase in daughter discrimination. Thus, as a whole, anti-caste policies have made few gains in reducing the son preference. While the elimination of discriminatory barriers may alter the son preference in the long-term, something else needs to be done in the short-term. Anti-caste efforts should be coupled with second generation reforms directed specifically at daughter discrimination.

B. SECOND GENERATION REFORMS

This Article suggests China should move past first generation equality laws and punishment enhancements and on to second generation reforms aimed at changing discrete societal norms. The possibilities for second generation reforms include: fostering associational societies that value daughters, incentivizing family planning workers and doctors to promote female births, and focusing education and media campaigns on the contributions of daughters. This Section also suggests some targeted economic reforms to erode support for patrilocal and patrilineal traditions. Finally, this Section briefly discusses legal mechanisms

99 Warren, Genderside at 14, 185 (cited in note 30).
100 Jiaojiao, Law Revised to Protect Women’s Rights (cited in note 76).
101 Banister, 21 J Pop Rsrch at 3 (cited in note 2).
103 Of course, the vigorous enforcement of family planning targets may be a greater contributor to China’s low fertility rates than efforts to enhance women’s status.
104 Croll, 29 Oxford Dev Studies at 231 (cited in note 9).
through which the United States can influence and support China’s efforts to eliminate daughter discrimination.

1. Reconstituting Social Practices

To begin with, anti-footbinding societies demonstrate the benefits of leveraging the role of community and its influence over individual family decisions. These associational arrangements implicitly recognized the importance of an activity’s social meaning and acknowledged that the known behavior of others can exert a strong persuasive force over individual decisions whether to engage in an activity.\textsuperscript{105} Associational societies and the resulting community norms exert influence in two ways. First, they are information creating—they provide a signal about what actions make sense—allowing other people to more easily and quickly make cost-benefit judgments. The behavior of others also serves a reputational function—it lets parties know when sanctions for deviance are likely and how deeply embedded a particular practice may be. An associational society designed to change a preexisting practice succeeds when it persuades others of the ease of changing behavior and signals the possible community sanctions for maintaining the old practice.

So, associational societies might be coordinated by government family planning agencies and women’s federations to encourage individual communities to: (1) agree not to practice female infanticide and equalize resource distribution to young children; and (2) commit families with male children to contribute to the maintenance of future wives’ natal families if the wives live with them. Couples might be encouraged to join such societies and make public pledges when they seek the governmental certificate allowing them to have children.\textsuperscript{106} As a footbinding scholar noted though, “exposure to an alternative convention is a necessary but not sufficient condition for convention shift.”\textsuperscript{107} Such associational campaigns could be rewarded by various government incentives,\textsuperscript{108} which would in turn also signal governmental support for a higher status for daughters in the community.

The development of such societies recognizes that in the status quo some families may be inherently neutral as to the sex of their children or even desire

\textsuperscript{105} See Sunstein, \textit{A New Progressivism} at 15–16 (cited in note 98).

\textsuperscript{106} Unlike many Western countries, the Chinese government takes a very active role in ordering family life and in directing media communication. This involvement creates an opportunity for many changes that might be perceived as invasive in the United States. So, for instance, family planning workers have been involved in the daily life and childbearing decisions of couples; a high degree of personal monitoring was tolerated that would be unacceptable in other countries.

\textsuperscript{107} Mackie, 61 Am Sociological Rev at 1010 (cited in note 45).

\textsuperscript{108} It is worth noting that anti-footbinding societies were self-enforcing without government intervention.
females, but given existing societal constraints, they feel compelled to make patriarchal bargains that reflect the value others place on male children. The associational societies solve a coordination problem by allowing a number of individuals to commit to change at the same time, rather than forcing individuals to separately make choices about the costs and benefits of having girls. The associational societies contain a built-in membership incentive as families with sons who join seem likely to do better on the tight marriage market than those who stay out. A family's mere membership makes its son a more appealing marriage prospect.

Footbinding does, however, have some important differences from sex selective abortions and the abandonment or neglect of female children. The practice of footbinding is extremely observable, which makes the determination of whether a family is complying with a footbinding pledge relatively easy. Female infanticide and abandonment are less visible, although a woman must still go through pregnancy without raising a subsequent child. While a family may offer explanations such as a stillbirth or an adoption, the truth could escape through active local gossip networks. Still, determining whether a family has chosen to have a sex selective abortion or is denying needed resources to girl children is difficult. Perhaps the government could make lists of pregnancies available to women's federations so they could monitor pregnancies and discourage sex selective abortions. The government could also post pregnancy lists more publicly and could encourage community surveillance.

Similarly, the enforceability of associational societies' marriage pledges also varies between footbinding and the more modern daughter discrimination context. The pledge to allow one's son to marry only an unbound woman commits a family to a one-time, highly visible action. A pledge to allow a daughter-in-law to contribute resources to her natal family is an ongoing commitment and one that the community may not be able to easily monitor. That being said, daughters could be added to the legal family support agreements which would entitle natal parents to informal or legal recourse if the daughter's husband or in-laws refused to allow her to contribute. In urban areas where women earn wages from external employers, a family might agree to allow the government to automatically deduct from the daughter-in-law's wages

109 The term “patriarchal bargain” was coined by Deniz Kandiyotti to explain how people strategize in the face of patriarchal societies' severe constraints. Deniz Kandiyotti, Bargaining with Patriarchy, 2 Gender & Socy 274 (1988).

110 Yuebin Xu, Family Support for Old People in Rural China, 35 Soc Poly & Admin 307, 311 (2001) (describing family support agreements as contracts between sons and their parents as to the sons' obligations to provide financial and practical support).

111 Id at 314 (describing the various enforcement mechanisms for family support agreements).
and thus remove the possibility of reneging on the agreement. Another possibility is to publicly post the daughter-in-law's contributions so that the community could shame those families that violate their original pledge.

The government could also tie advancement of family planning workers to successes in normalizing the birth sex ratio in local areas. Such linkage could improve the likely success of government led associational societies as well as encourage innovative local initiatives. Allowing local flexibility is important since most funding for birth programs comes from provinces, counties, and communities rather than the national government. In addition, the degree of severity of the missing women problem varies greatly among provinces. Rather than focusing on national policy, the government should encourage targeted incentives and programs for the hardest hit areas. The Chinese government has already shown willingness to treat provinces differently and allow them to self-implement initiatives. Of course, the combination of flexibility and pressure on local workers may encourage deceit about future sex birth ratios. Such deceit was not uncommon during the 1980s, due in part to the unrealistic family planning targets of the era. More worrisome, such targets may encourage coercive involvement in families' lives. Although these are serious concerns, setting sex birth ratio targets demonstrates strong governmental support for change—unlike existing unenforced criminal prohibitions.

Relatedly, the government could provide financial rewards to doctors to improve the sex birth ratio of their patients. Most village doctors are uncompensated by the government for their services and seem likely to respond to economic incentives. Such incentives could offset the money that families currently offer for doctors to illegally reveal ultrasound results.

The Chinese government can also undertake an education campaign explaining and celebrating the actual value of women to the society. Son preference is deeply ingrained in parts of the Confucian system, and Chinese families reinscribe this tradition through speech, gestures, and rituals. Thus, "de-biasing" campaigns need to be directed at a variety of practices and at both

112 Winckler, 28 Pop & Dev Rev at 387 (cited in note 7).
114 Susan Greenhalgh and Edwin A. Winckler, Chinese State Birth Planning in the 1990s and Beyond 45, 56 (INS Resource Information Center 2001).
the young and the old. Young people help shape the future of marriage markets
and other cultural practices, but existing parents and grandparents have strong
incentives to maintain the status quo.118

The government has already taken some initial steps in this direction with
slogans like “Women hold up half the sky.” This sort of rhetorical revisioning
should be focused on young girls and daughters. Instead of considering girls as
“double losses,” families’ views of daughters should be reconstituted as “double
blessings.”119 Men who move to their wives’ village or into their wives’ natal
families’ homes ought not to be seen as “wild ducks,” but as additional help and
protection for the household and village. We should be optimistic about the
government’s competence in this area—recent Chinese leaders have proven
adept at using “classical Chinese concepts to rationalize progressive reform.”120

The economic contributions of women need to be explicitly recognized in
public discourse. Such recognition should include both rural women’s
agricultural and domestic production, along with urban women’s potential to
earn good wages—wages which can then be shared with their natal families.
Because the Chinese government controls the media, such information can be
easily incorporated both into direct education campaigns and through indirect
measures such as innovative story lines on soap operas and radio programs.121

The government may also emphasize that just like footbinding, daughter
discrimination causes China to lose international face. The rejection of
footbinding was not a wholly isolated movement, but one within a larger societal
context of change in favor of modernity. Similarly, today, China seeks to balance
its cultural heritage with efforts to modernize its economic and political systems.
With its membership in CEDAW and its global leadership on women’s rights,
China currently tries to use gender issues to demonstrate its superiority to the
United States and the west more generally. Daughter discrimination undermines
this attempt to use the treatment of women as a nationalist issue.122

For example, mothers often hold strong son preferences because their strong bond with their
sons helps them to wrest control over the management of family affairs from their husbands as
their sons reach maturity in the later stages of the parents’ marriage. Das Gupta, et al, 40 J Dev

Girls might be double blessings in a variety of ways. In addition to their initial participation in
family life, they might economically contribute after their marriages or otherwise bring status and
esteem to their family.

Winckler, 28 Pop & Dev Rev at 389 (cited in note 7).

Such programs have helped increase awareness of domestic violence. Cheng, Women’s
Organizations in China: From Affiliation to Autonomy at 30 (cited in note 73).

Jude Howell, Post-Beijing Reflections: Creating Ripples, but Not Waves in China, 20 Women’s Studies
Finally, the constructed nature of patrilineal and patrilocal traditions must be exposed. These traditions have a lengthy cultural heritage, but are not necessary conditions for family or social life. These traditions and their underlying norms may be sticky, but they are not immutable. As for the importance of the maintenance of the family name, the government could allow, or even require, birth registration certificates to include both the wife’s and the husband’s family names. Similarly, the government could remind people of periods in Chinese history when women’s surnames were the family name and women were able to rule in their own names. Alternatively, the government could eliminate discriminatory barriers to lineage societies by requiring such societies to admit women in return for access to government resources. Their current strategy of eliminating lineage and ancestor worship might be too aggressive, though. As the government has limited influence over the belief that ancestor worship cannot be performed by women, it seems better served to offer financial and other incentives to lineage societies that voluntarily include women. At the very least, the government could educate people that non-patrilineality is not a Western construct, as many Southeast Asian countries utilize bilateral and matrilineal kinship systems. In fact, even in China, women were once included in family genealogies. Thus, such an exposure strategy couches change as a return to national principles rather than a departure in favor of abstract, universal equality norms.

A riskier proposal might capitalize on new information about missing women—the government might try to use the hepatitis B phenomenon to spark an information-induced norm cascade. In other words, the government could inform people that the practice of sex selective abortions and female infanticide was substantially less prevalent in recent generations than previously thought. Individuals making decisions going forward would know that fewer of their friends, neighbors, and elders engaged in these practices. The combination of an educational campaign about hepatitis B along with other information campaigns about the actual and potential value of women might help overcome the belief trap that female infanticide and sex selective abortions are necessary, widespread practices since women cannot help provide for their families or otherwise contribute to societal welfare. On the other hand, this hepatitis B proposal

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123 Hudson and den Boer, Bare Branches at 134, 136 (cited in note 4).
124 Yongping and Xizhe, Age and Sex Structures at 64, 70 (cited in note 113).
125 For instance, the Philippines, Malaysia, and Thailand all contain groups that practice bilateral kinship. See Leela Dube, Women and Kinship: Comparative Perspectives on Gender in South and South-East Asia 36 (United Nations 1997). Several other South Asian societies are matrilineal. Jael Silliman, Review, A Field of One's Own: Gender and Land Rights in South Asia, 72 Land Econ 269, 271 (1996).
involves significant risk because the possibility for government manipulation of information is great. For a country concerned with losing face, such information might be used to deflect attention from the missing women problem and suggest that no government intervention is necessary.

2. Providing Targeted Economic Incentives

Along with efforts to undermine the reasons and practices of daughter discrimination, the Chinese government should enhance existing economic incentives to eliminate son preference. As mentioned earlier, the Chinese government has already taken some steps in this direction including a national “care for girls” campaign which exempts many girls from school fees and provides housing, employment and welfare privileges to sonless, one-daughter families.127 The government has also initiated a pilot program to help provide pensions for sonless couples128 and right now, farmers with only one child or two daughters are given financial aid to help cushion their retirements.129

The government might also provide incentives for rural families to shift from patrilocal societies, where couples reside at the husband’s parents’ home, to virilocal societies, where couples share a home village and can reside with either parent, or to uxorilocal societies, where couples reside with the wife’s family.130 Not only would such a shift help provide long-term assistance for sonless couples, it should also increase the daughter’s status within her natal family. No longer would she be considered a double loss since she (and her husband) could directly contribute to her natal family after her marriage. A shift to virilocal and uxorilocal communities also avoids the patrilocal system’s requirement of continuous, close family contacts for a daughter and her in-laws. As noted earlier, such contacts bring sustained in-law conflict—arguably a major contributing factor in young rural women’s decisions to commit suicide.131 As explained above, such economic incentives must be coupled with norm de-biasing as many men who currently live in their wife’s natal home are considered interlopers and are often resented for their usurpation of community property.132

127 Parry, Shortage of Girls, Telegraph (cited in note 85).
128 Winckler, 28 Pop & Dev Rev at 391 (cited in note 7).
129 China Launches Family Planning Rewards for Rural Families, Xinhua News Service (June 21, 2005).
130 For instance, the government could provide tax incentives for matrilocal living arrangements. See Xiaorong Li, License to Coerce: Violence Against Women, State Responsibility, and Legal Failures in China’s Family-Planning Program, 8 Yale J L & Feminism 145, 190 (1996).
For those women that move into their husbands' families' homes, the government should alter the existing state of land entitlements. While China now allows women to inherit property, when a woman marries, her rural land entitlement is reallocated among the other village residents. Instead, her family should be allowed to keep her rural land entitlement even if she moves, or she should receive an entitlement in her own name in her new community from which she can contribute to her natal family.

In a similar vein, the government could also provide incentives to move away from patrilineality, where the family name and the main productive assets are passed down through the male line, to primolineality, where the main productive assets are passed down to the first born, or to a system where the assets are evenly divided among all the children and women are encouraged to keep their maiden names. While even division of assets was problematic when families had numerous children, given current family planning requirements, such property allocations should not create unusable land parcels or divisions of goods. One could conceive of complications, such as where two firstborn children from different villages marry and they cannot manage both farms. But that problem seems no more insurmountable than those instances in which a family has no male heir and must come up with an alternative arrangement for land distribution and disposition of other assets.

3. Involving the United States

The United States currently limits its criticism of Chinese demographics to complaints about the coercive nature of family planning rather than focusing attention on daughter discrimination or the underlying kinship structure that promotes it. Like the Chinese government, the United States must find a calibrated response that aims to change underlying familial norms without criticizing the Chinese government or the Chinese people too harshly. As the Chinese government seeks both to actively participate in the global economic system and to address daughter discrimination, it seems quite amenable to outside influence and assistance. Even so, it is worth remembering that footbinding ultimately changed as a result of national and local pressures, not international ones. Thus, the United States ought to see its role as awaking,

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133 Id at 161–62.
135 Drucker, 8 Historical Reflections at 188–89 (cited in note 60).
supplementing and supporting Chinese reformers rather than as challenging, criticizing, and embarrassing the Chinese government.

First, the United States must decide how to engage China on this issue. Given its current financial aid to China, the United States can use funds as either a stick or a carrot. The penalty approach suggests cutting off funds and international institutional membership as a reflection of displeasure. In the 1980s, some advocated this approach as a response to coercive family planning practices like forced sterilization. In this context, however, this strategy is misguided. Here, societal rather than governmental pressures drive daughter discrimination. Shunning China provides no reason to be optimistic about on the ground improvements and may provoke a backlash to decrease women’s existing protections.\(^{136}\)

Instead, the United States ought to support efforts to eliminate daughter discrimination by providing funding for groups and initiatives focused on eradicating son preference. For instance, the United States could provide money to the All China Women’s Federation (“ACWF”), which is a mass organization charged both with transmitting Party policy to the public and conveying women’s concerns to the Party.\(^{137}\) With its governmental prestige and international contacts, the ACWF is an important entryway for feminist reforms.\(^{138}\) Autonomous Chinese women’s organizations are emerging, but they still need the support of the ACWF\(^ {139}\) to implement initiatives, and many groups lack regular staff and resources.\(^ {140}\) Increasing the role and status of the ACWF as an umbrella for non-governmental organizations (“NGOs”) may also help create a model for other governmental entities to gradually accept an expanded role for NGOs and civil society more generally.\(^ {141}\)

On a separate, but related front, the United States’ ratification of the Convention to Eliminate all forms of Discrimination Against Women might also enhance its ability to combat daughter discrimination in China. If the United States joined this women’s rights regime, it could use the treaty language and official meetings to quietly push for a focus on discrimination against girls and provide US NGOs a mechanism through which to form linkages with the ACWF and Chinese NGOs. As China is still relatively closed to the outside world in many areas, such international legal regimes provide one of the few

\(^{136}\) See Sunstein, \textit{A New Progressivism} at 15–16 (cited in note 98).

\(^{137}\) Howell, \textit{20 Women’s Studies Intl Forum} at 238 (cited in note 122).

\(^{138}\) Id at 241.

\(^{139}\) Cheng, \textit{Women’s Organizations in China: from Affiliation to Autonomy} at 6–7 (cited at note 73).

\(^{140}\) Id at 26–27.

pathways to foster cross-group discussions and support systems. Chinese Women’s Federations need help updating their structures and strategies—exposure to US groups at CEDAW functions might help enhance their abilities.\textsuperscript{142}

**CONCLUSION**

Daughter discrimination is deeply embedded in Chinese society and is reinforced by existing economic and kinship structures. While the government can use law to create formal equality and denounce the participants in sex selective abortions and female infanticide, the government also needs to play a greater role in changing the underlying son preference through programs and incentives that change awareness and perceptions regarding the actual and potential value of daughters in Chinese society. This Article suggests that a combination of government involvement in fostering increased status for daughters along with financial incentives to decrease patrilocality and patrilineality will provide a more effective approach to the ongoing problem of China’s missing and discriminated-against girls and women.
