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Jack Healy

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# A Note on the Ethics of Rescue Operations

Rev. Jack Healy, O. Carm.

*Father Healy received degrees from The Catholic University of America, Columbia, the General Theological Seminary and also has a doctorate in theology from St. Michael's College, Toronto.*

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The issue of abortion will not go away. Neither will organized and concerted attempts to prevent the killing of the unborn in abortion clinics throughout the country. Though receiving skimpy media coverage, these attempts, called "rescue operations", occur nationwide everyday through the dauntless efforts of pro-life activists some of whom, like Joan Andrews and Bishop Austin Vaughan, are widely known. On innumerable occasions these rescuers have been rounded up, often violently, and jailed. In every instance of arrest and trial, the court has rendered a legal judgment on their actions but never a *moral* one. It is, of course, outside the competence of the court to do so. But if the court cannot, we must, if we are to appreciate the ramifications of what, in reality, constitutes "civil disobedience".

Seen in themselves, the actions of the rescuers consist of sitting quietly or at prayer outside the entrance of an abortion facility. By blocking access, they delay the clients, which thereby affords an opportunity to speak to them on behalf of the unborn child and to propose alternatives to abortion. This simple tactic is at the heart of the rescue operation. As a tactic, its primary focus is to save lives, not make symbolic gestures. Where their efforts fail, rescuers see themselves as having placed their own bodies, however momentarily, between the child and the instruments of the abortionist.

To the clients confronted by such actions, the experience is not unlike that of being hesitant to cross a picket line, startled by a sidewalk panhandler or uncomfortable alongside a street person. Sensitive to these reactions, pro-life activists offset the boldness of their tactic by addressing the clients quietly and gently. The activists maintain that despite the media-hyped exceptions, nonviolence is essential to their strategy.

## **'Sit-in' Tactic**

Americans are hardly unfamiliar with the "sit-in" tactic and have seen its effectiveness in the civil rights movement. Then as now, the tactic was

illegal, occasioning even violent reactions from those accosted by it. It constituted civil disobedience and called attention to the plight of those denied their rights. From women's suffrage to desegregation to the Viet Nam War, the tactic has been a tool of civil disobedience, the last resort of those in a situation of no-compromise with the legal and political system. For the sake of their cause, they have brooked the system and suffered its penalties, chief of which is detainment and arrest.

The scenario leading up to each arrest is usually the same: the person in charge of the abortion facility asks the rescuer to leave as he is required to do. Upon refusal, the police are summoned to make the same request. Further refusal leads to arrest. The charges routinely filed are those of harrassment, trespass and resisting arrest. The rescuer is booked, fingerprinted and detained in jail, sometimes overnight. After several subsequent court appearances involving the judge, district attorney and defense lawyers, the judge or jury hands down a verdict. Sentencing follows later and usually entails the imposition of fines, time in jail, community service.

There is unanimity on both sides of the abortion debate that rescue operations often violate the law and, in their illegality, constitute civil disobedience. But by what criteria or standards are these acts to be measured *morally*? That is, how can they be assessed as good or bad or as fitting human behavior? If morality and legality stand as related but distinct spheres, how can acts be commendable and proper which the law regards as harrassment, trespass and resistance? Rescue operations raise these very questions.

It is the nature of civil disobedience to use actions which transgress the law to call the law into question. The only actions by which rescuers can call into question the law they deem unjust to the rights of the unborn are acts of trespassing, harrassment and resistance. Whereas in the civil rights movement these same actions directly transgressed the laws and statutes which denied blacks their rights, in the case of rescue operations these actions have no bearing on abortion as such. The laws which rescuers violate have nothing to do with abortion. Furthermore, those who struggled against segregation and those who were its victims were one and the same. This is clearly not the case with rescuers and the unborn.

The unique situation in which rescuers battle abortion is one in which there is neither physical access to the "victim" nor legal access to his/her rights. In the first instance, the mother remains in full possession of the baby and in the second instance, the Constitution, as interpreted in *Roe vs. Wade*, does not recognize the unborn as a subject of rights. Isolated in the womb and defenseless before the law, the victim is literally at the disposal of the mother and the abortionist. Unlike the blacks and suffragettes, the unborn can neither physically band together for concerted action nor legally claim their rights at lunch counters and voting booths.

This no-win situation for the unborn explains the presence of rescuers at the targeted abortion clinic and their appeal to its prospective clients.

With the political and legal system deadlocked on abortion, the civil disobedience of rescuers can assume no other form than it has.

Its moral justification is the same as that which underlay the nonviolent actions of suffragettes, blacks and political objectors. Each of these groups disobeyed positive laws in the interest of laws which were more basic though denied to them by the political institution. The framers of the Constitution were keenly aware of these basic *natural laws*. These laws were inborn, dictating that human beings naturally pursue life, freedom and happiness. In propelling human beings toward these goods, these laws simultaneously conferred the "inalienable rights" to do so.

### Humanity Source of Rights

Thus, as the founding Fathers saw it, a human being's humanity and not an external institution is the source of his/her right to life, to equality, to freedom, to resist killing. Were not our humanity the source of laws and rights, "We the People" would have had no grounds in the first place for criticizing and changing the political and legal institutions oppressing us. To people in the pro-life movement, therefore, it is deadly ironic that the Constitution, which acknowledges *natural* laws and rights, should be used to deny them to unborn babies.

What escapes most Americans who rightfully oppose the imposition of someone else's morality is the fact that our common humanity already dictates how we should act. Apart from any philosophy or religion, there is a natural morality discernible, not by faith but by reason. It is this natural, rational morality which grounded the legal and political thinking of Jefferson, Adams and Monroe. So-called *positive* law was simply natural law applied to society and its members. Therefore, morality and legality cannot, in the real world, be separated.

With this the case, how can rescue operations which the law judges as harrassment and trespass be considered moral? How can the actions of rescuers be regarded as good and proper behavior?

The key to answering these questions lies in the very terms in which the abortion debate still rages: the *natural* right to life of the unborn vs. the *legal* right of the mother to abort. This conflict of rights rests on an inherent contradiction introduced by *Roe vs. Wade* between positive law and natural law. Instead of positive law flowing from and reflecting natural law, the Supreme Court decision has made them antithetical. On this issue of abortion, it kicked the moral legs out from under our legal and political institutions. Not surprisingly, a politician like Mario Cuomo, in spite of his religious conscience, can offer no *rational* grounds for opposing abortion. To his mind and that of millions of Americans, the law in this instance has abolished morality so that those who oppose the law cannot avoid appearing bent on imposing their morals on others.

In rescue operations, acts of trespass and harrassment call attention to this amoral situation wherein the fundamental natural right to life is

transgressed by a man-made law. Were it possible for rescuers to employ another tactic more directly related to opposing the abortion law, their present actions would be morally wrong. But, as explained above, their civil disobedience can take no other form than it has. Besides, one may ask, what rational person would feel morally bound to obey laws of trespass when human life is at stake?

It is the common humanity they share with the unborn that fires rescuers to champion the unborn's natural unassailable right to life. In the case of rescue operations, it is not civil disobedience which is immoral, but the law which transgresses nature and life. As long as a law like that stands, organized and concerted attempts to prevent the killing of the unborn will not go away.

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