

BIBLICAL TERRANOMICS

October, 1991

No.4

OPERATION RESCUE

This issue of *Biblical Terranomics* grows out of the controversy in Wichita, Kansas this summer over the actions of Pro-Lifers to rescue the unborn. If you followed the national news media in August, you will recall that Randall Terry's Operation Rescue group was invited to Wichita by local Pro-Life leaders. Tactics chosen to fight abortion included the blocking of entrances to buildings where abortions were performed. Although this tactic was used frequently by local Pro-Lifers during the preceding two years, including this writer, the assistance of Operation Rescue created massive arrests, and raised the demonstrations to national significance. Unquestionably, this tactic took heavy psychological and economic toll on the abortion industry in this city.

The response of the judiciary was to stiffen its stance. Repeat arrests led to longer jail time for many rescuers. Since local attorneys were unavailable, I was asked by the local leadership to provide some paralegal assistance. Specifically, I was requested to explore a legal remedy which could be used by a layman without the aid of an attorney. To my knowledge the *habeas corpus petition* is the only layman's remedy which can expedite release from imprisonment. Said petition was prepared and submitted. Unfortunately, about the same time, Rev. Don Wildmon, leader of a national anti-pornography organization, offered the assistance of two of his staff attorneys. Although fine individuals, they clearly lacked enthusiasm for using the petition I prepared, in spite of the fact that word came from the U.S. attorney's office that a habeas corpus petition could result in release of petitioners within four hours. Realizing that the OR and local Pro-life leadership were not prepared mentally to deal with the issues contained in my legal brief and in the petition, I abandoned the project. Consequently, nothing was done. Prisoners served out the time (some are still serving) and stiffer fines were imposed.

(To clarify, it should be mentioned that my petition was to be used in dealing with local charges of trespassing, not the contempt charges imposed by federal judge, Patrick Kelly. While the federal charges only affected a handful of individuals, the trespassing charges affected hundreds. Curiously, local attorneys only had interest in the federal charges.)

Although the protests are lawful only in terms of the Bible and Common Law, the Rescue movement still wants to fight the judiciary with technical legalese. It wants to use the "rule of necessity" defense, but rejects the Common Law which alone gives it validity. It wants to overturn *Roe*, but refuses to face the fact that it is the 14th Amendment and its alien law system which makes *Roe* possible. I believe the Pro-Life movement is doomed to failure.

To illustrate what I am saying, let me relate some aspects of a conversation I had with Wildmon's attorneys. One somberly told me that "the Common Law is dead." I asked him if he had read John Whitehead's book, *The Second American Revolution*, especially his appendix on Common Law. He had not. (I found that incredible.) When we were discussing getting these arguments before a jury, another attorney told me she did not trust juries to judge the law and the facts! These attorneys were nice people and sincere Christians, but their education makes them dangerous to Christian liberty.

Of course the Common Law is dead. That is because Common Law is People's law and the People are "dead in their trespasses and sins (Ephesians 2:1). Common Law cannot be enforced by attorneys.

Herein is the legal brief which was prepared. The *Habeas Corpus Packet* with do-it-yourself instructions is available free upon request with a subscription to *The Family Spokesman*.

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Biblical Terranomics is a publication issued on an occasional basis, reflecting on-going research into the subject of land law and the Bible. Its focus is centered upon local government and customary law, as opposed to national government and statutory law. Our vision is to see Christian reconstruction begin in the dominion of Christian men over their family estates. A free subscription is available to all subscribers of The Family Spokesman. Permission to reprint all or portions of Biblical Terranomics is hereby granted, provided the source is adequately cited.

LEGAL BRIEF FOR AN ACTION AGAINST ABORTIONISTS

(a summary)

1. "Abortion On demand" is based upon the 14th Amendment
2. The 14th Amendment was supposed to enlarge the sphere of Common Law rights secured by the 9th Amendment and elsewhere
3. The Common Law does not give the woman, or anyone else, the right to kill an unborn child. Rather, it is a criminal offense.
4. The 14th Amendment has had the effect of diminishing Common Law rights.
5. The 14th Amendment applies to government and public officials, not the private citizen.
6. Common Law provides for others to come to the aid of the unborn.
7. Therefore, rescues do not violate the 14th Amendment and are sanctioned by the Common Law.
8. The Constitution cannot be interpreted in a manner so as to contradict or defeat itself. Unborn children are members of the "Posterity" for whom the Constitution was created by "We the People" to protect. Abortion violates the Preamble to the Constitution and is thus unconstitutional.
9. The Common Law is based upon the Bible.

A LEGAL BRIEF FOR AN ACTION AGAINST ABORTIONISTS

The legal foundation for the practice of abortion in the United States is the Supreme Court decision, *Roe v. Wade*. It began as an action brought in the United States District Court, (Northern District of Texas), by an unmarried pregnant woman who wished to terminate her pregnancy by abortion. She wanted, and in the end obtained, a declaratory judgment against the validity of the Texas statute making abortion illegal. This case (decided in 1973) overturned the statutes of virtually all 50 states.

The summary of this case in the Lawyers Edition 2d reveals:

The right to choose whether to have children was protected by the Ninth Amendment, through the Fourteenth Amendment. . .

(Roe v. Wade, 35 L Ed 2d supra, 147)

This fact immediately brings us to the heart of the matter: there is something unique about the 14th Amendment which makes abortion possible in the United States. Heretofore, Pro-Life advocates have focused their energies on the moral and political battles - proving that life begins at conception and appointing Pro-life judges to the courts. The time has come to deal directly with the legal issues which made *Roe* possible. Operation Rescue, with its massive arrests, has made it possible to force evasive judges to answer the obvious constitutional questions.

Legal historians will note that the 14th Amendment has served the purpose of enforcing the Bill of Rights in state jurisdictions. Prior to that Amendment, the state citizen had to rely upon the Bill of Rights found in his respective State Constitution. The Bill of Rights applied only to the federal government.

Few people understand, however, that the 14th Amendment did not *carte blanche* the federal Bill of Rights onto state jurisprudence. The power of enforcement was found in Congress, not the judiciary. Thus, the courts depended upon federal legislation before they could act. That is why some rights we normally expect are absolute, such as the freedom of religion, are not necessarily so. The 14th Amendment allows discretion to Congress in the enforcement of those rights. For those who appeal to the 14th Amendment for protection, it has served as a watered-down version of the Bill of Rights.

This fact had little impact on the standing of those who were citizens prior to that Amendment, especially free, white males. They still relied upon the protections they had hitherto enjoyed.

The 14th Amendment served the purpose of making citizens those who had limited rights before, principally the newly freed Negro. That is why we have various Civil Rights Acts. However, over the years, the 14th Amendment has been expanded in its application and has been used to satisfy the complaints of all minority groups. That is why feminists and sodomites (homosexuals) have worked diligently in the area of federal legislation to have deviants declared minority groups. It brings them under the purview of the 14th Amendment, the "equal protection" clause, and the Civil Rights Acts. The 14th Amendment has had the effect of producing a nation of special-interest groups.

On the issue of abortion, the federal courts took the lead, instead of waiting for Congress. That tendency by the courts in recent years is what is referred to by the expression "judicial activism". For the courts, it was enough that women were fully enfranchised by the 19th Amendment. The Courts decided that women had protection and unborn children did not. For the 14th Amendment reads:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make any law which shall abridge the privileges and immunities of citizens of the United States.

The fetus had no rights because he was not a "person born or naturalized" and was not entitled to "the equal protection of the laws".

Contrast this view with that of the ancient common law and early American law as stated by John Bouvier, in his *Institutes of American Law*:

203.-I. Life is a gift which man has received from God, and which society incessantly endeavors to secure to him, even before he is born, from the very instant he exists in ventre sa mere. The law does not alone punish the homicide of a man who is born, but it punishes as a misdemeanor, whoever has procured the criminal abortion of a woman quick with child, even with her consent. And though the mother appears to have some rights over the foetus, which is yet a part of herself, she is punishable for attempting its life. An infant in ventre sa mere, or in its mother's womb, is considered as having rights of a man born, whenever it is for the interest of his life or his preservation that he should so be. (a) It is for this reason that if a woman quick with child should be capitally convicted, her execution will be delayed until after her confinement.

- John Bouvier's, *Institutes of American Law*, Book I, part 2, tit 1, chap.2, § 1, pp. 86-87 (1851).

It should be noted that Bouvier's Law Dictionary (Third Revision, 8th Edition, 1914) is the only official dictionary used by Congress.

The legal issue of abortion really turns on the question whether the 14th Amendment has set aside the Common Law. In recent years the Courts have assumed that it has. And for that reason, whatever influences the Bible may have had on our jurisprudence, it has been lost with the Common Law and has been replaced by statist law founded upon secular humanism. If we are ever going to regain a Pro-life jurisprudence, we must plead the Common Law, which finds its source in the Holy Writ of God's law-word.

A constitutional argument in favor of the unborn child which has not yet been argued in the courts is that the unborn child comes under the protection of the Constitution through the Preamble which reads:

WE THE PEOPLE of the UNITED STATES, in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the Common Defense, promote the General Welfare, and secure the Blessings of Liberty to Ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

According to Common Law, the "Posterity" exists at conception. Consider again Bouvier's *Institutes* (vol. 1, § 10, para. 176, pp.73):

The rights of a child in ventre sa mere are numerous: I. For all beneficial purposes to himself, such a child is considered as born. . .

8. Others may act on his behalf.

Numeral eight of Bouvier's paragraph above is of critical significance to Operation Rescue. Rescuers are acting on behalf of one - indeed many - of the "Posterity" protected by the Constitution, the Bill of Rights, and the Common Law. The *Roe* decision is a spurious one, void of precedent and arbitrary in its rejection of Common Law to the end of promoting a radical, social agenda. It grants "privileges and immunities" to abortionists at the expense of the loss of genuine legal and natural rights of unborn children - rights which have been recognized by Western Civilization for over a thousand years.

Through the years, the courts have repeatedly told us that the Constitution cannot be interpreted in a manner which would cause it to contradict or defeat itself. The Supreme Court's decision in *Roe v. Wade* uses the 14th Amendment to do that very thing: to cause "We the People" to destroy "the Posterity". It defeats the Preamble which defines for us the very purpose of the Constitution and the Bill of Rights. A more radical departure from the Constitution cannot be imagined. (It is the interpretive equivalent of using the 14th Amendment to justify the extermination of whites by blacks, or men by women.)

Those engaged in Operation Rescue are acting within the Common Law, the Organic Constitution, and the Law of God. It is the abortionists, and those who defend them, who are the lawless ones.

When the Pro-life movement, Operation Rescue, and American Christians become learned concerning the proper standing "at law", then their deficient endeavors in the courtroom as advocates for the unborn will be overcome, and victory for the cause of Christ and America's posterity will be within reach in the true judicial power of the state.

ADDENDUM

It should be added that the Supreme Court ruled in *Grovey v. Townsend*, 295 U.S. 45 (1935), that it was impossible for private citizens, exercising their lawful rights, to violate the 14th Amendment. Therefore, it seems an abortionist, while protected against harassment from government officials and organizations considered public, cannot expect the private citizen to be barred from attempting to stop an abortionist *in the act of abortion*. This may sound like an invitation to anarchy. But that is the fault of the Court which has sanctioned a holocaust against the unborn. It forces us back to Common Law procedures and the decisions of local juries which vote according to their consciences.

Common Law may refer to judge-made (as opposed to legislature-made) law, to law that has its origins in England and grows from ever-changing custom and tradition, or to written Christian law.

*-Law Dictionary for NonLawyers,
Dan Oran J.D. West Publishing Co., 1985*

Recommended reading:

Works by John Whitehead available from the Rutherford Institute, P.O. Box 7482, Charlottesville, VA 22906. Phone: (804)978-3888.

And also, "BEHOLD! Newsletter", Fourth Judicial District, 729 Molalla Ave. Suite #2, Oregon City, Oregon (503) 657-6207.