

THE CYCLICAL NATURE OF REPRODUCTIVE COERCION IN AMERICA

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I. INTRODUCTION

America has had a long-standing history of disregarding individuals' rights regarding reproduction, especially those who come from marginalized communities.¹ Legal professionals should urge state and federal legislators to enact laws to identify the extent of reproductive coercion or coercive control, utilize this description to educate special courts, and apply disciplinary action to those who have practiced such acts.²

¹ Paola Alonso, *Autonomy Revoked: The Forced Sterilization of Women of Color in 20th Century America*, Texas Woman's University, <https://twu.edu/media/documents/history-government/Autonomy-Revoked--The-Forced-Sterilization-of-Women-of-Color-in-20th-Century-America.pdf> (last visited Jun. 30, 2023); See also Willow S. Clouse, *The Forced Sterilization of Black Women as Reproductive Injustice*, RAMIFICATIONS 1 (2020).

² See, e.g. Carmen M. Cusack & Matthew E. Waranius, *American Capitalism and the Protestant Work Ethic: "I'll Always Be Your Slave,"* 25 J. L. SOC. DEVIANCE 40 (2023) (discussing slaves and reproductive rights). Carmen M. Cusack, *Nonconsensual Insemination:*

Unfortunately, as of today, only California seems to have taken legislative steps to criminalize certain reproductive coercive acts, such as stealthing.³ Congress has also taken some legislative steps in passing laws that mirror this California law.⁴ Under the Stealthing Act of 2022, a survivor might recover “compensatory and punitive damages, injunctive and declaratory relief, and such other relief as a court may deem appropriate.”⁵ Congress also passed the Consent is Key Act in 2022, allowing for the United States Attorney General to increase the “amount provided to a State under the covered formula grant if the State has in effect a law that authorizes a civil action, for damages and such equitable relief as may be appropriate, against a person who engages in nonconsensual sexual protection barrier removal.”⁶

A Pilot Study, 2 ONLINE J SOC. SCI. RES. 61 (2013). Carmen M. Cusack, *50 State Survey of Prosecutors’ Willingness to Prosecute Nonconsensual Insemination*, 6 FAMILY & INTIMATE PARTNER VIOLENCE Q. 7 (2014).

³ See Anne Branigin, *Condom ‘Stealthing’ is Sexual Violence, Bill Says. Here’s What to Know*, THE WASHINGTON POST (Jun. 15, 2022), <https://www.washingtonpost.com/nation/2022/06/15/condom-stealthing-bill-congress/>.

⁴ *Id.*

⁵ H.R. Res. 7920, 117th Cong. (2022).

⁶ H.R. Res. 7928, 117th Cong. (2022).

However, these laws are simply not enough as these cases are simply falling through the cracks of the legal system.⁷ Those within the legal system, including our courts, need to be better educated regarding this type of domestic violence.

This Article discusses domestic violence, specifically reproductive abuse and coercion, in Section I. A cycle of abuse is described as well as the legal implications of reproductive coercion. In Section II, the history of James Marion Sims, M.D., L.L.D., a slave doctor, is compared to present day reproductive coercion to produce a synthesized analysis. The final part, Section III, determines future paths for educating and correcting Americans.

II. DOMESTIC VIOLENCE TODAY

Domestic violence, also known as domestic abuse and intimate partner violence, is defined by the

⁷ See Clouse (2020), at 8-9.

emotional need for the abusive partner to keep power and control over the victim using a pattern of abuse.⁸

A. Types of Domestic Violence

1. Forms

While each type of domestic violence may have similar underlying power imbalances, the way the imbalance is carried out differentiates among the various types of domestic violence.⁹ Some of the most common types of domestic violence consist of the following: emotional abuse, financial abuse, reproduction abuse and coercion, sexual abuse and exploitation, stalking/cyberstalking, and litigation abuse.¹⁰ While most of these forms may appear self-explanatory, reproduction abuse and sexual abuse are often mistaken and confused as being the same. This is related to the nature of abuse. In order to

⁸ *Forms of Abuse*, WomensLaw.com, <https://www.womenslaw.org/about-abuse/forms-abuse> (last visited Jun. 26, 2023); *Domestic Violence*, Office of Violence Against Women, <https://www.justice.gov/ovw/domestic-violence>

⁹ *Id.*

¹⁰ *Id.*

differentiate between the two types, activists must analyze the conduct associated with the abuse, as discussed in this Article, to guide courts further regarding this important legislation.

2. Reproductive Abuse and Coercion

Dr. Charvonne Holliday Nworu, assistant professor at Johns Hopkins Bloomberg School of Public Health, established that “[w]hat differentiates reproductive coercion from sexual violence or sexual coercion is the intention to achieve pregnancy.”¹¹ Additionally, Nworu stated that “[t]actical forms of reproductive coercion span coercion, deception, and manipulation.”¹² However, reproductive coercion does not always look the same case-by-case.¹³ Reproductive coercion is behavior that “interferes

¹¹ Nayanika Guha, *Here’s What You Need to Know about Reproductive Coercion*, Prism, (Mar. 29, 2022) <https://prismreports.org/2022/03/29/what-you-need-to-know-reproductive-coercion/>.

¹² *Id.*

¹³ See *id.*

with the autonomous decision-making of a woman, with regards to reproductive health.”¹⁴

A 2019 study investigated how 550 sexually-active high school females were affected by reproductive coercion and relationship abuse.¹⁵ Of those 550 females, 12% reported recent—within the last three months—reproductive coercion, and 17% reported physical or sexual adolescent relationship abuse, with no significant demographic differences.¹⁶ Based upon these results, the study concluded that about one in eight females had experienced reproductive coercion within the last three months.¹⁷

The types of conduct included within reproductive coercion are varied and multi-faceted. Types of conduct that are typically categorized as reproductive coercion include: pregnancy coercion,

¹⁴ K.T. Grace & J.C. Anderson, *Reproductive Coercion: A Systematic Review*, 19 TRAUMA VIOLENCE ABUSE 371 (2018).

¹⁵ Amber L. Hill, Kelley A. Jones, Heather L. McCauley, Daniel J. Tancredi, Jay G. Silverman, & Elizabeth Miller, *Reproductive Coercion and Relationship Abuse Among Adolescents and Young Women Seeking Care at School Health Centers*, 134 OBSTETRICS & GYNECOLOGY 351 (2019).

¹⁶ *Id.*

¹⁷ *Id.*

condom manipulation, pregnancy pressure, nonconsensual insemination, and birth control sabotage.¹⁸ Birth control sabotage include, but are not limited to: hiding, withholding, and destroying birth control pills, or even withholding finances needed to purchase birth control.¹⁹ Examples of pregnancy coercion include: threatening to have a baby with someone else if the person does not conceive, using physical violence to coerce a pregnancy, and forcing partners to terminate a pregnancy against their will or injuring them to cause a miscarriage.²⁰ Additional examples of reproductive coercion are lying about having a vasectomy or being

¹⁸ Guha (2022); *See also Reproductive and Sexual Coercion*, The American College of Obstetrics & Gynecology, <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2013/02/reproductive-and-sexual-coercion> (last visited Jun. 30, 2023).

¹⁹ *Intimate Partner Violence and Reproductive Coercion*, Planned Parenthood (Aug. 2012), https://www.plannedparenthood.org/files/3613/9611/7697/IPV_and_Reproductive_Coercion_Fact_Sheet_2012_FINAL.pdf; *See also* National Domestic Violence Hotline, *Reproductive Coercion*, <https://www.thehotline.org/resources/reproductive-coercion/> (last visited Jun. 30, 2023).

²⁰ Guha (2022).

on birth control.²¹ This conduct is often manipulative, and a mixture of physical and emotional responses.

Examples of birth control sabotage and condom manipulation might include breaking a condom on purpose, destroying contraceptives, or forcibly removing vaginal rings, contraceptive patches, or intrauterine devices, and creating barriers to access healthcare appointments to obtain birth control.²²

Another type of birth control sabotage is stealthing.²³ Stealthing, a type of domestic violence, is defined as the nonconsensual removal of a condom either before or during sexual intercourse.²⁴ A 2014 study investigated whether male negative attitudes toward women increase the likelihood of condom sabotage, deception, and forceful condom use

²¹ *Reproductive abuse*, mycwa, <https://www.mycwa.org.uk/reproductive-abuse> (last visited Jun. 30, 2023).

²² Guha (2022).

²³ See National Domestic Violence Hotline, *Stealthing*, <https://www.thehotline.org/resources/stealthing/#> (last visited Jun. 26, 2023).

²⁴ *Id.*

resistance tactics.²⁵ This study found that the group of men with negative attitudes toward women were more likely to use deceptive condom resistance strategies.²⁶ Their use of condom sabotage or physical force tactics were similar to the other groups.²⁷ Additionally, this study found that 80% of the sample had successfully performed one condom resisting tactic since the age of 14 and that they had used any tactic an average of 48 times. These tactics were acts categorized as straightforward to those defined as deceitful, and even coercive or aggressive.²⁸ Physical force was the least used condom evasion tactic.²⁹ Ultimately, this study found that the men who had reported positive attitudes toward women reported the lowest total rates of condom use resistance behavior.³⁰ Thus,

²⁵ K.C. Davis, C.A. Stappenbeck, J. Norris, W.H. George, A.J. Jacques-Tiura, T.J. Schraufnagel, & K.F. Kajumulo, *Young Men's Condom Use Resistance Tactics: A Latent Profile Analysis*, 51 J. SEX RES. 454 (2014).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Davis (2014).

³⁰ *Id.*

domestic violence may be associated with specific types of reproductive coercion.

B. The Cycle of Abuse

While relationship can vary, a systematic pattern of behaviors in domestic violence situations makes these relationship appear similar.³¹ The first phase is the *Honeymoon Phase*.³² This phase occurs at the beginning of the relationship, and the abusive partner appears to be charming, charismatic, and even sincere.³³ The next phase is called the *Tension Building Phase*.³⁴ This phase often begins with subtle controlling behaviors.³⁵ This phase usually causes the other partner to feel as if they are walking on thin ice in order to avoid conflict.³⁶ This then transitions into the *Explosive Incident Phase*. This phase tends to make the affected partner question the

³¹ See The Network la Red, *What is Partner Abuse*, <http://www.tnlr.org/en/what-is-partner-abuse/> (last visited Jun. 26, 2023).

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

relationship or even leave the relationship because the abusive partner begins to use a tactic, or tactics, of abuse to control the other partner.

Next, in the *Hearts and Flowers* phase, the abusive partner typically will try to prevent the affected partner from leaving.³⁷ The abusive partner may try to buy flowers, do other acts of kindness, or simply apologize for the abuse towards the other partner.³⁸ The abusive partner may try to blame the abuse on drugs, alcohol, or stress.³⁹ The cyclical nature begins then. The acts of kindness can be viewed as just that; however, most of the time, the abusive partner is still trying to control the other partner.⁴⁰ The affected partner may feel relief that the explosive incident is over; however, the tension then begins to escalate again.⁴¹ This cycle is often repeated at an increasingly rapid rate over time.⁴² This cyclical nature makes domestic violence an

³⁷ See *id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

alarming issue because the relationship is fraught not with an isolated fight or a one-off incident of abuse. For these reasons, the long-lasting cycle of abuse has caught the eye of some legal systems.⁴³

C. Legal Implications of Reproductive Coercion

While not all states have specified which acts of reproductive coercion receive specific legal implications, if any, California has done so.⁴⁴ Governor Gavin Newsom approved AB 453, a California Assembly bill, signed into law on October 7, 2021.⁴⁵ This bill amended California's civil definition of sexual battery and made stealthing a

⁴³ Simone Shah, *What is Stealthing? The Sexual Misconduct Gaining Legal Attention Around the World*, Time (Mar. 15, 2023, 4:22 PM), <https://time.com/6263384/netherlands-stealthing-consent/#>.

⁴⁴ See Isabella Grullón Paz, *California Makes 'Stealthing,' or Removing Condom Without Consent, Illegal*, The New York Times, <https://www.nytimes.com/2021/10/08/us/stealthing-illegal-california.html> (last updated Nov. 10, 2021).

⁴⁵ *Id.*; *Sexual Battery: Nonconsensual Condom Removal.*, Openstates, <https://openstates.org/ca/bills/20212022/AB453/> (last visited Jun. 30, 2023).

civil offense.⁴⁶ This being the act of removing a condom without consent during intercourse.⁴⁷ While this bill presented an important step forward, the law took substantial time and resources for enactment. Assemblywoman Cristina Garcia, a sponsor of the bill, said the “measure would give victims another resource to hold perpetrators accountable.”⁴⁸ Christina Garcia had been trying to pass legislation criminalizing stealthing since 2017.⁴⁹ Alexandra Brodsky brought widespread attention to stealthing in her 2017 study.⁵⁰ In her study, Brodsky stated that stealthing is “rape-adjacent” and stated the need for stealthing to become a new tort in order to provide both “victims with a more viable cause of action and

⁴⁶ *Nonconsensual condom removal.*, Openstates, <https://openstates.org/ca/bills/20212022/AB453/> (last visited Jun. 30, 2023).

⁴⁷ Shah (2023).

⁴⁸ Isabella Grullón Paz, *California Makes ‘Stealthing,’ or Removing Condom Without Consent, Illegal*, The New York Times, <https://www.nytimes.com/2021/10/08/us/stealthing-illegal-california.html> (last updated Nov. 10, 2021).

⁴⁹ *Id.*

⁵⁰ *Id.*

to reflect better the harms wrought by nonconsensual condom removal.”⁵¹

While California seems to be the only state in the United States to pass legislation for this behavior, it is not the only jurisdiction in the world to do so.⁵² In other countries, stealthing has been defined as a crime or falls within the definition of rape,⁵³ due to the nonconsensual nature of stealthing.⁵⁴ In October 2021, when the California law went into effect, the Australian Capital Territory criminalized stealthing.⁵⁵ Canada, Germany, the United Kingdom, and New Zealand have all found

⁵¹Brodsky, Alexandra, 'Rape-Adjacent': Imagining Legal Responses to Nonconsensual Condom Removal (2017). Columbia Journal of Gender and Law, Vol. 32, No. 2, 2017, Available at SSRN: <https://ssrn.com/abstract=2954726>
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2954726; See also Amanda Kippert & Hannah Craig, What Are Grey Rape and Stealthing?, domesticshelters.org (Apr. 18, 2022), <https://www.domesticshelters.org/articles/identifying-abuse/what-are-grey-rape-and-stealthing#>.

⁵² See Kippert & Craig (2022).

⁵³ Kippert & Craig (2022).

⁵⁴ *Id.*

⁵⁵ *Id.*; *Nonconsensual condom removal.*, Openstates, <https://openstates.org/ca/bills/20212022/AB453/> (last visited Jun. 30, 2023); See also Isabella Grullón Paz, *California Makes 'Stealthing,' or Removing Condom Without Consent, Illegal*, The New York Times, <https://www.nytimes.com/2021/10/08/us/stealthing-illegal-california.html> (last updated Nov. 10, 2021).

stealthingly to be rape or sexual assault.⁵⁶ Legal scholars have studied this behavior and established its legal implications, and, now, courts may collect a bevy of treatments to simplify paths for Americans seeking similar remedies for similar types of this domestic violence.

III. AMERICA'S HISTORY OF REPRODUCTIVE COERCION

With new advancements and enacted laws in modern society, reproductive coercion and responses thereto have evolved and grown. However, the United States has always known and been exposed to reproductive abuse.⁵⁷ Fairly recently, women did not have the autonomy to make reproductive decisions, and such coercion continues in the twenty-first century.⁵⁸ One of the most historically well-known attacks on women's reproductive autonomy was by

⁵⁶ Kippert & Craig (2022).

⁵⁷ Alonso (2023).

⁵⁸ *See id.*

James Marion Sims, M.D., L.L.D.⁵⁹ An examination of this well-known example illustrates the importance of legal attention and development to address this type of domestic violence.

A. The History of James Marion Sims, M.D., L.L.D.

In 1833, Dr. Sims began his medical education at what is now known as the Medical University of South Carolina.⁶⁰ He later transferred to study at Jefferson Medical College.⁶¹ After the deaths of his first two patients, both of whom were infants, Dr. Sims relocated to Alabama.⁶² After his relocation, he became renowned as a skillful general surgeon and built a private eight-bed hospital in the rear of his home. Dr. Sims then began treating enslaved persons on local plantations.⁶³ This was not then uncommon

⁵⁹ See Jonathan Tavares, Charles J. Yeo, & Pinckney J. Maxwell, IV, *James Marion Sims, M.D., LL.D.*, 78 DEP'T. SURGERY GIBBON SOC. HIST. PROFILES 9 (2012).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

for doctors to do.⁶⁴ In 1808, the United States Congress banned the importation of African-born enslaved people.⁶⁵ Thereafter, slave-owners increased the number of births per enslaved woman as an economic strategy.⁶⁶ Because of the increased birth rates, doctors were hired by slave-owners to examine women in relation to their fertility.⁶⁷

During this time, Dr. Sims wrote that “[i]f there was anything I hated, it was investigating the organs of the female pelvis.”⁶⁸ However, in 1845, Dr. Sims was requested to care for a woman who had incurred injuries on her pelvis.⁶⁹ This was the first time during which Dr. Sims used what is now known as the “Sims position.”⁷⁰ This position allowed for better insight into the injuries and, upon this

⁶⁴ See Chris Fitzpatrick, *The ‘Father of Gynaecology’ Dr James Marion Sims and His Brutal Experiments on Slaves*, THE IRISH TIMES (May 14, 2023), <https://www.irishtimes.com/opinion/2023/05/14/revisiting-the-legacy-of-sims-the-father-of-gynaecology-who-performed-brutal-experiments-on-enslaved-women/>.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Tavares (2012), at 9.

⁶⁹ *Id.*

⁷⁰ *Id.*

discovery, Dr. Sims became elated.⁷¹ Dr. Sims then used a bent pewter spoon, purchased from a hardware store, as what is now known as the Sims speculum.⁷² This began his long practice of gynecology.⁷³ Dr. Sims began examining the enslaved women who had vesicovaginal fistulas, an abnormal opening between the bladder and the vagina.⁷⁴ Using this new speculum and position, Dr. Sims wrote: “I saw everything as no man had ever seen before. . . . I soon operated upon the fistula, closing it in about an hour’s time.”⁷⁵

While this operation failed, Dr. Sims became hyper-focused on curing vesicovaginal fistulas. In Dr. Sims’ autobiography, he wrote that he had “ransacked the country” to find “cases” to operate on.⁷⁶ Dr. Sims acquired eleven enslaved females with the condition, promising the slave-owners to

⁷¹ *Id.*

⁷² *Id.*

⁷³ See *id.*

⁷⁴ Tavares (2012), at 9. M. Stamatakos, C. Sargedí, T. Stasinou, K. Kontzoglou, *Vesicovaginal Fistula: Diagnosis and Management*, 76 *INDIAN J. SURG.* 131 (2014).

⁷⁵ *Id.* at 9.

⁷⁶ Fitzpatrick (2023).

“lodge, board, and treat them.”⁷⁷ This resulted in a three-year practice of repeated operations on these women.⁷⁸ There were three enslaved women in particular, Lucy, Anarcha, and Betsey, that were operated on several times.⁷⁹ Anarcha had over 30 surgeries.⁸⁰ During these operations, Dr. Sims did not use anesthesia, even though anesthetics were available, because he did not believe these operations brought upon enough pain to necessitate them.⁸¹ Additionally, starting in 1849, Dr. Sims ceased the use of silk sutures and began using silver sutures during these operations.⁸² This change was beneficial because the use of the silk sutures allowed the surgical site to become infected and reopen.⁸³ After this change, Dr. Sims performed the first successful vesicovaginal operation on a woman named Anarcha.⁸⁴

⁷⁷ Tavares (2012), at 10.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ Tavares (2012). [REVISE SHORT CITATION].

⁸⁴ *Id.*

Dr. Sims was awarded medals and honors, became president of the American Gynecological Society, and even became renowned as the “Father of American Gynecology.”⁸⁵ However, these awards were not gained without the forced participation of other human beings. The eleven enslaved women were in a seemingly never-ending cycle of indescribable pain, such as Anarcha, who suffered over 30 unsuccessful surgeries.⁸⁶ While science indicates that the use of silk sutures could lead to infections and re-opening of the surgical sites, this scientific breakthrough was found by forcing eleven enslaved women to endure three aggravating years of medical experimentation.⁸⁷ While Dr. Sims searched for a cure, he also ignored a basic pillar of medicine: “Primum, non nocere.”⁸⁸ This meaning “first, do no harm.”⁸⁹ Unfortunately, these practices

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *primum non nocere*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/primum%20non%20nocere> (last visited Jun. 30, 2023).

were not illegal or unknown as some may wish to believe.

In 1861, the Alabama Supreme Court decided that any enslaved individual “has no legal mind, no will which the law can recognize.”⁹⁰ Even if an enslaved woman experienced sexual violence at the hands of a slave-owner, there was no afforded legal protection or escape.⁹¹ These women had no physical or legal protection from these invasive and excruciating surgeries. Reproductive coercion and these forced acts have many similarities. Those who have been affected by reproductive coercion are similar to those eleven enslaved persons because both forced acts have removed all physical autonomy for these women.⁹² While there is no longer a widespread epidemic of slavery, individuals are still being forced into reproductive slavery.⁹³

⁹⁰ Fitzpatrick (2023).

⁹¹ *Id.*

⁹² National Underground Railroad Freedom Center, *Black Resistance: Reproductive Justice*, Freedom Center Voices (Apr. 14, 2023), <https://freedomcenter.org/voice/black-resistance-reproductive-justice/>; See also Clouse (2020), at 9.

⁹³ See Corey G. Johnson, *Female Inmates Sterilized in California Prisons without Approval*, Reveal (Jul. 7, 2013),

B. The Continual History

“[S]lavery very much depended on the control over bodies and thus the control over reproduction.”⁹⁴ Dr. Sims was not an isolated perpetrator in American history. During the time of enslavement, many women even turned to self-administered abortions.⁹⁵ However, the end of slavery did not end the control over Black women’s bodies.⁹⁶ During the 1950s and 1960s, society saw a shift from forcing reproduction to trying to stop their reproduction altogether.⁹⁷ This influenced the “eugenics movement,” focused on creating the “perfect race.”⁹⁸ Margaret Sanger, a woman involved in the movement for reproductive rights among poor and endowed females, stated that eugenics supported “more children from the fit, less from the unfit.”⁹⁹ Then, sterilization began being forced upon people

<https://revealnews.org/article/female-inmates-sterilized-in-california-prisons-without-approval/>.

⁹⁴ Clouse (2020), at 3.

⁹⁵ *Id.* at 3.

⁹⁶ *Id.* at 3.

⁹⁷ *Id.* at 3.

⁹⁸ *Id.* at 3.

⁹⁹ *Id.* at 3.

of color, as they were viewed by supremacists as an inferior group of society.¹⁰⁰

The most common procedures of sterilization were a hysterectomy, the removal of the uterus, and tubal ligation, the blocking of a woman's fallopian tubes through either cutting, burning, or tying.¹⁰¹ In many states, Black women were often sterilized against their will.¹⁰² This trend began because in 1907 when the United States government allowed state legislators to enact laws to sterilize anyone who was "unwilling and unwitting."¹⁰³ These non-consensual procedures were often completed in the hospital post-birth of a child or were done after being told they had a reproductive condition, when they did not, that could only be fixed with surgery.¹⁰⁴ By the 1930s, 33 states allowed the sterilization of "unwanted" members of society.¹⁰⁵

¹⁰⁰ Clouse (2020), at 6.

¹⁰¹ *Id.* at 5.

¹⁰² *Id.* at 6.

¹⁰³ *Id.* at 6.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

Specifically, Fannie Lou Hamer, a woman of color, was subjected to a forced hysterectomy.¹⁰⁶ In 1961, Hamer went to the Sunflower County hospital for a procedure to remove a tumor.¹⁰⁷ During her visit, she was sterilized without her consent.¹⁰⁸ At this time, they referred to this type of hysterectomy, one performed on indigent women of color, as a “Mississippi appendectomy.”¹⁰⁹ Hamer stated that about six out of ten women of color that go to the hospital are sterilized by having their tubes tied.¹¹⁰

C. Comparing History to Reproductive Coercion

Today, there is so much more knowledge available to understand reproductive coercion.

¹⁰⁶ Sanjana Manjeshwar, *America’s Forgotten History of Forced Sterilization*, BERKELY POL. REV. (Nov. 4, 2020), <https://bpr.berkeley.edu/2020/11/04/americas-forgotten-history-of-forced-sterilization/>.

¹⁰⁷ *Black Liberation Archives | WEEK 1 | Fannie Lou Hamer Taught Us*, Center for Constitutional Rights (Feb. 1, 2021), <https://ccrjustice.org/home/blog/2021/02/01/black-liberation-archives-week-1-fannie-lou-hamer-taught-us#>.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*; Rosalind Early, “*The Sweat and Blood of Fannie Lou Hamer*,” National Endowment for the Humanities, <https://www.neh.gov/article/sweat-and-blood-fannie-lou-hamer#>.

¹¹⁰ Center for Constitutional Rights (2021).

Using this knowledge, legal scholars and legislators can examine the practices of Dr. Sims and forced sterilization under a theoretical microscope to see how similar they were to what is now known as reproductive coercion. As previously discussed, a 2014 study found that men with reported positive attitudes toward women also reported the lowest total rates of condom use resistance behavior, which is a type of reproductive coercion.¹¹¹ Here, Dr. Sims had expressly shown his hatred towards female genitalia in the beginning of his career. After taking interest in the gynecological needs of slave-owners, Dr. Sims was not concerned with the physical ailments of the women involved.¹¹² Rather, Dr. Sims was simply helping slave-owners who needed assistance to maintain their economic needs and he made the decision that these women did not need anesthesia for extremely painful procedures.¹¹³

Even though Dr. Sims' actions occurred during the United States period of slavery, the forced

¹¹¹ Davis (2014).

¹¹² *Id.*

¹¹³ *See Id.*

sterilizations by others were roughly 65 years after the abolishment of slavery.¹¹⁴ These acts of reproductive coercion removed the autonomy of these women.¹¹⁵ These types of acts are not just in the past. In California, a report found that, between 2006 to 2010, more than 150 female prisoners were illegally forcibly sterilized.¹¹⁶ Even though there are laws that try to stop forced sterilization, this practice still occurs today.¹¹⁷ Public outrage over sterilization abuse in Alabama and New York also still continues today.¹¹⁸ Since the 1970s, it has been illegal to pressure anyone to be sterilized; however, women are still being sterilized against their will.¹¹⁹ Kimberly Jeffrey, a former inmate, stated that she was pressured by a doctor, while she was sedated and strapped to a surgical table for a C-section in 2010.¹²⁰ Jeffrey stated that she was horrified and resisted.¹²¹

¹¹⁴ Clouse (2020), at 7.

¹¹⁵ National Underground Railroad Freedom Center (2023).

¹¹⁶ Clouse (2020), at 8.

¹¹⁷ *Id.* at 8-9.

¹¹⁸ Johnson (2013).

¹¹⁹ *See id.*

¹²⁰ *Id.*

¹²¹ *Id.*

The current analogy between legislation, federal and in California, is not enough to delve into the variety of needs and solutions.

The federal legislation allowed for those affected by this coercion to be awarded compensatory damages, punitive damages, injunctive relief, and declaratory relief under the Stealthing Act of 2022.¹²² The federal legislation also allowed for the United States Attorney General to increase funding to states through the Consent is Key Act in 2022.¹²³ However, neither Act expressly allowed for educational resources to educate those working in this field. Neither legislation made it a criminal act to remove the reproductive autonomy from another using annotations that include every timely term and already defined form of violence, malpractice, and injury.

Although these forced acts have occurred throughout the history of the United States, reproductive coercion is a modern version of these

¹²² H.R. Res. 7920, 117th Cong. (2022).

¹²³ H.R. Res. 7928, 117th Cong. (2022).

forced actions. Reproductive coercion is how these actions have evolved throughout society as women have gained other rights. These cases have been permitted by some processes within the judicial system to slip through the cracks. It was not until the 1990s that some jurisdictions began to create specialized domestic violence courts.¹²⁴ States designed special domestic violence courts to “process cases more efficiently and deliver more consistent rulings about domestic violence statutes.”¹²⁵ Additionally, some domestic violence courts incorporate rehabilitation and deterrence of repeat offenses. This system could also be applied to intimate partners similar to those systems that help victims to defend against criminal actions by doctors and jailers.¹²⁶ Domestic violence court participation has had a statistically significant impact on repeat offenders.¹²⁷ These courts do not always uniformly

¹²⁴ *Domestic Violence Courts*, National Institute of Justice, <https://nij.ojp.gov/topics/courts/domestic-violence-courts>.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Practice Profile: Domestic Violence Courts*, National Institute of Justice (Oct. 22, 2018), <https://crimesolutions.ojp.gov/ratedpractices/78#mao>.

implement results in a national fashion.¹²⁸ As a result, these types of cases may still go unnoticed and not litigated.

IV. LOOKING TO THE FUTURE OF REPRODUCTIVE RIGHTS

Reproductive coercion is a painful and tragic part of American history that some people, institutions, states, and even the federal government may refuse to acknowledge using legal education to resolve matters. However, in order to look forward and establish a better future, courts must look to the past for answers. Currently, only one state in the United States, California, has made stealthing, a form of reproductive coercion, illegal as a distinguishable form of sexual violence. This distinguishment helps domestic violence courts to aid survivors in a consistent way. This lack of legal education and action is simply an injustice. The eleven enslaved women that Dr. Sims examined and experimented upon were not afforded any type of autonomy in their

¹²⁸ *See id.*

reproductive matters. Surgery after surgery, any fragment of bodily autonomy they felt they had was stolen from them. Any human that is a survivor of reproductive coercion is removed of their reproductive autonomy.

Dr. Sims ignored a basic pillar of medicine, “do no harm.”¹²⁹ Due to the deeply-rooted moral similarities of the medical field and the legal field, experts should not ignore this thought process. These acts of violence and manipulation have continued. While these newer acts of manipulation have resulted in physiologic manipulation, they still result in removing all autonomy in one’s reproductive health. The legal system was built to help those in need and punish those who caused harm. Stripping away the reproductive autonomy from an individual is one of the most harmful things a human can do to another. Without easy access to punishment and damages, those in need are not better off than their ancestors hurt by Dr. Sims.

¹²⁹ Merriam-Webster, <https://www.merriam-webster.com/dictionary/primum%20non%20nocere>.

Currently, there is not enough education regarding this type of domestic violence flowing evenly through the courts. States within the United States need to implement a widespread plan to educate the current legal system on how to properly address this issue. While the Center for Court Innovation has established that "[c]riminal domestic violence charges are challenging to prosecute and adjudicate," they have also outlined the seven key principles of developing domestic violence courts.¹³⁰ The Center has also helped gather data regarding the confirmed amount of criminal domestic violence courts within the United States.¹³¹ As of December 2009, only 208 criminal domestic violence courts were confirmed within the United States.¹³² This deficiency can no longer be tolerated. The cost of intimate partner violence exceeded \$8.3 billion in the

¹³⁰ See *Criminal Domestic Violence Courts: Key Principles*, courtinnovation.org,

https://www.innovatingjustice.org/sites/default/files/documents/DV_Criminal_Fact_Sheet.pdf.

¹³¹ *A National Compendium of Domestic Violence Courts*, Center for Court Innovation (Dec. 2009),

https://www.innovatingjustice.org/sites/default/files/national_compendium.pdf.

¹³² *Id.*

United States.¹³³ Additionally, survivors lost a total of 8 million days of paid work each year.¹³⁴ While these numbers show the sheer amount of loss Americans experience each year in domestic violence, it may not even show or make-up for the amount of individuals who lose their own reproductive autonomy.

¹³³ Economic Impact of Domestic Violence, Center for Domestic Peace, <https://centerfordomesticpeace.org/economic-impact-of-domestic-violence/>.

¹³⁴ *Id.*