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PREGNANCY AS HARM

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Abstract

Pregnancy is conceptually separate and discrete from sexual intercourse. However, despite efforts by feminists to disentangle the two, pregnancy remains inextricably linked to sexual intercourse in our culture and in our laws. As currently viewed, pregnancy is a natural and expected consequence of sex, and is exalted as being a positive and defining moment for a woman in our culture. This entanglement between sex and pregnancy affords little space in our legal narrative to distinguish acts that result in sex from acts that result in pregnancy, or to distinguish consent for one from consent for the other. This is particularly true when the pregnancy results from acts of reproductive coercion, acts which leave the woman or girl with no other choice but to confront or experience pregnancy, but where there was no physical violence. Although the harms of rape have been well documented, allowing for redress in criminal and civil law, the harms that can be associated with pregnancy, beyond the physical effects of pregnancy, have not. For some women, however, pregnancy is a deep infringement upon their autonomy, an experience that either results from, or will result in, myriad harms.

In an effort to make space within our legal and cultural narrative for responding to the coercive acts that result in pregnancy, this article begins by identifying the harms that can result in, or result from, pregnancy. In addition to the physiological changes that occur to a woman's body, this article considers the significant correlation between pregnancy and intimate partner abuse, and pregnancy and homicide. This article next addresses how acts of intimate partners, through direct sabotage of birth control or verbal manipulation; communities, through abstinence only sex education; and States, through limiting women's access to contraception and family planning services, coerce women and girls into pregnancy. Next, this article turns to challenges of responding to reproductive coercion, including the State's reluctance to interfere in the "private" acts of the bedroom, particularly when the acts relate to contraceptive use, how pregnancy is seen as a deserved consequence for perceived promiscuity, particularly for certain groups of marginalized women, and how the abortion-centric focus of the reproductive rights movement stifles responding to reproductive

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coercion because the “solution” of abortion reduces the perceived impact of the harm. Finally, this article argues how expanding the narrative of pregnancy through a reproductive justice lens could help achieve reproductive coercion as legally actionable harm.