

Presidential Address

The New Mexico-West Texas Philosophical Society

**ANTI-ABORTION VIOLENCE, PACIFISM, AND DEMOCRACY**

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In 1994 Paul Hill assassinated an abortion doctor, Dr. John Britton and his security guard, James Barrett, in Pensacola, Florida. In his moral and legal defense Hill urged, “whatever force is legitimate in defending the life of a born child is legitimate in defending the life of an unborn child.”<sup>1</sup> (Note that Hill’s justification is forward-looking, not backward-looking. He killed Dr. Britton not to punish him for past abortions that he performed, but to prevent him from performing more in the future). Hill’s plea that his act was legally justified was rejected. He was found guilty of first-degree murder and executed by the State of Florida in September 2003.

In this essay my concern will be with the issue of moral justification. Though a few have celebrated Hill as a martyr for the pro-life cause, the overwhelming majority in the pro-life movement has roundly condemned his acts.<sup>2</sup> My question is: on what plausible moral grounds can mainstream pro-lifers condemn Hill’s violence? (By “pro-lifer” I mean someone who believes 1) abortion violates the fetus’s right to life, and 2) for that reason, it ought to be illegal. The only possible exception is abortion needed to save the pregnant woman’s life). Some pro-lifers are pacifists who believe that all violence is wrong. Many others condemn Hill’s violence on the grounds that it was illegal and/or showed contempt for democracy. My primary aim in what follows is to show that the legality and democracy objections are unconvincing. If I am right, then the only principled, moral basis on which pro-lifers can condemn anti-abortion violence is pacifism. The version of pacifism needed to underwrite a categorical rejection of all violence is a very robust one. At the end of the paper I’ll indicate why I think all of us, including orthodox Christians, should reject a pacifism this robust. If that reason is sound, then the mainstream pro-lifer who wishes to condemn anti-abortion violence on principled, moral grounds is in a difficult bind.

One possible nonpacifist objection to Hill’s violence invokes what might be called the “no preemptive strikes” principle: *Lethal force against evil aggressors who are attempting to harm the innocent is permissible, but only after they have begun to make the attempt. It may not be used preemptively against someone whom one thinks will, but has not yet, attempted to do anyone any harm.* Hill ambushed the doctor while he was on his way to the clinic where he performed abortions. Though it is sometimes difficult to say when an attempt to kill has begun, this is not one of those cases. Hill clearly killed the doctor preemptively, before he made any attempt to abort fetuses that day.

There are two problems with a condemnation of Hill’s act that appeals to this principle. First, it is not really an objection to the killing *per se*, but rather to the *timing* of it. If Hill had hidden himself inside the clinic and waited to kill the doctor after he had begun to perform an abortion, then the pro-lifer would be unable to fault him for violating the no preemptive strikes principle. Second, what mainstream pro-lifers need are principles that explain why all forms of anti-abortion violence are wrong, not just those that involve *killing*. Suppose that instead of killing an abortion doctor, Hill had bombed and destroyed

the only abortion clinic in the state, and he bombed it when it was unoccupied, causing great property damage but no loss of life. Such an action would probably prevent some abortions because there are probably some women who can afford to visit a local clinic but not travel to a distant one. Neither the no preemptive strikes principle nor a version of pacifism that only forbids intentional killing can explain why this violence would be wrong. The only way pacifism can condemn it is if it forbids not just all killing, but all violence. I'll return to pacifism shortly.

A second possible nonpacifist objection to Hill's actions alleges that they were wrong because they were illegal. The wrongness of his acts is supposed to be demonstrated by a "universalization" argument: if everyone broke the law whenever they disapproved of it, the result would be anarchy. Hill, of course, would deny that he acted wrongly in breaking the law. He would insist that laws that allow doctors to abort fetuses are grossly unjust, and that it is at least permissible (if not obligatory) to break a law that is so unjust. Was it not permissible to help slaves escape to the North in spite of the fact that doing so violated the Fugitive Slave Laws? There seems to be some disagreement about whether this view is consistent with Christian tradition and Scripture. On the one hand, one could point to the natural law theory of Augustine and Aquinas, according to which an unjust law is not really a law at all but mere violence. On the other hand, there is "render unto Caesar that which is Caesar's" and the teachings of Calvin and Luther, both of whom held that obedience to an evil ruler is better than the alternative, anarchy.

Clearly no legal system can accept "my conscience demanded it" as a *legal* justification for breaking its laws. A legal system that did that would court anarchy. But our question is whether Hill's killing was *morally* justified, not whether it was (or should be) legally justified. The universalization argument mentioned above is supposed to demonstrate the immorality of what Hill did. Does it? Is it the case that if everyone broke the law, as Hill did, the results would be very bad for society as a whole? The answer to this last question depends on how precisely one describes what Hill did.

Suppose that in a country where all abortions are banned, some doctors illegally perform some early, first trimester, elective abortions. They do so because they are convinced that the ban is unjust, a violation of women's rights to control their bodies. Have they done "the same thing" in their country as what Hill did? Hill would say "no" because what the doctors did was break a just law in order to commit murder while what he did was break an unjust law in order to prevent murder. Those who are pro-choice will agree that the two acts are not "the same," but for a different reason: what the doctors did was break an unjust law that violates women's rights while what Hill did was break a just law and murder an innocent abortion doctor. If you reject both of those answers because you think that there is simply no way to know whether the laws that each of them broke were "really" just or unjust—they did the same thing, they simply broke the law—then you are probably a legal positivist of the sort that embraces a selective moral skepticism. If that is your view, and you condemn Hill's act on the basis of the universalization argument, then you are guilty of inconsistency. Why are you so skeptical of any "higher moral law" that others cite to justify their law breaking, but you are not equally skeptical of your own judgment that any act the performance of which by everyone would lead to anarchy is wrong? Your moral skepticism is inconsistent, because it is selective.

Pro-lifers, of course, are not moral skeptics. If you are a pro-lifer, then on the question of who has the most accurate description of what Hill did—Hill himself, those who are pro-choice, or the legal positivist/selective moral skeptic—you have to agree with Hill: what he did was break an unjust law and kill someone who was about to commit murder. As a mainstream pro-lifer you still think that his action was wrong. But if you have to agree that his description of it is the correct one, then you cannot say that the *reason* why it is wrong is that if everyone were to do the same thing, the results would be anarchy or the like. You have to admit that if everyone broke a law that protected murderers, in order to thwart their murderous plans, the results would be ones that we could all happily live with. So you have to find some other reason for saying that what Hill did was wrong.

The final (and perhaps the most popular) nonpacifist objection to Hill's violence that I shall consider appeals to the value of democracy. Democratic procedures, it says, must always be respected. The only proper way to change objectionable laws is through the democratic political process. Perhaps peaceful civil disobedience is an acceptable way of trying to persuade one's fellow citizens to repeal a bad law. But the use of violence to block its enforcement, to intimidate one's fellow citizens into repealing it, or to draw attention to one's cause, is never acceptable. Hill acted unjustly not simply because he broke the law, but because he broke laws that were created via fair democratic procedures. He engaged in an act of political terrorism in an attempt to circumvent democracy.

The moral principle on which this objection rests is that we have a moral duty *always* to abide by democratic procedures. The duty in question has to be *absolute*, because if it were not, then the permission and/or duty to disobey a substantively unjust law enacted via fair democratic procedures might outweigh it, if the injustice of the law were large enough. How can an absolute duty to uphold democratic procedures be defended?

One possibility is to argue that democracy is an example of what John Rawls called "pure procedural justice." With pure procedural justice, the justice of the outcome is guaranteed by following the procedures because we have no other independent criterion by which to judge whether the outcome is just. An example of this is where you and I agree to play a certain game that involves taking turns, but we disagree about who should go first, so we flip a coin to settle it. Contrast this with criminal trials, where we do have an independent criterion for what counts as the right outcome (namely, the guilty are convicted and the innocent acquitted) and where following just procedures ("a fair trial") makes it likely but doesn't guarantee that the right outcome will be obtained. What the "democracy as pure procedural justice" view entails is that there simply is no "correct" criterion for whether a law is substantively unjust. Instead, a law is just if and only if it is enacted by and is consistent with democratic procedures. ("Is consistent with" rules out attempts by a majority to disenfranchise a minority, gerrymander voting districts, restrict political debate, and so forth). The view combines skepticism about the possibility of establishing what is a substantively just outcome with confidence that there are objectively fair *methods* of reaching outcomes that are acceptable to all parties. There is intractable disagreement among us about the morality of abortion, economic development that destroys wilderness areas, killing animals for sport, and so on, but there is widespread agreement among us that we should decide which laws to enact on these matters by following fair democratic procedures. Since we have no criterion of whether a law is

substantively unjust, there can be no duty to combat substantively unjust laws, and thus, no such duty can ever outweigh the duty to abide by democratic processes. Respect for democratic procedures is *all* that justice demands.

The main problem with this defense of a duty always to abide by democratic political rules is that it assumes ideas rejected by all pro-lifers. Pro-lifers believe that permissive abortion laws are unjust even if enacted and supported by a majority in a procedurally fair, democratic political system. They are substantively unjust, simply because they fail to protect fetuses' rights to life. Note that those on the pro-choice side of the debate must also reject the "democracy as pure procedural justice" view. They hold that a law forbidding all abortions violates women's rights to self-determination. The law is unjust, even if an overwhelming majority supports it.

Perhaps the defender of the democratic objection to Hill's violence should turn to Kant. Who is wronged by a bombing that destroys an abortion clinic according to the pro-lifer who presses the objection? The Kantian answer would be the bomber's fellow citizens whose will it is that women should have access to abortion facilities. People who believe that a law enacted by the majority is bad but give up on trying to persuade the majority to change it and instead attempt unilaterally to block its enforcement show a contempt for their fellow citizens and their moral and deliberative capacities. Violating the rule of law in a democratic society fails to respect the majority of one's fellow citizens as persons capable of rational and reasonable choice. It treats them as "mere means" rather than as "ends in themselves."

Of course from the pro-life point of view, the abortion provider's fellow citizens, while perhaps not as blameworthy as the abortion provider, are still blameworthy inasmuch as they create the legal environment that allows him to ply his trade. But according to the Kantian interpretation of the democracy objection, their immoral support for permissive abortion legislation does not cancel the duty one has to respect them. The duty to respect them demands that one try to change their mind about the morality of such legislation via peaceful, rational persuasion. It forbids the use of violence either to block their wishes or to intimidate them into changing the law, even if attempts at peaceful persuasion fail.

Kant regarded the duty to treat humanity always as an end and never as a mere means (the Principle of Humanity) as an absolute side-constraint. Hence, Kant famously held that you may not lie even to someone who is intent on murder and who asks you if you know the whereabouts of his intended victim. If the Kantian Principle of Humanity supports democracy, then the absoluteness of that principle supports the absoluteness of the duty to respect democratic procedures. The duty to abide by democratic procedures will then override the duty to combat a substantively unjust law no matter how unjust that law is. Even if the injustice of legalized abortion is comparable to that of a holocaust or genocide, as the previous Pope and many other mainstream pro-lifers have claimed, the duty to support democracy will override the duty to combat such injustice via illegal, nondemocratic means.

I do not believe that the Kantian democracy objection to Hill's violence is successful. Suppose that the majority voted to authorize medical experiments in which thousands of healthy one-year-old babies (selected via a fair lottery) are to be used as guinea pigs; only

one medical facility is equipped to perform the experiments, which would kill the babies. If efforts to convince the majority to reverse its decision fail, then it does not seem clearly impermissible to blow up the facility in order to block the experiments—any more than it would be wrong to lie to Nazis in order to protect the lives of innocent Jews. Granted, blowing up the facility shows contempt for majority rule and one’s fellow citizens, just as lying to the Nazis shows a manipulating disrespect for them. But one’s fellow citizens are evil insofar as they authorize those experiments, and a failure to treat evil people as “ends in themselves” can be permissible when it would thwart their evil plans.<sup>3</sup>

This claim raises a difficult question. How unjust or irrational must a law or social policy be before it becomes permissible to violate democratic norms in order to oppose it? Is violence justified to protest tax policies that favor the rich, or a ban on gay marriage, or a government’s decision to wage “preemptive” war? Bertrand Russell believed that a nuclear arms race was likely to lead to “war by accident” and that the masses in Western democracies supported one only because they had been duped by government propaganda. What if Russell was right about this and violent (rather than peaceful) demonstrations are the most promising way to avert a nuclear Armageddon?

I do not know where exactly to draw the line between cases in which a violation of democratic norms would be permissible and cases in which it would not be. But if legalized abortion really is the *genocide* or *holocaust* that even mainstream pro-lifers claim it to be; then, unless pacifism is true, a violence that would prevent it surely belongs on the permissible side of the line. The injustice of a holocaust is not a “small” one. It is not in the same category as the injustice of denying gays and lesbians the benefits of marriage. It is injustice of the *most horrific and extreme kind* imaginable. If violence would prevent an evil of such magnitude, then unless pacifism is true, it is surely permissible even if it is not sanctioned by democratic procedures.

Of course the “if” in this last statement is a big one. As many pro-lifers point out, while vigilante abortion violence might prevent a few abortions in the short run, it produces so much negative publicity for the pro-life cause that it probably harms it in the long run. It reinforces the stereotype that pro-lifers are deranged religious fanatics, thereby making it harder for mainstream pro-lifers to win over to their side that large block of voters who waver between the pro-choice and pro-life positions. But would the pro-lifers who condemn Hill not on pacifist grounds, but for his being disrespectful of democracy, the rule of law, and his fellow citizens, still condemn his acts if they thought that the acts helped to change the majority’s mind and galvanized public support for restrictive abortion laws? If not, then their condemnation of Hill is merely *tactical*, not principled at all. Surely a merely tactical objection to anti-abortion violence is not an objection of the right sort.

What does “not of the right sort” mean here? Consider another case: religious fanaticism (by which I mean the idea that “error has no rights,” or all false religions should be banned) vs. a principled commitment to liberal toleration (a moral *right* to freedom of religion). What do we think of someone who favors a policy of toleration of all religion *only* for tactical reasons, namely, because he worries that if his religion, the true religion, were to attempt to suppress all error, a civil war might break out which his side could easily lose, resulting in the likely suppression of the true religion? Surely we would think

that this person is “at heart” a religious fanatic, not a liberal. His agreement with the liberal is superficial, not deep. The charge that he is really a “kindred spirit” of the fanatic might trouble him, but then again it might not. Now mainstream pro-lifers whose only objection to Hill is that his tactics are counterproductive are kindred spirits to him. Perhaps some of them will not be troubled by that charge. My impression, however, is that it would trouble most of them, and that is the reason why they themselves are eager to find a principled, moral basis for condemning Hill’s violence. So when I say that a merely “tactical” objection to anti-abortion violence is not an objection “of the right sort,” I mean that it is not the right sort of objection judged from the point of view of mainstream pro-lifers themselves.

Let us return to the condemnation of Hill that appeals to an absolute side-constraint forbidding any violation of democratic norms. With the example of experiments on one-year-olds, I have already indicated why I reject such a side-constraint. But I also find it simply bizarre in a way that leads me to wonder whether any religious people really, sincerely believe in it. The pacifist objection to Hill makes sense. The sanctity of human life is a traditional religious value, and if you really accept it in the way the pacifist does, then you should think that any intentional taking of human life is “playing God.” Absolute side constraints make sense where the actions that they prohibit would desecrate what is sacred. But to hold that respect for democratic procedures and the will of the majority is required by an absolute side-constraint is to believe in the sanctity of something that Christians traditionally have *not* regarded as sacred. The suggestion that respect for democracy trumps preventing the murder of innocents seems *ad hoc*, contrived for the sole purpose of providing nonpacifist pro-lifers with a means of avoiding an unwelcome implication of their own position (namely, that Hill’s actions were not wrong in principle).

If the argument up to this point is sound, then many pro-lifers face a painful choice: either condemn both abortion and anti-abortion violence on the basis of a pacifist ethic, *or* admit that their objections to such violence are merely tactical and that they are “kindred spirits” of Hill, *or* admit that legalized abortion is not a “holocaust” or “genocide” because the fetus is not a person with a right to life from the moment of conception. The reason why this is a painful choice for many pro-lifers is that they do not wish to condemn anti-abortion violence on the basis of pacifism. They cannot because they support capital punishment and the war in Iraq. Though there are different versions of the pacifist principle, all of them forbid retributive killing and “preemptive” war. The version of pacifism that supports the pro-lifers’ condemnation of vigilante abortion violence must forbid more than that. If it is to rule out Hill’s killing an abortion doctor (after the doctor has begun an attempt to perform an abortion), then it must forbid *all* killing, including *defensive* killing. If it is to rule out the bombing of an unoccupied abortion clinic, then it must forbid all violence, including *defensive* uses of violence. In short, it must be a very robust and demanding version of pacifism.

Some Christians attempt to defend a pacifism this strong by appealing to Jesus’s admonition in the Sermon on the Mount—“I say to you, do not resist an evil person; but whoever slaps you on your right cheek, turn the other to him also” (Matthew 5:38). But all this passage supports is the idea that it is virtuous to avoid violence to defend *oneself*. It says nothing about whether it is wrong to intercede with violence on behalf of *others*,

including the weak and defenseless under unjust attack. I am no expert on the New Testament, but the suggestion that it enjoins a pacifism that forbids defensive uses of violence seems to me dubious. Certainly Hill's belief that Christianity, properly interpreted, permits violence in defense of the weak and vulnerable is the more orthodox one. If one believes, as pro-lifers do, that nobody is more weak and vulnerable than a fetus targeted for abortion—not even its own mother will protect it—then the orthodox Christian pro-lifer cannot endorse the pacifist objection to Hill's violence. And those of us who are not orthodox Christians should not endorse it, either. If we follow the dictates of robust pacifism, then we will allow evil to triumph in cases when we could have defeated it by means of defensive violence.

Those on the pro-choice side believe that first-trimester elective abortion is not murder, because the fetus is not (yet) a full-fledged member of the moral community. One way to argue for this view is directly by defending a criterion for who has full moral status that excludes first-trimester fetuses. The argument of this essay provides what amounts to an indirect defense of the pro-choice position. If the pacifist objection to Hill's violence fares no better than the legality or democracy objections, if these are the only principled grounds on which pro-lifers can condemn violence against abortion providers, and if such violence is *in principle* wrong, then it seems to me to follow that pro-lifers are mistaken about the moral status of the fetus.

## NOTES

1. This was part of a "Defensive Action Statement" signed by Hill and several others in support of an earlier murder of an abortion doctor by Michael Griffin. The statement can be found on <http://www.armyofgod.com/defense.html>.

2. For some representative samples of pro-life argumentation condemning vigilante violence against abortion providers, see "Killing Abortionists: A Symposium," *First Things* 48 (December 1994): 24-31. The discussion is available at the following web-site: <http://www.leaderu.com/ftissues/ft9412/articles/killing.html>. Symposium contributors include Robert P. George, Nat Hentoff, Bernard Nathanson, John Cardinal O'Connor, and Ralph Reed. For a website that celebrates Paul Hill as a martyr, see <http://www.armyofgod.com/PHillLinks.html>.

3. See Christine Korsgaard's defense of a "nonideal" Kantian theory in her "The Right to Lie? Kant on Dealing with Evil," *Philosophy and Public Affairs* 15 (Autumn, 1986): 325-349.