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## ESSAYS

### RESCUES: IN AND OUT OF DIALOGUE WITH THE LAW

JOHN CAVANAUGH-O'KEEFE\*

To begin to understand abortion and rescues, we first have to set aside a myth. The myth is that abortion will end by a change in the law.

Throughout the history of the human race, there has been some abortion (and rape, murder, pillage). But in this century, the ideology of eugenics and steady advances in technology prepared the way for the social evil of massive abortion. And it was the change in laws — first in various state laws and then the 1973 Supreme Court edict — that effected the bloody transformation. Because it was a change in law that opened the gates of hell, many people believe that a reversal, another change in law, can end the bloodshed. This is nonsense. The law brought us the catastrophe, but cannot end it.

Knowing where an evil erupted does not tell us how to repair it; it simply gives future generations some guidance about how to prevent future crises. After a dam has cracked and washed away, after the flood has wiped out the town below the dam, it does not make sense to try to repair that crack. Rather, you rebuild the dam, and take future cracks seriously. A constitutional amendment is an effort to repair a crack in a wall that has ceased to exist. It is like trying to reinforce the Maginot Line in 1943, or gluing the czar's head back on in 1918, or putting a genie back in a bottle. Once evil spirits have been set loose, they must be exorcised.

In the history of the globe, there is no precedent to encourage the belief (held tenaciously by nearly all leaders of the prolife movement) that a massive and deeply entrenched social evil can be ended by a change in law. To be sure, at

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some point the law expresses a change that has taken place, but legislators do not have the power to effect deep changes with words alone. Massive and deeply entrenched social evils are ended by war or by campaigns of nonviolence. Aside from the miraculous, there is no third alternative. Slavery in America was ended by war, not by the Thirteenth Amendment; to pretend that the Amendment was the key event is willful blindness. Segregation was ended, or at least seriously eroded, by an organized campaign of nonviolence; civil rights legislation was a product of that campaign, not its foundation.

Those many prolife leaders who are still determined to end abortion by changing the law are ignoring history. The real choice is simple: abortion will be ended accidentally as a byproduct of a war, or it will be ended deliberately, by a sustained campaign of organized self-sacrifice. For me, the sooner this choice is made, the better.

A campaign of nonviolence like the prolife movement cannot be built with military principles. A competent soldier constructs an effective defense; the nonviolent activist deliberately opts for vulnerability. A military leader pays attention to detail, but focuses on the overall picture; the nonviolent leader is aware of the overall picture, but focuses on the individual. A soldier is a pragmatist with a defined goal, selecting weapons, such as tanks, ships, and bombs that are appropriate for that goal; the nonviolent activist is usually a person of faith who uses specified methods, such as prayer, fasting and self-sacrifice, and leaves the results in God's hands.

These contrasts can be overdone, but mentioning them helps to clarify the challenge one faces when trying to develop an articulate understanding of "civil disobedience" in general and rescues in particular. The law, which comprehends the familiar problems of the military, is often perplexed by the actions and attitudes of nonviolence. The fist and the bird can watch each other, but cannot share experiences.

Since Henry David Thoreau wrote about civil disobedience, lawyers have been encouraged to believe that the American legal system can respond intelligently to this foreign intrusion. It is not clear to me that this is so. I have been baffled repeatedly by judges who lecture proliferators about civil disobedience, saying, for example, that rescuers should plead guilty and take their punishment quietly, like Gandhi and Jesus. I understand the Gandhi part, perhaps because I can't remember the names of any of the judges he faced. But when a judge urges us to imitate Jesus, whose role is the judge taking? The

man who deliberately casts himself in the role of Pontius Pilate is not thinking clearly.

It is worthwhile to examine rescues as a form of civil disobedience; rescues draw upon a known tradition. It must be understood, however, that the exercise can be a seductive trap. If you cannot shift to another paradigm, you will never understand rescues.

### CIVIL DISOBEDIENCE AND PUBLICITY

Civil disobedience has been used to focus public attention on issues, and the rescue movement has done that. In August 1975, a group of women entered an abortion clinic in Rockville, Maryland. The group had been pulled together by Chris Mooney, who persuaded her friends that the prolife movement had to imitate the anti-war movement in order to get publicity. That initial understanding of rescues lasted for a single action, and then it was replaced.

This first sit-in did in fact garner publicity and sympathy. But the activists also learned that while they were inside the abortion clinic, they had a reasonable chance of persuading a mother or couple to leave with a living child. With that lesson, they shifted their focus to saving children and helping mothers there that day; publicity was still an aim, but was secondary.

Publicity is not necessary in civil disobedience. People who seek publicity rarely say explicitly, "I want people to listen to me." Rather, they say what they want to say and do not worry about listeners. Further, the fact that rescuers talked to reporters was seen as proof that they wanted publicity. So the claim that rescues were not designed to get publicity was generally ignored. Reporters, even friendly reporters, have insisted on referring to rescues as "protests" or as "demonstrations" or as "invasions."

I have been arrested 30 times. Of these, the one that I consider most successful received little publicity. And the aspect of it that warms my heart forever has received no publicity; in fact, I did not know about it myself at the time. When I was arrested on Holy Saturday in 1983, I was handcuffed and dropped on my face, and I bled dramatically. My older sister — who, unbeknownst to me, had an abortion years before — witnessed the event. She saw her little brother bleeding all over the place. My blood (together with my younger sister's arrest and Joan Andrews' long imprisonment) touched my sister's heart, and helped her to return wholeheartedly to the Lord and his Church. At that time, some rescuers were saying glibly that

we were working to save our unborn brothers and sisters from death *and our sisters from harm*. The second half of our claim was never reported. But out of sight that day, by God's grace, my blood served my blood-sister.

On two other occasions, I was arrested with small groups — just three of us, in both cases — and the rescues received no publicity. But each of those rescues set in motion a series of events that led to the closure of the abortion clinic.

### CIVIL DISOBEDIENCE: LEGAL CHALLENGE

Rescues have brought several issues into court, following the strategy of the civil rights movement led by Rev. Martin Luther King, Jr., which included deliberate decisions by various people to undergo arrest in order to bring discrimination issues into court.

In *Roe v. Wade*,<sup>1</sup> the Supreme Court sought to declare the State's neutrality in the decision to abort. Who had standing to challenge that? The children of course, have some interest in abortion decisions, but they are dead and discarded. Rescuers, using the necessity defense in court, attempted to raise the question of personhood in such a way that the Court could not dodge it. The defendant, claiming the benefit of every doubt, asserted a reasonable belief that human creatures with arms and legs and beating hearts were members of the human family, and required protection from the Fourteenth Amendment. In order to get a trespass conviction, it was hoped the prosecutor would be forced to show that this belief was unreasonable. This conclusion would end the pretense of neutrality and directly request the Court to address the question of personhood. The Supreme Court declined to rule on the issue.

Our simple idea — that trespass is justified to save a particular child on a particular day, and a child scheduled to die today will not be helped by legislation tomorrow, no matter how good the new law is — rarely made a dent in any judge's mind. During a trial for a rescue in Washington in 1977, U.S. District Court Judge Sylvia Bacon put it succinctly in a dry question: "Besides 'saving lives,' what other good reasons did you have for being there?"

It may be that rescuers raising the necessity defense will one day return to the Supreme Court, facing fewer pro-abortion ideologues. The Court, including Justice O'Connor, may address this central issue squarely. That is plausible, and

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1. 410 U.S. 113 (1973).

would not displease rescuers. However, when the state and federal courts were ignoring the necessity defense in the late 1970s, with no reversal in sight, rescuers were just getting started. Adverse decisions were interesting to rescuers, but did not have much impact on their plans.

Still, rescues may have a very different and quite significant impact on constitutional law in the future. As the hoary promulgators of *Roe* have died or retired, the U.S. Senate has been led to more and more debate over the meaning and application of *stare decisis*. One impact of rescues is to make it impossible to claim honestly that *Roe* settled the abortion question. With over 50,000 arrests as a result of that decision, including a confrontation between Church and State without precedent in American history (with five bishops arrested), the decision is ripe for review. The question cannot be considered settled.

If rescues make an impact on some Justice who agrees that the issue is not settled, that will please rescuers. But again, this is not planned.

#### NOT LIKE OTHER CIVIL DISOBEDIENCE

President Kennedy said that the hottest places in hell are reserved for those who are neutral in times of crisis.

Set aside, for the moment, the savage deception that lies in such neutrality. Accept, for the moment, the utilitarian premise that the State seeks tranquility, the greatest good for the greatest number. Accept, for the moment, the myth that the unborn are not members of the human community. Then ask the question: Is there any reason why the State should defend the unborn? This was the question asked by Dr. Henry Morgentaler in Canada, who was jailed for 10 months for performing illegal abortions: if you try to stop abortion, physicians go to jail. If you permit abortion, what happens? Nothing. That sounds like tranquility.

Rescues provide a response to that dilemma. They "make a fact." That fact is, if the state will not protect babies, rescuers will. There will be growing civil unrest if the unborn are not protected by law; this social reality is independent of the ideological stance of the legislator. The prosecutor who does not want to jail abortionists must jail bishops. Thus the state has an interest in defending the unborn, because its refusal to do so will destroy tranquility. Rescues destroy the myth of neutrality and force the "neutral" to admit their complicity. As rescues grow, neutrality ceases to be a convincing illusion.

Although rescues draw on a tradition, they differ from other campaigns of nonviolence in fundamental ways.

The principal difference is simple: at a rescue, the intent of the proliferers is to protect the unborn children and women who are at that specific location on that specific day. If those children live and those women embrace life, that is a success. By contrast, when civil rights activists sat in at lunch counters, they asked for sandwiches, but wanted a change in the law. If they had gotten the sandwiches they asked for, they would have gone to another counter.

The rescuer's effort to achieve an immediate and measurable goal has far-reaching implications. A rescuer will never plead guilty in court, affecting legal strategies for the future. It confuses nonviolence theoreticians, who often consider rescuers to be impatient or immature, since peace activists or civil rights activists who wanted immediate results were considered trouble-makers.

This goal is not quixotic. There are thousands of children alive today who would be dead were it not for the actions of rescuers. Still, the importance of the immediate goal is often obscured by the frequency of failure to persuade women otherwise. The failure does not seem to make much of an impact on the rescuers. Although rescuers have a clear and defined goal, they are not goal-oriented. Rather, the motivation for action is love for the threatened unborn children and their parents. This love seeks to preserve life, but is not extinguished by death.

At this stage, it does not make any sense to be discouraged about our work so far. The damage wrought by abortion is beyond imagination. It is not enough to recognize that abortion is an evil like slavery or colonialism or warfare. The social evil of abortion is far worse. In times past, combatants made some effort to protect women and children from the ravages of warfare; in this struggle, the principal targets are pregnant women and the most helpless of children. In the past, the maternal womb was the archetype of safety; today, it is the most dangerously unsafe place on earth. Abortion takes far more lives than warfare, starvation and malnutrition combined; abortion in the last generation has probably taken more lives than the sum of all other forms of interpersonal violence throughout human history. Within the United States, abortion has transformed the medical community from healers to professionals who specialize in the human body, sometimes healing and sometimes killing. Since the 1973 edict of *Roe v. Wade*, ten percent of the people of this nation have been executed without

trial. Pope John Paul II has said that abortion is a social sin, and that the route to freedom from social sin is solidarity with the victims. Those who believe that this teaching is prophetic see an immense task ahead, but trust that we are, finally, on the right road. We have just barely begun to respond.

