



Episode 484: Liberty and the Abortion Controversy

Guest: Stephen Wagner

WOODS: This is an extremely controversial topic, but I sometimes say to myself I don't have controversial enough topics on this show. Now, for most people, they look at the list of topics and they say, oh my gosh, look at the topics this guy covers, but for my audience, those are all mainstream. But this one is divisive within my own community, and I'm going to have people super ticked off at me for this episode and I'm going to have people cheering for me in this episode, and I say, you know, if you're listening to this show on a daily basis and it doesn't challenge you once in a while, then it ain't doing you no good. So I decided to talk to Steve — now, you and I have not spoken before, but I know about the work that Justice for All does, so I thought somebody from over there might be interesting to talk to. Plus, are you a fell Kansan?

WAGNER: I am. Yeah, we live in Wichita, Kansas, and most of our team is in Wichita.

WOODS: Tell us first of all about what Justice for All does. I know that you go around and you basically are talking to people face to face, one on one. Is it primarily college campuses, and how do you go about it?

WAGNER: Well, our goal as an organization is to find as many people who disagree with us and engage them on one of the hottest topics of American culture today, abortion. And so what we do is we'll go onto college campuses, we'll set up an exhibit that's meant to create a debate about abortion, get people energized to talk about it, and then our goal is to turn that debate into a dialogue that's productive for both sides, or as I would say, all sides of the issue, because I don't believe there are only two sides to the abortion issue.

WOODS: Oh okay, well, explain that, because I guess I supposed that there were only two sides.

WAGNER: Sure, well many people see the issue as pro-life versus pro-choice, but when I ask people what they mean by those terms, I have had people say at the end of the discussion their position ends up being exactly the same, even though they named the positions exactly opposite. So here's an example: I was at the University of Kansas, and two young women walked up to our poll table, and the poll table asks, "Should abortion remain legal?" One side says yes, and the other says no, and we just give them a pad of paper to register their opinion.

So I began to ask them some questions about what they believed, and the person who said abortion should remain legal, I asked her whether she thought it should be legal through all nine months. And she said no. And I kept asking clarification questions, really with an interest in understanding her better, not with the purpose of changing her mind at that point, and at the end of trying to figure out what she meant, she believed abortion should only be legal in the case of rape in the first few weeks of pregnancy and only with RU-486, which is one of the abortion – it's the chemical abortion technique used early in pregnancy.

Now, the other girl – it turned out they were sisters – they popped their heads out while they were writing and said hey sister, what did you write. And they actually – then they clarified for me they were actual blood sisters. And so they're signing the opposite sides of the poll table, but then her sister, after we clarified her view, her view is almost exactly the same: abortion should only be legal in the case of rape and life of the mother and only early in pregnancy. And so even though they named their positions differently, pro-life and pro-choice, they ended up having almost precisely the same position. And then of course we talked about their position to see whether that held up under further discussion.

WOODS: When you're on college campuses, is there, I don't know, maybe a median opinion that you encounter on abortion most often? And on what basis is it founded?

WAGNER: Sure. Well I'd say the most common position on abortion across the board – and this is students who are religious, students who are not religious, students who tend conservative or progressive or that tend different ways on the political spectrum – the most common position is I don't like abortion, but I think it should be legal. Or I'm sad about abortion; I think abortion is bad; I wish people didn't have to have abortions; I would never myself have an abortion, but I think it should be legal for women to have abortions.

WOODS: And on what grounds do they make the claim that it ought to be legal? Because obviously there are things that upset them very much that they would not want to have legal, and of course slavery is a common example the pro-life movement uses –

WAGNER: Sure.

WOODS: – why should slavery be illegal but abortion not be illegal, when both of them make these people sad?

WAGNER: Right, well I'd say that many people haven't thought through their position on abortion, and I can only give a perspective from talking to thousands of college students, so roughly 18 to 24, usually undergraduates but also graduate students on major universities across the country. That's the perspective that I've interacted with most often, and in many cases, they just haven't thought it through. They think that the pro-choice perspective – the abortion should be legal, at least in some circumstances, at least at certain points in pregnancy – they think that's just the

obvious perspective, and they've sort of assimilated it just from being a part of American culture. And so I don't think they're coming to the discussion a lot of times having thought it through.

But once we start into the discussion, some of the most common groundings or reasons for abortion that they give me are things like I think a woman has a right to her body, and then all sorts of practical considerations: a woman's too poor to have a child, she shouldn't have to have a child if she doesn't want one. But typically when we start talking about those things, most people want to limit the number of circumstances where they think abortion should be legal. So the most common person is not very in favor of abortion, just elective abortion for any reason whatsoever. Most people want to limit the abortions that they think should be legal to life of the mother, health of the fetus or disability in the fetus, or rape and incest, which is certainly the most common reason that people think abortion should be legal.

WOODS: All right, let's unpack some of that, that when you say that people speak about women having a right to their own bodies, and then they say that a woman shouldn't have to have a child if she doesn't want one, I think of those as being kind of the same argument, because if they're claiming that a woman shouldn't have to have a child if she doesn't want one, that implicitly is arguing that that's because she has control over her body, and who else should have a greater moral claim to make decisions about her own body than she herself. So what is the Justice for All or your personal answer when people say that to you, because that, on the surface of it, you could see a plausibility to that. This is my body, and a pregnancy is going to interfere with it; it's going to make me very ill, it could put me in bed for nine months. Do I really have this obligation to this other person who happens to be inside me?

WAGNER: Well, I agree that these concerns – whether I'm ready to have a child or I'm too poor to have a child or I want to have a child and then a woman's right to her body – I agree that those concerns are linked in many people's minds. I'd like to separate them for just a moment, and I think your listeners will see why here in a moment.

Let's just say that the reason for abortion is some women are too poor. Well, certainly poverty matters and we all want to help people out of poverty, but as I'm sure your listeners would say, there are different ways to help people out of poverty. Some people believe in government solutions some people that we as communities can help people get out of poverty, some people believe that individuals should get themselves out of poverty, and different there are variations of those. But we can all agree that poverty is a serious issue and that people feeling too poor to have a child, that's a valid feeling that they might have, and that's a very tough circumstance. So I agree that it's tough to be in that circumstance.

But imagine that we have a two-year-old, and his mother is very poor, extremely poor. Now, would we say that she can kill her two-year-old? Most people that I talk to are going to say no, you can't kill the two-year-old. And then I just ask a simple question: why can't she kill the two-year-old if she's too poor? And sometimes I'll frame the conversation this way: I'll say, I know this sounds like a stupid question, but I think

that will help our discussion to just see if we have common ground on this point. And usually the person at the end of the day will say, well, that's a human being. The two-year-old's a human being; that's why you can't kill the two-year-old because of poverty. And then I'll say, well, isn't that the issue then with the unborn. If the unborn is a human being like the two-year-old, we can't kill them for poverty, but if they aren't a human being, then certainly it's not a problem to kill them in this issue of poverty.

And so that's the issue: is the unborn a human being? So with many of the arguments about abortion for and against — some of them make an economic argument. They might say it's better for the economy to have abortion be legal. And someone of course might make the opposite argument; it's worse for the economy, because 50 million people have been killed since 1973 who could have been producing good for the economy over the course of those many years. And I would say, well, aren't we missing the issue here? I mean, we can debate the way that the economics work, but let's even just grant that it would be better for the economy for abortion to be legal. Does that justify killing a human? Well, no, we can't kill humans in order to make the economy better, and so that's really the issue with the unborn, so if the unborn is a human being, then we would have to protect them just like two-year-olds, wouldn't we? And so that's how the discussion might go on issues of poverty or practical considerations like that.

WOODS: All right, yeah, let me jump in there. My wife who does a lot of pro-life work tells me that one trend she's seen over the years is that in the older days you used to hear the argument that, well, the unborn, we're not really dealing with human beings; we're dealing with just a clump of cells, and it's meaningless, and there's nothing there, whereas she's much, much more likely today to encounter people saying, yeah, I know it's a baby; of course it's a life. That's the Camille Paglia view; she comes right out and says, let's not be ridiculous about it; obviously this is a life, but there are other values that trump that, including my own personal situation just does not allow for the birth of a child at this moment. So it's not a question of we deny the humanity. We recognize the humanity; we just still want to have the abortion anyway.

WAGNER: Yeah, so I agree that many people are granting the humanity of the unborn early in the discussion, and I still, for the sake of clarity in the conversation, I still want to make sure that we're using the same words to describe the same things or that we are really on the same page about that. So someone can say in a vague way the unborn is fully human, but then they can proceed with their argument and treat the unborn as if they're not fully human. And so in order to help that conversation be more productive about the unborn being fully human but abortion still being justified, I want to take a moment to clarify the biological facts and to clarify some basic ideas about the value of human beings before we proceed.

So for example, I want to know if we agree that the unborn is a living, whole organism of the human species, or a living, human organism. And biologically — I'm only talking biologically right now. And usually when people say I think life begins at, say, fertilization, they mean that biologically, and then they also mean it in more of a

value or rights sense. But sometimes we get pushback from someone who's on another side of the issue, saying I don't think it's alive in the sense that you mean it, that it has rights. And so I have to clarify, do we at least agree it's a living, human organism biologically. Now, all the scientific evidence seems to be on the side of affirming that, that it's a living, human organism. I don't think that's very controversial for a lot of people once they look at the facts.

Then the question is, "Do all human organisms deserve the same kind of treatment?" or, "Are they all equal?" And I think because they all have a human nature, and that's the thing that's the same about us that demands that we treat each other equally — let's just take adults, for example — what demands we treat each other equally? Well, we're all human. We all have a human nature, or we are that kind of thing, and we all have our humanness equally. Well, the unborn also have that humanness, and so we should treat the unborn equally as well.

So now if we all agree that the unborn are human organisms and that all human organisms should be treated equally based on their human nature, then we can proceed with the argument that you're talking about: a woman has a right to her body and should be able to have an abortion even though the unborn is a human being.

WOODS: I guess some people seem to think that there's some moment — and they'll admit that it's murky — when you go from a clump of cells to a human being.

WAGNER: Sure.

WOODS: And I think even most people would say it's obviously not just three seconds before the child comes out of the womb. Like, obviously there's some particular moment, but nobody quite knows when. But the way I think of a classical, maybe scholastic philosopher would have thought about it is that if nothing in the child's nature changes, then it's still the same child the whole way. If it's not going from being a pigeon to a bat or an encyclopedia to a CD player, it's simply unfolding its natural capacities. It is still the same thing. Its nature has not fundamentally changed, either based on its physical location or its size. These things are completely extraneous to whether or not you're dealing with a human being. There is an uninterrupted sequence going back to conception, where there is a natural unfolding that's taking place. It's not the transformation of one thing to another; it's got to be always the same thing.

WAGNER: That's right, and here's a simple way that I communicate that to people or that we talk about it together to try to see if we can get closer to agreement and closer to the truth together. I'll say, "Are you a human being with certain fundamental rights, like the right to life?" And they'll say yes. And I'll say, "What has been added to you since the time of fertilization to bring you to this point?" And they'll have to say, food, and I was in a certain kind of environment that's proper to my organism.

Okay, so all that was added to you is food and environment from fertilization on, and you got somehow to this point today where you're a human being with certain fundamental rights, rights that are transcendent of the government. The government

didn't grant you – I mean, your rights didn't come about because the government granted them to you. You have certain fundamental rights. Okay, how did you get to that point? We added food and environment to this organism at fertilization. Then you must have had those same rights at fertilization, because you can't get rights or change who you are by adding food and environment.

WOODS: All right, so that's my argument, but stated in a way that normal people get, so that's good. That's why you do what you do. That's very important.

WAGNER: Sure.

WOODS: Now, I want to hit on something that is really central to the way a lot of people in my audience think, and I know that it's not a simple question to answer. And on the – I wanted to hit on those Planned Parenthood videos; I realize it's belated, but it's always going to be important. But I think maybe we'll do that on another occasion, so we can focus our attention on this particular argument. And the argument that I have in mind is the one that was raised I think back in the early 1970s – I mean, it must've been around the time of Roe vs. Wade – by a professor named Judith Jarvis Thomson. Some people listening will know exactly where I'm going with this, and even Murray Rothbard referred favorably to her work, although there's a website, Libertarians for Life, that absolutely tears her work to pieces – that's L4L.org.

But anyway, her argument went something like this: it has to do with the unconscious violinist, and I'm recalling it from memory, because I haven't looked at it since I was in college. But it ran something like this: let's suppose that you're a woman, you're lying in bed, and one day you wake up and you have somehow been tethered to an unconscious violinist, who is basically sucking nutrients out of your body and getting sustenance from you, and the only way that you could separate yourself from this violinist would kill the violinist. There is no third option. Either you're tethered together, or the violinist dies.

So what she claims is that there's no particular moral reason that I should have some obligation to make this extraordinary sacrifice on behalf of a complete stranger like this. And if I did, it would be entirely from my own choice and from my own magnanimity, but not because he had any right to any such behavior on my part. And she would say that in the same way, we can think of the child in the womb, and that we should think of the child in the womb – and I don't remember if this is exactly her language – as a trespasser, because the body is my property, and if the child is physically in my body, then we're dealing with a case of trespass, and at the very least I have the right to expel a trespasser.

I realize this has played such a key role in advancing the intellectual, philosophical argument for abortion, that I'm asking a lot of you to try to take it on right now, but doggone it, I'm going to ask you anyway. That's what you do for a living, so here we go.

WAGNER: Sure, that's great. Well, let's clarify first that Judith Jarvis Thomson clarifies in the beginning of her argument that she's going to assume for the sake of the argument that the unborn is a full, human person or a person in her language has the same rights, the same right to life that you and I have. So let's proceed all granting that point.

Now, certainly some people make this argument, and Judith Jarvis Thomson would be one of them, saying I don't necessarily agree with that, but I'm going to grant it for the sake of the argument. And David Boonin at University of Colorado at Boulder is a more recent proponent of Judith Jarvis Thomson's argument and elaborated on it and extended it and defended it in his book, *A Defense of Abortion*. And I think this argument is an important argument, because it grants most of the case that pro-life advocates would make, that the unborn is a human being, just like the rest of us, and then it proceeds on that basis.

So this is an argument by analogy, right? So Judith Jarvis Thomson is weaving a story to try to help our moral intuitions come to the surface, and that's maybe the most important first point that I could make. Notice that she's talking about this in moral terms, and I think that some of the difficulty about this argument comes about, because people responding to it or talking about it conflate moral and legal: whether abortion would be wrong versus whether someone should be allowed to get one. So that's an important distinction to keep in mind.

The way that I talk about the argument is I start with what would be the right thing to do, but then I proceed to try to talk about well, and what could we as a society restrict people from doing or limit people in doing, and I think that there are some differences between those two.

WOODS: All right, so – well, okay. Is there any reason that we should think of the child differently from how we should think of this random violinist?

WAGNER: Well, sure. I think there are some differences. The most important difference between the violinist analogy and abortion is that abortion, there's a direct killing act. So if you make the analogies precisely parallel to abortion, you would say, imagine that you wake up attached to an unconscious violinist. Now, it turns out that the only way to detach from the violinist is to slit his throat. Now, how does that change your intuitions as you think about this story? Should you be allowed, not just to detach and let him die of his diseased kidney condition, but instead, you slit his throat? And I think many people are unwilling to say you should be allowed to slit his throat, whereas if you're detaching and he's dying essentially from a natural condition, then I think they're more willing to say that should be legal.

WOODS: Another way of approaching this that I've heard – now, this way does not work when you're dealing with conceptions that are due to rape, but apart from that it works. The argument would be something like this: that if you personally are responsible for the vulnerable condition of somebody else, that constrains the actions that you are free to take.

And the example that is often given is – and this is what Libertarians for Life will often use – if I take you up in my plane, and we're X thousand feet above ground, and I suddenly decide when we're up there that I really don't enjoy your company anymore, and hey, this plane, it's my plane; it's my private property; I own it; nobody has the moral right to tell me what to do on my plane; I get to set the rules as to who gets to be on my plane. I can't just open up the hatch and let you plummet to your death, because the fact that you are vulnerable, that you are in midair, 35,000 feet above ground is my doing. So that limits – now, if you were on the ground and you refused to leave my plane, maybe I could forcibly push you out or something, but you're vulnerable up there, and your vulnerability is my doing.

And so in the same way, you are responsible for the vulnerable position of the child. I mean, to think of the child in this case as a trespasser, when the child is not even conscious of the situation – and especially when we think of trespassing as being some place where you're not supposed to be, where exactly is an unborn child supposed to be, if not in the womb?

WAGNER: Right, it's a trespasser for whom you opened the door and actually put a sign out on the street saying "Food in here," etc., etc.

WOODS: Exactly. So when we think about it this way, the analogy breaks down.

WAGNER: And what you're talking about is what some of us who have been working on this argument, we have called the Responsibility Objection, or I think that's actually the term that David Boonin coined in his book for this argument against the violinist argument. I think it's a very persuasive argument for many people. They would say that the woman who gets pregnant in 98.5% of abortion cases, there's consensual sex that produced the child, that then is up for abortion or being given birth. And in those 98.5% of cases, the woman willingly engaged in an act that she knew – or should have known – might produce a child in this completely dependent state. And so the argument would go that you, as the woman, owe to the child the basic necessities of life, the basic care, the food and shelter that the child needs until that responsibility could be transferred to someone else, for example, maybe through adoption after birth.

WOODS: Steve, one last thing. A lot of times when men are talking about abortion, it's difficult, because they get told that they're not really entitled to an opinion, and it's somewhat analogous to people talking about racial questions – if you don't belong to a particular race, you're not entitled to have an opinion. Well, certainly you're not allowed to have an opinion on abortion, other than being in favor of abortion. That is allowed. No, there's no man who says I'm in favor of abortion who's told, hey, you're not a woman; you can't have an opinion. It's when you're pro-life you're told you can't have an opinion, because you're a man; you'll never get pregnant; it's easy for you to say, and you can have the luxury of your moral superiority when the women actually have to deal with the real consequences of your view. How do you respond to that? I'm sure that's come up.

WAGNER: Well, I think there's two different ways to respond to this, and it depends on if I'm in a debate forum, where time is of the essence and I have to come up with a very short response. I might follow Frank Beckwith in saying arguments don't have gender. And there are more colorful ways to say that. But arguments don't have gender; people do, and many women make the same exact arguments that I'm making in favor of the unborn and against abortion, and so you have to deal with my arguments rather than attacking me personally. So that might be a way to deal with this in a debate setting or on television, where it requires a very quick, sound bite response.

But what I've found in discussions with people is that those sorts of responses don't help us to have a dialogue. They don't help us to meet each other halfway and try to understand each other, and so this concern when someone brings it up, that I'm a man, instead of just attacking the concern and saying that's foolish, that's just an ad homonym attack, or that's just attacking me personally, give me a better argument, I'm going to try to understand what the person's getting at and say something like this: "I think you're right. You're right that I am a man, and you're right that I am never going to be pregnant, and you're also right that I can't understand exactly what it feels like to be a woman who's struggling at age 14 with being pregnant when I wasn't planning to be pregnant, with trying to decide what to do, with trying to figure out if I should tell my parents, with dealing with a boyfriend who might be pressuring me to have an abortion. That's really hard what she's dealing with, and many women deal with these circumstances that I can't begin to understand." So I'm just going to admit that weakness in myself in terms of understanding something I wish I could understand.

Now it turns out, I actually understand the woman's perspective better than a lot of people, because I've spent something like thousands of hours listening to people's stories, and I've listened to them as they've told me what this is like for them, and this is people who are now pro-life, some people who are still pro-choice, people who have had abortions, people who have had unplanned pregnancies. I've listened to all of those stories, and so I have a better perspective on that than some people would, but I still grant that I can't understand exactly what it's like to be in that woman's shoes. And you'd be surprised how that many times can turn the conversation in a productive direction, and in my way of thinking, it would turn a debate into a dialogue, because many times people soften at the point, and they realize, well, okay, so this person is willing to admit that he can't understand exactly what it's like to be in those shoes, but now I might want to hear what he has to say. So I think I win the right to be heard by giving voice or credence to how difficult that circumstance can be.

WOODS: Now, Steve, I'm going to grant that, given that abortion is such a divisive issue, there really is no way to have a productive conversation with somebody about it unless you're going to have a compassionate attitude that tries to take full account of the points your opponent is making.

WAGNER: That's right.

WOODS: And so you have to do this, but it sounds to me like it's just part of your natural temperament to interact with people in this way, and all I can say is I wish I had that quality in myself, because I, as my listeners know – and they're responsible for it, because they cheer me on – but when I'm going after an opponent, I rip his throat out. There's just no stopping me. I can be absolutely a bear in an argument, and it doesn't ever win that person over, but it has subsidiary effects. You know, other people who are watching will say, hey, that guy must know what he's talking about. But I do feel bad about it later, whereas I bet you don't go home feeling bad about yourself. So in that way, I think – there is something to be said for having a little fun when you're arguing something that's not life and death, but at the same time, I probably could learn something from you in this way, so you really are a model for me in that, and I wanted to point that out to you and thank you for that.

WAGNER: Well thanks, Tom, but I bet even you are finding common ground along the way, because an argument can't proceed very well, even a cutthroat debate can't proceed very well if nobody ever grants a point. The strongest way to make an argument, even in that forum, in that format, in that medium, would be to grant as much of the other person's points, but then show how they're mistaken. And so a lot of my approach in these discussions is – I definitely start with the priority of I'm going to grant anything I can grant here. I'm going to try to agree with anything I can agree with. I'm going to find common ground, because I have a bigger fish to fry, so to speak, than to be right about everything. I want us to get together on this main point, rather than some of these peripheries.

WOODS: Well, Steve, if people want to follow you, they should of course head over to Justice for All. What's the website there?

WAGNER: It's JFAWeb.org.

WOODS: And the gist of what you do is?

WAGNER: Well, we train thousands to make abortion unthinkable for millions, one person at a time.

WOODS: That's a good tagline, very effective. All right, Steve, perhaps we'll talk again in the future. There's a lot more to discuss, but I think we've laid an important foundational groundwork in this conversation, and I've tried to raise good devil's advocate arguments so people can feel like there was a reasonable exchange of views on both sides, and I think you've done a helpful job that will help people have this conversation themselves. So I appreciate that and your time today.

WAGNER: Well, I've really enjoyed being with you. Thanks so much.