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Discordant Expectations of Global Intimacy: Desire and Inequality in Commercial Surrogacy

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First Published February 1, 2021 | Research Article

<https://doi.org/10.1177/1360780420984169>



Abstract

Gestational surrogacy – carrying someone else’s baby (or babies) to term and giving birth to them – is perhaps one of the most intimate acts a human being can perform for others. However, the proliferation of commercial surrogacy has drawn concern and criticism, with many scholars arguing that it both creates and exacerbates global social and economic inequalities. Commercial surrogacy thus raises both the possibility of global intimate connection and the specter of reproductive exploitation. I therefore explore the various, shifting, and often discordant desires for intimate connection between the intending parent(s), the surrogate mother, and the resulting child(ren) in commercial surrogacy. I then examine how those intimacies intersect with commercial surrogacy’s socioeconomic inequalities. Weighing commercial surrogacy’s driving desires and intimate practices against its commercialization, I end with a reconsideration of the procreative desires and intimate practices that spur current international commercial surrogacy (ICS), urging an emphasis on reproductive justice.

Keywords

[intimacy](#), [inequality](#), [reproductive justice](#), [stratified reproduction](#), [surrogacy](#)

Introduction

This article explores the dynamics of intimacies and inequalities within commercial surrogacy arrangements. I became interested in surrogacy as an extension of my investigations into adoption – adoption and surrogacy being the main options for people who want children but cannot have them through natural birth processes. I have been struck not only by the assisted reproductive technology (ART) business' industrialization of reproduction but by the relational tensions in commercial surrogacy arrangements. Teasing out the strands of intimacy through a review of numerous recent social studies of surrogacy (cf. [Deomampo, 2016](#); [Jacobson, 2016](#); [Pande, 2014](#)), here I highlight the power relations inherent in the negotiation of intimacies within commercial surrogacy, particularly in cross-border practices.

In conceptualizing intimacy, I follow [Lynn Jamieson \(2011: 151\)](#), who focuses on 'practices of intimacy' in building connections between people as a means of defining the concept of intimacy through the processes by which it is created. This approach helps highlight the dynamic and shifting nature of intimacy – emotional, physical, and even genetic (relatedness) – rather than defining it as a static 'thing'. Jamieson notes that in many cultures, intimacy is closely related to family and is indeed often assumed to be an essential feature of family life. It is not, however, as prominent in non-Western cultures. She also highlights the role of globalization and potential commodification in mediating certain intimate relationships, pointing out that intimacy does not necessarily bring about equality between parties. This complex dynamic between intimacy and economics is echoed in studies which discuss commercial surrogacy as a form of gift exchange ([Rudrappa, 2015](#)), adding surrogacy to the broad category of intimate labor ([Boris and Parreñas, 2010](#)) being performed largely by women, including domestic and care work. This conceptualization of intimacy is instructive for thinking about how surrogacy practices can become points of contention in commercial surrogacy, which often involves relatively wealthy intending parents seeking surrogate services from poorer people. Despite the potential for commercial surrogacy to forge intimacies across not only national but racial and class borders, I argue that – because of its entanglement with markets and the way it is presently managed by states, organizations, and families – it tends to create discordant expectations of intimacy and exacerbates global reproductive inequalities.

This article will therefore explore, first, the various – and often discordant – desires for intimate connection between the intending parent(s), surrogate mothers, and the resulting child(ren) – and, second, those intimacies' intersections with commercial surrogacy's socioeconomic inequalities. Though Jamieson does not explicitly mention surrogacy, it certainly qualifies as an example of a commercial practice in which 'participation in the "modernity" of intimacy might make palatable relationships that

could otherwise be described as inadequate or even failed' ([Jamieson, 2011](#): 158). After defining surrogacy and its trends, I turn to the different actors and their expectations of intimacy. Many intending parents and surrogate mothers frame their choices to engage in commercial surrogacy differently over time, as alternately altruistic and market-based ([Deomampo, 2016](#)). Next, I therefore detail how the framing of commercial surrogacy as 'helping' others to create families cultivates discordant expectations of intimacy, creating both distance and closeness, as it also challenges and reinforces global reproductive inequalities.

Weighing commercial surrogacy's driving desires and intimate practices against its commercialization calls for both the protection of women's and children's rights and the need for reproductive justice. *Reproductive justice* is a concept that came out of feminist communities of color, which 'contextualizes reproductive choices and decisions by including the intersecting economic, social and political forces that shape the lives of women, their families and their communities' ([Generations Ahead, 2017](#): 278). I therefore conclude by considering various alternative conceptualizations of commercial surrogacy practice that try to account for and/or overcome the tensions between intimate desires, market forces, and reproductive justice.

What is surrogacy?

Before unpacking the dynamics of intimacies and inequalities in commercial surrogacy, it is important to be clear on the definitions of terms, as they can be confusing. Surrogacy is the act of carrying a fetus to term on behalf of another parent or parents. Traditional surrogacy involves the use of one's own oocyte (egg), which is rather rare these days. With the advancement of ARTs, the bulk of contemporary surrogacy arrangements are gestational, meaning that others' fertilized embryos are implanted in the womb of the surrogate mother, who carries the non-genetically related child to term. Gestational surrogacy ostensibly also helps prevent disputes about legal parentage, which typically favors genetic connection over social (or, in this case, biological¹) parentage.

Aside from traditional versus gestational surrogacy, another important designation is between altruistic versus commercial surrogacy. This is perhaps the more contested distinction, as many policymakers consider commercial surrogacy ethically questionable, both in terms of potential exploitation of women as surrogate mothers and of surrogacy possibly constituting the sale of children ([United Nations Human Rights Council Special Rapporteur on the Sale and Sexual Exploitation of Children, 2018](#)). Even in cases where altruistic surrogacy is allowed by law, it can be difficult to differentiate the permitted costs to be covered by intending parents from commercial

arrangements. Therefore, while Russia and some US states have legalized commercial surrogacy, some EU countries have banned it – and many more have banned *all* forms of surrogacy. However, the EU have found it challenging to place sanctions on their citizens going abroad to seek commercial surrogacy services.

Finally, there is a distinction between domestic and international surrogacy. Within domestic arrangements, in which intending parents contract a surrogate mother in their own country – as, for example, happens often in the United States commercially or the United Kingdom, where only altruistic surrogacy is allowed – there is much more potential for intimate interactions between intending parents and surrogate mothers. In fact, someone whom the intending parents already know may offer to carry their child for them. But even in cases mediated by an agency, where a stranger is recruited to become a surrogate mother for an intending parent(s), there tends to be much more focus on relationship building – especially where surrogate mothers and intending parents live in geographical proximity (Jacobson, 2016). International arrangements, on the other hand, are typically marked by fewer opportunities for intending parents and surrogate mothers to get to know one another or develop intimate practices, not only by virtue of physical distance but by language barriers. There also tend to be greater cultural and class disparities between the parties – though some foreign parents nonetheless manage to be present and forge intimate ties with surrogate mothers during at least part of the pregnancy (Carone et al., 2017; Smietana, 2017). In the next main section, I return to how and why agencies brokering commercial surrogacy arrangements are much more likely to manage the expectations of the various parties by discouraging contact than by cultivating it (Pande, 2014).

Trends in surrogacy

The rise in prevalence of commercial surrogacy is tied to both scientific advances in ARTs and to decreasing childbirth rates in Western countries. This is attributed primarily to the age-related infertility of women deferring motherhood due to gendered economic inequalities and waning social support such as accessibility of childcare (cf. Marre et al., 2018). Smietana et al. (2018) have also chronicled the rise in surrogacy use by the LGBTQ+ community and the attendant challenges for reproductive justice.

International commercial surrogacy (ICS) commonly involves white and/or monied intending parent(s) from wealthier countries hiring women of color from poorer countries and/or lower socioeconomic classes as surrogates, brokered by international agencies – although permissive states in the US have also become major hubs for commercial surrogacy, with many white, middle-class women acting as surrogates (Berend, 2016; Jacobson, 2016). Nonetheless, critics claim that the fertility industry is often premised on neocolonialism and white supremacy (Harrison, 2016; Twine, 2017).

Of late, commercial surrogacy has been aggressively marketed not only to heterosexual couples and single women but to gay men in the global North (Riggs and Due, 2017), opening possibilities to fulfill their desires to reproduce, 'as if recovering the fertility that was lost by coming out' (Smietana, 2018: 101).² In some instances, such marketing actually generates desires for genetically related parenthood where it had not previously existed (Darnovsky and Beeson, 2014: 17). But this practice can actually reinforce both 'settler sexualities' and the heteronormative family model (TallBear, 2018).

Such expanded pronatalism can sometimes even play into pro-nationalist concerns, as is the case in Israel, which wrote the world's first domestic surrogacy law at roughly the same time as a booming reproductive industrial complex was emerging there (Vertommen, 2017). This complex is so linked to the Zionist political project that Israel has made great efforts to accommodate citizens who fall outside the domestic surrogacy law (primarily gay men and single women) when they seek ICS arrangements (Shalev et al., 2017).³ Other states that prohibit commercial surrogacy domestically have likewise shown themselves to be accepting of their citizens utilizing ICS (Allan, 2017).

With advances in ART, particularly in vitro fertilization (IVF), gestational commercial surrogacy started expanding into an international business. India quickly became a popular destination as part of their medical tourism industry, appealing to intending parents for its low cost relative to other destinations. When India started restricting the practice due to moral and legal concerns, however, the global market shifted to other, less regulated countries such as Thailand, Nepal, and Cambodia – all of which had banned ICS by the end of 2016 due to various scandals and accusations of the industry's exploitation of women (Whittaker, 2019).⁴ Georgia and the Ukraine have since become popular destinations for ICS, as well as a few US states, including California and New York. In addition, there is now evidence that Indian doctors are opening clinics in East Africa.⁵ So, as was the case in intercountry adoption markets, which shifted from increasingly regulated destinations to unregulated ones (Cheney, 2014a), Africa has become somewhat of a 'final frontier' for ICS (The African Child Policy Forum, 2012).

The actors and their labels

I have written before about how terminology is one means of setting the tone of the relationship between actors in ICS (Cheney, 2018a). The labels one uses are emotionally, morally, legally, and politically charged – and therefore matter a great deal: to call someone a 'commissioning' versus an 'intending' parent – or to call them

'parents' versus 'clients' – can either mask or foreground the commercial nature of the transaction. Moreover, to call the person who carries the child a 'gestational carrier', a 'surrogate', and/or a 'mother' can, as [Beeson et al. \(2015\)](#) have argued, either mask or foreground not only the potential rights and entitlements of those who act as surrogates but also mask or foreground their affective and reproductive labor in the process – as well as their very humanity. All terms therefore rub *someone* the wrong way because they tend to reflect power differentials between parties. Terminology frames surrogacy practices in ways that either highlight or elide the inevitably commercial nature of ICS and either open or foreclose possibilities for intimacy. I am consciously using the terms 'intending parent(s)' and 'surrogate mother' in this article to try to encapsulate the various dynamics of intimacy while not diminishing the inequalities of commercial surrogacy arrangements. I also refer to the children born through surrogacy as 'surro-children' to differentiate children born through surrogacy arrangements from those who are not.

Managing expectations of intimacy in ICS

Surrogacy is a procedure that, as Carolin Schurr and Elisabeth Miltz point out, involves 'multiple processes of attachment, detachment and reattachment' ([Schurr and Miltz, 2018](#): 1626). ICS in particular is an example of what Sara Ahmed ([Ahmed, 2004](#)) refers to as an 'affective economy', where emotions act as a form of currency:

... the market of surrogacy can only be economically effective – in the sense of generating capital – when it succeeds in forging attachments across physical, cultural, social and emotional distances, while at the same time controlling intensities of attachment in order to facilitate processes of detachment to guarantee and finalize the exchange of the baby in the market encounter. ([Schurr and Miltz, 2018](#): 1631)

Heather Jacobson's ethnography of surrogate mothers in the United States, *Labor of Love: Gestational Surrogacy and the Work of Making Babies* (2016), details how much time and energy brokering agencies spend mediating the expectations and relationships of both parties in domestic commercial surrogacy arrangements – in which, as mentioned above, physical proximity may allow for more intimate practices than in international arrangements. Intending parents and surrogate mothers in the US may get to 'deeply know' each other ([Jamieson, 2011](#): 151) during conception and pregnancy, with intending parents in a better position to attend prenatal doctors' appointments with the surrogate mother ([Jacobson, 2016](#)).

In international arrangements, on the other hand, intending parents and surrogate mothers' relationships are typically much more reliant on – and thus more heavily mediated by – agencies. Some brokers may allow for face-to-face meetings when

intending parents are in a position to travel to the country of the surrogate mother. This has been true in the US and Mexico, for example. But in India, clinics and agencies typically discouraged intending parents' contact with surrogate mothers, often framing them as conniving gold-diggers to be distrusted by intending parents (Majumdar, 2018: 221). Some southeast Asian brokers in countries such as Thailand promoted complete anonymity, partly to prevent the parties from sharing information on payment that might lead to surrogates demanding more money (Whittaker, 2019: 65). But the majority are somewhere in between, with agencies facilitating occasional, virtual contact between the intending parents and surrogate mothers through mediated and interpreted online video chats. Where intending parents actually travel to the destination country for the birth of the child, they may or may not see the surrogate mother but (with the exception of the US) are often discouraged from attending the birth – sometimes at the request of the surrogate mother herself (Whittaker, 2019).

Nevertheless, various actors in an ICS arrangement can have very different expectations of the experience. Intending parents' feelings about resorting to ICS to have a child, surrogate mothers' motivations and emotions, and children's feelings as they grow up and learn that they are the product of an ICS can all change over time – before, during, and after contractual obligations have been fulfilled. Discordance, then, can result in a breakdown of the market exchange as well as the changing expectations of various parties (Jacobson, 2016). And yet, evidence has shown that at many moments throughout and beyond the commercial surrogacy arrangement, there can be intimate discordance between intending parents and surrogate mothers – and also between them and the children who are produced through such arrangements. In the US, it is often assumed that the contracting parties in commercial surrogacy arrangements will maintain a certain level of attachment with a surrogate mother, at least until the baby (or babies) is/are born and delivered to the intending parents. Jacobson (2016) argues that in the US this is a means of masking the commercial nature of the arrangement. Post-birth, though, surrogate mothers are trained to conform to industry expectations of detachment, as in India before the ICS ban (Pande, 2014).

In ICS, physical distance poses an additional hindrance to attachment, but with information and communication technologies, distance can be negotiated as a kind of safety zone to facilitate an 'appropriate' level of interaction while avoiding *overly intimate* connections. Intending parents can video chat with their surrogates to forge intimate ties and keep up with developments in the pregnancy (Berend, 2016), but where language poses a barrier, that interaction is usually mediated by clinic staff or other invested intermediaries. Intimate desires can thus change over time in accordance with structural limitations and possibilities – though again, intending

parents have more control over this than surrogate mothers ([Schurr and Miltz, 2018: 1638–39](#)).

Surrogate mothers

Surrogate mothers have varying ‘capacities to determine their own affective investments and attachments’ ([Schurr and Miltz, 2018: 1638](#)), as per the parameters discussed above. The interaction between surrogate mothers and intending parents in ICS is often dictated by contract in favor of the convenience of the intending parent(s), partly because of the fact that they are the ones who are paying. However, most ICS contracts do not lay out stipulations about the relationships between intending parents and surrogate mothers *after* the birth of the child(ren), as contracts tend to terminate upon the birth and transfer of the child(ren) ([Schurr and Miltz, 2018: 1639](#)).

The assumption of most intending parents – and thus the industry that favors them – is that the surrogate mother will cease to be an active part of the child’s life after birth, though this may not be what either the surrogate mother or the intending parent(s) has in mind. Intending parents may send pictures of the child in infancy and even toddlerhood, but contact usually tapers off over time. And yet, despite the industry attempts to rule out post-birth relationships in certain contexts, surrogate mothers often desire to maintain some kind of connection. Some surrogate mothers claim that they have an unbreakable bond with the children they have gestated by virtue of that labor. One surrogate mother in India told Amrita Pande, ‘After all it’s my blood even if it’s their genes . . .’ ([Pande, 2014: 148](#)). In Indian cosmology, this ‘blood’ actually imparts identity to children. But as mentioned, surrogate mothers’ expectations can be highly mediated by the brokering agencies and clinics, in ways that refute such cultural beliefs: [Daisy Deomampo \(2016: 159\)](#) noted in her ethnography, *Transnational Reproduction: Race, Kinship, and Commercial Surrogacy in India*, that

while surrogates told me that they wished to know more about their clients, [the clinic doctor] claimed to speak for them, saying, ‘The surrogate doesn’t want anybody to be in touch or turning up at her door. So they’re not interested, you know.’

However, Deomampo goes on to point out that surrogate mothers would rearticulate their desires to meet or maintain contact with their surro-children in terms of their reproductive labor rights ([Deomampo, 2016: 170](#)). Similarly, most of the surrogate mothers in Schurr and Miltz’s (2015) Mexican study of surrogacy were in fact hopeful ‘that [my surro-child] will one day knock at my door’, as one told them ([Schurr and Miltz, 2018: 1640](#)).

In *International Surrogacy as Disruptive Industry in Southeast Asia* (2019), medical anthropologist Andrea Whittaker points out that cultural beliefs about blood and

obligation also undergird expectations of global intimacy among Thai surrogates. She explains that the Buddhist concept of *bunghun* – gratitude or indebtedness in return for selfless acts, care, or assistance – is closely tied to motherhood and thus linked to Thai surrogate mothers' expectations of both intended parents and their surro-children. Because she gave her labor and nurturance through the sharing of blood in her womb, the typical Thai surrogate mother sees herself as forever karmically bound to her surro-children through the suffering of child birth. But the sharing of blood also implies a kind of kinship, and surrogate mothers would try to claim their relatedness through, for example, referring to intended parents and surro-children with fictional kinship terms, for example, 'sister' for the intending mother or 'niece/nephew' for surro-children (Whittaker, 2019: 59–64).

Despite these sentiments, Pande (2014: 145) emphasizes that 'it is important to recognize how the process of [commercial] surrogacy alters the women's existing kin ties . . . [In India] many surrogate mothers kept their surrogacy a secret from their children' while their relationships with their husbands were also strained. Though many women found ICS more empowering than other work available to them, it remained stigmatized as 'dirty work' akin to prostitution (Majumdar, 2016: 220). In the early days of India's growing ICS industry, husbands were deeply ambivalent about their wives participating in ICS: though they needed the income, husbands resented being usurped as breadwinners, and they did not like having to cope without their wives, who were usually confined to a clinic after the first trimester of their surro-pregnancies. However, some husbands (and their families) started pushing reluctant wives into surrogacy as they saw others in their communities reaping the material benefits and realized how lucrative commercial surrogacy could be (Nadimpally and Majumdar, 2017). Throughout, many surrogate mothers claimed that they were in fact doing it not for the intending parents so much as to better provide for their own children (Cheney, 2018a).

What about the children??

There is very little research at present to know how surrogate-born people feel about the circumstances of their births and/or contact with surrogate mothers. A 2014 study in the United States indicated that children to whom their surrogate birth was disclosed generally looked favorably upon their surrogate mothers and are curious about them (Jadva et al., 2014). But this study involved just 19 children born through domestic arrangements, and it is unclear how many of those were commercial or altruistic surrogacies. A psychological study of thirty 6- to 12-year-old surro-children born to gay fathers in Italy noted that children with secure attachments to their fathers were more likely to explore their surrogacy origins (Carone et al., 2020).⁶ Though the article is not explicit about whether the children were born through altruistic or commercial arrangements, it does state that all 30 children were born through gestational

surrogacies abroad (all forms of surrogacy being prohibited in Italy), implying that most were likely commercial arrangements. It would be interesting to see whether this fact of a commercial exchange has an impact on surro-children's feelings about their surrogacy origins, particularly once they reach adolescence.⁷ More child-centered research, while methodologically challenging, is needed to capture the perspectives of surrogate-born people over the life course.⁸

Some adoption studies scholars examine surrogacy's parallels with adoption and the lessons adoption might hold for parents of surrogate-born children (Crawshaw et al., 2017). For example, adoption research indicates that the earlier the circumstances of a child's birth are disclosed to them, the better children react and the more the circumstances become normalized over time (Scherman et al., 2016). However, 'Disclosure decisions are contingent, fluid and complex, as they have the potential to challenge affective relations of kinship. After disclosure, the surrogate children might rearrange their affective attachments, seeking the gamete donor or surrogate laborer out . . .' (Schurr and Miltz, 2018: 1640), effecting a re-attachment. Like adoption, ICS is slowly moving from being shrouded in secrecy and stigma toward more openness as the use of surrogacy for family formation is gradually normalized. Even where the circumstances of their births are disclosed from an early age and surro-children are encouraged to explore their identities and origins in surrogacy, a relationship with a commercial surrogate mother or gamete provider in another country is seldom encouraged so much as identification with their birthplace. As one intending parent told Majumdar (2016),

I will explain to them everything and even show them photographs of the surrogate mother pregnant, in hospital, etc. But . . . *To me it is more important that they understand that India as a country and culture is their mother (emphasis added by author).* (p. 224)

It is likely that as they come of age, many surro-children will express interest in getting to know their surrogate mothers (and gamete providers) in order to have a greater understanding of their own origins (Dempsey and Kelly, 2017). Advocates for the rights of donor-conceived people have argued passionately for access to information about gamete providers – whom they refer to not in cold, scientific terms as providers of genetic materials, but with affective kinship terms like 'father' or 'mother'.⁹ For this reason, total anonymity of gamete providers should be discouraged (Crawshaw et al., 2017). The same opinion may evolve regarding surrogate mothers as surro-children continue to explore their origins and the intimate meanings they attach to them. The preservation of records pertaining to the circumstances of any child's birth is therefore essential – especially where it concerns donor conception or surrogacy (Cheney, 2014b).¹⁰

Adoption studies also teach us that intending parents' expectations that surro-children should always be 'grateful' just for having been born are fraught and problematic. Many adoptive and donor-conceived people have grown up to become critical of adoption and/or donor conception practices, especially where an exchange of money has taken place. Expectations of gratitude are often used to silence their critiques of the practice.

Intending parents

Intending parents' motivations for getting involved in surrogacy and their feelings about it, while complex, have been well documented and are often overrepresented in both popular and scholarly literature. Intending parents are usually driven to ICS by a desire for children – but for whom pregnancy and gestation may otherwise be impossible (e.g. gay men or women who cannot conceive and/or carry a child to term) or otherwise undesirable. Public discourse is usually produced from their point of view and/or in sympathy with them. It is also clear that the intending parents' desires take precedent, and that they therefore have the most power to dictate the terms of the practices of intimacy in ICS (Deomampo, 2016; Schurr and Militz, 2018; Whittaker, 2019). As the initiators of ICS, who are typically wealthier and have more rights over the child both legally and affectively, decisions about whether and how to maintain contact with surrogate mothers before or after birth is in reality largely theirs to dictate.

As mentioned above, intending parents' desires for intimacy can change over time. Though some intended parents initially want to cultivate intimacy with the surrogate mothers they hire, the stress of multiple IVF treatments, miscarriages, and other setbacks can eventually lead them to dial back their expectations to that of a more straightforward business transaction (Deomampo, 2016: 84–87). As an intending parent hiring a surrogate in India told Deomampo (2016),

At first, I wanted to know them and everything about them and talk to them. But I think after our miscarriage, I'm probably changing to, 'Look, this is a business deal'. I can't get attached to them; I want the best surrogate I can get. And I probably want to put a little more business relationship into it than last time. (p. 87)

Such feelings of ambivalence can also mark the intending parents' relationships with surrogate mothers after their children are born. An intending mother in Switzerland told Schurr and Militz in 2017,

I don't know yet whether and when I will tell our daughter about her Mexican surrogate. I know some people have the picture of their surrogate in the nursery. But I really don't want the surrogate's picture like an icon of Maria hanging over her bed. I just want us to be a normal family . . . (p. 1638)

signaling that surrogacy is still considered too far outside the reproductive norm to maintain the relationship over time. At times, involving a surrogate or gamete donor in one's configuration of family can be seen as disruptive of the project of securing a normative nuclear family unit, and so parents may minimize surrogates' and providers' roles (Whittaker, 2019: 63–64). This process of detachment meant 'to delineate the boundary of their nuclear family after birth is often combined with multiple processes of attachment and reattachment' (Schurr and Miltz, 2018: 1639).

Parents also decide whether to disclose the circumstances of their birth to surro-children. Indications are that, as with adoption, parents of surro-children are starting to disclose the use of surrogacy to their children more often and at earlier ages. But (as with adoption) they are framing it in ways that carefully secure the nuclear family relationships over those with surrogate mothers (Nordqvist, 2019). Jamieson (2011: 157) points out that 'Practices of intimacy might then overlap with and become enmeshed in the reproduction of generational power'. With their great power to control the narrative also comes great responsibility:

The way in which intended parents handle processes of affective/effective attachment and detachment along the life-course of their children will shape the global and intimate connections of their 'assisted world family' . . . But much also depends on the surrogate laborers' capacities to make their desires effectively to detach or affectively to stay attached to the surrogate baby prevail against the unequal power relations that saturate the global fertility industry. (Schurr and Miltz, 2018: 1640)

Inequalities

Despite ICS' potential for cultivating global intimacy, scholars remain concerned with how it engenders and even exacerbates certain inequalities – of race, class, geography, and privileged access to the very technologies that make ICS possible. Sayantani Dasgupta and Shamita Das Gupta have described the Indian surrogacy industry as a post-colonial regime that 'privileges Western white parenthood, and specifically Western white maternity, over Indian motherhood' (DasGupta and Das Dasgupta, 2014: 195). These inequalities are largely maintained by the detachment and distancing techniques of intending parents, the ICS industry, and even surrogate mothers themselves.

Deomampo (2016) has argued that intending parents tend to position their surrogates as racially Other, either as objects of rescue (facilitating a kind of patrimonial attachment) or as conniving businesswomen (facilitating detachment). This also helps them to naturalize and justify the inequities of ICS' intimate yet commercial exchange. Indeed, Pande (2016) argues that this construction upholds the

notion of surrogacy as a labor market by highlighting a fundamental paradox – wherein a market that literally produces humans and human relationships is critically dependent on the maintenance of a global racial reproductive hierarchy that privileges certain relationships while completely denying others. (p. 254)

Jacobson untangles a similar paradox in the US commercial surrogacy industry: working- and middle-class women acting as commercial surrogates staunchly reject the notion of money as a motivation to engage in commercial surrogacy. Instead, they seek ‘perfect journeys’ (i.e. fulfilling intimate connections) with their upper-class intending parents that reinforce their motivation to help others to become parents. However, being of a lower class and in a less powerful position in the relationship makes it difficult for surrogate mothers to cultivate the kinds of intimate practices that make surrogates’ desired relationships with intending parents possible. Though brokering agencies may try to match expectations of intimacy between intending parents and surrogate mothers, intending parents view the transaction as primarily contracted labor. So while ideal practices of intimacy – ‘perfect journeys’ – effectively function to obscure the commercial and labor aspects of the surrogacy process, the way the affective economy is mediated by agencies still serves to guard against discordance in expectations of intimacy between the two parties (Jacobson, 2016: 74–113).

Actors in ICS will also negotiate intimacies by alternately minimizing and foregrounding the commercial exchange while subverting the inequalities. Anandita Majumdar notes how agencies and clinics in India frame the practice in terms of patronage (by intended parents) and gift-giving (by surrogates), wherein ‘IPs come across as generous and as providing help to poor Indian women for whom a surrogacy contract is like a “god-send”’ (Majumdar, 2018: 211), while surrogate mothers framed their participation as altruistic (despite being paid) because they were providing a ‘gift’ that was ‘helping other women’ to have families (Pande, 2014). This patronage/gift-giving framing may be adopted to circumvent negative, stigmatizing discourses about commodification and exploitation in commercial surrogacy, because, as Majumdar argues, it ‘helps maintain idealized notions of ‘what should be’ (Majumdar, 2018: 211). But it rarely subverts the power relations inherent in the practice: ‘. . . the surrogate is required to view herself as both a worker-producer and a mother-reproducer. [Yet] the disciplinary project devised by the commercial surrogacy regime exploits this production-reproduction duality’ (Pande, 2014: 64).

Reproductive justice

Such discordance in ICS’ relationships – and the ways in which it commodifies women’s and children’s bodies (Cheney, 2018b) – makes it difficult to argue that ICS as currently practiced is compatible with notions of reproductive justice. More often,

commercial surrogacy is identified as stratified reproduction (Colen, 1995), in which inequalities in reproductive labor are compounded by the nature of the commercial exchange.

Laura Harrison (2016) echoes Dasgupta and Das Gupta by detailing how ARTs like ICS often deploy brown women's bodies in the service of socially reproducing the white, heteronormative, middle class; moreover, when all actors in surrogacy arrangements concede to 'the fiction that race is reproduced genetically' (Harrison, 2016: 7), they not only contribute to dominant narratives that belittle black and brown women's reproductive labor; they undermine decades of social science that asserts that race is a social rather than biological fact. This has racial and class implications for the achievement of reproductive justice. Take, for example, Pande's work, which highlights the irony of the Indian state policy: for decades, it forcibly controlled the fertility of poor women, but when it realized how lucrative the ICS industry could be, India suddenly started promoting poor Indian women's fertility in the context of a burgeoning international medical and reproductive tourism industry (Pande, 2014). Even India's ICA ban did not alleviate inequalities, as upper-class and expatriate Indian IPs may still utilize lower-caste surrogates – and in any case, many claim ICS still occurs clandestinely.¹¹

As a result of such potential exploitative practices, a number of radical feminists opposed to ICS have argued that while everyone has the right to family, ultimately 'children are not an entitlement through which we can justify exploiting other human beings' (Ekman et al., 2017: 308). Yet an abolitionist stance on commercial surrogacy is unlikely to be effective unless universal, and it may foreclose opportunities of having children that have only just opened up to, say, queer families (Smietana et al., 2018). The affective economy of reproductive technologies may seem problematic, but many intimate relationships are often entwined with economics (Dow, 2016).

Some argue that we must look beyond the commodification of biology and genetics and return to the emotional bases of intimate relationships (cf. Stuvøy, 2018); this may provide clues for how to minimize inequalities while increasing global intimacies and recognition of non-biological relatedness. For some, this means re-examining reproductive desire entirely. For example, Adele Clark and Donna Haraway call for 'kinnovation', a radical reimagining of intimate relationships 'generating feminist science studies-informed pro-kin and non-natalist politics of reproductive justice' (Clark and Haraway, 2018: 1). Kinnovation involves a cultivation of relatedness that emphasizes practices of intimacy over procreation (Haraway, (2015: 161) also refers to this as 'making kin not babies'). Such kinning practices with other people (and other species) may help move toward more humane and less exploitative or commodified relationships.

Queer kinship gives us other alternative models that allow for the expansion of notions of family beyond the patriarchal, heteronormative, Western, and colonial (TallBear, 2018). For these scholars, reproductive justice means exploring family making without foreclosing the possibility of LGBTQ+ people having genetically related children or enabling exploitative practices in the name of non-heteronormative family formation (Smietana et al., 2018). Possibilities include open surrogacy, multi-parent child custody, and further detangling the biological, legal, and affective 'grammars' of kinship (Gunnarsson Payne, 2018). So far, though, emergent laws on surrogacy have emphasized genetic relatedness (Cheney, 2018b). While this emphasis is crucial to preventing baby farming and child trafficking,¹² it also privileges nuclear, patriarchal family formations over non-normative ones – while the market entices non-normative families into commercial relations as well. Moreover, such reconceptualizations will not necessarily ameliorate power imbalances or discordant expectations of intimacy.

I remain skeptical that any kind of intimacy or ethics of care overcome the inequalities of market-mediated reproductive transactions. But if we can expand our notions of relatedness as we keep the issue of reproductive justice at the forefront of the discussion, we can better recognize the broader contexts, histories, and relations of power into which we enter when we make certain decisions to expand our families. And if we can hold the industry to standards that uphold reproductive justice, hopefully this will lead to ever more ethical, inclusive, and nonexploitative reproductive practices.

Funding

The author received no financial support for the research, authorship, and/or publication of this article.

Notes

1. Genetic parentage differs from biological parentage in that in a surrogacy arrangement, a child may have a *genetic* relationship to one or more intending parent (and many laws concerning surrogacy require a genetic link) and a *biological* relationship with their surrogate mother, in that she gestates them in her womb.
2. This is particularly true following several countries' passage of marriage equality laws.
3. Israel revised their domestic surrogacy law in 2018, expanding it to allow single women to utilize domestic surrogacy. Though gay men are still prohibited, the Israeli government continues to assist gay men and couples who go abroad for international commercial surrogacy (ICS) by helping them attain Israeli citizenship for the resulting children.

4. In India, the conservative government restricted the use of surrogacy to heterosexual couples in 2014, and further to domestic and altruistic surrogacy in 2016 ([Majumdar, 2018](#): 210).
5. Confirmed by delegates to the Africa regional consultation on surrogacy hosted by International Social Services at the University of the Western Cape, Cape Town, South Africa, 19 August 2019. See also, for example, <https://www.vinsfertility.com/surrogacy-in-kenya/>.
6. Gay fathers are far more likely to disclose a child's surrogacy origins to them at an early age because of the conspicuous absence of a mother and the need for the child to explain their unconventional family to friends and schoolmates.
7. Adolescence is a typically a difficult period of identity exploration, but it can be particularly so for adoptees and donor-conceived people – and by extension, surro-children. Many grapple especially with the exchange of money around their birth/adoptions. This aspect might be even more difficult for surro-children, given that at least a portion of the money paid by intending parents does go to the surrogate mother. Moreover, the UN Special Rapporteur on the Sale and Sexual Exploitation of Children, Maud de Boer-Buquicchio, stated in her 2018 special report on surrogacy that in some instances, commercial surrogacy could constitute 'the sale of children' ([United Nations Human Rights Council Special Rapporteur on the Sale and Sexual Exploitation of Children, 2018](#)).
8. Though it is acknowledged that more research about surrogate-born people's perspectives is needed, many of them – particularly those born through ICS – have not yet come of age, and so it can be difficult to gain access to them as children: Perhaps the circumstances of their births have not yet been disclosed to them, and/or adult gatekeepers fear that the outcomes of such studies could reveal uncomfortable truths or moral questioning of their choices and actions. It can be similarly difficult to access the bio-children of surrogates in countries where stigma around surrogacy practices persists. Some children may have been too young to remember or may not otherwise have known that their mothers have acted as surrogates. Some governments, such as in India, Cambodia, and Thailand, have moved to more tightly control or even ban ICS due to alleged corruption and exploitation, including trafficking of women and children – a fact to which they do not want to draw attention. In other countries where the industry is openly active, it may still tightly control access to women acting as surrogates – either currently or in the past – so they may be reluctant to be interviewed, or to allow researchers access to their own families.
9. Discussed at the panel 'Children's Rights in the Age of Biotechnology', at the conference 'Celebrating 30 Years of the Convention on the Rights of the Child', Palais

des Nations (United Nations), Geneva, Switzerland, 19 November 2019.

10. Surrogate mothers' identities are often completely erased from the documentation of a child's birth. Either the birth certificate is *never* issued with the surrogate mother's name on it, or it is replaced by one with the intending parents' names once the child is transferred into their custody. Until recently, gamete providers' identities were largely anonymous, but donor-conceived people have pushed to require gamete donation to be non-anonymous because of genetic implications like inherited disease and public health concerns such as preventing people conceived from the same donor sperm (effectively half-siblings) ending up dating, married, or procreating together.

11. Cf. https://www.huffpost.com/entry/why-indias-new-surrogacy-bill-is-bad-for-women_b_57c075f9e4b0b01630de83ad

12. Without the requirement of a genetic link to at least one commissioning parent, there could be an explosion in the gamete market to make 'designer babies' and/or in baby farming, which is already taking place (cf. <https://www.aljazeera.com/programmes/africainvestigates/2015/12/nigeria-baby-farmers-151202123224095.html>).

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