I. INTRODUCTION
Non identity problem introduced, along with other considerations.

II. PREVALENCE OF THE PROBLEM
A. PHYSICAL RISKS FROM IVF AND ICSI
   IVF = In Vitro Fertilization      ICSI = Intracytoplasmic Sperm Injection
Robertson notes that these procedures may be associated with increased risk of problems (cerebral palsy, neurological problems). The question: Are these procedures permissible in spite of the increased risk?

B. RISKS OF MULTIPLE GESTATION
Common side effect of IVF, associated with increased risk of injury and disability.

C. RISKS OF TRANSMISSION OF INFECTIOUS AND GENETIC DISEASE
Those who request ART services may be at increased risk that they are recessive carriers. If they refuse to test and screen, they create significant risk for the child.

D. RISKS OF INADEQUATE OR INCOMPETENT CHILD REARING
Those who request ART may have disabilities that impair their ability to rear a child. (???) ADA covers this perhaps?

E. RISKS OF NOVEL FAMILY ARRANGEMENTS
Surrogacy arrangements, gay parents,… some people believe that these imply risks to the child.

III. ETHICAL ANALYSIS: THE PARADOX OF HARM, PROCREATIVE LIBERTY, AND PROVIDER AUTONOMY

A. THE PARADOX OF OFFSPRING HARM
These are cases for which the very act of conception is thought to be the act that creates the harm to the child. Regulation, in this case, would result in the nonexistence of the child who would purportedly be harmed.

A Paradox: “If offspring are “harmed” by being born in those conditions, then the only way to prevent the harm is not to use those techniques. But this means that the children sought to be protected will never be born. Because their lives will not be so miserable as to be “wrongful,” it would seem that once born they have benefitted from rather than been harmed by being born. If that is so, then using ARTs to enable their birth does not harm them and does not justify restriction on those grounds.” (14)

Avoidable v. Unavoidable Harms (…) On selective reductions: “Because the unborn have no right to be born, preventing the birth of some potential persons in order to enhance the welfare of those who are born does not harm or wrong those who are never born. No right or interest of those not born has been violated to improve the lot of the fewer who are born.” (15)

Same Numbers Substitutions: Response to ‘place-holder’ theories like Parfit’s Principle Q and Brock’s principle. (Wolf’s (2010) view is a variant of this view.) Robertson argues that these principles work only for same number choices. (Is this true??) Robertson argues that these solutions are impersonal, that they will impose undue burdens on some, and that the problem rarely arises in any case. (Is he right about this??)
When Numbers Differ (...)(17) (Total v. Average Views) [Sideline: Parfit’s Example?]

Harm to Others? Limited application to justify regulation for three reasons: (18)
(1) “Many of the conditions involve questions of relative well-being” and will not outweigh the claims of reproductive liberty.
(2) Even with more serious risks, the parents knowingly accept the risks in question.
(3) Even if the costs may be imposed on others, we must treat those in need of ART equally with those who do not. (Equal treatment for the fertile and the infertile.)

Is it Procreative? (That is, are these actions covered under procreative liberty.) (18)

Legal Situation: Courts have mostly ruled that parents but not children may recover damages.

B. PROCREATIVE LIBERTY
Notes that this right is generally a negative right against the state, not a positive right to resources. (This is mostly familiar from the earlier paper.)

C. PROVIDER AUTONOMY: Physician autonomy is also an important value at play here. There are reasons not to regulate physician behavior unless there are powerful reasons to do so. It does, however, (claims Roberts) give physicians a right not to treat if they choose, given compliance with anti-discrimination laws. (23) Notes that this right is severely limited by (for example) the ADA.


On E: Manipulation of Gametes, Embryos, Genes:
Pres Council: the “dignity of human procreation” is violated if children are born without “the natural connection of two human genetic parents.” (quoted p. 31—Robertson finds this vague/unsupported)

Case: Reproductive Cloning. “…resulting clones… cannot be harmed by existence alone because the only alternative to protect them would be to prevent their birth altogether.” (32) There is a question whether cloning for otherwise fertile couples involves a key interest protected by rt. of procreative lib.

Case: Other Novel Techniques. Gametes from stem cells or aborted fetuses?
Case: Gene Alteration. (Robertson argues for a permissive view.)

Case: Non-Medical Enhancement. (Robertson urges that “Neither law nor ethics have yet resolved whether the internal logic of procreative liberty entails a strong right to select traits of offspring, including the right to enhance or diminish traits.” (35) Posits that the connection with constitutionally protected values and interests is slender, that there is no obligation for public support for research in this area, and that concerns about fairness to the non-enhanced can justify restrictions. (Against Sandel.)

V. CONCLUSION: Key question for Robertson: Does this procedure serve a useful reproductive interest? If not, right of procreative liberty will not protect it. If it does, then this interest needs to be evaluated against competing legitimate interests.