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Sex Selection, Nondirectiveness, and Equality

SONIA M. SUTER

In exploring the implications of genetics technology for women, Mary Mahowald's article briefly discusses the ethos of nondirectiveness in genetic counseling and its relationship to feminism. This relationship is of particular concern to the largely female group of master's-degree genetic counselors, or genetic associates as they are sometimes called, because genetic counselors must grapple with the sometimes morally problematic implications of genetic technology. Sex selection, in particular, creates a very real tension for many genetic counselors who are committed to equality and feminist goals. On the one hand, this commitment to equality motivates a nondirective approach in which counselors are expected to support and accept the choices of their clients. On the other hand, equality seems to clash directly with the selection of fetuses on the basis of sex. In order to better understand the difficulty of maintaining an approach to genetic counseling that is both nondirective and feminist, I will explore nondirectiveness and its application to sex selection in light of the principle of equality.

Post-implantation sex selection uses prenatal testing to determine the sex of the fetus and selective abortion to terminate the pregnancy if the fetus is

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1. The term "genetic counselor" can refer to anyone who provides genetic counseling, whether she holds an M.D., Ph.D., or M.S. degree. "Genetic associate" generally refers only to master's-degree genetic counselors. I shall use the terms interchangeably unless I specifically indicate that I mean to refer solely to the master's-level genetic counselors.

2. I do not intend to define or explore the meaning of equality in any detail. Rather, I use the term to refer to the notion that individuals should be treated justly and with respect. Any discrimination on the basis of race, gender, ethnicity, or sexuality, for example, is a violation of equality.

3. In this Article, sex selection refers to post-implantation sex selection unless otherwise stated. Pre-implantation sex selection may become routine in the future, but it currently remains experimental. Nora Frenkiel, 'Family Planning: Baby Boy or Girl?', NY Times C1, C6 (Nov 11, 1993). The pre-implantation technique raises some unique ethical concerns that are beyond the scope of this Article.
not of the desired sex. While sex selection has been possible for over two decades, it remains the most vivid illustration of the dilemmas that nondirectiveness can pose for genetic counselors when couples decide to select children on the basis of non-medical traits, as opposed to genetic disease. It also starkly highlights the equality concerns raised by the serious denigration of women in many cultures where sex selection is used disproportionately to select male fetuses over female fetuses.  

Sex selection is one of the most difficult moral dilemmas that genetic counselors face, given their moral and feminist aversions to such a use of prenatal testing and their nondirective ethos. Many genetic counselors condemn sex selection because it denies equality between the sexes. Yet, they are committed to the ethos of nondirectiveness out of a similar concern for equality and justice, as nondirective counseling seeks to protect equality by giving voice to individual perspectives and values and by empowering the disenfranchised. While most master’s-level genetic counselors ultimately accept the use of sex selection based on their commitment to protecting client autonomy, the procedure nevertheless results in “cognitive dissonance” for genetic counselors who struggle with these conflicting moral principles.

Is the dilemma posed by this commitment to equality resolvable or must genetic counselors choose between nondirectiveness and a rejection of sex selection? In other words, if they care about equality, must genetic counselors remain nondirective to the extent that they grant requests for sex selection without expressing their disapproval? Or should they reject nondirectiveness, at least with regard to sex selection, in the interest of promoting equality? Or is there a third alternative—can the problem be reframed such that the dilemma is dissolved?

In order to attempt to resolve or address this conflict, we must first expose the conceptual underpinnings of the moral conflict raised by certain uses of genetic technology such as sex selection. Therefore, in this Article, I will examine the ways in which a concern for equality and justice can support two seemingly contradictory positions: a commitment to nondirectiveness and an aversion to many forms of sex selection. I will begin, in Part I, by presenting

6. Deborah F. Pencarinha, et al, Ethical Issues in Genetic Counseling: A Comparison of M.S. Counselor and Medical Geneticist Perspectives, 1 J Genetic Counseling 19, 24 (1992) (finding 82% of master’s-level counselors versus 62% of M.D. or Ph.D. genetic counselors would perform (38.3% versus 34%) or refer (43.4% versus 28%) patients to other centers for sex selection). While these data come from two surveys conducted four years apart, the data are highly suggestive of occupational differences, even if occupations may not account for the full difference in approaches.
8. I want to qualify up front that not every instance of sex selection is morally
the equality-based arguments for rejecting the practice of sex selection, particularly when used in the context of cultural attitudes that devalue women. Part II will discuss nondirectiveness as articulated in the literature, arguing that among the principles underlying nondirectiveness is a concern for equality. Finally, Part III outlines possible ways of resolving this conflict.

I. Equality Concerns Raised by Sex Selection

Of all of the reasons prenatal testing is requested, sex selection is one of the least common in the United States. In this country, requests for the procedure typically come from families of foreign origin, for example, families from Asia, India, or Islamic cultures. These requests often reflect certain cultural ideals, which, in many instances, devalue women. Despite the fact that sex selection is not prevalent in this country, the practice raises important concerns. Genetic counselors find sex selection especially morally problematic because it is the tip of the non-medical trait-selection iceberg; that is, sex selection uses genetic technology, not to prevent disease in future children, but to select children on the basis of non-medical traits. Genetic counselors also share the view of many feminists that any use of sex selection in the context of devaluing females is reprehensible.

In fact, the consensus among most ethicists is that, in most instances, sex selection is immoral, largely because it violates principles of equality and justice. The primary concerns are that the procedure promotes sexism or is itself inherently sexist. Even if some of the reasons for sex selection may not
appear actively sexist, such as the desire to balance a family by having, for example, both a son and a daughter, many worry that, at best, the technique promotes gender stereotyping. Such stereotyping, according to this view, perpetuates the inequities between males and females.

Many commentators also fear that sex selection is the first step down the slippery slope of attempting to design the perfect child. In other words, sex selection, whether pre- or post-conceptual, may amount to a eugenic practice or result in the commodification of offspring. Such attitudes threaten to create inequities between people on the basis of how closely they approximate notions of "perfection."

Others are concerned that the use of sex selection may give credibility to the pro-life movement's attempts to limit the availability of abortion. In other words, if people use abortion to select against the birth of children with undesirable non-medical traits, such as female sex, the anti-abortion position will gain favor with the public. Ultimately, this could lead to the demise of the protected right to abortion or limitations on the uses of prenatal diagnosis. Since the ability to obtain abortions and prenatal testing is considered central to the empowerment of women, any loss of reproductive rights threatens equality between the sexes.

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14. The concern regarding gender stereotyping applies even in western cultures where the preference for male children is not as great as in some Asian nations because many Westerners still prefer that the first born child be male. Mary Anne Warren, Gendercide: The Implications of Sex Selection 17-18 (Rowman & Allanheld 1985); Wertz and Fletcher, Feminist Critique at 242 (cited in note 12); Gale Largy, Reproductive Technologies: Sex Selection, in Warren T. Reich, ed, Encyclopedia of Bioethics 1439, 1443 (Free Press 1978). The use of sex selection to control the gender sequence of offspring could also influence stereotyping since traits identified with the first born often include those typically associated with males, such as ambition and confidence. Warren, Gendercide at 21. Thus, even if families chose as many sons as daughters, the possibility that many families might choose to select a male first-born child could influence gender roles. See Mahoney, The ethics of sex selection at 150-51 (cited in note 13) (noting this concern among feminists); Renteln, 15 Women's Studies Intl Forum at 416 (cited in note 4).

15. Fletcher, Ethics and Public Policy at 247 (cited in note 10); Wertz and Fletcher, Feminist Critique at 245 (cited in note 12); Powledge, Moral Policy at 211 (cited in note 13); Mahoney, The ethics of sex selection at 155 (cited in note 13); Evans, et al, 164 Am J Obstet Gynecol at 1098 (cited in note 11).

16. Mahoney, The ethics of sex selection at 146 (cited in note 13) (noting that even pre-conceptual sex selection "treats the offspring as a 'product' to be tailored").

17. See Fletcher, Ethics and Public Policy at 229 (cited in note 10); Wertz and Fletcher, Feminist Critique at 244 (cited in note 12).

18. See Wertz and Fletcher, Feminist Critique at 244 (cited in note 12).

Many ethicists also oppose sex selection on the grounds that it misallocates scarce resources, particularly when only 25 percent of women in the United States for whom prenatal diagnosis is medically indicated have access to such services. In a world in which access to health care is so grossly unequal, such a misapplication of medical resources only exacerbates grave social inequities. While the privileged may tailor children to their specifications, the disadvantaged cannot even receive basic prenatal care.

Moreover, in many cultures, sex selection maintains men in positions of wealth and power. If privileged families are best situated to take advantage of sex selection, they are likely to have a greater percentage of sons than less privileged families who must accept the natural ratio of sons and daughters. Thus, there will be a larger proportion of males among the wealthy to inherit the riches and positions of prestige and power.

Perhaps the greatest concern regarding sex selection is its direct negative impact on females. Many view sex selection as similar to infanticide, even if it takes a less extreme form. In fact, one commentator has coined the term "gendercide" to emphasize the similarities between sex selection and genocidal practices such as infanticide. Even critics who find sex selection preferable to the ancient and too widely used practice of female infanticide in countries such as China and India, nevertheless charge that sex selection reflects the same insidious attitudes toward women that underlie infanticide. Both practices treat the sexes in horribly disparate ways, valuing males far in excess of females, and both contribute to the continued inequality of women in those cultures.

Furthermore, even though some critics suggest that sex selection could improve the plight of women without sons, who, in some cultures, are frequently ill-treated, they stress that the very need to protect these women from shame or abuse for failing to bear a son reflects a dire manifestation of inequality. Promoting sex selection, they claim, only causes sexist and unjust attitudes towards women to become even more deeply ingrained and acceptable. They also worry that the physiological and psychological risks of

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23. Id.
24. Id at 22.
26. Id; Wertz, *Reproductive Technologies* at 2214 (cited in note 11).
frequent abortions\textsuperscript{28} for women who want to ensure the birth of a male child further perpetuate women's subordinate status.\textsuperscript{29}

Sex selection may also result in a lower percentage of women in the population, as in China where the ratio of live male births to female births has increased.\textsuperscript{30} Critics fear that as women (and wombs) grow scarce, women will be further devalued and commodified. Women might be prostituted to meet the increased demand for female sexual companionship. Worse yet, they might also become "baby machines" as "wife-less" men require these scarce "resources" to undergo numerous births to satisfy their desire for children.

In sum, critics of sex selection charge that it bolsters existing inappropriate or immoral inequalities and perpetuates perniciously discriminatory attitudes. In their view, sex selection is antithetical to a deep commitment to protecting equality both between the sexes and in general. As we shall see in Part IIA below, a commitment to the same ideals motivates the ethos of nondirectiveness.

II. Nondirectiveness

"There is perhaps no area of medicine with a stronger commitment to patient autonomy than reproductive genetics."\textsuperscript{31} This commitment is expressed

\textsuperscript{28} See Warren, \textit{Gendercide} at 21-22 (cited in note 14). The newer form of prenatal testing, chorionic villus sampling, provides chromosome results and the ability to determine sex within the first trimester, allowing women to terminate the pregnancy before the second trimester. Lori B. Andrews, et al, eds, \textit{Assessing Genetic Risks: Implications for Health and Social Policy} 76-77 (National Academy 1994). Women who terminate their pregnancies in the first trimester will not yet have felt fetal movement and will have carried the fetus for a shorter time than those who abort in the second or third trimesters. Nevertheless, women who terminate their pregnancies during the first trimester may still experience psychological stress and difficulty. See generally, Barbara Katz Rothman, \textit{The Tentative Pregnancy: How Amniocentesis Changes the Experience of Motherhood} (Norton 1993). See also Irving G. Leon, \textit{When a Baby Dies: Psychotherapy for Pregnancy and Newborn Loss} 63 (Yale 1990) (noting that guilt and depression may follow an abortion even if ultimately outweighed by relief).

\textsuperscript{29} Wertz and Fletcher, \textit{Feminist Critique} at 242 (cited in note 12); Wertz, \textit{Reproductive Technologies} at 2214 (cited in note 11).

\textsuperscript{30} In China, where the policy of limiting family size to one child exacerbated the urgency to have sons, the number of live male births for every 100 female births eventually rose from 105 to 113.8 in 1990. Shripad Tuljapurkar, Nan Li, and Marcus W. Feldman, \textit{High Sex Ratios in China's Future}, 267 Sci 874, 874-75 (1995). In response to the frightening population changes, the Chinese government has not only begun a campaign to alter sex preferences, Sheila Tefft, \textit{A Rush to Rob the Cradle—of Girls}, Christian Sci Monitor (Aug 2, 1995) (noting that the Chinese government has "launched a campaign to change attitudes toward girl children and upgrade women's economic and social status"), but has also instituted legal prohibitions against the practice of sex selection in an attempt to reinstate the natural sex ratio. \textit{New Chinese Law Prohibits Sex-Screening of Fetuses}, NY Times A5 (Nov 15, 1994).

by the ethos of nondirectiveness, which holds that patients should make their own decisions regarding genetic testing and reproductive options in terms of their own values, beliefs, and circumstances, unhindered by the biases of genetics professionals. While genetic counselors are trained to educate counselees about the medical facts of genetic conditions, patterns of inheritance, and available options, and to help clients deal with the emotional repercussions, counselors are admonished not to make specific recommendations. They must not express their opinions as to what counselees should or should not do. They can help patients clarify their values and relevant feelings, but counselors should never prescribe a "right" set of values.

Nondirectiveness, as described in the literature, requires genetic counselors to adopt a neutral posture to avoid directly influencing the counselees' decisions. Consequently, counselors try to present the genetic data nonjudgmentally and to support patients' decisions, whether or not the counselor agrees with them. Most would regard criticism of a client's decision as a serious breach of nondirectiveness.

Nondirectiveness at its extreme can be illustrated by the commonly cited rule: a genetic counselor should never tell the counselee what she would do if she were in the counselee's shoes. Nor should she tell counselees what

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32. See, for example, Lynn Godmilow and Kurt Hirschhorn, *Evaluation of Genetic Counseling*, in Herbert A. Lubs and Felix de la Cruz, eds, *Genetic Counseling: A Monograph of the National Institute of Child Health and Human Development* 121, 123 (Raven 1977) (referring to Mount Sinai's policy of nondirectiveness). See also Eleanor Gordon Applebaum and Stephen K. Firestein, *A Genetic Counseling Casebook* 7 (Free Press 1983) (asserting that it is proper that "the counselor does not seek to superimpose his own objective upon that of the counselee").


34. I should note that nondirectiveness, as described in the literature, may well oversimplify how counselors understand the process and it may ignore the very real possibility that genetic counselors do not share a uniform understanding of nondirectiveness. Indeed, no good empirical data exist regarding what nondirectiveness really means to genetic counselors. Moreover, the traditional account of nondirectiveness tends to describe a process that is potentially incoherent or inconsistent in some respects. It is beyond the scope of this paper to explore those problems, though I address them in another paper. See Sonia M. Suter, *A Fresh Look at Nondirectiveness* (unpublished manuscript on file with the author).

35. The notion that any counseling posture can be meaningfully neutral has been challenged by many. See, for example, Karen Grandstrand Gervais, *Objectivity, Value Neutrality, and Nondirectiveness in Genetic Counseling*, in Dianne M. Bartels, Bonnie S. LeRoy, and Arthur L. Caplan, eds, *Prescribing Our Future: Ethical Challenges in Genetic Counseling* 119 (Aldine de Gruyter 1993).


38. Responding to a counselee's questions about what the genetic counselor would do, counselors will offer such statements as: "It really wouldn't be helpful for me to answer
others have decided when faced with similar situations. What others would do is considered irrelevant since many counselors believe that no two couples are alike in their values, goals, and upbringing.\(^3\)

In short, the genetic counseling literature admonishes genetic counselors to try to hide their biases and attitudes from patients, keeping them as mysterious and unknowable as the secret of the Sphinx.

A. NONDIRECTIVENESS’ COMMITMENT TO EQUALITY

Nondirectiveness reflects a commitment to equality in a number of ways, both as it relates to counselees and counselors.\(^4\) As Mahowald points out, its focus on patient autonomy is consistent with a liberal feminist philosophy\(^5\) that strives to achieve equal rights for women. Viewed in terms of liberal feminism, nondirectiveness honors the individual rights of the woman (often in conjunction with her partner)\(^6\) to make her own reproductive decisions unimpeded by the genetic counselor. Nondirectiveness can be seen as an extension of the principles underlying women’s battle for reproductive freedom and the opportunity to terminate pregnancies without having to provide an “acceptable” justification.\(^7\)

that question for you because I won’t have to live with the consequences of the decision. I believe I can be of assistance by helping you to discuss your feelings, to consider all options, and to understand the facts upon which your decision should be based.” Applebaum and Firestein, Counseling Casebook at 210 (cited in note 32). But see F.C. Fraser, Genetic Counseling, 26 Am J Hum Genetics 636, 649 (1974) (“Many counselors would go so far as to say that although it is impossible to extrapolate himself entirely into the counselee’s situation... he thinks he would probably take a certain course of action.”).

39. Charles L. Bosk, All God’s Mistakes: Genetic Counseling in a Pediatric Hospital 118 n 5 (Chicago 1992). See also Applebaum and Firestein, Counseling Casebook at 11 (cited in note 32) (“[N]o outsider can ever duplicate the counselee’s experience of life within the circle of their own family.”).

40. Of course, the motivations driving nondirectiveness are likely varied and complex. As a result, other factors in addition to a concern for equality may be at work. See Suter, A Fresh Look (cited in note 34).

41. Mary B. Mahowald, Genetic Technologies and Their Implications for Women, 3 U Chi L Sch Roundtable 439, 459 (1996).

42. I do not want to ignore the importance of many male partners in the process of genetic counseling. While many, even most, couples approach the complex decisions presented by genetic technology jointly, it remains true that, legally, the woman has the final word about whether to undergo prenatal testing or pregnancy termination. Thus, to the extent that genetic counseling is intimately connected to reproductive choices, genetic counselors recognize the woman’s special biological role. Even so, genetic counselors always encourage women to consult their partners, if available. Women are seen as the sole decision-makers in the “default” situations when partners are unavailable, uninvolved, abusive, or when women patently refuse to include their partners for their own reasons.

43. The first master’s-level genetic counseling program was established in the midst of the emergence of the women’s movement and the Supreme Court’s growing recognition that the right to privacy extends to procreative rights. See, for example, Griswold v Connecticut, 381 US 479 (1965) (finding a privacy right of married couples to use contraceptives); Eisenstadt v Baird, 405 US 438 (1972) (finding a privacy right of single
As Mahowald indicates, women’s potential to become pregnant is a sex-based difference (which can be viewed both positively and negatively). Consequently, an ethic that supports the right of a woman to make reproductive decisions is one that attempts to minimize the unequal burdens that pregnancy can impose, thereby fostering sex equality. Thus, even if a woman chooses to use prenatal testing to select for male fetuses—and nondirectiveness, as articulated in the literature, insists that she be allowed this choice—nondirectiveness nonetheless protects the equality and reproductive freedom of all women, even at the expense of individual decisions that foster inequality.45

Ruth Cowan, a historian of science and technology, indirectly offers another way in which nondirectiveness with regard to sex selection reflects a commitment to feminism and equality. She defends sex selection in terms of a feminist ethic based in nurturance. Both Gilligan and Rothman, Cowan notes, have identified a “nurturing voice” in studies of couples who decided to terminate pregnancies.46 These couples “used the language of relationships, the need to sustain relationships, the need to provide good relationships, the need to nurture and to nurture well, in expressing their reasons for deciding to abort.”

Scholars have extrapolated from this voice an ethical principle that contemplates the importance of nurturance in helping individuals become independent and capable beings. Deciding whether to continue a pregnancy in terms of the nurturance ethic, the couple or woman must consider the chances that the fetus will be able to become independent and autonomous and whether the resources necessary to nurture that fetus to independence will deprive others of nurturance.48 Such an ethic, Cowan concludes, demands that decisions regarding abortion “should rest entirely in the hands of the woman who is pregnant,”49 since she can best determine her capacity to nurture the fetus and others. Under this view, if a woman feels unable to nurture a daughter properly, then it is better for this woman to avoid having a daughter. Therefore, physicians should provide sex-selective abortion services to patients “no matter how personally repugnant to the provider the decision of the woman may be.”

To the extent that the underlying goals of nondirectiveness reflect this feminist-based nurturance ethic, nondirectiveness toward sex selection is ulti-
mately consistent with the principle of equality in two ways. It allows women or couples to make choices that maximize the care and opportunities of others with whom they have relationships. Such care accords respect to those others, recognizes them as important, and gives weight to their needs in considering important family decisions—all of which is important to equality. In addition, it allows the woman to consider how she can best be nurtured herself. In cultures that devalue women, studies have shown that women who bear daughters receive less support from family and friends and take less care of themselves than women who have sons.51

Nondirectiveness also reflects feminist ideals and a concern for equality as it relates to the role of the genetic counselor. While Mahowald correctly states that “women who do genetic counseling do not neatly fit into either of Gilligan’s [justice and care] models of moral reasoning,” she observes that they “evidence elements of both justice and care.”52 Genetic counseling exemplifies Gilligan’s feminist care model of moral reasoning in notable ways. The psychological paradigms underlying genetic counseling emphasize the counselor's responsibility to be supportive and open to cultural and individual differences.53 This approach to counseling exhibits such caring elements as empathy and sensitivity toward others. In addition, genetic counselors attempt to “know[] the other as different from the self”54 and “to attend to voices other than their own and to include in their judgment other points of view.”55 If one views nondirectiveness in light of the “caring” voice of morality that Gilligan describes, it is not surprising that male geneticists are two to seven times more likely to be directive than female geneticists.56

Mahowald points out that this openness to different perspectives supports equality in that it empowers women by maximizing their autonomy57 and eroding the power imbalances that engender sexual inequality. It also empowers other groups that typically have lacked power. It empowers anyone who is not represented by the status quo because it supports perspectives that those “in power” may reject or ignore. It empowers patients vis-à-vis the medical establish-

52. Mahowald, 3 U Chi L Sch Roundtable at 458-59, 460 (cited in note 41).
53. The first master's-level counseling programs incorporated psychology courses to stress the emotional and psychological effects of genetic testing. See Joan H. Marks, The Training of Genetic Counselors: Origins of a Psychosocial Model, in Dianne M. Bartels, Bonnie S. LeRoy, and Arthur L. Caplan, eds, Prescribing Our Future: Ethical Challenges in Genetic Counseling 15, 18-22 (Aldine de Gruyter 1993). This method of training encouraged counselors to be nonjudgmental and not to assume that patients’ values would resemble their own or that the counselors’ values were superior.
55. Id at 16.
57. Mahowald, 3 U Chi L Sch Roundtable at 460 (cited in note 41).
ment, minorities vis-à-vis the majority’s perspective, and even genetic counselors themselves vis-à-vis medical geneticists. All of these groups are empowered not only because they are given a voice and are heard, but because they can carry out their choices with the full support of genetic counselors and without judgment or criticism. Such efforts to empower the disenfranchised or those with weak voices reflect an ideology consistent with not only feminist thought, but also with critical theory in general. The ethos of nondirectiveness thereby works toward leveling power imbalances and increasing equality among different groups.

For all of these reasons, nondirectiveness can be seen as consistent with and supportive of an interest in promoting equality between the sexes and among other unequally treated groups. While justified on those grounds, application of nondirectiveness to requests for sex selection continues to trouble many. Even grounded in a concern for equality, nondirectiveness, at least in the case of sex selection, quite often results in ethically problematic consequences for women. With regard to sex selection, a concern for equality appears to lead down divergent and conflicting paths, the possible resolution of which I will discuss in Part III. First, let me take a moment, however, to explore how this quandary affects medical professionals.

B. MEDICAL PROFESSIONALS’ VIEWS TOWARD SEX SELECTION

Based on my earlier discussion of the equality-based arguments against sex selection in Part I, it should come as no surprise that most medical professionals oppose most uses of post-implantation sex selection on moral, medical, and economic grounds. One study indicates that 85 to 99 percent of geneticists and obstetricians disapprove of sex selection via prenatal diagnosis. Another study, which examined the attitudes of health care professionals (79 percent of

58. Genetic associates, who tend to be well-educated and bright women, have had to work hard to make a place for themselves in the hierarchical medical world. Genetic associates often have had to vie for professional “turf,” particularly when physicians appear to curtail their opportunity to do the counseling for which they have been trained. See Bosk, All God’s Mistakes at 24 (cited in note 39) (describing a genetic associate’s frustration with her limited opportunities to provide genetic counseling). As a result, many genetic associates ally with patients in a battle to overcome any attempts by physicians to control medical decision-making. Of course many physician genetic counselors also strongly believe in nondirectiveness. Nevertheless, studies indicate, see Pencarinha, et al., 1 J Genetic Counseling at 28-29 (cited in note 6), and my experience as a genetic counselor confirms, that the concern with protecting patient autonomy is greatest among genetic associates.

59. This argument, however, does not resolve the problem that nondirectiveness can further empower those already empowered to the extent that it allows sexism or other attitudes that enhance power imbalances to continue. Herein lies the tension for those who see nondirectiveness as a tool to giving voice to the weak in general, because it may not do so in all instances, such as when applied to sex selection.


respondents) as well as ethicists and clergy (21 percent of respondents), found that a majority of the respondents believed that sex selective pregnancy terminations in the first (67.2 percent), second (74.6 percent), and third (92.5 percent) trimesters are morally unacceptable.

Despite its moral aversion to sex-selective abortions, the medical profession has become increasingly willing to perform prenatal diagnosis for sex selection or to refer patients to others who would be willing to offer such testing. Interestingly, as Mahowald notes, female Ph.D. and M.D. geneticists are more likely than men to respond to requests for sex selection nondirectively.

The few articles that have explored the attitudes of the predominately female master's-level genetic counselors suggest that these counselors are also more nondirective regarding sex-selection decisions than M.D. or Ph.D. geneticists. A 1989 study determined that 82 percent of such counselors in the United States would grant requests for prenatal testing for sex selection (38.3 percent) or refer patients to centers offering such a service (43.4 percent).

A more recent study of genetic counselors, primarily master's-level genetic associates, offers no hard statistics but provides an impressionistic glimpse of their attitudes toward sex selection. The authors conclude that these genetic counselors shared “common views on only two issues: the ideal of nondirective

62. Evans, et al, 164 Am J Obstet Gynecol at 1094 (cited in note 11). The authors of this study, a group of physicians and an ethicist, conclude that abortion for gender selection “violates equality in a radical way. Also, gender is not a disease, and to abort for gender is a precedent for eugenics.” Id at 1098.

63. In 1972-73, 1% of American physicians fell into that category. In 1975, 15% would recommend amniocentesis for sex selection in general and 28% would recommend it for a couple with a daughter who wanted only two children and who wanted to ensure that their second child would be a son. Burke, 34 Soc Sci Med at 1264 (cited in note 7). By 1985, 62% would either perform such a procedure (34%) or would offer a referral (28%) for a couple with four daughters who would abort unless the fifth fetus were male. Wertz, Reproductive Technologies at 2213 (cited in note 11).

64. Mahowald, 3 U Chi L Sch Roundtable at 458-59 (cited in note 41). See also Wertz and Fletcher, 37 Soc Sci Med at 1364 (cited in note 21). I want to make clear, however, that geneticists have different attitudes and values and do not all share identical approaches or attitudes toward sex selection. My arguments are based on what appear to be, according to a limited number of studies, the most prevalent attitudes of genetic professionals.

65. Pencarinha, et al, 1 J Genetic Counseling at 23-24 (cited in note 6). The authors note, however, that most M.S. genetic counselors “would not grant the couple’s request” for a sex-selective abortion. Id at 24. This statement masks the fact that a substantial percentage (43.4%) would refer such couples to other centers that presumably offer such services. I make this presumption because the authors state, id at 21, that they modeled the scenarios they presented to the genetic counselors after the Wertz, Fletcher, and Mulvihill surveys, which describe referring patients to other centers “offering the service.” See Wertz, Fletcher and Mulvihill, 46 Am J Hum Genetics at 1206, table I (cited in note 5).

66. Burke, 34 Soc Sci Med at 1264 (cited in note 7). One of the respondents had a medical degree and the 29 others, save four with B.A. degrees and on the job training, had M.S. degrees. All but two of the counselors were female. Id at 1264-65.
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counseling... and a condemnation of the use of prenatal diagnosis for sex selection purposes." Most genetic counselors "did not consider this practice 'business as usual,'" and they were outraged that "scarce medical resources" were being used for what they regarded as "a frivolous reason at best [and] a morally shoddy abuse of reproductive freedom at worst." This study points out, if only briefly, the dilemma at the center of this paper—the fact that sex selection challenges many of the genetic counselors' moral commitments, including their commitments to the pro-choice ethic, to nondirectiveness, to cultural sensitivity, and to equality between the sexes. For modern-trained genetic counselors, sex selection creates "cognitive dissonance" on several fronts.

III. Resolving the Incongruity Created by Sex Selection and Nondirectiveness

What is to be done about the dissonance created by genetic counselors' equality-based opposition to sex selection and commitment to nondirectiveness? Is this dilemma resolvable or must genetic counselors choose one path at the expense of the other? In other words, must their commitment to equality be expressed through adherence to nondirectiveness such that they grant requests for sex selection without expressing their disapproval? Or must genetic counselors disavow their commitment to nondirectiveness, at least with respect to sex selection, in the interest of promoting equality?

Without attempting to offer any final answers to these questions, I propose four possibly fruitful ways of addressing this problem. The first questions whether a commitment to equality does in fact require a rejection of sex selection. The second examines whether a concern for equality necessitates the sort of nondirective approach described in the literature. A third response asserts that nondirectiveness is a procedure designed to achieve important goals in general and therefore it justifies certain isolated troubling outcomes. The final approach concedes that ultimately this dilemma is intractable and therefore we should come to terms with it, recognizing that genetic counselors cannot be expected to achieve everything, including the promotion of equality in all instances.

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67. Id at 1265.
68. Id.
69. Id.
70. Id.
71. Id at 1266.
72. Id.
73. Id. Burke concluded that some of the counselors' comments suggested that they "might not find sex-selective abortion quite so offensive if it were balanced between the sexes or if it were carried out by people with similar cultural views to their own." Id. This conclusion, if correct, suggests that the largest difficulty they have with sex selection is its tendency to be used as a tool for discrimination against females.
74. Id at 1268.
A. EQUALITY AND SEX SELECTION

The first potential response to the genetic counselor's dilemma is to challenge the assertion that sex selection is inherently incompatible with equality. Perhaps equality may be best preserved by allowing women or couples to make any decision, however disconcerting, including the decision to have a sex-selective abortion. After all, abortion is legal until viability, regardless of the reasons for pregnancy termination. We permit abortion for essentially any reason, including social concerns, economics, or convenience. To many, these reasons are no more morally palatable than sex selection. Yet, feminists frequently defend abortion decisions because women's ability to control their reproduction is central to their equality. Why then, one might ask, would equality be furthered by singling out certain reproductive decisions as immoral?

Moreover, one might argue, the real villains in the struggle against inequality are the cultural values that demean women, as opposed to sex selection itself which is only a symptom of such values. While sex selection may reflect demeaning attitudes toward women, attempting to prevent sex selection may actually do little to promote equality. Instead, the real solution might be to address the underlying roots of sexism and discrimination. Until those prejudices are eradicated, the presence or absence of sex selection will be of little consequence in raising women's status. Thus, since nondirectiveness, by comparison, at least has the potential to promote equality by enhancing women's reproductive autonomy, a nondirective approach to sex selection requests may be most compatible with equality.

B. NONDIRECTIVENESS—“IMPERFECT PROCEDURAL JUSTICE”

An alternative approach would be to defend nondirectiveness on the grounds that it is a procedure that both inherently and instrumentally promotes equality. As discussed in Part II, nondirectiveness has inherent value by virtue of its underlying commitment to equality and autonomy. By giving counselees autonomy in genetic decisionmaking, the process expresses a deep respect for individuals and enhances equality among individuals. Our legal system is similarly defended on the basis that it is rooted in a deep concern for justice and fair representation. For example, by guaranteeing all criminal defendants a constitutional right to a fair trial and legal representation, our legal system treats individuals with respect and promotes equality.

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75. Fletcher, *Ethics and Public Policy* at 229 (cited in note 10).
76. John Rawls, *A Theory of Justice* 85 (Belknap 1971). Rawls identifies two different systems of justice. A system of pure procedural justice must have “an independent standard for deciding which outcome is just and a procedure guaranteed to lead to it.” Id at 84-85 (emphasis added). Procedural justice under such a system is *perfect* because justice would always be guaranteed. However, more realistic and practical systems of justice only achieve imperfect procedural justice because they do not always lead to the correct result. But, like the criminal trial, they are systems of justice nonetheless because they are designed to reach just results most of the time. Id at 85-86.
One could argue further that nondirectiveness not only has inherent but also significant instrumental value with regard to equality. According to this view, nondirectiveness provides a coherent approach to genetic counseling that promotes equality more often than any other approach. The nondirective procedure for genetic counseling is more effective at protecting equality and autonomy in troubling reproductive decisions than ad hoc responses. In other words, nondirectiveness is part of a system that ensures that patients make voluntary reproductive decisions in accord with their values. In most cases, the results will be morally satisfactory to geneticists who strive, above all, to help families reach decisions in harmony with the lives they hope to create for themselves. Moreover, this approach treats all clients equally by giving equal weight and respect to their individual perspectives and choices. Thus, although nondirectiveness may require genetic counselors to support certain positions that appear inconsistent with equality, they can be comforted by knowing that the process most often preserves equality and respect.

Again, our system of legal advocacy provides a nice analogy. Lawyers often face the dilemma of defending a client whose position conflicts with the attorneys’ moral views. Many a public defender has had to represent vigorously and with conviction defendants whom the attorney strongly suspects have committed serious crimes, such as rape or murder. Similarly, corporate attorneys are often morally troubled by representing particular sides of a dispute or even particular clients. Yet these attorneys resolve their moral discomfort with particular clients or legal positions by recognizing the valuable role they play in a system more far-reaching than the individually troubling cases. They can defend their actions by reasoning that a legal system that provides full and effective advocacy for both sides is best able to reach the most legally just result, even though the system may fail in certain instances. Procedure is valued over substantive judgments in specific instances because it ensures the most satisfactory approach for the system as a whole, even if it is sometimes imperfect.

According to this line of reasoning, the dilemma for genetic counselors would dissolve if genetic counselors viewed nondirectiveness as part of a system (albeit imperfect) intended to respect and treat individuals equally. Therefore, counselors could justify a nondirective approach to sex selection as the approach most consistent with a general, systematic commitment to equality even though equality may be compromised in particular cases.

C. THE LIMITATIONS OF NONDIRECTIVENESS

One might respond to the dilemma in quite a different manner. One could argue that, in spite of the moral justifications underlying nondirectiveness, its ethic is effectively more procedural than substantive. As a consequence, nondirectiveness runs the risk, as in the case of sex selection, of producing

77. Id at 85-86 (describing criminal trials as an example of imperfect procedural justice—"[a]n innocent man may be found guilty, a guilty man may be set free").
ethically problematic results. Perhaps if we really care about equality, the argument would continue, we should not condone a nondirective approach to genetic counseling because it, at least in some cases, perpetuates inequality and other values to which we are morally opposed. Moreover, though nondirectiveness can give voice to the disempowered in general, in certain instances, such as when families request sex selection because they devalue females, nondirectiveness serves to further empower the empowered and disempower the disempowered.

The solution under this view would be to search for alternative approaches to counseling. Genetic counselors who refuse to be nondirective with regard to sex selection might still protect patient autonomy, empower the weak, express compassion and sensitivity toward “other voices,” and promote equality. Genetic counselors might be able to achieve the goals underlying nondirectiveness without being nondirective.78

One such approach might include refusing to offer or refer patients to other clinics for sex selection testing or refusing to provide information about the sex of the fetus until the pregnancy is so far advanced that abortion becomes infeasible or illegal.79 Such outright refusals, however, do little to honor the underlying goals of nondirectiveness, including a concern for equality and autonomy.

Instead, genetic counselors could develop a more nuanced approach to counseling that is consistent with the rationales underlying nondirectiveness. In difficult cases, such as sex selection, where nondirectiveness would likely produce ethically troubling results, an alternative approach might allow genetic counselors to be true to their equality values. Between the extremes of prohibiting sex selection and failing to express one’s views lie other possibilities. For example, counselors might lift their veils of neutrality and engage in a moral discussion with clients in which they articulate their deep concerns regarding sex selection.80 Developing such an alternative approach, however, would require serious rethinking of the appropriate role of genetic counseling.

D. ROLE LIMITATION

Finally, one could simply accept the genetic counselors’ quandary as unavoidable rather than attempt to “dissolve” the problem by reconceptualizing it.

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78. That is, nondirective in the way that the literature so often describes it.
79. See Wertz and Fletcher, Feminist Critique at 248 (cited in note 12); Marc Lappé, Choosing the Sex of Our Children, Hastings Ctr Rep 1, 2 (Feb 1974); Burke, 34 Soc Sci Med at 1267 (cited in note 7) (noting that in Canada, the policy is to wait until the seventh month of gestation, when abortions are not legal, to release information on fetal sex); Wertz and Fletcher, 37 Soc Sci at 1365 (cited in note 21) (suggesting that laboratories should not release the information of fetal sex to the physician).
Perhaps we expect too much from genetic counseling. Any professional can only do so much in the name of equality or any other moral value. Thus, genetic counselors might defend a nondirective approach to sex selection on the basis that their role in patient care, by necessity, must have certain limitations. The primary goal of genetic counseling is to educate patients regarding their options and to help patients reach decisions with which they will be able to live in the future, not to ameliorate societal inequality.

Even if committed to principles of equality, genetic counselors cannot expect to abandon the defining elements of their job to fight for equality in all instances. Like the roles of physicians, lawyers, and therapists, the role of genetic counselors must be circumscribed to some extent, otherwise the burdens and responsibilities of their positions will become unwieldy. Genetic counselors simply cannot be held accountable for fighting against all inequities in the world. Perhaps all we can expect is that the underlying rationales supporting nondirectiveness are morally sound and that genetic counselors fulfill the goals of their profession, rather than struggle against every injustice they encounter.

IV. Conclusion

The genetics community has long recognized the dissonance that genetic counselors experience when faced with requests for sex selection. Yet, little has been done to explore the conceptual underpinnings of this conflict so that we might begin to dissolve the problem or lessen the tensions it creates. While a commitment to equality arguably creates such dissonance by both motivating a nondirective approach and by making sex selection morally offensive, it may be possible to rethink the consequences of a commitment to equality such that the conflict is resolvable. In a modest first step, this Article attempts to map possible avenues for further inquiry and invites others to help explore solutions to this problem.