

ERI Podcast: Is Consent to Sex Consent to Pregnancy?

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Announcer: If you're looking for clear pro-life thinking, cutting-edge apologetics, and the fresh approach to abortion dialogue you've come to the right place. This is the "Equipped For Life" podcast.

Josh: So, we want to talk today about a phrase that if you have been a pro-life advocate and have talked to a pro-choice person ever online you have heard this phrase, "consent to sex is not consent to pregnancy." So, we want to talk about that today because there are some good pro-life responses to that. There are some cringy pro-life responses to that also, and we just released a huge video. By the time this podcast goes out, we'll have released a mega video that you and the philosophy team have been working on for like three years.

Rachel: More than that - yeah, it's been a long time coming and it's a really big project. It's a big section of training. I mean, it's only a half hour video, but honestly that's probably two hours' worth of content kind of just really summarized.

Josh: Mushed in. You think 30 minutes is long, you should have seen the original.

Rachel: We condensed a lot of ideas into a short amount of time, yeah.

Josh: And it's not like this was your guy's main project for four or five years. It's like the origin of kind of like the idea and some of that started happening about four years ago even before we hired you, technically.

Rachel: Oh, yeah.

Josh: And then we kind of - I kind of tabled it so we could focus on cyber counseling master class and that advanced module. And then it's like, "okay let's get that back on the table", especially now that more pro-choice people are making that argument. So, if you haven't watched the video, if you haven't watched the "abortion as self-defense" video, I really encourage you to watch it. If you're not into 30-minute YouTube videos, there's an audio version. You're in the podcast if you're listening to this. There's an article version if you want to read it too, but you know Rachel's just done fantastic job on that. There is a five-minute section of that video that responds to this argument about consent to sex not being consent to pregnancy because that's a really important - it's very related to the overall topic that we wanted to cover in that video. But that was one of those sections that really got condensed. There is so much more that you have to say about that. And so, you had a great idea of let's get in the podcast and for people who want a deeper dive we want to dive really deep on this topic further than we did in the video, then we can talk about that. But we want to build up some foundation first, so that even if you haven't listened to that video, this will still make sense. So, I'm going to try to build you a runway,

Rachel: Okay

Josh: So that you can fly because you've got all kinds of great content that is fantastic, and I just want you to present it. But just to kind of make sure all the pro-lifers listening are on the same page because we got different people listening - some of our like super fans that they've been through all the courses

multiple times and they know all this stuff and they could probably be sitting here doing this too. And then you've also got other people that are kind of new

Rachel: Right

Josh: to pro-life apologetics, and so we just want to leave anyone behind. So let me talk a little bit about an argument that pro-lifers typically call the responsibility objection. This is one of the kind of important first responses to bodily rights arguments,

Rachel: Yes

Josh: Particularly, a bodily rights category that Trent Horn and us all kind of like we like this labeling, “the right to refuse” argument. So, it's not responding to the idea that women can do whatever they want with anything inside of their body - the super kind of extremist pro-choice argument. It's responding to the better pro-choice argument that says, “no, no, no, you don't have the right to do whatever you want with your body. That's crazy. No, of course not. No, but you do have the right to do some things and one of those things is you have the right to refuse to have your body hooked up as a life support machine for someone else, even another person. So, this is where the Judith Jarvis Thompson famous violinist analogy comes in. Where you wake up in a hospital bed, you've been kidnapped, and you've got to stay there hooked up to this violinist for nine months or else the violinist is going to die. One of the important first responses - not the only response - but a good initial response, or one of the initial responses to this is what pro-lifers called the responsibility objection. It is pointing out one of several important differences between Thompson's violinist story and the real world and what pregnancy is actually like. Where you say, “okay, in the violinist story, you were kidnapped by the society of music lovers who want to help the violinist and they've taken you to this hospital and dropped you off basically. And that's not usually how pregnancy begins, okay, thankfully.

Rachel: Yeah

Josh: That's not usually what goes down. So, the responsibility objection says basically that when you have consensual sex, you're engaging in an act that you know might result in the creation of an inherently needy child. And therefore, you owe that child compensation. In other words, you are culpable. The fact that sex creates babies, sometimes, and you knew that when you had sex, means that you are morally responsible for the fact that suddenly now there is this extremely vulnerable child.

Rachel: Yeah

Josh: That you basically have to care for it not to die. And it says that you need to care for the child at least until you can transfer care to someone else. So, one day, if we can Star Trek beam the baby out, or we can move it to an artificial womb maybe that's just perfectly fine. But for like right now, in 2020 the situation is, you've got to stay pregnant for at least about 23 weeks before the baby is viable. And so, that's the basic thing that pro-lifers have talked about. Now, I want you to connect this to the “consent to sex is not consent to pregnancy” idea and talk a little bit about what's in the video. Again, for the people that haven't watched the video, but then take us deeper.

Rachel: Okay, that sounds good. So normally, when pro-choice people are arguing about this, they're really against the idea that just because she knows where babies come from and she's consenting to the sex does not mean that she's consenting to parenthood or the use of her body for those nine months

from the child. So they're trying to argue that there is a disconnect. Just because there's consent to one thing does not mean there's consent to another.

Josh: Yeah

Rachel: And in the video, I was really wrestling with how to make the larger argument refuting that abortion is self-defense. And one of the things I do is I lay out my response to the responsibility objection - which we're going to talk about in a second. But then I have a section where I kind of talk through how pro-choice people sometimes fall into different categories after you make even a really good argument for the responsibility objection. Sometimes they're with you all the way; sometimes they're with you partially, and sometimes they're not going to accept it. This is one of those things in the conversation that you got to give it your best shot, but even if you argue about it until you're blue in the face, sometimes you're not going to be able to convince them right there in the conversation. And so, the way I handle the overall argument is: given that fact that not everyone's gonna be convinced, and some people are gonna be partially convinced. But what I mean by that is that sometimes there are pro-choice people that think women who have consensual sex and have reasonable access to birth control but choose not to use birth control - those people would be in a category of like okay now you're responsible for this child in a different sort of way than a woman who is using one or multiple methods of birth control. She's doing everything she possibly can do to have consensual sex, but also not get pregnant. That woman is not responsible. In the same way a woman who is pregnant after rape is not responsible.

Josh: Right.

Rachel: Because of course pro-life people who make the responsibility objection, we still believe that women who are pregnant after rape are not responsible in the same way as women who have had consensual sex.

Josh: Of course.

Rachel: So we would actually say the violinist argument is most akin to pregnancy after rape. There are still significant differences that affect our intuition and affect our reasoning about the violinist argument, but we would say that just women who are pregnant after rape would be in a situation like that and so.

Josh: And the responsibility objection is not attempting to respond to arguments about abortion in the case of rape. Like it doesn't apply there. I've heard people respond to the responsibility objection with something like, "well, what if she was raped." And it's like okay, then it's a completely different argument. Like we can respond to that, but the responsibility objection is not in this in this category because it's all about consensual sex. When you have consensual sex, you're engaging in this act. So you know, if someone asked, "what if someone was super young?" Well then, they're not consenting. That's not consensual sex. That's a different thing. Again, we can talk about that, but that is a different category. In this, you know arena, we're talking about consensual sex only.

Rachel: And in some ways what we would call, you know, the right to refuse in the case of rape is an even stronger argument.

Josh: Right, yeah

Rachel: But you can't apply that strong argument to all pregnancy from the pro-life perspective when we accept the responsibility objection.

Josh: Right

Rachel: But I still think you can make a convincing argument, and this is what I do in the video. I try to make a convince an argument that's like even if you don't accept the responsibility objection, your argument here fails and here's why. So go watch that longer video if you want to learn about abortion is self defense.

Josh: Really really - just it's just like, I think every pro-lifer needs to watch this video. I'm sorry. It's s good. It's so good. Okay, go ahead.

Rachel: I'm really happy with how it turned out. So, we have actually two different versions of "consent to sex is not consent to pregnancy". I only cover one of the versions in the video because I think it's more common with the everyday person. But there's one that's a little bit more academic. It's the one that we covered in my bioethics class, and we're going to go into that today as well. We're going to do both. And we're going to go deeper even than I do in the video on the first one. So, the first version of this is really coming off of something that I think is positive that's happened in our culture. We're becoming more educated about what consent looks like when it comes to any sort of sexual contact. And one of the things that is almost like a new model if you will, but really it should be the old model, but it's really a new way of looking at it and that is that consent to sex is ongoing. Meaning it doesn't matter what she texted you, what she said at the bar, what's been happening before, whatever's happening now.

Josh: Right

Rachel: At any point in time, any party has the right to say, "I want to stop."

Josh: Yeah

Rachel: You don't have to give a reason. You say "no"; the other person accepts your no, and that's how it goes. There's no "but she was flirting with me 10 minutes ago."

Josh: Right, right

Rachel: That's really, really important, and so I think that a lot of the positive conversations about ongoing consent to sex have now trickled into this conversation about consent to pregnancy. So, the pro-choice person is essentially saying, "just like sex, consent is ongoing. That's the same way that consent to pregnancy works. It has to be ongoing, meaning just because she got pregnant right away and she's pregnant now for like four weeks, and she's consenting to that. At week five, she can withdraw consent. Just like 20 minutes in she can withdraw consent during sex."

Josh: And not all pro-choice people are being tactical when they make this argument, but I just want to say this is a brilliant tactical move, okay.

Rachel: Sure

Josh: Like if premise one of their argument is consent to sex is like consent of pregnancy. They are alike in a certain way. And then premise two - while we know with sex you can break off consent at any point and it's totally appropriate. It's fine. Then the pro-life person might make the mistake in responding in a

way that kind of implies that they don't agree with you about consent to sex being able to be broken off which is not the right move.

Rachel: Our disagreement is not with premise two; it's with premise one.

Josh: Yes

Rachel: We think that they are different and we're gonna explain why.

Josh: So let me ask this quick question before moving on since there is this I think generally speaking, our society, we kind of are in agreement on the fact that when it comes to sexual consent you can withdraw it even in the middle of the act. I think there's general agreement between conservatives and people on the left on that. But I suspect that's a thing that maybe the pro-choice person you're talking to might not realize that you agree with them on that even though you're about to disagree about there being this connection between the consent of sex and the content of pregnancy. So would you recommend a quick common ground line before you rebut their argument? Something like, "I am completely with you on consent to sex. I think that the consent can be withdrawn even you know in in the middle of the sexual act. Like everything you're saying about sexual consent I am 100% completely in agreement. My disagreement is actually about something else." And then you talk about that other thing. Do you think that would be a valuable common ground move to like make sure that you don't forget when you're talking about this?

Rachel: Yeah, I think that I like the "my disagreement with you is about something else" is actually most helpful because you're not only finding common ground, but you're helping them identify and find clarity on - we agree about this thing, but we also disagree about this. And like let's talk about this. I always love when we do that with common ground because it's not just like, pandering is a bad word, but you know what I mean, we're not just like trying to make friends here.

Josh: Right

Rachel: With common ground, we are building rapport, which is incredibly helpful for convincing arguments, but we're also finding clarity. Whenever you find common ground because you don't know what you disagree about until you know what you agree about. And so I think doing that would be excellent.

Josh: Nice

Rachel: You know, I think that in my conversations, something that sometimes goes on in the back of my head is like, "I want sexual consent to be even more clear than our culture teaches. I want sexual consent to be a situation where both people have lots of time to think about it, they get up before all their friends and family, and they both profess to each other that they consent." Like that's my worldview, right. But our culture has made this really, really messy and now we're running into a bunch of problems and so we're trying to come up with more solutions to protect men and women in these situations that they're putting themselves in but you know that's sometimes like I keep that usually in my own head.

Josh: I don't think that's the persuasive response.

Rachel: That's not necessarily the thing, but sometimes I get really excited.

Josh: Everyone should just get married first like, come on.

Rachel: There's this like thing that we invented to like really like protect women and men like from like confusing unclear sexual consensual situations. Like yes marital rape can happen it is a thing. But I think people are safer if they get married first because they've had a lot of time to think about it. But, I usually do not bring that up in my conversations unless my friend and I can actually have a laugh about it and I know them very well. If it's a stranger, No, I don't necessarily do that. I just try to focus in on what's gonna be most helpful

Josh: We have common ground on that.

Rachel: I kind of want to bring up this example, it's actually from an essay by a student and the title of their paper was, "Consensual Pregnancy: The Moral Permissibility of Abortion." We're going to link to it in the show notes. But Josh, I'm going to have you read. It's actually a couple paragraphs. It's pretty long, but the reason I want to go through the long example.

Josh: Yeah

Rachel: So, I want people to hear what an articulate real pro-choice person's argument might sound like. Rather than me doing like an example dialogue.

Josh: Let's get the straw men out of our heads. This is intelligent writing.

Rachel: Right

Josh: Let's take a serious look.

Rachel: On social media, you might not hear it this way.

Josh: You probably won't.

Rachel: You will probably hear people tweeting or commenting something that's similar to this, so look for this. If they're saying it this way, they're making the first version of this argument. So, let's go ahead and read that.

Josh: Okay, so this is from Dartmouth student Maya Frost Belanski. She says, "Most anti-abortion arguments are based on how abortion violates a fetus's personhood or its potential for future personhood. Yet these arguments fail to account for the woman's intimate role in pregnancy and her rights to her own bodily autonomy. In section 1, I argue that no person may use another's body without her consent. Assuming for the sake of argument that a fetus is a person, it does not have the right to use a woman's body without her consent. I also argue that a person has the right to take the least aggressive action necessary to terminate the unwanted use of her body. In the case of ending the fetus's unwanted use of the woman's body, the least aggressive action is abortion. Therefore, I argue that abortion is morally permissible if the fetus is using a woman's body without her consent. The obvious counterargument to this claim is that the woman gave the fetus implied consent to use her body when she engaged in consensual sex being fully aware of the risk of pregnancy. However, I will show that a woman's awareness of the negligible risk of pregnancy - especially if the woman used contraception - does not equate to providing consent for the fetus's use of her body. To illustrate the difference between being aware of a risk and actively giving consent, I will consider a young woman who decided to go to a bar on a Friday night in New York City. Perhaps this woman arrived at the bar alone and began to flirt with a male bargoer. Perhaps she wore a tight dress and batted her eyelashes. Perhaps she consumed

several alcoholic drinks, and perhaps she even agreed to accompany him back to his apartment. Then consider that as he began to make sexual advances, she decided that she was not or was no longer interested in having physical relations with him. It was her right - regardless of her awareness of the risk that this man might want to have sex with her - to refuse his advances and leave the apartment. Even though the woman made the choice to go to the bar, to flirt with the man, and to accompany him back to his apartment, at no point does she give any sort of consent for his advances. Even if the two had already begun to engage in physical intimacy, the woman would still have had the right to withdraw the consent at any point and terminate all use of her body. The same principle applies to abortion. A woman who is aware of the risk of getting pregnant by engaging in consensual sex has still not given consent for the fetus to use her body.”

Rachel: Yeah, so this feels really powerful, right

Josh: Pretty strong

Rachel: Because the person listening to the story is nodding along the whole time she's talking about the guy in the bar, right.

Josh: Yeah

Rachel: Of course, yeah yeah. And then when she says “the same principle applies to abortion”, Boom. Red alert. Okay, so we got to talk about this: you can consent to actions but consenting to effects does not make sense. Like it's a different category. And so, we need to help the pro-choice person understand in the conversation how really pregnancy is an effect of sex. It's not an action in the same way that sex is. So, we consent to actions but not its consequences or its effects.

Josh: Let me just like triple underline this

Rachel: Right.

Josh: If you take like any one thing away from this podcast like I think this is probably the thing. You can consent to actions; you cannot consent to effects.

Rachel: And the example I use in the self-defense video (you can watch the little segment on that) I talk about going to a casino, okay. So think about you know a person who wants to gamble, they drive to the casino, they give their car to the valet, they go in, they exchange their money for chips. Like all of these little tiny things at any point in this time they can withdraw consent and say, “ooh, I really shouldn't be spending this money right now; I'm going to go home.”

Josh: Right

Rachel: The casino's going to give them back their money for the chips if they exchange it. All that stuff is true. But imagine going to a roulette table and you sit down at the roulette table, and you're feeling really lucky, and you bet on a number or whatever. And the wheel starts to spin, so you put your chips down, they close the bets, the wheels spinning okay. And the ball lands on a number that you didn't bet on. And now you realized how the game ended. And this is an undesirable result after an action that you consented to.

Josh: Right

Rachel: And you say to the pit boss, "I'm so sorry, I want my chips back because I consented to the bet, but not to losing any money."

Josh: Right

Rachel: I only consented to win.

Josh: I didn't consent to a bad outcome. I just put my chips there.

Rachel: And he would probably laugh at you, have security take you out or whatever.

Josh: Best case scenario

Rachel: Right, best case scenario if you're trying to grab at your chips, you're going to get in some serious trouble.

Josh: Yeah

Rachel: And so, you know this is the example I use in the video because I wanted to find something that you know at any point in time you can withdraw consent but we all know how gambling works. It's very common sense that when you go to the casino, if you place a bet you might win; you might lose.

Josh: Right

Rachel: Another example when it comes to sex is like contracting an STI. Like obviously, that's an undesirable result for anyone.

Josh: Right

Rachel: Pregnancy is sometimes desirable and sometimes not for people. But again, there's obviously no physical way to say like, "I don't consent to getting herpes right now", obviously. But if there was and you could kill someone to get out of having herpes or something. Everyone would be very confused by that and say of course that's not the same as consenting to the sex.

Josh: Right

Rachel: So, there are certain effects. Now, I want to refer people if you want to like look at the logistics when it comes to the legal matters of this, right. Because a lot of times people are obviously there's no sex contract that people are signing.

Josh: At least not yet.

Rachel: Right, at least not yet. But like theoretically people throw around like the term "sex contract" because really what we mean by that is "what are you agreeing to at the time of the sexual consent".

Josh: Right

Rachel: And if we looked at it like, what if the sex contract was a legal matter and Secular Pro-Life has an article. We're going to link to that in the show notes as well. I'm going to just like kind of recap the argument that they're making, and I believe the... I don't remember, I feel bad, I don't remember who the author is.

Josh: I think it's Kelsey Hazard because she talks about being a lawyer, so I'm almost positive though.

Rachel: Kelsey, yeah, she has the legal background.

Josh: Kelsey is great.

Rachel: She is great. So she talks about torts which - don't panic - I'm gonna try to make this as simple as possible if you don't know like law school legal stuff or whatever. Torts is essentially a section of law all about damages, right. You think about like lawsuits and anything related to that, you're looking at times where there are intentional, maybe malicious or like you are at fault because of something that you should have known you, should have done. And then the non-intentional stuff which is like accidents. So, the way to think about it, like maybe someone slips and falls on ice outside of a you know store or something and then they sue the store.

Josh: Right

Rachel: That's a non-intentional lawsuit.

Josh: The store didn't try to trick them into sliding on the ice. They might still be responsible; they maybe should have done more preventative measures to get the ice away. That would be the question, but by non-intentional we mean the store wasn't like they didn't want the person to fall.

Rachel: Right, of course. So, this is a great example because a lot of times what's going on in your pro-choice friend's mind when they're making this argument is intention. She didn't intend to get pregnant; therefore, she's not responsible. This was an unintended pregnancy, it's an accident so how could she have consented to the accident?

Josh: Especially if she used birth control. Like she was like doing this action that showed that she didn't want to get pregnant.

Rachel: Right, and I see the most common way people make this type of argument is with car accidents. When you get behind the wheel you don't intend to get in an accident.

Josh: Right

Rachel: You wear your seatbelt, you drive the speed limit, you obey all the laws or whatever.

Josh: In theory

Rachel: Well, I'm just saying like someone who's doing that but still gets in an accident, it's not their fault it's not an intentional thing. So how could they have consented to the accident? Where someone maybe who's like driving drunk is more at fault right. So, they're kind of talking through it in that way. And there's certain things I don't like about these analogies. All of them - even my casino example - just kind of pulling back the curtain a little bit. I don't like talking about pregnancy in a way of like it's an accident because it is something went right. Biologically, something has gone right. That is the biological purpose of sex which a lot of people- one of the reasons we're using the Secular Pro-Life view and sometimes Secular Pro-Life on Twitter has had to come back at people. Because when pro-lifers point this out, they sometimes fall into like this naturalistic thinking and people are like you're making the naturalistic fallacy. There's all these issues. You're making a natural law argument. And Secular Pro-Life when they tweet this article at people they're like, "actually like we don't think it's a you know natural law argument it's actually a torts argument you could make."

Josh: Right

Rachel: So that's why I'm referring you to that, but if that aside confuses you, you don't need to know that to necessarily make this torts argument.

Josh: Right

Rachel: Here's the underlying bolded point you need to know. The fact that something is foreseeable does not mean that it was intentional. When we're talking about non-intentional torts: accidents, they're always looking at, "was this accident that happened foreseeable?" Not "was it intentional?" So, it snows outside. The snow melts and freezes. The ice, the sidewalk is icy or whatever. You know people might slip and fall. You need to go salt that sidewalk.

Josh: Right

Rachel: And if you don't do that

Josh: Right

Rachel: And it was a foreseeable problem or whatever, like you're going to be liable in that lawsuit.

Josh: You're going to be in worse shape if it's like a customer came in and was like, "did you know that it's really icy out there?" And you're like, "yeah, I'm busy or whatever." Like the more you're like aware of this problem, the more that is going to affect you. This is clearly a foreseeable issue.

Rachel: Yeah, that makes me think of the McDonald's - the famous McDonald's case. Which I don't know all of the details of it, but pretty much I know one of the reasons that that person who like spilled the hot coffee in themselves sued them for so much money was because they had had complaints.

Josh: Yes

Rachel: They had people telling them about how hot it was and how it was a problem. And then when people are going to the hospital with burns and again and again and they don't correct it,

Josh: Right

Rachel: That's one of the reasons that

Josh: It wasn't the first-time problem. If it had been, she might have lost, but the fact that I think even like maybe like a health inspector or someone had already told them I think even hey your coffee is 20 degrees hotter than like it's supposed to be so, you know change that. And they didn't.

Rachel: So, like it was like very foreseeable if you will because they knew that this was a problem, and they didn't

Josh: Based on our understanding I'll link to some article that that goes into all the details if you want to get into that, but that that is definitely my understanding of the case.

Rachel: Right, and to argue that pregnancy after sex is foreseeable almost feels silly, to be honest, because fundamentally for someone to be able to consent to sex, they need to know where babies come from.

Josh: Yeah

Rachel: If you don't know where babies come from and you think it's a stork bringing the baby, you're not consenting to the sex because you're not old enough or you don't have the mental capacity to do so or something. Everyone having consensual sex knows how babies are made. That means it's a foreseeable consequence of sex. [It] Doesn't matter if you didn't desire it, didn't intend it, tried to prevent it,

Josh: Right

Rachel: It's foreseeable, and so that's the argument I'm making you know, but in a in a little bit different way with the casino. Like you know that you might lose your money when you bet at the casino. It's a foreseeable outcome and we don't consent or not consent to outcomes. We consent to the actions knowing what the foreseeable outcomes may or may not be.

Josh: Yeah

Rachel: And I think it's important to point out when we're talking about like lawsuits using examples from there - you know someone deserves to be sued or whatever for some mistake they made or an accident that happened, to address something that might be going on in the pro-choice person's mind. It's kind of a preconceived notion about pro-life people and that we see the child as a punishment that she deserves for having sex outside of marriage or something like that.

Josh: And this is a common pro-choice view. I mean I just had an email exchange with someone who you know felt like you know maybe part of what's going on underneath the surface for pro-life people. There's like this nefarious thing where we are so conservative, we're so socially conservative that we hate that people have pre-marital sex. And then if they do, we want to punish the woman. There's like this patriarchal thing, like maybe we don't even care even that much about punishing the guy because guys are going to do whatever they want to do. But it's like we're going to punish the woman because how dare she you know do this you know horrible thing, kind of a thing. It's like no that's really not what's going on.

Rachel: We actually don't see children as punishments. We think that they're actually a positive thing.

Josh: Yeah

Rachel: And so I think emphasizing that in your conversation (and I address this a little bit in the video as well).

Josh: Yeah

Rachel: But if you just address this and talk about how you see that the sexually active person - it's not that they've done something wrong and they deserve to be punished. That's not why we're pro-life.

Josh: Right

Rachel: By saying it's a foreseeable result, we're not making a moral judgment about that. You can make a moral judgment about someone's actions - of course you can. But it's not we think that she did something wrong and therefore she has to continue the pregnancy because of that. That's not why we think she should continue the pregnancy.

Josh: Yeah

Rachel: We think that children should not be killed. And that's the fundamental part of our argument. And sometimes you have to be extra extra clear about that.

Josh: Yeah

Rachel: Because oftentimes the way that they talk about us in their circles when the doors are closed. They're like, "oh yeah, I think this is what's going on. Let's connect some dots here."

Josh: Right

Rachel: "And if men got pregnant, abortions would be happening on every street corner." I mean I heard that in my Women's Studies classes. It was so obnoxious. But yeah when people argue about this, that's something that's going on in the back of their minds and they may not articulate in the conversation. So, address it anyway.

Josh: So if you're a pro-life advocate and you talk about the tort law thing which can be very helpful in some of these dialogues, just understand okay, they might interpret this to like mean that you want to punish women because that's something that can happen when at the end of a tort case. So just kind of this goes back to that thing that we teach sometimes where it's like - here's what I'm not saying; here's what I'm saying. It might just be really good for say like just one quick line, "I don't think that women should be punished or something like that." In a lawsuit someone gets punished at the end of it. That's not what I'm trying to say. What I'm trying to say is that like in these tort cases, it's not as much about intentionality; it's about could you foresee this thing happening and that's what I'm saying.

Rachel: So I think that the way we articulate it in our responsibility objection - we're talking about you're creating an inherently needy child to whom you owe compensation. And what we mean by that is you have taken a child into a vulnerable situation and now you're responsible for caring for them until someone else can. And that is not saying that you deserve to be punished and now you have to pay. When we say "owe compensation", it's because you have put this other person in a vulnerable situation and now the only option is to help that person or to kill them. And you cannot kill them. You are responsible for caring for that child and even if, I mean when we talk about you know pregnancy after rape. Even if you're not responsible for that, it's completely on him because he did a horrible thing.

Josh: Right

Rachel: There's a vulnerable child here that you should help because no one else can. And we talk more about that in the course as well. So, let's move on to the second version of this argument.

Josh: Yeah

Rachel: Because it's actually I think a little bit more tricky

Josh: Yeah

Rachel: And to be honest this is an argument that really appeals to me. I think if I was pro-choice, this would be one of the biggest reasons why. I don't know, there's something about it that's so intuitively like I want to rah rah-rah cheer behind the person who makes this argument.

Josh: It's an interesting argument. It's an impressive argument. So, this argument basically says that you cannot enter into an agreement with someone if they are not present or if they don't even exist at the time of the agreement or the consent. What's more, the use of your body cannot be something that you consent to in the future tense or sign away in contract because it is an inalienable right. So, explain what that means.

Rachel: Sure. So, pretty much the people that make this argument are talking about metaphorically if we were all sitting around the table and we're going to like get the lawyers and sign the contract, you know. Who are you signing a contract with? Well at the time of the sex, there are only you know two people that are present for this contract. There's the man and the woman, and so if they're sitting down and they're like, "yes I consent to this sex. And the fetus or embryo does not exist at the time, the fetus or embryo comes into being after the sex takes place. And so, because the fetus isn't signing the contract, they can't be included. They can't be part of it and so pretty much, so this comes from Margaret Little. She's a philosopher who pretty much is saying that because the embryo is not present, the mother is not making any sort of agreement and so now you cannot follow through with that. The fetus can't demand anything from her because the fetus wasn't there at the time that she gave consent. And there is some ongoing included in this. The arguments in some ways overlap, right, but now there's the gestator and the embryo. And you know the term gestational labor comes up in these conversations. That the person's using those terms: "gestator", "gestation", "gestational labor", they might be making this argument because that is the feminist literature, that is the terminology that's used in the bioethics papers as well.

Josh: And what do they mean by that? Why are they using that language?

Rachel: Well, this is really what they're talking about with pregnancy is a labor contract which is different than a sex contract. It's almost like two different agreements. There is a relationship between you and your partner and then there's a relationship between you and the child. And so they're saying, "how can that second contract be signed while the first one's being signed if the other party isn't even there?" It's kind of a weird way to think about it I think for pro-life people. It sounds so foreign

Josh: It's outside of our culture.

Rachel: Yeah. And it sounds a little weird to call the woman a gestator or a laborer, right. And yeah, it's unpaid gestational labor, right.

Josh: Like almost like slavery.

Rachel: Right, it's slavery if you don't consent to it. And one of the issues is they're saying at the time of sex even if you were going to sign this contract with yourself, let's say. Because that's my argument: it's actually making a commitment to yourself and to your partner that you're going to care for this child. You can't do that because it's a future tense signing. And you cannot sign away an inalienable right. So, when we talk about slavery in bioethics, the same thing comes up. So like they believe - we believe that you cannot like say, "I'm gonna consent to being your slave for the next two years or something."

Josh: Right

Rachel: Because that is some, that is a right you cannot sign away.

Josh: Right

Rachel: There are certain rights that are inalienable and the use of your body is one of them. And so, I think a lot of pro-life people when they hear this they want to make an argument about the man's obligations during the sex contract. So when a man consents to sex he knows the woman might get pregnant and if she gets pregnant and she doesn't have an abortion he's signing away 18 years of child support which is a significant amount of money. To you know not even sign a contract for but just during the time of sex he's agreeing to that, so if he's agreeing to that, isn't she agreeing to the use of her body for those nine months. I mean pro-life people this is an intuitive response and I actually think it's not that bad, but Margaret Little brings this up in her paper and she you know she talks about how the financial commitment is not inalienable, but the gestational labor is because it's your right to body autonomy. Your right to ownership of property is not something that is inalienable. It's different in kind. And this is what I find intuitively persuasive because in my mind I'm like of course you can't sign away your body and be a slave to someone.

Josh: Right

Rachel: And framing the woman as a slave to the embryo who's using her body against her consent is just like so like wicked twisted. I don't know, there's something about it that's like "oh". It makes me feel like I'm biting a bullet as a pro-life person.

Josh: So before you go on, I want you to help the pro-life people listening who don't find this nearly as persuasive as you do. And so I you know here's an argument I can imagine being in the minds of some people based on something you just said. Where you said you know like your right to body autonomy is this inalienable thing and right to property isn't. And I could imagine conservatives being like "well, we talk about you having the right to own property. Isn't that an inalienable right too?" Like help them understand.

Rachel: I think most conservatives would agree that a man has to pay child support. If he is not going to be taking care of this child, you know, in a traditional you know married life way, like yeah, he should be paying child support for that baby that he brought into existence. I think most people feel very strongly about that. But I could see some people saying, "you know if you add all that money up that's a lot of money." And I also believe it's pretty unfair the way the system's set up right now where the man has no say and the woman has complete say over the abortion decision. You know it really is unfair to him because he's consenting to the same thing she is but then if she gets pregnant it's completely in her control. Obviously, a lot of women are coerced into having abortions by their partner, you know. But legally, the man who doesn't want her to abort, that's the man I pity. The man who wants to take care of the child and he has no say and she can go and do whatever she wants without even letting him know, is very upsetting to think about. So, I think that you have to look at it as pregnancy is such an intimate thing. It's painful, it changes your body, I mean there's a very intimate giving there. I don't think that financial support is as intimate even if it's you know almost more impactful over the course of your life or something like that. But I think that when people think about contracts we usually sign, financial decision making is more traditional common part of that.

Rachel: Okay, respond to one other kind of pro-life person. This is one I've talked to more often. I feel like this happens a lot. We don't have to spend a lot of time on this because I think just some pro-life people are just going to feel differently or think differently about this. And some of that comes down to theology frankly, but a lot of Christian pro-lifers (and I'm using the word "Christian" very very broadly: Protestants, Catholics, whatever, when they hear me do a bodily rights speech, they will come up afterwards and say

“you actually don't have any bodily autonomy, like that that's a myth. Basically, that these weird atheist liberals think you have but The Bible talks about how you know your body is a temple. And so like, bodily autonomy is not a thing. And we shouldn't respond by like conceding their point, their world view that bodily autonomy is a thing. We should say, ‘no you don't have body autonomy and you definitely don't have the right to kill people.’” Respond to those people.

Rachel: Sure, that's a that's a great pushback. If you think about it from a legal perspective, I want you to imagine the individual's consent versus a government control if you will, right. So, if you believe that the body is a temple of the Holy Spirit, that it's a holy thing. And is something that should be given to God. That doesn't give the government the right to take it from you. In the same way you could say, “well, nothing we own, all of all of our possessions we should be giving to God. We shouldn't be attached to any of our money or any of our you know material items. Does that give the government or another person the right to come and take those things from you? Even if you believe that you have a moral obligation to give all of your money to the poor, you have a moral obligation to give of your body to God and that the woman when she gets married has an obligation to her husband and to God to serve the family in the way of childbearing. All of those like Christian ideas I think are consistent with the idea that the government doesn't have the right to come and force you to give blood, force you to give a kidney to someone even if it means they will die.

Josh: Right

Rachel: Maybe as a Christian, you believe that you should be giving blood whenever you can and if you don't need your kidney and you're healthy, you should be giving it to your neighbor who needs it. Like those are all very virtuous things right but it's still consistent with the idea that someone else cannot come and demand it from you.

Josh: Right

Rachel: And what the pro-choice person who's making this argument is saying is that the fetus is a person who's coming in and demanding it from the woman.

Josh: Yeah

Rachel: And she has the right to say no. And so, I think it's compelling even to the person who might think you know they hear the violinist story and they're like well if it's only nine months and the person's gonna die, why wouldn't you love your neighbor as yourself, right and give of yourself in that situation? You might think that you have a moral obligation and it would be wrong to unplug and selfish. Like you could make that argument.

Josh: Yeah

Rachel: But when we're talking about the legality of it, I think that people even that if they believe that would say so.

Josh: That's really helpful, thanks.

Rachel: So Margaret Little makes a you know, response to talking about like the financial aspect where she talks. She uses like tipping at a restaurant. So, she says there's no settled social meaning of sexual intercourse that allows us to uncover some intention to gestate hidden in the action. Which essentially

means like when you leave let's say a five-dollar bill on the table after eating at a restaurant, there's a social.

Josh: Hopefully you didn't eat a lot if it's only five dollars.

Rachel: Let's say you had a drink or whatever, right you have a coffee. You leave five dollars, okay yeah, it's the cheapest, I don't know, you're at, what's the waffle house. Okay, so if you eat a waffle house, you leave five dollars on the table, and there's a social concept there in America. In other countries, some countries don't have a tipping culture. We have a tipping culture, so we know that means that the waitress is allowed to come up and take your money and the person eating at the table next to you is not.

Josh: Right

Rachel: That would be wrong for them to do and it's acceptable for her to do. It's not stealing

Josh: Right

Rachel: And Little is arguing that child support is similar to this where there's like a financial concept. It's like yes, we're both going to take care of this child financially if we have a child together, but that there's not that social contract with sexual intercourse in the same way there is with tipping. So it's kind of a weird way I think to think about it, but I think that her argument that there's like this social relative thing happening with intercourse. It's kind of bogus. Like I just think that everyone knows that's how babies are made and if you look back in history, there are some cultures where the village kind of raises all the children, right.

Josh: Yeah

Rachel: We don't have a culture like that where you know it's just kind of like every adult around is like in charge of caring for the children that are around.

Josh: We're in a very individualistic time now. People don't even necessarily know their neighbors, but it used to be the like the you know, the village raising a child used to be like a thing that people talked about, yeah.

Rachel: Right, so like you could make an argument that in in the past it was kind of seen as like the child rearing was just kind of all the women in our small village because we're like this connected community and that's just not how we live right now. And so, you could make arguments about child rearing which can change over time and that is kind of a social construct. But when you look at sexual intercourse, we're talking about a biological fact.

Josh: Yeah

Rachel: Women gestate children and give birth to them and that's how all of us came into being. I mean, the technology could be changing. We could eventually have you know, surrogate artificial wombs and things like that. But right now, for most people, this is how we have children. And you can look at something like surrogacy even where you know I would be really interested in looking more at how those contracts are put together because if this is an inalienable thing and you can't consent to the future, how do those contracts even work? I think they're kind of tricky with like labor and compensation and things like that. But I think that would be something that would be interesting to maybe discuss. If I was having

a very long conversation with my friend or this is like an ongoing thing through time, that might be an angle I would take it. I've never done that in a conversation, but I'm just like throwing out ideas like that would be something that would be really interesting to talk about. Like if she consents to getting pregnant, they do in vitro fertilization or something, and then she wants to pull out in like the third month and she's like, "I don't actually want to carry your child to term. I want to abort your child." Like, how would that work? That would be something to kind of talk with your friend and see if your intuitions line up on something like that. But you know going back to Little's argument: the right against involuntary servitude. You know she says, "if the government mandates continued gestation, the state is mandating that the woman be in a state of unwanted occupation and conscripting her labor for the benefit of another." So that's just the way she articulates this like unwanted work.

Josh: She's occupied

Rachel: Yeah

Josh: There's an unwanted occupation like if soldiers like took over your house. Like if the third amendment wasn't a thing and it's like there's this unwanted occupation. This is an interesting, like that language is just an into an interesting perspective into her worldview.

Rachel: Some radical feminists take it even a step further. The one I talk about in the self-defense video is Sophie Lewis. She wrote a book called *Feminism Against Family: Full Surrogacy Now*. Which is an interesting title.

Josh: Just putting it all out there

Rachel: Yeah. And I quote one of her interviews in the video because long story short, she pretty much says that the violence against the fetus is a justified violence for someone who wants to exit a workplace. And she, the way she describes the fetus is like an aggressor.

Josh: Yeah

Rachel: And to label a fetus as an aggressor is just so absurd.

Josh: Yeah

Rachel: Because you know, and I talk about in the video about how the fetus is more like a threat in a case where a woman's health or life is at risk. The fetus is a threat by proximity but not an aggressor because an aggressor is an agent that's like moving an action forward. You know like if I drop a bowling ball out of a building, I'm the aggressor. But the bowling ball could be a threat to people below. But the bowling ball is not an active agent in the situation. Just by proximity it's putting other people in danger.

Josh: Right

Rachel: And so the embryo works the same way. And I think that our intuitions toward aggressors are different than our intuitions towards threats, and that's why that's an important distinction that you sometimes will have to make. And I think that Little is falling into a similar sentiment here. She's kind of thinking through the fetus something who's demanding labor. But the fetus has been put in a situation by that man and woman, right. The fetus did not come in in the middle of the night and kidnap you and hook you up to itself.

Josh: Right

Rachel: It is not a parasite and that is something that you know you'll hear that term thrown around a lot. Biologically the fetus does not operate like a parasite does. And so that sometimes is a biological distinction you have to make. So, there's different ways to respond to this. But I'm gonna just kind of wrap us up with what I think is, should be like your final move in the conversation. I think this this whole thing maybe sounds complicated and it kind of is. Sometimes you need to wander down these different rabbit trails.

Josh: Listen to this again.

Rachel: Right. The reason I'm feeling kind of disorganized right now is because I'm thinking about like all the different things I might need to talk about with that person and it's going to be different from case to case.

Josh: Yes.

Rachel: If someone's really attached to this, you might need to kind of explore those different things, but you know if you're playing the Mortal Kombat game, at the very end of the fight there's always like the "finish him." You know like obviously you don't want to be like behaving like that in a conversation. But if you think in your mind like okay this is this is a wrapping up conversation. I need to give my final blow. This is this is where you need to go. And we have a video on YouTube that is blood donation and bodily rights arguments right. So, if you're gonna make this argument and you haven't watched that video, go watch that video because we go into depth about how to articulate this argument. But essentially, I argue that Little is making the same error that Thompson does in her paper with the violinist. She's pretending that abortion is simply denying the fetus the right to your bodily resources. And that's not what abortion is. Abortion is an act of violence against an innocent person. It is an act of lethal violence and so we cannot do that. We have an obligation to not do that which is a greater obligation than we have to protect our own bodily autonomy. I think that in most situations, blood donation, a kidney donation - those things are too big of an ask for the government to be able to come in and force you. Even if blood donation is so much simpler and more straightforward and smaller than pregnancy. In a blood donation situation, the person who needs your blood, maybe they got an accident and if you don't give them blood, they will die.

Josh: Right

Rachel: But why will they die? Because they were in an accident.

Josh: Right

Rachel: Something's gone wrong with their body, they're sick whatever else is happening that makes them need your blood, makes them need your kidney. Something is wrong and if you don't help them, they will die. And that is sad, and you might argue that you have a moral obligation to help them but not a legal one

Josh: Right

Rachel: But in the case of abortion, the embryo is healthy. It's doing exactly what it's supposed to be doing. And when you hire an abortionist, they're actively killing that child and that child is dying because

of a direct action on your part. And there's different forms of abortion that are more direct than others and direct killing and direct killing get very messy. But abortion is very clear. Suffocation, dismemberment, lethal injection - these methods of abortion are not just helping someone. And in most cases, you cannot help, you can help, or you could kill. And in pregnancy you just have two options: you can help that fetus, or you can kill that fetus. Right now, we don't have a third option. Maybe in the future, we'll have technology, and we'll have other options. Right now we just have the two. So again, go watch that video for more information about this. But I think that this is our best response to Little's argument.

Josh: Yeah

Rachel: And going way back to that first example that we had from the paper that we read - that big section. Remember she says something along the lines of, "you need to use the least aggression possible to exit this situation."

Josh: Right

Rachel: She's making an argument. She's trying to like do the smallest amount of aggression that you possibly could to withdraw. And in the violinist situation, it's unplugging which seems like pretty minimal aggression. There is no minimal aggression when it comes to a lethal action against someone else. This is not a "I'm just gonna do the least amount of whatever." This is a direct act of violence. And I think that this in this situation it's very important to, in a medical, clear way, help them to understand abortion procedures. Help them to understand exactly what's going on. Because sometimes in their mind, they might be thinking about abortion as simply not helping someone. And it really is not. Especially RU486, the early chemical abortion. That's the one that I think for a lot of people seems like not helping someone that doesn't even know they're there. Watch the next podcast or listen when the next podcast comes out, we're going to get more into that idea.

Josh: Right

Rachel: But there's I think these actually are in some ways connected. But that's really what's going on. I don't know if you have anything else to add.

Josh: I mean, I was gonna say if the kind of direct killing that happens in an abortion is the least aggressive option, I don't want to know what her most aggressive option is.

Rachel: Right

Josh: It's like, this is this is this is clearly wrong.

Rachel: Right. I don't think you can argue that suffocating an innocent child is not aggressive.

Josh: Right

Rachel: or not violent. It is violence and that's why we oppose it. And I do not think that what the embryo is doing by using oxygen and nutrients is violent in any sort of way. And you will hear people articulate gestation, pregnancy as violence.

Josh: Right

Rachel: And that is wrong - categorically wrong. And we need to really separate that in the conversation.

Josh: Totally agree.

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