AT: Welcome to the Infinite Women podcast. I'm your host, Allison Tyra, and today I'm joined by Jill Hasday, a distinguished professor at the University of Minnesota Law School and author of the book, *We the Men: How Forgetting Women's Struggles for Equality Perpetuates Inequality*. So that feels like a pretty broad topic. Could you narrow that down for us?

JH: Well, I think the title really summarizes the main punchline of the book. The United States Constitution famously purports to speak for we the people, but in fact, too many of the stories that powerful Americans tell about law and society include only we the men. And I argue that when America's dominant stories forget about women's struggles for equality, that's not only inaccurate, but it actually helps perpetuate inequality.

AT: And so you're looking at the entirety of American history up to recent years. And so what do you mean when you say that people in positions of power **forget** women's struggles for equality, especially given that the US is largely a, I believe the term is gerontocracy, where the people in power are old enough that they were around for a lot of these pivotal moments?

JH: Okay, I like you bringing the gerontocracy into it. So the book focuses on two kinds of forgetting. The first is just leaving women out. And sometimes the examples are very concrete. So imagine yourself walking through a public park, and then walking into a government building in the United States with someone's name over the door. I suspect that most Americans who envision themselves in that situation would assume that the statute they looked at was a man, maybe on horseback, and that there was a man's name over the door. And those assumptions would be well founded. A recent survey of the 50 most frequently commemorated Americans found just three women on the list compared to 44 white men, many of them slaveholders. If you look at public monuments, women are only about 10% of even recent commemorations. So one way women are left out is just through how we remember American history.
You also see women being left out when the Supreme Court or when professors talk about what are the most important legal developments in America? What are the Supreme Court's worst or most important cases? There's no cases about women's rights that make the list. In fact, I was surprised as I was writing this book to discover how often women are missing, even from stories about women's status. Often courts or politicians or popular writers revert to what I call spontaneous enlightenment stories. And the idea here is that women didn't have to fight to increase their rights. Instead, men in their wisdom spontaneously decided. If you've ever read a textbook that talks about how the 19th Amendment **gave** women the vote, that fits into those spontaneous enlightenment stories. So that version of the 19th Amendment is inaccurate in at least two ways. First, the US Constitution doesn't guarantee anyone the right to vote. The 19th Amendment ended sex-based prohibitions on voting, but it didn't actually guarantee anyone the vote. And many women, especially women of color, were denied voting rights after 1920 and to the present day. Second, the 19th Amendment wasn't a gift. It was a battle. Suffragists were thrown from the picket line, shot at, assaulted, force-fed in prison, otherwise brutalized. This was something that had to be fought for. So anyway, the first kind of forgetting is leaving women out of the story, even when the story is about women.
And the second kind of forgetting is forgetting the work the nation still has to do. I think anyone living in 21st century America has heard someone announce or assume that the sexist battle days were behind us. But I was surprised to discover how early those kind of premature announcements of victory began. For instance, in the book, I quote this 1918 textbook that tells young readers, this is a quote, “all men and women are regarded as equals before the law.” Just for context, at the time, 33 out of 48 states denied women equal voting rights and restrictions on women's rights at work, in marriage, and in every other arena were widespread. And here are textbooks already announcing victory.

AT: Now, one of the things that you argue is that this forgetting is impeding further progress. And you've sort of touched on this in terms of we can't address what we don't see, in this idea that we're in a post-sexism society

isn't helpful. But could you give us more information on how this is impacting our ability to move forward, particularly given the era that the US is in right at this moment?

JH: Well, one thing I demonstrate in the book is that it's not just random when a court or the Supreme Court declares women's emancipation, that says sex discrimination is behind us. In fact, courts very specifically use those declarations of victory as a way of rationalizing their judgments refusing to give women equal rights. And I have tons of examples, but I'll just give you, and I want to get to the overruling of Roe, but let me just give you an earlier example first. So there's this 1961 case that comes to the Supreme Court, it's called *Hoyt v. Florida*. Gwendolyn Hoyt has been convicted of second degree murder for killing her husband with a baseball bat. The jury is entirely made up of white men. Florida discriminates based on race and also says that men are automatically included in jury pools and women have to opt in. Obviously, very few people enjoy jury service, few women opt in and even if they do, Florida will only let up to about 10 women be on the jury pool for each county, which means that juries are usually all male and occasionally there might be one woman. Gwendolyn Hoyt had a temporary insanity defense. Basically, her husband was very violent. He was blatantly carrying on affairs. This is in the era before cell phones, so his girlfriends are literally calling the house phone asking for him. And she says, “I snapped and I hit him with the baseball bat. I immediately regretted it. And a female jury or a jury that included at least some women would have been more sympathetic to my defense. I was denied a jury of my peers.” The Supreme Court rejects the claim. They say states are free to exclude women from jury service because women's primary responsibilities are domestic. Men have obligations to the state. They are core citizens and women are peripheral. In the process of saying this and denying female defendants juries of their peers, the court says, “don't worry. America has seen women's enlightened emancipation.” It's both, I think, a declaration of “sexism is behind us,” but also that phrase enlightened emancipation for me really invokes this spontaneous enlightenment idea. Who is enlightened? It's the men in charge. Through enlightened men, they've already fixed the problems that the court is acknowledging are in the past, but there's no problem now. That's why we can uphold women's continued marginalization from jury service. That is just a routine way of operating, not only for courts, but I also show in the popular press. When they declare kind of “victory, we've left women's discrimination behind,” It's often in the context of saying, “so whatever women are asking for now is unreasonable, is too much. What we're doing now can't be sexist or can't be discriminatory because that's something we've left behind.”

AT: This also feels like there's a strong correlation between this mindset and a lot of what I call CHAWM, so cis, het, abled, white men. I just got really tired of saying it. A lot of CHAWMs view equality as oppression of them. They view any move that helps right imbalances as, “oh, well, you're wanting special treatment.” They're acting like this is going above and beyond, and therefore it creates unfairness towards them. And that's really resonating with what you're describing.

JH: That is a deep, we certainly have seen many contemporary examples, but that is a deep theme in American history across not only sex discrimination, but also race discrimination, that courts and other powerful people will respond to arguments for equality with the contention that what you're actually asking for is special treatment. In fact, what they're asking for is protection against discrimination. But phrased differently, another way of thinking about it is what they're asking for is a disruption of the status quo. They're definitely asking for that. These arguments that equality has been already achieved is a way of protecting the status quo. It's a combination of seeming to agree with the principles, “I support equality as well,” but refusing to actually change how things are currently ordered.

AT: And so speaking of status quos, I would say one of the most upsetting things in recent years, at least from a feminism standpoint, was the overturning of Roe v. Wade. I do have a separate conversation with Barbara Winslow where we discuss sort of then and now activism to, I guess, re-secure abortion rights in the US. And

the fact that we even have to fight this fight again, I think really shook a lot of people who thought, “okay, no, we already gained that right.” And if you've lived particularly a relatively privileged life, which I feel like I have, this idea that victories that have been secured can subsequently be lost was a shock.

Listen to Barbara Winslow on abortion activism or read the transcript.

JH: Okay. I really appreciate that question. I began writing this book before the Supreme Court overruled *Roe v. Wade* in a 2022 decision called *Dobbs v. Jackson Women's Health Organization*. And for instance, in the initial introduction I wrote, I said something like, “women have certainly have more rights now than they had a half century ago, but there's still a long way to go.” And after *Roe* was overruled, I actually changed that to “women certainly have more rights than they had a century ago,” because I'm actually not clear if we're better off now than we were a half century ago because abortion rights are so central to women's ability to control their own lives. I also think that the overruling of *Roe* really focused my attention on the danger of regression. As I initially thought of the project, I thought one of the through lines was going to be, “of course there's been progress, but it's been too slow and too small.” But the overruling of *Roe* really focused my attention on how many moments in American history, it's not a question of progress being too slow, it's actually a question of regression. *Dobbs* is certainly one of the biggest rollbacks of women's rights in US history, although it's not the only one. All that said, there were aspects of *Dobbs* that ultimately felt very familiar to me. So the punchline of *Dobbs* is that the federal constitution places no limits on legislative control over abortion. If Congress wants to ban abortion, it has the votes, it can. If a state wants to ban abortion, it has the votes, it can. And there's a lot of things going on in *Dobbs*. The court's probably main argument is that in interpreting the liberty protected in the 14th Amendment, we need to look back at what the men behind the 14th Amendment would have thought they were doing, and the court contends they would never have thought they were protecting abortion rights. In the process of making that argument, *Dobbs*, like so many courts before, says, “don't worry women, you're already so well off, you don't need this right you're trying to keep.”
I'll just read this quote from *Dobbs*, which I think is so striking. This is Justice Alito's majority opinion in *Dobbs*. He says, “women are not without electoral or political power. It is noteworthy that the percentage of women who register to vote and cast ballots is consistently higher than the percentage of men who do so.” Alito is basically saying, “don't worry about losing constitutional protection for abortion. Women have to vote now. In fact, they're majority of registered voters.” He also says there's no more discrimination against unmarried pregnant women. The American social safety net is so great, it's easy to put your child up for adoption, et cetera. Like all of these premature announcements of victory, it turns on obscuring the work that still has to be done. For instance, women are a majority of registered voters, but let's look at who holds office. For instance, *Dobbs* was most immediately concerned with whether Mississippi's restriction on a ban on abortion after 15 weeks was constitutional. The court upholds it in the process of overruling *Roe*. Who was in the Mississippi legislature that passed this gestational age act of 2018? Well, 85.1% of them were men. The court never says that. It focuses on this idea of, equality has been achieved, so this rollback isn't a big deal. It's a way of rationalizing what they're actually doing. *Dobbs* is very striking in that this kind of statement, women have political rights, is almost the only thing the court says about the impact that overturning *Roe* might actually have on women's lives. So I think *Dobbs* is this enormous and enormously consequential decision, but at the same time, it's also part of a larger playbook that the court has used many, many times before.

AT: Well, and that's also ignoring the many intersectional issues that when we get into privileges and who is in a position not just to run for office, but also to vote. I mean, Republicans have been waging a decades-long campaign to make it harder for particularly marginalized people to vote in a variety of ways. So this idea that gender is the only factor ignores the difference between someone like me, who is a very privileged white woman, and people who are significantly more marginalized. Just because we're both women doesn't mean that we are at the same level of privilege.

JH: I agree with that, and I think you could even go further. One irony of the court's statement about how women have it so good is the Supreme Court itself has fought tooth and nail to reduce all of those things. So the Supreme Court is very sympathetic to legislative moves that roll back voting rights. I think that's fair to say. The Supreme Court allowed, the original version of Obamacare required states to increase Medicaid up to people receiving 133% of the poverty line, recognizing the poverty line is set extremely low. Someone at 133% of the poverty line is very poor. The Supreme Court said states did not have to expand Medicare. So everything they're saying is so great, first of all, isn't great. We don't have a wonderful social safety net in the United States, especially compared to other developed nations. And the Supreme Court, if anything, has been on the side of rolling back all those protections. Another irony is the court notes, well, I'm sorry, **claims** is more accurate, that there's no discrimination against unmarried pregnant women. And in the book, I just point out a few examples of how the anti-abortion movement actually continues to disparage non-married pregnant women quite a bit. If you just run a search for “promiscuous,” you just see it everywhere in the literature. So their account of reality is just not true. And equally interesting, I think, is how the court is trying to pull on this American idea of progress achieved as a way of defending and rationalizing a tremendous rollback of rights.

AT: Now, one of the things that you talk about is how, “America needs more conflict over women's status rather than less.” So what do you mean by that, in terms of what do you see as the current situation? What do you think that we need?

JH: I think one of the dominant stories America tells itself is that women's status is ultimately the product of consensus and that progress is inevitable. So for instance, I have many textbooks where they literally say, since America wanted to be democratic, of course, the 19th Amendment would have been ratified. I think it's easy to say that in retrospect, the 19th Amendment isn't that controversial anymore, although there are some members of the Trump coalition who have raised questions about its wisdom. But at the time, many Americans thought it was perfectly consistent to exclude women from voting and to support democracy. In fact, when you look at every important victory women have ever achieved has been achieved through conflict, through challenging the status quo, through disrupting settled expectations, through making noise. That's what I mean by more conflict. Sitting back and waiting for men's spontaneous enlightenment has never done anything. So I don't think the problem, I don't think the solution is we need to calm things down. You need to disrupt to have any progress.

AT: And I would say particularly in recent years, that has become more of an issue and most especially since Trump 2.0 took office, there has been a lot of discussion around Democrats in power “behaving,” right? Like there are some firebrands but so many of them seem way too willing to just go along with the rising fascism that is just blatantly obvious. And that feels concerning.

JH: Yeah, and although I think we are definitely in the anti-feminist moment, I just want to say we're not in the only anti-feminist moment in American history. And one lesson of history is that sitting back and being polite usually is not effective. Although maybe I could make that in a slightly more subtle way, which is for instance, one thing I think you can learn from the woman's suffrage fight in the United States is that it was actually, although they really despised each other at the time, it was extremely effective to have a more moderate mainstream wing and a firebrand wing. Like Alice Paul leads the more militant suffragists. She invents the idea of picketing the White House, which seems like old hat now, but she comes up with it and it is seen as like insanely radical at the time. And although she has a lot of conflict with the more mainstream suffragists, in fact, having those two sides really helps move things along because the Alice Pauls of the world create a lot of attention. Then the more moderate people say to Congress, “deal with me, or you have to deal with these crazy people.” But everyone just sitting back and being polite definitely does not work.

AT: And I think it's important to differentiate between the radicals and the moderates **and** the women who are working to uphold the status quo, because there are always members of marginalized groups who, for their own self-interest, will go along with the people in power. So I feel like there's sort of that spectrum of how much are you cooperating, shall we say, with the current power structure.

JH: One of the looming figures in my book is actually Phyllis Schlafly. (AT: Ughhh!) And her life story sort of fits into what you were just saying. So Phyllis Schlafly is a conservative Republican activist and she is genuinely a right-wing figure. I don't think that's strategic. But in the ‘60s and early ‘70s, she keeps trying to move into Republican politics. She wants to be a defense expert, just to bring it to contemporary issues. She opposes the giveaway of the Panama Canal, but she can't make headway. Republicans are just not interested in her. She's an educated person. She has a Master's from Radcliffe. She's very smart, but they're just not interested in a woman playing a big role in Republican politics. And finally, she has this newsletter. After five years, she hits on the idea in 1972 of devoting her newsletter issue to What's Wrong with Equal Rights for Women. That's the title for February 1972 issue. And all of a sudden, she makes a splash, because ironically, feminism creates an opening for her. And she gets a lot of attention. She is a very effective organizer. At the end of the day, though, most of the people who vote against ratifying the ERA are male legislators. So I don't want to overstate her role, but she does play an important role. But there have always been — the point of the book is not that women have a uniform view. Of course, there are divides among women, including about feminism. For instance, Phyllis Schlafly, who really sets a template for a lot of anti-feminists after her, has two central arguments against the ERA. And one of them exactly builds on one of the myths I'm talking about, which is she says, the ERA is unnecessary because America no longer discriminates against women. And then her second argument is the ERA is threatening because it would disrupt women's place in the home. Those two arguments are in tension, but she says them together. And in the book, I show how a half century of anti-feminists have used that same strategy when opposing affirmative action, when opposing government supports for childcare, etc. This is their go-to. It's unnecessary because there's no more sex discrimination and it's threatening because it'll take women out of the home or cause some other parade of horribles.

AT: The thing that I find really ironic about women who are sort of figureheads for conservative values is that they are very much talking about an ideal that they do not uphold if they are public figures, because we can look at tradwives on social media where that woman is not actually like doing real farming. (laughter)

JH: How does she have time to churn the butter and also be on Instagram, right?

AT: Exactly. Like the aesthetics of this are much more important than the actual functionality. There is no way that this person looks this well put together if they were actually living the lifestyle that they are idealizing.

JH: Phyllis Schlafly has six children and she's always sort of cagey about what childcare she has. Her niece later reveals, years later, that she had a housekeeper who was in the house, I think, every day and cooked all the meals and cleaned and stuff. It kind of made a little brouhaha in the press, but when you think about it, it's kind of absurd. Of course she had someone. She was traveling all over the country all the time and she had six children. Either she had childcare or there was going to be neglect. I mean, her husband was a big conservative lawyer. He wasn't doing it. So there is this irony of how anti-feminism and saying that women belong in the home has given many women an opportunity to escape the home. One of the things I find interesting about Phyllis Schlafly is she presents herself, and I think believes, feminism is a disaster, she's an anti-feminist, but she takes so many lessons from feminists. Some of the stuff she does from a feminist perspective is pretty cool. The ‘70s feminism, one of its key methods is consciousness raising. So she does consciousness raising for her on her side. She recruits women. She tells each woman, “find 10 of your smartest friends and get together and talk about organizing.” She runs media training, how to give an interview.

A lot of women actually get a lot of empowerment and community out of these anti-ERA groups whose purpose is essentially to freeze women in time. So there's an irony there, but I can see why many of her supporters join her because she is offering them these opportunities to get out of the house.

AT: Which is so ironic because the main thing they're fighting for is women's supposed right to continue to be housewives. She went and got a law degree for heaven's sake. She's traveling the country, as you said, actively lobbying. And there's a really great miniseries from a couple years ago called *Mrs. America*, where the absolutely impeccable Cate Blanchett plays Schlafly. And there's a scene that may be my favorite from the whole miniseries, where some of her minions are talking with some of the feminists. So the feminists are saying, “well, do you do this? Do you do this?” And they're like very proud, like, “yes, yes, we do!” And the feminist says like something along the lines of, “congratulations, you're an activist.”

JH Right, right. There is an interesting merging. Another way you see this tension in Schlafly's own life is, so Schlafly, I don't agree with her on almost any issue, but she's a genius. She helps unite the new right around anti-abortion politics. She helps get Catholics and evangelicals to vote on the same side, which they historically had not. She is a very, very powerful figure in not only opposing ERA ratification, but helping to create the new right. And when Reagan is elected in 1980, she is very public about wanting an important position in the Reagan administration. She gives extremely broad hints in the press. It's discussed in the media and she doesn't get it. I think he puts her on some bicentennial commission for the Constitution, but she doesn't get a real job. Almost everyone he names to his cabinet is a white man, not surprisingly. And then later on, she's still fighting the ERA. There's some great debates where feminists say, “you say sex discrimination doesn't exist, but you yourself have been the victim of sex discrimination.” And there's almost a moment when she acknowledges it because she knows she's good. She really is. And she just can't get into the establishment. They won't let her in. And gender is, I think, a significant part of that. So she's a complicated figure, but she forges a path that anti-feminists have really worked for.
So for instance, I have in the book, there's some proposed legislation that was supporting childcare. Childcare is extremely expensive in the United States because the government plays a very small role in funding it. So it's a huge burden for many. I think every state, I was looking at the statistics, people pay more for childcare than they do in rent. It's just this enormous economic burden. And this anti-feminist group, Independent Women's Forum, which is a successor to Phyllis Schlafly's Eagle Forum, they send women to testify against it. And they simultaneously say, “women have it all. They can do whatever job they want. Every opportunity is open to them.” And then fight government support for childcare, even though most women, the only way they can have a job is if they have access to affordable childcare. There's no magic solution. So at a deep level, these arguments don't make sense, but they are politically effective. It works.

AT: Are you familiar with the term “pick me”?

JH: P-I-C-K me? Pick me? No.

AT: So a pick me girl in colloquial slang is a girl who, and I say girl because I do feel like there is an implied immaturity. But there are adult women who act this way as well, obviously, but it's essentially a girl or woman who plays into things like misogyny and puts down other women so that men will like her. And what I think we're getting into here with Phyllis Schlafly is that being a pick me isn't going to benefit you in the long run. You might make advances in certain ways. You might have benefits that come out of this. There are certainly plenty of conservative figurehead women who have benefited in a variety of ways, but they are never going to put you in charge.

JH: We all live in this society. And from a certain perspective, it's hard not to internalize the dominant norms of

that society, even if those norms don't benefit you. So in some ways, it's not surprising. I don't know if those pick me women even intentionally realize that, that they say, “oh, I can get some advantage by appealing to men,” or it's just they've been internalized. One lesson girls get as they grow up is “make men like you.” Although Phyllis Schlafly is not someone who goes around saying, “men are smarter than women. Men know more.” Because she knows she knows plenty. Instead she just says, “women are natural nurturers. Their job is to take care of children. And men's job is basically to protect women so they can take care of children.”
I also want to say that some of the points she makes, I agree with. So for instance, and I don't have a lot of overlap with Phyllis Schlafly, but one of her points is she says, “if women have equal access to work, but men still don't do housework, then women are just going to end up working more.” And I think that's right.

AT: But she doesn't then take the next step to say, “men should help with housework.”

JH: Right, men should do more housework. And feminists were all about men should do more housework. And also the idea that feminists were opposed to housework, they weren't. All of the idea of making traditionally female work less grueling and more rewarding, feminists were on board with that. So she kind of caricatures feminists as not realizing what's going to happen, when feminists did realize that it just, it turned out that society was more willing to accept some women's entry into slightly better market jobs and changing the arrangement of household labor was much more difficult. So she has a nub of something I agree with. The double shift is real, but she weaponizes it against feminism as opposed to saying, “isn't this a moment for men to also change their behavior?”

AT: I think it helps that a lot of the things that women were fighting for may have seemed more abstract to men in terms of how “this isn't going to directly impact **me**.” Whereas your wife wants you to do more housework does directly, like that is something that every man should be doing right now.

JH: Changing family structure is always the hardest. I'll give you another example, which I talk about in the book. So the common law, which is the original law in the United States has all sorts of ways in which men are in charge of their wives and gradually most of them are abolished. So women can have wills. Women can own property. Women can have a paycheck. Almost the last thing for there to be any movement on is the marital rape exemption where husbands are immune from prosecution for raping their wives. And even now, at least 12 states treat sex crimes more leniently if the perpetrator was married to the victim when he acted. And why is that? And it's not that feminists haven't been working on this. Feminists have been trying to get rid of marital rape exemptions for over 150 years, but that's so at the core of family life, that that's where the resistance is strongest. And you can see though, that if you don't have a change in family relations, the impact of more public changes is going to be muted. So for instance, if women get the vote, but they don't have time to be involved in politics because they're so consumed with housework, then women's suffrage is going to have less of an impact.

AT: Bringing this back to the courts, because, you're a law professor and this book is about the court system and laws. You're very much looking at how the courts and the world outside the courts operate together. So what does that look like to bring those things together?

JH: So one of the stories that judges like to tell is that they operate above the political and popular fray. So federal judges in the United States have lifetime tenure, their salaries can't be cut. And the idea of this protection is they don't have to worry about what's popular, what's not. They can be insulated. One of the things my book shows is there's such a close connection between courts and the world outside the courts. It's the same stories ricocheting back and forth between them. So the popular press tells spontaneous enlightenment stories, men just decided to give women something, and the courts tell the same stories. Or

anti-feminist politicians and activists contend that America has left sex discrimination behind and courts tell the same stories. That these dominant stories about America are so deeply rooted that they are echoed and reinforced in both arenas. And in some ways, I don't find that too surprising. Judges are a product of the culture they come from. When judges leave women out of the story, one explanation is, if schools leave women out of the history books, then judges are going to grow up with a certain vision of American history. If you grow up reading stories in which men in their genius gave women various things and you never hear about how much of a struggle it is, that's how you're going to envision law's movement. If you're in a world where you don't find it suspicious that there's no discussion of women all the time, then when you talk about the court's big cases, you'll never think why is it there's no cases about women, they're all about men. So the book alternates basically between a chapter that's about the courts and a chapter that's outside the courts. And I think this really shows how, sometimes when people aren't lawyers, they think of the courts as these mythical creatures in these robes on high and emoved from the rest of reality. And this book shows that what the courts say and do is very similar to what politicians or the press or activists say and do. It's the same conversation.

AT: Now, you've mentioned a few different examples from the book, but were there any other favorite stories that you have that you wanted to tell us about?

JH: One of the reasons writing this book was such a pleasure is that I have been studying and writing about women's history and sex discrimination for more than two decades. And I still met many women, I mean met metaphorically, many female historical figures that I had never known about. And one of my favorite stories involves Anne Davidow. So the story begins in 1945 when Michigan passes a law banning women from bartending in larger cities. This law was actually part of a wave of what were called anti-barmaid statutes that were pushed through many states at the behest of the all-male bartenders union. They like to call female bartenders “barmaids” to differentiate them. “We're bartenders, these are barmaids.” The bartenders union sometimes phrased their opposition to barmaids in the language of morality. “We're protecting women from unsavory bar characters,” but that argument never really made sense. For instance, Michigan banned women from bartending while allowing them to serve as cocktail waitresses. I don't know about you, but I would much rather be behind the bar than out with the customers as a cocktail waitress if I was concerned about safety. And the bartenders union in their internal documents, which I looked at for the book, admit that ultimately their concern is economic. Keeping women out of bartending jobs helps preserve high wages and job security for men. Okay, so the bartenders union pushes through this anti-barmaid law in 1945. And Anne Davidow is a pioneering feminist attorney and she agrees to represent four women who are challenging the law. Two are bar owners and two are bartenders. That includes a mother-daughter pair where the mother owns the bar and the daughter tends bar, because the way the statute was written, the only women who could tend bar were women who were the wife or daughter of a male bar owner. So even if you were a woman and owned your own bar, you couldn't attend bar and you also couldn't take advantage of having your daughter work for you.
It's a very uphill battle to sue. The Supreme Court has upheld literally every sex-based restriction on women's work, but Anne Davidow is undaunted. She takes the case, which is called *Goesaert v. Cleary*, all the way to the Supreme Court. It gets there in 1948. In this era, the Supreme Court does not record oral arguments, so we don't have an exact transcript of what happens, but we do have Anne Davidow's statement in a later interview. Now, when you have a Supreme Court argument, there's a set time, but it used to be that they would give you a day when your case would be heard and you'd basically sit there until they call your case. So she's sitting there all day. There's a lunch break. After the lunch break, the Solicitor General for the state of Michigan, the man defending the law, comes in with some of the justices, like the fix is in. And in fact, Michigan's argument is short and sweet. Justice Frankfurter, who's known as a big liberal, heckles Davidow from the bench while informing her that the days of chivalry aren't over. Either Frankfurter failed to recognize the irony or felt that Davidow's effrontery in bringing the suit excused him from any obligation to treat her chivalrously. Frankfurter writes an extremely dismissive opinion. It's less than three pages long. He says, “this is the rare

occasion where to state the question is to answer it. Can Michigan exclude women from bartending? Of course they can." This is another opinion, by the way, where the court says, "don't worry, women have made all this progress. It's not a big deal to exclude them from this desirable job." Eventually, Davidow has the last laugh. The Supreme Court overrules *Goesaert* in 1976, but even then it's just in a footnote. They don't really get into why they were wrong. Anyway, I love the story because of Davidow's resistance and determination, even when she was unlikely to win. She fought even though her chances of winning were low, but she didn't give up. And I find that very inspiring.

AT: I do find it interesting how often laws and other rules that are meant to ostensibly protect women, first and foremost tend not to really address the question of "what if the law did something to protect us instead of just restricting our movements?" There's this veneer of "we're protecting women by not giving them choices and by restricting and limiting what their options are." And you see this all over the place, but the idea that women are safer around drunk men if they are behind a bar gets ignored in favor of, "oh well, as long as a woman's dad owns the bar, she'll be safe."

JH: And the father or husband didn't even have to be in the bar at the time she was working there. So it was absurd. But I agree that many restrictions on women's rights have historically and to the present day been justified as protection. "We're protecting women from the rowdiness of the polling place." "We're protecting women from having to hear the details of criminal cases if they served on a jury." "We're protecting women from the immorality of being a bartender." And the way this protection has functioned is to take control and autonomy and rights away from women. And also it places the burden, the way that the protection is going to be accomplished is by denying women an opportunity rather than, for instance, changing male behavior. Are there other ways to go after violent bar customers, for instance, by going after violent bar customers rather than banning women from being a bartender? Plus, as I said, women could be cocktail waitresses. So the whole thing is implausible on its face. And it's a good example of how little scrutiny the Supreme Court gave to restrictions on women's rights. You could say something as ridiculous as "we're going to protect women by making them cocktail waitresses" and get away with it.

AT: It also speaks to how, including courts, I would say, but the power structures more broadly simultaneously hold women back economically, among other ways, but then act like it's our fault that we can't support ourselves.

JH: There is a lot of evidence that when women have more economic power, this isn't so surprising, but when women have more economic power, it just expands their opportunities in all directions, not only economic, but to decide, are they staying in this relationship? Are they going to demand more in the relationship, etc. But the *Goesaert v. Cleary*, this Michigan bartending case, is a great example of how law actually helps produce women's underpayment and economic vulnerability. So another way of thinking about it, this law is nominally about protecting women, but what it actually does is make women poorer because you make more as a bartender than as a waitress, or you make more as a bartender versus the other job that would be available to you. So it actually leaves women more vulnerable because they're poorer. The female bartenders in that case testified that they need, they're not bartending for their health, right? They need the job. It's a relatively high paying job given the education, etc., required. So it actually produces female vulnerability as it's saying it is protecting women. You could say the same thing about the suffrage arguments. What made women vulnerable? Not having the vote makes you extremely vulnerable, but women's disenfranchisement was justified as protecting them. And actually there's also for a more modern example, one strain of anti-abortion argument is "we're protecting women from the abortion industry" or "we're protecting women from regret," but what they're actually doing is denying women control over their own lives. And also potentially subjecting them to terrible health complications because the hospital is too scared to help them.

AT: I can't speak to how much any judge or any other man in power or woman in power for that matter, because we do have women like Amy Coney Barrett who are part of the problem, but I can't speak to how much any individual actually believes the bullshit that they're spewing. But I have to assume that disempowering women, however much they might try to coat it with the thinnest veneer of nonsense, I have to assume that that is a feature not a bug in terms of, “if we can trap women with pregnancies, then that is a goal not an inadvertent side effect,” as one example. If we can keep them from well-paying jobs and keep them financially dependent on men while then also criticizing “welfare moms,” that feels very much like it is intentional.

JH: I can't get into anyone's mind. I do think that the anti-abortion movement would like women to focus more on domesticity and I don't think they would phrase in their own mind as “trap,” but they would like women to focus more on domesticity and their highest calling and caring for children. And at least some members of the anti-abortion movement equate family stability with staying together rather than investigating what are the terms in which you're together? So having another child might keep you in a relationship because your options for leaving are diminished but that doesn't mean it's a great relationship. So I do think a push towards domesticity is underlying the anti-abortion movement and generally the anti-feminist movement, that seems to be an important goal. If you look at the recent discussion of pronatalism, a lot of that is about women focusing on their domestic responsibilities. By the way, just to go back to housework, there's very robust evidence that the more even the distribution of housework, the more children women are willing to have, which is not surprising at all. But one thing I find interesting is, the pronatalists, you never hear them say “we need a housework revolution”. They have a lot of other ideas but they don't say we need a housework revolution, even though equalizing housework I think would lead more women to want to have more children.

AT: Well and something else that has come up before in previous conversations is that there is a very real difference between people who seem to just want to control women and people who do seem to actively want to make it easier, make it more feasible for people to have more kids. So in a U.S. context, if you increased the minimum wage, that would make it more realistic for people to get by on one person's salary or say if it's a two-parent household, one of them is working part-time. But if you increase the minimum wage, parents wouldn't need to work so much just to stay afloat. If you provided free or subsidized childcare, if healthcare was more affordable, there are all these frankly socialist policies that would actually make it more possible for people to have these families that the conservatives seem so obsessed with. And yet I never seem to hear any of them pushing for those kinds of policies. It's always, shall we say, all stick and no carrot.

JH: There is a strand of pronatalism that wants to expand the social safety net, that wants to have more paid parental leave, more support for childcare and basically is recognizing that one important reason why people don't have more children is economic reality. It's extraordinarily expensive to raise children, both in terms of the money you're directly spending on the child, but also in terms of foregone income. If you're someone who can earn money during that time, it's a double hit. So there is a strain of pronatalism that wants to expand the social safety net, but to date that has not been the dominant strand. So for instance, the Trump administration has spoken many times about pronatalism, but they're in the midst of trying to pass a statute that would brutally slash what was already a very stingy social safety net in the United States. And you don't see arguments about, “well, if we make it harder to get food stamps, won't that have an effect on people's willingness to have children?” So there does seem to be a disconnect.
More generally, one of the critiques of the anti-abortion movement has always been, “you're so concerned about the fetus, but then once a child is born, you don't seem to be very interested in helping to support that child.” If you actually wanted to reduce abortions, I think the most powerful thing you could do is reduce economic desperation, because economic desperation is an important motivator for abortions. Poor people are much more likely to have abortions, but the anti-abortion movement has not really pushed that, of guaranteed

minimum income. There's plenty of things you could do that I think would effectively reduce the abortion rate, not through coercion, but just by giving people more options. In fact, one of the ironies of *Dobbs* is that the abortion rate has actually gone up in the United States since *Dobbs* overruled *Roe*. And that's because *Dobbs* produced a polarization at the state level, which is about half the states banned or all but banned abortion, but the other states became more protective of abortion and, for instance, are now willing to mail abortion medication across state lines, which they hadn't been doing before. So there's more abortion in the United States than there was before, suggesting if you actually want to reduce abortions, this strategy was not the best strategy. Helping people and allowing someone who wants to have a child to feel like this is possible would be more effective.

AT: And even just common sense prevention, like providing birth control and providing useful sex ed instead of things like abstinence-only sex ed. Again, conservatives generally, not 100 %, but predominantly seem to be against these things that would just objectively make it less likely that people are in a position to need an abortion.

JH: One thing I do in the book because the *Dobbs* case overturning *Roe* was actually about Mississippi is, I specifically look at the Mississippi statistics. And Mississippi requires public schools either to be what they call abstinence-only or abstinence plus and prohibits any instruction about how you actually use birth control devices. Not surprisingly, it has the highest pregnancy rate for 15 to 17-year-old girls. Mississippi also won't, if you're already receiving temporary assistance for needy families, which is means-tested welfare, and you conceive another child while you're on it, Mississippi won't increase the grant even though you have another child. So the idea that abortion restriction isn't so terrible because we have this great social safety net is particularly absurd in the Mississippi context. And again, there is this irony that many of their policies ultimately push people to have abortions, except if they've made it so difficult for someone who doesn't have the resources to leave the state that they would like to have an abortion, but it's not possible.

AT: So back in 2024, the Missouri Attorney General basically filed a lawsuit about the abortion pill Mifepristone. And literally, not just him, but three attorneys general were arguing that federal laws making it more difficult for states to enforce the abortion bans was harming the states financially. And the filing, this is a direct quote, says, “younger women are more likely to navigate online abortion providers or websites ordering mail order medication to self-manage abortions.” So they are literally saying that it is harmful to the state to not have more teen pregnancies.

JH: Although Missouri does not have particularly robust help for teenage, unwed pregnant mothers.

AT: Of course not. (sarcastic) Wait, what are you saying? Are you trying to say that there is actually still prejudice against single mothers? WHAT?!?

JH: Right. Right. It's amazing. But the other thing I want to say about that is *Dobbs* is not the end. It's kind of the beginning. So the anti-abortion movement worked on overruling *Roe*, and that took 49 years. But many members of the anti-abortion movement, their ultimate goal is to end all abortions, and in fact, to have abortion be illegal throughout the United States. So what we're now seeing is, if stage one is overruling *Roe*, stage two is trying to roll back everything. It's only just starting interstate disputes over abortion access, but it's beginning. So for instance, there's a suit in Louisiana. Louisiana is trying to go after a New York doctor that mailed abortion medication into the state. And time will tell how these cases work out, but the overruling of *Roe* is really only the beginning.

AT: Well, and we've obviously talked a lot about *Roe* and *Dobbs*, but as you mentioned, you were working on

this before that ruling came down. So what was the impetus for writing this book?

JH: I have had a book like this in mind for a really long time, I think since I went to law school. As I was sitting in those classes and listening to the professors, almost all of whom were men, tell me stories, it struck me that in all of the stories, the law's treatment of men was what the story was about. And women's experiences under the law were either skipped over or they were treated as a footnote. And I kept thinking, “women are not a footnote. We're about half the population. Our experiences are just as central as men's experiences. Why did they get to be the baseline and we're the exception?” So I wanted to write a book that placed women at the center of American law and history. And then the immediate impetus that got me to write it right now is that the 250th anniversary of the United States is coming in 2026. In all past commemorations, women have had to claw their way in. So in the centennial, in July 4th, 1876, suffragists asked for one minute at the microphone and they're denied it. Susan B. Anthony and other suffragists literally stormed the stage. They're like the wedding crashers and they spread their literature. A century later, the story that Gerald Ford is telling at the bicentennial is essentially the same story, which is that the founders established government by the consent of the governed. That story is only true with respect to white men, especially white male property owners. Most Americans in the early United States, including all women and most men, were denied rights of self-government. NOW holds a counter-bicentennial to protest women's continuing inequality. And this is the next big anniversary, probably the biggest one of my lifetime. And women deserve to be in it.
Freedom and autonomy are part of the founding, but so is slavery and subjection. There's no story about America that doesn't include women. I'm not too optimistic about how the Trump administration is going to celebrate the 250th anniversary. Donald Trump has already named a task force with him as the chair. But I think this is a really important moment to reflect on the dominant stories we tell about America. Because one thing that Donald Trump and I agree on is the stories we tell about the past shape how we think about the present and imagine the future. That's why there's so many fights about commemoration, which aren't new, that's been going on for centuries. Because how we tell the story of America and the 250th anniversary is really a moment about how we understand America now and how we think it should evolve in the future.
I think the book ultimately is very uplifting because it tells the stories of so many women who experienced the many anti-feminist moments in American history and kept persevering. Sometimes the only way up is through. And one of the great lessons of women's history is that every victory women have ever achieved has not been easy or quick and has not been achieved by anyone acting alone. Women have always had to mobilize and push and sometimes it takes generations. I think that's another thing I want to say, which is I don't want to take anyone's attention away from the headlines. The headlines are important, but this struggle isn't about what we can win this week or this month or even this year. It's what we can push for across generations because sometimes it takes generations to make progress.

AT: Join us next time on the Infinite Women Podcast. And remember, well-behaved women rarely make history.