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The Biopolitics of Parental Access: Cross-Readings of Transnational Adoption and Surrogacy in Denmark and Norway

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This article introduces the notion of the "biopolitics of parental access" as an analytical lens to examine how different forms of reproductive governance support and enable parental access. Through a cross-reading of political and administrative documents relating to the regulation of, respectively, transnational adoption in Denmark and transnational surrogacy in Norway, we examine the logics and techniques that inform the reproductive governance of parental access. Drawing attention to the racialized entanglement of pro- and anti-natalism, the analysis shows how access to parenthood for Danish and Norwegian citizens is continued and secured through the annihilation of the parenthood of surrogate mothers and families losing children to adoption. While the concrete logics and techniques of reproductive governance differ in the two cases, the result—access to parenthood—is similar.

Keywords: biopolitics; parental access; kinship; transnational adoption; transnational surrogacy

Introduction

In a world of ever more diversified ways of having children and becoming parents, an increasing number of prospective parents rely on the involvement of others (e.g. Flood and Payne 2019; Kroløkke et al. 2016). In transnational arrangements, for example, transnational surrogacy or the long-institutionalized practice of transnational adoption, these "others" are often positioned at a distance from the prospective parents, in other geographies and socioeconomic positions. This has drawn scholarly attention to the inequalities

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in market position (e.g. Pande 2016) and racialized patterns emerging in transnational reproductive arrangements (e.g. Vora 2015). Moreover, it has produced theorizations of the way in which reproduction for some depends on the reproductive dispossession of others (see Ross and Solinger 2017) and how the parenthood of some rests on the unkinning of others (Briggs 2012; Yngvesson 2010). Taking our cue from these critiques, a question of concern to us is how this matrix of power is sustained through concrete instances of reproductive governance (cf. Morgan and Roberts 2012).

In this article, we bring together transnational adoption in Denmark and transnational surrogacy in Norway, empirically examining how these two pathways to parenthood are governed in a Scandinavian setting. Our analysis is guided by the following research question: how is access to transnational adoption in Denmark and transnational surrogacy in Norway facilitated through reproductive governance in the two countries? To examine this question, we introduce the "biopolitics of parental access" as an analytical lens. With this notion, we seek to redirect attention away from the rights and conditions of (white) adopters and intended parents, and toward the welfare-state governance of parental access and the biopolitical implications this entails for children, surrogate mothers, and the first families of adoptees. The core of our contribution is an analysis of how parental access is calibrated and revitalized through different logics and techniques of reproductive governance. In the following, we begin with the notion of the biopolitics of parental access and a contextualization of transnational adoption/surrogacy in Denmark and Norway.

The Biopolitics of Parental Access

Access is a central feature in much feminist work on sexual and reproductive health, including services such as maternal care and abortion (e.g. Amery 2020; Bryson 2022). In the scholarship on assisted reproduction, access is also an oft-repeated topic and concern (e.g. Smietana, Thompson, and Twine 2018). High costs and legal prohibitions against certain reproductive methods are highlighted as inhibiting access and causing some prospective parents to travel elsewhere for reproductive opportunities (e.g. Bergmann 2011; Culley et al. 2011). Moreover, legal constraints have been found to prevent access to assisted reproduction for some, such as single women and LGBT+ people (e.g. Hašková and Sloboda 2018). These circumstances reveal how access to assisted reproduction, and by extension, to parenthood, is not equitably distributed (e.g. Leibetseder 2018).

Characteristically, this focus on access to assisted reproduction, parenthood, and ways of making family and kin is frequently directed toward the lack thereof. That is, it is the (negative) restricted access and limitations imposed on those in want of a child to parent and in need of assistance to obtain one that are of concern. In the context of assisted reproduction and alternative

family-making, such perspectives on access do not capture how access for some relies on the "assistance" of others or, rather, on the extraction of their reproductive labor and/or their annihilation as potential kin. This, we argue, fails to engage with the ways in which access granted can reproduce inequality and depletion of life.

With the "biopolitics of parental access," we seek to build an analytical lens that can be used to examine how parental access is regulated by state practices. Biopolitics, as we use it here, is understood as a series of interventions and regulatory controls to administer and optimize the population (cf. Foucault 1990). Introducing the notion of the biopolitics of parental access from within a Scandinavian setting, we note that the Scandinavian welfare states are oriented toward their citizens' well-being and reproductive lives, as illustrated by significant and sustained state investment in family policies and fertility (Ellingsæter and Pedersen 2016). We seek, however, to strengthen critical examinations of how contemporary welfare-state regulation and the securing of access to parental opportunities creates different "outsides" (Butler 1993). While these "outsides" vary, from the annihilation of kinship relations to the extraction of reproductive labor, they ultimately serve a constitutive function enabling a reproductive politics that prioritizes (white) family formation within the welfare state.

The biopolitics of parental access, as we understand it, is aligned with other conceptualizations of how inequality structures reproduction and family-making. One significant contribution is Shellee Colen's (1995) notion of "stratified reproduction," which denotes how reproductive labor is unequally distributed along lines of global inequality and has been employed, inter alia, to conceptualize the unequal relations of reproduction in transnational surrogacy (Gondouin 2012; Pande 2016). Similarly, Kalindi Vora's (2015) notion of "life support" captures how the good life—and reproduction—of some rests on the labor and vital energy of others in an arrangement which has "its roots in colonial labor allocation as a project of the racialization and gendering of labor" (Vora 2015, 3).

Importantly, stratified reproduction and life support highlight capitalist relations and the sourcing of reproductive labor. Aligned with such an emphasis, the concept of "reproductive justice" investigates how structural racism continues to shape the politics of reproduction (Ross and Solinger 2017). Reproductive justice accentuates a focus on reproductive annihilation and social discrimination (Smietana, Thompson, and Twine 2018, 117), and thus how reproduction for some depends on the reproductive dispossession and unkinning of others (see also Yngvesson 2010). Operating a similar analytics, Charis Thompson directs attention toward the role of the state with her notion of "selective pronatalism" (Thompson 2005, 2011; Smietana, Thompson, and Twine 2018). Thompson argues that selective pronatalism captures how states systematically promote the reproduction of some while suppressing that of others (Thompson 2011, 212). Selective pronatalism is, in other words,

always entangled with anti-natalism, whose policies "reflect historical imaginaries fuelled by settler colonial, colonial, or imperial ambitions and/or religious, class, ability, and race supremacy" (Smietana, Thompson, and Twine 2018, 117).

Bringing the notion of the biopolitics of parental access into these conversations, we similarly stress the "constitutive connection" (Padovan-Özdemir and Øland 2022, 216) between coloniality and selective pronatalism, and how the latter can be seen as continuing patterns of inequality and domination. We argue that the biopolitics of parental access is contingent upon material and discursive processes of racialization that both enforce a specific (colonial) division of labor *and* ascribe differential and hierarchical value to the kinship relations involved. This resonates with our proximity to Michel Foucault's notion of "a biopolitics of the population" (Foucault 1990), and his point that the cesura between lives that should be nurtured and lives that should be disallowed is a function of modern racism (Foucault 1990, 138, 149).

The biopolitical significance of reproduction is emphatically stressed by scholars of assisted reproductive technologies (Spilker 2008), surrogacy (e.g. Das 2019), and adoption (e.g. Briggs 2013; Kim 2015). Such studies have provided important analyses of shifts in reproductive biopolitics and drawn attention to how political investments in "negative eugenics" and "overpopulation" during the twentieth century have been replaced by investments in reproductive paradigms facilitating new forms of reproductive methods (Hübinette 2020). As an analytical lens, the biopolitics of parental access is attuned to both the broader politics of such shifts and how the regulation of parental access is intimately tied to an unequal distribution of life and death. For this article, we direct attention to the ways in which parental access is secured and gains legitimacy through different rationalities and logics. We borrow Lynne M. Morgan and Elizabeth F. S. Roberts's concept of reproductive governance to capture how reproductive norms and practices are managed and shaped through "legislative controls, economic inducements, moral injunctions, direct coercion, and ethical incitements" (Morgan and Roberts 2012, 243). We examine reproductive governance—and the biopolitics of parental access—through an analysis of transnational adoption and transnational surrogacy in Scandinavia.

Transnational Adoption and Surrogacy in Scandinavia

Transnational adoption was institutionalized as a path to parenthood for (white) Scandinavian citizens during the 1960s. More recently, from the late 2000s onward, transnational surrogacy has emerged as an alternative path to parenthood for Scandinavian citizens. The emergence of transnational surrogacy is taking place at a time when the number of transnational adoptions is

dwindling.[1] According to Scandinavian news outlets, the number of adoptions has now been surpassed by the number of children born abroad to surrogate mothers (Dagsavisen 2020; *Kristeligt Dagblad* 2018).

Within the past decade, transnational surrogacy has occasioned debate within the Scandinavian countries, as also seen elsewhere. In particular, it provoked fervent debate in Norway starting around 2010 (see Andersen 2013; Melhuus 2009; Stuvøy 2016). In the Norwegian debate, transnational surrogacy has been compared with human trafficking of babies and criticized as exploiting women (Stuvøy 2016). The phenomenon has been presented as problematic and an unwanted consequence of globalization and increasing marketization (Eriksson 2022), and the fertility travels of Norwegian citizens have troubled cultural notions of motherhood and citizenship alike (Kroløkke 2012). However, the debate was also characterized by an appreciation of Norwegian citizens' desire for a child to parent and a distinction between "good" and "bad" transnational surrogacy, depending on whether people traveled to the United States or India (Nebeling Petersen, Kroløkke, and Myong 2017; Stuvøy 2019).

In contrast, transnational adoption in Scandinavia has long been imbued with a sense of moral superiority and thought to equally help orphaned children and would-be parents (Eriksen 2020; Hübinette 2020). However, the long-institutionalized practice of transnational adoption has increasingly become the subject of wider public criticism (see also Koo 2019). In Denmark, this criticism intensified in 2012 in the wake of extensive media exposure of the illegal procurement of children from Ethiopia, resulting in efforts to reform the adoption system.

These critiques are mirrored in the research literature. In the decades since 2000, critical adoption scholarship has increasingly sought to scrutinize the economic and racial inequalities exacerbated by the transnational adoption system. This has resulted in analytical excavations of the racialization of kinship, subjectivity, and belonging (Hübinette and Tigervall 2009; Kim-Larsen 2018; Myong 2009; Yngvesson 2015; Zhao 2019, 2013), adoption and migration politics (Myong and Andersen 2015; Yngvesson 2012), the stratification of national belonging (Andersson 2016, 2010), and adoption as a nation-building imaginary (Gondouin 2016; Hübinette 2021).

With a few exceptions (e.g. Gondouin 2012; Gondouin and Thapar-Björkert 2022; Jonsson Malm 2011), research on transnational adoption and transnational surrogacy in the Scandinavian context has unfolded along separate trajectories, rather than in conversation. Bringing these two phenomena together in this article, the critical attention in Norway and Denmark concerning, respectively, transnational surrogacy and transnational adoption serves as a point of departure for our own examination. In the following section, we explain our methodological approach and empirical material.

Methodology and Empirical Material

Empirically, we bring together two cases that, individually and in conjunction with each other, enable an exploration of how selective pronatalism informs the governance of reproduction. We have studied both cases—transnational adoption in Denmark and transnational surrogacy in Norway—in detail for more than a decade. Notably, we are not studying the same type of reproductive phenomenon in two different contexts, or two different phenomena in the same context. Yet, these contexts—Denmark and Norway—are in many ways similar, with a shared history and similar political history, for example, the egalitarian Scandinavian welfare state (Bendixsen, Bringslid, and Vike 2018). Moreover, transnational adoption and transnational surrogacy are similar in the sense that the children who are procured for Danish or Norwegian nuclear families are born to someone else, in non-Scandinavian geographies, and are then migrated and/or displaced to those designated as either adopters or intended parents. Additionally, the two reproductive phenomena share a history of controversy in the two countries during overlapping periods of time. Drawing the two cases together, we start from what we understand to be crises of legitimacy, unfolding at similar points in time, concerning these different yet similar reproductive phenomena.

Rather than purporting to make a comparison as it is generally understood in sociological studies, where the "fascination with difference" is central (cf. Smelser 2013), we propose a methodology of cross-reading. Cross-reading may be described as a way of analyzing cases in light of one another, focusing on "family resemblances" in order to gain an appreciation of the underlying processes at work in different contexts (Sakaranaho 2006, 79–82). For our purposes, cross-reading is a way of moving beyond the compartmentalization of different phenomena that works to render certain phenomena marginal (and exceptional), rather than illustrative of broader logics (Myong and Andersen 2015), our concern here being the biopolitics of parental access.

Our empirical material consists of government documents, which allow us to examine the rationalities underpinning both Danish and Norwegian reproductive governance. The documents included in our analysis are dated from 2010 onward and include government reports, political agreements, newly introduced regulations, and bureaucratic correspondence. In our efforts to select relevant material, we have been concerned with how these documents help to establish and modify the issues at stake (Asdal and Reinertsen 2021). Thus, in the case of adoption in Denmark, we have selected documents written and produced as part of the so-called adoption reforms initiated in 2013. In the case of surrogacy in Norway, we have focused on documents produced as part of the authorities' efforts, starting in 2010, to settle the question of parenthood in cases where Norwegian citizens had traveled abroad for surrogacy.

The notion that documents both establish and modify the issues at stake has also inspired our analysis, which has been guided by the following

analytical considerations. First, what issues of concern do the documents demarcate, and what solutions do they promote and discuss? Second, how are (political) subject positions established, made to disappear, and/or managed in the documents? We proceed as follows: to begin with, we describe each case separately in order to offer an overview of their complex trajectories. Thereafter, we discuss the two cases through a cross-reading in which we look for resemblances in the discursive and moral logics supporting parental access and in the techniques of reproductive governance of what we refer to as the biopolitics of parental access.

Transnational Adoption in Denmark

Our first case consists of the political efforts to reform the Danish adoption system since 2013.[2] These reforms have ushered in stricter administrative control and closer monitoring of adoption agencies—thereby emphasizing the role and importance of the state—as well as centralizing psychological counseling and "openness" as desired values in adoption. We show how the (ongoing) reforms, which have been enacted in response to sustained criticism aiming to dismantle the system, have worked to maintain and secure access to transnational adoption and to bolster renewed trust in the adoption system.

During 2012–2013, the legal and moral crises facing the Danish adoption agencies DanAdopt (unlawful procurement of children) and AC Børnehjælp (impending bankruptcy and embezzlement) were far from the first "scandals" to engulf adoption operators in Denmark.[3] As the criticism continued to gain public traction, Danish politicians scrambled to take action and in June 2013 the Domestic, Social Affairs and Children's Committee of the Danish parliament concluded that the Danish adoption system should be subjected to investigation. The mandate for this investigation (Ministry for Social Affairs and Integration 2013) eventually produced two reports in 2014, known as the *General Analysis*. The first report focused on the "structural framework and the inspectorate" (Ministry for Children, Gender Equality, Integration and Social Affairs 2014a) and the second examined "the conditions of the adoptive family" (Ministry for Children, Gender Equality, Integration and Social Affairs 2014b).

Based on these reports, a broad coalition reached political agreement in the fall of 2014, with the ambition of overhauling the Danish adoption system. The seven-page agreement closely followed the reports in its outline of priorities intended to "secure the adoption system for the future" (Ministry for Children, Gender Equality, Integration and Social Affairs 2014c, 1). Although the agreement was met with harsh criticisms from adoptees arguing that it was geared toward sustaining adopter interests, its principles were swiftly translated into amendments (also called "The New Adoption System") to the Adoption (Consolidation) Act [L187].[4] The bill was passed in late 2015 and

came into effect on January 1, 2016 (Ministry of Social Affairs and Senior Citizens 2015).

It is significant that the political eagerness to create "a new system" was closely tied to financial investments in adoption operations. In March 2014, the Finance Committee of the Danish parliament had allocated 7 million DKK to rescue AC Børnehjælp from bankruptcy,[5] of which 3.4 million DKK were later reallocated to the merger of DanAdopt and AC Børnehjælp into the agency Danish International Adoption (DIA) in January 2015.[6] As the government presented amendments to the Adoption Act in the spring of 2015, overall budget allocations to create "A New Adoption System" (during the period 2015–2018) were divided into 22 million DKK for inspectorate and administration, 8.6 million DKK for post-adoption services (PAS), and 17 million DKK for the DIA (Ministry for Children, Equality, Integration and Social Affairs 2015, see explanatory comments). Notably, 9 million DKK of the funds allocated to the DIA consisted of a one-time grant, but the DIA was also given a permanent grant worth 2 million DKK for annual operating costs.[7] The state subsidy of adoption operators, and in particular the permanent grant, constitutes a conspicuous break with the business model[8] historically used by Danish agencies, which has relied on fees paid by prospective adopters.

Political support and the allocation of substantial funding to the DIA did not, however, warrant more independence for adoption agencies or an expansion of their administrative powers. On the contrary, central aspects of the revised Adoption Act consisted of establishing a stronger and more transparent inspectorate operating under the National Social Appeals Board (a government agency). According to the Act, the inspectorate was obliged, among other things, to conduct unannounced annual inspections of agencies and to publish an annual report. The revised Act also clarified requirements and criteria for existing and future operators seeking to obtain accreditation. Significantly, the amendments also enacted a clear-cut transfer of authority from the DIA to the National Social Appeals Board. The DIA remained tasked with the responsibility of assigning children to adopters, but the authority to approve the matches was transferred from the adoption agency to the National Social Appeals Board. In the explanatory comments to the amendments to the Adoption Act, this transfer of power is substantiated as a measure that will "increase security for the child in the process and simultaneously strengthen state control of the area as such" (Ministry for Children, Equality, Integration and Social Affairs 2015, 14).

Hence, the reforms manifest a clear priority to secure access to adoption by keeping the non-profit private adoption industry afloat. This priority is embedded in a historical division of roles under which the Danish state relies[9] on agencies to procure adoptable children for adopters. This division dates back to 1964, when DanAdopt (then Forgotten Children) was the first agency to receive state accreditation. The role of the state has been to audit the transactions and partnerships of the agencies as well as vetting prospective adopters.

The possibility of the Danish state acting as an adoption intermediary has been the object of occasional debate and investigation over the years. However, opposition to this position has often been grounded in concerns that the procurement of children would be compromised because international partners prefer private agencies.[10]

The enforcement of stricter controls and increased subsidies to secure the adoption system has been accompanied by disciplinary rationalities of counseling and so-called "openness in adoption." Since 2007, the Danish welfare authorities have organized a number of PAS aimed at adopters and adoptive families with children under eighteen. The adoption reforms affirm this priority, stressing PAS as a step toward securing the best interests of the child. While the political agreement of 2014 stipulates that the screening system must "acquire the best qualified adopters" (Ministry for Children, Gender Equality, Integration and Social Affairs 2014c, 5), it also states that changes will not be implemented to screening procedures. Instead, the revised Adoption Act includes the requirement that adopters must accept mandatory counseling both prior to and after receiving a child. These services have been expanded and made accessible for a longer period (until the adoptee turns eighteen). In the explanatory comments to the amendments, it is argued that such counseling constitutes a "preventive measure" and that it will work toward achieving "good adoption trajectories for children" (Ministry for Children, Equality, Integration and Social Affairs 2015, 21).[11] This investment in mandatory psychological counseling is entangled with the dominant position of attachment discourse within the field of adoption, including PAS (Myong and Bissenbakker 2021). Folded into the reforms, this focus on attachment serves to create a promise/assertion that the system is (and will be) productive of successful adoptions as well as competent adopters.

Over the years, adoptees in Denmark have increasingly raised questions concerning the relations between adoptees and first families, as well as the rights and status of the latter. These questions were foregrounded during the debates that began in 2012, and in the mandate (Ministry for Social Affairs and Integration 2013) setting out the *General Analysis* it was stated that the option of open adoptions should be examined. The possibility of implementing open adoptions (which would include first families having the right to exercise options to contact) was, however, swiftly put to rest in the *General Analysis*, which counseled a highly cautious approach, instead advocating "openness in adoption" (Ministry for Children, Gender Equality, Integration and Social Affairs 2014b, 91ff). Thus, in the political agreement (based on the *General Analysis*), there is no trace of open adoptions. Instead, "openness in adoption" is introduced and explained as the right of adoptees to access personal information and to know "their own history and origin" so they can make an informed decision about birth searches and "an individual choice regarding direct contact with the original family" (Ministry for Children, Gender Equality, Integration and Social Affairs 2014c, 6–7).[12]

While the political agreement thus closed the door to open adoptions, it did stipulate that adopters should write follow-up reports about the adoptee so that these could be shared with the authorities in the sending countries (through the DIA) and with the first families. This principle, however, was never written into the revised Adoption Act. Instead, it was implemented administratively but never enforced with sanctions against those adopters unwilling to write such reports. Even though different stakeholders, including the DIA, have called for judicial sanctions, the Danish authorities have maintained a focus on "the moral obligation" of adopters to write such reports (National Social Appeals Board 2020, 48).[13]

The disappearance of open adoptions as a potential option and the investment in "openness in adoptions," alongside adopters' "moral obligation" to write follow-up reports, underscore a political determination to continue the violent erasure of first families, which is central to adoption. In addition, it reveals how the relations between first families and adoptees are made governable during times that feature an increasing focus on search and reunion. Thus, the "moral obligation" imposed on adopters to write reports can be read as an affirmation of the adopter not only as the authoritative storyteller of the adoptee's experience, but also as the rightful mediator of the relations between the adoptee and her first family.

Transnational Surrogacy in Norway

We turn now to the second case, transnational surrogacy in Norway. Surrogacy is not legal in Norway, but it emerged in the Norwegian context around 2010 following instances of Norwegian citizens traveling abroad to have a child born to them by a surrogate mother and then returning to Norway with the child. Our focus here is on how the Norwegian authorities came to govern and deal with this transnational phenomenon.

Before 2010, transnational surrogacy cases involving Norwegian citizens were considered rare and were handled on an ad-hoc basis by local government agencies, in the absence of centrally produced guidelines on the matter. However, in 2010, the Norwegian authorities initiated the process of establishing a standardized bureaucratic practice. This process was oriented toward interpreting and, when considered necessary, amending legislation that had hitherto not been formulated with surrogacy in mind. For this purpose, an interdepartmental working group was appointed to examine and consider the application of existing legislation to surrogacy cases involving Norwegian citizens.

In the working group's report, delivered on June 28, 2010, the Norwegian state's obligations were emphasized, as set out in international conventions, to "safeguard the child's and the surrogate mother's basic rights," ensuring that "the child is not stolen or bought, that the woman has not been forced or

exploited . . ., and that her subsequent free consent to adopt the child is available" (Ministry of Children, Equality and Social Inclusion 2010, 5). These formulations and the report's conclusions indicate that Norwegian citizens' use of transnational surrogacy as a pathway to parenthood was initially not understood as something that should be tolerated or facilitated. Instead, in the early attempts to shape a standardized bureaucratic practice in cases of transnational surrogacy, attention was devoted to the rights of the children and the surrogate mothers and, also, to their potential vulnerability.

The correspondence between the different bureaucratic agencies responsible for handling surrogacy cases during the years 2010–2013 further illustrates that the surrogate mother and her well-being was initially of central concern. In a letter from the Ministry of Children, Equality, and Social Inclusion (BLD) to the Norwegian Labor and Welfare Administration, dated March 30, 2011, the ministry highlighted a potential conflict between surrogacy contracts and prohibitions against slavery and forced labor in international conventions, and, also, a possible conflict between commercial surrogacy arrangements and the principles of the Hague Convention on adoption. The letter also suggested a possible conflict between the surrogacy contract—if the surrogate mother could be forced to carry out the intentions of the contract—and her right to family life, a right granted by the UN Human Rights Act (Ministry of Children, Equality, and Social Inclusion 2011a, 4–5). Additionally, the ministry warned in its letter against the "normalization" of surrogacy if Norwegian citizens traveling abroad for surrogacy were recognized as a child's legal parents.

However, during these initial years of determining how to handle Norwegian citizens' use of surrogacy abroad, a shift in focus is discernible in the letters exchanged between the bureaucratic agencies. Attention was gradually directed away from the situation of the surrogate mother toward the question of how to secure legally recognized relations between the intended parents and the children. Thus, the non-Norwegian woman gestating and birthing the child became overshadowed by the Norwegian citizens traveling abroad to reproduce through transnational surrogacy and the children they were bringing home with them. Moreover, this shift of focus implied a centering of fatherhood, as indicated by the disappearance of the (surrogate mother's) motherhood in the letter titles, replaced by a singular focus on fatherhood. This centering of fatherhood reflects a legal situation in which the surrogate mother is always defined as the mother in her capacity as the person birthing the child. As a result, the clause on fatherhood in the Norwegian Children's Act soon became important both for those who traveled abroad for surrogacy and in the authorities' handling of surrogacy.

The correspondence between the different bureaucratic agencies during the years 2010–2013 revolved around the conditions for recognizing fatherhood and the applicable legal paragraphs, including international obligations to acknowledge relations between a child and their father. In the abovementioned

letter from BLD in March 2011, a list of arguments against recognizing fatherhood was provided as a form of conclusion, including such matters as the enforcement of the surrogacy contract and the involvement of economic compensation (Ministry of Children, Equality and Social Inclusion 2011a, 9). In the so-called "government agency letter" [Norwegian: *etatsbrevet*], sent out on October 10, 2011, the ministry briefly comments on its previously provided list of arguments against recognizing fatherhood, specifically mentioning the involvement of economic compensation (Ministry of Children, Equality and Social Inclusion 2011b, 8). Yet, this letter mainly contains information about how fatherhood via transnational surrogacy can be recognized in accordance with Norwegian law. The early warning against the normalization of surrogacy mentioned above seems to have been replaced, as time passed, by concerns about how to ensure that fatherhood is rightfully recognized.

The shift in attention toward Norwegian citizens' fatherhood in the bureaucratic agencies' correspondence may be understood as reflecting a political determination to ensure the legal acknowledgment of relationships between the children—already seen as rightfully belonging in Norway—and their Norwegian intended parents. The acknowledgment of these children as Norwegian implied that the authorities had a responsibility to confirm their legal ties to their Norwegian caregivers and intended parents (see Ministry of Children, Equality, and Social Inclusion 2012). Consequently, temporary regulations were passed in both 2012 and 2013 to ensure recognition of the involved Norwegian citizens as the legal parents of children born to foreign surrogate mothers.[14]

While the recognition of fatherhood—and parenthood—was a major topic in the handling of surrogacy in Norway during these initial years, another topic that received a lot of attention from lawmakers was whether traveling abroad for surrogacy could be punished under the law. The Norwegian Biotechnology Act contains a penal provision, stating that intentional infringement, or a contribution to the infringement, of the Biotechnology Act or regulations set down in law is punishable with fines or imprisonment of up to three months. Similarly, adding to the confusion about how to apply the Children's Act in the case of transnational surrogacy, there was also confusion concerning whether this penal provision was applicable when Norwegian citizens traveled abroad for surrogacy. In 2013, a majority of the Norwegian parliament voted in favor of an addition to the Biotechnology Act, exempting private individuals from punishment if they acted in breach of the law.

While the bureaucratic and political processes establishing how to govern and handle surrogacy in Norway mostly took place during the early 2010s, the topic emerged again in May 2020, when a major reform of the Biotechnology Act was passed by a majority in the Norwegian parliament. Until then, surrogacy had not been specifically mentioned in this act, which nonetheless regulated it indirectly through the ban on egg donation.[15] With the ban on egg

donation being lifted as part of the legal reform, the lawmakers introduced a paragraph tailored specifically with surrogacy in mind, stating that "fertilized eggs can only be inserted into the uterus of the woman who is to become the child's mother" (Biotechnology Act 2020, §2–15). In this way, the politicians ensured a continued prohibition on gestational surrogacy within Norway.

Along with this new paragraph, parliament tabled a motion asking the government "to ensure that Norway actively works internationally to combat the exploitation of women in the international surrogacy industry" (Statute 104 (2019–2020), resolution 621). Thus, the members of parliament made it clear that they were not only opposed to surrogacy in Norway but also critical of how it is organized and practiced beyond Norwegian borders. Nevertheless, neither a proposal to introduce state efforts to reduce the opportunities available to Norwegian citizens to use surrogacy services abroad nor a proposal to inquire into the state's ability to punish these citizens were passed. While critical of what goes on internationally, the majority of members of parliament did not see any reason or possibilities to hinder Norwegian citizens from participating in it. As in 2013, there was a reluctance among lawmakers to introduce measures to hinder Norwegians from traveling abroad for surrogacy.

In summary, the standard bureaucratic procedure and the legal changes introduced in the early 2010s and, more recently, in 2020, not only ensured that children born through surrogacy abroad were granted legal parents and citizenship, but they also made it relatively uncomplicated for Norwegian citizens to use transnational surrogacy as a way to become parents. While surrogacy initially caused concern, inter alia, due to the potential hardships experienced by the legally presumed mother—that is, the surrogate mother, as the one birthing the child—it ended up being handled as a matter of defining the legal father of children who were understood as already being Norwegian.

Cross-Reading Adoption and Surrogacy

Having described and analyzed each case separately, we will now discuss the two cases through a cross-reading. To structure our reading, we ask the following analytical questions. First, what discursive logics are mobilized to support and secure parental access through transnational adoption and transnational surrogacy? Second, what techniques of reproductive governance are emerging across the two cases?

Different logics of belonging structure our cases. In the Norwegian case, it is noteworthy that the children born through surrogacy abroad were construed as automatically belonging to their Norwegian intended parents. Thus, the Norwegian authorities' handling of surrogacy revolved around the issue of how to establish a *legal* relationship between the child and their intended parents, while leaving the social and affective kinship relations to be managed within the privatized sphere of the family. In this way, we would argue,

parental access was achieved through a notion of the child as someone who is already settled and included in the Norwegian (national) family.

Belonging is also an organizing principle in the Danish handling of transnational adoption, but adoptee subjectivity and the adoptee's social and affective kinship relations are made the object of state-mandated interventions to a greater extent, such as post-adoption counseling, in which belonging is a priority. At the level of disciplinary power, it is, in particular, the psychological framework of attachment which continues to be mobilized in order to adjust and govern the adoptee's affective labor (Myong and Bissenbakker 2021). In addition, the prioritization and investment in interventions that seek to secure the belonging of the adoptee to her adoptive family may themselves be seen as performative of the adoptee's belonging (and value) to the welfare state.

In Denmark, parenthood of the adopter subject is contingent upon the legal annihilation of the first parent as a parent. Since the Danish adoption reforms, the status of the first parents has become slightly more visible, in both the political debates and the preparatory legislative documents. However, this symbolic recognition has neither granted the first parents legal rights to maintain kinship ties with their children nor resulted in the allocation of material and economic resources that could sustain the livability of their family life. The shift from open adoptions to "openness in adoption" has worked to install "openness" as an ideal for adoption, but also as a new form of governance to manage relations and contact between the adoptee and her first family. This process has served to quash discussions of rights for the first families, thus continuing their racialized subordination. For adopters, the screening procedures assessing their suitability in terms of their parental capabilities can be said to align their (potential) parenthood with norms of "good parenthood" (Lindgren 2016), but it also provides them with state-sanctioned parental approval.

The logics of "openness" are not mobilized in the same way in the Norwegian case, where the surrogate mother features prominently in the documents as both an original parent and the legal mother—who is defined as the one birthing the child. Yet, as the analysis shows, the intended father soon became the center of attention in the Norwegian handling of transnational surrogacy. The focus on establishing (Norwegian) fatherhood displaced both concern for and attention toward the surrogate mother. In neither the Norwegian nor the Danish case do the different forms of legal (in the case of surrogacy) or discursive acknowledgment of first parents and surrogate mothers result in the strengthening of their rights or a break with the privileging of adopters/intended parents. Rather, parental access for Danish and Norwegian citizens is enabled and continued through racializing logics that work to decenter, subordinate, and foreclose surrogate mothers and first parents from kin relations.

The different logics can be said to weave together pro- and anti-natalist sentiments that are imbricated in racial hierarchies. The child is

simultaneously oriented *toward* its (white) intended/adoptive family and *away* from other belongings and kinship relations. While these racializing logics are productive of belonging at the expense of other belongings, they also work to enforce a colonial division of labor whereby procured children can be removed and/or commissioned from what are often racialized and dispossessed populations in order to create white families. Across the two cases, it is significant that surrogate mothers and first families in adoption are never discussed or imagined as belonging to the Danish or Norwegian (welfare) states or families. Instead, efforts to keep them at a distance (from their children as well as the welfare state) and in positions where parenting is impractical or foreclosed seem significant for how the question of parenthood is handled in the two cases.

This leads us to the question of reproductive governance. Notably, parental access gained through transnational forms of surrogacy and adoption should not be conflated with legal access within the jurisdiction. As seen in the Norwegian case, although the intention of the surrogacy contract is complied with in the handling of the question of legal parenthood, surrogacy is not legal as a reproductive method within Norway. This is different in the Danish case, where the transnational adoption system has a longer history and where lawmakers have made significant efforts to preserve the system as a pathway to parenthood for its citizens. Over the past ten years, and in response to public scrutiny, Danish lawmakers have imposed reforms that seek to rebuild trust and moral legitimacy in the adoption system by accentuating state regulation and control measures. For example, through expanding the authority of the inspectorate, increased subsidization of the only remaining adoption agency, and investment in PAS.

If we consider the governance of transnational surrogacy in Norway, we can see that lawmakers have repeatedly debated and agonized over the moral dilemmas that follow from surrogacy. This has resulted in a broad unity across the political spectrum in favor of the continued and, as of 2020, explicit national prohibition of surrogacy. Thus, the Danish strategy of increasing state control to affirm the moral rightfulness of transnational adoption does not find its equivalent in the Norwegian handling of transnational surrogacy. Rather, the Norwegian authorities have kept their distance from surrogacy as an object of governance, refusing to allow it to take place in Norway but also not prohibiting Norwegian citizens' use of surrogacy abroad. On multiple occasions, the Norwegian parliament has refrained from introducing measures that could block its citizens' access to surrogacy in other countries.

The insights we take from this cross-reading are not about the presence/absence of reproductive governance, but rather that different techniques of (state) governance can be detected. These are intimately entangled with moral positioning. In the Norwegian case, state regulation does not materialize as surveillance or control over the processes that facilitate the sourcing of children or the conditions of the surrogate mothers. Notably, the Norwegian

handling of surrogacy involves a transfer of moral choice and responsibility from the state to the implied actors, such as the intended parents (cf. Førde 2017). Furthermore, this may be understood as a way of "outsourcing problems" (Eriksson 2022), framing surrogacy as a transnational or cross-border problem whose "solution" is not to be found in Norway. In the Danish case, (tighter) state regulation in the form of surveillance and a transfer of power from adoption facilitators to state institutions are promoted to a greater extent as a "solution" and/or a response to the critiques of adoption; here, moral legitimacy is renewed and produced through measures that clearly signal the state's responsibility and willingness to regulate adoption. While the techniques of reproductive governance differ, it is noteworthy that, in both cases, parental access is secured and prioritized for, respectively, Danish and Norwegian citizens. In continuing to uphold transnational adoption and transnational surrogacy as pathways to access parenthood, these welfare states rely on anti-natalist and racializing disinvestments from the first families of adoptees and the surrogate mothers. In this way, there is a resemblance in the results and in the underlying logics of how the welfare state ensures parental access for its own citizens.

Concluding Remarks

In this article, we have analyzed and cross-read two contested cases of parental access. Starting from what we define as the crises of legitimacy, our examination has focused on how reproductive governance facilitates parental access for Danish and Norwegian citizens through transnational adoption and transnational surrogacy, respectively. Analyzing these processes through the lens of the biopolitics of parental access, our ambition has been to inquire into how Norway and Denmark optimize specific forms of parenthood. Our contribution is aligned with traditions of scholarship that scrutinize how the expansion of (white) parental access is imbricated with selective pronatalism (cf. Thompson 2005, 2011) and reproductive annihilation (cf. Ross and Solinger 2017). Our cross-reading has focused on the racializing logics and rationalities that uphold parental access for adopters and intended parents through the continued subordination of first parents and surrogate mothers in two Scandinavian contexts. In both cases, the commissioned/procured children are presumed to belong to the white nuclear family as well as to the nation and the welfare state; surrogate mothers and first families can be said to constitute the limits of this belonging.

Through our cross-reading, we have also analyzed how different techniques of reproductive governance operate across the two cases. While the Danish authorities have opted for increased state regulation and subsidization of the adoption system, the Norwegian authorities have governed through distance and by refraining from imposing regulations. These techniques of governance

are similar in their effects: securing access to parenthood for, respectively, Danish and Norwegian citizens.

With this article, we have sought to move beyond assumptions that (the expansion of) parental access constitutes a progressive ideal in itself. We write this bearing in mind that this is a time when accelerating forms of reproductive racism are being mobilized against migrants, LGBTQ+ people, and racialized minorities throughout Europe and beyond (Siddiqui 2021). However, critical inquiries into the racializing and extractive forces at play in how different forms of parental access are regulated and supported by the state may provide useful knowledge about how reproductive racism operates and acquires new forms through reproductive governance. Such discussions are urgent, we would argue, especially in the Scandinavian context(s) where the regulation of reproduction constitutes a central domain of politics and where the contemporary welfare state is often perceived as a progressive force in terms of implementing "family–friendly" policies and reproductive rights for LGBTQ+ people.

Notes

1. In 2020, twenty-three children were adopted to Denmark, forty-one to Norway, and ninety-two to Sweden. These numbers are reported by the government agencies of Statistics Denmark, Statistics Norway, and Statistics Sweden.
2. Historically, changes to Danish adoption law have been based upon recommendations laid out in white papers. A total of seven white papers focusing on adoption were published between 1954 and 1997, but over the past few decades a growing stream of mandates, monitoring reports, assessments, and inquiries produced by government officers have constituted the context for legislative amendments and the administrative government of adoption.
3. See, for example, the case of the Indian father Ramesh Kulkarni. In 2007, the Danish Broadcasting Corporation (DR) uncovered how Kulkarni's children, who had been temporarily placed at the child facility Preet Mandir in Pune in 2002, were later adopted to Denmark without Kulkarni's knowing consent. In response to the case, the Danish authorities swiftly issued a twelve-page report which concluded that all procedures had been correctly followed. Later investigations by the Central Bureau of Investigation in India have uncovered evidence that Kulkarni was defrauded of his children, but also that numerous other children have also been illegally procured for adoption by Preet Mandir (Borresø 2010).
4. See Ministry for Children, Equality, Integration, and Social Affairs 2015 [L187]. The proposal was put forward to parliament in April 2015, but postponed due to general elections in June 2015. The proposal was

returned to parliament in October 2015, see Ministry of the Interior and Social Affairs (2015) [L7].

5. Historically, agencies have relied financially on adoption fees paid by prospective adopters; a business model that has been vulnerable to declining numbers of both adoptable children and applicants.
6. See Folketingstidende E (2014a, 2014b, 2015).
7. Permanent funding was also allocated to the inspectorate, with an annual grant of 5.2 million DKK and post-adoption services.
8. Due to declining numbers of both adoptable children and applicants, this model became increasingly untenable. While the state did not directly subsidize agencies prior to 2015, subsidies (not subject to taxation) have been given to adopters. In 2022, this subsidy amounted to 57,635 DKK per child (see https://www.borger.dk/familie-og-boern/Adoption, accessed 12 July 2022).
9. This is somewhat similar to how transnational adoption has been structured in Norway and Sweden, although Sweden supported a two-tier system during a brief period in the 1970s, when both private adoption agencies and the Swedish state negotiated partnerships with adoption organizations in sending countries (Lindgren 2010).
10. The Danish authorities have repeatedly addressed the question of whether or not the state should negotiate directly with sending countries and thus replace the private adoption agency; see, for example, Ministry for Children, Gender Equality, Integration, and Social Affairs (2014a) and National Social Appeals Board (2019).
11. Notably, critical adoptee activists have largely refused to advocate for (more) counseling services to be offered through the state-funded PAS program as this is widely considered to be adopter-centric and pro-adoption.
12. There are many definitions of open adoption and ways to practice it. Critical adoptees in Denmark have largely rejected open adoption as a "solution" to the structural injustices in transnational adoption. In this article, we focus on how open adoption (as a potential right for first families) was swiftly replaced by efforts to secure "openness in adoption."
13. According to the rules of accreditation, the DIA is obliged to inform the National Social Appeals Board if adopters refuse to write reports. From 2016 to 2019, the National Social Appeals Board received notification of sixteen cases, whereupon the board sent a letter to the adopters in question reminding them of their "moral obligation" (National Social Appeals Board 2020, 49).
14. On May 23, 2012, a temporary regulation was introduced to acknowledge paternity established abroad for children born to a surrogate mother. On March 8, 2013, a temporary law was introduced to transfer the parenthood of children born to a surrogate mother abroad. Citizens applying for parenthood with reference to either of these regulations needed to apply by January 1, 2014.

15. In addition to the clause on surrogacy in the Biotechnology Act, the Children's Act contains a formulation stating that "agreements to give birth on behalf of another woman are not binding" (Children's Act 1981, §2).

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