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## COERCING PREGNANCY

A. RACHEL CAMP\*

### ABSTRACT

Intimate partners coerce thousands of women in the United States into pregnancy each year through manipulation, threats of violence, or acts that deliberately interfere with the use of, or access to, contraception or abortion. Although many of these pregnancies occur within the context of otherwise abusive relationships, for others, pregnancy serves as a trigger for intimate partner violence. Beyond violence preceding or resulting from pregnancy, women who experience coerced pregnancies often suffer other physical, financial and emotional harms. Despite its correlation to domestic violence, reproductive coercion fits imperfectly, if at all, within our existing laws designed to combat domestic violence or rape. Although the harms of forced sex and, though to a slightly lesser extent, the harms of domestic violence, are well understood and accepted in our culture and our laws, the harm of experiencing a pregnancy through coercive acts remains largely invisible in both spheres, despite the prevalence of coerced pregnancies. This Article begins by filling in the missing narrative of reproductive coercion by exploring the social and legal contours of how women are coerced into pregnancy, the harms that can result, and the deep correlation between such acts and domestic violence. It then explores how our cultural and legal conflation of pregnancy with sex, motherhood and even abortion, limits our ability to isolate and understand the experience of pregnancy coercion. This Article concludes by considering how arming feminists and other advocates with an increased understanding of the interrelatedness between pregnancy, coercion, and intimate partner abuse can help to broaden domestic violence laws and policies, and reconceptualize pregnancy prevention as violence prevention.

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\* Visiting Associate Professor and Co-Director, Georgetown University Law Center, Domestic Violence Clinic. I am deeply indebted to my mentors, colleagues, and friends, Margaret Johnson and Deborah Epstein, for their comments and insight on this Article. Thank you also to Melissa Breger and Leigh Goodmark for their thoughtful review, and to my incredibly capable research assistants, Jessica Lightener, Maria Sevilla and Jennifer Brown. An early draft of this Article was presented at the University of Baltimore's Sixth Annual Applied Feminism Conference, and the AALS Conference in Puerto Rico. Thank you to Georgetown University Law Center for its financial support of the writing of this piece. I dedicate this Article to my daughters for whom I wish the freedom to choose *all* paths in their future, whatever those paths may be.

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## INTRODUCTION

*Woman must have her freedom—the fundamental freedom of choosing whether or not she shall be a mother and how many children she will have. Regardless of what man's attitude may be, that problem is hers—and before it can be his, it is hers alone.*

*She goes through the vale of death alone, each time a babe is born. As it is the right neither of man nor the state to coerce her into this ordeal, so it is her right to decide whether she will endure it.<sup>1</sup>*

Jessica became pregnant less than four months into dating her boyfriend.<sup>2</sup> As she described it, "he refused to give me funds to purchase birth control, and always refused to use condoms after we became exclusive."<sup>3</sup> Jessica and her boyfriend lived in a community

1. MARGARET SANGER, *WOMAN AND THE NEW RACE* 100 (1920).

2. "Jessica's" Story, KNOWMORE (2008), archived at <http://perma.cc/E5CD-S92P>.

3. *Id.*

where “Planned Parenthood is maligned and access to low cost birth control is made extremely difficult by opponents.”<sup>4</sup> As such, she had limited options for pregnancy prevention. When Jessica and her boyfriend “decided to continue the pregnancy and marry, the overt abuse started within days of [their] wedding.”<sup>5</sup> According to Jessica, her husband was “verbally, emotionally, financially, sexually, and physically abusive to me . . . He would always refuse my attempts at birth control.”<sup>6</sup>

Increasingly women share stories similar to Jessica’s. Male partners deliberately interfere with their use of contraception, its effectiveness, or with their ability to obtain an abortion through assaults, manipulation, threats of physical harm, or direct sabotage of birth control.<sup>7</sup> These acts of coercion are designed to exert or maintain control over a woman by imposing a pregnancy on her.<sup>8</sup> Though the existing cultural narrative of pregnancy coercion is one dominated by stories of women deceptively tricking their male partners into pregnancy,<sup>9</sup> social science research and these increasingly shared experiences of women and girls are turning “on its head the notion that it’s always women who are trying to trick their boyfriends into getting them pregnant.”<sup>10</sup>

Although stories like Jessica’s are being increasingly told, the experiences of women coerced into pregnancy—including the abuse that both precedes and follows—remain largely invisible. Our culture and our laws assume that if a woman engages in consensual sex and becomes pregnant,<sup>11</sup> that pregnancy also was her choice; consent for

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*; see also “Janey’s” Story, KNOWMORE (2008), archived at <http://perma.cc/7EY6-L2J2>; “Erika’s” Story, KNOWMORE (2008), archived at <http://perma.cc/H3LR-C88W>.

8. See “Jessica’s” Story, *supra* note 2.

9. See *Conversation: Lynn Harris & Elizabeth Miller on Reproductive Coercion*, THE NATION ON GRIT TV (July 28, 2010), <http://www.thenation.com/video/37984/conversation-lynn-harris-elizabeth-miller-reproductive-coercion#>, archived at <http://perma.cc/L8BW-7ZP3>.

10. *Id.*

11. When sex is (and whether it can be) fully “consensual” is an issue that has been explored by feminist scholars for decades. See ANDREA DWORKIN, *INTERCOURSE* 142–43 (1987) (arguing that heterosexual sex is coercive); CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* 172–73 (1989) (asserting that it is “difficult to distinguish” rape from “consensual” intercourse given the cultural context of male dominance); see also Meredith J. Duncan, *Sex Crimes and Sexual Miscues: The Need for a Clearer Line Between Forcible Rape and Nonconsensual Sex*, 42 *WAKE FOREST L. REV.* 1087, 1113–15 (2007); Orit Gan, *Contractual Duress and Relations of Power*, 36 *HARV. J.L. & GENDER* 171, 201 (2013); Robin L. West, *The Difference in Women’s Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 15 *WIS. WOMEN’S L.J.* 149, 172 (2000) (each arguing that the lines between rape and sexual acts that are not legally rape but also are not consensual are unclear, at best). Although these discussions are critical to understanding women’s

sex assumes consent for pregnancy. When an unwanted or unintended pregnancy occurs, the dominant cultural narrative is one that vacillates between punishment or blessing with little space in between for wondering about the experience of the pregnant woman. That is, even when unintended, pregnancy often is viewed as an appropriate “consequence” for engaging in sex in the first place—a socio-legal reprimand of “you’ve made your bed, now lie in it,”<sup>12</sup> or the positive constructions of motherhood and anticipated joys of a resulting child offset any “harm” an unintended pregnancy may impose. For women already marginalized in our culture—young, poor, unmarried, or of color—the pregnancy is often identified as a punishing consequence for perceived promiscuity and irresponsibility. A nuanced consideration of the conditions within which the pregnancy occurred or whether the pregnancy was consensual is absent.

In part, this lack of nuance comes from the ways that our culture and our legal system shields privacy and autonomy relating to sex and contraception with impenetrable privacy, unless in the most egregious of circumstances.<sup>13</sup> Though feminist advocates have made significant progress over the past forty years advancing laws that protect women and girls from forced sex, little has been done to protect them from forced or coerced pregnancies. To move coerced pregnancies into a space of cultural and legal legitimacy requires a shift in our view of pregnancy itself. While there may be an intuitive cultural understanding that a pregnancy resulting from coercion may be harmful to a woman, to name pregnancy as something that may impose harm in the same way that other forms of domestic or sexual violence may impose harm, requires challenging the normative, positive

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sexual experiences, for purposes of this Article, consensual intercourse is assumed to be that which is not legally rape—that is, sex that is not compelled by force or direct threat of bodily injury. See Marie K. Pesando, *Definitions and general considerations*, 65 AM. JUR. 2D Rape § 1 (2011); see also Khiara M. Bridges, *When Pregnancy is an Injury: Rape, Law, and Culture*, 65 STAN. L. REV. 457, 466 (2013) (identifying that most jurisdictions define rape as including “some mixture of the elements of sexual intercourse, victim nonconsent, and use of force by the perpetrator”).

12. Although this Article explores the harms that come to women from a coerced and, therefore, unintended pregnancy, those harms are not finite. If a child results from the pregnancy, a woman experience harms that differ from, or add to, the harms identified in this Article. Consideration of those harms, although critical to understanding the experiences of women coerced into pregnancy, is beyond the scope of this Article.

13. See *Lawrence v. Texas*, 539 U.S. 558, 562 (2003) (holding “liberty protects the person from unwarranted government intrusions into a dwelling or other private places”); see also *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 851 (1992) (holding “intimate and personal choices a person may make in a lifetime . . . are central to the liberty protected by the Fourteenth Amendment”); *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972) (holding that a fundamental right to privacy is the decision to use contraceptives); *Griswold v. Connecticut*, 381 U.S. 479, 485–86 (1965) (same).

cultural construction of pregnancy and motherhood—constructions that provide little flexibility. Though the experience of pregnancy mirrors the current cultural narrative for many women—an experience invited, a time of happiness, willing sacrifice, and excitement about pending motherhood<sup>14</sup>—for those who experience pregnancy through deliberate interference with the use of, or access to, contraception, it can result in deep infringement on their reproductive liberty, autonomy, sense of self, and result in physical, financial, and emotional harm.<sup>15</sup> Similar to other forms of domestic violence, pregnancy can be a tool that limits a woman's independence and movement, and pregnancy can force dependence on an intimate partner.<sup>16</sup> Acts of pregnancy coercion frequently occur within a broader context of an abusive relationship,<sup>17</sup> with violence either preceding the coercion, or beginning during a pregnancy. In any other context, the imposition of a harm upon another could likely result in civil or criminal liability.<sup>18</sup> In the context of imposing a pregnancy, outside of exceedingly limited circumstances, it does not.<sup>19</sup>

This Article explores the social phenomenon of pregnancy, acts that coerce it, and the contexts within which coerced pregnancies occur. Part I defines methods used to coerce pregnancy and explores the correlation between pregnancy coercion and intimate partner abuse. Part II identifies the specific harms that befall women who experience a coerced pregnancy, including the correlation between unintended pregnancy, intimate partner violence, and homicide. Part III explores how our current legal and cultural narratives on sex, motherhood, and even abortion, limit the cultural and legal urgency to name and respond to acts that coerce pregnancy. Finally, Part IV considers how an increased understanding of the interrelatedness between pregnancy, coercion, and intimate partner abuse can be used within our legal and advocacy systems to more fully understand the experiences of pregnant women, and how that understanding can be used to advocate for laws and policies that conceptualize pregnancy prevention as violence prevention.<sup>20</sup>

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14. See Bridges, *supra* note 11, at 461.

15. *Id.* at 496.

16. Shane M. Trawick, Comment, *Birth Control Sabotage as Domestic Violence: A Legal Response*, 100 CALIF. L. REV. 721, 733–34 (2012).

17. See *infra* Part I for further discussion.

18. See Trawick, *supra* note 16, at 746.

19. *Id.* at 735–36.

20. This Article explores the role that intimate partners play in coercing pregnancy, and how our culture and laws respond to those private acts. To understand the experiences of pregnant women, however, it also is critical to understand the State's role in creating barriers for women to respond to or avoid a coerced pregnancy. Part IV of this Article briefly discusses the State's role; a separate article will also explore this topic further.

## I. PREGNANCY COERCION DEFINED

Giving context to the experiences of women who are coerced into pregnancy and the relationships in which such coercion often exists is critical to understanding women's experiences and our socio-legal response. This section begins by exploring the methods men use to coerce pregnancy. It then explores the relational context, often characterized by intimate partner abuse, within which these methods commonly are used.

### A. *Methods Used to Coerce Pregnancy*

Reproductive coercion broadly is the "deliberate restriction of options"<sup>21</sup> intended to control and regulate autonomous and informed decision-making regarding whether and when to become pregnant, or whether to maintain or terminate an existing pregnancy. Pregnancy coercion is a form of reproductive coercion where the intent is to impose a pregnancy upon a woman.<sup>22</sup> Almost one in ten women report that an intimate partner has tried to get her pregnant when she did not want to be, or has had a partner who refused to wear a condom during intercourse.<sup>23</sup> Women also report having partners who refuse to allow them to access abortions by withholding money or transportation, or by threatening to leave a relationship or physically harm her if she terminates her pregnancy.<sup>24</sup>

The methods used by men attempting to coerce a woman into pregnancy can be categorized—albeit imperfectly—by the degree to which they interfere with her physical autonomy. Acts of physical and sexual violence used to coerce pregnancy result in the most direct

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21. Janet Radcliffe Richards, *Consent with Inducements: The Case of Body Parts and Services*, in THE ETHICS OF CONSENT: THEORY AND PRACTICE 281, 292 (Franklin G. Miller & Alan Wertheimer eds., 2010).

22. Other forms of reproductive coercion include acts that coerce a woman into *terminating* a pregnancy, or that harm her with the intent to cause a miscarriage. See *infra* Part IV; see also LINDA CHAMBERLAIN & REBECCA LEVENSON, FAMILY VIOLENCE PREVENTION FUND, AN INTEGRATED RESPONSE TO INTIMATE PARTNER VIOLENCE AND REPRODUCTIVE COERCION 6 (2010), available at [http://www.futureswithoutviolence.org/userfiles/file/HealthCare/Repro\\_Guide.pdf](http://www.futureswithoutviolence.org/userfiles/file/HealthCare/Repro_Guide.pdf), archived at <http://perma.cc/E8BB-8TED>.

23. See MICHELE C. BLACK ET AL., CTR. FOR DISEASE CONTROL & PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY 48 (2010).

24. See Trawick, *supra* note 16, at 730–34 (2012); Barbara Stark, *The Women's Convention, Reproductive Rights, and the Reproduction of Gender*, 18 DUKE J. GENDER L. & POL'Y 261, 279–80 (2011). Sociologist Evan Stark recounts abortion coercion through a story of one of his former clients whose medical records revealed that she had undergone an abortion "at her husband's insistence and against her wishes and religious scruples." EVAN STARK, COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE 292 (2007) [hereinafter STARK, COERCIVE CONTROL].

interference with a woman's physical autonomy. Sexual violence, including rape and incest, is most commonly identified as a way to exert control over another through forced sex.<sup>25</sup> Sexual violence may also be used to force a pregnancy upon a woman.<sup>26</sup> Although the specific intent to rape is not relevant for purposes of criminal liability—proving that a forced sexual act occurred with a non-consenting person is sufficient<sup>27</sup>—when a man rapes a woman, his intent may include causing a pregnancy.<sup>28</sup> Men also coerce pregnancy through acts of physical violence outside of the context of sex, primarily through assaults or threats of assault in response to a woman's assertion of a reproductive choice.<sup>29</sup> Such acts may include assaulting or threatening to assault a woman if she uses contraception or if she insists that the male partner use a condom,<sup>30</sup> or if she seeks to obtain an abortion once pregnant.<sup>31</sup>

“Pregnancy pressure” or other forms of verbal manipulation also may be used to coerce a woman into pregnancy.<sup>32</sup> These verbal tactics can include a partner inducing or manipulating a woman into having sex without contraception or into keeping a pregnancy that she

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25. The No MORE Project, *Resources*, NOMORE.ORG (2010), <http://www.nomore.org/resources>, archived at <http://perma.cc/K2D8-6LL7>.

26. See CHAMBERLAIN & LEVENSON, *supra* note 22, at 6.

27. See Duncan, *supra* note 11, at 1096–1107.

28. As one woman recounted, after raping her, her boyfriend retorted, “What’s the big deal? . . . It’s not like you couldn’t get your hands on the morning after pill if you actually cared.” “Libby’s” Story, KNOWMORE (2008), archived at <http://perma.cc/E5YD-M6HN>. Another woman reported that when she confronted her partner about his unfaithfulness, her boyfriend would “force himself” on her sexually, always refusing to wear a condom, and becoming offended when she suggested he use one. “Janey’s” Story, *supra* note 7.

29. See Trawick, *supra* note 16, at 730.

30. See Gina M. Wingood & Ralph J. DiClemente, *The Effects of an Abusive Primary Partner on the Condom Use and Sexual Negotiation Practices of African-American Women*, 87 AM. J. PUB. HEALTH 1016, 1016 (1997), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1380941/pdf/amjph00505-0130.pdf>, archived at <http://perma.cc/8ZPS-8TRW> (assessing the abusive consequences of asking their partners to use condoms through a private interview with 165 African-American women).

31. See CTR. FOR IMPACT RESEARCH, DOMESTIC VIOLENCE AND BIRTH CONTROL SABOTAGE: A REPORT FROM THE TEEN PARENT PROJECT 22 (2000), available at <http://www.impactresearch.org/documents/dvandbirthcontrol.pdf>, archived at <http://perma.cc/5APG-X9MS> (finding that adolescents reported that if they were caught using Depo-Provera shots, they were “hit or beaten”); Ann M. Moore et al., *Male Reproductive Control of Women Who have Experienced Intimate Partner Violence in the United States*, 70 SOC. SCI. & MED. 1737, 1738 (2010), available at <https://www.guttmacher.org/pubs/journals/socsci/med201002009.pdf>, archived at <http://perma.cc/6W5M-8KLC> (reporting that partners beat up their girlfriends “upon finding her contraception or threatening to kill her if she has an abortion”). Moore and her colleagues also describe threats to harm a woman if she keeps a pregnancy. One woman, for example, described her partner’s threat to “throw[] [her] down the steps” if she did not obtain an abortion. *Id.* at 1741.

32. CHAMBERLAIN & LEVENSON, *supra* note 22, at 6.



otherwise wishes not to;<sup>33</sup> threatening to leave a woman if she doesn't get pregnant;<sup>34</sup> accusing a woman of using birth control in order to be promiscuous;<sup>35</sup> scaring a partner about side effects of birth control with the intent to prevent her from using it;<sup>36</sup> or asserting that if his girlfriend "really loved" him she would have a baby with him.<sup>37</sup> Although this category of pregnancy coercion alone does not impact a woman's physical autonomy, when used within a broader relational context where physical or sexual violence exists, this "pressure" may trigger similar concerns pertaining to physical safety or autonomy as would a direct threat of harm. Without the context of violence, pregnancy pressure can range from what simply may be a disagreement over pregnancy within a relationship to a coercive tactic designed to interfere with a woman's reproductive decision-making.<sup>38</sup>

Still another method used to coerce pregnancy falls within the broad category of what this Article identifies as behavioral birth control manipulation. These tactics interfere with a woman's physical autonomy, but in ways that differ from threats or actual violence. Examples of behavioral birth control manipulation range from a partner refusing to use a condom,<sup>39</sup> a partner withholding money so his girlfriend cannot purchase needed birth control;<sup>40</sup> monitoring girlfriends' periods to ensure that they are not taking long-term contraceptive shots;<sup>41</sup> promising to "pull out" and then failing to do so;<sup>42</sup> and partners barring their girlfriends from seeking an abortion by removing access to finances or transportation, or sabotaging abortion appointments.<sup>43</sup> Behavioral birth control manipulation commonly occurs through the intentional sabotage of birth control in an attempt to void its use or effectiveness.<sup>44</sup> Acts of birth control sabotage are often secretive or subtle, and can include hiding birth control pills by

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33. *Id.*

34. See Margaret Conway, *Partner Abuse and Unintended Pregnancy: Making the Connections* (April 1, 2010), NAT'L DOMESTIC VIOLENCE HOTLINE BLOG, <http://www.thehotline.org/2010/04/partner-abuse-and-unintended-pregnancy-making-the-connections/>, archived at <http://perma.cc/W8ED-3JA7>.

35. See "Erika's" Story, *supra* note 7.

36. See Moore et al., *supra* note 31, at 1741.

37. See CTR. FOR IMPACT RESEARCH, *supra* note 31, at 18.

38. See *infra* Part IV for further discussion.

39. See Moore et al., *supra* note 31, at 1740.

40. See *id.* at 1738.

41. *Teens Susceptible to Reproductive Coercion*, NEWSWEEK (July 1, 2010), <http://www.newsweek.com/teens-susceptible-reproductive-coercion-71139>, archived at <http://perma.cc/XYZ5-8K85>.

42. See Trawick, *supra* note 16, at 723.

43. See Moore et al., *supra* note 31, at 1741.

44. See Trawick, *supra* note 16, at 721.

flushing or otherwise destroying pills;<sup>45</sup> breaking, removing, or poking holes in condoms before ejaculating;<sup>46</sup> and removing contraceptive rings or patches during intercourse.<sup>47</sup> A man's control over condom usage makes its manipulation particularly common.<sup>48</sup> Young men have reported that they "insist" on condomless sex or use condoms inconsistently, as way to maintain control over their partners.<sup>49</sup>

While methods used to coerce pregnancy may occur alone, women often report that their partners use multiple methods.<sup>50</sup> In one study, a quarter of women who called a domestic violence hotline seeking advice on domestic abuse reported having a partner who pressured them to become pregnant, told them not to use contraception, or forced them to have unprotected sex,<sup>51</sup> with 16% of those women also reporting that their partner removed condoms during sex.<sup>52</sup> Alone, these acts can dramatically impact a woman's reproductive autonomy. Together, as described by one woman, they can devastate it. As she recounted it, her partner told her that he:

"[S]hould just get you pregnant and have a baby with you so that I know you will be in my life forever." . . . [He] refused condoms and tried to convince [her] not to use birth control, accus[ed] her of being unfaithful if she tried. He denied paternity when she became pregnant. She had two abortions with him, both of which he refused to pay for.<sup>53</sup>

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45. Moore et al., *supra* note 31, at 1740.

46. *Id.*; see also *Committee Opinion Number 554, infra* note 49, at 2; *The Facts on Reproductive Health and Partner Abuse*, FUTURES WITHOUT VIOLENCE, archived at <http://perma.cc/S2YM-NK3L>.

47. Moore et al., *supra* note 31, at 1741; Trawick, *supra* note 16, at 730. An example of behavioral interference with birth control in order to terminate a pregnancy was captured in a Reuters article about a man who obtained misoprostol, a medication that can cause abortion, and switched that with an antibiotic his girlfriend was taking. As a result of the switch, the girlfriend miscarried the fetus she was carrying. See Jane Sutton, *Florida Man Says He Tricked Girlfriend into Taking Abortion Drug*, REUTERS, Sept. 10, 2013, available at <http://www.reuters.com/article/2013/09/10/us-usa-abortion-florida-idUSBRE9890W220130910>, archived at <http://perma.cc/4HW5-3DSW>.

48. See CHAMBERLAIN & LEVENSON, *supra* note 22, at 12.

49. See Committee on Health Care for Underserved Women, *Committee Opinion Number 554: Reproductive and Sexual Coercion*, AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS 2 (Feb. 2013), available at <http://www.acog.org/~media/Committee%20Opinions/Committee%20on%20Health%20Care%20for%20Underserved%20Women/co554.pdf?dmc=1&ts=20130623T2032290544>, archived at <http://perma.cc/G32M-5GNN> [hereinafter *Committee Opinion Number 554*].

50. See Moore et al., *supra* note 31, at 1742.

51. HotlineAdvocate\_SA, *1 in 4 Callers Surveyed at the Hotline Report Birth Control Sabotage and Pregnancy Coercion*, NAT'L DOMESTIC VIOLENCE HOTLINE BLOG (Sept. 19, 2014), <http://www.thehotline.org/2011/02/1-in-4-callers-surveyed-at-the-hotline-report-birth-control-sabotage-and-pregnancy-coercion/>, archived at <http://perma.cc/56SN-RKCK> [hereinafter *1 in 4 Callers*].

52. *Id.*

53. Moore et al., *supra* note 31, at 1739–40.

### B. *The Relational Context of Pregnancy Coercion*

Reproductive coercion often occurs within the context of an otherwise abusive relationship.<sup>54</sup> The correlation between reproductive coercion and intimate partner abuse was quantified in a 2010 study exploring the intersection of reproductive coercion,<sup>55</sup> intimate partner abuse, and unintended pregnancy.<sup>56</sup> In that study, principal investigator Dr. Elizabeth Miller surveyed women and girls seeking services from numerous California family planning clinics who reported physical abuse in their intimate relationships. Of those participants, more than one-third reported some form of reproductive coercion.<sup>57</sup> Conversely, of participants who reported experiencing reproductive coercion, almost three-quarters reported experiencing intimate partner abuse.<sup>58</sup> Said differently, Dr. Miller found that while in some relationships where violence exists reproductive coercion is used, in relationships where reproductive coercion is used, that relationship likely is physically violent.

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54. See Elizabeth Miller et al., *Pregnancy Coercion, Intimate Partner Violence and Unintended Pregnancy*, 81 *CONTRACEPTION* 316, 316 (2010) (“Nearly one in four women in the United States report experiencing violence by a current or former spouse or boyfriend at some point in her life, with adolescents and young adults at highest risk for intimate partner violence.”).

55. *Id.* at 317 (labeling birth control sabotage and pregnancy coercion as “reproductive control”).

56. *Id.* The study obtained data from a sample of 1278 women ages sixteen to twenty-nine. *Id.*

57. *Id.* at 317. To assess whether a participant experienced pregnancy coercion, Dr. Miller’s study posed six questions:

Has someone you were dating or going out with ever: (1) told you not to use any birth control (like the pill, shot, ring, etc.); (2) said he would leave you if you did not get pregnant?; (3) told you he would have a baby with someone else if you didn’t get pregnant?; (4) hurt you physically because you did not agree to get pregnant?; and (5) tried to force or pressure you to become pregnant?

*Id.* Participants also were asked if they, “[h]ave . . . ever hidden birth control from a sexual partner because you were afraid he would get upset with you for using it?” Birth control sabotage was assessed by asking:

Has someone you were dating or going out with ever: taken off the condom while you were having sex so that you would get pregnant?; (2) put holes in the condom so you would get pregnant?; (3) broken a condom on purpose while you were having sex so you would get pregnant?; (4) taken your birth control (like pills) away from you or kept you from going to the clinic to get birth control so that you would get pregnant? Or (5) made you have sex without a condom so you would get pregnant?

*Id.* A positive answer to any of these questions indicated that a woman had experienced birth control sabotage. If a woman experienced overlap between pregnancy coercion and birth control sabotage, she was identified as having experienced “reproductive control.” *Id.*

58. See Miller et al., *supra* note 54, at 319.

Reproductive coercion and intimate partner abuse are particularly closely correlated in adolescent relationships.<sup>59</sup> Broadly, teens are more likely to experience abuse and reproductive coercion in their intimate relationships than are their older counterparts.<sup>60</sup> Nearly one-quarter of teenage girls in abusive relationships report that their male partners have tried to get them pregnant by interfering with their use of contraception<sup>61</sup>—a rate nearly double that of adolescent girls not in abusive relationships.<sup>62</sup> Abusive adolescent boys are less likely to use condoms than their non-abusive peers, and abused adolescent girls indicate that they are half as likely to use condoms as compared to girls who are not abused.<sup>63</sup> The more severe the physical violence, the more aggravated the interference with an adolescent girl's use of birth control.<sup>64</sup> As one abusive teenage boy noted when discussing his use of condoms:

I also think I know everything about her, like, you know? It's like she's real clean. You know? I know she wasn't gettin' with no other dude. I just . . . I have an instinct about her. She's not that type of girl, you know . . . She's really like my wife now.<sup>65</sup>

Poor adolescents face significant obstacles to understanding the coercive context of their relationships or to avoiding those contexts

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59. Jody Raphael, *Teens Having Babies: The Unexplored Role of Domestic Violence*, 12 THE PREVENTION RESEARCHER 15, 16 (2005), available at [http://www.tpronline.com/article.cfm/Teens\\_Having\\_Babies\\_The\\_Unexpected\\_Role\\_of\\_Domestic\\_Violence](http://www.tpronline.com/article.cfm/Teens_Having_Babies_The_Unexpected_Role_of_Domestic_Violence), archived at <http://perma.cc/L5L8-V5GK> [hereinafter Raphael, *Teens Having Babies*].

60. See Lisa Vollendorf Martin, *What's Love Got to Do With It: Securing Access to Justice for Teens*, 61 CATH. U. L. REV. 457, 460 (2012); Raphael, *Teens Having Babies*, *supra* note 59, at 16 (finding more than half of the young women surveyed experienced “some level of domestic violence at the hands of their boyfriends in the last 12 months,” 73% reporting physical violence, and 41% reporting “the most severe levels of domestic violence (such as kicking, beating, or being threatened with a weapon) within the last [twelve] months.”); see also Miller et al., *supra* note 54, at 318.

61. *Committee Opinion Number 554*, *supra* note 49, at 1–2.

62. See, e.g., Miller et al., *supra* note 54, at 318 (finding that of women sixteen to twenty years old, 18% experienced some form of pregnancy coercion, while nearly 12% experienced birth control sabotage); Elizabeth Miller et al., *Male Partner Pregnancy-Promoting Behaviors and Adolescent Partner Violence: Findings from a Qualitative Study with Adolescent Females*, 7 AMBULATORY PEDIATRICS 360 (2007); see also Jody Raphael, *Battering Through the Lens of Class*, 11 AM. U. J. GENDER SOC. POL'Y & L. 367, 371 (2003) [hereinafter Raphael, *Battering Through*].

63. See CHAMBERLAIN & LEVENSON, *supra* note 22, at 11. Because asking their partner to wear a condom may be a trigger for abuse, abused girls may be less likely to insist on the use of condoms during sex. See Wingood & DiClemente, *supra* note 30, at 1018.

64. Raphael, *Teens Having Babies*, *supra* note 59, at 16 (measuring findings based on study participants' yes/no responses to behavioral questions); see also Miller et al., *supra* note 54, at 364 (utilizing a cross-sectional survey of English and Spanish speaking females ages sixteen to twenty-nine years old, in five family planning clinics in California).

65. A. Raj et al., *Contexts of Condom Use and Non-condom Use Among Young Adolescent Male Perpetrators of Dating Violence*, 19 AIDS CARE 970, 972 (2007).

altogether.<sup>66</sup> Yet, for multiple reasons, poor adolescent girls appear to be at particular risk of reproductive coercion.<sup>67</sup> First, poor adolescent girls are likely to have fewer financial, housing, or educational resources.<sup>68</sup> A pregnant adolescent is also likely to be in a relationship with a significantly older man, which can lead to a unique loss of reproductive autonomy given the context of the age differential.<sup>69</sup> Finally, many policies severely limit or restrict altogether adolescents' access to comprehensive sex education or birth control, limiting the options for understanding or responding to their experiences.<sup>70</sup>

While the foregoing demonstrates a correlation between reproductive coercion and violence within both adolescent and adult relationships, that correlation is not exclusive.<sup>71</sup> Acts designed to coerce pregnancy also occur in relationships where sexual or physical violence is absent or sporadic.<sup>72</sup> Although men may engage in reproductive coercion within relationships where they otherwise are not abusive, such coercion also may precede other forms of abuse.<sup>73</sup> If the relationship continues, it may become physically or sexually violent.<sup>74</sup> Without the direct use of violence, however, controlling a woman through pregnancy falls squarely within the broad category

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66. JUDITH S. MUSICK, YOUNG, POOR, AND PREGNANT: THE PSYCHOLOGY OF TEENAGE MOTHERHOOD 71 (1995).

67. Raphael, *Battering Through*, *supra* note 62, at 371 (noting that in one study, two-thirds of adolescent mothers on public assistance experienced birth control sabotage by a partner); Anna Aizer, *The Gender Wage Gap and Domestic Violence*, 100 AM. ECON. REV. 1847, 1848 (2010) ("Disadvantaged women face much higher risks of abuse. Women with annual income below \$10,000 report rates of domestic violence five times greater than those with annual incomes above \$30,000."). This correlation is consistent with the well-established correlation between domestic violence and poverty generally. Although domestic violence can be found among all economic classes, studies repeatedly demonstrate that violence increases as household income decreases. *See, e.g.*, Raphael, *Battering Through*, *supra* note 62, at 367.

68. Raphael, *Teens Having Babies*, *supra* note 59, at 17.

69. MUSICK, *supra* note 66, at 88.

70. *See* Kim Shayo Buchanan, Lawrence v. Geduldig: *Regulating Women's Sexuality*, 56 EMORY L.J. 1235, 1256–57 (2007) (noting that young, poor women face both "the greatest stigma for sexual activity and the highest barriers to access and information about contraception and abortion"); Lisa R. Pruitt, *Toward a Feminist Theory of the Rural*, 2007 UTAH L. REV. 421, 463–65 (2007) (identifying the burden waiting periods and parental notification laws have on poor, rural women); *see also infra* Part IV for further discussion.

71. *See* Miller et al., *supra* note 54, at 318–19.

72. *See* CHAMBERLAIN & LEVENSON, *supra* note 22, at 6; Raphael, *Teens Having Babies*, *supra* note 59, at 16 (noting that one-third of adolescent girls who did not identify as being in a domestically violent relationship still reported some form birth control sabotage by their boyfriends); *see also* Miller et al., *supra* note 54, at 320 (reproductive coercion in the absence of physical or sexual violence was experienced by 7% of the participants); Raphael, *Teens Having Babies*, *supra* note 59, at 16 (34% of teens with no domestic violence reported either verbal or behavioral birth control sabotage).

73. *See, e.g.*, Miller et al., *supra* note 54, at 320.

74. *See id.* at 319.

of behaviors that sociologist Evan Stark and others have defined as “coercive control.”<sup>75</sup> Coercive control includes a variety of behaviors that intentionally deprive intimate partners—usually women—of their autonomy and liberty.<sup>76</sup> Coercive control expands what constitutes abuse within intimate relationships to include acts that “create[] or exploit[] conditions that leave the woman vulnerable to control; undermin[e] the woman’s resistance by depleting her tangible, social, or personal resources; and establish[] and exploit[] [her] emotional dependency.”<sup>77</sup> These acts upset the relational balance and allow the coercing partner to engage in ongoing strategies that include intimidation and isolation, and that extend into all areas of a woman’s life, including relations with family, friends and work.<sup>78</sup> In short, coercive control includes behaviors that can severely constrain a person’s freedom and community.<sup>79</sup> Although physical violence is not central to coercive control, even sporadic violence makes this abusive strategy particularly effective by reinforcing the credibility of any future threats that may accompany, or be implied through, the coercive act.<sup>80</sup> As Evan Stark has identified, even the mere threat of violence—the “or else” proviso—can be a strong barrier to action.<sup>81</sup>

Imposing or attempting to impose a pregnancy upon a woman falls squarely within the category of exploitive and dependency-making behaviors that constitute coercive control. The sign of an abdomen enlarged from pregnancy is perhaps the single most obvious indication that a woman is, or has been, involved in an intimate relationship. Even within the most controlling of relationships, few acts compare to confining a woman to a term of pregnancy, and potentially to a lifetime of motherhood and connection to the coercing partner. Indeed, when asked, some men explicitly state that they coerce pregnancy to physically confine or “trap”<sup>82</sup> their partner in the relationship, to claim ownership over the woman, and to “mark” a woman as

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75. STARK, COERCIVE CONTROL, *supra* note 24, at 12–13.

76. See LEIGH GOODMARK, A TROUBLED MARRIAGE: DOMESTIC VIOLENCE AND THE LEGAL SYSTEM 36–37 (2012); STARK, COERCIVE CONTROL, *supra* note 24, at 13 (explaining that the combination of coercion and control in a relationship is the most common form of abuse against women).

77. See GOODMARK, *supra* note 76, at 37.

78. Margaret E. Johnson, *Redefining Harm, Reimagining Remedies, and Reclaiming Domestic Violence Law*, 42 U.C. DAVIS L. REV. 1107, 1121–22 (2009) [hereinafter Johnson, *Redefining Harm*].

79. GOODMARK, *supra* note 76, at 36.

80. *Id.* at 37.

81. STARK, COERCIVE CONTROL, *supra* note 24, at 15, 199.

82. See Lynn Harris, *When Teen Pregnancy Is No Accident*, THE NATION (May 24, 2010), <http://www.thenation.com/article/when-teen-pregnancy-no-accident#>, archived at <http://perma.cc/YL5-WU25>.

“mine.”<sup>83</sup> Others assert that they coerce pregnancies because of the notion that women who have children are more “unattractive” to other men, and, therefore, will be less likely to leave the relationship.<sup>84</sup>

Within the context of a relationship where violence is or has been used, resisting acts that coerce pregnancy by insisting on the use of contraception or otherwise refusing to comply with requests that place a woman at risk of becoming pregnant may simply be too intimidating, too coercive, or too dangerous for her to employ. The intimate context within which pregnancy coercion usually occurs also makes resistance difficult—vulnerability, sexuality, and intimacy can be difficult to disentangle from coercive acts or intent. Once pregnant, a woman may experience emotional, physical, and financial dependence that, both in the short and long term,<sup>85</sup> may be exploited by the batterer and used to more easily and effectively dominate and control his pregnant partner.<sup>86</sup> The following story chillingly demonstrates an example of how an extreme desire to control a woman’s reproductive autonomy can lead to devastating results: Amanda’s 14-year-old son was murdered by his stepfather following her decision to obtain an abortion.<sup>87</sup> The stepfather murdered her son because, according to the stepfather, “his mother aborted my kid and, uh, I tried to let it go, and I couldn’t . . . Look, Amanda killed my kid, you know. That’s just fucking crazy, she knows who I am. We’re even.”<sup>88</sup>

Although there is a limited understanding of what motivates men to coerce pregnancy beyond (or in addition to) coercive control, additional theories have been offered. One theory identifies the role of gang culture, where a male, whose life expectancy is uncertain, may believe a child could carry on his legacy.<sup>89</sup> When that gang member’s

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83. Lynn Harris, *‘He Thought a Baby Would Keep Me in His Life Forever’: When Partner Abuse Isn’t a Bruise But a Pregnant Belly*, ALTERNET (June 25, 2009), [http://www.alternet.org/story/140887/27the\\_thought\\_a\\_baby\\_would\\_keep\\_me\\_in\\_his\\_life\\_forever%27%3A\\_when\\_partner\\_abuse\\_isn%27t\\_a\\_bruise\\_but\\_a\\_pregnant\\_belly](http://www.alternet.org/story/140887/27the_thought_a_baby_would_keep_me_in_his_life_forever%27%3A_when_partner_abuse_isn%27t_a_bruise_but_a_pregnant_belly), archived at <http://perma.cc/XPW2-SB72>.

84. See Raphael, *Battering Through*, *supra* note 62, at 370. In one study, women reported higher rates of reproductive coercion before their partners were sent to prison; if she became pregnant before he left, according to the women, it was unlikely she would leave him while he was imprisoned because she “would be seen as less desirable by other men and invested in maintaining a relationship with the father of the child.” Moore et al., *supra* note 31, at 1740.

85. See Raphael, *Battering Through*, *supra* note 62, at 372; see also *infra* Part II.D, “Emotional and Financial Harm,” for a discussion on the financial costs of pregnancy.

86. Deborah Tuerkheimer, *Conceptualizing Violence Against Pregnant Women*, 81 IND. L.J. 667, 680 (2006).

87. *Police: Teen Helped Dad Kill Stepmother*, CNN (July 30, 2013), <http://www.cnn.com/video/data/2.0/video/bestoftv/2013/07/30/exp-nr-ky-boy-kills-stepbrother.cnn.html>, archived at <http://perma.cc/N4LS-SNMZ>.

88. *Id.*

89. See Lynn Harris, *‘My Boyfriend Stole My Birth Control’: When Men Force Women to Get Pregnant Against Their Will*, THE NATION (May 28, 2010), <http://www.alternet.org>

partner becomes pregnant—through whatever means—his odds of leaving that legacy increase. Another theory suggests that some cultures, again including gang culture, attribute social standing and seniority to men who father multiple children with multiple women.<sup>90</sup> Still other research suggests that some men coerce pregnancy in an attempt to secure a nuclear family, countering the coercer's experience of growing up in a maladjusted home.<sup>91</sup>

A final note on the relational contexts for pregnancy coercion: throughout this Article, I intentionally identify the coercer as male and the coerced as female. I have labeled the actors in this way for a variety of reasons, none of which is meant to take away from the experiences of men who have been misled into unwanted or unplanned fatherhood.<sup>92</sup> First, as explored in Part III, the existing cultural narrative that tricking a partner into pregnancy is an act dominated by women simply is inaccurate.<sup>93</sup> This Article offers a counter-narrative

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/story/147040/%22my\_boyfriend\_stole\_my\_birth\_control%22%3A\_when\_men\_force\_women\_to\_get\_pregnant\_against\_their\_will?page=0%2C3&paging=off, archived at <http://perma.cc/RNK9-XMPB>.

90. See *Conversation: Lynn Harris & Elizabeth Miller on Reproductive Coercion*, *supra* note 9.

91. *Id.*

92. For a discussion on the how the definition of “fatherhood” has evolved within the law, see Jane C. Murphy, *Legal Images of Fatherhood: Welfare Reform, Child Support Enforcement, and Fatherless Children*, 81 NOTRE DAME L. REV. 325, 331–44 (2005).

93. The narrative follows this general storyline: a woman, desperate to have a baby, misleads her male partner into having unprotected intercourse based on her assertion that she either had been sterilized or was using some form of hormonal contraception, and a pregnancy that she wanted, but the male partner did not, resulted. This narrative is strongly engrained in our social and cultural discourse. See, e.g., Ian Daly, *That Was No “Accident,”* DETAILS, <http://www.details.com/sex-relationships/marriage-and-kids/200610/did-your-girlfriend-trick-you-into-fatherhood>, archived at <http://perma.cc/L7FR-H4MU> (last visited Jan. 28, 2015) (reporting on a story with the following headline: “You two were careful, but somehow she got pregnant. It happens. Or not. Getting tricked into fatherhood by a woman hell-bent on getting pregnant is much more common than you think.”); NINE MONTHS (Twentieth Century Fox 1995), available at [http://www.script-o-rama.com/movie\\_scripts/n/nine-months-script-transcript-9.html](http://www.script-o-rama.com/movie_scripts/n/nine-months-script-transcript-9.html), archived at <http://perma.cc/DBB4-DDJV> (following the main character, who becomes pregnant, leading her boyfriend and best friend to consider whether she intentionally coerced the pregnancy); HONEY CONE, STICK-UP (Hot Wax 1971), available at [http://www.oldielyrics.com/lyrics/hone\\_con/stick\\_up.html](http://www.oldielyrics.com/lyrics/hone_con/stick_up.html), archived at <http://perma.cc/8AD9-293Z> (“I’ll set a tender trap, he’ll be unaware; I’ll wear a smile down the aisle; ‘Cause he’s the father of my child.”); THE SPECIALS, STUPID MARRIAGE, available at <http://songmeanings.com/songs/view/115299>, archived at <http://perma.cc/H3V7-48C7> (2 Tone Records 1979) (“He wanted to be something but she knows he never will; She’s got him where she wanted and forgot to take her pill; And he thinks that she’ll be happy when she’s hanging out the nappies; If that’s a happy marriage I’d prefer to be unhappy”); 2PAC, DO FOR LOVE (Jive Records 1997), available at <http://www.azlyrics.com/lyrics/2pac/doforlove.html>, archived at <http://perma.cc/AQ5Y-SGB9> (“Just when I thought I broke away and I’m feeling happy; You try to trap me; You say you’re pregnant and guess who’s the daddy?”). But see Kathryn Robinson, *From “Broken” Condoms to Pill Tampering: The Realities of Reproductive Coercion*, NAT’L DOMESTIC VIOLENCE HOTLINE BLOG (July 18, 2013), <http://www.thehotline.org/2013>



to that dominant cultural assumption. Second, and perhaps more importantly, the phenomenon of pregnancy coercion and the resulting harms are unique to women. Although men can be—and are—misled about their partner’s use of or need for birth control and that deception can lead to their partners’ pregnancy,<sup>94</sup> there is a critical distinction between a woman exposing herself to the physical, emotional, and financial consequences of pregnancy and another person using deceptive, manipulative, or physically harmful methods to expose her to the same.<sup>95</sup> Accordingly, although both genders may engage in deception around contraception use with the goal of inducing a pregnancy, the resulting impact on physical health, reproductive autonomy, safety and the likelihood that such deception occurs within the context of a broader abusive relationship compels identifying pregnancy coercion as a distinctly female experience.<sup>96</sup>

## II. DECONSTRUCTING THE HARMS OF COERCED PREGNANCIES

Almost half of all pregnancies in the United States are unintended.<sup>97</sup> Although it is not possible to know how many pregnancies are unintended due to acts of coercion by intimate partners and how many are unintended for other reasons (for example birth control failure or consensual birth control omission), data suggest a significant correlation between a woman’s lack of control over her reproductive

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/07/from-broken-condoms-to-pill-tampering-the-realities-of-reproductive-coercion/, archived at <http://perma.cc/ASD8-RRDF> (following Carlos and Gaby, a couple on the show *Desperate Housewives*, who “can’t agree on whether or not they should have a baby. Carlos, anxious to start a family, replaces Gaby’s birth control with sugar pills, which leads to her getting pregnant. Five seasons (and some children) later, Carlos has again tricked Gabby, and confesses that he didn’t actually have a vasectomy as he’d told her he had.”).

94. A 2010 study by the Centers for Disease Control of 23,000 men and women eighteen or older, found that more men than women were coerced into pregnancy. Specifically, the CDC’s survey found that 10.4% of men surveyed, as compared to 8.6% of women, reported ever having an intimate partner who tried to get them pregnant when they did not want to, or refused to use a condom. BLACK ET AL., *supra* note 23, at 1, 48. *But cf.* Miller et al., *supra* note 54, at 319 (finding that of women surveyed, 15% reported having a male partner who sabotaged birth control).

95. *See infra* Part II.

96. This is not dissimilar from studies that demonstrate that rates of violence within intimate relationships may be statistically even. Sociologists Michael Johnson, Ellen Pence, and others, however, have identified that not all violence is the same and have categorized the violence based on the tactics used. *See* GOODMARK, *supra* note 76, at 33–36.

97. *See* Lawrence B. Finer & Mia R. Zolna, *Unintended Pregnancy in the United States: Incidence and Disparities*, 2006, 84 *CONTRACEPTION* 478, 480 (2011); Adam Thomas & Emily Monea, *The High Cost of Unintended Pregnancy* at 2, *CTR. ON CHILD. & FAM. AT BROOKINGS* (July 2011), available at [http://www.brookings.edu/~media/research/files/papers/2011/7/unintended%20pregnancy%20thomas%20monea/07\\_unintended\\_pregnancy\\_thomas\\_monea.pdf](http://www.brookings.edu/~media/research/files/papers/2011/7/unintended%20pregnancy%20thomas%20monea/07_unintended_pregnancy_thomas_monea.pdf), archived at <http://perma.cc/U8Z3-M3EV>.

choices and unintended pregnancy.<sup>98</sup> In Dr. Elizabeth Miller’s study, for example, the combined effect of intimate partner violence and reproductive coercion doubled the likelihood that a woman would experience an unintended pregnancy.<sup>99</sup> Beyond the physical side effects of pregnancy, routinely identified in our existing cultural narrative as potentially difficult if not outright injurious to women,<sup>100</sup> pregnancy—intended or otherwise—can trigger myriad other harms. When the acts of another cause an unintended pregnancy, the pregnancy *itself* can become both an injury and the cause of other harms.<sup>101</sup> This section explores those direct and causal harms of pregnancy, beginning with the correlation between pregnancy and domestic violence.

#### A. *Pregnancy and Intimate Partner Abuse*<sup>102</sup>

Women who experience abuse in their relationships routinely report that such abuse begins or intensifies during pregnancy or immediately following the birth of a child.<sup>103</sup> Nearly one-third of women who experience domestic violence report that the first abusive incident occurred during pregnancy.<sup>104</sup> Pregnant women are more likely to be abused in their intimate relationships than women who are not pregnant,<sup>105</sup> and pregnant women experience abuse more frequently

98. See Miller et al., *supra* note 54, at 316.

99. *Id.* at 319; *1 in 4 Callers*, *supra* note 51 (“40% of abused women reported that their pregnancy was unintended compared to 8% of non-abused women.”).

100. See Bridges, *supra* note 11, at 463–64; see also Shari Motro, *The Price of Pleasure*, 104 NW. U. L. REV. 917, 935 (2010).

101. See Bridges, *supra* note 11, at 472–73.

102. Within this section, I use both the phrases “domestic violence” and “intimate partner abuse.” When referencing physical violence within a relationship, I use the phrase “violence” or “domestic violence.” When describing more expansive forms of abuse within relationships, I use the phrase “intimate partner abuse.” I make this distinction, as noted by Professor Leigh Goodmark, “to capture the broad range of behaviors—beyond physical violence” that limit the autonomy of women “subjected to abuse in their relationships.” Leigh Goodmark, *Transgender People, Intimate Partner Abuse, and the Legal System*, 48 HARV. C.R.-C.L. L. REV. 51, 53 n.16 (2013).

103. See CATHARINE A. MACKINNON, *SEX EQUALITY* 395 (Foundation Press 2d ed. 2007); Douglas A. Brownridge et al., *Pregnancy and Intimate Partner Violence: Risk Factors, Severity, and Health Effects*, 17 VIOLENCE AGAINST WOMEN 858, 864 (2011); Tuerkheimer, *supra* note 88, at 667.

104. NEW JERSEY CHILD ABUSE & NEGLECT PREVENTION PLAN: A ROADMAP TO CHILD AND FAMILY WELL-BEING, DEPT. OF CHILD. AND FAM. 23 (Jan. 2010), available at <http://www.state.nj.us/dcf/documents/about/commissions/njtfcan/PreventionPlan.pdf>, archived at <http://perma.cc/4EYX-JGB4> (quoting a survey by the National Domestic Violence Hotline and Family Violence Prevention Fund (2011), available at <http://www.thehotline.org/2011/02/1-in-4-callers-to-the-national-domestic-violence-hotline-report-birth-control-sabotage-and-pregnancy-coercion/>, archived at <http://perma.cc/V46P-EJ6B>).

105. See Julie A. Gazmararian et al., *Prevalence of Violence Against Pregnant Women*, 275 J. AM. MED. ASSOC. 1915, 1918 (1996) (finding that as many as 20.1% of pregnant

and more severely than women who experience abuse before pregnancy but not during it.<sup>106</sup> Violence during pregnancy is particularly prevalent when the pregnancy is unintended.<sup>107</sup> Women who experience unintended pregnancy report rates of abuse three to four times higher than women who intentionally become pregnant.<sup>108</sup> Women marginalized due to cultural stereotypes about age, race, or class<sup>109</sup> are at the highest risk for unintended pregnancy. Nearly half of African American and Latina women and almost 40% of low-income women have had at least one unintended birth.<sup>110</sup> As compared to their higher-income counterparts, poor women are four times as likely to have an unintended pregnancy and five times as likely to have an unintended birth.<sup>111</sup> Of all females of childbearing age, however, adolescent girls are at highest risk for unintended pregnancy. Although rates of teen pregnancy have been steadily declining over the

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women experience violence during pregnancy); Mary M. Goodwin et al., *Pregnancy Intend- edness and Physical Abuse Around the Time of Pregnancy: Findings from the Pregnancy Risk Assessment Monitoring System, 1996–1997*, 4 MATERNAL & CHILD HEALTH J., 85, 85–86, 88, 91–92 (2000) (stating that the percentage of women who are physically abused may be higher in pregnant women than the general female population). *But cf.* Brownridge et al., *supra* note 103, at 871, 976 (stating that pregnancy may be a protective factor for some women who experience intimate violence).

106. See Judith McFarlane et al., *Abuse During Pregnancy and Femicide: Urgent Implications for Women's Health*, 100 OBSTETRICS & GYNECOLOGY 27, 28 (2002).

107. See Moore et al., *supra* note 31, at 1737.

108. CHAMBERLAIN & LEVENSON, *supra* note 22, at 11; Moore et al., *supra* note 31, at 1737. The prevalence of abuse for women with intended pregnancies is around 5%; for women with mistimed pregnancies, that rate more than doubles to 12.6%; and for women experiencing unwanted pregnancies, the rate of abuse is nearly tripled, with 15% reporting abuse during pregnancy. Goodwin et al., *supra* note 105, at 85, 90–92 (stating, “[o]verall, women with unintended pregnancies had 2.5 times the risk of experiencing physical abuse compared with those whose pregnancies were intended”).

109. See NAOMI CAHN & JUNE CARBONE, RED FAMILIES V. BLUE FAMILIES: LEGAL POLARIZATION AND THE CREATION OF CULTURE 90 (2010).

110. See Susan A. Cohen, *Repeat Abortion, Repeat Unintended Pregnancy, Repeated and Misguided Government Policies*, 10 GUTTMACHER POL'Y REV. 8, 9 (2007); Angela Hooton, *A Broader Vision of the Reproductive Rights Movement: Fusing Mainstream and Latina Feminism*, 13 AM. U. J. GENDER SOC. POL'Y & L. 59, 78 (2005) (noting that approximately 50% of all pregnancies among Latinas are unintended).

111. CAHN & CARBONE, *supra* note 109, at 90.

For those with incomes at 200% of the poverty line, there were 29 unplanned pregnancies per 1,000 women aged 15–44; for those with incomes at 100% of the poverty line, there were 81 unplanned pregnancies per 1,000 women in that age group; and those below the poverty line had 112 unplanned pregnancies per 1,000 women, almost four times the rate of the most affluent. The disparities have increased further in recent years, with poor women's unplanned pregnancy rates increasing by 29% while the rate dropped for the better-off. And the unplanned pregnancies produce even greater disparities in unplanned births: 11 per 1,000 women for the most affluent groups; 35 per 1,000 for those women at 100% of the poverty line; and 58 per 1,000 for those in poverty, more than five times the rate of the wealthiest group.

*Id.*

past twenty years, 615,000 adolescents become pregnant each year,<sup>112</sup> and almost all are unintended.<sup>113</sup> Half of African American and Latina teenagers will be pregnant before the age of 20—a rate almost double the national average.<sup>114</sup> Pregnant or parenting adolescents are twice as likely to experience intimate partner violence than women 18 or older, with teenage mothers experiencing the highest risk of violence after pregnancy.<sup>115</sup> Indeed, adolescent girls experiencing dating violence are four times more likely to become pregnant than are adolescent girls not experiencing dating violence.<sup>116</sup> Adolescent girls in physically abusive relationships experience unintended pregnancies almost one and a half times more frequently than young women in non-abusive relationships, and more than one in ten adolescent mothers report being “physically assaulted by the fathers of their babies.”<sup>117</sup> Indeed, nearly half of all parenting adolescent couples report some couple violence.<sup>118</sup> Young women who experience violence in their relationships experience a repeat pregnancy within twelve to eighteen months of an initial pregnancy—a rate higher than those in non-violent relationships.<sup>119</sup> In short, abused adolescents face a

112. *Fact Sheet: American Teens’ Sexual and Reproductive Health*, GUTTMACHER INSTITUTE 1, 3 (June 2013), available at <http://www.guttmacher.org/pubs/FB-ATSRH.html>, archived at <http://perma.cc/S2YD-2LFN>.

113. CAHN & CARBONE, *supra* note 109, at 8; Finer & Zolna, *supra* note 97, at 480.

114. Kathryn Kost & Stanley Henshaw, *U.S. Teenage Pregnancies, Births and Abortions, 2008: National Trends by Age, Race and Ethnicity*, GUTTMACHER INST. 6 (Feb. 2012), available at <http://www.guttmacher.org/pubs/USTPtrends08.pdf>, archived at <http://perma.cc/T7UK-CAVU>; *Policy Brief: Racial and Ethnic Disparities in Teen Pregnancy*, THE NAT’L CAMPAIGN TO PREVENT TEEN & UNPLANNED PREGNANCY 1 (June 2010), available at [http://www.thenationalcampaign.org/resources/pdf/briefly\\_policybrief\\_raceethnicdisparities.pdf](http://www.thenationalcampaign.org/resources/pdf/briefly_policybrief_raceethnicdisparities.pdf), archived at <http://perma.cc/J3VJ-6BZH>; see Hooton, *supra* note 110, at 78.

115. Bradford D. Gessner & Katherine A. Perham-Hester, *Experience of Violence Among Teenage Mothers in Alaska*, 22 J. ADOLESCENT HEALTH 383, 385–86 (1998). Although some studies suggest adolescents experience violence in their relationships at the same rate as adult women, others find that they experience higher rates of abuse. *Id.* at 383, (noting that adolescent “mothers are more likely to experience violence during and after pregnancy than older women.”); Martin, *supra* note 60, at 461 (“[W]omen of ages sixteen to twenty-four experience the highest rates of violence by current or former intimate partners.”); Miller et al., *supra* note 54, at 316, 318.

116. Jay G. Silverman et al., *Dating Violence Against Adolescent Girls and Associated Substance Abuse, Unhealthy Weight Control, Sexual Risk Behavior, Pregnancy and Suicidality*, 286 J. OF THE AM. MED. ASS’N 572, 577 (2001).

117. Constance M. Wiemann et al., *Pregnant Adolescents: Experiences and Behaviors Associated with Physical Assault by an Intimate Partner*, 4 MATERNAL & CHILD HEALTH J. 93, 96 (2000); Miller et al., *supra* note 54, at 320 (finding that 45.7% of women who experience intimate partner violence have unintended pregnancies, compared to 35.3% of women who have no experience intimate partner violence who have unintended pregnancies).

118. See Bernie Sue Newman & Caroline Campbell, *Intimate Partner Violence Among Pregnant and Parenting Latina Adolescents*, 26 J. INTERPERSONAL VIOLENCE 2635, 2636 (2011).

119. See Mark Jacoby et al., *Rapid Repeat Pregnancy and Experiences of Interpersonal Violence Among Low-Income Adolescents*, 16 AM. J. PREV. MED 318, 319 (1999) (noting that the study considered women between ages of thirteen and twenty-one).

high risk of unintended pregnancies, which are likely to follow—or to increase—intimate partner violence.<sup>120</sup>

Intimate partner abuse during pregnancy can result in significant health-related harms for women and their fetuses.<sup>121</sup> Physical violence during pregnancy is routinely directed towards a woman's womb. Pregnant women abused during pregnancy routinely report being kicked or punched in the abdomen by their partner.<sup>122</sup> A women who experiences violence during pregnancy is also at significant risk of additional harms to both herself and her fetus. Those harms include increased risk of abusing controlled substances and smoking; unhealthy diet; low weight gain; infections; anemia; and low birth weight.<sup>123</sup> Abused pregnant women are also more likely than women who are not abused during pregnancy to suffer psychological consequences, including anxiety and depression, and are more likely to attempt suicide.<sup>124</sup> As summarized by one set of researchers, "abuse during pregnancy is a major threat to the health and survival of pregnant women."<sup>125</sup>

Although research suggests that 4–8% of all pregnant women experience abuse, this number likely grossly underestimates the

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120. Beyond the harms associated with violence itself, adolescent girls abused during pregnancy are more likely to abuse substances than pregnant adolescents who are not experiencing such violence. See Lisa Espinosa & Kathryn Osborne, *Domestic Violence During Pregnancy: Implications for Practice*, 47 J. OF MIDWIFERY & WOMEN'S HEALTH 305, 307 (2002). Pregnant and parenting teens who report partner violence also report experiencing significant social, educational, and psychological harms, including "higher rates of school dropout, higher stress and depression scores, and increased substance use during pregnancy." Angie C. Kennedy & Larry Bennett, *Urban Adolescent Mothers Exposed to Community, Family, and Partner Violence: Is Cumulative Violence Exposure a Barrier to School Performance and Participation?*, 21 J. INTERPERSONAL VIOLENCE 750, 753 (2006) (citations omitted).

121. Janel M. Leone et al., *Effects of Intimate Partner Violence on Pregnancy Trauma and Placental Abruptio*, 19 J. WOMEN'S HEALTH 1501, 1504 (2010) (finding that 3.7% of women who gave birth between January 2000 and March 2002 in a Northeastern city were subjected to intimate partner violence, resulting in higher rates of pregnancy trauma and placental abruptio).

122. See West, *supra* note 11, at 98.

123. See Tuerkheimer, *supra* note 88, at 672–73; see also Moore et al., *supra* note 31, at 1737 (citation omitted) (noting that research supports the conclusion that "intimate partner violence is associated with unwanted pregnancy, women not using their preferred contraceptive method, sexually transmitted infections including HIV/AIDS, miscarriages, repeat abortion, a high number of sexual partners, and poor pregnancy outcomes.").

124. See Sandra L. Martin et al., *Pregnancy-Associated Violent Deaths: The Role of Intimate Partner Violence*, 8 TRAUMA VIOLENCE ABUSE 135, 145 (2007) (citing two studies that found between 30–40% of pregnancy-associated suicide victims had a history of intimate partner violence, and that battered women more likely to attempt suicide than non-battered women); Christie L. Palladino et al., *Homicide and Suicide During the Perinatal Period: Findings From the National Violent Death Reporting System*, 118 OBSTETRICS & GYNECOLOGY 1056, 1060 (2011) (finding 54% of pregnancy-associated suicides occurred by women experiencing problems with current or former intimate partner).

125. McFarlane et al., *supra* note 106, at 28.

number of pregnant women who are actually abused.<sup>126</sup> Women abused during pregnancy are more likely than non-abused women to avoid or delay prenatal care,<sup>127</sup> creating a barrier to accurate data collection and even reliable anecdotal evidence. Indeed, the factor with the greatest impact on timing for a woman to obtain prenatal care is whether a pregnancy is wanted—when a pregnancy is unwanted, the odds of prenatal care are dramatically reduced.<sup>128</sup> Women abused during pregnancy also may not be able to readily access needed health care, or may delay obtaining such care, because of their partner's imposed restrictions, their young age, or their lack of the necessary financial resources or access to such care.<sup>129</sup> Pregnant women experiencing abuse who do obtain prenatal care may be unlikely to report the abuse due to fear that reporting may trigger additional abuse from her partner, or may prompt the medical provider to report.<sup>130</sup> Women may also experience shame or fear of judgment from being abused while pregnant, or simply may not report abuse because of an investment in their relationship or a recognition that they will need to co-parent with the abusive partner, or both.<sup>131</sup> Even women who disclose abuse during pregnancy may not specifically identify reproductive coercion as part of their abusive experience because the coercion may be secretive,<sup>132</sup> because it is not readily named in our culture as a form of abuse, or to name it as abuse may feel inaccurate or embarrassing. Finally, because reproductive coercion often occurs within a broader context of abuse, a woman may feel that other forms of abuse are more dangerous or relevant to disclose than acts that infringe upon her reproductive autonomy.<sup>133</sup>

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126. See Tuerkheimer, *supra* note 88, at 670.

127. See Espinosa & Osborne, *supra* note 120, at 308 (many women experiencing intimate partner abuse who do seek prenatal care do not do so until the third trimester). *But see* Deanna L. Pagnini & Nancy E. Reichman, *Psychosocial Factors and the Timing of Prenatal Care Among Women in New Jersey's HealthStart Program*, 32 FAM. PLAN. PERSP. 56, 62 (2000).

128. See Pagnini & Reichman, *supra* note 127, at 60.

129. See Moore et al., *supra* note 31, at 1737; *Committee Opinion Number 554*, *supra* note 49, at 2.

130. See ELAINE J. ALPERT, MASS. MEDICAL SOCIETY COMMITTEE ON VIOLENCE INTERVENTION AND PREVENTION: 8 (2004), available at <http://www.massmed.org/partnerviolence/>, archived at <http://perma.cc/SYA7-U2CQ>.

131. See Julia Goldscheid, *Gender Violence and Work: Reckoning With the Boundaries of Sex Discrimination Law*, 18 COLUM. J. GENDER & L. 61, 76 (2008) (identifying similar reasons for not reporting abuse in an employment context); Jane K. Stoeber, *Freedom from Violence: Using the Stages of Change Model to Realize the Promise of Civil Protection Orders*, 72 OHIO ST. L.J. 303, 350 (identifying similar reasons for women delaying seeking redress through the court system for domestic violence).

132. See Moore et al., *supra* note 31, at 1742.

133. *Intimate Partner Violence During Pregnancy: A Guide for Clinicians*, CTR. FOR DISEASE CONTROL, <http://www.cdc.gov/reproductivehealth/violence/IntimatePartnerViolence/sld001.htm#2>, archived at <http://perma.cc/MF8M-EDJ5> (last visited Jan. 28, 2015).

### B. *Pregnancy and Homicide*

There is perhaps no data more sobering, or more supportive of the conclusion that a coerced pregnancy imposed on a woman can be harmful to her, than the data that murder by an intimate partner is a leading cause of death among pregnant and post-partum women.<sup>134</sup> More pregnant women die from murder by an intimate partner than from pregnancy-related bleeding, improper development of the placenta, or preeclampsia.<sup>135</sup> In one study of women who died while pregnant, homicide accounted for 20% of deaths, while embolisms—identified in multiple medical publications as a “leading cause of maternal mortality in the developed world”—comprised only 9% of deaths.<sup>136</sup> Most women murdered during pregnancy die during their first trimester<sup>137</sup> and most experience violent deaths.<sup>138</sup>

Predictably, homicide during pregnancy often follows prenatal physical abuse: Women abused during pregnancy are three times more likely to be murdered than are women who were abused before becoming pregnant.<sup>139</sup> More than a quarter of all women who were pregnant when an attempted femicide occurred had been abused during pregnancy.<sup>140</sup> When a woman is pregnant, in an abusive relationship, and African American, she faces the highest risk of being killed by an intimate partner;<sup>141</sup> African American women are up to seven times as likely as white women to be murdered while pregnant or in the year following childbirth.<sup>142</sup> When between the ages of

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134. See McFarlane et al., *supra* note 106, at 33 (noting that studies conducted in New York City, Chicago, Maryland and Virginia all found that homicide was the leading cause of maternal mortality); Palladino et al., *supra* note 124, at 1061 (2011) (citing one study where 38% of postpartum female homicide victims were killed by a boyfriend, husband, or ex-husband); Jeani Chang et al., *Homicide: A Leading Cause of Injury Deaths Among Pregnant and Postpartum Women in the United States, 1991–1999*, 95 AM. J. PUB. HEALTH 471, 472 (2005) (noting that of all pregnancy-associated injury deaths, homicide ranked second, behind only deaths of pregnant women caused by motor vehicle accidents).

135. See Palladino et al., *supra* note 124, at 1059.

136. See McFarlane et al., *supra* note 106, at 28; Michael D. Benson, *Pulmonary Embolism in Pregnancy: Consensus and Controversies*, 64 MINERVA GINECOLOGICA 387, 387 (2012); Ghada Bourjeily et al., *Pulmonary Embolism in Pregnancy*, 375 LANCET 500, (2010).

137. See Diana Cheng & Isabelle L. Horon, *Intimate-Partner Homicide Among Pregnant and Postpartum Women*, 115 OBSTETRICS & GYNECOLOGY 1181, 1185 (2010).

138. See *id.* at 1182 (most women who die during pregnancy are shot, stabbed, or strangled).

139. See Chang et al., *supra* note 134, at 474.

140. See McFarlane et al., *supra* note 106, at 27.

141. Homicide rates are highest for pregnant all women in their early twenties and for women who are unmarried and who lack a high school education. See McFarlane et al., *supra* note 106, at 27; Palladino et al., *supra* note 124, at 1061; see also Chang et al., *supra* note 134, at 472.

142. See McFarlane et al., *supra* note 106, at 28; Chang et al., *supra* note 134, at 472.

25–29, the homicide rate for pregnant black women increases to more than ten times the rate of white women.<sup>143</sup>

Despite these data, homicide during pregnancy remains a staggeringly hidden issue. The silence around the homicide rates for women, and particularly women of color, may be attributable in part to our culture's judgment of women that fall within certain categories of women—"the 'single' mother, the 'young' mother', [and] the 'Black' mother."<sup>144</sup> Our culture blames these categories of women for pregnancy and any accompanying harms more harshly than it does the "paradigmatic" (and therefore more "sympathetic") expectant mother.<sup>145</sup> Lacey Peterson—white, married, middle class and murdered while pregnant—may be etched in our sociocultural memory due to the heavy media coverage and national outrage over her murder.<sup>146</sup> Dawna Denise Wright and Shantay Wheeler, on the other hand, were black, young, and also murdered while pregnant, and received limited media coverage and no collective cultural anger.<sup>147</sup>

The motivations of men who coerce pregnancy and those who kill their partner once she becomes pregnant are unclear and, in fact, appear to be incongruous. Why would a man coerce his partner into pregnancy and then abuse or kill her once she becomes pregnant? Killing a pregnant partner appears to defeat the offered explanation that men coerce pregnancy to leave a legacy, or to bind the coercer and the coerced together through a child. Though it is possible that men who coerce pregnancy and men who kill or abuse their pregnant partners are two distinct groups of men, it is more likely that these behaviors fall within the often contradictory acts that exist in relationships dominated by abuse and control. Within such relationships, inconsistent behaviors often are used to limit a woman's freedom, autonomy, and movement.<sup>148</sup> Pregnancy or abuse can result in limiting all three, indicating that the apparent inconsistency between coercing pregnancy and then abusing or killing the pregnant partner may not be inconsistent at all. Coercing a pregnancy and the corresponding violence may simply be means to the same end—both can significantly limit a woman's freedom to leave a relationship out of fear or need (or both), or result in her death.

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143. Chang et al., *supra* note 134, at 472.

144. Melissa Breger, *The (In)visibility of Motherhood in Family Court Proceedings*, 36 N.Y.U. REV. L. & SOC. CHANGE 555, 577 (2012).

145. *Id.* at 586.

146. See Lindsay Goldwert, *Murdered Pregnant Women: The Racial Divide*, CBSNEWS, <http://www.cbsnews.com/news/murdered-pregnant-women-the-racial-divide>, archived at <http://perma.cc/F77B-Z3EG> (last visited Jan. 28, 2015).

147. *Id.*

148. Trawick, *supra* note 16, at 724.



Another possible explanation for these seemingly contradictory behaviors is that the coercing partner has an unanticipated reaction to his partner's pregnancy: once a woman becomes pregnant, the coercer may experience jealousy over the fetus or identify the fetus as a "direct threat and rival for their partner's attention,"<sup>149</sup> or may identify an unanticipated loss of the "primary position"<sup>150</sup>—or the perceived loss of that position—within a woman's life.<sup>151</sup> Relatedly, pregnancy can also result in a period of drastic change in a relationship, where a woman's attentions may be elsewhere; where there might be increased stress (financial or otherwise) related to the pregnancy; disbelief (or an excuse of disbelief) over paternity;<sup>152</sup> or because of a pregnant woman's decreased physical or emotional availability during pregnancy.<sup>153</sup> To regain a position of importance or reassert control within the relationship, a partner may assert dominance through violence, including murder.<sup>154</sup>

### C. *Autonomy, Self-Identity, and Dignity*

#### 1. *Pregnancy and Sense of Self*

A woman's control over her reproduction can be central to her sense of autonomy and self-identity.<sup>155</sup> Many women anticipate the experience of pregnancy for most of their lives, with an assumption that they will have control over when and how they will experience it. When pregnancy occurs under conditions imposed rather than chosen, a woman loses the "authority to construct pregnancy and motherhood for" herself,<sup>156</sup> she is simultaneously separated her from, and reduced

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149. Brownridge et al., *supra* note 103, at 874.

150. See Kim Curtis, *Murder Not Uncommon Cause of Death for Pregnant Women*, NapaValleyRegister.com (Apr. 24, 2003), <http://www.napavalleyregister.com/news/murder-not-uncommon-cause-of-death-for-pregnant-women>, archived at <http://perma.cc/4NGQ-B6VC>.

151. *Id.*

152. See Brownridge et al., *supra* note 103, at 874.

153. Moore et al., *supra* note 31, at 1737; see also Julie A. Gazmararian et al., *Violence and Reproductive Health: Current Knowledge and Future Research Directions*, 4 *MATERNAL & CHILD HEALTH J.* 75, 80 (2000) ("[W]omen whose pregnancy was unintended had two to four times the risk of experiencing physical violence as did women whose pregnancy was planned.").

154. See Moore et al., *supra* note 31, at 1337.

155. See Julia E. Hanigsberg, *Homologizing Pregnancy and Motherhood: A Consideration of Abortion*, 94 *MICH. L. REV.* 371, 372–74 (1995); see also Margaret E. Johnson, *Balancing Liberty, Dignity, and Safety: The Impact of Domestic Violence Lethality Screening*, 32 *CARDOZO L. REV.* 519, 543–44 (2010) [hereinafter Johnson, *Balancing Liberty*].

156. Lisa C. Ikemoto, *The Code of the Perfect Pregnancy: At the Intersection of the Ideology of Motherhood, the Practice of Defaulting to Science, and the Interventionist Mindset of the Law*, 53 *OHIO ST. L.J.* 1205, 1208 (1992); Moore et al., *supra* note 31, at 1740.

to, her reproductive capabilities.<sup>157</sup> As Professor Julia Hanigsberg has written, “taking away women’s ability to control their decision not to become mothers can be severely damaging to their very sense of self, for this denial of decisionmaking divides women from their wombs and uses their wombs for purpose unrelated to women’s own aspirations.”<sup>158</sup> Within the context of rape, Professor Khiara Bridges considers what constitutes the “injury” that allows for aggravating factor findings in criminal rape cases when a pregnancy results.<sup>159</sup> Professor Bridges explores numerous possible “injuries,” including: the childbirth or abortion that may result from the pregnancy, the physical changes that accompany pregnancy, and the fetus *itself* as the injury of pregnancy.<sup>160</sup> For various reasons, Professor Bridges rejects each of these as the injury women sustain when becoming pregnant through rape. Instead, she identifies what she calls the “abstracted notion of pregnancy as the injury.”<sup>161</sup> She explains:

[t]he injury is the woman’s knowledge that she is pregnant, even when the pregnancy has not produced any substantial, or even noticeable, physical effects. The injury is the alteration of a rape victim’s identity from ‘woman’ to ‘pregnant woman.’ The injury is the fact that the woman thinks of herself differently.<sup>162</sup>

Although for many women—most, perhaps—an altered self-identity from “woman” to “pregnant woman” is a positive and welcomed change, for a woman who becomes pregnant under conditions not defined or anticipated by her, the pregnancy can result in a deep disorientation, bringing disruption to her self-identity.<sup>163</sup>

## 2. Regulation of Pregnant Women

Pregnancy exposes women to increased State involvement in ways dissimilar from any other medical condition. Pregnant women routinely experience direct and indirect restrictions on medical decisions when those decisions are deemed harmful to their fetuses.<sup>164</sup> While pregnant, a woman often loses her ability to direct “control of

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157. EILEEN L. McDONAGH, *BREAKING THE ABORTION DEADLOCK: FROM CHOICE TO CONSENT* 103 (1996); Hanigsberg, *supra* note 155, at 372, 382–83.

158. Hanigsberg, *supra* note 155, at 372.

159. Bridges, *supra* note 11, at 485.

160. *See id.* at 487. This argument was first advanced by Eileen McDonagh in her book. *See* McDONAGH, *supra* note 157, at 103.

161. Bridges, *supra* note 11, at 488.

162. *Id.*

163. *See* Motro, *supra* note 100, at 927.

164. *Id.*

[her own] body, the caretaking of [herself] and the freedom of movement.”<sup>165</sup> The rise of fetal personhood statutes has served as an impetus for many of these regulations.<sup>166</sup> Decisions to refuse therapies that may place the mother’s safety or health at risk, or that are contrary to her assessment of risk or value system, are routinely superseded by medical and court intervention when those decisions are deemed harmful to her unborn fetus.<sup>167</sup> This increased regulation of the behaviors and choices of pregnant women is often in direct conflict with her dignity and her ability to exercise reproductive or personal autonomy.<sup>168</sup>

The most notable ways that pregnant women have been exposed to State regulation over the past two decades has been through increased policies regarding mandatory drug testing.<sup>169</sup> Drug testing has become routinized across the country for women who are “determined to have potentially exposed their fetuses to controlled substances. . . .”<sup>170</sup> Although the stated regulatory intent of mandatory drug testing laws is a medical one—to protect the life of the fetus,<sup>171</sup> women with addictions often are exposed to criminal and civil liability for their drug use during pregnancy.<sup>172</sup> Pregnant addicts who seek prenatal care or medical assistance with labor are likely to be tested and, if positive, exposed to criminal prosecution, involvement with the child welfare system, and potentially incarceration.<sup>173</sup> Pregnant African American women face significantly higher risk of mandatory testing, and higher exposure to prosecution and involvement

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165. Johnson, *Balancing Liberty*, *supra* note 155, at 543 (citing Elizabeth M. Schneider, *The Violence of Privacy*, 23 CONN. L. REV. 973, 974–75 (1991)).

166. See, e.g., A.J. Stone, *Constitution: Tort Law as an End-Run Around Abortion Rights After Planned Parenthood v. Casey*, 8 AM. U. J. GENDER, SOCIAL POL’Y & L. 471, 503–04 (2000).

167. See Wendy Bach, *The Hyperregulation of the Poor*, 25 YALE J. LAW & FEMINISM (forthcoming); Hanigsberg, *supra* note 155, at 373; Ikemoto, *supra* note 156, at 1236–48 (describing pregnant women who have experienced forced Cesareans, forced hospital deliveries, forced life support and forced prenatal treatment by subordinating the interests of the woman to the interests of the fetus); Dorothy Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality and the Right of Privacy*, 104 HARV. L. REV. 1419, 1430–31 (1991). A stark example is a woman whose wishes for no life-saving measures when in a coma were ignored in order to preserve her fetus. See Ikemoto, *supra* note 156, at 1208; see also Florida Hospital Says It Will Force Pregnant Woman to Have Cesarean Surgery; Federal Court Won’t Issue Emergency Order to Prevent Forced Surgery, NAT. ADVOCATES FOR PREGNANT WOMEN (July 25, 2014), [http://advocatesforpregnantwomen.org/blog/2014/07/press\\_release\\_florida\\_hospital.php](http://advocatesforpregnantwomen.org/blog/2014/07/press_release_florida_hospital.php), archived at <http://perma.cc/N79H-V7QG>.

168. Johnson, *Balancing Liberty*, *supra* note 155, at 543.

169. Bach, *supra* note 166 (manuscript at 28–29).

170. *Id.* (manuscript at 28).

171. See Reva Siegel, *Reasoning from the Body: A Historical Perspective on Abortion Regulation and Questions of Equal Protection*, 44 STAN. L. REV. 261, 343–44 (1992).

172. *Id.* at 329–30.

173. See Roberts, *supra* note 166, at 1430–31.

with the child welfare system based on the results of that testing than do other races.<sup>174</sup> Mandatory drug testing and other similar regulations are rooted in our culture's desire to manage the behavior of pregnant women, particularly women of color who "society views as undeserving to be mothers and to discourage them from having children."<sup>175</sup> One result of such regulations is that drug-addicted women avoid medical care altogether, exposing themselves and their fetuses to more significant, and potentially more harmful, health-related risks.<sup>176</sup>

Justification for regulating the behavior of pregnant women is based in large part on the premise that "a pregnant woman is a mother who should think and act first and foremost to protect the health of the fetus she carries. . . ." <sup>177</sup> As explored in Part III, *infra*, there is a strong assumption that behavior during pregnancy is indicative of future parenting behavior. Behaviors that are assumed to pose a risk of harm to a fetus are determined to be equivalent to a risk of harm to a born child.<sup>178</sup> These ideas reinforce the inextricable link in our culture and our laws between pregnancy and motherhood,<sup>179</sup> as "even women who are merely pregnant are subject to regulatory frameworks inspired by viewing pregnant women as already being mothers."<sup>180</sup>

#### *D. Emotional and Financial Harm*

Unintended pregnancies broadly can force women into choosing abortions they would rather not have, or cannot afford to have;<sup>181</sup> to experience a miscarriage, which can be painful and lead to future reproductive complications;<sup>182</sup> to give up a born child for adoption;<sup>183</sup>

174. See Bach, *supra* note 166, at 38–39.

175. *Ferguson v. City of Charleston*, 186 F.3d 469, 484–86 (4th Cir. 1999) (Blake, J. dissenting in part) (highlighting that African American women made up 90% of all arrests of state hospital policy to arrest and prosecute drug-abusing women); *Ferguson v. City of Charleston*, 532 U.S. 67 (2001) (striking down urine test policy for suspected drug abusing women on Fourth Amendment grounds); Roberts, *supra* note 166, at 1435–36; see also Breger, *supra* note 144, at 557–58.

176. MARSHA ROSENBAUM & KATHERINE IRWIN, DRUGPOLICY.ORG, *Pregnancy, Drugs, and Harm Reduction*, [http://www.drugpolicy.org/docUploads/309\\_318\\_Rosenbaum.pdf](http://www.drugpolicy.org/docUploads/309_318_Rosenbaum.pdf), archived at <http://perma.cc/R5GF-GFXC> (last visited Jan. 28, 2015).

177. Ikemoto, *supra* note 156, at 1235.

178. See Bach, *supra* note 166 (manuscript at 28–29) (noting that although studies support conclusion that cocaine does not harm a fetus, women still are prosecuted for using it during pregnancy).

179. Hanigsberg, *supra* note 155, at 394–95.

180. *Id.* at 374.; see also *Ferguson v. City of Charleston*, 532 U.S. 67, 67 (2001) (finding that involuntary drug testing of pregnant women violates the Fourth Amendment).

181. See Motro, *supra* note 100, at 918–19.

182. See Ingrid H. Lok & Richard Neugebauer, *Psychological Morbidity Following Miscarriage*, 21 BEST PRAC. & RES. CLINICAL OBSTETRICS & GYNECOLOGY 229, 229 (2007).

183. See STARK, COERCIVE CONTROL, *supra* note 24, at 284.

or to keep a child that they cannot financially afford to care for, are not emotionally prepared to care for, or simply do not want.<sup>184</sup> The consequences of any of these options may result in significant emotional harm, including depression and grief.<sup>185</sup> Women experiencing unintended pregnancies suffer higher rates of mental-health disorders than do women experiencing intended pregnancies.<sup>186</sup> The potential for emotional harm is augmented when the unintended pregnancy results from the coercive act of another: Women who experience unintended pregnancy through reproductive coercion may feel degraded, threatened, or humiliated, which may in turn impact their feelings towards the pregnancy, the fetus, and even themselves.<sup>187</sup>

Women experiencing unintended pregnancies also may be forced to face harmful—if not devastating—financial burdens.<sup>188</sup> If she chooses to abort the child, she may need to pay for the abortion, given the severe limitations on state-funded abortions,<sup>189</sup> or pay for RU486, the “abortion pill,” which can cost between \$300 and \$800.<sup>190</sup> If she chooses to keep the pregnancy, she may have significant financial burdens resulting from her prenatal and post-partum care. She also may be limited in her ability to work during pregnancy or immediately post-partum, which may result in extreme financial hardship.<sup>191</sup> This hardship may occur despite protection from laws such as Title VII and the Pregnancy Discrimination Act, which are both substantively and practically limited in their protections.<sup>192</sup> And, of course, if a child ultimately results from the pregnancy, a mother may be exposed to incredible financial burdens not only in terms of direct costs of raising a child, but also by limiting her access to education and significantly reducing her future earning capacity.<sup>193</sup>

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184. *Id.*

185. See Lok & Neugebauer, *supra* note 182, at 229.

186. See Thomas & Monea, *supra* note 97, at 2.

187. See discussion *infra* Part III.

188. See *Geduldig v. Aiello*, 417 U.S. 484, 500–01 (1974), (Brennan, J., dissenting) (footnote omitted) (“[T]he economic effects caused by pregnancy-related disabilities are functionally indistinguishable from the effects caused by any other disability: wages are lost due to a physical inability to work, and medical expenses are incurred for the delivery of the child and for postpartum care.”).

189. Heather D. Boonstra, *The Heart of the Matter: Public Funding of Abortion for Poor Women in the United States*, 10 GUTTMACHER POL’Y REV. 12, 13 (2007), <http://www.guttmacher.org/pubs/gpr/10/1/gpr100112.html>, archived at <http://perma.cc/JD4E-4PZZ>.

190. *The Abortion Pill*, PLANNED PARENTHOOD, <http://plannedparenthood.org/health-info/abortion/the-abortion-pill>, archived at <http://perma.cc/X3Z-KJXX> (last visited Jan. 28, 2015).

191. See Motro, *supra* note 100, at 928.

192. *Id.*

193. See STARK, COERCIVE CONTROL, *supra* note 24, at 279. Beyond the financial burdens individual pregnant women may experience, unintended pregnancies impose considerable costs on taxpayers. In 2010, Americans spent \$12 billion dollars for publicly financed medical care for women who experienced unintended pregnancies and on infants who were

### III. THE INVISIBILITY OF REPRODUCTIVE COERCION: CULTURAL AND LEGAL NARRATIVES OF PREGNANCY

Despite its increasingly understood prevalence, reproductive coercion remains a relatively invisible form of intimate partner abuse.<sup>194</sup> This invisibility is due in large part to existing narratives of pregnancy that connect it to nature, sex, motherhood, and even abortion.<sup>195</sup> This section explores how these narratives hinder our ability and desire to isolate pregnancy itself as something that may be harmful, particularly when experienced through deceitful, manipulative, or threatening means.

#### A. *Pregnancy is Natural*

Most physical consequences of pregnancy fall within a vast space within our culture of “normal,” even when those consequences result in pain or discomfort, or place limitations on a woman’s movement or activity.<sup>196</sup> This normalization of pregnancy’s side effects stem from its identification as a natural, biological occurrence. “To understand a healthy pregnancy without any medical complications” as something harmful to women, “is to challenge positive constructions of pregnancy as a necessarily ‘good’ thing that happens to women; it is to understand a pregnancy as being an injury.”<sup>197</sup> To be sure, the vast majority of women who become pregnant survive and manage well,<sup>198</sup> with many experiencing multiple pregnancies in their lifetimes. However,

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conceived unintentionally. See Thomas & Monea, *supra* note 97, at 2. This amount includes public spending for abortions, miscarriages, births and infant medical care. On average, a publicly financed, unintended pregnancy costs taxpayers nearly \$10,000. *Id.* at 3.

194. See Trawick, *supra* note 16, at 722 (arguing that birth control sabotage should be categorized as a form of domestic violence); see also Erin N. Marcus, *Screening For Abuse May Be Key To Ending It*, NY TIMES (May 20, 2008), [http://www.nytimes.com/2008/05/20/health/20abus.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2008/05/20/health/20abus.html?pagewanted=all&_r=0), archived at <http://perma.cc/U5RU-X7B2> (arguing that despite recommendations by the American Medical Association and other professional, medical organizations, “screening for domestic abuse in seemingly healthy women is nowhere near as widespread among doctors as testing for breast cancer or high cholesterol”); Barbara Gerbert et al., *Simplifying Physicians’ Response to Domestic Violence*, 172 W. J. OF MED. 329, 329 (2000) (noting physicians do not routinely screen for domestic violence); Virginia A. Moyer, *Screening for Intimate Partner Violence and Abuse of Elderly and Vulnerable Adults: U.S. Preventive Services Task Force Recommendation Statement*, 158 ANNALS OF INTERNAL MED. 478, 479 (2013) (identifying a benefit to physician screening women of reproductive age for intimate partner abuse).

195. Hanigsberg, *supra* note 155, at 394–95.

196. See Bridges, *supra* note 11, at 490–97 (discussing other aspects of our laws where pregnancy is identified as an injury).

197. *Id.* at 509.

198. Despite the overwhelming survival rate, thousands of women in developing countries still die each year from preventable causes related to pregnancy and childbirth. See *Maternal Mortality Fact Sheet No. 348*, WORLD HEALTH ORG. (2012), <http://www.who.int/mediacentre/factsheets/fs348/en/>, archived at <http://perma.cc/7S63-K7RF>.

despite its biological normalcy, even the most wanted of pregnancies impose significant physical strain on a woman's body.<sup>199</sup> Pregnancy's side effects are vast, and range from nausea and vomiting to extreme fatigue, "back pain, labored breathing, or water retention."<sup>200</sup> Six out of ten women who experience pregnancy and childbirth need treatment for a medical complication, and three out of ten need treatment for major pregnancy related medical complications.<sup>201</sup> Women who become pregnant face a risk of gestational diabetes, gestational high blood pressure, and preeclampsia, a condition that can affect a woman's kidney, liver, lungs, and brain, and, when untreated, can result in death.<sup>202</sup> Labor and delivery impose "extraordinary physical demands" on a woman, ranging from what can be multi-hour vaginal deliveries to Caesarians, highly invasive surgeries that account for one-third of births and are associated with serious injury and death.<sup>203</sup> Pregnancy significantly increases a woman's uterine size, her pulse rate, and her body weight;<sup>204</sup> and it can result in preterm birth and miscarriage, both of which can have negative effects on a woman's physical and emotional health, even if the pregnancy was unplanned or unwanted.<sup>205</sup>

There are limited contexts within our sociolegal system where pregnancy itself is identified as an injury sustained by a woman for which a remedy should be available. U.S. abortion policies provide one such context. Although abortion remains a fiercely polarizing topic in the United States, broad consensus exists among political and social ideologies that when a pregnancy threatens the life of a mother, abortion should be an available medical option.<sup>206</sup> Comparatively,

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199. *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 852 (1992); *see also* Motro, *supra* note 100, at 923–26 (identifying multiple side effects of pregnancy, including "diabetes, urinary or fecal incontinence, and uterine, bladder, or kidney infections").

200. Susan R. Estrich & Kathleen M. Sullivan, *Abortion Politics: Writing for an Audience of One*, 138 U. PA. L. REV. 119, 126 (1989); *cf.* *Gen. Elec. Co. v. Gilbert*, 97 U.S. 125, 142 (1976) (highlighting a policy that distinguished pregnancy from other forms of illness or injury because it is a "temporary disability unique to the female sex and more or less to be anticipated during the working life of most women employees"); MCDONAGH, *supra* note 157, at 28 (explaining the Court's holding that the burdens imposed by pregnancy are generally within the range of being "normal as long as they do not threaten a woman's health or life").

201. Estrich & Sullivan, *supra* note 200, at 126.

202. *See* THE PREECLAMPSIA FOUNDATION, *Facts*, PREECLAMPSIA.ORG (Dec. 20, 2013), <http://www.preeclampsia.org/health-information/faq#prezero>, archived at <http://perma.cc/WB6Q-2UYC>.

203. Estrich & Sullivan, *supra* note 200, at 126.

204. *Id.* at 126 (explaining that a woman's uterine size increases "500–1000 times, her pulse rate by ten to fifteen beats a minute, and her body weight by 25 pounds or more.").

205. *See* Lok & Neugebauer, *supra* note 182, at 239.

206. Juliet Eilperin & Scott Clement, *If Gay Marriage and Pot Are Now Ok, Why Isn't Abortion?*, WASH. POST (Apr. 12, 2013), <http://www.washingtonpost.com/blogs/the-fix/wp>

when a woman is raped but her life is not endangered, support for abortion decreases, with support at its lowest when a woman seeks an abortion to avoid marrying the father.<sup>207</sup> Our laws mirror these cultural views. The Supreme Court has repeatedly found that no matter how dramatically depicted, or what physical consequences result, all pregnancies are “normal as long as they do not threaten a woman’s health or life.”<sup>208</sup> Federal Medicaid funding to terminate a pregnancy is available only in cases where the “life of the mother would be endangered if the fetus were carried to term” or if the pregnancy occurred through rape or incest.<sup>209</sup> Because the vast majority of pregnancies do not occur through rape, and because most women’s pregnancies are not life-threatening,<sup>210</sup> these restrictions support the presumption that while perhaps uncomfortable, complicated, or painful, women should endure pregnancy’s physical consequences—regardless of whether that pregnancy resulted within the context of a violent relationship, or through coercive techniques—unless those consequences are extreme.

Beyond the context of federally funded abortions, there exist other limited contexts where despite its biological normalcy, pregnancy itself may arguably be identified itself as harmful to a woman. Within the context of rape, pregnancy constitutes “serious bodily injury” for purposes of most jurisdictions’ rape laws,<sup>211</sup> subjecting a rapist to an aggravated crime and an increased prison sentence (as compared to a victim who does not become pregnant).<sup>212</sup> In identifying pregnancy as a distinct and separate injury from the rape itself, legislatures have recognized that “pregnancy and the resulting consequences are not injuries necessarily incidental to an act of rape

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/2013/04/12/if-gay-marriage-and-pot-are-now-ok-why-not-abortion/, archived at <http://perma.cc/NBV-2CV8>.

207. *Id.* Of course, the question regarding whether the father was abusive to her, or whether she wanted to avoid marrying him because the pregnancy was coerced, was not part of that survey.

208. Prior to the passage of the Pregnancy Discrimination Act in 1978, the U.S. Supreme Court in *Geduldig v. Aiello* held that California’s decision to exclude from its unemployment compensation disability program disabilities resulting from “normal” pregnancies was not “invidious discrimination violative of the Equal Protection Clause.” 417 U.S. 484, 485 (1974). “Normal” pregnancies are identified as being “an objectively identifiable physical condition with unique characteristics.” *Newport News Shipbuilding and Dry Dock Co. v. E.E.O.C.*, 462 U.S. 669, 677, n. 12 (1983).

209. Consolidated Appropriations Act of 2012, Pub. L. No. 112-74, 125 Stat 786 (2011) (“The Hyde Amendment”).

210. *See, e.g.*, Melissa M. Holmes et al., *Rape-Related Pregnancy: Estimates and Descriptive Characteristics From a National Sample of Women*, 175 AM. J. OBSTETRICS & GYNECOLOGY 320, 320 (1996).

211. Bridges, *supra* note 11, at 467–68.

212. *See id.* at 458.



and, consequently, can warrant an increased punishment if caused by a sexual assault.”<sup>213</sup> Although pregnancy is identified as a distinct injury, the intent of the rapist in causing the pregnancy is not relevant to a conviction—the fact that a pregnancy resulted is sufficient.<sup>214</sup> Outside of the context of rape, a pregnancy imposed upon a woman through threat of harm or even immediately following a physical assault, is not recognized as a distinct injury, even if the harms that befall a woman are similar to those harms that may result to a woman who became pregnant through rape or sexual assault.<sup>215</sup>

Finally, pregnancy has been recognized as constituting a distinct harm within the context of certain types of medical negligence.<sup>216</sup> In those case, parents have recovered damages based on a physician’s negligence that resulted in an unplanned child, or where a child born with significant disabilities could have been prevented or aborted had the parents received competent advice during the pregnancy.<sup>217</sup> Damages awarded in medical negligence cases are almost always tied to the costs associated with raising the child with a disability, or the direct medical costs associated with the pregnancy and raising the child.<sup>218</sup> Damages are not awarded for the impact becoming pregnant has on a woman’s altered sense of self or because of the infringement upon her autonomy that a pregnancy imposes.<sup>219</sup> Awarding costs directly tied to the birth of a child, and not as compensation for a woman’s experience as a pregnant woman is “a vital distinction”<sup>220</sup> that reinforces the cultural and legal normalization of the experience of being pregnant, and it’s positive construction, whatever the conditions that caused it.

### *B. Pregnancy’s Inextricable Link to Sex and Motherhood*

Because of its relatively brief temporal nature, the narrative of pregnancy often is not considered in isolation, but rather within the

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213. *See id.* at 469.

214. *Id.* at 469 (articulated standard in *Hagenkord v. State*, 302 N.W.2d 421, 437 (Wis. 1981)).

215. *Id.* at 476–77.

216. *Bridges, supra* note 11, at 497–98.

217. *Id.* at 497–501.

218. *Motro, supra* note 100, at 961.

219. *Bridges, supra* note 11, at 500 (“[C]ourts do not attempt to compensate victorious plaintiffs for having been injured by a pregnancy that they wish they did not have to bear. . . . [or] attempt to compensate plaintiffs for the mental and emotional costs of bearing a pregnancy that is unwanted or would have been unwanted had the mother or parents been provided with full information.”); *Motro, supra* note 100, at 961 (“Most jurisdictions’ wrongful pregnancy recovery allowance covers prenatal and postnatal medical expenses, including expenses of any complications associated with the pregnancy or birth as well as the mother’s pain and suffering during the pregnancy and delivery.”).

220. *Bridges, supra* note 11, at 500.

contexts of sex and motherhood. This section explores how these bookend frameworks impact our culture's ability or willingness to identify pregnancy as a potential for harm.

### 1. *The Conflation of Sex and Pregnancy*

Although pregnancy can result from sex,<sup>221</sup> conceptually, sex and pregnancy are distinct acts, each involving distinct choices and contexts. With regard to sex, one can choose to engage in it, or choose not to; with regard to pregnancy, one can choose to use contraception to attempt to prevent it, or choose not to do so.<sup>222</sup> However, within our culture and our laws, consent for sex presumes an implied consent for pregnancy.<sup>223</sup> This conflation of consent for sex with consent for pregnancy means that so long as an act of sex does not fall within the legal definition of rape, there is no collective sociolegal inclination to consider whether a resulting pregnancy was also consensual. However, using the example of the coercive method of birth control sabotage, it swiftly becomes apparent how distinct consent for each is—although a woman may have understood the contours of the sex act(s) itself, if her birth control was sabotaged, she could not have consented to the pregnancy (or potential for pregnancy) because essential information about her reproductive options was intentionally withheld from her.<sup>224</sup>

By conflating consent for sex with consent for pregnancy, when sex is legally consensual<sup>225</sup> and a pregnancy results, two dominant cultural responses exist: the pregnancy is identified as a way to assign blame and reach “the moral conclusion that pregnancy is an appropriate punishment for women [or adolescents] who consent to engage in sex,”<sup>226</sup> or the pregnancy is immediately tied to the positive constructions of motherhood (as discussed further *infra*) and is identified

221. *But see* MCDONAGH, *supra* note 157, at Ch. 3 (making a compelling argument that fetuses, not sex, cause pregnancy).

222. *Cf.* Bridges, *supra* note 11, at 483 (“At most, by consenting to sex, [a woman] has consented to exposing herself to the risk of becoming pregnant.”).

223. MCDONAGH, *supra* note 157, at 65; *see, e.g.*, Erwin L.D. v. Myla Jean L., 847 S.W.2d 45, 47 (Ark. Ct. App. 1993); Lasher v. Kleinberg, 105 Cal. Rptr. 3d 618, 619 (1980); Faske v. Bonanno, 357 N.W.2d 860, 861 (Mich. Ct. App. 1984); Douglas R. v. Suzanne M., 487 N.Y.S.2d 244, 245 (N.Y. Special Term 1985); L. Pamela P. v. Frank S., 449 N.E.2d 713, 714 (N.Y. 1983); Hughes v. Hutt, 455 A.2d 623, 624–25 (Pa. 1983); Linda D. v. Fritz C., 687 P.2d 223 (Wash. Ct. App. 1984).

224. Janet Radcliffe Richards, *Consent with Inducements: The Case of Body Parts and Services*, in THE ETHICS OF CONSENT: THEORY AND PRACTICE 281, 296 (Franklin G. Miller & Alan Wertheimer, eds., 2010).

225. *See* Bridges, *supra* note 11, at 482.

226. MCDONAGH, *supra* note 157, at 65 (footnote omitted).

as a natural, expected, and generally positive consequence of sex. Neither construction allows for the identification of pregnancy as a resulting harm to a woman, even when her reproductive choice was infringed upon, or removed altogether.<sup>227</sup>

Our laws treat the sex-pregnancy dyad differently from other parallel dyads. As Professor Khiara Bridges writes, “in many other contexts, we do not lose the claim of having been injured or harmed by unwanted things that happen to us—even when we have exposed ourselves to the risk that those unwanted things will, indeed, happen to us.”<sup>228</sup> For example, a person does not lose the ability to assert that he obtained a sexually transmitted infection after the carrier withheld information about the infection, even though one arguably always exposes oneself to sexually transmitted infections when having sex.<sup>229</sup> However, when it comes to deception around contraception, courts generally provide no legal recourse, citing extreme reluctance to become involved in matters of the bedroom.<sup>230</sup> By conflating sex and pregnancy as one act requiring one consent, women who experience reproductive coercion are left without an ability to claim injury or harm, regardless of her partner’s use of coercive techniques.

## 2. The “Homologizing” of Pregnancy and Motherhood<sup>231</sup>

In addition to the act that precedes it, pregnancy also is conflated with its common result: motherhood. From the moment she becomes pregnant, a woman is tied to her prospective role as mother, identified

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227. If no pregnancy results, there is a cultural response akin to “no harm, no foul.” This, of course, fails to recognize the intense anxiety a woman can experience when wondering if she is pregnant and weighing the costs associated with purchasing pregnancy tests or seeking affirmation through medical testing.

228. Bridges, *supra* note 11, at 483–84.

229. See *Hudson v. Dr. Michael J. O’Connell’s Pain Care Ctr., Inc.*, 822 F. Supp. 2d 84, 95 (D.N.H. 2011) (holding that the defendant had a duty of care to the plaintiff based on constructive knowledge because he knew that his other sexual partner’s husband had been diagnosed with herpes); *M.M.D. v. B.L.G.*, 467 N.W.2d 645 (Minn. Ct. App. 1991) (holding that a man had a reasonable basis to know he had genital herpes because he had recurring genital sores and received a medical evaluation that the sores might in fact be herpes, creating a legal duty to warn his sexual partner about his possible infection, even though he did not have medical confirmation that the disease had been contracted); Louis A. Alexander, *Liability in Tort for the Sexual Transmission of Disease: Genital Herpes and the Law*, 70 CORNELL L. REV. 101, 124 (1984) (“The magnitude of the societal health concerns associated with genital herpes precludes resort to this doctrine as a complete defense.”); Celia M. Fitzwater, Comment, *Tort Liability for Sexual Transmission of Disease: A Legal Attempt to Cure “Bad” Behavior*, 25 WILLAMETTE L. REV. 807, 818–19 (1989).

230. See Trawick, *supra* note 16, at 740.

231. I borrow the word “homologizing” from Julia E. Hanigsberg as defined in her article *Homologizing Pregnancy and Motherhood: A Consideration of Abortion*, 94 MICH. L. REV. 371, 374 (1995).

as a mother-in-waiting, a mother-to-be.<sup>232</sup> Professor Julia Hanigsberg labels this cultural phenomenon of identifying pregnancy and motherhood as “corresponding states of being” as the “homologizing” of pregnancy and motherhood.<sup>233</sup> She notes that through “a legal, political, and social process, pregnancy and motherhood are made to resemble each other.”<sup>234</sup> The inextricable tie between pregnancy and motherhood creates immediate expectations about the characteristics, motivations, and goals of pregnant women that results in a continuum of motherhood that begins at conception.<sup>235</sup> Beginning motherhood at pregnancy carries with it social assumptions about what makes a “good” mother, leaving even expectant mothers vulnerable to high praise or harsh judgment depending on how she responds to her pregnancy.<sup>236</sup> When a pregnant woman fails to express “absolute dedication” to her fetus or to establish a bond that “takes precedence over anything else,” or if she expresses ambivalence about—or even lack of desire for—a pregnancy, she may find herself at odds with social expectations that hold mothers to the “highest possible, almost unattainable, standards.”<sup>237</sup> A woman who discusses the coercive circumstances under which her pregnancy occurred may be critiqued for not instead focusing her energy on her pending motherhood.<sup>238</sup> Professor Reva Siegel writes on the impact this judgment may have on women who bear an unwanted child:

Hypothetically, a woman compelled to bear a child she does not want could give it up for adoption, abandon it, or pay someone else to care for the child until maturity. In this society, however, few women are able to abandon a child born of their body. . . . Once compelled to bear a child against their wishes, most women will feel obligated to raise it.<sup>239</sup>

Judgment of even expectant mothers, can be harsh and swift. For certain categories of pregnant women—poor women, particularly

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232. *See id.* at 374.

233. *Id.*

234. *Id.*

235. *Id.* at 371, 374.

236. *Id.* at 372.

237. Hanigsberg, *supra* note 155, at 396–97; Breger, *supra* note 144, at 576; *see also* Jane Aiken, *Requiring Selflessness: Motherhood and the Law* (unpublished manuscript) (article on file with author) (arguing that mothers “are supposed to be selfless in caring for their children, and anything less risks heavy criticism from the rest of society.”); Chris Gottlieb, *Reflections on Judging Mothering*, 39 U. BALT. L. REV. 371, 373 (2010).

238. *See* Ikemoto, *supra* note 156, at 1210–11; Yxta Maya Murray, *Rape Trauma, the State, and the Art of Tracey Emin*, 100 CALIF. L. REV. 1631, 1640–41 (2012) (identifying how women who have been raped may not talk about their experiences if they perceive others will judge them).

239. Siegel, *supra* note 171, at 371–72.

those who already have children, unmarried African American women, and adolescent girls—this judgment may be particularly silencing. When pregnancies are not intended, for whatever reason, poor women and women of color are blamed more than are other groups of women who experience unintended pregnancies.<sup>240</sup> The welfare debates of the 1990s elucidated this point. Rather than identifying the social and political constructs that impacted pregnancy rates, the perception that poor women of color were becoming pregnant (presumably intentionally) to obtain increased state support spurred drastic welfare reform.<sup>241</sup> Poor, pregnant women of color reinforce the notion of the “welfare queen,” as “black, heterosexual, unmarried, and sexually precocious” and intent to become pregnant is assumed.<sup>242</sup> If the pregnant female is adolescent, she may be identified as being careless, irresponsible, or naive.<sup>243</sup> The narrative of what makes a good mother begins at pregnancy; to deviate from that narrative and share stories of coercion and harm simply may not be worth the social price, or may simply fall on the unsympathetic or judgmental ears.<sup>244</sup>

### C. *Abortion as Solution*

In addition to the conflation of pregnancy and sex, and pregnancy and motherhood, abortion also decreases the cultural and legal recognition that pregnancy itself can be harmful. If a pregnancy is a harm resulting from something other than a woman’s full and informed choice, then, for at least part of that pregnancy, a woman could arguably mitigate the harm with an abortion. Indeed, many women who experience unintended or unwanted pregnancies choose to have one. Because some view abortion as a solution to a coerced pregnancy, if a woman does not terminate it, intentionality around the pregnancy is assumed.<sup>245</sup> As argued by Professor Shari Motro, the idea that there is asymmetry in choice (women’s unilateral decision-making power over abortion) counterbalances the asymmetry in sexual risk (women’s exposure to unwanted pregnancy) and “belittles the harms that come along with *all* of women’s reproductive choices.”<sup>246</sup> Further, abortion is not equally available to all women. Eighty-eight percent

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240. See Roberts, *supra* note 166 at 1420.

241. See ANNA MARIE SMITH, WELFARE REFORM AND SEXUAL REGULATION 18 (2007).

242. *Id.*

243. See *id.* at 19; Linda C. McClain, “Irresponsible” Reproduction, 47 HASTINGS L. J. 339, 341, 378–79 (1996).

244. See Aiken, *supra* note 237, at 6.

245. See MCDONAGH, *supra* note 157, at 28; see also Motro, *supra* note 100, at 918 (noting that the legal response to a woman who experiences an accidental pregnancies is that she “must deal with the consequences.”).

246. Motro, *supra* note 100, at 934.

of all U.S. counties have no abortion providers.<sup>247</sup> When considering only non-urban counties, that number increases to 97%.<sup>248</sup> Transportation and abortion costs also restrict abortion access. Public funding for an abortion is severely restricted and abortions generally cost hundreds of dollars to obtain, due to both the costs of the abortion itself and the costs required for the thousands of women who must travel to see an abortion provider.<sup>249</sup> Even for women with greater access to abortions, preventing an abortion may be a coercive tactic used by an intimate partner.<sup>250</sup> One woman described her challenges in obtaining an abortion as follows:

He really wanted the baby—he wouldn't let me have—he always said 'If I find out you have an abortion', you know what I mean, 'I'm gonna kill you,' so I was forced into having my son. I didn't want to; I was 18. [. . .] I was real scared; I didn't wanna have a baby. I just got into [college] on a full scholarship, I just found out, I wanted to go to college and didn't want to have a baby but I was really scared. I was scared of him.<sup>251</sup>

Women may not universally desire abortion. Even if a woman doesn't want to be pregnant, she may also not want to have an abortion. The premise that abortion is always available—or that a woman will terminate an unwanted pregnancy—gives men “no external incentive to prevent conception,” and may in fact give men more incentive to assert control over a woman's reproduction.<sup>252</sup> Abortion may offer a solution for some women experiencing a coerced pregnancy, but for others, it may simply be no solution at all.

#### IV. CONSTRUCTING SPACE FOR PREGNANCY COERCION

To move pregnancy coercion into the broader narrative of intimate partner abuse, women's experiences with reproductive coercion

247. *Access to Abortion*, NATIONAL ABORTION FEDERATION, <http://prochoice.org/education-and-advocacy/about-abortion/abortion-facts>, archived at <http://perma.cc/3UG5-KXBL> (last visited Jan. 28, 2015).

248. *Id.*

249. See Motro, *supra* note 100, at 936. Depending on the trimester for which a woman is seeking an abortion, and whether she lives in a rural or urban community, a woman may have to travel more than 100 miles to see an abortion provider. *One-Third of U.S. Women Seeking Abortions Travel More Than 25 Miles to Access Services*, GUTTMACHER INST. (July 26, 2013), <http://www.guttmacher.org/media/nr/2013/07/26/>, archived at <http://perma.cc/FG6A-JG65>.

250. As stated in note 22, *supra*, forcing a woman to obtain an abortion can be a form of reproductive coercion.

251. See CHAMBERLAIN & LEVENSON, *supra* note 22, at 12.

252. Motro, *supra* note 100, at 921.

must be legitimized within our culture and our laws. This section begins by exploring the role of our existing legal system in legitimizing the experience of pregnancy coercion. It then explores how by sharing the experiences of women, and naming the correlation between pregnancy, coercion, and abuse, advocates can shape domestic violence and reproductive rights policy, and begin to move pregnancy coercion from the periphery of both.

### A. Legitimacy Within Our Legal Systems

Use of the legal system to name something as harmful is a “political act” that helps “market social problems,” and provides a foundation for cultural legitimacy.<sup>253</sup> When an act is identified as harmful to an individual or a group—and laws are used to remedy those harms—“public meanings and shared understandings between the government and public” are created.<sup>254</sup> While the law certainly is not a panacea for all social ills, it has the power to shape, influence, and educate the public about acceptable and unacceptable behavior.<sup>255</sup> By linking “specific behaviors, consequences or dynamics that have not been previously linked,” harmful behavior is moved from the “shadow to the center of consciousness, influences how we think of those we associate with a problem, and shapes the allocation of resources.”<sup>256</sup> As argued by Professor Robin West, when our laws fail to identify an act “uniquely sustained by a disempowered group” as harmful, that failure denies the experience of the individuals harmed, causing the harm to lack “a name, a history, and in general, a linguistic reality.”<sup>257</sup>

Within the criminal context, the stories of pregnancy coercion remain largely unexplored. Beyond one notable exception, discussed *infra*, there is neither a crime responding to reproductive coercion nor is a defendant’s intent to coerce pregnancy particularly relevant to a rape or assault conviction.<sup>258</sup> Establishing that the defendant intended to engage in the act of rape or the assault itself is sufficient. His motivation for anything beyond proving the act was an accident

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253. STARK, COERCIVE CONTROL, *supra* note 24, at 369.

254. See Dionne L. Koller, *How the Expressive Power of Title IX Dilutes Its Promise*, 3 HARV. J. SPORTS & ENT. L. 103, 120 (2012); Richard H. McAdams, *An Attitudinal Theory of Expressive Law*, 79 OR. L. REV. 339, 339 (2000).

255. Koller, *supra* note 254, at 120.

256. STARK, COERCIVE CONTROL, *supra* note 24, at 369.

257. ROBIN WEST, NARRATIVE, AUTHORITY, AND THE LAW 183–84 (1993); see Danielle Keats Citron, *Law’s Express Value in Combating Cyber Gender Harassment*, 108 MICH. L. REV. 373, 407 (2009).

258. Bridges, *supra* note 11, at 474.

or mistake, simply is not relevant. Civilly, when a person demonstrates that she experienced abuse or assault, she qualifies for a civil restraining order in every state, allowing for various forms of relief including stay away, no-assault provisions, and no-contact provisions.<sup>259</sup> Abuse commonly is defined as an act that causes “serious bodily injury” or “physical injury” to another.<sup>260</sup> Although a

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259. ALA. CODE § 30-5-6(a) (2012); ALASKA STAT. § 18.66.100 (2013); ARIZ. REV. STAT. ANN. § 13-3602 (2014); ARK. CODE ANN. § 9-15-206(a) (2013); CAL. FAM. CODE §§ 6300–6306, 6320 (West 2014); COLO. REV. STAT. § 13-14-102 (2013); CONN. GEN. STAT. ANN. §§ 46b-15, 46b(e) (West 2014); DEL. CODE ANN. tit. 10, §1044(b) (West 2013); FLA. STAT. ANN. § 741.30 (West 2012); GA. CODE ANN. § 19-13-3(c) (2012); HAW. REV. STAT. § 586-5.5(a) (West 2011); IDAHO CODE ANN. § 39-6306(1) (West 2013); 725 ILL. COMP. STAT. ANN. 5/112A-2 (West 2014); IND. CODE ANN. §§ 34-26-5-2, 34-26-5-9 (West 2014); IOWA CODE §§ 236.2, 708.1 (West 2009); KAN. STAT. ANN. § 60-3104 (West 2011); KY. REV. STAT. ANN. §§ 403.750(1) (West 2010); LA. REV. STAT. ANN. § 46:2134 (2014); ME. REV. STAT. ANN. tit. 19-A, § 4006(1) (2014); MD. CODE ANN., FAM. LAW § 4-505(a)(1) (West 2012); MASS. GEN. LAWS ch. 209A, § 3 (West 2014); MICH. COMP. LAWS ANN. § 600.2950 (West 2007); MINN. STAT. ANN. § 518B.01 (West 2014); MISS. CODE ANN. § 93-21-7 (2013); MO. REV. STAT. § 455.040(1) (2009); MONT. CODE ANN. § 40-15-201(2) (2008); NEV. REV. STAT. ANN. § 33.018 (West 2013); N.H. REV. STAT. ANN. § 173-B:5(I) (2010); N.J. STAT. ANN. § 2C:25-29(a) (West 2013); N.M. STAT. ANN. § 40-13-3.2(A) (West 2006); N.C. GEN. STAT. § 50B-3(a) (West 2014); N.D. CENT. CODE ANN. § 14-07.1-02 (2013); OHIO REV. CODE ANN. § 3113.31(D)(1) (West 2010); OKLA. STAT. ANN. tit. 22, § 60.4(B)(1) (West 2013); OR. REV. STAT. § 107.710(2) (2009); 23 PA. CONS. STAT. ANN. § 6107(a) (West 2010); R.I. GEN. LAWS § 8-8.1-4(a)(2)(iii) (2011); S.C. CODE ANN. § 20-4-40 (2006); S.D. CODIFIED LAWS § 25-10-5 (2007); TENN. CODE ANN. § 36-3-605(a) (2010); TEX. FAM. CODE ANN. § 85.001(b) (West 2014); UTAH CODE ANN. § 78B-7-103 (West 2010); VT. STAT. ANN. tit. 15, § 1103 (2007); VA. CODE ANN. § 16.1-279.1(A) (2012); WASH. REV. CODE ANN. §§ 26.50.020 (West 2013); WIS. STAT. ANN. § 813.12 (West 2010); WYO. STAT. ANN. § 35-21-105(a) (2009); *Machukas v. Wagner*, 246 A.D.2d 840, 667 N.Y.S.2d 817 (1989).

260. ALA. CODE § 30-5-2(1) (2012); ALASKA STAT. § 18.66.990(3) (2013); ARIZ. REV. STAT. ANN. § 13-3601(A) (2014); ARK. CODE ANN. § 9-15-103(3)(a) (2013); CAL. FAM. CODE § 6203(a) (West 2014); COLO. REV. STAT. § 13-14-101(2) (West 2013); DEL. CODE ANN. tit. 10, § 901(1) (2013); FLA. STAT. ANN. § 741.28(2) (West 2012); GA. CODE ANN. § 19-13-1 (2012); HAW. REV. STAT. § 586-1 (West 2011); IDAHO CODE ANN. § 39-6303 (2013); 725 ILL. COMP. STAT. ANN. 5/112A-3(1) (West 2014); IND. CODE ANN. §§ 34-26-5-2 to -9 (2014); IOWA CODE ANN. § 236.2(1) (West 2009); KAN. STAT. ANN. § 60-3102(a)(1) (West 2011); KY. REV. STAT. ANN. § 403.720(1) (West 2010); LA. REV. STAT. ANN. § 46:2132(1) (2014); ME. REV. STAT. ANN. tit. 19-A, § 4002(1) (2014); MD. CODE ANN., FAM. LAW § 4-501(b)(1) (West 2013); MASS. GEN. LAWS ch. 209A, § 1 (West 2014); MICH. COMP. LAWS SERV. § 600.2950(1) (LexisNexis 2007); MINN. STAT. ANN. § 518B.01(a) (West 2014); MISS. CODE ANN. § 93-21-3(a)(1) (2013); MO. REV. STAT. § 455.040(1) (2009); MONT. CODE ANN. § 45-5-206(1)(a) (2013); NEV. REV. STAT. ANN. § 33.018(1) (West 2013); N.H. REV. STAT. ANN. § 173-B:5(I) (2014); N.J. STAT. ANN. § 2C:25-19 (West 2013); N.M. STAT. ANN. § 40-13-3(D)(2) (2014); N.Y. FAM. CT. ACT § 812(1) (2010); N.C. GEN. STAT. ANN. § 50B-3(a)(1) (West 2014); N.D. CENT. CODE ANN. § 14-07.1-01(2) (West 2012); OHIO REV. CODE ANN. § 3113.3(a)(1) (LexisNexis 2010); OKLA. STAT. ANN. tit. 22, § 60.1(1) (West 2010); OR. REV. STAT. §§ 107.705(1)(a) (West 2014); 23 PA. CONS. STAT. ANN. § 6102 (West 2014); R.I. GEN. LAWS § 8-8.1-1 (West 2014); S.C. CODE ANN. § 20-4-20 (2006); S.D. CODIFIED LAWS § 25-10-1 (2007); TENN. CODE ANN. § 36-3-601(1) (2014); TEX. FAM. CODE ANN. § 71.004 (West 2014); UTAH CODE ANN. § 78B-7-102(1) (LexisNexis 2010); VT. STAT. ANN. tit. 15, § 1101 (2007); VA. CODE ANN. § 16.1-228 (West 2012); WASH. REV. CODE ANN. § 26.50.010 (West 2014); W. VA. CODE § 48-27-202 (West 2014); WIS. STAT. § 813.12 (2013); WYO. STAT. ANN. § 35-21-102 (2014).



coerced pregnancy—regardless of the consensual nature of the sex itself—can result in significant harm to a woman, without more, use of birth control sabotage to coerce a pregnancy, for example, is likely insufficient for proving the requisite harm.<sup>261</sup> As discussed *supra*, courts are exceedingly reluctant to make factual determinations about acts that occur within one's sexual relationship, primarily concerning the use or nonuse of birth control.<sup>262</sup> The sacrosanct privacy of the bedroom between two "consenting" adults trumps an inquiry into the conditions in which a woman consented to contraceptive use.<sup>263</sup>

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261. This Article does not assert that every method used to coerce pregnancy, on its own, should be subject to legal relief. Acts that do not directly interfere with a woman's physical autonomy are distinct from the other methods described in this Article. For example, a woman who is pressured into pregnancy through threats that a partner will leave the relationship, or who is manipulated by assertions such as if she "really loved him," certainly may feel that her options are restricted. However, "pregnancy pressure" and any resulting coercion is likely too subjective to find legitimacy within our legal system.

262. To be clear, even the criminalization of birth control sabotage would not be a panacea for women experiencing such acts. In retelling stories of the ways their birth control was sabotaged, women may be required to disclose deeply personal, and perhaps embarrassing information about their intimate relationships and experiences. Women may be victimized in ways similar to rape victims after being interviewed or providing testimony about their experiences. The burden of proof in either a civil or criminal context, in what almost always would be her story against his, would be incredibly hard to meet. As many feminists have identified over the past forty years, the criminal justice system often fails to provide a victim-centered remedy within the broader context of domestic violence, isolating women from their cases, and potentially working against their goals and safety. *See* GOODMARK, *supra* note 76, at 37.

263. The opening paragraph of *Lawrence v. Texas*, elucidates this point:

Liberty protects the person from unwarranted government intrusions into a dwelling or other private places. In our tradition the State is not omnipresent in the home. And there are other spheres of our lives and existence, outside the home, where the State should not be a dominant presence. Freedom extends beyond spatial bounds. Liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct. The instant case involves liberty of the person both in its spatial and more transcendent dimensions.

*Lawrence*, 539 U.S. 558, 558 (2003). Prior to *Lawrence*, the Court incrementally and consistently found that what happens within the privacy of one's bedroom pertaining to the use of contraception, so long as those incidents occur between two consenting adults, is sacred and private, including the ability to use contraception whether married or unmarried. *See* Griswold v. Connecticut, 381 U.S. 479 (1965); Eisenstadt v. Baird, 405 U.S. 438 (1972). In *Eisenstadt v. Baird*, when considering whether the right to use contraception extended to unmarried persons, the Court wrote, "If the right of privacy means anything, it is the right of the *individual*, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." 405 U.S. at 453. In *Planned Parenthood of Southeastern Pennsylvania v. Casey*, the Court "again confirmed that our laws and tradition afford constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education." 505 U.S. 833 (1992). In so doing, the Court reemphasized that "intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment." *Planned Parenthood*, 505 U.S. at 851.

Indeed, there are no laws that directly prohibit tampering with someone's birth control, or intentionally destroying one's own and then engaging in intercourse.<sup>264</sup>

Currently, the only method of reproductive coercion legally prohibited in many states is one that coerces a woman to terminate a pregnancy.<sup>265</sup> While coercing abortion certainly can be a form of reproductive control exerted by an intimate partner,<sup>266</sup> and can be acutely harmful to a woman who is otherwise opposed to abortion, wants to keep the child, or suffers adverse physical consequences as a result of the abortion,<sup>267</sup> coerced abortion laws have not been enacted because of feminist advocacy or because of how such coercion infringes upon a woman's dignity or autonomy. Rather, such laws have been successful because of the advocacy of those within the anti-choice movement who seek not to protect a woman's reproductive autonomy or safety,<sup>268</sup> but to preserve the life of the fetus.<sup>269</sup> As noted by one researcher, the "one-sided emphasis on only penalizing partners and health care providers involved in coerced abortions does not adequately address the danger a woman is in who is experiencing reproductive control."<sup>270</sup>

To advance a domestic violence narrative that includes pregnancy coercion, feminists and advocates should follow the experiences of their predecessors who have identified otherwise "private" acts that place women at direct risk of violence, dominance, and control. The domestic violence movement broadly serves as one example of how an issue on the periphery of social consciousness became a legally and culturally accepted harm through such advocacy. At the beginning of the movement, domestic violence was identified as a personal

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264. See Trawick, *supra* note 16, at 747 (identifying Canada's criminalization of "the efforts of abusers to sabotage their victims' reproductive wishes.").

265. See ALA. CODE § 26-23A-5 (2014); ARIZ. REV. STAT. ANN. § 36-2153 (2014); ARK. CODE ANN. § 20-16-903 (2014); DEL. CODE ANN. tit. 24 § 1786 (2014); KAN. STAT. ANN. § 65-6710 (West 2014); IDAHO CODE ANN. § 18-615 (2014); LA. CHILD. CODE ANN. art. 603(9) (2014); ME. REV. STAT. tit. 22 § 1599-A (2014); MICH. COMP. LAWS ANN. § 333.17015 (West 2014); MO. ANN. STAT. § 188.039 (2013); MONT. CODE ANN. § 50-20-106 (2013); NEB. REV. STAT. § 71-6902.02 (2014); N.C. GEN. STAT. ANN. § 90-21.90 (West 2014); N.D. CENT. CODE ANN. § 14-02.1-03(3) (West 2014); OHIO REV. CODE ANN. § 3701.791 (West 2014); OKLA. STAT. ANN. tit. 63, § 1-737.6 (West 2014); 18 PA. CONS. STAT. ANN. § 3208 (West 2014); S.D. CODIFIED LAWS § 34-23A-53(4) (2014); TENN. CODE ANN. § 39-15-202 (2014); UTAH CODE ANN. § 76-7-312 (2014); WISC. STAT. ANN. § 253.10 (West 2014). Legislation to criminalize coerced abortions currently is pending in Virginia and Rhode Island. See S.277, 1st Reg. Sess. (Va. 2012); H.R. 5072, 1st Reg. Sess. (R.I. 2011).

266. Moore et al., *supra* note 31, at 1743.

267. *Id.*

268. Reva B. Siegel, *The Right's Reasons: Constitutional Conflict and the Spread of Woman-Protective Antiabortion Argument*, 57 DUKE L. J. 1641, 1641-42 (2008).

269. *Id.* at 1664.

270. Moore et al., *supra* note 31, at 1742.

matter and, even in extreme cases, rarely resulted in arrest or criminal liability for the perpetrator.<sup>271</sup> It was not until anti-domestic violence advocacy groups began bringing class action lawsuits that the social narrative began to shift.<sup>272</sup> Through the issuance of court opinions and settlements, action was relatively swift. Police quickly adopted mandatory arrest policies<sup>273</sup> and state legislatures adopted “no-drop” prosecution requirements in domestic violence cases.<sup>274</sup> Although these policies now are critiqued by many feminist scholars,<sup>275</sup> when initiated, they were revolutionary and helped to shape the cultural narrative of domestic violence as a social crisis that demanded political and legal intervention.<sup>276</sup> Similarly, once Professor Martha Mahoney named a phenomenon that was happening to women—violence was increasing when they separated from their intimate partners<sup>277</sup>—separation violence became a legitimized aspect of intimate partner abuse and a consideration for women’s safety.<sup>278</sup>

By identifying the correlation between pregnancy and intimate partner abuse, feminists, advocates, and scholars can, as Professor Mahoney has written, help “conceptualize the battering process” and offer an alternative view of pregnancy by acknowledging the harm it can cause.<sup>279</sup> Advocates can tell the stories of women, both in and out of court, who have experienced pregnancy coercion, and can

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271. Citron, *supra* note 257, at 409. For example, in D.C., in 1990, out of approximately 15,000 domestic violence calls to MPD, only 5% of arrests occurred. Notes on file with author.

272. *Id.*

273. *Id.*

274. *Id.*; cf. LISA A. GOODMAN & DEBORAH EPSTEIN, LISTENING TO BATTERED WOMEN: A SURVIVOR-CENTERED APPROACH TO ADVOCACY, MENTAL HEALTH, AND JUSTICE 71–88 (American Psychological Association, 1st ed. 2008) (arguing that no-drop prosecution policies lack the flexibility necessary to respond effectively to particular situations).

275. GOODMAN & EPSTEIN, *supra* note 274, at 75 (pointing out that no-drop prosecution policies are inflexible, not able to respond to particular situations, and that by coercing victims into participating in the prosecution, the government teaches them to distrust the legal system).

276. *Id.* at 74.

277. Martha Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 5 (1991); see Tamara L. Kuennen, *Private Relationships and Public Problems: Applying Principles of Relational Contract Theory to Domestic Violence*, 2010 B.Y.U. L. REV. 515, 529 (2010) (citing statistics that support Mahoney’s “separation assault” theory).

278. There is still work to be done in legitimizing separation violence. Many within the legal system continue to assume that the best, and safest, decision for women is to separate from their abuser, and many housing and shelter policies remain woefully underfunded. Johnson, *Redefining Harm*, *supra* note 78, at 1150; Alyse Faye Haugen, *When it Rains it Pours: The Violence Against Women Act’s Failure to Provide Shelter from the Storm of Domestic Violence*, 14 SCHOLAR 1035, 1057–64 (2012) (“The most severely inadequate provision of VAWA is undoubtedly the shelters and housing sections.”).

279. Mahoney, *supra* note 277, at 9.

explicitly distinguish consent for pregnancy from consent for sex. Lawyers and advocates can train judges, caseworkers, and police to build a name and a narrative—establishing legitimacy—for pregnancy coercion and violence.<sup>280</sup> Beyond the legal system, health care providers, who often have the most direct and consistent line to pregnant women, can inquire about women's experiences with pregnancy and coercion in their relationships and help them name their experience, while providing contraceptive options that allow women more control over their reproductive autonomy, including more discrete, and long-term, options for birth control.<sup>281</sup>

### *B. Pregnancy Prevention as Violence Prevention*

A woman's experience when coerced into pregnancy, and the legal and extra-legal response thereto, cannot fully be understood without considering how state and federal laws and policies on reproductive health impact her options and, therefore, her exposure to coercion and violence. Although a detailed consideration of the state's role in providing options for women to avoid pregnancy or respond to coerced pregnancies is beyond the scope of this Article, it is critical to consider how existing laws contribute to women's experiences.<sup>282</sup> For example, abstinence-only sex education, taught in more than 30% of U.S. schools,<sup>283</sup> deprives girls of information on their contraceptive options or provide them with a name for behaviors their partners may use to impose a pregnancy upon them. This limited sex education places girls at risk of violence in their intimate relationships.

Anti-domestic violence and reproductive rights advocates can begin to shape policies on reproductive rights by citing and sharing the social science research that connects relationships, pregnancy, and violence. Legislation to prevent violence against women, including the Violence Against Women Act, can be broadened to include funding for contraception as a tool both to prevent pregnancy and to prevent violence in intimate relationships. Similarly, advocates can advance comprehensive sex education policies using the strong correlation between violence, pregnancy, and adolescent girls. Pro-choice advocates can build on the success of the abortion coercion movement to advance a pro-woman agenda on other methods of pregnancy coercion,

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280. See *Conversation: Lynn Harris & Elizabeth Miller on Reproductive Coercion*, *supra* note 9.

281. *Committee Opinion Number 554*, *supra* note 49, at 4.

282. MCDONAGH, *supra* note 157, at 134–38.

283. *Facts on Sex Education in the United States*, GUTTMACHER INST., available at [https://www.guttmacher.org/pubs/fb\\_sexEd2006.html](https://www.guttmacher.org/pubs/fb_sexEd2006.html), archived at <http://perma.cc/M6CE-4PGS>.

arguing that coerced pregnancies can be equally as harmful as coerced abortions. Including reproductive autonomy as a tool for violence prevention may also allow legislators and policymakers to more easily navigate the highly politicized landscape of contraception, sex education, and abortion funding.

#### CONCLUSION

Women who experience pregnancies through coercive acts of their intimate partners may experience significant—even extreme—harms and are likely to experience other forms of intimate partner abuse.<sup>284</sup> Those harms and the correlation between pregnancy and abuse, however, are not readily named within our culture nor sufficiently acknowledged within our laws. This Article has set out to define and name the experience of pregnancy coercion and to provide a different narrative of pregnancy than that which currently exists—one that allows for its identification as not only something celebrated by a woman, but also something that can result in significant harms to her. With a broadened understanding of the ways that women are coerced into pregnancy, and the harms that can result, a more nuanced legal and cultural understanding can be brought to the biological and social phenomena of pregnancy.

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284. *Committee Opinion Number 554*, *supra* note 49, at 1.