

# Chapter 13

## Harms to Future People and Procreative Intentions

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**Abstract** This paper argues that agents' intentions can play a critical role in the moral appraisal of policies that result in the creation of shorter or harder lives than the lives that would have resulted from other policies. When agents, whether parents or policymakers, intend to create people whom they believe can only lead shorter or harder lives than others they might have created, the people they create will lack a complaint against them—a complaint they might have had if the agents lacked those intentions.

**Keywords** Intentions · Partiality · Policy · Justification · Harm · Nonidentity problem.

### 13.1 Introduction

We can be criticized for two kinds of actions with respect to future people. We can cause harms to future generations, like floods, famines, and nuclear catastrophes. And we can create people who will have shorter or harder lives than those of other people we might have created.

My interest in this paper is in exploring the relationship between these two kinds of actions in a class of situations where they converge: where future people are harmed or impaired by the very actions or policies that are necessary for their worthwhile existence. Derek Parfit offers such “identity-affecting” cases to suggest that the underlying moral offense in both kinds of action is the same: the creation of a world which is, from an impersonal perspective, worse than it might have been—with less overall well-being, happiness, or utility.<sup>1</sup> The future people harmed by policies that are necessary for their worthwhile lives are not wronged, the argument goes; rather, they are the incidental beneficiaries of policies that can be only be criticized for making the world as a whole worse off. But if the moral offense is

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impersonal in this class of cases, it may also be impersonal in standard “identity-preserving” cases, where harm is inflicted on people who could have existed without suffering it.

Several philosophers have sought to deny Parfit’s first claim, that the harm in identity-affecting cases is impersonal, so as to forestall any attempt to generalize the impersonal account to standard cases of harming. They argue that actions and policies that harm future people may violate their rights, or wrongfully harm them, even if they are necessary for their worthwhile lives.<sup>2</sup>

In this paper, I will argue that the wrong in policies that cause “necessary” harms to future people—harms they could not have existed without suffering—cannot be analyzed as *either* a standard rights violation or a lack of beneficence. The wrong in such policies is unlike a standard rights violation, since it is found only in the absence of a certain kind of intention—an intention to create an individual or kind of individual whom one knows can only live a truncated or disadvantaged life. But for much the same reason, the wrong cannot be seen as a simple failure to act in a beneficent manner, since there is no wrong, or only a distinct and lesser one, in policies that express such procreative intentions, even policies expected to yield consequences impersonally worse than the alternatives.

### 13.2 Must We Create the Best? Partiality Toward Future Imperfect People

Several approaches to the non-identity problem have retained or acquired currency in the 30 or so years since its introduction. Most seek to explain or accommodate the strong intuitions elicited by a handful of influential hypotheticals introduced by Parfit—e.g., *The Risky Policy* and *A 14-Year Old Girl*.<sup>3</sup> These approaches differ in whether they seek to justify (1) the judgment that the agents act wrongly and (2) the judgment that they wrong those who owe their worthwhile lives to the very policies or actions that harm them. Some attempt to do both, by explaining the wrong in these cases in person-affecting terms; in terms of a harm or wrong done to the individuals who owe their existence to the agent’s conduct. These approaches identify a violation of rights or breach of duty in the intentional, knowing, or negligent creation of future people expected to face certain harms or fall below some threshold of well-being.<sup>4</sup>

Other approaches seek to defend only the first judgment—that the agents act wrongly—while denying that they wrong those who owe their worthwhile lives to the very policies and actions that harm them. These latter approaches share Parfit’s view that non-person-affecting principles are needed to explain such cases, but they typically seek to limit recourse to such principles to choices where the number of future people will be the same in each alternative.<sup>5</sup>

Still other approaches distinguish two kinds of identity-affecting cases. In “macro” cases like *The Risky Policy*, current policy decisions have far-reaching effects on the identity of the people who will exist in future generations and how

well they will live. In “micro” cases like *A 14-Year Old Girl*, a parent makes a reproductive choice that results in her having a child with an impairment instead of a child without one.<sup>6</sup> One approach, developed by Melinda Roberts, claims that in standard macro cases, the non-identity problem does not arise because the wrong can be explained in person-affecting terms. The affected individuals *are* made worse off, since they *could* have existed without the harm: they had the same vanishingly small ex-ante odds of coming into being whether or not the harm-causing policy was selected.<sup>7</sup> On this approach, the non-identity problem is raised largely by micro cases, in which the individual could not, at least as a practical matter, have come into existence without the harm. In such cases, the agent does not harm the individual she creates, and the judgment that she does is either mistaken or misplaced: there may be harm to third parties, but not to the individual created.

The approach I favor, and will develop here, offers a more qualified judgment in micro cases. It can be understood in terms of a distinction drawn by Hallvard Lillehammer in this volume: between “person-involving” concerns—about “benefits or harms to identifiable individuals,” and partial concerns—about benefits or harms to “a subset of humanity, for example, the agent’s family, to which the agent has a special attachment.” As Lillehammer argues:

[T]he potential conflict between partial and impartial concerns cannot be reduced to a conflict between person involving and non-person involving concerns. This fact is significant for the ethics of human reproduction. Thus, it might be tempting to think that the ethics of reproductive choice must be fundamentally impartial because reproductive choices are identity-affecting and the values at work in identity affecting choices are fundamentally non-person involving. This would be a sound argument if all non-person involving values were fundamentally impartial. But they are not.<sup>8</sup>

I will argue that in macro as well as micro cases, the agent can choose to create some people rather than others out of partial concerns. I will also contend—and here I may part company with Lillehammer and many others—that if an agent acting from such partial concerns creates people with shorter or more disadvantaged lives than others she might have created, she will not wrong those people, as she would have if their creation had resulted from purely selfish or other ulterior motives.

These claims are easier to make out in micro cases, where prospective parents may have strong preferences about the kind of child they want to bring into existence and into their families. I have argued elsewhere that if parents act on such a preference, they will not wrong the child they create, even if they believe that a child of that kind can only live a truncated or disadvantaged life.<sup>9</sup> Some, but by no means all, parents will have such reasons in creating children whom they know or expect will lead especially difficult lives, e.g. parents who choose to have a child with whom they will have a genetic tie, when any such child is likely or certain to have, by virtue of that tie, genetically-based impairments.

It might, however, seem difficult to attribute such reasons to policymakers, whose decisions affect the population of distant generations. Why would they have any reason for preferring the unidentifiable individuals who would exist hundreds of years later under one policy over the different individuals who would exist under another? I will suggest that such reasons can be found in the ordinary partiality

that policymakers display towards members of their own political community or culture. Such partiality might well give them reasons to populate a future world with more of their own kind, even if doing so meant that the population of the future world would have shorter or less advantaged lives than if they had chosen impartially.

Such partiality may be even harder to defend than the partiality that individuals have to future people with their own genes, but I will argue that it plays a similar role in the moral appraisal of identity-affecting decisions. It denies a complaint to the objects of that partiality—people who will live shorter or less advantaged lives than the people who would have existed in their place under an impartial policy. The policymakers in such cases are still subject to criticism, because they make the world an impersonally worse place by acting on a suspect partiality. But this criticism is weaker than that to which the decision makers in Parfit's Risky Policy case are subject, since it is not accompanied by even the semblance of a complaint from the affected individuals. In light of the policymakers' intentions, those individuals appear to be the beneficiaries rather than the victims of an impersonally inferior policy.

Without a complaint from the affected individuals, the impersonal objection to the chosen policy has much less force. But this suggests that much of the outrage provoked by the Risky Policy reflects a judgment that the individuals harmed by that policy have also been wronged, and thus that the objection to the Risky Policy cannot be completely explained in impersonal terms. I will argue that this judgment is warranted. The Risky policymakers, having no intention to create individuals who can only live shorter and less advantaged lives, display a disrespectful indifference to the hardships faced by those individuals. In contrast, policymakers who act partially in creating future individuals expected to face similar hardships show no such disrespect to those individuals. I will argue that such differences in intention are relevant to our moral judgment of policies, as well as parental decisions, that cause harm to people who would not have existed without them.<sup>10</sup>

I will begin with a case in which policymakers make the impartial decision to delay the extinction of humanity by adding a generation with truncated lives. I will argue that a standard rights-based account cannot account for our approval of the decision to create an additional generation which will be painlessly annihilated after 35 years. An impersonal account has an easy explanation of our favorable judgment in this different-number case. But, as well as challenging a rights-based account of the Risky Policy, this case will set the stage for several others that challenge impersonal accounts.

An impersonal account will have trouble explaining our judgments in same-number variations of this case, in which the policymakers prefer the truncated lives of future people with whom they have a strong affinity to the longer lives of other people with whom they lack such affinity. People who owe their worthwhile lives to the agent's choice to create them instead of different people, or no people at all, have no grounds to complain about the harm they unavoidably suffer as a result of their creation. The agents may be criticized on other grounds, e.g., for chauvinism,

but those are not grounds on which the affected individuals will have any special standing to complain. These cases should suggest the need to take account of the agents' intentions in the moral appraisal of identity-affecting harm. Standard rights-based approaches cannot account for the lack of a complaint; impersonal approaches cannot account for the less severe criticism to which the policymakers are subject in the absence of such a complaint.

### **13.3 Justifying Harm in Different-Number Cases: The Generation-Adding Policy**

Some of the difficulties in explaining the moral offense committed by the Risky policymakers in person-affecting terms are apparent in considering a variation I will call the Generation Adding Case (GA).

The apparent world-wide decline in sperm count turns out to be real. The only way to prolong fertility is to generate low level radiation, which will yield nuclear waste and eventually cause a nuclear explosion that will painlessly kill everyone then alive. We must choose between two policies. Under the first, where we do not intervene, humanity will last only through the 299th generation, because that generation will be born sterile. Under the second, we keep that generation fertile with radiation, but the members of the resulting 300th generation will, 35 years after their birth, be painlessly annihilated in the explosion caused by radioactive waste.

I think that most people would find it at least permissible to adopt the GA policy, leading to the painless annihilation of the 300th generation. We would find it acceptable to create a generation that would have worthwhile but truncated lives, if the only alternative was that no one would be born after the 299th generation. To accommodate misgivings about this policy, we can push back the time of the explosion, to 60 or 70 years, or reduce its impact, so that it causes permanent injury but not death. At some point, that policy will be acceptable to virtually everyone, although it will still cause harm to the last generation that it would ordinarily be wrong to inflict on other people without their consent. How can such a policy be acceptable, if the Risky Policy is not?

Some might respond that GA is described too schematically to elicit reliable intuitions. Generations are not literally cohorts, marching in chronological step, so in any actual world a nuclear explosion would kill people of all ages, many of whom had never had a chance at a minimally decent life. We could alter the hypothetical so that the waste build- would reach a "critical mass" at a certain date, causing a mutation that painlessly killed every person born thereafter in his 35th year. We could also stipulate that this date would be known, or knowable, so that the last generation could plan its lives accordingly. The reason I will stick with the nuclear disaster is that it clearly causes non-comparative harms,<sup>11</sup> thereby making it easier to claim a rights-violation despite the overall goodness of the truncated lives.<sup>12</sup> If no violation can be found in these circumstances, it seems, a fortiori, that none could be found in cases where the policymakers cause the last generation a mere deficiency rather than a discrete injury.

### 13.4 Justifying Harm in Same-Number Cases: The Chauvinist Policy

GA poses no obvious difficulties for proponents of an impersonal account of the Risky Policy. Unlike that policy, the GA policy involves a different-number choice, one that results in an impersonally better outcome than the alternative: instead of humanity dying out, another generation of people lead worthwhile but truncated lives. In contrast, the Risky Policy yields the same number of people as its alternative, but leaves the last generation with truncated lives. Our approval of the GA policy might thus appear to reinforce the claim that our real objection to the Risky Policy is its creation of an impersonally worse state of affairs.

In contrast, the GA policy appears to challenge accounts that locate the wrong done by the Risky policymakers in their violation of a right against the harm they cause to the affected individuals—their midlife annihilation.<sup>13</sup> The “victims” in GA suffer the same harm and same benefit as the victims of the Risky Policy—a worthwhile life that is abruptly truncated—but lack a similar complaint.

The defender of a rights account might seize on the difference in overall outcome between GA and the Risky Policy to claim that any rights violation in GA is justified by the impersonal benefits the policy confers.<sup>14</sup> But the increase in aggregate well-being resulting from the GA policy is clearly not sufficient to preclude a rights-violation. The same impersonal benefits claimed to justify or override the rights violation in GA would not justify the rights-violations where the same harm of midlife annihilation was inflicted on anyone *except* the beneficiaries of the policy. Thus, most of us would not regard it as justifiable to annihilate the next generation in mid-life in order to add a 300th generation; we would see the victims as seriously aggrieved.<sup>15</sup>

More important for my purposes, a net benefit is not *necessary* to avoid a rights-violation. There are policies that cause the same harm to the same number of individuals as the Risky Policy, with the same loss in aggregate well-being, that do not even appear to violate the rights of the affected individuals or give them grounds for complaint. Such policies will, for this reason, pose a challenge to impersonal accounts of the Risky Policy.

Consider a same-number variation of the GA policy in which an impersonal justification is clearly lacking. Call this the Chauvinist Policy (CP):

American policymakers can irradiate either the U.S. or Russia to preserve the fertility of its 299th generation. Irradiating either nation will yield about same number of people in the 300th generation. But irradiating the U.S. will cause a nuclear disaster in that generation, while irradiating Russia will not. Members of the last Russian generation would live normal life spans, although they could not reproduce. The policymakers, wanting the last generation be American, chose to irradiate the U.S. instead of Russia.

The policymakers might reasonably be criticized for their excessive partiality; for their chauvinism in valuing a generation of truncated American lives more than a generation of full Russian lives.<sup>16</sup> But while the policymakers might be criticized from an impersonal perspective as well, for failing to choose the better available

to them, their failure to do so would not even appear to violate the rights of the last American generation. The members of that generation might, if they knew of their fate and the policy responsible for it, also criticize the policymakers for their chauvinism or lack of beneficence. But they would lack any special standing to complain, and the harm they suffered would be no more of a rights violation than the harm suffered by the last generation in GA, where the policymakers displayed no partiality.

This contrast suggests that if the Risky Policy violates the rights of the last generation, it cannot be merely because it lacks an impersonal justification—CP lacks that justification as well, yet it does not appear to violate the rights of those it kills.<sup>17</sup> In both cases, the “victims” get the same net benefit from the policy that causes them harm—worthwhile but truncated lives. Yet the fact that the last American generation owes that benefit to the policymakers’ partiality appears to deny them a complaint against their benefactors, a complaint they might have if they were only the incidental beneficiaries of a policy adopted for other reasons.

If there is a rights violation in the Risky Policy, then, it seems that it can only be because the Risky, unlike the Chauvinist, policymakers, did not intend to create the people killed or injured in the nuclear accident. To explain why the rights of the last generation’s members are violated by the GA but not the Risky Policy, we would have to posit rights not against specific kinds of injury, but against having those kinds of injury inflicted in the absence of certain intentions. And although I think the wrong to the last generation is best understood in terms of the policymakers’ intentions, I am not sure it is helpful to understand that wrong as violation of a right to be acted on or against only in the presence or absence of certain intentions.

### 13.5 An Impersonal Explanation of the Chauvinist Policy

As I noted, CP also poses a challenge for impersonal accounts of the nonidentity problem. This challenge may not be obvious, since our disapproval of the policymakers appears to be readily explained in impersonal terms: they make the world worse off than it might have been by bringing into existence a last generation of truncated rather than full lives. The difficulty lies in explaining why we judge the Chauvinist policymakers less harshly than the Risky policymakers, even though they bring about consequences that do not differ from an impersonal, impartial perspective.

Some of those who defend an impersonal account of the Risky Policy, like Phillip Peters, urge us to reject the commonsense moral judgment that those harmed by the Risky policy have a personal complaint against the policymakers, and to see the wrong as one to the *class* of people who are worse off than they could have been—here, the potential members of the last generation.<sup>18</sup> CP, however, inflicts the same harm on the same class as the Risky Policy without even appearing to give its members a complaint. (Perhaps earlier generations of *Russians* would have a complaint about the devaluation of Russian lives implicit in the policymakers’ choice.) This suggests that the impersonal objection to the Risky Policy does not

fully explain the disapproval it faces. Our sense that the people killed by that policy are wronged as well as harmed, and that they have a complaint that others lack, cannot be explained by the policy's consequences alone.

The defender of an impersonal account might argue that the difference in moral appraisal between the Risky and Chauvinist policies can be explained impersonally, in terms of a second baseline of comparison for the latter: the Chauvinist policymakers also had the option of not irradiating anyone, which would have resulted in the extinction of humanity at the close of the 299th generation. Irradiating the United States yielded an outcome that was impersonally superior to this, since the last generation of Americans has lives worth living. The Chauvinist policymakers did not do as well as they could have, but they also did better than they might have. In contrast, the Risky policymakers simply chose the worse of two options. It is this difference, the defender of an impersonal account might argue, that accounts for the difference in their moral appraisal.

The first problem with this response is that it may be a costly recourse for someone who seeks to explain our condemnation of the Risky Policy in impersonal terms while denying a general duty to produce the best consequences. One intuitively appealing strategy for narrowing the scope of the duty violated by the Risky policymakers involves restricting the comparison to alternatives involving the creation of the same number additional people. Thus, Jonathan Glover offers a principle, akin to Parfit's Q, that does not require us "to create extra happy people" but holds that "when we are going to add to the population, where the choice arises we must always prefer to add a happier than a less happy person."<sup>19</sup> This principle is contravened as fully by the Chauvinist as the Risky policymakers; to condemn the latter more severely than the former, it appears that we must appeal to an impersonal principle of broader scope, one which takes account of the different-number alternative available to the former but not the latter, of letting humanity end in the 299th generation.

Moreover, the difference in the disapproval faced by the two policies is qualitative as well as quantitative. The Risky policymakers do not merely seem less beneficent or more selfish than the Chauvinist policymakers; they appear to wrong specific individuals in a way that the Chauvinist policymakers do not.

This difference is highlighted by a variation on CP in which the alternatives yield the same net utilities, but the people harmed appear to have a complaint against the policymakers. In the Ultra-Chauvinist Policy (UCP), the policymakers' motivation is no more selfish and the benefits and harms resulting from the policy are the same, but those benefits and harms are differently distributed:

The policymakers can bring about a 300th generation of Americans only by irradiating Russia, foreseeably causing the 299th generation of Russians to die in mid-life from a nuclear disaster. The 300th generation of Americans, which will have roughly the same number of people as the 299th generation of Russians, will live a normal life span. If the policymakers used a lower level of radiation, they could escape a nuclear disaster, but then the 300th generation would be Russian; if they did nothing, the world's population would die out peacefully in the 299th generation. The members of the 299th Russian generation owe their existence to the higher level of radiation, since without it, different Russians would have come into existence in that generation.



It is unclear how the proponent of an impersonal account would distinguish this case from the original CP. An impersonal inventory of the harms and benefits resulting from the two policies does not reveal a net difference.<sup>20</sup> Compared to the alternative of doing nothing, which would allow the extinction of humanity at the end of the 299th generation, both CP and UCP cause one harm, the nuclear disaster, and add the same number of total “life years”—UCP adds more life-years than CP in the 300th generation, but takes away the same number in the 299th generation. Compared to a non-Chauvinist alternative that adds a 300th generation with full lives, both policies involve one harm, the nuclear disaster, that befalls the same number of people and causes the same loss of life years—in the 300th generation in CP; in the 299th generation in UCP.

The critical difference between the two policies cannot be that CP only inflicts harm on those who benefit.<sup>21</sup> The 299th-generation Russians annihilated in UCP benefit in the same way as the 300th-generation Americans annihilated in CP—they receive worthwhile but truncated lives. What distinguishes the policies is the fact that the policymakers *intended* to confer this benefit on the 300th generation of Americans in CP; but confer it on the 299th-generation Russians as an unintended side effect in UCP. These Russians, like the last generation destroyed by the Risky Policy, appear to have a substantial complaint against the policymakers, a complaint that the 300th-generation Americans lack. The intention of the policymakers in CP to confer a greater benefit on those who will suffer the lesser harm appears to give them a moral immunity that the UCP policymakers lack, for the harm caused to future people by the actions that bring about their worthwhile existence.

### 13.6 Limits on the Role of Procreative Intentions in Justifying Harm

The defender of an impersonal account might challenge the significance of intention for avoiding rights-violations with a different variation on the GA policy. Consider the Selfish Generation-Adding Policy (SGA):

The policymakers are as selfish and shortsighted as the Risky policymakers, equally unwilling to conserve energy in order to prevent a buildup of radioactive waste. The expected outcome of their policy, however, is the same as in GA—the accumulation of nuclear waste will extend fertility before it causes a disaster, so that its net effect will be to add a disaster-truncated generation of people with worthwhile lives.

Clearly, we would not praise the SGA policymakers, although the foreseen effects of their policy were beneficent. But we might not condemn them either, at least as harshly as the Risky policymakers, nor regard the last generation as having a complaint against them. The defender of an impersonal approach could argue that since these policymakers are as selfish as the Risky policymakers, the only basis for judging them less harshly is the more beneficial effect of their action.

Admittedly, the SGA policymakers, unlike the Risky Policymakers, do not manifest a willingness to cause harm by bringing about a comparatively worse outcome.

We may judge them less harshly because we (charitably) assume that they were unwilling to cause certain bad outcomes, although they were not motivated to produce certain good ones.<sup>22</sup> But if they would not have caused a nuclear disaster without a net impersonal benefit, then they escape blame only because they accept an impersonal constraint on their conduct.<sup>23</sup>

If impersonal factors play this even this indirect role in denying a complaint to the 300th generation in SGA, they appear to limit the significance of procreative intentions for the moral appraisal of harm to future generations. The Risky and SGA policymakers both lack such intentions in causing lethal harm, but the victims have a complaint only against the former. The beneficial consequences of the SGA policy appear to block the complaint despite the policymakers' lack of appropriate intentions.

And yet not all impersonally beneficial outcomes would do so—the 299th Russians irradiated in UCP would have had no less of a complaint if the only alternative policy would have been less beneficent, resulting in the quiet extinction of humanity at the end of the 299th generation. Although the policy that annihilates them is impersonally superior to that alternative, since it adds a 300th generation of Americans at the price of truncating the 299th generation of Russians, the Russians could claim to be sacrificed for the good of others, even though their worthwhile existence also results from the policy.

It seems that the beneficence of the policy only forestalls a complaint when the benefits *could* have been intended for those harmed. The SGA policy could have been adopted with such intentions, as the policy in GA was, but it is doubtful that the UCP policy could have been: what possible reason could the policymakers have had for preferring the specific 299th-generation Russians killed by that policy to the 299th-generation Russians who would have lived full lives under the alternative? This contrast suggests that those who are harmed by an impersonally beneficial policy will, if they lead worthwhile lives, have no grounds for complaint when they *could* have been its intended beneficiaries; when the different people who would have been created under alternative policies were distinguishable from them in ways that *could* have had motivational significance for the policymakers.

It might seem, then, that the impersonal benefit secured by SGA makes no independent contribution to the immunity enjoyed by the SGA policymakers, but merely provides, in the generation it adds, a plausible object for procreative intentions. This, however, would be too strong a conclusion. If a policy is *not* impersonally beneficial, the mere fact that it could have been intended to benefit those victims would not deny them a complaint. Consider CP, which is impersonally worse than its alternative. Although my intuitions on this are not strong, I think that the 300th generation of Americans created under that policy would have grounds for complaint about their mid-life annihilation if the policymakers had not intended to create them, e.g., if they had produced the radiation solely for their own comfort. In sum, these cases suggest that a policy that is neither impersonally beneficent, nor intended to benefit those it unavoidably harms, does not confer immunity on the policymakers for the harm.

At most, then, impersonal considerations *may* block a complaint from those who are harmed by policies that could have been, but were not, intended for their benefit. But those considerations cannot explain the substantial differences we find

in the evaluation of policies with impersonally similar outcomes. In particular, they cannot explain why the American “victims” of CP do not have a complaint, while the Russian victims of UCP do. An impersonal account simply lacks the resources to explain the significance of procreative intentions in the moral appraisal of identity-affecting policies.

### 13.7 An Alternative? Asymmetrical Responsibility for Harms and Benefits

The difficulties already facing the notion of procreative intentions might suggest that the variable moral assessment of the array of policymakers I have discussed has a simpler explanation. Early in the debate on the non-identity problem, Matthew Hanser argued that we condemn the Risky policymakers because they are responsible for the harm but not the benefit to the last generation.<sup>24</sup> Hanser suggested that the conditions for assigning responsibility for harm and benefit are different; without attempting to specify those conditions, he found it plausible to conclude that the Risky policymakers satisfy the former conditions but not the latter. Their knowledge that their policy will cause the nuclear disaster suffices to make them responsible for the harm they cause, while their indifference to and ignorance of the specifics of, the policy’s identity-affects denies them responsibility for the worthwhile existence of the nuclear people. They are responsible for the nuclear disaster, which they foresee, but not for the worthwhile existence of the last generation, since they are indifferent to the existential consequences of their policy. Hanser contrasted policymaking with ordinary reproduction, claiming that a parent who knowingly has a child with a harmful genetic condition is responsible for the benefit of that child’s existence but not the harm<sup>25</sup>—a claim I will return to later in the paper.

Hanser’s account has obvious affinities with, and a deep influence on, my account of procreative intentions. But I do not think the piecemeal attribution of responsibility for harm and benefit can explain the range of cases I have presented. Although I think that Hanser is correct in claiming distinct responsibility conditions for harm and benefit in general, I will argue that the agents in the cases I have considered are responsible for *both* the intended benefit and the expected harm. In those cases where they intend to bring into existence people whom (they believe) can only exist with those harms, they can invoke the benefit to justify the harm. And I will argue that this is equally true for policymakers and prospective parents.

Hanser’s account was schematic; he did not spell out responsibility conditions, but merely argued for an asymmetry between the responsibility conditions for harm and benefit. I will begin, then, by considering the responsibility conditions for benefits in more detail.

Two features of the relationship of the Risky policymakers to its putative victims might explain why we do not hold the former responsible for the worthwhile existence of the latter: first, the policymakers’ lack of intention or even foresight about the beneficial effects of their actions, and second, the very oblique, insubstantial causal role their actions play in bringing about those effects.

Joel Feinberg famously compared the Risky policymakers to a cabdriver whose negligent driving causes his passenger to miss a flight that later crashes.<sup>26</sup> We regard the driver as responsible for making the passenger late but not saving his life. The obvious difference, however, between the taxi driver and the Risky policymakers is that the latter could have foreseen, even if they did not intend, the benefit to the nuclear people: they could well have known that the policy they chose would alter the identity of the members of future generations and thus bring about the worthwhile lives of the people it harmed.

Hanser might respond that the creation of the *specific* people who come into being in the 300th generation is not foreseeable, and that for this reason the Risky Policymakers are *not* responsible for their creation. But this would also seem to deny credit to the GA and CP policymakers (unless one can intend a result one cannot foresee), since neither has any knowledge about the specific people their actions will cause to exist: the GA policymakers merely know that additional people will live worthwhile lives if they act in one way, none if they do not; the CP policymakers merely know that additional Americans will lead worthwhile lives if they act in one way, while additional Russians would lead worthwhile lives if they acted otherwise.

A more tenable distinction between the policymakers might be made on the basis of their causal contribution to the benefits enjoyed by the last generation. The causal role of the GA and CP policymakers, although mediated by the reproductive choices of 299 intervening generations, appears to be more direct and substantial than that of the Risky policymakers: the actions of the former have a direct, if delayed, effect on the fertility of the 299th generation. But however attenuated it may be, the causal role of the Risky policymakers in altering the identities of the people in the last generation would suffice to make them responsible for benefits they *intended* to bring about, e.g., if they sought to prevent the creation of a 300th generation Hitler by actions that altered the mating patterns in the next generation. Unless the conditions for causation vary with the agent's intentions, it is hard to deny the Risky policymakers responsibility for the benefit on the ground that their causal contribution is not adequate.

But while an intention to confer the benefit of a worthwhile existence may be necessary to give the policymakers responsibility for that benefit,<sup>27</sup> it is not sufficient to allow them to invoke that benefit to justify serious harm. The piecemeal attribution of responsibility cannot explain, for example, why the offset of harm by benefit is permitted in CP but not in UCP.<sup>28</sup> Presumably, part of the reason the policymakers would not be blamed for the harm to the Americans in CP is that it is outweighed by the benefit of their worthwhile existence, for which the policymakers are also responsible. Although the UCP policymakers are not responsible for benefiting the Russians they harm, they are responsible for the benefit of a full life they confer on the 300th generation Americans—a an even greater benefit than they confer on the last generation of Americans in CP. The question is why they cannot “transfer” their credit from the intended to the unintended benefit, or offset the blame they get for the harm by the credit they get for the benefit, even though the harm and benefit are to different individuals. Excluding credit when the victims and beneficiaries are different people requires something more than the separate attribution of responsibility

for harm and benefit; it requires an account of the moral significance of the intended or foreseen *relationship* between the harms and benefits.<sup>29</sup>

Hanser might claim that all that was needed was a restriction on permitted offsets to harms and benefits received by the same person. An account that permitted A's harm to be offset by B's benefit would fail to respect the moral boundaries between people. But a limitation on set-offs cannot explain why we do not always give off-setting credit for the benefits of existence when the policymakers are responsible for harms and benefits to the same people; it cannot account for cases where future people appear to have a complaint about the harm caused by policies that were intended in some sense to bring about their worthwhile existence.

Such cases can arise in both same- and different-number contexts. In the Risky policy, which is a same-number case, we can increase the responsibility of the policymakers for the distinct existence of the nuclear people without significantly weakening the complaint those people have against them. Take a case where the policymakers seek, on the advice of counsel, to assure a totally different population in the 300th generation, by choosing, among equally risky policies, the one most certain to ensure no overlap with the population that would have existed under the alternative Safe policy. They may even be willing to endure some small discomfort to ensure there is no overlap. We would still condemn the policymakers, and still see the last generation as having a complaint against them. Yet Hanser could hardly deny that they were responsible for the separate existence and worthwhile lives of the people whom their policy destroyed. Their responsibility for the benefit, however, would not confer even partial immunity for the harm.<sup>30</sup>

Second, such immunity is lacking even in some different-number cases, where the policymakers intend to create *additional* people. Consider a variation on GA in which the policymakers, though willing to create an additional generation, are unwilling to incur even a slight sacrifice of their own comfort to give its members full lives. The Very Selfish Generation Adding (VSGA) policymakers could ensure the fertility of the 299th generation with a much lower level of radiation that would not risk nuclear disaster in the 300th generation but which would require a significant economic sacrifice to produce. Instead, they use a high level of radiation, with its attendant risks, that can be produced without sacrifice. As in the Risky Policy, the choice of the higher dose has far-reaching effects, resulting in completely different people in the last generation than there would have been with a lower dose of radiation.

Like the original GA policymakers, the VSGA policymakers appear to be responsible for the benefit as well as the harm to the last generation, because their only reason for producing radiation in the first place is to extend fertility. But we would still condemn them almost as harshly as the Risky policymakers, whom Hanser holds responsible for the harm but not the benefit.<sup>31</sup> We would condemn them even if, like the liability-avoiding policymakers described above, they had selected among equally risky policies the one most certain to alter the make-up of the last generation. We might condemn them less harshly than the Risky policymakers because they did more good than they might have, by creating even a truncated 300th generation, and because they did intend that benefit. But their responsibility for the existence

of the people harmed would not give them the moral immunity enjoyed by the GA policymakers.<sup>32</sup> By incurring even a slight sacrifice to create additional people, they would appear to benefit those people in a morally relevant sense. But that benefit does not offset the harm in the way that it does for the GA policymakers. Hanser's account lacks the resources to explain this difference.

### 13.8 The Limitations of Asymmetrical Responsibility

Hanser, as noted, reaches a different conclusion about responsibility in micro than in macro cases. When harm to an individual, such a genetically-based impairment, arises from what he calls "intrinsically reproductive acts," he suggests that the agent will be responsible for the benefit—the individual's worthwhile existence—but not that harm. Unlike the Risky policymakers, who cause the harm with no intent to benefit, the parent intends (in continuing if not in initiating the pregnancy) to confer the benefit and merely "transmits" the harm.

I agree that the moral evaluation of policies and procreative acts will often be different, but I do not think the piecemeal assignment of responsibility is any more adequate for micro than macro cases. The limitations of Hanser's account can be seen by contrasting two sets of parents. Both can avoid having a child with a mild cognitive impairment simply by waiting a year to conceive. For the first set of parents, that delay will cause a significant loss of income or other goods. Call these the burdened parents. The second set of parents *wants* to have a mildly impaired child because their closeness with their own mildly impaired parents have given them a strong affinity with, and partiality towards, people with similar impairments. Call these the partial parents. In light of their close relationship with their own parents, they are confident that they would be devoted and skillful caregivers. Neither generation, however, would find it a sacrifice to forego such having a cognitively impaired child; everyone would be happy if the child were not impaired.

The first case involves a substantial burden but no reason (except avoiding that burden) for creating an impaired child; the second involves a reason but no substantial burden.<sup>33</sup> While many people would disapprove of both sets of parents for not waiting to conceive, I suspect that most people would criticize the burdened parents more strongly than the partial ones. But even those who criticized the partial parents as strongly would have trouble attributing a complaint to the child. A desire to create and raise a particular kind of child appears to forestall or mitigate a complaint more than a substantial burden.

This difference is especially striking because the second set of parents *intends* for the child to have an impairment, while the first set merely foresees the impairment as a consequence of conceiving within a year.<sup>34</sup> Although the two sets of parents seem equally responsible for the benefit of the child's existence, the partial parents seem, if anything, more responsible for the harm. Hanser's account would have trouble explaining this difference, since the comparative blameworthiness of the two sets of parents correlates so poorly with their comparative responsibility for the benefits and harms.

Moreover, the desire for a retarded child seems mitigating in a different way than the burden of avoiding one. The burdened parents are engaged in a kind of balancing, while the partial parents are not—the question is whether their reason for desiring a child with the impairment is an appropriate one, not whether the burden they suffer in failing to satisfy that desire is substantial enough. (I have stipulated that it is insubstantial.) Finally, the child of the burdened parents has more of a basis for resentment, since he can see his impairment as the unintended consequence of his parents' insensitivity to the limitations and frustrations they expected him to experience. The child of the partial parents cannot see his impairment in this way; it is not a consequence of his parent's disregard but (part of) the reason he was brought into existence. That awareness may be bittersweet for a child if he is frustrated by his impairment, but any resentment should be tempered by the recognition that he is alive because his parents wanted a child "like him" to enjoy the goods of existence.

### 13.9 Selectivity, Partiality, and Procreative Intentions

In denying that the decisions of the Chauvinist policymakers and the partial parents give rise to a complaint, I have suggested a particular way of looking at their procreative acts: as picking from an array of potential creatures those who will be brought into existence. The agent may know that some of the potential people will, if made actual, suffer various harms or limitations, but it seems inappropriate to blame him for harming them, or for causing them to exist in a harmful state, by the very acts that select them for existence—even if those acts cause or contribute to the harm, and the agent knows that they do.<sup>35</sup>

There are, of course, some selections it would be wrong to make, e.g. of people who will live with no pleasure and unremitting pain. And there are, of course, many bad reasons for selection, like those based on Chauvinist, racist, or sexist preferences. Indeed, I have argued elsewhere that almost any trait-based selectivity represents a departure from the parental ideal of unconditional welcome.<sup>36</sup> But the use of a bad selection criterion may not give the individual selected a complaint with respect to the harm he unavoidably suffers.<sup>37</sup>

Clearly, not all agents who knowingly cause people to come into existence can be seen as choosing them from an array of potential people. Most ordinary parents cannot, since they exercise no such selectivity. The agents who adopt the Risky policy cannot be seen as making such a choice either, because they have no intentions with respect to the "existential consequences" of their actions. In contrast, the adoption of the GA policy does involve a similar choice—of people who will lead truncated lives over no people. The requisite intent can be found in both same- and different-number cases.<sup>38</sup>

But the mere intention to create additional people is not enough. Although the VSGA policymakers clearly have procreative intentions, they cannot be seen as choosing people expected to suffer certain harms from an array of potential people. Apart from the lesser burden on them, they have no reason to prefer the future people

who would be harmed over future people who would not be, so they cannot be seen as choosing the former in selecting the higher level of radiation.

Nor can such a choice be based on the mere intention to create different people than those who would have existed under a policy that had less harmful consequences. In acting to ensure that the people who come into existence in the 300th generation under the Risky Policy are not the same people who would have come into existence under a safe policy, the Risky policymakers do not select one group of people from an array of potential people. The problem is not that they select by exclusion, as they would in adopting a policy aimed at creating “anyone but Russians.” It is rather that their selection criterion picks out people only with reference to the outcome of an alternative policy, and not with reference to any independently-identifiable characteristic of the people chosen among. While “non-Russian” can be a criterion for selection, “different from any person who would have come into existence under the alternative policy” cannot be.

### 13.10 Conclusion

The immunity conferred by procreative intentions may still seem mysterious. We can hardly assimilate partiality toward some possible future children to partiality toward one’s actual children. A parent does not need to give reasons for preferring her children to those of other parents. But the partiality that she is morally permitted or even required to show is grounded in a relationship she had already established. It is not clear how she can invoke such partiality to justify the decision to establish such a relationship in the first place.

This difficulty in justifying partiality towards a kind of future child does not arise from the difference in moral status between potential and actual children—if potential children can even be candidates for moral status (as in-vitro embryos can be). Rather, it arises from the different relationships between chooser and chosen. This is suggested by comparing prospective biological parents with prospective adoptive parents. Although the latter may choose among actual children, they also have not yet developed a relationship with those they choose among. For this reason, trait-based partiality toward an existing adoptive child is no easier to justify than such partiality toward a future child. Adoption agencies may have a good moral reason to permit such partiality and allow parents to select children of their own race, or of a particular gender—to save more children from abandonment, hunger, or physical harm. But it is not clear that the adoptive parents have any stronger moral basis for exercising such partiality than prospective biological parents. *If* adoptive parents are morally permitted to exercise such partiality, it is for the same reasons that biological parents may—that in choosing the individual with whom they will establish this uniquely intimate relationship, they are unconstrained by impersonal considerations—in their case, by considerations of how much good they could do by adopting one child rather than another.<sup>39</sup>

The similarity in the latitude enjoyed by prospective biological and adoptive parents in selecting among children suggests that the causal role of the former in causing “necessary” harm to the children they select has little moral significance.



What does seem to matter is whether the child is “wanted” in part for some attribute that it can only have in a harmful state, or even wanted for that harmful state itself. While the desire to create a person with such a trait or in such a condition may sometimes reflect a morally deformed conception of the good, those who owe their worthwhile existence to that desire will have no special standing to complain.

## Notes

1. Parfit (1984), pp. 351–79.
2. See, for example, Woodward (1986), Steinbock’s and McClamrock (1994) and Tooley (1998).
3. Parfit (1984), *op. cit.*
4. See references in note 2.
5. See, for example, Brock (1995) and McMahan (1998).
6. There are several related distinctions between macro and micro cases as described: between the agents—policymakers vs. individual parents; between the acts—policy decisions and their implementation vs. “inherently reproductive acts” (Hanser, 1990); and between the intentions with which the acts are done—whether or not the agent intends to affect the existence, number, or identity of future children. I will distinguish macro and micro cases by differences between agents and actions, but not by intentions; I will claim that policymakers can act, in choosing long-term policies, with intentions that are similar in morally relevant respects to the intentions parents sometimes act with in having children.
7. Roberts (2007).
8. Lillehammer (2009), in this collection. Roberts’ position, as outlined above, is that macro cases can be “person-affecting,” in making people worse off than they would have otherwise been, even if they are not “person involving” in Lillehammer’s sense, since the affected individuals cannot be identified at the time of the decision or action.
9. Wasserman (2005).
10. Wasserman (2005).
11. Shiffrin (1999) and Harman (2004).
12. GA itself appears to be motivated in part by non-person affecting considerations—it is not for the sake of specific human beings, or even kinds of human beings, that the policymakers prolong humanity, but from a combination of impersonal beneficence, historic preservation, and species-partiality. Still, the 300th generation people can be seen as the policymakers’ intended beneficiaries if part of their reason for adding a generation was to allow its members, whoever they might be, to enjoy the goods of existence.
13. This would include Woodward’s (1986) account, which involves a right against that harm, but not Steinbock’s and McClamrock’s (1994), which is based on a threshold of well-being that the members of the last generation may well exceed even if they are annihilated in mid-life.
14. The defender might argue that although the GA as well as the Risky policy violated the rights of the last generation, that violation was overridden in the former by a weighty justification lacking in the latter. The first thing to notice is that a justification in these terms for GA would not be a strictly person-affecting one, since the benefit to the people harmed is the same in both cases: their worthwhile existence. The harm in the former case is offset by the impersonal benefit of creating an additional generation, a benefit the Risky Policy does not confer.

But if GA was distinguished from the Risky Policy only by the availability of an impersonal justification for the harm caused the last generation, the explanation for the wrongness of the Risky Policy would not be person-affecting “all the way down”: while that policy would be wrong because there was an unjustified rights violation, there would be such an violation only because the harm to the last generation was not outweighed by the impersonal benefits flowing from the policy. This might be acceptable to some proponents of a person-affecting account, as

a way of integrating (or personalizing) the impersonal differences adduced by Parfit: while the rights-violation is personal to the victim, it can be overridden if, on an impersonal assessment, its benefits outweigh its harms.

15. Although it might be less egregious to annihilate the next generation in order to add a 300th generation than to do so in order to substitute one set of people in the 300th generation for another, particularly if the two sets were now indistinguishable. The midlife annihilation of the next generation to produce a 300th, of course, would also pose an issue for an impersonal account, but only the familiar one of utility trumping rights.

Perhaps a net benefit, assessed impersonally, is sufficient to preclude a rights violation in cases where the victims are also the beneficiaries. But this would yield a peculiar hybrid account. It could not justify the harm either in terms of the capacity of a sufficiently great impersonal benefit to override important rights—the next-generation case rules that out—nor in terms of the victims' hypothetical consent to the harm—such consent would be forthcoming from the victims of the Risky Policy as well. Moreover, as I go on to argue in the text, even in cases where the victims are also the beneficiaries, a net impersonal benefit may not be *necessary* to avoid a rights violation.

16. We could modify the example to make their chauvinism more or less reasonable by making it more or less “naked,” e.g., by varying the expected cultural continuity and genetic affinity between present-day and 300th generation America. Even if we believed that people had a prerogative not only to favor their present countrymen but to perpetuate their culture and even their genes, we might still balk at respecting their strong preference for future people who had nothing in common with them genetically or biologically, just the same national affiliation.
17. The limited relevance of the impersonal justification of an action or policy to the occurrence of a rights violation is also apparent from cases involving existing people. Thus, if a surgeon can only save an accident victim by a transplant that will cause a fatal immune reaction in a year, he would have an impersonal justification for doing if no one else needed the organ, even if the victim injured himself by drunk driving. But the transplant might not be justified if it denied the organ to another person blamelessly injured in the accident, who could be saved by the transplant without any reaction. While many people would favor a lottery between the two victims, most would condemn the surgeon for choosing the first simply on whim, or because the transplant procedure was slightly less time-consuming. His choice would result in a severely truncated life for one patient rather than a full life for another, arguably more deserving one. In impersonal terms, the fatal immune reaction suffered by the patient he chose lacks a justification.

But the surgeon would not appear to violate the rights of the organ recipient any more than he would if no one else needed the organ. The fact that the patient's own life was the one saved would preclude us from finding that his rights were violated by the fatal immune reaction the transplant caused. This would be so even if the patient himself was critical of the surgeon after the operation for choosing him when he could have saved someone more deserving with a much better expected outcome.

18. Peters (2004).
19. Glover (1992).
20. We could also stipulate that all knowledge concerning the policy choice would be lost long before the 299th generation, so that the nuclear disaster would appear equally accidental to its victims in both cases.
21. In any case, we can stipulate that the radiation causes sufficient genetic changes over the Russian generations to make the existence of any given individual in the 299th generation more likely, even *ex ante*, with the radiation than without it. The increased *ex ante* odds of coming into existence make it more plausible to claim for CP than for the Risky Policy that the policymakers do as well as possible for the affected individuals (see Roberts, 2007).
22. What if the SGA policymakers had expected to bring about the same outcome as the Risky policy but unexpectedly brought about the same outcome as the GA policy? I think we would judge them less harshly than the Risky policymakers, but only because actual consequences, and thus moral luck, play a significant role in moral appraisal.

23. The opponent might insist the constraint need not be an impersonal one. It might be that the SGA policymakers would be unwilling to harm anyone who would not thereby receive a greater benefit, whether or not the net effect was beneficial. But if we impute this constraint to them, why not to the Risky policymakers as well? What if the Risky policymakers would have balked at causing a nuclear disaster if they believed that it would befall people who would otherwise have led full lives? I can see no satisfactory way of distinguishing the SGA policymakers from the Risky policymakers on the basis of their intentions, actual or counterfactual, except in terms of an impersonal constraint that is violated by the Risky but not the SGA policymakers.
24. Hanser (1990).
25. Hanser (1990).
26. Feinberg (1986).
27. However, I argued in Section 13.6. that the intention to confer the benefit may not be necessary, merely the possibility of having such an intention.
28. There is a threshold difficulty in even applying Hanser's account to the Chauvinist Policies—he assumes the policymakers “could not possibly make a Same Number Choice [one affecting the identity but not the number of future people] in order to ensure one group of people's coming into existence rather than another.” Hanser (1990), pp. 61–2. This is because “prior to the people's actual conception there can be no foreknowledge of who will come into existence if one policy is adopted and who will come into existence if another is adopted.” The Chauvinist Policies, however, involve just such a choice, about what group of people will come into existence. All that is required for the policymakers' choice is that they have foreknowledge of the *type* of people who will come into existence under different policies.
29. The question of whether responsibility for benefits and harms to future people can be assessed piecemeal may be related, in a way I cannot explore here, to the question of whether there is a difference in the reason-giving force of bads and goods in the lives of future people. According to McMahan, the commonsense view is that the expected bads of a future life have both a “cancelling” function – to balance out the expected goods in a future life in assessing its overall value for the person – and a “reason-giving” function – to provide the agent with a reason to not bring that person into being if the balance is negative. McMahan (2009). In contrast, the expected goods of a future life have only a cancelling function—to justify (or failing to justify) the agent in exposing that person to the unavoidable hardships of his life.
30. The persistence of the victims' complaint in the face of the policymakers' intention to alter the identity of the 300th generation also raises doubts about Feinberg's suggestion that the nuclear people resent the Risky policymakers for their manifest willingness to inflict harm on members of their class. That resentment persists in this variation, despite the fact that the Risky policymakers only manifested a willingness to harm those whom they benefit overall.
31. The selfish policymakers could be compared to the woman in Parfit's (1984) case who conceives a child with a genetic impairment now because she is too impatient to wait a month to conceive an unimpaired one. (We could increase the similarity between the cases by having the act of conception itself contribute to the impairment, so that the mother would clearly be responsible for the impairment as well as for conceiving an impaired child.) She, too, is responsible for the existence of the person she helps create, as well as for the harm he will suffer. If we do not judge her as harshly as the VGSA policymakers, it may be because she confers the benefit of existence so much more directly, or because she chooses to carry the fetus to term, or because her impatience expresses a commendable longing to confer that benefit, a longing that she expresses “not wisely but too well.”
32. Hanser, of course, would not be compelled to reject this conclusion. In fact, he expresses doubts about a principle that would grant such immunity to the VSGA policymakers, to wit: “If a choice benefits someone (in the morally relevant sense) more than it harms him (in the morally relevant sense), the choice is not objectionable owing to the harm it does them.” But he does not explain why this principle is unsatisfactory.

33. The burdened parents are like the VGSA policymakers, but with a more direct procreative role and a greater sacrifice required to avoid harm; the partial parents are like the Chauvinist policymakers, with a more direct procreative role and a better reason for creating a person they know can only exist in a harmful state.
34. The Chauvinist policymakers would fall in between, since they see the (more clearly) harmful condition into which they place the last generation of Americans as necessary for its existence.
35. Whether we can even be said to harm someone by the “very act” by which we intentionally bring about his worthwhile life seems to depend on how we individuate acts. It is difficult to see the act of (deliberately) creating a person as harming him, even if it unavoidably causes him harm, since the relevant counterfactual comparison is between the person’s whole life and his non-existence. The question appears to be whether a single complex set of physical movements can be an act of harming as well as an act of creation when it is logically but not physically possible to have the life without the harm. Hanser (this volume) raises distinct objections to the claim that parents can be said to harm their children by bringing about their harmful states merely by genetic transmission.
36. Asch and Wasserman (2005).
37. Thus, to modify a case of Parfit’s (1984) imagine that Ruth will pass on her fatal disease only to sons, but that she so much wants a son that she employs preimplantation screening to assure that she gets one. That son has no grounds for complaint against Ruth if he has a worthwhile life, even if we would condemn Ruth for such an extreme sex preference. In contrast, the son in Parfit’s original case, where the mother does not act on a sex-preference, may have a complaint, because his mother’s indifference to the sex of her child makes the harm he suffers seem gratuitous, despite the fact that he could not have existed without it. Even if we think that this complaint would be a weak one, the contrast between the two cases highlights the immunizing role of procreative intentions.
38. We can classify grounds for choice into descriptive or historical. A choice based solely on expected attributes that are desired by the parent or the procreative agent is descriptive, and it raises the now-familiar spectre of a genetic supermarket. A choice based on the donor of the gamete source is descriptive to the extent it seeks the donor’s traits, but is historical to the extent that it seeks to express or extend a relationship with the donor, e.g. a woman who chooses to implant an embryo with a genetic impairment conceived with her deceased husband rather than an embryo without the impairment but conceived with a stranger, because she would rather have an impaired child “with” her husband than an unimpaired child from a stranger. The choices made by the Chauvinist policymakers and the couple with cognitively impaired parents are hybrids as well: they are historical to the extent they concern the relationship between the potential person and other people; they are descriptive to the extent that they concern the expected attributes of the potential person.
39. But by the same token, if trait-based selectivity is morally problematic for adoptive parents, it is not because they owe equal consideration to the children they choose among. If, as I would be inclined to argue, they should flip a coin among those children, it is not because they owe them a right to equal consideration or equal chances, but because they should not condition membership in the intimate association of their family on any of the characteristic they could screen for.

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