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Operation Rescue: What Legacy of Disobedience?

by

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On January 13, 1993 the United States Supreme Court overturned a lower court decision allowing the 1871 Ku Klux Klan Act, enacted to protect blacks against conspiracies violating their civil rights, to be applied to the blockading of abortion clinics by Operation Rescue. While the anti-Klan law was a protection against organized hatred directed at blacks as a race, Justice Antonin Scalia's majority opinion in *Bray v. Alexandria Women's Health Clinic* rejected the notion that efforts to impede abortion were equivalent to animosity against the class of women.

Whatever one thinks of abortion, it cannot be denied that there are common and respectable reasons for opposing it, other than hatred or condescension toward (or indeed any view at all concerning) women as a class.

In a season with little to cheer, abortion opponents were understandably heartened by the Supreme Court's rejection of the anti-Klan law as a basis for prosecuting Operation Rescue. The next day the *New York Times* quoted the executive director of Operation Rescue, Keith Tucci, who recognized a moral victory, a "message to our troops," in the Supreme Court decision. The Court's action, in the mind of Tucci, invited a broader interpretation than simply the refusal to read into a civil rights law a purpose far outside its original intent. It could be construed as tacit consent to the aims of Operation Rescue. "What this decision tells people is that it is perfectly legal to protest the killing of unborn babies." A Court showing no likelihood now to overturn *Roe v. Wade* at least would tolerate the most radical public stance against legalized abortion.

But perhaps concern for legal status or symbolic victory is a bit short-sighted. The actual text of Justice Scalia's opinion cannot be said to include any endorsement of Operation Rescue and simply invites the States to apply their own laws against trespass of private property. The same *New York Times* article

that quoted Keith Tucci concerned the possible increase in "attacks" on abortion clinics as a result of the decision. A lawyer from the Center for Reproductive Law and Policy spoke of the decision as "giving license to violence, almost chumming for sharks," and she noted ominously "a national pattern of itinerant violence against clinics." Other abortion-rights advocates sounded similar warnings of the likely rise in violence against clinics and called for Congress to introduce legislation making it a federal crime to block access to an abortion clinic.

It did not take long for Rep. Charles Schumer (D-N.Y.) and Rep. Constance Morella (R-Md.) to oblige, and their bill now before Congress, which President Clinton could conceivably sign, includes a first offense punishable by a year in prison, with substantial fines, and a second offense punishable by fines and three years imprisonment. Despite the recent Supreme Court decision, Operation Rescue and its members have for some time been beaten up in the courts nationwide. One prominent pro-life attorney John J. Broderick noted recently that in trials of rescuers jurors vote for acquittal "about once in a hundred times." Even without a federal law to prosecute Operation Rescue, prison sentences and stiff fines are customary now at the local level, and the number of active rescuers has dwindled as a result. While the recent Supreme Court decision evokes again the note of controversy that has generally surrounded Operation Rescue, it is clear that Operation Rescue faces severe obstacles in the days ahead, even more so since the killing on March 10th of Dr. David Gunn outside an abortion clinic in Pensacola, Florida. Perhaps the moment is appropriate to question it as a phenomenon of public record.

Unlike some previous efforts to effect political change through the practice of civil disobedience, there has been an element of ambiguity in the public perception of Operation Rescue, and probably because the traditional notions of civil disobedience never quite applied in the case of Operation Rescue. From Ghandi to Martin Luther King, the arousal of public sympathies through civil disobedience has been historically connected to a protest against laws which deprived liberties. But at this point in American legal history the right to abortion is a liberty sustained on constitutional grounds. Precisely that condition makes public protest against the abortion law a poor candidate for transmission of the symbolic gesture required for the effectiveness of civil disobedience, which traditionally evokes a condition of victimhood for the one whose rights and liberties are transgressed.

If, in the United States, the legal status of abortion can be described as a right to an action, a permission for a particular choice, it is not a law that reduces a liberty. On the contrary, it exalts the freedom of individual choice to an absolute good surpassing all others, even life itself. When an abortion clinic is blocked, those whose rights are at risk, at least from a legal standpoint, are women who seek an abortion. Any limitation of that right can be perceived as an attack on liberty, and the one whose liberty is so violated becomes the victim. The legal right and the defense of liberty join hands in this instance to repel aggression against a helpless victim. Police brutalities become justified, court verdicts predictable, and the media blatantly one-sided in coverage, because the focus of victimhood rests finally on the woman denied her liberty. She provokes an image of vulnerability,

isolated and utterly outnumbered by the crowds of Operation Rescue, attracting counter-forces to her own rescue.

In their dissenting opinions to *Bray v. Alexandria Women's Health Clinic*, Justices John Paul Stevens and Sandra Day O'Connor employed precisely the notion of rising to the defense of violated rights in the face of a monolithic threat to liberty. The language of sentiment is possible here because an image of helplessness has attached itself to the woman seeking abortion, which evokes in turn a need to denounce, even in exaggerated terms, the presence of grave dangers. Even more than the appeal of aiding the "underdog," a woman in distress calls forth the traditional stance of heroic and timely rescue. And so Justice Stevens speaks of "nationwide conspiracy . . . zealous, politically motivated, lawless conduct . . . massive defiance of the law with violent obstruction of the constitutional rights of their fellow citizens . . . the theft of their constitutional rights by organized and violent mobs across the country." Justice O'Connor's more sober statements nevertheless include references to women desiring abortion as "victims of petitioners' tortious actions," confronting "force, intimidation and violence" from those who "have chosen to target women seeking abortions and to prevent them from exercising their equal rights under the law."

Keith Tucci, in his *New York Times* statement, spoke of the Supreme Court decision as a "message to our troops." Beyond the rhetorical flourish the opportunity presented, the question may be asked whether Tucci was revealing the self-understood purpose of Operation Rescue in a militant call to protest, and so perhaps inviting the image these dissenting opinions assigned to Operation Rescue. At the same time have there been deeper dimensions to this protest, beyond the political realm, that justified it in ways not so well understood from the purely legal standpoint? Has Operation Rescue sought primarily a political objective — namely, the reversal of *Roe v. Wade* — which at present, since *Casey v. Planned Parenthood* in the summer of 1992, might require at least a nationwide conspiracy to overturn? Or is it possible that there were deeper meanings at work in Operation Rescue that may have gone unnoticed? How would Operation Rescue itself answer charges of violence, conspiracy and victimization which intelligent minds identify with it?

Though the actual graphic drama of large-scale rescues and arrests in Atlanta in 1989 and in Wichita, Kansas in 1991 attracted undeniable media interest, it seems to be a superficial view that Operation Rescue was seeking as first aim to gain public attention. Symbolic gesture trivializes the actual intention of an Operation Rescue, which took place far more often on a local level beyond the glare of national media focus. As a grass-roots movement the members of Operation Rescue described it simply as an organized effort to block access to abortion clinics on specific days with the aim of preventing the killing of any child in that particular building that day. The goal was to prevent death from taking place, even a single death if possible. Rather than dissipating the intensity of that primary fact, there was an immediacy of focus precisely upon the near proximity of potential killing. Such was its declared purpose — to save children's lives, no more and no less — and its tactics followed suit. Whatever was necessary to close

down a clinic for that day and so prevent the killing, chaining bodies to doors, for instance, or overwhelming doors with bodies, was a defensible means of action — anything short of violent action against another person. Blockading an abortion clinic was not the time or place for diplomatic discussion of the philosophical arguments.

Yet what else of significance was occurring as a result of such action, especially when it took place locally and unknown to the clinic until the day of the blockade? By obstructing access to a building, Operation Rescue obliterated, for the moment, the constitutional right a mother possesses to destroy the child of her womb. Any woman desiring an abortion who approached a blocked clinic confronted an unforeseen event with repercussions beyond her immediate consciousness. Her prior decision, as a mother, presumably deliberated upon in earnest, was stonewalled. She did not lose the capacity to judge solely by herself on the worth of the life in her womb, but the ability to carry out a judgment to kill that life was forcibly paralyzed. Without her consultation, with no advance notice, the death sentence she had already pronounced in the privacy of her heart was overturned, and the reprieve not only rendered her judgment null and ineffective, it subjected it at least temporarily to an interrogation now directed at herself.

A successful Operation Rescue thus caused a rupture between the autonomy of private judgment and the freedom of a right proclaimed by society. The decisiveness of a judgment made in the privacy of conscience was denied access to a right deemed legal in the public domain. Prevented by the blockade, a mother's private intention could not translate itself into action, and this inability to carry out her decision undermined a power she could assume she possessed until then. Instead, the presumed correctness of a woman's choice, resting on a right society had sanctioned, to decide for herself the fate of her child, was cast back upon the mother emptied of its former claim to absolute independence. Her autonomy, at least for the moment, became a cruel fiction.

No one would deny there was something quite aggressive in this action of forcibly seizing a putative legal right from another and in effect declaring it no right at all. Blockading a clinic tore from the legal right its normal vitality to issue in action. But to affirm the right to life of a child, members of Operation Rescue saw, in conscience, no alternative but to repudiate the legal right granted by a legal decision. No compromise on the matter could be permitted. And perhaps the action was expressing precisely the dilemma of a radical moral stance in the postmodern world, since morality and legality claim, in this instance of legalized abortion, to uphold rights that are in direct conflict. Moral rights bound to life itself and legal rights framed to meet current social pressures find no common ground here.

Yet one might say these were merely legal aspects of the effort taken by Operation Rescue to oppose abortion. To appreciate the deeper philosophical undercurrent at work in Operation Rescue's protest, it may be necessary to grasp a largely overlooked facet in the acceptance of abortion by American society in the years since *Roe v. Wade* in 1973. Although the public debate over abortion is ordinarily cast as a conflict of rights between a woman in her self-autonomy and

the unborn child's right to life, an underlying foundation for the acceptance of legalized abortion has been ignored, and it was perhaps Operation Rescue which unwittingly made the point in dramatic fashion.

No abortion-related decision or opinion of a Justice since *Roe v. Wade* has formally denied the reality of life in the fetus, only the right to life of the unborn child. But the significance of a baby's existence to the self-understanding of a pregnant woman has never been addressed in these years, except to reinforce the notion of a child as an unwanted burden or a threat to a woman's sovereignty over her own body. The unspoken implication necessary to justify abortion was to leave aside the question whether the life to be terminated did not touch the maternal instinct in a profound manner prior to birth, so much so that violation of that instinct through directly intending the destruction of her own child might do irreparable damage to the spiritual well-being of a mother.

This insidious attack on the true nature of the feminine maternal instinct occurred through an assault on the natural union between a mother and her child. Indeed a guiding principle for the Supreme Court Justices who have defended *Roe's* continuance has been to underscore the ambiguous status of the unborn child, withdrawing the child from a fundamental connection to the mother, and thereby isolating the unborn as an entity of uncertain abstract meaning. The ground was laid when *Roe v. Wade*, concerned for the private decision of the mother, refused the "fetus" the constitutional protections associated with legal personhood, since the fetus as person would implicate any direct assault upon its life. Person, according to that decision, is a word that "has application only postnatally." The decisive importance of that legal maneuver is telling for all that follows.

If the notion of legal personhood determines who is a subject of rights, the denial of personhood for the unborn child led soon enough to the conclusion that any consideration of human life in the unborn child obscures the more pertinent matter of the actual absence of legal rights for that life. Empirical fact, scientific evidence, are permitted no direct input here. The only relevant fact is that there can be no "significant" life where no legal right persists. Almost twenty years after *Roe*, Justice Stevens was simply reiterating a firmly entrenched position of the Court when his opinion to *Casey v. Planned Parenthood* (1992) noted the legal consequence of the unborn child lacking the status of personhood:

A developing organism that is not yet a 'person' does not have what is sometimes described as a 'right to life.'

A process of abstraction was thus begun with *Roe v. Wade* that proved a methodology for the defense of abortion rights. Dissolving the unborn child into a mere idea with a rival claim to a right that encroached on a woman's private choice encouraged further confusions beyond the cut-and-dried world of legal decisions. The isolation of the unborn child as an abstraction relative to the mother's private autonomy was the preparation for muddling the scientific and philosophical orders. Recognition of the existence of human life in the unborn, a scientific question, became tied in the views of some Justices to the metaphysical problem of personhood residing in human life prior to birth, indeed, from the

moment of conception.

And so by *Thornburgh v. American College of Obstetricians and Gynecologists* (1986), in the concurring opinion of Justice Stevens, the presumption that an unborn child could be a human being had itself become a religious question, a notion to be placed alongside the consideration whether the fetus was a person. The Court had already rejected legal personhood for the fetus, now it could feel free, according to Stevens, to extend a flat-out denial to the existence of human life in the fetus, a question apparently no longer outside the Court's competence, since it was clear by now, at least to Stevens, that the absence of legal personhood, begun with *Roe*, deprived the unborn child equally of scientific and philosophical status as well.

For, unless the religious view that a fetus is a 'person' is adopted . . . there is a fundamental and well-recognized difference between a fetus and a human being; indeed, if there is not such a difference, the permissibility of terminating the life of a fetus could scarcely be left to the will of the state legislatures.

The necessity in the view of Justice Stevens to expel from the Court any hint of metaphysical regard in its deliberations, while actually in effect pronouncing answers of philosophical import, led finally in *Casey v. Planned Parenthood* (1992) to the unseemly exaltation of self-autonomy as an abstraction upon which the Court could at last stake a metaphysical commitment. Liberty now was equated with an autonomous right of definition, not simply about private decisions "basic to individual dignity and autonomy," not simply concerning a "certain private sphere of individual liberty," as Thornburgh had said, but concerning the nature of the basic truths of human life.

At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life.

Truth thus depends solely on its being determined as such by whoever chooses to do so, and most especially, one would expect, when the matter concerns "the right," as Justice Blackmun had already written in dissenting from *Webster v. Reproductive Health Services Inc.* in 1989, "to make the uniquely personal, intimate and self-defining decision whether to end a pregnancy."

How did Operation Rescue speak directly to the underlying philosophical bias expressed in the Supreme Court's progressive reduction of the meaning of an unborn child? If the individual's right of self-definition has become, according to *Casey*, the cornerstone of the defense of abortion rights, how did Operation Rescue cast light on the significance of a pregnant mother defining herself apart from the presence of the baby in her womb? The answers perhaps lie in the effect of a "rescue" upon the maternal instinct of a woman.

When members of Operation Rescue were arrested, it was generally for placing their own bodies in between that of the mother and a clinic, protecting a child from its potential murder inside that building. Far from being passive, this aggressive action announced in forthright terms that the inconvenience of a pregnancy could not be expediently done away with. But there was more than a denial of the legal right in this action, or of the more ethereal philosophical

capacity for self-definition. Blocking access to an abortion clinic affirmed a woman's motherhood, and the real existence of the child she carried, in a manner that no moral debate could match. How so?

While the principal strategy of an Operation Rescue has been this use of a blockade, what that blockade never did was separate a child from his or her mother. On the contrary, any mother impeded from entering a clinic was forced, willingly or not, to gaze back self-reflexively upon her own motherhood and the inner conflict created in her heart by legalized abortion. It is true that on the level of argument her own child's right to continuing existence remained at odds with the legal right she possessed, as a mother, to abort that child. But this conflict was more than one of abstract legal rights. Two opposing experiences of subjectivity were at war in the heart of a mother contemplating an abortion, and her attempt to gain entrance to the abortion clinic blocked by Operation Rescue bared this self-contradiction.

What was truly exposed here was the awful capacity of the human heart to retain diametrically opposed interior states. A mother, because she is a mother, cannot help but carry within her the instinct of a mother's nature to preserve her baby from harm. And yet simultaneously she can surrender to the desire for self-autonomy which an abortion will, for the moment, guarantee. The sanction of law offers a possibility that contradicts the natural instinct, and indeed it encourages just such a step. But the law cannot overcome an instinct rooted in nature any more than a mother can eradicate the law of nature through an act of violence against herself. By appealing to the subjective desire for self-autonomy, the seductive presence of legal right may temporarily blur and confuse the natural instinct, block it even, but it cannot banish entirely a mother's protective instinct toward her own infant. And it is precisely such depths of feeling for the reality of her own child's existence which Operation Rescue forced upon a mother.

When the blockade of a clinic by Operation Rescue restored the right to live, at least for the moment, of the child whose life hung precariously in the balance, more than a test of conflicting freedoms thus weighed in the balance. A metaphysical victory was taking place. There was an implicit statement in a successful blockade that the transcendent value of life does not submit to the immanence of autonomous self-will. That a child, simply because it is a child, should remain alive, triumphed over the notion that arbitrary willfulness should have power over life. Every legalistic ingenuity to transform a baby into a mere abstraction of public controversy over the rights of self-autonomy became exposed as a lie preparing the ground for a naked evil. Unwilling to submit to society's dispatch of the unborn child as a mere disposable item on the agenda of autonomous rights, Operation Rescue insisted on a metaphysical vindication of the personhood of the baby in the womb, and so restored to a mother the chance to embrace again the beauty and the dignity of her own motherhood.

Before *Casey v. Planned Parenthood* in 1992, the majority opinions of the Supreme Court were inclined to subsume questions of personhood and the existence of human life under a category of the unanswerable. The newfound realization in the 1992 ruling is that private liberty and its self-defining capacity

provide the elixir for all such questions. Shedding its customary reluctance for broaching metaphysical matters, the Court in the summer of 1992 waxed eloquent in encouraging what amounts to the individual's private presumption of reaching moral certitude simply because decision-making is inherently self-justifying. Instead of demanding hard reasoned judgment, the *Casey* decision implies that moral praxis means to be guided by predilections arising out of the individual's own desires, requiring only the ability to convince oneself of an outstanding personal need of the moment.

Casey's notion of liberty is thus a barely disguised brand of the modern faith acceptable to a world without reference to God. For liberty of this sort proposes a belief in the self as isolated in its own infallible will to self-definition. The pretension of attaining a metaphysical high ground in this rooting of liberty in a principle of moral self-autonomy should not be missed. Perhaps without so intending, Justice Scalia's criticism of the judicial methodology of the majority decision in *Casey* is equally a blunt statement on the consequences to personal morality when self-autonomy is the one defensible absolute.

It is not reasoned judgment that supports the court's decision; only personal predilection . . . what the court calls 'reasoned judgment' . . . turns out to be nothing but philosophical predilection and moral intuition.

In a statement of unintended self-disclosure on the spiritual state of a nation, this same *Casey* decision ominously asserts that "an entire generation has come of age free to assume Roe's concept of liberty." Perhaps in the wake of the Court's endorsement of such dubious notions of liberty, Operation Rescue can be seen now as all along offering something of a test case for the loss of critical intelligibility in contemporary moral understanding. Perhaps not fully aware even of its own implications, Operation Rescue laid bare the fragile survival of truth in an arena of conflict where antiseptic abstractions have too long directed the course of arguments. The result has been a gradual numbing of the moral conscience of the nation, which should be no surprise. An anesthetized conscience is a likely consequence when the choice of evil is made easier by rationalized motives.

The Supreme Court's defense of abortion rights is partially to blame in this regard. By adopting over the years an unnatural logic that splits mother and child into abstract entities having no basis in flesh and blood, the Court has desensitized the American conscience about the reality of abortion. With the reaffirmation by *Casey* of the constitutional right to abortion, a woman's sense of personal freedom can declare even more firmly her triumph over disposable tissue. But such a victory involves far more than indulging oneself in a grandiose notion of liberty. A betrayal of reality is also necessary, for a baby in the womb is not a concept, a mere thought, and a mother's lie to herself undergirds the refusal to protect the life of her unborn child.

Operation Rescue's aggressive methods were a metaphysical protest against that lie, a rebellion directed at the reign of abstractions which violate the actual truths of motherhood. Civil disobedience is thus an incomplete description for the illegal actions of Operation Rescue. What was really taking place was a

“metaphysical disobedience” against a philosophy of autonomous liberty now enshrined in a Supreme Court ruling. The doors of an abortion clinic were the portals of death in more ways than one, and there was no choice but to close them.

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