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# INTERSECTIONALITY AND THE ETHICS OF TRANSNATIONAL COMMERCIAL SURROGACY

SERENE J. KHADER

Critics of transnational commercial surrogacy frequently call our attention to the race, class, and cultural background of surrogates in the global South. Consider the following sampling from the critics: “the women having babies for rich Westerners have been pimped by their husbands and are powerless to resist” (Bindel 2011); our “rules of decency seem to differ when the women in question are living in abject poverty half a world away” (Warner 2008); and we should worry that “women of color are easier to commodify” (Smerdon 2008, 51–52). Critics suggest—rightly, in my view—that the race, class, and culture of Southern surrogates matter to the moral acceptability of transnational surrogacy. But how, precisely, do the race and class of Indian surrogates change what is morally at stake in a practice whose domestic iteration is criticized primarily for its entrenchment of sexism?

One way to understand the moral import of the race and class status of Southern surrogates involves what I call “intensification analysis.” The intensification thesis supposes that gender oppression subjects all women to qualitatively similar harms and that race and class oppression increase the severity of those harms. I argue here that intensification analyses, if they are intended as

exhaustive, miss two sorts of morally relevant effects surrogacy has on Southern women. First, they miss ways in which race and class subordination can *mitigate* negative welfare effects of being a commercial surrogate. Second, they miss what I call “qualitatively intersectional” harms to Southern women—that is, qualitatively distinct harms that arise from being subject to race and class-specific gender stereotypes. Specifically, intensification analyses miss the ways in which poor Indian surrogates are less likely to be taken advantage of than their Northern counterparts and are more likely to reap significant financial benefits. Intensification analyses also miss the ways in which surrogates and other marginalized women are harmed by being subjected to qualitatively intersectional stereotypes. Indian surrogates and all women of color are harmed by the stereotype of women of color as lacking an interest in noncommodified affective relations. Indian surrogates and poor Indian women are also harmed by the interlocking caste and gender stereotypes about impurity. I will advocate an intersectional analysis of transnational surrogacy that brings these two types of considerations to light.

My aim here is not to offer an all-things-considered judgment about the moral acceptability of transnational commercial surrogacy. It is, rather, to help us get nearer to a list of the considerations relevant to rendering such a judgment. I am particularly interested in the question of how race and class oppression of Southern surrogates weigh on questions about the moral acceptability of the practice. Two trends in critical discussions of transnational surrogacy suggest we need a clearer sense of how race and class are morally relevant to whether the practice should continue. First, the philosophical literature that focuses on surrogate race and class tends to alert us to the ways in which transnational surrogacy takes advantage of existing structural injustices—such as global economic inequality and the disproportionate allocation of dependency work to women of color (see Bailey 2011; Donchin 2010). Though I agree with these analyses, tracing the practice to unjust background conditions does not tell us whether that practice ought to be allowed to continue—especially given that those unjust conditions are likely to persist in the short term.

Second, the popular literature that is critical of transnational surrogacy tends, despite mentioning that Indian surrogates are poor and may lack better options, to rehash the traditional moral worries about surrogacy in the North (see Warner 2008; Zakaria 2010; Pet 2012; Vora 2009). These worries are about retrenchment of gender stereotypes, subjection of women to potentially dangerous and traumatic experiences, exploitation of gendered vulnerabilities,

commodification, potential surrogate autonomy loss, and so forth. This strain of critical analysis of transnational surrogacy tends to argue that surrogate race and class worsen the traditional vulnerabilities associated with surrogacy—typically by claiming either that Northerners are extra likely to inflict the harms of surrogacy on Southern women because of their “otherness” or by claiming that Southern women are more vulnerable to patriarchal norms that subordinate women to men and attach women’s value to their reproductive capacity. This second tendency in the literature ought to raise feminist questions for several reasons. To begin with, postcolonial feminist theorists have pointed out the explanatory inadequacy of the idea that non-Western women’s moral situation involves subjection to worse versions of the same patriarchal cultural norms to which Western women are subject (Narayan 1997; Mohanty 1991). I agree that such characterizations are more likely to reflect colonial epistemic prejudices than accurate characterizations of the lives of Southern women. Also, the tendency to focus on how transnational surrogacy especially retrenches gender oppression and takes advantage of gendered vulnerabilities suggests a feminist theoretical blind spot. Thirty years of theory about how the effects of gender oppression on women of color produce qualitatively different—and not always worse—effects on women of color should lead us to worry that we are missing something if we do not at least question the view that transnational surrogacy is simply a “worse” version of domestic surrogacy.

Intersectionality offers methodological directives that help us overcome these limitations in existing feminist discussions. It asks us to recognize two possibilities: that the oppressions facing multiply oppressed women co-constitute one another and that these oppressions sometimes make the short-term interests of multiply oppressed women diverge from those of privileged women. In considering these two possibilities, we will see two important sets of moral considerations associated with transnational surrogacy: mitigating factors introduced by surrogate race and class, and harms caused by the expression and perpetuation of qualitatively intersectional stereotypes. I begin by explaining the appeal of intensification analyses and arguing that they plausibly describe how the race and class of Indian surrogates affect their psychological and bodily health and autonomy. In the second section, I show how intersectional analysis reveals the existence of morally mitigating concerns and qualitatively intersectional harms. As part of my argument for the existence of such harms, I develop the idea that women of color are traditionally subject to stereotypes that suggest they lack an interest in noncommodified affective relations. I pause to qualify the paper’s scope

before making these arguments. First, I focus on the Indian surrogacy industry because it is booming, and because of the (relative) wealth of social scientific data about it. My analysis is extensible to other countries to the extent that they share key features of Indian surrogacy—such as surrogate poverty, their cloistering in clinics/hostels, racial differences from intended parents, and strong local patriarchal traditions. Second, due to space considerations, I focus on surrogacy's effects on women (rather than children or society at large).

### The intensification thesis

Feminist theorists agree that we must “take race and class into account” when analyzing sexist practices' effects on women who face multiple oppressions. One way of understanding this prescription is as a call to see how race and class make gender oppression *worse* for the multiply oppressed. Let us call the view that poverty and racial oppression only intensify the effects of gender oppression the “intensification thesis.” Note that the intensification thesis is not simply the view that poor women of color face heightened versions of the same harms that more privileged women face; it is the methodological presupposition that acknowledging this is *the* way to take race and class into account. My concern is that pre-commitment to the intensification thesis will prejudice our account of the moral considerations relevant to the practice of surrogacy.

But we can acknowledge that intensification analysis fails to exhaust the relevant moral considerations without denying that Southern surrogates face worse versions of *some* of the same harms Northern surrogates do. There are some mechanisms by which other oppressions could heighten the effects of gender oppression. First, it is plausible that other oppressions foreclose options for circumventing gender oppression—and thus heighten the effects of gender oppression. For instance, a proponent of intensification analysis about gender divisions of labor might plausibly argue that all women face them—but they are particularly crushing for women in poor countries because Structural Adjustment Programs have caused them to lack the resources that would allow them to transfer some gendered work burdens onto others. Similarly, racist and classist global structures may make it particularly difficult for poor Indian women to avoid the gender-based harms of surrogacy; they may, for instance, find it difficult to avoid perpetuating the norm that women are baby-making machines because other lucrative employment opportunities are foreclosed to them. Second, people may fail to acknowledge that subjecting others to gender oppression is morally objectionable when those others are racially different from them, and

this may cause them to inflict worse forms of it. For instance, Usha Smerdon argues that all surrogacy involves commodification, but Northerners are less likely to produce regulations on commodification when the women in question are brown (2008, 51).

Concerns consistent with intensification analysis appear in a variety of critiques of transnational commercial surrogacy. Critics of transnational surrogacy argue that surrogates are particularly vulnerable to bodily and emotional harm (Smerdon 2008, 56; Bindel 2011; Deonandan 2012) and autonomy loss (Bindel 2011; Centre 2012, 45–46; Pet 2012; Deonandan 2012), and that sexist norms are particularly likely to become entrenched in the Indian cultural context (Deonandan 2012). These concerns mirror and magnify those of critics of American surrogacy such as Elizabeth Anderson (1993) and Debra Satz (2010). Anderson argues that commercial surrogacy causes emotional harm and is incompatible with respect for women's autonomy, and Satz argues that surrogacy entrenches sexist norms. We should expect Indian surrogacy to be harmful in these ways, because the potential for these harms stems from relatively contextually invariant features of surrogacy (at least under patriarchy)—the emotional attachment that is frequently experienced by pregnant women, pregnancy's entailment of bodily risk, the fact that the class of people who become pregnant (women) is already oppressed, and the dependency of the fetus's health on women's everyday behavior.

### **Intensified risk for bodily and psychological harm**

The risks of surrogate bodily and psychological harm are likely increased in India. The general lack of regulation of health care in India, the lack of enforced national standards for the treatment of surrogates (Sama 2006; Centre 2012), and the fact that surrogates lack follow-up health care (Centre 2012, 75) increase Indian surrogates' health risks. Their risk for separation grief also seems heightened. Where many American commercial surrogates have successfully won legal rights to children they gestated, the proposed Indian surrogacy regulatory law gives Indian surrogates no rights over their gestational children (Roy 2011). The potential for grief also increases because Indian surrogates tend to feel forced into shameful labor by financial necessity (Pande 2010, 988)—rather than feeling hopeful about redeeming previous abortion or adoption decisions or being overjoyed about being pregnant (as data suggest American surrogates are [Anderson 1993, 180]). One woman says that surrogacy was a better choice than selling a kidney (Deonandan 2012). Another describes surrogacy as “a compulsion” (Pande 2009, 160).

Though both the American and transnational surrogacy industries insist that the bond between gestational mother and child is ephemeral (Anderson 1993, 177; Pande 2009, 2010; Vora 2009), the transnational industry has greater opportunity to manipulate surrogates because of its more pervasive role in their lives. Indian surrogates typically live in clinics or hostels for the duration of their pregnancies (Centre 2012); American surrogates live at home. Hostel life multiplies points of contact between surrogates and industry messaging. This messaging encourages women to suppress their attachment to fetuses, or encourages strong but “disposable” attachment. At best, it is likely to produce cognitive dissonance; at worst, being asked to attach and detach may produce trauma. In Amrita Pande’s words, the transnational industry asks women to cultivate a “disposable mothering role.” Industry messaging claims that the children surrogates gestate are not “really theirs” (Pande 2010, 977–79; Vora 2009, 270) but are simultaneously more valuable than their children at home (Pande 2010, 978).

The grief argument need not presuppose, as critics such as Satz (2010) allege, that attachment is the only normal relationship to a fetus. As Anderson writes, much surrogate pain arises from the conflict between social norms concerning “normal” motherhood and surrogacy (1993, 175). This conflict can only intensify in a society where the view that women’s value lies in their ability to reproduce is explicit and widespread, where few stepfamilies or other “alternate” arrangements exist, and where domestic surrogacy is well-hidden. Some Indian surrogates insist that their gestational children are really theirs—describing the literal sharing of blood as more important than genetic material (Pande 2010, 987). Data also suggest that many Indian surrogates miss the children afterwards (Vora 2009, 272).

### **Intensification of autonomy harms**

Opponents of domestic surrogacy see it as both taking advantage of women’s lack of autonomy and reducing women’s autonomy during pregnancy. Indian surrogates typically experience greater losses of autonomy during pregnancy than American ones. Indian surrogates are rarely consulted in abortion decisions; in one study, less than 2.9 percent of those who had undergone abortions had been asked for their consent (Centre 2012, 78). Surrogates everywhere are also subject to “potentially unlimited control over [their] activities” (Anderson 1993, 176); surrogacy contracts demand dietary changes, specific sleep schedules, controlled recreational and work activities, and so on. Residential hostels and clinics increase the potential for control. Not only are diets and

activities under perpetual surveillance, but Indian surrogates' time is regimented with activities intended to "modernize" them (Pande 2010). Sex with husbands is prohibited (981) and surrogates' mobility is restricted. Visits home from clinics and hostels require permission and are dangled before the surrogate as carrots to elicit "good behavior" (Pande 2010, 982). Anecdotal evidence shows that some Northerners seek Indian surrogates because they are easier to control. One intended mother explains why she declined to hire an American surrogate: "You have no idea if your surrogate mother is smoking, drinking alcohol, doing drugs. . . . There's no one policing her in the sense that you don't know what's going on" (Warner 2008).

Anderson argues that the American industry attempts to convince women that financial motives corrupt surrogacy, and that they should see themselves as performing a loving act toward the intended parents (1993, 180). This damages surrogate autonomy, Anderson believes, because it is deceptive; manipulating gift norms promotes two lies—that it is abnormal to feel love for a child one gestates, and that surrogacy is not labor.<sup>1</sup> The transnational industry frequently contrasts Indian surrogates to "bad" American ones—the latter being alleged money-grubbers who use the court system to gain custody of children after accepting money (Pande 2010, 977). Indian brokers describe embryos as "gifts from God" and claim that thinking otherwise is just "being greedy" (978). In at least some transnational cases, it is not simply gift *norms* that operate; in-kind exchange occurs. One American couple offers a house rather than cash, and characterizes the transaction as purely sentimental, "you make us happy; we'll make you happy" (987).

Further, Anderson (1993) argues that the American surrogacy industry preys on women who are too emotionally volatile to consent. Indian surrogates' existing autonomy deficits result from factors besides emotional volatility, but nonetheless may be preyed on for their autonomy deficiency. First, the industry may take advantage of poor Indian women's unfamiliarity with fertility technologies. Brokers are often the first to inform would-be surrogates about the technologies' existence (Vora 2009, 271–72). Given this fact, and that surrogacy is a taboo subject in their communities, Indian surrogates may (but do not necessarily) lack the medical understanding of surrogacy that would allow them to consent. Second, consent procedures are poorly followed; roughly half of surrogates are illiterate, and at two clinics studied by an Indian NGO, only two surrogates held copies of their contracts (Centre 2012, 42–43).

Third, Indian women are likely to be enacting the will of others when they consent to surrogacy. Smerdon argues that they likely consent because of pressure



from family (2008, 54). Not all pressure is coercive, but if surrogates consent because of physical or psychological coercion, the industry profits from women's lack of autonomy. Some data confirm Smerdon's hypothesis (Centre 2012, 39), and data from South Asia about women being pressured into microcredit (Holvoet 2005, 86) and organ-selling (Satz 2010, 196) provide greater reason to suppose undue pressure from family members is an issue. Further, Indian surrogacy law disturbingly makes surrogates' husbands party to surrogacy contracts (Smerdon 2008, 40). Indian surrogates seem more vulnerable to having their lack of autonomy taken advantage of—but for different reasons.

### **Toward an intersectional analysis**

Though Southern surrogates experience intensified versions of some of the same harms as their Northern counterparts, we should be wary of concluding that these harms are the only effects of transnational commercial surrogacy. Feminist intersectional theories offer methodological suggestions that would produce a more complete understanding of what is at stake in moral judgments about transnational commercial surrogacy. Intersectional theories are united by a critique of what Crenshaw (1991) calls “additive” models of identity. Additive models hold that each oppression facing a multiply oppressed individual affects her in a qualitatively distinct—but negative—way, and that she is thus necessarily worse off than the individual facing a single oppression. In contrast, intersectional theorists argue that the oppressions facing multiply oppressed women co-constitute one another and situate those women such that attempts to advance the interests of “all women” may fail to advance theirs. To articulate the basic idea with an example, we might think of how race and gender stereotypes interlock to produce the image of the Asian woman as a particularly good factory worker; descriptors like “docile” and “nimble-fingered” describe qualities that would be attributed neither to Asian men nor to white women. Further, attempts to promote the interests of all women—say by encouraging wage labor to release women from domesticity—may actually increase these women's exposure to imperialist domination. The intensification thesis whose insufficiency I am about to demonstrate rests on assumptions somewhere between those of the additive and intersectional frameworks. This thesis, like additive analyses, allows that multiple oppressions can *affect* one another; race and class oppression make gender oppression worse. But its account of the possible interactions between race, class, and gender oppression is excessively narrow.

Following Ann Garry, I see intersectionality not as a distinct methodology, but as offering directives about what sorts of questions we should ask about the lives of the multiply oppressed (2011, 830). These general directives are the lessons of a generation of looking at women of color's lived experiences. In practical moral philosophy, I believe intersectionality requires philosophers to actively recognize three possibilities: that multiple oppressions cause qualitatively distinct and irreducibly intersectional harms, that advancing the short-term interests of one group of women may harm other women, and that individuals who face multiple oppressions are not uniformly worse off. Intersectionality demands only that we grapple these possibilities; we need not assume beforehand that any of the above possibilities is true about a particular case.<sup>2</sup> The intensification thesis ignores these possibilities by stating that the main way race and class subordination impacts gender oppression is by producing the same effects it produces on privileged women—albeit in an aggravated form.

To elaborate the methodological directives of intersectionality: the first asks moral philosophers to look for harms that accrue to people with multiple oppressions that are what I call “qualitatively intersectional.” Such harms’ essential characters would fundamentally change if we extracted either their racist or sexist qualities. Kimberle Crenshaw’s analogy comparing black women to pedestrian victims of an accident at a traffic intersection illustrates this: “sometimes the skid marks and the injuries indicate that they occurred simultaneously, frustrating attempts to figure out which driver caused the harm” (1989, 149). Think of the image of the Asian woman as a particularly good factory worker: removing either stereotypes about Asians or women from the image changes the character of the image. The second directive asks us to recognize that the short-term interests of all women are not always aligned. It follows that interventions designed to benefit women may actually entrench the oppression of some subset(s) of women. The third directive asks theorists to be open to the possibility that those facing multiple oppressions may be better off *in some ways* than those facing single ones. This directive is more familiarly seen in the intersectional refusal to “rank” oppressions (Moraga 1983) and women of color’s insistence that, in certain ways, they are less in the throes of gender oppression than white women (Amadiume 1998).

### **Where race, class, and culture are mitigating considerations**

The intensification thesis insists that race, class, and culture can only make practices affecting women of color or third-world women hyper-objectable.

The intersectional directive that asks us to question facile rankings of oppressions requires us to consider the possibility that the race, culture, and class of Indian surrogates may sometimes mitigate harm to them. Two harms associated with American surrogacy appear to be mitigated in the transnational case. I emphasize that race, class, and culture are sometimes mitigating *considerations*—not that they warrant the all-things-considered judgment that transnational surrogacy is less objectionable than its Northern counterpart.

Indian surrogates are less likely than American ones to enter the contract from emotional volatility—and are more likely “responding rationally to their incentives.” Anderson writes that the American industry takes advantage of women who cannot consent to surrogacy because they are often motivated by the desire to work through past abortion or adoption decisions. In one study, less than 1 percent of American surrogates said they would do it for financial reasons alone (Anderson 1993, 180). If Anderson is correct that alienating one’s body to make sense of one’s emotional past is nonautonomous,<sup>3</sup> Indian surrogates are more autonomous than American ones in one respect. Indian surrogate motivations are more amenable to being considered economically rational,<sup>4</sup> to being thought of as the choices that any reflective and self-interested person would make under the circumstances. Of course, this is only one facet of autonomy, and Indian surrogates’ greater autonomy in this respect does not change the autonomy threats posed in manipulation by husbands, poor consent procedures, and other circumstances.

Still, the fact of surrogate poverty seems—perversely, perhaps—to impute rationality to the surrogacy choice. Further, these other respects in which the industry takes advantage of compromised autonomy could be undone with changes in local norms and medical reform.<sup>5</sup> It might be argued that surrogate poverty should not reduce our concerns that surrogates are acting under emotional duress since poverty produces its own sort of emotional duress. But this mischaracterizes the type of poverty faced by women who are candidates for surrogacy. Indian surrogates, though poor, are typically not the poorest of the poor (Centre 2012) and are certainly not so desperately poor as to experience cognitive impairment.

The option sets of poor Indian women also allow surrogacy to benefit them economically in a way it does not benefit American surrogates. Where American surrogacy offers women with safe and better-paying alternatives less than minimum wage (Centre 2012, 21), no alternative form of employment allows poor Indian women such a quick and large infusion of capital—the type of infusion of capital that may permit long-term investments as through the purchase of a home

or an education for one's children. One surrogate pregnancy equals five years of income for many poor Indian women (Pande 2010, 974). Many alternative routes to (lesser) income would also expose them to bodily harm (Humbyrd 2009, 12–13). We may believe (as I do) that poor Indian women deserve a world in which surrogacy is not their best alternative, but benefit is a baseline concept, and the option set that women should have in an ideal world is not the relevant baseline for deciding whether the practice should be allowed to continue.<sup>6</sup> While acknowledging the injustice of the non-ideal conditions that structure surrogates' options, I claim that transnational surrogacy provides significant economic benefits under the (potentially unchangeable in the short-term) circumstances—and that this should matter to our moral assessment of the practice.

### **Qualitatively intersectional harms**

When we follow the intersectional directives that ask us to recognize that groups of women's short-term interests may diverge and that other oppressions change the character of gender harms, we see that transnational surrogacy stigmatizes some groups of women by perpetuating qualitatively intersectional stereotypes. Much has been written about how attempts to liberate Northern women from the constraints of biology and gendered work burdens shift feminized labor onto poor women and women of color (Ehrenreich and Hochschild 2003). This assignment of stigmatized forms of gendered labor to certain groups of women continues in the transnational surrogacy industry. Intertwined racist, classist, and sexist stereotypes mark the women involved in surrogacy as inferior and are seen to justify their inferior treatment. I examine two sets of qualitatively intersectional harms—one that involves the stigmatizing of poor Indian women as impure and another that involves treating and representing women of color as though they have no interest in having noncommodified affective relations.

### **Intersectional class and gender harms**

To see how transnational surrogacy undermines poor Indian women's claims to equal treatment, we can ask how well democratic-equality criticisms of American surrogacy apply to the transnational case. Democratic-equality critics, such as Satz (2010), argue that the view of women as baby-making machines vitiates their ability to be perceived as equal citizens within a democracy. One thing we learn by extending such analyses is that transnational commercial surrogacy may be *in the interests of* women in Northern democracies. If surrogacy becomes the work of poor women in the global South, the view of women as baby-making

machines may transfer onto “other” women—and this may decrease the likelihood that privileged Northern women will be subject to this stereotype.

But we are interested here in transnational surrogacy’s effects on Southern women. Even if it benefits Northern women, transnational surrogacy may undermine Indian women’s ability to be perceived as equals by other Indians—and by citizens of other countries who nonetheless wield power over their lives. It seems clear that commercial surrogacy in India reinforces the view within India that women’s purpose is baby making. Given that surrogacy is some Indian women’s *most lucrative* opportunity, it may be particularly potent at reinforcing norms that locate women’s value in their reproductive capacities. Counterarguments that Indian surrogacy will promote liberatory images of women or encourage women to demand greater nondomestic working roles are somewhat implausible. Given that the data on microcredit and home-based labor in South Asia suggest that inequalitarian norms persist in spite of women’s role in generating income (Sen 1990; Alkire 2008), we should expect the same from surrogacy.

Intersectionality asks us to remember that the interests of different classes of women can diverge. It is not only that stereotyping Southern women may benefit Northern women; surrogacy subjects Southern women, and specific groups of Southern women, to qualitatively intersectional stereotypes. Some of these are intersecting gender and class stereotypes, which arise because Indian (unlike American) surrogates come from disadvantaged classes and castes. Indian surrogates are disproportionately poor, and this is unlikely to change. Class inequality in India is radical, often visibly marked, and characterized by discourses of purity (Pande 2009). It seems likely that transnational surrogacy—because of the class/caste status of surrogates and strong cultural associations of surrogacy with sex work (*ibid.*)—will retrench views of poor women as impure. Indian media portrayals of surrogates typically depict them as pursuing romantic entanglements with intended fathers (155). The casting of poor women as morally lesser because of their labor is nothing new in the global North or South; we are familiar with moral criticisms of sex workers, as well as the ubiquitous trope in industrial societies of women factory workers as unvirtuous. As Pande (*ibid.*) documents, Indian surrogates utilize the classic psychological mechanisms of those engaged in what sociologists call “dirty work.” Surrogates’ preoccupation with distancing their work from prostitution shows that they are concerned about being subject to caste-specific purity norms (Pande 2009, 2010).

A second set of qualitatively intersectional harms is even more difficult to register on an intensification analysis. This set of harms involves the promotion

and expression of a set of degrading views about women of color. This set of views presents women of color as lacking an interest in, or lacking the capacity to experience, noncommodified kinship relations. By “noncommodified kinship relations,” I mean caring relationships with others that are not governed exclusively by instrumental norms. I believe all of us have an interest in maintaining such relations, and that the capacity to maintain them is something we value about our humanity. White women’s oppression often trades on depictions of white women as being *too good* at maintaining noncommodified kinship relations; their supposed overinvestment in relationships has been used to justify their exclusion from the public sphere. In contrast, three sets of “controlling images,” to use Patricia Hill Collins’s (2000) phrase, of women of color converge on the view of women of color as lacking such interests—the image of women of color as poor mothers of their biological children, the image of them as valuing children only to the extent that it is financially lucrative, and the image of them as reproducing excessively. Racial and class-based distributions of gendered labor promote such images. To give just one idea of how, Latina immigrants in the United States are both (1) frequently employed as caregivers of other people’s children; and (2) represented as desirous of children only so that they can stay in the country or access welfare benefits. Together, these facts give the impression that Latinas lack the capacity to appropriately value children as anything but instruments for financial gain.

These stereotypes of women of color as lacking kinship interests and kinship capacities are particularly pernicious because they can easily become justifications for *disrespectful* treatment. To respect a being is to recognize positive value that it has because it belongs to a kind; we respect others when we recognize them as possessing human attributes we value in ourselves. If the ability to value others for noninstrumental purposes is one such valuable human attribute, the stereotypes of women of color I have mentioned are not just negative but potentially respect-undermining. If the ability to value others for their own sakes is part of what is morally significant about being human, these stereotypes of women of color undermine their claim to human treatment.

The transnational surrogacy industry treats surrogates as though their entire affective lives deserve to be commodified. As Anderson (1993) argues, all commercial surrogacy involves the attempt to emotionally dominate surrogates, but the transnational industry goes further by attempting to subordinate all of the surrogate’s relationships to the goals of the industry. Industry representatives do not only tell women how to treat their paid pregnancies; they accuse them of

improperly valuing the children they have at home. They attempt to elicit in surrogates feelings of guilt and shame about being bad mothers and use these feelings to make it easier to extract labor from them. They call surrogates who become attached to the children they gestate money-grubbers and failed mothers. Pande recounts a joke by an industry recruiter; the crux is that two “bad” surrogates who claim to be attached to their gestational children must be lying because they are bad at caring for their children at home—who are allegedly poorly dressed, sick, and promiscuous (2010, 980). In addition to mocking the surrogates’ poverty and work burdens (presumably a major source of their children’s difficulties), the recruiter implies that any surrogate attachment to a fetus she is gestating must be feigned. Brokers also repeatedly argue and imply that surrogates who lack altruistic motives impute vulgarity to the practice of motherhood (979).

Shockingly, the industry also dominates surrogates’ kinship ties by telling them that the fetuses they gestate for pay are worth more than their own children. One doctor counsels a surrogate that the fetus is a guest and that she should “love it more than you love your own [children]” (Pande 2010, 978). Other tropes treat surrogacy as an opportunity for the surrogate to “prove” that she is capable of expressing the right values in her affective life. Recruiters frequently “remind” women that the alternative to surrogacy is prostitution (979). In all of these cases, the allegation of deficiency targets the surrogate’s whole affective life. If she chooses not to be a surrogate, it is because of her inability to appropriately value sexual purity; if she is a bad surrogate, it is because she does not attach the correct value to mothering. That surrogates feel a need to counter such representations with images of themselves as uniquely capable of caring or being cared for suggests that they experience industry representations denying their status as individuals with caring capacities and care interests. Surrogates resist by representing themselves as especially good at gestating or as especially lovable to the Northern couples who chose them (985–86).

Industry practices also more literally deny surrogates’ interest in maintaining noncommodified affective relations. Surrogate hostels and the stigma they are designed to, but fail to completely, offset cut women off from their home communities. Though they may receive visits from husbands, they may have no sexual relations during the contract period (Pande 2010, 981). The surrogate’s access to her children is treated as a bargaining chip; the prospect of a visit with her children becomes a carrot used to exact good behavior (*ibid.*). The threat of being told one is a bad mother to one’s existing children is ever-present. Women are often told that they should undertake surrogacy because it is the only way to be a good

mother—it can serve as a way to get a dowry for an unmarried daughter, for instance (975). They also often experience destruction of relations with extended family when they find themselves rejected upon returning home; one study of three Indian surrogacy sites revealed that 40, 82, and 100 percent, respectively, experienced distancing from family (Centre 2012, 57). The industry does not only manipulate the surrogate's relationship with the fetus and the intended parent(s); it treats all of her affective relationships as on-limits in the market exchange.

The industry does not only treat surrogates consistently with intersectional stereotypes about women of color's kinship interests, but is also likely to perpetuate those stereotypes—and thus also affect Northerners' more generalized views of women of color and women from the global South. Transnational surrogacy contributes to stereotypes of all women in these groups as lacking the capacity to experience or be interested in noncommodified kinship relations. To see how this is possible, we need to grant that the beliefs of Northerners toward Southern women matter; they affect the types of political demands Southern women can effectively make. As Alison Jaggar (2005) argues, the policies that affect the lives of Southern women are often more responsive to the concerns of Westerners than to the demands of those whom they affect. Further, Northern views of women of color as incapable of noncommodified affect are likely to affect the political claims immigrant women and women of color living in Northern countries are able to make.

Though women of color and women from the global South are not a homogeneous group, I will discuss stereotypes of them together, because stereotypes of these groups overlap in the Northern imaginary (probably because both groups are racially marked). Recall that respectworthiness attaches to beings because of their belonging to some *kind*. Judgments about respectworthiness are thus particularly amenable to influence by unjust social hierarchies. Oppressive societies treat “natural” characteristics—like racial and gender differences—as though they legitimize treating certain kinds of people as inferior<sup>7</sup>—and the racial difference of Indian surrogates is likely to be salient to Northerners. Behaviors engaged in by members of oppressed groups are likely to be read in a certain way—namely, as revelatory of their underlying nature. In a vicious cycle, behavioral differences caused by oppression come to justify future oppression. They come to form the basis for claims about the different natures of members of marginalized groups. Think of how women have historically been denied education and then have been described as naturally lacking rationality. Because of how racial and gender stereotypes claim to reveal the natures of kinds, the stereotypes



reinforced by transnational surrogacy are likely to transfer onto other women marked as the “same kind” as surrogates.

Women of color and women from the global South figure in the Northern imaginary largely as being unable to appropriately value motherhood. Though it is simplistic to insist that there is a single social imaginary in the North, or that women of color appear uniformly in it, we can identify two related trends: women of color appear as unfit mothers, and their reproduction is frequently portrayed as excessive. The appearance of women of color as poor mothers is not coincidentally related to their disproportionate engagement in nonfamilial dependency work. In the contemporary United States, 46 percent of paid care work is done by African Americans and Latinos (who make up less than 30 percent of the U.S. population) (National Clearinghouse on the Direct Care Workforce 2011). The most vulnerability-generating form of care work, live-in work, is done almost exclusively by recent women immigrants (Hondagneu-Sotelo 2001, 48). The association of this labor with women of color is at least as old as the practice of black slavery. As Patricia Hill-Collins (2000) famously demonstrates, the image of black women as mammies still affects their social status. Despite being expected to produce affect for their white charges, slave women were discouraged from forming bonds with their own children, who could be sold—or, in some cases where the children had white fathers, could be raised by white families. Cheryl Sanders (1992) actually refers to this as a system of “forced surrogacy.” This disproportionate engagement in nonfamilial dependency work gives the impression that women of color produce only corrupt love of children—the kind produced nonspontaneously, and frequently for pay. To make matters worse, women of color are regarded as poor mothers of their genetic children. Representations of women of color portray them as teen mothers and drug addicts who cannot mother appropriately, as “welfare queens” (Collins 2000), and the mothers of “anchor babies” (Huang 2008)—mothers who produce criminal children, often because of selfishness or irresponsibility. The practice of transnational surrogacy, by creating another class of women of color who produce ostensibly noncommodifiable maternal labor for pay, stands to reinforce these stereotypes.

Transnational surrogacy also reinforces genetic notions of kinship, which work to classify the type of caring labor women of color engage in as inferior. Gestational surrogacy, simply because of the challenge to the more traditional<sup>8</sup> reproduction it poses, forces society to articulate and rank claims to parenthood (at least, where parental rights are understood as exclusive). Legal definitions of

surrogacy, in both the United States and India, rank genetic over gestational claims to parenthood. It is frequently argued that the idea of parenthood as the sharing of genetic material advances men's interests at the expense of women's (Khader 2008; Satz 2010). But it also devalues the caring labor performed by women of color—who are not biological family members—which in turn entrenches the perception that their caring capacities are inferior. The legal privileging of genetic parenthood seems already to be deployed selectively in the United States to deny surrogates of color's claims to parenting the children they gestate. In *Johnson v. Calvert*, a U.S. court decided (somewhat inconsistently with previous decisions involving white surrogates) that the black surrogate mother of a child whose genetic parents were Asian and white had no claim to custody (Allen 1991, 3).

But it is not only women of color's claims to have their *gestational* labor valued that genetic definitions of parenthood undermine. Genetic definitions also work to undermine women of color's claims to appear as kin to the children they care for. The pattern of charging women of color with the paid care of white children, coupled with the belief that the best care is unpaid, generates a hierarchy of forms of caring. The sharing of genes with another allows "true" caring for her. Representations of dependency workers of color as transgressing moral boundaries when they become attached to their young charges abound (Ollivier 2005; Rivera 2010). These representations persist even when children actually receive little care from their genetic family and despite the fact that good caring labor often requires affective attachment. Women of color do the work of kinship, but genetic notions of kinship prevent that work from "counting." The recent film *The Help* (albeit controversial among feminists of color) dramatizes the harmful nature of genetic notions of kinship to women of color's care interests; the white protagonist sees her black nanny as part of her family, but that nanny is expelled when she is too old and no longer "of use." Genetic bonds, rather than bonds of caring, produce family membership; women of color's claims to be kin to those they care for are invalid, and their caring labor is of an inferior sort.

Interestingly, Indian surrogates already seem to be working to resist portrayals of themselves as incapable of appropriately valuing children. They try to present their ties with their gestational children as involving uncorrupted forms of care, representing themselves as the true mothers of their gestational children, insisting that the literal sharing of blood with a fetus is kinship (Pande 2010, 987), and that intended parents have "pseudo-kinship" duties to them (Vora 2009, 272). They also insist that they are particularly loveable and thus not interchangeable

with other surrogates—that they are particularly good at loving and gestating children (Pande 2010, 985–86).

Transnational surrogacy also reinforces another view about women of color's inferior interest in maintaining noncommodified affective relations—the view that women of color lack interest in reproducing. Practices aimed at curtailing their reproduction within Northern countries have ranged from coerced sterilization of women of color in the 1970s (Nelson 2003) to recent advocacy for sterilization and contraception for women recipients of public assistance (Kluchin 2011, 219–20). Domestic policies of many poor countries have also included population control efforts, including coerced sterilization of poor women (and men) in India until at least the 1970s (Gwatkin 1979). International population and environmental policy has focused in the last thirty years on decreasing the fertility of women in the global South. The rationale behind such policies is that poverty and environmental degradation are caused by overpopulation. We need not evaluate the logic of this rationale<sup>9</sup> or argue against reproductive rights promotion in the South<sup>10</sup> to note that it produces public policies that incentivize women in the global South (and thus disproportionately women of color) to decrease their family sizes. The explicit focus of development policy on population control shifted toward reproductive rights since the 1994 Cairo declaration, but the image of the global South as a site of dangerous population explosion remains common. Further, many Northern nations continue to incentivize reproduction by citizens of their own countries (Moore 2006; Walker 2006) while promoting population reduction control abroad.

Further, transnational surrogacy also promotes another set of representations that depict women of color as lacking an interest in having noncommodified affective relations. These representations and policies involve the view that women of color's reproduction is harmful, a source of poverty. Transnational surrogacy, if represented positively, distills the racist elements of these views and affirms them. In it, women from the same group that is typically targeted for *fertility control* are paid large sums of money to reproduce. What salient characteristics accompany this apparent reversal in attitudes toward their reproduction? The children will live in rich countries and they are Northern and frequently white. My point is not that intended parents or industry representatives are motivated by racism (I believe most of them are not). It is that, given the background representational context, surrogacy is likely to promote the view that women of color do not have an interest in having children of their own—or that this interest is subordinate to rich white women's.<sup>11</sup> The practice of transnational surrogacy,

because of its nature, strikingly recasts the problem of “overpopulation”; it is not reproduction itself that is a problem, it is reproduction of children who are racially similar to, and will be raised by and with, women from the global South. Alison Bailey hints that transnational surrogacy “tells us something about which babies and which pregnancies are socially valued” (2011, 721). To develop Bailey’s point, transnational surrogacy suggests that some women have an interest in reproducing and others do not—and that the difference between the two groups is largely racial.

## Conclusion

I have made a general claim about the method of practical moral philosophy and more specific claims about the moral acceptability of transnational commercial surrogacy. First, methodologically, I have suggested that morally assessing the effects of sexist practices on the multiply oppressed requires more than simply assuming that other oppressions intensify the effects of gender oppression. Intensification analyses ignore the ways in which other oppressions can mitigate the effects of sexist practices, and they miss the qualitatively intersectional harms those practices can cause. Second, I hope to have illuminated some previously unacknowledged moral considerations involved in transnational surrogacy. The mitigating considerations posed by surrogate poverty seem only to be acknowledged by transnational surrogacy enthusiasts (Humbyrd 2009) or by those who (rightly) call our attention to structural injustice (Bailey 2011) but (problematically) beg the question of whether transnational surrogacy should continue in the short term. The mitigating consideration posed by the unlikelihood that Indian surrogates are acting from emotional volatility is absent from existing discussions. Also absent has been mention of the practice’s qualitatively intersectional harms.

Though some have mentioned how the practice takes advantage of existing race and class inequality (Smerdon 2008) and that the practice involves potentially racist views about who gets to reproduce (Bailey 2011), they have not elaborated these concerns morally nor situated them within the history of perceptions of women of color as lacking affective capacities and interests. I will not endeavor to assign relative weights to the considerations and make a policy prescription here. But deciding what should be done about transnational surrogacy involves much more than simply pointing out that surrogates are disproportionately poor women of color or claiming that this fact makes transnational surrogacy especially bad. We need to clarify the effects of transnational surrogacy if we are to

render a judgment about its moral acceptability. An intersectional approach reveals effects of transnational surrogacy that intensification analyses would tend to deny or obscure. We need to see that the ways race and class oppression change the effects of sexist practices are critical to answer questions responsibly about whether this controversial practice should persist.

### Notes

1. Of course, Anderson's argument is that discouraging maternal–fetal bonding involves manipulation; deception rests on a (controversial to some) understanding of such bonding as normal.

2. Some may see intersectional analysis as requiring an a priori commitment to the idea that sexist practices always produce qualitatively intersectional harms, but I believe the core claim in most foundational intersectional texts (such as Crenshaw's) is that women of color experience intersectional harms and that gender-focused analyses often miss these; it does not follow from this that women of color experience intersectional harms as a result of all sexist practices.

3. I thank Sabrina Hom for pointing out to me that Anderson's conception of surrogates as nonautonomous because of emotional volatility trades on a rationalist (and potentially androcentric) conception of what autonomy requires. I am also grateful for her more general comments on this paper.

4. Bailey (2011) argues that many Indian surrogates do not perceive surrogacy as a choice and that discussions of economic rationality import a normative perspective to describe surrogates' lives that the surrogates themselves would not use. If Bailey's point is that it is morally important that these women wish they had choices besides surrogacy, I agree. But I believe there is value in pointing out the fact that Indian surrogates' choices (if uncoerced) can be characterized as rational on virtually any conception; it actually gives us reason to take seriously Indian women's assessments of their own situation.

5. The case that surrogates act autonomously would be more clear-cut in a poor country where women had more household bargaining power.

6. In *Adaptive Preferences and Women's Empowerment*, I have argued that a behavior may benefit a person vis-à-vis her existing option set and produce a form of life inconsistent with a person's basic well-being.

7. This point that oppressive systems code the hierarchies they generate as natural is made by a number of thinkers, including John Stuart Mill (2002) and Pierre Bourdieu (2002).

8. Using the word *traditional* to describe non-surrogate parenthood is somewhat inaccurate, given that human beings have been practicing low-tech surrogacy since time immemorial; we need only recall the story of Abraham's impregnation of Hagar in Western religious traditions to see this.

9. For a discussion of how population control discourse is inaccurate regarding the causes of poverty and how it deflects attention from global inequality, see Sen (2008).

10. My criticisms of population control discourse and historical policies here are fully compatible with policy aimed at strengthening women's abilities to control the timing and spacing of their children.

11. Some portion of Indian commercial surrogacy is also undertaken for people of Indian descent living abroad, but the argument I am making here turns on what the perception of transnational surrogacy in the North is; media portrayals focus almost exclusively on white couples seeking Indian surrogates.

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