

**EXPECTING VIOLENCE: CENTERING THE EXPERIENCE OF
VIOLENCE IN PREGNANCY**

*Meghan Boone**

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INTRODUCTION

“I’m tired,’ you will say to women, because you are so large you cannot get comfortable and your hips hurt and your legs hurt and you think you are dying, though you’re not. Or maybe you are. You don’t know. But you are tired. And the women will laugh and say, ‘Wait until the baby comes; you’ll be more tired then.’ You will want to punch them. You will want to punch everyone. Especially the man at the hardware store who tells you that you make walking look difficult. Or the barista who frowns when you order a coffee. The women who reach out for your belly, your body, who stroke it without warning. Who tell you this is precious. Who tell you to savor it. Who get tears in their eyes while you are in the checkout aisle in Target and your acid reflux is so bad you think you are having a heart attack.”¹

The cultural conception of pregnancy radically diverges from the lived reality for many pregnant people. Pregnancy is popularly understood as a “special” time in which we envision the pregnant person² as surrounded by an excited and supportive community, while the pregnant person herself is “glowing” and “radiant.”³ Our cultural script for pregnancy further constitutes the pregnant person as specially protected, buffered

¹ LYZ LENZ, BELABORED: A VINDICATION OF THE RIGHTS OF PREGNANT WOMEN 121-22 (2020).

² While I prefer using the term “pregnant people,” in recognition of the fact that not all those that can become pregnant identify as women, I sometimes use the term “pregnant women” when I am referring to or quoting research, in circumstances in which it would be impossible to substitute “people” for “women” without mischaracterizing the underlying data. I also sometimes use feminine pronouns (she/her) throughout for readability.

³ Even the words we use to describe pregnancy are often cutesy or demeaning — like “a bun in the oven” or “in a family way.” Katy Steinmetz, *It’s Time to Rethink the Demeaning Ways We Describe Pregnancy*, TIME (May 11, 2019), <https://time.com/5587321/knocked-up-pregnant-synonyms/> (“Common terms we use to describe pregnancy are laced with demeaning attitudes toward women. There are few human events as longstanding or consequential, yet widespread language we use to describe this phenomenon — in all its glory and anxiety, all its pain and productivity — is underwhelming.”).

from potential violence.⁴ The law can, and often does, reflect this idealized vision of pregnancy.⁵

The reality, however, is that pregnancy can also be the site of, and a *catalyst* for, violence — both as a result of the physical process itself and because of the ubiquity of state and private violence against pregnant people. Further, the presence of private violence can be a catalyst for public violence — and vice versa — placing the pregnant person at risk for overlapping and escalating harm at the exact moment culture assumes she is safest. This Article centers the experience of violence in pregnancy. It describes concentric circles of potential violence — as a result of the physical process of pregnancy, the prevalence and severity of intimate partner violence during pregnancy, and the unique forms of state violence unleashed on pregnant people — that deeply imperil the wellbeing and physical safety of pregnant people. In so doing, this Article asserts that the failure to incorporate the true prevalence of violence in pregnancy constrains our ability to enact law and policy responsive to reality — thus risking exacerbating the violence that pregnant people experience.

While some readers might chafe at the idea of a consented-to pregnancy being described as “violent,” the truth is that all manner of consented-to activities are nonetheless understood in just this way — participating in boxing matches, undergoing invasive surgeries, or enlisting in the armed forces are all consensual activities that can involve a great deal of violence. The hesitance to describe wanted pregnancy as (at least potentially) violent is evidence of the exact problem this Article seeks to remedy — failure to recognize the sometimes-violent reality of pregnancy makes it impossible to promulgate regulation that is appropriate.

Of course, the myriad ways that pregnancy is the site of violence cannot be exhaustively catalogued here. Instead, this Article aims only to briefly describe the broad categories of private and public violence associated with pregnancy and provide a few key examples. Through this broad description, we can begin to see how the legal regulation of pregnancy often fails to consider the reality of violence in pregnancy and how such failure increases harm to pregnant people.

⁴ Nidhi Subbaraman, *Homicide is a Top Cause of Maternal Death in the United States*, NATURE (Nov. 12, 2021), <https://www.nature.com/articles/d41586-021-03392-8> (quoting researcher Phyllis Sharps, stating that “[t]here’s an idea in our society that pregnancy is a happy time . . . But for a lot of women, that’s just not true, and a lot of women are just not safe in their homes.”).

⁵ See generally F. Laguardia, *Pain That Only She Must Bear: On the Invisibility of Women in Judicial Abortion Rhetoric*, 9 J.L. & BIOSCIENCES 1, 2 (2022) (noting that judicial opinions about abortion are “almost wholly absent” of discussions of the “pain, long-term health implications, and risk of death associated with pregnancy”).

I. THE VIOLENCE OF PREGNANCY

Pregnancy hurts — pain is the norm in pregnancy. Low back and pelvic pain are reported in 71.7% of pregnancies.⁶ This pain is experienced throughout pregnancy,⁷ and is severe enough that 10% of pregnant people will be forced to take time off work.⁸ Nausea, too, is expected. Eighty percent of pregnant women report some nausea, with 35-40% reporting vomiting.⁹ A complete accounting of the physical maladies associated with pregnancy, including the pre-existing conditions that are exacerbated by pregnancy, might well overshoot the allotted word count for this Article.¹⁰ Whether these problems and pains are understood to be self-inflicted in the case of a wanted pregnancy, or inflicted by the fetus¹¹ or even the state,¹² it is fair to say that even “normal” pregnancy is potentially rife with physical violence to the body of the pregnant person.

And of course, childbirth itself is notoriously painful.¹³ If there is one negative aspect of pregnancy that the cultural zeitgeist deigns to take into account, it is this. Even here, however, the pain and violence of childbirth is often portrayed for its supposed humor — the “comedic” trope of the laboring woman, breath ragged, yelling at her partner or her doctor

⁶ Ingrid M. Mogren & Anna I. Pohjanen, *Low Back Pain and Pelvic Pain During Pregnancy: Prevalence and Risk Factors*, 30 SPINE 983, 985 (2005).

⁷ Melissa C. Lutterodt et al., *Examining to what Extent Pregnancy-Related Physical Symptoms Worry Women in the First Trimester of Pregnancy: A Cross-Sectional Study in General Practice*, 3 BJGP OPEN 1, 2 (2019).

⁸ Shu-Ming Wang et al., *Low Back Pain During Pregnancy: Prevalence, Risk Factors, and Outcomes*, 104 OBSTETRICS & GYNECOLOGY 65, 68-69 (2004).

⁹ Lutterodt et al., *supra* note 7, at 2.

¹⁰ *Planned Parenthood of Alaska v. Alaska*, 2003 WL 25446126, at *5 (Alaska Super. Oct. 13, 2003) (listing health risks associated with pregnancy and childbirth, including, gestational diabetes, pregnancy-induced hypertension, over-distension of the uterus, postpartum hemorrhage, respiratory conditions, and depression); Laguardia, *supra* note 5, at 7-8 (“Pregnant people are immunocompromised, more likely to die or suffer severe illness from diseases such as the flu, and the course of pregnancy can lead to severe health risks long after giving birth, including sciatica and heart attack.”).

¹¹ Of course, in the case of pregnancies that result from rape or pregnancy coercion and/or birth control sabotage, there is a third party responsible for the violence. See Elizabeth Miller et al., *Pregnancy Coercion, Intimate Partner Violence and Unintended Pregnancy*, 81 CONTRACEPTION 316, 318 (2010). Rape and reproductive coercion are often present simultaneously — 30% of women raped by an intimate partner experienced a form of reproductive coercion by the same partner. See *Understanding Pregnancy Resulting from Rape in the United States*, CDC (June 1, 2020), <https://www.cdc.gov/violenceprevention/sexualviolence/understanding-RRP-inUS.html>.

¹² See *infra* Section III.

¹³ Laguardia, *supra* note 5, at 2 (“[C]hildbirth is famous for being one of the most painful experiences in the spectrum of human discomfort.”).

appears in many television shows and movies.¹⁴ But far from comedic for many people who experience it, childbirth can be both a painful and traumatic process — up to 45% of postpartum people report birth trauma.¹⁵

The “normal” violence of pregnancy and childbirth, however, does not capture the real possibility that extreme harm and even death can occur. Ectopic pregnancies, which occur in one out of every fifty pregnancies,¹⁶ can cause sudden, severe pain in the abdomen or pelvis, and life-threatening internal bleeding.¹⁷ The most common reasons for pregnancy-related deaths are heart disease and stroke, while obstetric emergencies like severe bleeding and amniotic fluid embolism are the most common causes of death in childbirth itself.¹⁸ Giving birth in the United States carries more than twenty times the risk of death as skydiving.¹⁹ But even birth does not ensure that the pain and violence of pregnancy abates. Common, “normal” postpartum symptoms include vaginal bleeding, cramping, bladder and bowel problems, hemorrhoids, and pain in the back, neck, joints, perineum, and incision site (for cesarean births).²⁰

Therefore, if only the physical process of desired pregnancy itself was considered, it would be true to say that pregnancy was violent. Of course, pregnancy is a social experience and not just a physical one. And pregnancy can be the site of, and catalyst for, violence from outside forces, as well. The following section details the association between pregnancy and private violence.

¹⁴ See, e.g., MsMojo, *Top 10 Funniest Going into Labor Scenes in TV*, YOUTUBE (Aug. 7, 2017), <https://www.youtube.com/watch?v=j52cmbtuhHM>. Or the reality of childbirth is sanitized. See Clare Daniel & Tessa Baldwin, *Fabricating Babies: Reproduction as Production in Storks and The Boss Baby*, FEMINIST MEDIA STUDIES (2022), <https://doi.org/10.1080/14680777.2022.2149596>.

¹⁵ Cheryl Tatano Beck, Sue Watson & Robert K. Gable, *Traumatic Childbirth and Its Aftermath: Is There Anything Positive?*, 27 J. PRENATAL EDUC. 175, 175 (2018).

¹⁶ *Ectopic Pregnancy*, MARCH OF DIMES (Oct. 2017), <https://dev.marchofdimers.org/complications/ectopic-pregnancy.aspx>.

¹⁷ *Ectopic Pregnancy FAQs*, AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS (Feb. 2018), <https://www.acog.org/womens-health/faqs/ectopic-pregnancy>.

¹⁸ *Pregnancy-related Deaths*, CDC (May 14, 2019), <https://www.cdc.gov/vitalsigns/maternal-deaths/index.html>.

¹⁹ Amanda Hess, *When Motherhood is a Horror Show*, N.Y. TIMES (May 12, 2022), <https://www.nytimes.com/2022/05/12/arts/motherhood-horror-movies-tv.html>.

²⁰ *Postpartum Pain Management FAQs*, AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS (Oct. 2020), <https://www.acog.org/womens-health/faqs/postpartum-pain-management>.

II. PRIVATE VIOLENCE TOWARDS PREGNANT PEOPLE

Becoming pregnant can, and often does, involve violence at the hands of others. Researchers estimate that almost 2.9 million U.S. women have experienced a rape-related pregnancy during their lifetime.²¹ Even pregnancies that are not the result of rape may be the result of “reproductive coercion,” a term that encompasses a variety of behaviors that “involve[] exerting power and control over reproduction through interference with contraception, pregnancy pressure, and pregnancy coercion.”²² While the prevalence of reproductive coercion is hard to conclusively establish, studies suggest that up to 19% of women in the United States have experienced some type of pregnancy coercion, with women of lower socioeconomic status, single women, and racial minorities at particular risk.²³

Contrary to cultural expectations, many people experience intimate partner violence (IPV) during pregnancy, as well. A study conducted in a thirty-state area revealed that “3.2% of pregnant women . . . had been pushed, hit, slapped, kicked, choked, or physically hurt in some other way during their most recent pregnancy.”²⁴ That number raises to nearly 7% for teen pregnancies²⁵ and 15% of mistimed or unwanted pregnancies.²⁶ This accounts for approximately 324,000 pregnant women abused *each year* in the United States.²⁷ This makes IPV “more common for pregnant women than gestational diabetes or preeclampsia - conditions for which

²¹ Kathleen C. Basile et al., *Rape-Related Pregnancy and Association with Reproductive Coercion in the U.S.*, 55 AM. J. PREVENTIVE MED. 770, 772 (2018).

²² *Id.* at 771. See also A. Rachel Camp, *Coercing Pregnancy*, 21 WM. & MARY J. WOMEN & L. 275, 280 (2015) (describing reproductive coercion as a variety of behaviors 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”).

²³ Karen Trister Grace & Jocelyn C. Anderson, *Reproductive Coercion: A Systematic Review*, 19 TRAUMA VIOLENCE & ABUSE 371, 382 (2018).

²⁴ Christian A. Chisholm et al., *Intimate Partner Violence and Pregnancy: Epidemiology and Impact*, 217 AM. J. OBSTETRICS & GYNECOLOGY 141, 142 (2017).

²⁵ *Id.*

²⁶ *Intimate Partner Violence During Pregnancy*, WHO (2011), https://apps.who.int/iris/bitstream/handle/10665/70764/WHO_RHR_11.35_eng.pdf (“A US population-based survey also showed that women who had mistimed or unwanted pregnancies reported significantly higher levels of abuse during pregnancy compared with those with intended pregnancies.”).

²⁷ *Intimate Partner Violence Committee Opinion No. 518*, AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS (Feb. 2012), <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2012/02/intimate-partner-violence>.

pregnant women are routinely screened.”²⁸ Experiencing IPV can result in “lifelong consequences, including emotional trauma, lasting physical impairment, chronic health problems, and even death.”²⁹

It is not only that pregnancy can be the site of IPV, however, but that pregnancy can be a catalyst for the severity of violence to increase.³⁰ The leading cause of death among pregnant women is homicide³¹ — accounting for *twice* as many deaths as the other leading causes of pregnancy-related deaths: bleeding or placental disorders.³² Pregnancy alone results in a 16% increase in the risk of being murdered — and a three-fold increase among Black women.³³ And even if pregnancy does not result in homicide, the physical realities of pregnancy (and early parenthood) places an individual who was potentially already experiencing violence in a uniquely vulnerable position, increasing her susceptibility to violence and decreasing her ability to disentangle herself from systems of support even when they risk additional violence.³⁴

For some people, pregnancy *can* be a “protective period” where incidents of violence decrease.³⁵ But our cultural expectation is that this protection from violence is much more widespread. Media portrayals of incidents of violence against pregnant people rarely mention that pregnancy can be a time of increased violence, implicitly implying that such violence is surprising and exceptional³⁶ — when, in fact, it is depressingly commonplace.

²⁸ Rebekah Kratochvil, *Intimate Partner Violence During Pregnancy: Exploring the Efficacy of a Mandatory Reporting Statute*, 10 Hous. J. Health L. & Pol’y 63, 65 (2009) (internal citation omitted).

²⁹ AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, *supra* note 27.

³⁰ It is unclear whether pregnancy results in a higher risk for IPV generally, with some studies suggesting that it does and others refuting such an association. Compare Rebecca L. Burch & Gordon G. Gallup Jr., *Pregnancy as a Stimulus for Domestic Violence*, 19 J. Fam. Violence 243, 243–247 (2004), with Tamara L. Taillieu & Douglas A. Brownridge, *Violence Against Pregnant Women: Prevalence, Patterns, Risk Factors, Theories, and Directions for Future Research*, 15 Aggression & Violent Behav. 14, 22 (2010).

³¹ Rebecca B. Lawn & Karestan C. Koenen, *Homicide is a Leading Cause of Death for Pregnant Women in US*, 379 *BMJ* 2499, 2499 (2022); Maeve Wallace et al., *Homicide During Pregnancy and the Postpartum Period in the United States, 2018-2019*, 138 *Obstetrics & Gynecology* 762, 762 (2021).

³² Subbaraman, *supra* note 4, at 539.

³³ *Id.* at 540.

³⁴ Deborah Tuerkheimer, *Conceptualizing Violence Against Pregnant Women*, 81 *Ind. L.J.* 667, 679-80 (2006).

³⁵ Jacquelyn Campbell et al., *Abuse During Pregnancy in Industrialized and Developing Countries*, 10 *Violence Against Women* 770, 773 (2004) (internal citation omitted).

³⁶ See e.g., Christine Pelise, *Pregnant Woman Was Allegedly Killed by Navy Officer — and Family Says It Happened After She Refused Abortion*, *People* (Aug. 18, 2022), <https://people.com/crime/pregnant-woman-allegedly-killed-by->

III. STATE VIOLENCE TOWARDS PREGNANT PEOPLE

In addition to the risk of private violence during pregnancy, pregnant people experience violence at the hands of medical professionals and state actors, as well. This violence takes many forms and changes dependent on whether the pregnancy itself is desired.

As a number of scholars have recently explored, in addition to the “normal” violence of childbirth, pregnant people are expected — and sometimes required — to endure additional violence in the form of unwanted and often unnecessary medical interventions.³⁷ This “obstetric violence” includes forced and/or coerced surgeries and medical procedures, sexual violence, and unnecessary physical restraint, including shackling during childbirth.³⁸ Incarcerated pregnant people are more likely to experience state violence, including being deprived of basic and necessary medical care during pregnancy and birth.³⁹ Prisoners in Arizona recently claimed that they were subject to forced inductions of labor well before their due dates because of a prison policy.⁴⁰

The state can also exert violent control over the pregnant body by making pregnancy a sufficient reason to strip away rights and protections that would otherwise exist.⁴¹ For instance, the imposition of criminal punishment for actions that would not be criminal but for pregnancy, such as criminalizing pregnant people who use drugs or alcohol, attempt suicide, or even fail to wear a seatbelt.⁴² But it is not only through the criminal law that the state can exert violent control over the pregnant body. Some states permit the complete deprivation of a pregnant person’s liberty through civil commitment laws that apply specially to pregnant people.⁴³ And a majority of states invalidate the advanced directive of a pregnant person

navy-officer-family-says-it-happened-after-she-refused-abortion/; Moira Ritter, *Missing Pregnant Woman is Found Shot Dead, Virginia Cops Say. Boyfriend is Arrested*, THE CHARLOTTE OBSERVER (Oct. 24, 2022), <https://www.charlotte-observer.com/news/nation-world/national/article267783307.html>.

³⁷ Elizabeth Kukura, *Obstetric Violence*, 106 GEO. L.J. 721 (2018).

³⁸ *Id.* Sexual violations can include unnecessary or unconsented to vaginal exams, sexualized medical care (such as the inclusion of a “husband stitch” in repairing vaginal tears), or even sexual assaults. *Id.* at 735-36.

³⁹ Priscilla A. Ocen, *Incapacitating Motherhood*, 51 U.C. DAVIS L. REV. 2191, 2213-20 (2018).

⁴⁰ Jimmy Jenkins, *Arizona Inducing the Labor of Pregnant Prisoners Against Their Will*, ARIZ. REPUBLIC (Jan. 2, 2023), <https://www.azcentral.com/story/news/local/arizona/2023/01/02/arizona-inducing-labor-of-pregnant-prisoners-against-their-will/69768038007/>.

⁴¹ See generally Priscilla A. Ocen, *Birthing Injustice: Pregnancy as a Status Offense*, 85 GEO. WASH. L. REV. 1163 (2017).

⁴² *Id.* See generally MICHELE GOODWIN, *POLICING THE WOMB* (2020); WENDY BACH, *PROSECUTING POVERTY, CRIMINALIZING CARE* (2022).

⁴³ See, e.g., WIS. STAT. § 48.133 (1997); MINN. STAT. § 253B.02 (2022).

— forcing her and her family to maintain her body on life support regardless of her wishes.⁴⁴

The types of state-sanctioned or perpetrated violence in the preceding paragraph assumes the wantedness of the pregnancy — the willingness of the pregnant person to *be* pregnant in the first place. Compelling continued pregnancy through the criminalization of abortion — or through the enactment of policies that make it legal but practically inaccessible — are a different type of violence altogether.⁴⁵ The “normal” violence of pregnancy, discussed *infra*, takes on a wholly different tenor in this circumstance, where the state is requiring the pregnant person to endure the extreme and unique forms of violence associated with pregnancy — and to do so entirely in service of the states’ own interests.⁴⁶ The United Nations Women’s Rights Committee has labeled such forced childbearing as gender-based violence — and even as a form of torture.⁴⁷ And despite the suggestion of Justice Amy Coney Barrett that safe haven laws sufficiently

⁴⁴ See, e.g., ALA. CODE § 22-8A-4(e) (2013); Ky. Rev. Stat. Ann. § 311.629 (West); MICH. COMP. LAWS § 700.5507 (2000).

⁴⁵ Reva Siegel, *Reasoning from the Body*, 44 STAN. L. REV. 261, 378-79 (1992) (“[T]he fact that most women will give themselves to children in ways that belie what is taken from them, does not alter the fact that coercing motherhood is an act of violence against women.”).

⁴⁶ See Anita Bernstein, *Common Law Fundamentals of the Right to Abortion*, 63 BUFF. L. REV. 1141, 1149 (2015) (“Commanding that someone must remain pregnant against her will makes her suffer in ways analogous to penalties [like] imprisonment, flogging, torture, surveillance. . . . Its hurtful consequences, which can include severe pain and death, are exceptionally intimate.”). There is legitimate debate about the existence and scope of state interests in forced childbirth, but courts have routinely accepted such interests exist. See Meghan M. Boone, *Reproductive Due Process*, 88 GEO. WASH. L. REV. 511, 530-35 (2020) (describing the various state interests in compelled reproduction that have been asserted or could be imagined, such as protecting potential life, promoting childbirth, and various moral and economic reasons for a pronatalist stance). Indeed, the majority opinion in *Dobbs v. Jackson Women’s Health Organization* outlined what it considered legitimate state interests in the regulation of abortion. See *Dobbs v. Jackson Women’s Health Org.*, 597 US __ slip op. at 78 (2022) (listing presumptively legitimate state interests as, “respect for and preservation of prenatal life at all stages of development, the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability”) (citation omitted).

⁴⁷ *Access to Safe and Legal Abortion: Urgent Call for United States to Adhere to Women’s Rights Convention*, UN Committee, U.N. HUM. RTS. OFF. OF THE HIGH COMM’R (July 1, 2022), <https://www.ohchr.org/en/statements/2022/07/access-safe-and-legal-abortion-urgent-call-united-states-adhere-womens-rights> (stating that forced pregnancy “amount[s] to gender-based violence against women and, in certain circumstances, to torture or cruel, inhuman or degrading treatment, in violation of the CEDAW Convention”).

address any lingering legal impediment of forced childbearing beyond the pregnancy itself,⁴⁸ many people experience the gut-wrenching decision to place children for adoption as violent, as well.⁴⁹

Public and private violence do not exist independently of one another, of course. Reproductive coercion increases the risk of unintended pregnancy and, without legal access to abortion, unintended pregnancies are more likely to result in increased incidence and severity of IPV.⁵⁰ Thus, private and public violence becomes mutually reinforcing — one type of violence placing the pregnant person at a higher risk for other types of violence.⁵¹ Further, there is a meaningful association between laws that enact violence on pregnant bodies — including civil commitment laws and laws that invalidate the advanced directives of pregnant people — and increases in private forms of violence.⁵² It is not surprising that the normalization of violent control over pregnant bodies by the state might encourage — or at least tacitly endorse — more intimate forms of violent control.

IV. HOW ACKNOWLEDGING THE REALITY OF VIOLENCE ALTERS LEGAL REGULATION

How might the legal regulation of pregnancy look different if the reality of pregnancy, and not its idealized cultural construction, were to inform lawmakers and jurists? First, replacing idealized notions of pregnancy with ones that more clearly reflect the potential for violence might simply shed light on the *need* for policy in areas that remain mostly unregulated. Or, at the very least, encourage both academics and policymakers to invest in additional research to determine the scope and contours of the issue. Second, centering the experience of violence in pregnancy might help to explain the negative consequences of regulation that already exists — how such regulation creates or exacerbates violence. This includes an honest recognition that it is sometimes legal regulation that *causes* pregnant people to experience violence. And finally, it might help to shift the

⁴⁸ Transcript of Oral Argument at 56-57, *Dobbs v. Jackson Women's Health Org.*, 597 US ___ (2022) (No. 19-1392).

⁴⁹ See Bernstein, *supra* note 46, at 1189 n.238 (collecting sources discussing why the option to relinquish parental rights does not negate the harm of an unwanted pregnancy).

⁵⁰ See Camp, *supra* note 22, at 290-94; Lawn & Koenen, *supra* note 31, at 2499.

⁵¹ DIANA GREENE FOSTER, *THE TURNAWAY STUDY* 230-36 (2020) (discussing how women denied abortions were more likely to experience violence from the father of the child, in part because the compelled pregnancy resulted in additional, ongoing contact with him).

⁵² Meghan M. Boone & Benjamin J. McMichael, *Reproductive Objectification*, MINN. L. REV. (forthcoming) (arguing that the objectification of the pregnant person that occurs as a result of fetal personhood laws is associated with increases in violence against women generally).

cultural narrative surrounding pregnancy, as well. While law is not the only — or even primary — driver of cultural change, it possesses a powerful expressive function that can affect how we understand and make meaning out of our experiences.⁵³

First, simply changing the conversation about pregnancy to account for the potential for violence might help alert both the public and legislators to the need for attention in this area.⁵⁴ About 700 women die from pregnancy-related complications each year in the United States, and approximately 60% of those deaths are considered *preventable*.⁵⁵ Shockingly, pregnancy-related mortality has *increased* in the United States in the last several decades, nearly doubling in the years between 1988 and 2014.⁵⁶ And Black women die of pregnancy related causes 2.5 times as often as other groups.⁵⁷ The United States is uniquely poor in this regard — our maternal mortality rate is more than twice that of the United Kingdom or Canada.⁵⁸ The successes of other countries that have made maternal mortality a priority shows that it is *possible* to combat this tragedy, if there is political will to do so. Centering this risk of harm and death — although contrary to the normally rosy construction of pregnancy — might help to create such political will.

Criminal justice reform could also benefit from focusing on the reality of violence in pregnancy. Violence during pregnancy has often not been adequately addressed by criminal law, which can underestimate or obscure the unique harm that a pregnant victim of violence endures.⁵⁹ Even though homicide is a more common cause of death in pregnancy than other common pregnancy-related disorders, the CDC doesn't classify these deaths in its "maternal mortality" numbers.⁶⁰ Likewise, federal homicide data collected by the FBI does not capture the pregnancy status of female

⁵³ See, e.g., Cass R. Sunstein, *On the Expressive Function of Law*, 144 U. PA. L. REV. 2021 (1996). In his Article, Professor Sunstein uses, as one example, the "troublesome" way that social norms might be affected if reproductive capacity is commodified. *Id.* at 2026, 2038-39.

⁵⁴ WHO, *supra* note 26 ("For policy makers, the greatest challenge is that abuse remains hidden.").

⁵⁵ CDC, *supra* note 18.

⁵⁶ *Pregnancy Mortality Surveillance System*, CDC (Mar. 23, 2023), <https://www.cdc.gov/reproductivehealth/maternal-mortality/pregnancy-mortality-surveillance-system.htm#causes>.

⁵⁷ Subbaraman, *supra* note 4.

⁵⁸ U.S. GOV'T ACCOUNTABILITY OFF., GAO-23-105871, MATERNAL HEALTH: OUTCOMES WORSENERD AND DISPARITIES PERSISTED DURING THE PANDEMIC 1 (2022).

⁵⁹ See generally Tuerkheimer, *supra* note 34, at 668.

⁶⁰ Subbaraman, *supra* note 4. The fact of pregnancy might not always be relevant to the homicide — certainly both victim and/or perpetrator may have been unaware of the pregnancy at the time. But without data, it is impossible to understand the scope of the problem.

victims.⁶¹ This failure to even collect data about the prevalence of homicide in pregnancy stunts policymakers' ability to fully understand the link between pregnancy and homicide, and obscures the true risks of pregnancy to health. If we fail, as an initial matter, to collect the data that reflects a problem like violence in pregnancy, we undermine the ability of policymakers to recognize the need for regulation.

There are also ways in which confronting the realities of violence in pregnancy might cause us to re-evaluate existing legal regimes. For instance, policies that aim to increase young fathers' involvement with non-marital children might be less desirable than policymakers imagine if they first take into account the fact that IPV is considerably *more* prevalent in these populations.⁶² Further, and in the wake of the *Dobbs v. Jackson Women's Health Organization* decision,⁶³ there have been a raft of stories in the media about the fundamentally violent nature of forcing pregnant people to carry pregnancies they do not desire or that pose a serious threat to their wellbeing or life.⁶⁴ The violence of forcing medical providers to wait until a health condition deteriorates so far that it threatens the life of a pregnant person before being legally permitted to act,⁶⁵ or of forcing the teenage (or younger) rape victim to carry a pregnancy against their will,⁶⁶ are striking examples of how abortion regulations *themselves* create violence. These narratives challenge the cultural construction of pregnancy

⁶¹ U.S. GOV'T ACCOUNTABILITY OFF., GAO-02-530, VIOLENCE AGAINST WOMEN: DATA ON PREGNANT VICTIMS AND EFFECTIVENESS OF PREVENTION STRATEGIES ARE LIMITED 3 (2002). While a minority of states try to collect pregnancy data on death certificates, these numbers are likely incomplete. *Id.*

⁶² Jennifer S. Barber et al., *The Dynamics of Intimate Partner Violence and the Risk of Pregnancy during the Transition to Adulthood*, 83 AM. SOC. REV. 1020, 1021 (2018) (“[B]etter understanding of the link between IPV and pregnancy during the transition to adulthood is important in elucidating the relationship context of young parents and informing policies and laws aimed at increasing father involvement in unmarried families...”).

⁶³ 597 US __ (2022).

⁶⁴ Selena Simmons-Duffin, *For Doctors, Abortion Restrictions Create An 'Impossible Choice' When Providing Care*, NPR (June 24, 2022), <https://www.npr.org/sections/health-shots/2022/06/24/1107316711/doctors-ethical-bind-abortion>; Marty Schladen, *Ohio Docs Say New Abortion Law Has Them Working Against Oaths to do no Harm*, OHIO CAP. J. (Sept. 7, 2022), <https://ohiocapitaljournal.com/2022/09/07/ohio-docs-say-new-abortion-law-has-them-working-against-oaths-to-do-no-harm/>; Laura Ungar & Heather Hollingsworth, *Despite Dangerous Pregnancy Complications, Abortions Denied*, AP NEWS (Nov. 20, 2022), <https://apnews.com/article/abortion-science-health-business-890e813d855b57cf8e92ff799580e7e8>.

⁶⁵ *Id.*

⁶⁶ Shari Rudavsky & Rachel Fradette, *Patients Head to Indiana for Abortion Services as Other States Restrict Care*, INDIANAPOLIS STAR (July 1, 2022), <https://www.indystar.com/story/news/health/2022/07/01/indiana-abortion-law-roe-v-wade-overturned-travel/7779936001/>.

as fundamentally non-violent and *abortion* as the “violent” choice — showing such a framework to be at least incomplete, if not outright incorrect.

As a result of focusing on the experience of violence in pregnancy, these narratives have broken through the “normal” politics of the abortion debate and shifted the public conversation.⁶⁷ This shift has, in turn, affected the perception of the desirability of draconian abortion regulation. This turn reflects the argument of this Article — that simply discussing the real potential for harm and violence will inform policy preferences and choices. Of course, there are legitimate concerns about whether it is politically savvy — or ideologically defensible — to focus on these “extreme” stories at the cost of highlighting the more everyday stories of people who simply want and deserve the right to choose abortion. While I agree that advocates should tell a full range of stories, my aim in this Article is not to suggest that we focus only on “extreme” narratives, but to recognize that the reality of many pregnancies — even most pregnancies — is different and more fundamentally violent than the cultural construction of pregnancy currently reflects. We need only accurately communicate the extremely commonplace experience of violence in pregnancy.

There are some positive developments as more researchers and policymakers recognize the need to address the uniquely American maternal mortality crisis. In 2020, the Department of Health and Human Services declared maternal deaths a public health crisis.⁶⁸ In recognition that an estimated 70% of recently pregnant people develop at least one pregnancy-related complication in the year following delivery, there are state and federal attempts to expand Medicaid access so that recently pregnant people don’t lose their Medicaid coverage after sixty days, instead retaining this important link to healthcare for twelve months postpartum.⁶⁹ These initiatives are positive signs, but in order to successfully address maternal mortality, sustained attention must be paid — and additional research-backed policy needs to be implemented.

⁶⁷ Raphael Thomadsen et al., *Impact of a Supreme Court Decision on the Preferences of Americans Regarding Abortion Policy*, SSRN (Sept. 14, 2022), <https://ssrn.com/abstract=4218978>; Shefali Luthra, *The End of Roe Could Be Changing People’s Minds About Abortion Bans*, THE 19TH (Sept. 19, 2022), <https://19thnews.org/2022/09/abortion-opinion-changing-after-roe-v-wade/>.

⁶⁸ U.S. DEP’T OF HEALTH & HUM. SERVICES, HEALTHY WOMEN, HEALTHY PREGNANCIES, HEALTHY FUTURES: ACTION PLAN TO IMPROVE MATERNAL HEALTH IN AMERICA AND SURGEON GENERAL’S CALL TO ACTION TO IMPROVE MATERNAL HEALTH 10 (2020).

⁶⁹ J. Phillip Gingrey, *Maternal Mortality: A US Public Health Crisis*, 110 AM. J. PUB. HEALTH 462 (2020); *Biden-Harris Administration Announces Initial Actions to Address the Black Maternal Health Crisis*, THE WHITE HOUSE (Apr. 13, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/13/fact-sheet-biden-harris-administration-announces-initial-actions-to-address-the-black-maternal-health-crisis/>.

CONCLUSION

It is understandable that many would resist a reframing of pregnancy as potentially or even fundamentally violent — the conventional story of pregnancy as a period of excitement, anticipation, and safety is certainly a nice story to tell. But relying on a cultural script that fails to reflect the lived reality of pregnant people blinds the public and lawmakers to the failures of reproductive policy. And ironically, relying on such a script might have the unintended consequence of making this idealized version of pregnancy even less attainable.
