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A Critical Take on Procreative Justice

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Abstract:

Herjeet Kaur Marway recently proposed the Principle of Procreative Justice, which says that reproducers have a strong moral obligation to avoid completing race and color injustices through their selection choices. In this paper, we analyze this principle and argue, appealing to a series of counterexamples, that some of the implications of Marway's Principle of Procreative Justice are difficult to accept. This casts doubt on whether the principle should be adopted. Also, we show that there are some more principled worries regarding Marway's idea of a strong pro tanto duty not to complete injustices through one's procreative choices. Nonetheless, we believe Marway's arguments point in the right general direction regarding duties and structural injustice. Thus, in the final part, we suggest a positive proposal on how it would be possible to respond to the cases we raise. More specifically, we explore the suggestion that agents have a pro tanto duty to participate in eliminating structural injustice. Importantly, this duty can be satisfied, not only in procreation choices but in multiple ways.

1 INTRODUCTION

Herjeet Kaur Marway recently proposed a principle called Procreative Justice.¹ The principle states the following.

Procreative Justice (PJ): reproducers have strong pro tanto moral reasons to avoid completing race or colour injustices via their selection decisions.

Procreative Justice explains the intuition that, in cases such as the following, there is something morally problematic about choosing the child that is expected to live the best life.

¹ Marway, H. K. (2023). Procreative Justice and genetic selection for skin colour. *Bioethics*, 37(4), 389–398.

Embryo Choice: Bo is undergoing IVF and has a choice to implant Embryo A, likely to develop a fairer skin tone, and Embryo B, likely to develop a darker skin tone. Having fair skin will be advantageous to their potential future child, due to background colour injustice.²

The case is not far-fetched. In 1993, in Italy, an infertile black woman gave birth to a white infant following implantation with an egg from a white donor. The woman (whose husband was white), chose to have a white baby because she believed a white child would have a better future than one of mixed race.³

Many people, in our opinion rightly, believe it is wrong to choose white-skinned children in such cases, or at least that there is something morally disturbing with Bo's choice situation. The principle of Procreative Justice explains these intuitions. As Marway correctly notes, the principle also aligns with the reproductive justice movement which aims to reveal how systemic inequalities shape individual decisions around reproduction and parenting and emphasizes the background conditions of racism and colourism in which our reproductive decisions occur.⁴

Nevertheless, while Procreative Justice explains the intuition that there is something morally troubling about Bo selecting embryo A (and similar choices), we show that Procreative Justice proves too much and leads to conclusions that are intuitively very difficult to accept. Moreover, there are also more principled worries regarding Marway's Procreative Justice. This casts doubt on whether the principle should be adopted in its current form.

2 COUNTER-EXAMPLES

To understand some of the problems of Procreative Justice, consider a case Marway raises in her paper.

Same-Race Parents: Lou and Sam have white skin and want to use donated sperm to conceive. They can (i) select a white donor; (ii) select a non-white donor; or (iii) ask the fertility clinic not to provide information about the race of the sperm donors. Lou and Sam must decide what to do.⁵

Marway states that white- or light-skinned reproducers have pro tanto moral reasons to select non-white or dark-skinned donors in these cases. This would simply be in line with Procreative Justice. So Lou and Sam should either select (ii) or (iii), therefore choosing to select *against* (i).⁶

² Ibid.

³ Willan, P. & Hawkes, N. (1993). White Baby Born To Black Mother, *The Times of London*, 1, 31 December. As quoted in Berkowitz, J.M. & Snyder, J.W. (1998). Racism and Sexism in Medically Assisted Conception. *Bioethics*, 12(1), 25–44.

⁴ Marway, *op. cit.* note 1.

⁵ Ibid.

⁶ In fact, as we will see later when discussing Marway's understanding of "completing injustices", Procreative Justice also speaks against choosing (iii), since one can complete

Now, consider the following slightly altered case.

Same-Race Parents₂: As before, Lou and Sam have white skin. They want to have a child. They can (i) have sex to get pregnant with a child, (ii) use a sperm donor and select a non-white donor; or (iii) use a sperm donor and ask the fertility clinic not to provide information about the race of the sperm donors. Lou and Sam must decide what to do.

We believe that many people share our intuition that Lou and Sam are *not* morally required to select against having a child by having sex (i). Yet, Procreative Justice implies that Lou and Sam have a strong pro-tanto moral reason to select a non-white donor (ii) or ask the fertility clinic not to provide information about the race of the sperm donors they use (iii), instead of having a (white) child by having sex. This is because if a choice between selecting a black donor versus a white donor is a *selection* (as it is in Same-Race Parents), then, surely, a choice between selecting a black donor versus not using a donor but having sex instead is a type of *selection* too. It is hard to see why only the former choice is regulated by Procreative Justice; indeed, it would seem to be an arbitrary demarcation to include the former but exclude the latter procreative choice from the scope of Procreative Justice.⁷ A conclusion stating that a white couple should not have a child by having sex but should choose a black sperm donor instead is in line with Procreative Justice, but this seems strongly counter-intuitive.⁸

an injustice even if one does not intend to do so by choosing (iii). This adds to the worry about Procreative Justice.

⁷ Of course, this also raises a potential problem for the other principles that Marway discusses including Procreative Beneficence, Person-Affecting Procreative Beneficence, and Procreative Non-Maleficence (Marway, *op. cit.*, p. 390). Hence, the thorny question of how to understand the strength of *pro tanto* reasons in a reproductive context is not unique to Marway's position. However, the principle we put forward is not vulnerable to the problem we point to in this paragraph. Note that one may be tempted to respond that the distinction between assisted reproduction and sexual reproduction is not arbitrary, but crucial. Yet, all things equal, we fail to see how this distinction can be morally relevant. Assuming, as we do, that sexual reproduction and assisted reproduction are equally accessible, have equal chances of success, etc. then it does seem like sexual reproduction also falls under Procreative Justice. Or, at the very least, Marway offers no reason *not* to think that sexual reproduction could also be evaluated by Procreative Justice. We thank an anonymous reviewer for pointing this out.

⁸ Could Marway respond by appealing to the fact that Procreative Justice does not imply that Lou and Sam are morally required to select (ii) or (iii), only that they have a strong *pro tanto* moral reason to do so? We think not because the intuitive view here is that Lou and Sam have no pro tanto, let alone no strong pro tanto, moral reason not to procreate themselves. Also, if Procreative Justice articulates a reason that is strong enough to defeat a weighty concern for one's future child's well-being, we do not see how it could not also be weighty enough to imply a moral requirement for Lou and Sam to select (ii) or (iii) instead of procreating themselves despite their preference to do so. For further discussion of the merely-a-strong-pro-tanto-reason reply, see below.

This is not the only counter-intuitive conclusion of the principle. Consider our second counter-example.

Multiple Children. Jill is an infertile white woman who wants to have a child. Jill has a rare medical condition that causes her body to react differently to certain donors. There is no clear pattern in her reactions to different donors. But it so happens that, given the donors to whom she has access, she is confronted with the following choice: if a single embryo that has been fertilized by the available black sperm donor is transferred into Jill's womb, the embryo will not implant, and Jill cannot get pregnant. But if two or more embryos that have been fertilized by the same black sperm donor are transferred into Jill's womb, all the embryos will implant into her womb. This problem, however, does not arise if she chooses the available white sperm donor. Hence, Jill must choose between (i) selecting an embryo fertilized by a white donor, or (ii) selecting two or more embryos fertilized by a black donor.

Of course, this fictional case is very far-fetched in a biological sense, but not in a way that makes it difficult to assess it morally speaking⁹, since there are none of its far-fetched non-biological features that bears on the moral nature of the choice facing Jill. The case underlines a problem with *pro tanto* obligations: it is unclear how to reconcile conflicting morally acceptable preferences, such as a preference to have only one child, and the commitment to oppose background injustices. According to Procreative Justice, Jill has a *pro tanto* moral obligation to select two or more embryos in this case because they result in black children rather than selecting an embryo producing a white child to be gestated. That is because selecting an embryo from a white donor would count as 'completing injustice' in the context of racial background injustice. When Jill selects the embryo producing a person with white skin, she, as Marway puts it, repeats those unjust patterns and makes them that much more successful. But, again, the conclusion that one should choose and gestate multiple children instead of one seems highly counter-intuitive.

At this point, it is useful to consider a possible reply suggested by Marway. One could point out that Procreative Justice only gives a strong, *pro tanto* moral reason to select non-white progeny over white. Perhaps this strong, *pro tanto* reason is overruled by other more important factors in these cases. One could for instance argue that twin pregnancy is more burdensome or riskier to the pregnant person than single pregnancy and thus this would overrule the *pro tanto* obligation.¹⁰ However, the problem here is that if we accept that the *pro tanto* clause can be overruled in *Multiple Children* or *Same-Race Parents*₂, it could be overruled in other cases as well, where, presumably, Marway would argue that the principle should hold.

⁹ For refuting the 'weirdness objection' see Boonin, D. (2003). *A Defense of Abortion*. Cambridge UK. Cambridge University press. pp. 139–147.

¹⁰ For such a claim and some ethical discussion related to it see Räsänen, J. (2022). Twin pregnancy, fetal reduction and the 'all or nothing problem' *Journal of Medical Ethics*, 48(2), 101–105.

To illustrate, consider our third possible counterexample to Procreative Justice:

Lookalike Kid: Lou and Sam have white skin and want to use donated sperm to conceive. They can (i) select a white donor, who in many respects (in addition to skin colour) looks like Lou and Sam; (ii) select a non-white donor who in many respects (in addition to skin colour) does not look like Lou and Sam; or (iii) ask the fertility clinic not to provide information about the race and looks of the sperm donors. Lou and Sam must decide what to do. Lou and Sam regard skin colour as one among many dimensions in terms of which they can look like their child - not irrelevant to similarity of appearance, but not overly important either. They would have preferred a non-white donor who scored higher overall than a white donor on these similarity-determining dimensions as might well have been the case given their non-racist views about similarity of appearance.

We should bear in mind that when people consider having children, many people want their progeny to resemble themselves. Elizabeth Brake, for example, claims that procreation is, for many, one of the most important (perhaps the most important of all) creative activities in which they will ever engage and because of this individuals can procreate with their own gametes since that makes it more likely that the child will display certain features that the parents value and wish to perpetuate.¹¹ Along similar lines, we think, intuitively, it would be morally permissible for Lou and Sam to select the white donor given the stated assumptions.

However, presumably, Marway would argue that the prospective parents in this case should *not* choose the white donor. Hence, we can see how this case raises the question of how to interpret what it means for prospective parents to have a strong pro tanto moral reason to avoid completing race or colour injustices via their selection decisions. Perhaps parents who have chosen to procreate with the help of a donor are more willing to sacrifice desires related to similarity of appearance, making the pro tanto reasons more justified to certain parents.¹² It is not clear why their (un)willingness should affect the moral reasons here, i.e., whether there is a pro tanto duty not to complete injustice when procreating. A similar point has been made in relation to sex-selection. While some think sex selection for family balancing is justified, it has been claimed from a feminist point of view that sex selection perpetuates cis-heterosexual norms, and gender essentialism (a set of unfounded assumptions about the sexes which pervade society and underpin sexism¹³) that are problematic from the perspective of justice.¹⁴

¹¹ Brake, E. (2015). Creation Theory: Do Genetic Ties Matter, in Permissible Progeny? In S. Brennan, S. Hannan, & R. Vernon, (ed). *The Morality of Procreation and Parenting* (pp. 129–149). New York: Oxford University Press.

¹² We thank an anonymous referee for raising this point.

¹³ Browne, T.K. (2017). How Sex Selection Undermines Reproductive Autonomy. *Journal of Bioethical Inquiry*, 14(2), 195–204.

¹⁴ Hendl, T. (2017) A Feminist Critique of Justifications for Sex Selection. *Journal of Bioethical Inquiry*, 14(3), 427-438; Shahvisi, A. (2018). Engendering Harm: A Critique of Sex Selection For “Family Balancing”. *Journal of Bioethical Inquiry*, 15(1), 123–137.

Yet, in Marway's text, like in the criticism of cis-heterosexual norms (and, more generally, for criticisms of structural injustice), this points to a deeper question concerning pro tanto reasons, since it is not clear from the face of it when such a reason is strong and when it is not. To clarify a bit, let us distinguish between a strong and a weak interpretation of this matter. On the strong interpretation, if the goal to avoid completing the injustice gives rise to a strong pro tanto reason, then it explains why the prospective parents in *Lookalike Kid* should put aside their preference for a progeny that resemble themselves. Following a strong interpretation, one should bite the bullet and argue that though some applications of Procreative Justice are counter-intuitive, they are nonetheless morally right.¹⁵

However, we take this to be rather implausible. In particular, if one bites the bullet in *Lookalike Kid* and adopts the strong interpretation of Procreative Justice, then it is unclear why it does not also lead to the conclusion that white prospective parents have a duty-generating strong pro tanto reason *not* to have a child through sexual intercourse, to choose the single child over the twins, or to have kids that look like them, when, for reasons only marginally related to race, having a white donor is the only way to ensure these results. It then seems like strong Procreative Justice becomes overly demanding.

In contrast, if one adopts a weak reading of the pro tanto obligation and agrees that the burdens of twin pregnancy overrule the pro tanto duty in *Multiple Children*, then it seems likely that a desire to have a child through sexual intercourse, as in *Same-Race Parents*₂, or the desire that one's kid resembles its parents for non-racist reasons, also overrules the pro tanto duty in *Lookalike Kid*. However, if one adopts this weaker reading, then Procreative Justice looks too permissive for Marway's purposes. After all, as Marway contends, Procreative Justice should also disrupt the idea that children must resemble their parents:

PJ provides reasons *not to colour 'match' in many instances*. (...) This outcome has the potential to disrupt our assumption about what a 'normal' family looks like and to be socially progressive. For instance, assuming that children must physically resemble parents implies that mixed-race adopted families or families that do not use colour-matched gametes are anomalous and even inferior. By contrast, normalising diverse families, as PJ does by not advocating colour-matching, encourages us to value equally any type of family. (Marway, *op. cit.* note 1, p. 397).

Hence, in this passage, Marway seems to favour the strong interpretation of Procreative Justice. Yet, as we argued above, this makes the principle overdemanding.

¹⁵ Some might say that this preference, while very common and perhaps even genetically hard-wired, is morally objectionable. On our view, such a preference might well be morally objectionable in some way. But it is a fact that many people have it (and not necessarily for reasons related to racism). For a preference to carry moral weight for the purpose of non-ideal moral theory, which is in any case the sort of moral theory we are dealing with here, it need not be one that people would still have in a perfectly just world.

In parallel, following the weak interpretation, it seems unlikely that Procreative Justice has the potential to disrupt our assumption about what a ‘normal family’ looks like. We suspect that, on this reading, Procreative Justice almost never wins out in practice. Therefore, in its current form, Procreative Justice is unlikely to be disruptive. More generally, this connects Marway’s argument to the broader question of how to address and tackle structural injustice, a topic to which we come back in Section 5 below. However, before we consider this more general issue, we provide arguments below which show that in some cases, it is implausible to maintain that Procreative Justice provides even a pro tanto reason.

3 WHAT DOES IT MEAN TO COMPLETE INJUSTICE?

Suppose we have been wrong in what we have said before. There is yet a further and more principled problem with Marway’s rationale for adopting Procreative Justice. It is difficult to explain what exactly ‘completing injustice’ amounts to such that, plausibly, one has a pro tanto reason not to complete injustice whether through one’s procreative choices or through other choices.¹⁶ Consider the following case.

Rebels. Suppose that there are two groups of people, dominators and dominated. Suppose further that the dominated rebel every 20 years, and every time they fail. Suppose also that, unbeknownst to the dominated, their failure decreases the chance that they will ever escape their condition.

Again, this example is, admittedly, a bit far-fetched, this time not biologically, but historically, speaking. However, it is not outlandish. After all, history has seen many successive and unsuccessful rebellions by dominated people. The rebellion led by Spartacus was far from the only slave rebellion in Rome and its defeat in 71 BCE by

¹⁶ Marway says that “[c]ompletion occurs when agents constitutively contribute to making background injustice more successful” Marway, *op. cit.* note 1, p. 390. However, she realizes that what this means in the context of structural injustice, which she takes to be the most important context for Procreative Justice, requires further explanation (see the next footnote). Moreover, it is curious that Marway specifies that completing the injustice contributes to making it *more successful*. It is unclear what is *increased* by bringing a child into the world in a way that is consistent with existing background injustices (we thank an anonymous reviewer for raising this point). One way to interpret the qualifier “more” here may be to insist on the fact that by deciding to reproduce, procreators are faced with a decision concerning what type of person will be added to the world, since they have a certain control over the probable characteristic the future child will have – including skin tone. Hence, by deciding to use sperm from a white donor, future parents, in a sense, render the background injustice “more successful” by creating a new instantiation of that injustice (see Marway, *op. cit.*, p. 394). However, it is doubtful that one has to add to the injustice to complete it. Imagine a future parent who can only have Black children and decides *not* to reproduce due to racist biases. This seems to complete the background injustice in Marway’s sense. Yet, it is unclear what is added in this case. Similarly, in some (admittedly peculiar) cases, having a white, socio-economically disadvantaged child may diminish the overall background injustice (see footnote 18 below). In these cases, it seems like it is possible to complete an injustice even if one makes it less successful, in some sense.

Crassus certainly rendered it harder for Roman slaves to successfully rebel in the years thereafter. In any case, here we partly use it to cast light on the conceptual issue of what it means to “complete” an injustice, partly to explore the moral issue how one should conceive of individual duties *vis-à-vis* a particular structural injustice. According to Marway’s understanding of completing injustice, an agent completes an injustice when their act constitutively brings about the success of (or constitutively makes more successful) another agent’s wrongdoing. In this case, the rebels’ rebellion is constitutive of the structurally unjust society. The structural injustice consists in people being divided into dominators and dominated and the latter being caused to rise up and be defeated with regular intervals. With this definition, it seems that the dominated have a pro-tanto duty *not* to rebel. After all, there is a sense in which they ‘instantiate’, ‘repeat’, ‘constitutively contribute’, and ‘complete’ the structural injustice in question.¹⁷ But, again, this seems highly counter-intuitive.¹⁸

Of course, Marway might say that by rebelling, dominated people do not complete the injustice to which they are subjected, but, if so, more than what she offers by way of characterizing structural injustice would have to be said to explain why it is not. Offhand, we are skeptical of the possibility of doing so all the while preserving Procreative Justice in its current form. On our view, some of the worst forms of structural injustice, other things being equal, involve the victims collaborating, in a sense, in their own oppression. Of course, in response one might say that victims of a

¹⁷ These are all terms that Marway uses to characterize what it is to complete structural injustice. It is unclear that these terms mean the same. A particular problem is that while it is reasonably clear what it means to ‘constitutively contribute’ to an injustice when the injustice in question results from an agent bringing about the injustice in question - presumably, one constitutively contributes when one’s action in itself is a way of executing the unjust agent’s intention - it is less clear what this can mean in the case of structural injustices where there are no intentions – not even intentions of past agents – of the relevant sort at play. In such cases, Marway (*op. cit.* note 1, p. 394.) seems to claim that completing structural injustice comes down to replicating structural injustice (as opposed to replicating previous constitutive instances of a given structural injustice) without really addressing whether replicating something is the same as instantiating it. On our view, these two relations are quite different, e.g., a museum might exhibit a replication of a stolen painting without thereby exhibiting an instantiation of it. Anyway, like Marway, we assume that, nevertheless, there is some standard relative to which we can sensibly determine when an action constitutively (or otherwise) contribute to the success of structural injustice.

¹⁸ For similar reasons one might wonder whether it is true of all people that selecting a white donor will complete racial injustice. Suppose that I am a white prospective parent, who, setting aside racism, shares many of the socioeconomic predicaments of non-white citizens. I might even be subjected to race-related stigma on account of working in jobs which few white accept, living in non-white neighbourhoods, etc. Given the lack of social mobility in my society, I can be certain that my child will predictably do better with a non-white than with a white donor. Do I then complete racial injustice by selecting a white donor? Perhaps. But the reason it is not clear, is that if there were no white people like me, average racial disparities in my society might be even more skewed in favor of whites.

structural injustice have no pro tanto moral reason not to complete the relevant injustice but doing that in effect amounts to rejecting Procreative Justice. We believe that a more promising way to approach structural injustice cases is to move away from strong pro tanto reasons that zone in on particular actions and decisions, to adopt a more flexible understanding of our duties of justice which considers the particular context in which persons act along with their past actions and decisions. This more nuanced approach, which we detail in Section 5, allows us to have a more flexible framework recognizing that there are different ways of dealing with particular unjust structures, and that we need to accommodate a wide range of possible actions to oppose these structures.

4 PROCREATION AND STRUCTURAL INJUSTICE

We now move on to the final problem with Marway's account. Suppose that despite the problem discussed in the previous section, there is a duty not to complete injustice. Presumably, this is a duty not specifically tied to procreative choices, but one that regulates a much wider range of choices. If so, it is unclear whether the relevant duty is a duty not to complete injustice in a sufficiently wide range of cases or whether it is a duty, for each and every choice one makes, not to complete injustice. On the former view, the duty is like what Kant called an imperfect duty. On his view, one has a perfect duty not to lie meaning that on each and every occasion one can lie one has a duty not to. In contrast, according to Kant, the duty of beneficence is imperfect, meaning that, on enough occasions and to a sufficient degree, one must act beneficently towards needy persons. Marway seems to assume that the duty not to complete injustice is perfect, whereas, as we will now argue, it is more plausibly thought of as an imperfect duty.

There are many ways in which you can avoid completing structural injustice (similar to how there are many ways in which you can satisfy the duty to be a good citizen, e.g., by voting, writing an op-ed, driving people to the polling station, participating in grassroots politics, town hall meetings etc). Marway is acutely aware of this, as seen with the following quote.

[I]t would be better to change the 'pernicious attitudes' or opt for 'social institutional reform' that renders darker skin disadvantageous, rather than yield to that disadvantage in selection. This seems obviously true. But this response fails to address the issue at hand because it misrepresents the options that are open to *individual* procreators.¹⁹

Yet, we believe that Marway moves a bit too swiftly in this passage. Many authors working on structural injustice recognize that there are multiple ways of responding to structural injustice.²⁰ At this point, we need to introduce a bit of taxonomy of responses to structural injustice. By 'frustrating injustice,' we mean doing the opposite of what

¹⁹ Marway, *op. cit.* note 1, p. 391.

²⁰ See notably Young, I. M. (2011). *Responsibility for Justice*. Oxford: Oxford University Press, ch. 5; McKeown, M. (2018). Iris Marion Young's 'Social Connection Model' of Responsibility: Clarifying the Meaning of Connection. *Journal of Social Philosophy*, 49(3), 484–502; Ackerly, B. A. (2018). *Just Responsibility: A Human Rights Theory of Global Justice*. Oxford: Oxford University Press.

Marway means by completing injustice; i.e., one frustrates an injustice if, through one's actions, one constitutively makes that injustice less successful. By 'sidestepping structural injustice,' we mean doing something that neither completes nor frustrates structural injustice. One can satisfy a duty not to complete injustice in two ways: by frustrating it or by simply sidestepping it, e.g., in the sort of cases Marway discusses by choosing not to procreate. Plausibly, frustrating injustice counts more strongly towards fulfilling the duty not to complete an injustice than simply sidestepping injustice.

Our contention is that if an agent frustrates the relevant structural injustice (or for that matter structural injustices in general or the injustices of other agents) in a sufficient number of cases and to sufficient degrees at some costs to themselves, it is not clear that the agent has a pro tanto duty – let alone a strong pro tanto reason however interpreted – to satisfy Procreative Justice. Consider the following case.

Structural Injustice Fighters. Adam and Beth, a white couple, have spent their entire adulthood frustrating structural injustice, particularly unjust racist and sexist structures. Now, they would like to conceive a child but must undergo IVF to do so. They can (i) select a white donor; or (ii) select a non-white donor. Since they would like their child to have the best possible life (or because they prefer their child to resemble themselves, for reasons similar to those at stake in *Lookalike Kid*), they select a white donor.²¹

Adam and Beth have a strong pro tanto reason in this case not to act as they do procreation-wise according to Procreative Justice. But, on our view, it is not clear that they commit *any* injustice, not even a pro tanto one. After all, they have spent their entire adulthood frustrating structural injustice (to the very limited extent to which this is within their powers, of course). Unless we think the duty not to complete injustice is extremely demanding, they seem to have done much more than they have a duty to do, structural injustice-wise, and in any case much more than the great majority of human agents. This suggests that Procreative Justice is too narrow. It is not clear that you have a strong pro tanto reason not to complete structural injustice in your procreation choices *simpliciter*. Rather, you have a strong pro tanto reason to do enough not to complete structural injustice and, ex hypothesis, Adam and Beth have acted in accordance with that reason, even if they select a white donor.

5 A PRO TANTO DUTY TO FRUSTRATE STRUCTURAL INJUSTICE

Despite the criticisms above, we believe that Marway is on to something when discussing these cases involving morally problematic procreation choices. Hence, in closing, we would like to put forward a positive proposal, which is inspired by her account but also avoids the challenges above. On this view:

²¹ One could make the case even stronger by imagining an example where the couple have a choice between having sex to have a (white) child or going to a clinic to select a non-white donor. This too highlights that Procreative Justice can lead to very counter-intuitive conclusions.

The Pro Tanto Duty to Eliminate Structural Injustice: Individuals have a pro tanto duty to do their part in eliminating or mitigating structural injustice.²²

Young proposes a duty quite similar to this one.²³ She proposes a forward-looking principle according to which individual agents have a duty to work with others to change the unjust structure.

The pro tanto duty to eliminate structural injustice avoids some of the problems for Marway's Procreative Justice set out above. It is broader than Procreative Justice, which means that it avoids the problem emphasized in *Structural Injustice Fighters*. There are plenty of ways to satisfy the duty to contribute to mitigating structural injustice, and since Adam and Beth have done more than enough in this respect, they do not violate the pro tanto duty to eliminate structural injustice, when they select a white donor, e.g., out of a concern for the well-being of their future child.

Importantly, the pro tanto duty to eliminate structural injustice is also able to explain why racist parents commit a pro tanto wrong when they select a white donor. Since racist parents most likely will not have done their part in combating racist structural racism, they would commit a pro tanto wrong by choosing a white donor for racist reasons.²⁴ They would – in virtue of their procreative choice and many other choices made by them – fail to do their part in eliminating or mitigating structural injustice. This shows that we do not have to turn to Procreative Justice to capture why we find such cases objectionable. We may simply appeal to a broader, and more plausible, principle which says that one has a pro tanto duty to participate in eliminating or mitigating structural injustice.

²² By referring to eliminating or mitigating structural injustice instead of not completing or frustrating structural injustice, we sidestep tricky issues about what it takes to complete an injustice, when there is no agent – not even a past agent who, influenced by discredited ideologies, is causally responsible for the existence of contemporary unjust structures – whose plans can determine whether we frustrate or complete the injustice in question (see Procreation of Structural Injustice above; Marway, *op. cit.* note 1, p. 392–394).

²³ Young, *op. cit.* note 21. Admittedly, she uses the term 'responsibility' instead of 'duty' because, for her, a duty is specific, while a responsibility is more discretionary. In the light of the fact that, as explained above, we have an imperfect duty in mind, this difference between us is merely verbal.

²⁴ This raises the question of whether one can satisfy one's duty to participate in combating structural injustice by doing something in relation to one type of structural injustice, even if one does nothing in relation to another type of structural injustice. Suppose the racist couple have participated in combating structural gender injustice, but are unwilling, because they are racists, to participate in combating structural racial injustice. Would they be failing their duty by choosing a white donor? Fully settling this question is beyond the scope of this paper, but one possible view here is a kind of spheres of justice view according to which one might not have done all that one has a duty to do if one is unwilling to participate in combating a particular form of structural injustice. However, for the purposes of this paper, we might assume that the racist parents have not participated in combating any forms of structural injustice.

Moreover, appealing to the pro tanto duty to eliminate structural injustice allows us to situate a couple's procreative choice within the broader social processes in which it takes place. As Young has pointed out, this responsibility is shared among the different actors who are connected by the structure and what they may be expected to do can vary depending on their position in the structure itself.²⁵ Consequently, to ensure that prospective parents do not reproduce an unjust racist structure in a particular context, they may be expected to collaborate with others to aim and change the structure; they may be expected to deal with clinics that have clear anti-racist commitments; and the clinic themselves may be expected to follow certain anti-racist guidelines, such as not disclosing the skin color or race of donors.

An appeal to the pro tanto duty to eliminate structural injustice moves us away from a focus on the prospective parents and it does render the forward-looking duty view perhaps more vague, in that what one must do to change, e.g., racist structures, in the end, is contextually determined and preserves a considerable degree of discretion for agents involved in that structure.²⁶ However, this may not be a problem. This broader focus highlights that we should not only focus on "the options that are open to *individual procreators*."²⁷ Following Young's input, to respond to structural injustice, it is often necessary to join with others to reorganize our social and political relationships and to modify the status quo.²⁸ Consequently, the capacity to change the structure goes beyond anything a single individual or couple can do. Yet, this collective element is an essential part of what it means to oppose an unjust social structure. Marway's Procreative Justice is very much focused on what individual agents can do on their own to not complete injustice and thus subscribes to a very demanding principle that misses the different ways in which one can oppose an unjust structure.

6 CONCLUSION

In this paper, we described five counterexamples to Marway's Procreative Justice. We have thus used thought-experiments, a common argumentative method in applied ethics and political theory²⁹, to show that Marway's views lead to conclusions that are difficult

²⁵ For instance, Young identifies power, privilege, interest and collective ability as 'parameters of reasoning.' Young, *op. cit.* note 21, p. 144ff.

²⁶ This may also be a potential way to respond to the issue of whether the pro tanto duty should be understood strongly or weakly. If we appeal to the duty to eliminate structural injustice, the strength of the reasons one has to choose a non-white donor can vary depending on one's situation and one's past actions. Hence, a prospective parent who never frustrated a racist social structure could have a strong reason to choose a non-white donor, while the prospective parent who spent their entire adulthood frustrating the racist social structure could have only a very weak, easily overridable, reason to choose a non-white donor. By situating a person's action within their larger social context and their own past actions, the duty to eliminate structural injustice allows us to develop a more nuanced approach to the strength of such pro tanto reasons.

²⁷ Marway, *op. cit.* note 1, p. 391.

²⁸ Young, *op. cit.* note 21, p. 146ff.

²⁹ For a defence of using thought-experiments in argumentation, see Brownlee, K. & Stemplowska, Z. (2017). Thought Experiments. In A. Blau (Ed.). *Methods in Analytical*

to accept. Admittedly, sometimes one person's counterexample is another person's bitten bullet or even another person's abductive evidence in favor of the principle. However, we also raised some concerns about the idea that we have a duty to not complete injustice and we pointed out that, insofar as we have such a duty, it is an imperfect duty and not a perfect one, thus, leaving moral discretion to structural injustice fighters to complete injustice through their procreative choices.

Be that as it may, we do not claim that there are no strong moral reasons not to select light skin at least in some of the cases Marway raises. We share the intuitions with her on many of the cases in these contexts. As Berkowitz and Snyder stated before in the context of embryo selection: "At best, the predetermination of race and sex reflects cultural bias. At its worst, racial engineering is a harbinger of racial purity."³⁰

However, if we are right, Procreative Justice, as it is currently stated, is implausible even if it directs our attention in the right general direction. Part of the problem, we argued, is that it is too narrow. Thus, we ended by putting forward a positive proposal, namely that individuals have a pro tanto duty to eliminate structural injustice. A duty which can, at least partly, be satisfied when one makes procreation choices not to have fair-skinned offspring, but which can also be satisfied in multiple other ways.

Political Theory (pp. 21–45). Cambridge UK. Cambridge University press; DeGrazia D. Leveraging a Sturdy Norm: How Ethicists Really Argue? (2013). *Cambridge Quarterly of Healthcare Ethics*, 1-11. doi:10.1017/S0963180123000592

³⁰ Berkowitz and Snyder *op. cit.* note 3.