Can the Killing of Abortionists Be Justified?

by Charles Rice
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In the moral sense, every abortionist, as the deliberate killer of an innocent human being, is a murderer. Why, then, can a defender of his intended victims not blow away that murderer-for-hire as he walks from his car to the entrance of the abortuary, or as he leaves his house to drive to "work," or as he looks over the racks in the video store for a movie to watch at night?

If you were walking down the street and saw, through a living room window, a man strangling a child, you would have a legal right to break down his door to intervene to save that child. You would have the right to inflict injury and perhaps even death on the perpetrator if necessary. This necessity or justification defense is generally recognized in state and federal courts, but not in abortion cases. No appellate court has upheld the necessity defense, or the privilege to defend others, in an abortion rescue case. The unborn child is the only human being excluded from entitlement to rescue efforts to prevent him from being killed.

In any civilized society, all human beings have a natural right to be treated as persons entitled to the right to live. Roe v. Wade has corrupted the law by defining the innocent unborn child as a nonperson who therefore has no constitutional rights and who may be executed at the discretion of his mother. The necessity defense, however, is not limited to the protection of legally recognized persons; it authorizes the use of necessary and reasonable force for the protection of all human beings as well as animals and other property. The Supreme Court could not change the reality that the unborn child, whom it defined as a nonperson, is a human being. The result is a conflict of entitlements: the mother is entitled, by court decree, to kill her child; other persons are entitled to protect a human being in danger, which the unborn child is.

If American law regarded the unborn child as a person, as it should, that law, pursuant to the privilege to defend others, would allow other persons to defend that child against the attack of the abortionist. In some situations where the peril is imminent and apparently not otherwise avoidable, the law would allow the infliction of injury and perhaps even death on the abortionist. More basically, however, if American law regarded the unborn child as a person, there would be no abortuaries and that child would be defended by legal authority rather than by private individuals acting on their own initiative. While no appellate court, state or federal, has upheld the necessity defense in the abortion context, it is not surprising that the legalized infliction of violence, in abortion, has caused some to respond, wrongly, in kind. This is so because Roe v. Wade has loosened the bonds of civil order by legalizing the intentional killing of the innocent.

In depersonalizing the unborn child, the Supreme Court prevents interference by anybody with the killer of the unborn child and even makes that killing a specially protected constitutional right. The recent attacks on abortionists are a symptom of an unraveling of
the civil order which is directly traceable to Roe v. Wade and its sanction of the execution of the innocent. As Pope John Paul II said at the Capitol Mall in Washington on Oct. 7th, 1979, "If a person's right to life is violated at the moment in which he is first conceived in his mother's womb, an indirect blow is struck also at the whole of the moral order, which serves to ensure the inviolable goods of man. Among those goods, life occupies the first place." In her address on Feb. 3rd, 1994 to the National Prayer Breakfast in Washington, Mother Teresa said that "the greatest destroyer of peace today is abortion, because it is a war against the child, a direct killing of the innocent child, murder by the mother herself. And if we accept that a mother can kill even her own child, how can we tell other people not to kill one another?"

St. Thomas Aquinas explained that we are morally obliged to obey a just law. But if a human law "deflects from the law of nature," it is unjust and "is no longer law but a perversion of law." St. Thomas explains that a law may be unjust in two ways:

"First, by being contrary to human good ... either in respect of the end, as when an authority imposes on his subjects burdensome laws, conducive, not to the common good, but rather to his own cupidity or vainglory; or in respect of the author, as when a man makes a law that goes beyond the power committed to him; or in respect of the form, as when burdens are imposed unequally on the community, although with a view to the common good. The like are acts of violence rather than laws; because as Augustine says (De Lib. Arb. i.5), a law that is not just, seems to be no law at all. Wherefore such laws do not bind in conscience, except perhaps in order to avoid scandal or disturbance, for which cause a man should even yield his right....

"Secondly, laws may be unjust through being opposed to the divine good: Such are the laws of tyrants inducing to idolatry or to anything else contrary to the divine law; and laws of this kind must nowise be observed, because, as stated in Acts 5:29, we ought to obey God rather than men" (Summa Theologiae, I, II, q. 96, art. 4; emphasis added).

The human law cannot validly permit murder. Despite the decree of the Supreme Court, abortuaries, which are murder factories, have no moral right to exist. Roe v. Wade, which defined the unborn child as a nonperson subject to execution at the discretion of others, is an unjust law and therefore void. So, too, can be otherwise neutral and just trespass laws when they are applied to prevent nonviolent "rescues" at abortuaries. Whether such a nonviolent rescue will be morally justified or required depends on prudential judgments, the detailed discussion of which would be beyond the scope of this essay. More to the point of this essay, it does not follow from the injustice of Roe v. Wade that laws forbidding the killing of the abortionist are unjust. The Catechism of the Catholic Church states criteria that govern this matter:

N. 2258. "Human life is sacred because from its beginning it involves the creative action of God and it remains forever in a special relationship with the Creator, who is its sole end. God alone is the Lord of Life from its beginning until its end: No one can under any circumstance claim for himself the right directly to destroy an innocent human being" (emphasis in Catechism).
N. 2262. "In the Sermon on the Mount, the Lord recalls the Commandment, 'You shall not kill,' and adds to it the proscription of anger, hatred, and vengeance. Going further, Christ asks His disciples to turn the other cheek, to love their enemies. He did not defend Himself and told Peter to leave his sword in its sheath."

The Catechism, however, affirms a right of individuals to defend themselves and others:

N. 2263. "The legitimate defense of persons and societies is not an exception to the prohibition against the murder of the innocent that constitutes intentional killing. 'The act of self-defense can have a double effect: the preservation of one's own life; and the killing of the aggressor. ... The one is intended, the other is not'" (quoting St. Thomas Aquinas, Summa Theologiae, II, II, 64, 7).

N. 2264. "Love toward oneself remains a fundamental principle of morality. Therefore it is legitimate to insist on respect for one's own right to life. Someone who defends his life is not guilty of murder even if he is forced to deal his aggressor a lethal blow: 'If a man in self-defense uses more than necessary violence, it will be unlawful: whereas if he repels force with moderation, his defense will be lawful.... Nor is it necessary for salvation that a man omit the act of moderate self-defense to avoid killing the other man, since one is bound to take more care of one's own life, than of another's" (Summa Theologiae, II, II, q. 64, art. 7).

N. 2265. "Legitimate defense can be not only a right but a grave duty for someone responsible for another's life, the common good of the family or of the state."

N. 2321. "The prohibition of murder does not abrogate the right to render an unjust aggressor unable to inflict harm. Legitimate defense is a grave duty for whoever is responsible for the lives of others or the common good."

Note that the right to defend oneself or another does not authorize the intentional killing of the aggressor. The principle of the double effect governs here, as quoted above in N. 2263 of the Catechism. Fr. John Hardon, S.J., explained this principle clearly, with respect to operations to remove the cancerous womb of a pregnant woman. Such operations can be justified by the principle of the double effect because the death of the child is an unintended effect of an operation independently justified by the necessity of saving the mother's life. They do not involve the intentional killing of the child for the purpose of achieving another good--for example, the preservation of the mother's life. "To be licitly applied," Fr. Hardon noted, "the principle must observe four limiting norms:

"1) The action (removal of the diseased womb) is good; it consists in excising an infected part of the human body.

"2) The good effect (saving the mother's life) is not obtained by means of the evil effect (death of the fetus). It would be just the opposite, e.g., if the fetus were killed in order to save the reputation of an unwed mother."
"3) There is sufficient reason for permitting the unsought evil effect that unavoidably follows. Here the Church's guidance is essential in judging that there is sufficient reason.

"4) The evil effect is not intended in itself, but is merely allowed as a necessary consequence of the good effect.

"Summarily, then, the womb belongs to the mother just as completely after a pregnancy as before. If she were not pregnant, she would clearly be justified to save her life by removing a diseased organ that was threatening her life. The presence of the fetus does not deprive her of this fundamental right" (Fr. John A. Hardon, S.J., The Catholic Catechism, 1975, p. 337).

The principle of the double effect could apply to the defense of the unborn in some cases. If you were in the room with an abortionist as he was about to perform an abortion, you would have the moral right, and probably the duty, to use reasonable force to prevent that imminently threatened killing of the unborn child. Your action would be moral if you used only the force necessary to stop the killing and if your intent was to stop the killing rather than to harm the abortionist. It is most unlikely, at least, however, that deadly force would be necessary or justified even in that situation. And you surely would have no right intentionally to kill the abortionist.

Apart from the just war, capital punishment, and a justified rebellion, which will be mentioned below, no one ever has the moral right intentionally to kill another person:

N. 2268. "The Fifth Commandment forbids direct and intentional killing as gravely sinful. The murderer and those who cooperate voluntarily in murder commit a sin that cries out to Heaven for vengeance" (emphasis in Catechism).

N. 2269. "The Fifth Commandment forbids doing anything with the intention of indirectly bringing about a person's death. The moral law prohibits exposing someone to mortal danger without grave reason, as well as refusing assistance to a person in danger.... Unintentional killing is not morally imputable. But one is not exonerated from grave offense if, without proportionate reasons, he has acted in a way that brings about someone's death, even without the intention to do so" (emphasis in Catechism; note omitted).

The only situations in which anyone ever has the right intentionally to kill anyone are the just war, capital punishment, and a justified rebellion (or what the Catechism calls "armed resistance" to oppression by political authority")pN. 2243, emphasis in Catechism). The just war and capital punishment are decreed by the state, which derives its authority from God. Armed rebellion involves an assumption by private persons of that authority of the state. The death penalty is inflicted on a person judged guilty of a capital crime and a just war or justified rebellion is subject to the mandate of noncombatant immunity, which forbids the direct and intentional killing of innocent noncombatants. See the Catechism, NN. 2312-2314. Whether in a just war or any other circumstance, no one ever has the moral right intentionally and directly to kill an innocent human being.
In self-defense or defense of others, against an aggressor, the intent must be to defend, rather than to kill. Consider two situations. In the first, Able, an abortionist's assistant in the killing room, suddenly has a change of heart moments before the abortion begins. He has a right and even a duty to use force to defend the child, not to kill the abortionist. In the second situation, Baker, an opponent of abortion, shoots the abortionist in the parking lot as he is approaching the building to do abortions a few minutes later.

One difference between the two cases is imminence. Able engages himself in the immediate defense of the child; he has no intent but to defend that child; he has no separate intent to harm or kill the abortionist. Recall that, in justified self-defense or defense of others, the intent cannot be to kill the aggressor, but rather to stop the attack. Baker, by contrast, is not in the heat of a physical struggle to save the child. He thinks, "I can get no closer than this. If I do not stop him he will go in there and murder babies. So I will shoot him in the head." His purpose or motive is to save children. But his intent in the act he performs that moment is to blow the baby killer's head off in order to achieve that purpose of saving children. Apart from the just war, capital punishment, or the justified rebellion, which derive from the authority of God, no one may ever intentionally kill anyone. Baker is intentionally doing an intrinsically evil thing to achieve a good end. He assumes the authority of God, to decide when that person will face the final judgment of God. His act cannot be justified. St. Thomas, quoting St. Augustine, said that "a man who, without exercising public authority, kills an evildoer, shall be judged guilty of murder, and all the more, since he has dared to usurp a power which God has not given him" (Summa Theologiae, II, II, q. 64, art. 3).

Some may argue that killing the baby killer in the parking lot is defense of the child because that is as close as Baker could get. But if Baker may kill the abortionist when he is not actually performing an abortion, why does he have to limit himself to the parking lot? Why can he not conclude that the only practicable way he can get a clear shot at him is to shoot him on the golf course? Or at the video store? St. Thomas speaks of the justified defender as one who "repels force." See the Catechism, N. 2264. Unless we are to declare open season on abortionists, so as to justify their intentional execution by anybody so inclined wherever practicable, the right to defend the child must be restricted to the immediate performance of the abortion. Even then it is practically inconceivable that lethal force would have to be used.

The first of the above two examples is academic, because opponents of abortion, practically, do not find themselves in abortuary killing rooms. The issue is simply whether it is justifiable to kill abortionists, wherever and whenever an opportunity to do so presents itself.

The intentional killing of an abortionist could be justified only if it were incidental to a justified rebellion, which would itself be a just war, in which the abortionist was rightly regarded as a combatant and therefore a legitimate target. However, "Armed resistance to oppression by political authority is not legitimate unless all the following conditions are met: 1) there is certain, grave, and prolonged violation of fundamental rights; 2) all other means of redress have been exhausted; 3) such resistance will not provoke worse
disorders; 4) there is well-founded hope of success; and 5) it is impossible reasonably to foresee any better solution" (Catechism, N. 2243; emphasis in Catechism). These criteria do not justify the intentional killings of abortionists. Michael Griffin was not resisting an immediate, unjustified attack by the Bureau of Alcohol, Tobacco, and Firearms. By no stretch of the imagination can one reasonably conclude that we are in an insurrectionary situation in the United States today such as to justify his intentional killing of a person who was not then attacking anyone. A justified rebellion involves the assumption by private persons of the prerogative of the state to wage a just war. In a rebellion the war is waged against the state itself. In Roe v. Wade, and later cases, the Supreme Court, with the cooperation of Congress and the Executive Branch, has precipitated an unraveling of the American civic fabric. It cannot, however, be legitimately concluded that the situation has disintegrated so far beyond other means of correction that armed rebellion is justified in whole or in part.

Rebellion, incidentally, is not something to be lightly sanctioned. The just war waged by a government has the limiting feature that it can be waged only by the duly constituted public authority. A rebellion, by contrast, involves an assumption of all or part of that public authority by private persons who themselves decide that they are justified in taking over the power of the state in whole or in part. And if one can so decide, so can another. In Populorum Progressio, in 1967, Pope Paul VI said that "a revolutionary uprising save where there is manifest long-standing tyranny which would do great damage to fundamental personal rights and dangerous harm to the common good of the country produces new injustices, throws more elements out of balance, and brings on new disasters. Real evil should not be fought against at the cost of greater miseries (Populorum Progressio, N. 31).

The divine prohibition of intentional and direct killing (apart from the just war, including justified rebellion, and capital punishment) is absolute. In his 1993 encyclical, Veritatis Splendor, Pope John Paul II stated:

"The negative precepts of the natural law are universally valid. They oblige each and every individual, always and in every circumstance. It is a matter of prohibitions which forbid a given action semper et pro semper, without exception, because the choice of this kind of behavior is in no case compatible with the goodness of the will of the acting person, with his vocation to life with God and to communion with his neighbor. It is prohibited to everyone and in every case to violate these precepts. They oblige everyone, regardless of the cost, never to offend in anyone, beginning with oneself, the personal dignity common to all.... The Church has always taught that one may never choose kinds of behavior prohibited by the moral Commandments expressed in negative form in the Old and New Testaments" (Veritatis Splendor, N. 52).

The question arises whether infliction of nonlethal injury or property damage on abortionists is similarly prohibited absolutely. Instead of killing the abortionist, can you break his arms to prevent him from killing babies? Or can you destroy his property to put economic pressure on him to stop killing babies? If Baker intentionally wounded the abortionist in the driveway, for example, by shooting him in the arm, that act would still
lack the imminence necessary for legitimate defense of others. It would therefore seem to be unjustified in principle. In response to the question, "Whether it is lawful for a private individual to kill a man who has sinned?", St. Thomas rejected the infliction of "harm" which is not sanctioned by public authority: "It is lawful for any private individual to do anything for the common good, provided it harm nobody: but if it be harmful to some other, it cannot be done except by virtue of the judgment of the person to whom it pertains to decide what is to be taken from the parts for the welfare of the whole" (Summa Theologiae, II, II, q, 64, art. 3).

In any event, the use of violence, whether lethal or nonlethal, against abortuaries and abortionists is unjustified on several prudential grounds. It is not the most effective way to save the lives of unborn children threatened by abortion. It is counterproductive in that it distracts attention from the real, and spiritual, nature of the problem, and it diverts pro-life efforts away from more useful approaches. Moreover, it accelerates the disintegration of the civil order with predictably harmful impact on the common good.

The use of violence in the pro-life cause must be utterly rejected. If we attempt to combat the abortion movement with force, we oppose its strongest weapon, the coercive power of the state, with our weakest. The most effective on-site activity in defense of unborn children is concededly legal prayer and counseling. That activity does save lives and it can be carried on day after day. By contrast, if an obstructive rescue occurs on Tuesday, its participants are in jail on Wednesday or otherwise entangled in legal proceedings which may keep them from prolife activity for a considerable time.

Nonviolent rescues have probably done more than anything else to bring the reality of abortion to public attention. Pursuant to the necessity defense, they ought to be considered legal as well as moral. However, as indicated in Madsen v. Women's Health Center, decided on June 30th, 1994, the law is a stacked deck in this respect. The Supreme Court will distort even settled legal principles to insulate abortionists from interference and even annoyance by pro-life advocates. It will almost certainly become increasingly difficult to carry on even peaceful, nonobstructive prayer and counseling efforts.

As the anti-life state increases its pressure against all forms of pro-life advocacy, we can expect more opponents of abortion to respond with violence as the only recourse. But now more than ever, the pro-life movement must reject all forms of violence even against baby killers and their abortuaries.

What is wrong in the pro-life movement is not that we have not bombed or shot. What is wrong is that we have not spoken the truth and we have not prayed enough. For two decades, the movement has approached abortion as a legal and political problem. In a good-faith effort to "save lives," the leaders of the establishment pro-life movement have proposed one compromise after another, affirming in their actions, despite their rhetoric, that the right to life is alienable—and therefore that the unborn child is a nonperson who, though innocent, may be executed in at least some cases. By permeating the public discourse with the message that even the pro-life "leaders" think that innocent life is
negotiable, they have immeasurably increased the toll of innocent lives by abortion and now by euthanasia. The result is a climate of frustration among those who know by reason as well as faith that we, and the law, can never validly tolerate the execution of the innocent. This climate is conducive to the emergence of some who delude themselves into thinking that murder can be a solution. The pro-death forces who dominate our government would like nothing more than to see the pro-life movement disintegrate in spasms of bombing and shooting. Such would confirm the pro-death assumption that there is no objective morality and that the issue is reducible to the utilitarian exercise of power.

It is therefore more important than ever to reject violence in the pro-life cause. Instead, we should employ our strongest weapons: the truth and prayer.

We should speak the truth in the political realm. No candidate who believes that the law should authorize the execution of the innocent, born or unborn, in any case, is fit to hold any public office. Nor should any law be supported which would authorize such execution in any case. It is time to go back to the position taken by Cardinals Krol, Medeiros, Manning, and Cody in their Senate testimony in 1974. They urged "legal and constitutional conformity to the basic truth that the unborn child is a person in every sense of the term from conception." They refused to support the Buckley Amendment because it would have allowed abortion to save the life of the mother. And they insisted that "the prohibition against direct and intentional taking of innocent human life should be universal and without exceptions." If we had followed that principle, in action as well as rhetoric, it is likely that we could have saved millions of lives. Pragmatism does not work, especially in this area. But the truth can work if we will affirm it without compromise.

On the educational front, it is time for the pro-life movement to confront contraception as a root cause of abortion. This is most important in light of the prevailing mislabeling of early abortifacients as contraceptives. Further, the movement must redouble its efforts to provide help for mothers with problem pregnancies and to facilitate adoption as a responsible alternative to abortion.

The educational effort should put front and center the reality that the only coherent basis for affirming absolute rights in the human person is that he is an immortal creature made in the image and likeness of God, with a dignity which absolutely transcends the interests of the state.

Finally, and most importantly, the pro-life movement must put its primary reliance on prayer, especially through the intercession of Mary, who is the Mother of Life. Mary is the "Mother of each and every one of us, the Mother who obtains for us divine mercy" (Pope John Paul II, Veritatis Splendor, N. 119). The rosary is a most powerful weapon for us here, with an appeal far beyond denominational lines. We must pray for our country, for the women who contemplate, or have committed, abortion, and especially for the abortionists and all who support them.
The philosophers and politicians of the Enlightenment have tried for three centuries, and especially in the last few decades in this country, to build a society as if God did not exist. Their premises are secularism, relativism, and the cult of the autonomous individual. But their effort is a total failure. We are living through what Fr. Francis Canavan, S.J., aptly called "the fag end of the Enlightenment." And the Christian restoration of faith and culture, primarily under the leadership of Pope John Paul II, is well underway. The pro-life movement can play an important part in that restoration if we will adhere to objective moral principle, speak the truth without compromise, and, most importantly, pray.