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The True Confession of One One-Issue Voter

GROVER REES III

IN MY DREAM a child is playing by a bridge. Then I see the car hurtling toward the child. There is terror in the driver's eyes, because he does not see the bridge. It seems to him that he must either swerve onto the safe ground where the child is playing, or die in the ravine.

But there is a bridge. The driver can save himself if he will only turn his eyes and his car *up* . . . How can I explain it? Not toward the sky, but *up* into another world just outside the corners of the dream. A strange world, but a world with a bridge in it.

I wave my arm in the right direction: it is not gravity the driver must defy, but only his current perspective. But he never sees the bridge. The car wavers once, then veers onto the grass. The child is hit.

The driver gets out and stands over the dead child. He is in shock, but there is something else in his voice when he looks at me and says, "I had no choice. It was him or me."

I wave vaguely toward the bridge, but then my hand drops to my side and I say nothing. Even if I could make him see the world of the road not taken, it would not help. It would perhaps hurt him badly, and I have seen enough hurt today.

The dream has been with me for years. At first I would make more of an effort to show the driver the bridge. Once he even told me he knew where it was. Yet he had still chosen to hit the child, rather than to cross over into that strange other world. Where is the assurance of safe return? The driver might be forced to abandon his car and walk

forever in the new world, with the child walking beside him, determined to express its gratitude forever. So you see, said the driver, I really had no choice. It was him or me.

In the end I am always left standing beside the body, the only evidence that a choice was made. I have never given up trying to point out the bridge. I am the evangelist of the fourth dimension, the crazy prophet of the road not taken. Every morning I wake up a little crazier, a little more sad.

CAMUS' STRANGER was a man who had never cared about anything. He finally found a subject that interested him, after he had been condemned to die: -

How could I have failed to see that nothing is more important than an execution; and that, in the final analysis, it is the only thing of real interest for a man! If ever I got out of prison, I would go to see all the executions.

Every society has its central horror. In post-Revolutionary France it has been the guillotine. One would have wanted to learn all about it, perhaps even to watch the spectacle. It was the most important thing happening in the world.

Capital punishment today amounts only to the occasional killing of an exceptionally depraved murderer who has somehow evaded the obstacles erected by our judges, who generally cannot find it in their hearts to send a man to his death. Their hearts are in the right place. The calculated and organized killing of anybody, no matter how depraved, raises the level of depravity and violence in the atmosphere. The official, respectable nature of an execution, approved by judges and carried out by agents of the state, paid for with a bit of my money and a bit of yours, gives us all a stake in the killing.

When the death march begins, every two or three years, for some killer in Texas or Utah, it becomes for a while the central national horror. Television and newspapers sift through the facts about the condemned man, his loved ones, his victims, the legal hurdles between him and his death. And, not least, the technical details of the death mechanism. We approve or we deplore, but we all watch with interest.

Indochina, too, has given us atrocities enough to focus attention on atrocity itself. Idi Amin has also served this

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purpose—with his boast of having eaten human flesh and found it tasty—as has most recently the Reverend James Jones of San Francisco and Jonestown. But none of these terrible things—capital punishment, foreign wars, African despots and other twisted men—is close enough to the mainstream of American life to be its central horror. They are unessential. Amin, Jones, Manson, Calley, Pol Pot might never have existed, and life would be the same for all of us except their particular victims.

Yet we are compelled to search for the central horror, the yardstick by which all other horrors are to be judged. The President of the Fund for Animals said recently that the annual slaughter of baby fur seals in Canada “is the crucial single cruelty in the world.” I think he is wrong, but his heart, too, is in the right place. He knows there can be such a thing as violence in the air; he has undertaken the search.

There was what we call the Holocaust. It happened on another continent, before I was born, before most people now alive were born. We call it the Holocaust and invoke its memory that it might never happen again; but we may have retired the trophy too soon. Can there really never be another Holocaust, or even other holocausts?

And if you could find the new Holocaust—if you could isolate the central horror in our society—what could you do about it? If it were *central*, it would be hard to abolish. It would serve some useful purpose. Many good citizens would believe it to be unavoidable, perhaps even desirable. Mostly, they would not want to think about it. You would have to educate them slowly and gently, with an eye toward containing the horror now and ending it later. If they had fostered or tolerated the horror, you would have to convince them that they could reform, not without guilt, but without self-hatred.

Above all, you would try not to be shrill.

READING THE *New York Times* is one of the habits I picked up in college. It works out nicely now that I live in Louisiana, since the things the *Times* worries about are so different from the things most people here worry about. I can choose my worries from a broad selection.

Early in the summer of 1978 the *Times*, its columnists, and its interviewees were concerned about One-Issue Politics. As the election approached, the warnings became more frequent. James Reston predicted that as more people pressured their congressmen to vote certain ways on certain bills—as opposed to the traditional, generalized pressures, such as to vote for lower taxes and against inflation—it would be tougher and tougher to make the tough decisions. Ultimately, it would become impossible to govern.

Bill Brock predicted that as more conservatives responded to “one-issue” fund-raising letters, the Republican Party would find itself unable to raise enough money to present an effective opposition to the Democrats.

I sensed the displeasure of the *Times* when Minnesota Democrats rejected the multi-issue Donald Fraser for Bob Short, who was against abortion and for snowmobiles.

My reactions to these reports were influenced by my experience as a congressional staffer. On Capitol Hill there was always plenty of one-issue politics. Organized lobbying

groups knew precisely how they wanted congressmen to vote. Generally, these groups favored higher spending, or took some other position that was unpopular with the electorate at large. Yet it was usually possible for congressmen to satisfy both the uninformed, generalized pressure from voters and the specific pressure from lobbyists: they would vote with the lobbying groups on a key procedural vote, and then cast a showcase vote in the other direction for the folks back home. This is the practice whose abolition Reston feels will make it impossible to govern: one-issue politics in Washington, no-issue politics in Kansas. For myself, I'm glad to see it go.

As for Bill Brock, it's only natural that he should worry more than I do about the credit rating of the Republican National Committee. Besides, he comes with unclean hands:

Capital punishment is no longer a routine operation; and it has nothing to do with nice people, your own friends and loved ones. The central horror is the one you can put on Master Charge

official Republican groups send out as many “one-issue” fund-raising letters as anybody. The only difference is that the money thus raised goes to support the re-election of Republican politicians, even if they were on the “wrong” side of the issue. If it is immoral to raise money to defeat the Panama Canal treaties, are things made right by giving the money to senators who voted for the treaties? Must be the New Morality.

In the coverage of the Minnesota primary, one had a glimpse of what it was all leading up to. The *Times* is not really opposed to one-issue politics. Eugene McCarthy was a hero in 1968 because he fought for principle, against great odds, on one important issue. Even when trivial issues swing elections—as when Floyd Haskell upset Senator Gordon Allott in 1972, riding the coattails of Colorado voters' opposition to a proposed Winter Olympics—the *Times* just gives us the news. But they did not like Bob Short, not a bit, and it had nothing to do with snowmobiles.

“One-Issue Politics” was a code phrase for the one issue that would not go away.

AFTER THE election they made it official. The *Times* ran two articles exposing the sins of Roger Jepsen, senator-elect from Iowa. It seems that Jepsen, a conservative Republican, is guilty of being a one-issue voter three or four times over: he attacked incumbent Senator Dick Clark on abortion, gun control, and the Canal, among other issues.

Abortion made the difference. Jepsen had hidden unsportingly behind a “plodding” campaign style and a wide disadvantage in the public-opinion polls, and had snuck up

on Clark at the last minute with the aid of 300,000 anti-abortion leaflets that caused many Democrats to switch over, "especially in urban areas with large numbers of Roman Catholics."

The *Times* quoted an Iowa editorial to the effect that the 1978 campaigns had been permeated by a "shabbiness rarely seen in Iowa politics," but offered no instances of such shabbiness other than Jepsen's efforts to mobilize one-issue constituencies.

Fortunately, the *Times* offered a paradigm of an unshabby campaign: Robert Young, a moderately liberal Democrat from the St. Louis suburbs, had won re-election by "shap[ing] his campaign around service to the district, not party ideology." Mr. Young is the wave of the future: the article found "the heart of the new order of politics and government" in the observation of a Washington lobbyist that "the public does not want its congressional representatives to deal with broad questions. Thus the role of the politician has become largely absorbed in errand-running, and the good runner gets re-elected."

The *Times* chose an ironic example, since the pro-life movement also claimed credit for Young's victory against a pro-abortion Republican. Yet the treatment of the Jepsen and Young campaigns illustrates the curious new mathematics: no-issue politics is better than one-issue politics.

A few days later, *Times* columnist Anthony Lewis noted a CBS news poll revealing that 5 per cent of the American people—an extraordinarily high number by comparison with the figures on all other issues—would allow their feelings on abortion alone to determine their votes in political contests.

Criticizing Iowa right-to-life activists for opposing Clark, Lewis found it tragic that "a senator's conscientious refusal to support a change in the United States Constitution required a vote against him no matter what else he had done and no matter what the character of his opponent." Lewis added that the abortion issue is not going to go away, and that the behavior of the right-to-life movement seems very dangerous, giving "little reason to hope for the forbearance that makes democracy work."

Who are these millions of Americans who are so worrying to the *Times*? And should we all be worried?

THIS IS NOT an essay on abortion. It is an effort to explain how one-issue voters tick, so that other members of society can decide what to do about them. But in order to explain how an ordinary American becomes one of that 5 per cent whose feelings against abortion automatically and absolutely determine their votes—and to make an educated guess as to whether their ranks will grow or diminish—one must get inside their minds, examine all their values, find out how their One Issue got to be that way and how it affects their behavior apart from voting. One must try to decide how similar the one-issue voters are to other people, and then to isolate the difference.

You will perhaps not appreciate my suggestion that the one-issue voter is a lot like you. In fact, there is only one difference: he has come to accept, however reluctantly or passively at first, the truth of a single fact (or fiction). If he is wrong, he is wasting his time and causing lots of trouble

for everybody; but if he is right, then his political tunnel-vision is not only rational, it is compelling. If somehow you came to share his understanding of this one fact, you would do just as he does.

Suppose, for example, that somebody thrust before your face a color photograph of an eight-week-old fetus. Imagine that your resentment of this intrusion, and your association of such pictures with a noisy minority determined to impose its religious beliefs on the rest of us, thereby aggravating overpopulation and oppressing women—imagine that these reactions did not assert themselves for a moment, just long enough for you to examine the photograph in the neutral, non-ideological way you usually look at pictures. And suppose you felt *recognition*. What if you saw that the eight-week-old fetus resembled nothing so much as a newborn baby?

Or (if you are the type who does not need, or does not like, to look at pictures of things when deciding what they are) suppose that you deliberately undertook a search for the characteristics that make something a "human," and rejected criteria such as present intelligence, or physical independence, on the ground that they exclude too many individuals who (something tells you) ought to be included. What if you could find *no* limiting criterion that could be consistently applied without excluding large numbers of "obvious," walking-around human beings?

Or suppose you found it futile to try to decide whether anything is "human," because of the many value judgments and emotional associations implicit in the term, and because of our scant knowledge of the physical nature of consciousness. You would still be left with the problem of where to place the burden of proof. If somebody were to capture Bigfoot, and he displayed some "human" and some "animal" characteristics, and scientists proposed to slaughter him in order to study evolution, would you want to leave the final decision in the hands of those who proposed the slaughter? If it were conceded that he "might" be human, would you require that those who wanted to save him come up with conclusive proof of his humanity in order to get a stay of execution? Or (leaving to one side your concern for the survival of endangered species) would you require the would-be slaughterers to prove he was *not* human, not like us in any important sense, before proceeding with their plans? To the precise extent that one is unsure about what a "human" is, the burden of proof is decisive.

It might be such a sudden epiphany as looking at a picture, or such a dry and abstract inquiry as deciding where to place a burden of proof, that would force you to the conclusion that an eight-week-old fetus is a human being. You would not be a very different person because of it. Your attitudes on religion and sex, for example, would probably not change; you would continue to like and dislike the same traits in other people and in yourself. Yet—precisely because you would wish to go on about your business, with the same views and friends and habits—this abstract metaphysical conclusion would be most inconvenient for you.

You would have to accept the logical consequences of your belief in the humanity of the fetus. You would have to believe, in other words, that every abortion (technically speaking) kills a human being.

And then somebody would tell you that there are a million abortions a year in the United States. You would have no choice but to accept, on a purely intellectual level, the proposition that a million people were killed last year, in doctors' offices, with the acquiescence of their mothers; and that a million more will be killed this year.

And after you had accepted these intellectual propositions, I think you would begin to brood on them.

YOU WOULD HATE to think about abortion; and you could go whole days without thinking about it. But when the knowledge of it was thrust at you, you would spend days and nights thinking of nothing else. You would decide that abortion is the central horror of our society.

Central, because all the things that create the demand for abortion, and its acceptance by those who do not believe the fetus is human, only intensify the horror for you, bring it up close where you cannot ignore it.

Cambodia can be abstracted because it is pure hatred; but abortion is more real, precisely because it intertwines death so tightly with love and sex and the mother instinct, with so many tender and familiar moments.

Jonestown may have been endorsed by a few congressmen who knew nothing about it, but the deaths there were not performed in licensed, antiseptic offices with the approval of the United States Supreme Court. (What was the scariest thing about Jonestown? It was the young doctor. We revere doctors. It was the young doctor, trained to save lives, administering the poison; and parents forcing it down the throats of their children, who did not want to die. Those things are hard to abstract.)

Capital punishment is no longer a routine operation; and it has nothing to do with nice people, attractive people, your own friends and loved ones. The central horror is the one you can put on Master Charge.

And there are the numbers: about six million legal abortions by now.

The usual arguments for legalized abortion—often cited as if they mooted the question of the humanity of the fetus—will seem silly to you. You would not want the state to permit the killing of newborn babies because they were unwanted or handicapped, nor of 15-year-olds because they were juvenile delinquents. You would not vote for a law allowing a woman who said she had been raped to kill the alleged rapist without a trial—much less to kill the rapist's infant child. The fact that the present laws against murder do not always deter wife-killing would not cause you to support legalization of wife-killing, notwithstanding the undisputed facts that it would then be far safer for the killer, and that the decision to kill one's wife is an intensely difficult and personal one.

You will become suspicious of politicians who affirm their "personal" (or "religious") belief that the fetus is "a human being from the moment of conception," yet decline to support a constitutional amendment to forbid abortions. They are saying, exactly: "I think Charles is a human being, but since you don't necessarily agree with me, I think it should be legal for you to kill Charles." Either they are not very confident of Charles's humanity—less confident than they are of, say, the right way to fight inflation—or they do not believe in a rule of law. They are not the politicians you would want in power when somebody wants to kill or hurt

you; and even if (not being a member of any discrete and insular minority) you are absolutely unafraid for your own safety, you will vote against these politicians anyway, because they propose to do nothing about the central horror.

Voting will be the least of your worries, though. You will probably not march in demonstrations, either because you would be embarrassed, or because you never hear of the demonstrations until after they are over, or just because you're always busy with the same things that kept you busy before you knew what the central horror was. But you will feel guilty about not marching, and even guiltier that you do not spend your lunch hour every day passing out leaflets in front of the abortion clinic—leaflets with those pictures of fetuses on them. Maybe you could only prevent one abortion a month. But wouldn't you give up twenty lunch hours to save one child from drowning?

If you are fortunate enough to be paid for thinking, writing, and talking about ideas, you will feel guilty that you

You will become a one-issue voter because it is the least you can do. You do not want to be a revolutionary, and you want to sleep nights

spend most of your time on other questions. Never mind that you hate to think about abortion, that you find it difficult to apply your professional skills to the subject as dispassionately as you apply them elsewhere, that your colleagues know your perspective and therefore discount everything you say about abortion. When the ovens of Dachau were in operation, was it moral to exhaust one's persuasive resources on economic policy, simply because one had a better chance of persuading people about economics than about ovens?

Still, as long as the six million abortions can be kept at arm's length—even the ones that take place in the Women's Clinic, the attractive yellow brick building you pass on your way to work every day—they will only bother you as abstractions, no more real than famine in Africa or a few random late-night murders downtown.

Then will come the worst day of your life, the day when somebody close to you will tell you about her abortion. She will be hurt and vulnerable, and will say, "I had no choice. It was it or me." You will do your best to comfort her without lying, and so you will talk nonsense, veering crazily between comforting lies and dangerous truths. Why didn't she tell you *before*, when you could have told her of the alternatives, all painful but all infinitely less horrible? Before, when you could have called everything by its right name without pointlessly adding to her pain? When you could have shown her the world that the bridge leads to?

You will take long walks. You will go in the middle of the night to stand in front of the attractive yellow brick building and think: Why don't I get a bomb and destroy it?

Reasons not to destroy the building will flood your mind

—all practical, having to do with job security and tort liability and prison. Yet if you could postpone dozens of abortions, if you could give those intensely pressured women a few days to think, surely you could prevent a few deaths. Are you not morally bound to destroy property in order to save lives? You don't know. You haven't yet worked out your ideas on civil disobedience. (Is that the best you can do? Now is the time to decide.)

At last you find two unselfish reasons not to become a bomb-thrower: You have a child of your own to support. And it is important to preserve the republican form of government—the only chance for lasting security and freedom—even at the expense of more deaths. You will work through the system, and you will win. You will stop the killing.

You will become a one-issue voter because it is the least you can do. You do not want to be a revolutionary, and you want to sleep nights.

SO YOU WILL VOTE for anti-abortion politicians. You will vote against the hacks who say they believe that unborn children are human but that others should be allowed to kill them. And you will vote against the politicians who sincerely believe that the fetus is just a blob of protoplasm, entitled to no legal protection. Not because they are murderers—they lack the essential knowledge and intent—or even bad people, but because they are terribly mistaken. They stand in the way of stopping the central horror.

Sometimes it will be easy. If you were a conservative or a moderate in Iowa, you might have voted for Senator Clark just because he was the incumbent and was good at running errands—until the pro-life campaign focused your attention on Clark's voting record, which was "wrong" from your standpoint not only on abortion, but also on government spending and foreign policy.

Other times it will be harder; but as the CBS poll confirms, there were certainly liberal pro-life votes for Jepsen; and those few liberal politicians who have risked offending liberal organizations by taking pro-life stands (Senator Mark Hatfield of Oregon and Congressman Ron Mazzoli of Kentucky come to mind) have received the support of the pro-life movement against more conservative opponents.

Sometimes the issue will not be squarely joined: in Minnesota, pro-life Democrat Short ultimately lost to pro-life Republican David Durenberger, with "one-issue" voters presumably falling back on their traditional preferences. You might even have to choose between two pro-abortion candidates, or to vote against a buffoon who would hurt the cause more by his embarrassing behavior than he would help it by his pro-life votes.

Yet whenever a sincere, presentable person asks for your vote, saying that he or she wants to go to Washington to stop the killing, you will be unable to resist. Whatever their positions on other issues, you will usually find that pro-life candidates command your respect. They are your kind of people, the kind you would want around if anybody were trying to hurt or kill you.

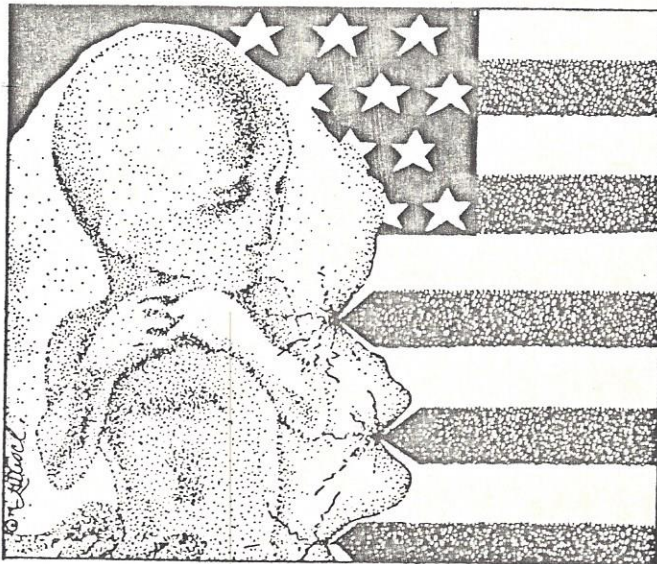
Of course, there are other pressing issues. Suppose your pro-life candidate does not share your concern about the Soviets' military strength, or suppose he favors domestic spending cuts which, in your view, will ruin the lives of these children you are both trying to save? Well, you will

try to change his mind, before and after the election. These other issues, left unsolved, could lead to disaster; they should be dealt with right away; but they are not yet getting people killed. So you will take your chances (if you must) that the other issues can wait. You will perhaps even hope that a successful resolution of the abortion problem will bring about a moral renaissance in America, will focus our attention on human life as the most valuable and fragile thing there is, and thereby contribute to the solution of our other problems.

THE OTHER SIDE has its hard core, too. But most people who are pro-abortion don't think about it much. If they are right and you are wrong, then a constitutional amendment will inconvenience a lot of women, and in some cases increase their suffering. The same can be said for any number of wrong decisions. But if you are right, then there are those six million deaths. So you care more, try harder: the rabbit outruns the fox because the fox is running for his lunch, the rabbit for his life.

What about the millions of women who have had abortions? They vote, too, and they have a terrible stake in not believing that the fetus is human. Yet they have not emerged as a counterweight to the anti-abortion voters. Perhaps it is because some of them have realized that what had been destroyed in them was not nothing. Some have now joined the pro-life movement, and speak out about how they were railroaded by the abortionists. Yet as the millions of abortions mount into tens of millions, and as the pro-life movement gains converts, the polarized society feared by the *Times* may come into being. After the up-or-down vote on ratification of a constitutional amendment, half the country might go away mad. Such divisiveness would be very bad; there are only a few things worse.

YOU WILL BE a one-issue voter until you win—even though society will give you no medals for "working within the system," even though you know you are a nuisance. You can go for days without thinking about abortion, but on other days the Camusian fascination with the *event* takes hold. You wonder about the details of particular abortions, about



your friends and loved ones walking into the yellow brick building, into the waiting room, lying down on the operating table. You see their faces, and you picture the actual process of death, the suction devices and knives and abrasive chemicals; you wonder about resistance and pain and

occasional crying. You try to imagine six million deaths. Whenever you can, you tell people about the world of the road not taken, taking care not to be shrill. Someday you will win, and your bad dreams will stop. For now, every morning you wake up a little crazier, a little more sad. □

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A Comment

JAMES JACKSON KILPATRICK

IF MR. REES HAS not delivered himself of an essay on abortion, I will never read an essay on abortion. And if his tone is not shrill, I have been struck tone-deaf. He has indeed voiced a cry of unbearable pain; he recoils from abortion as the central horror of our times; he feels guilty for not spending every lunch hour on the sidewalk, passing out leaflets. The gentleman is a one-issue man. His voice is the voice of zealotry, and it turns me off.

Let me respond by talking a little history, a little law, a little politics. These are fields that relate directly to the question under discussion, which has to do with how office-holders vote on particular legislative propositions. Arguments of theology, morals, and medicine are not before the house. We are debating such issues as a constitutional amendment on abortion and the public funding of abortions for the indigent. Mr. Rees's position, as I understand it, is that every member of Congress who opposes the amendment or supports the funding should be drummed out of office *for this reason alone* as soon as an opportunity presents itself at the polls.

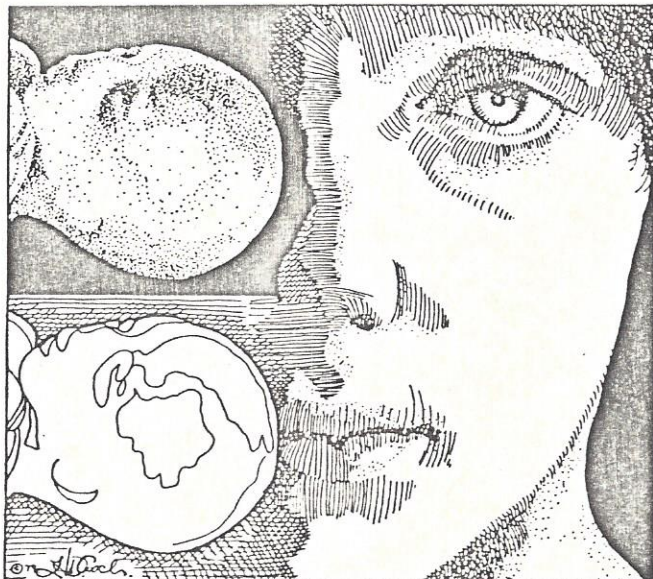
Very well. Prior to January 22, 1973, there would have been no occasion for debate. At least 27 states had laws making it a criminal offense for any person to perform an abortion, and the practice was regarded almost universally as, if not criminal, at least a dirty piece of business. Then came the Supreme Court's opinions in the Texas case of *Roe v. Wade*, 410 U.S. 113, and the Georgia case of *Doe v. Bolton*, 410 U.S. 179. Overnight, abortions under certain circumstances became as lawful as appendectomies.

Lest I be misunderstood, permit me to assert that, in terms of jurisprudence, the Court's two opinions added up to lousy law. Mr. Justice Blackmun and six of his colleagues (only White and Rehnquist dissented) took a piece of whole cloth, tailored a suit of personal predilections, and trotted it forth as constitutional law. In the garden of "privacy" they found a constitutional flower that never had been identified before. By fashioning judicial mandates from social policy, they took the Court back to the days of the *Lochner* case in 1905.

But nothing much is gained by railing at the Court for pronouncing bad law. *Roe v. Wade* remains for all practical purposes the supreme law of the land. Its basic teach-

ing is that the states cannot impose an absolute barrier, by criminal sanctions, against a woman's decision to obtain an abortion. This is because a woman has a right of privacy derived from the liberty that is protected by the due-process clause of the Fourteenth Amendment. The right may also be included among the unenumerated rights of the Ninth Amendment. Wherever it comes from, the right "is broad enough to encompass a woman's decision whether or not to terminate pregnancy." Not until the second trimester may the state intrude with rules and regulations, and not until "viability," in the third trimester, may the state further regulate "and even proscribe abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother."

I speak from a body of conservative convictions, at least as deeply held as Mr. Rees's convictions, that the substantive provisions of Mr. Justice Blackmun's opinion in *Roe v. Wade* represent sound and reasonable public policy. If these provisions had been embodied in a legislative proposal before a state legislature, they would have had my support. For a number of reasons.



I had supposed it to be a fundamental principle of conservatism to challenge every doubtful intrusion of the state upon the freedom of the individual. The more serious the intrusion, the more it must be resisted. Only the most compelling interests of society can justify a major invasion by the government of a person's right to be let alone. If these are not fundamental principles of conservatism, I have wasted thirty years in the contemplation of that philosophy.

Most intrusions by the state upon the liberty of the individual are petty: the stop sign, the sales tax, the ordinances against noise and litter. Some intrusions are more serious: through the power of eminent domain the state may take our homes away. A few intrusions are of the first magnitude. Conscription is one. Another was described by the Supreme Court in *Eisenstadt v. Baird*, 405 U.S. 438, in a case involving contraception: "If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." That strikes me as sound doctrine.

The answer of the right-to-lifers, if I am not mistaken, is to say, All very well, but what about the rights of the individual fetus? The aborted fetus has been executed without the slightest trappings of due process. What greater intrusion of the state could possibly be defined? To which I answer (because I am not debating theology, morals, or medicine), that nowhere in the law—in common law, case law, statutory law, or constitutional law—has a week-old fetus ever been defined as a "person."

THOSE WHO would absolutely prohibit abortion, under any circumstances whatever, find little support in legislative history. The state enactments, prior to 1973, provided dozens of exceptions and exemptions. The Georgia law that was struck down in *Doe v. Bolton* was based upon the model statute drafted by the American Law Institute; it exempted abortions performed by a licensed physician based upon his best clinical judgment that continued pregnancy would "seriously and permanently" injure the mother's health. For the past several years the Congress has been thrashing over various versions of an abortion amendment to the appropriations bill for Medicaid. The several proposals are more or less restrictive, but none of the proposals would make abortion a crime.

These exceptions and exemptions tend to undermine Mr. Rees's case. If this week-old fetus is a person at law, there is no possible way for the state to sanction its murder by abortion. From the instant of conception, the fertilized egg is entitled to counsel, to witnesses in his own behalf, to a jury trial, to all the panoply of defenses that an accused may rightfully put forward when charged with a capital crime. But on what charge does one indict this cluster of cells? The proposition is absurd. Admit one exception, such as the universal exception to save the life of the mother, and the notion of the legal personhood of the fetus is destroyed.

A case for the Blackmun Abortion Act of 1973 rests not only upon law and philosophy but upon equity also. In the Rees view, the mother has no right whatever to deter-

mine whether an unwanted pregnancy may be terminated. Some of us, at least, see that position as cruel and inhumane. Suppose it is medically determined at an early stage that the fetus is deformed? No matter, say the zealots, let the pregnancy proceed. Suppose the pregnant woman is an unmarried woman in a household or a community where the bearing of an illegitimate child is a matter of lifelong shame? Never mind, say the zealots, let the woman bear her shame.

Mr. Justice Blackmun mentioned some of the considerations in his 1973 opinion. "Maternity, or additional offspring, may force upon this woman a distressful life and

*I can close my eyes and still
see the body of a beautiful girl,
maybe 16 or 17, lying on the
stainless-steel table of a
morgue. She had tried abortion
by knitting needle*

future. Psychological harm may be imminent. Mental and physical health may be taxed by child care. There is also the distress, for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it."

Finally, there is the possibility of winding up with a live baby and a dead mother. This is Mr. Rees's "him or me" brought home to roost. If he makes his own moral choice for the child and I make mine for the mother, which of us is the more moral? We are not talking about leaving the issue to God, or to fate; we are talking about the wisdom or unwisdom of laws that might prevent such fiendish decisions from having to be made in the first place.

The gentleman wants a constitutional amendment. He would vote out of office any politician who disagrees with that demand. A typical amendment is to this effect:

With respect to the right to life, the word "person," as used in this article and in the Fifth and Fourteenth Articles of Amendment to the Constitution of the United States, applies to all human beings, including their unborn offspring at every stage of their biological development, irrespective of age, health, function, or condition of dependency.

This article shall not apply in an emergency when a reasonable medical certainty exists that continuation of the pregnancy will cause the death of the mother.

(In passing it may be observed that even under the right-to-lifers' own amendment, the unborn person ceases to be a person and may lawfully be put to death because of a "reasonable medical certainty.")

Let us talk a little history. My brother wants this amendment for the same reason the Women's Christian Temperance Union wanted Prohibition. Those ladies went around

breaking up barrooms. They thought that if only they could embed in the Constitution a flat commandment that "the manufacture, sale, or transportation of intoxicating liquors within the United States is hereby prohibited," the demon rum would be forever exorcised. By the same token, Mr. Rees supposes that his amendment would end abortions. After all, if a week-old fetus is constitutionally a person who cannot be deprived of life without due process of law, the abortionist and the consenting mother could together be tried for murder and sentenced to life imprisonment or to death. Who would take such risks?

The Eighteenth Amendment became operative January 16, 1920. I was born the following November and grew up in Oklahoma as a child of Prohibition. Did the amendment end the manufacture, sale, and transportation of liquor? Do canaries swim? That amendment launched the United States on a 14-year binge of contempt for law and for public institutions. Our Oklahoma bootleggers had home delivery and charge accounts; they had sales and specials and Christmas packages. Moonshining and bootlegging flourished through bribery and corruption and the bloody domination of the mob. Throughout this long dark night, any man who wanted a drink could get a drink, and to hell with the Constitution.

In more or less the same fashion, France in 1946 set out to abolish the brothels in which 6,200 registered prostitutes plied their profession. Today it is estimated that ten times that number of prostitutes are roaming the streets; venereal disease is rampaging; criminal syndicates are in command. A move is under way to bring the brothels back.

A constitutional amendment to overthrow *Roe v. Wade* and to make the ordinary abortion a felony would encounter the same inexorable resistance. The amendment would not end abortion; it would only drive abortion underground. It would restore the same squalid situation that obtained before 1973. Mr. Rees has his nightmare. I offer him a remembered reality. As a newsman, thirty-odd years ago, I covered the Chief Medical Examiner's Office. It was part of the police beat. I can close my eyes and still see the body of a beautiful girl, maybe 16 or 17, lying on the stainless-steel table of the morgue. She had tried abortion by knitting needle, and had died in the agonies of peritonitis.

PENDING A constitutional amendment, my brother wants to prohibit the spending of public funds to provide abortions for the indigent. On this issue I express no passionate sentiments. Under *Roe v. Wade* a first-trimester abortion is constitutionally viewed as a mere medical procedure, generally comparable to nipping out a child's tonsils. If the taxpayers pick up the bill for other gynecological procedures, why not for this one? The only effect of a Hyde amendment (for Representative Henry J. Hyde, R., Ill.) is to deny the poor woman the relief that other, more fortunate women may lawfully obtain almost anywhere.

But as President Carter remarked in opposing such public funding, life is not always fair; pro-life taxpayers understandably are outraged by such expenditures; as the Supreme Court said in a series of 1977 cases, the Constitution imposes no obligation on the national or state governments to pay for indigents' abortions. And a lawful, sanitized abor-

tion costs less than a black-and-white TV set anyhow. I myself would vote against a Hyde amendment, out of an unwillingness further to grind the faces of the poor, but maybe this \$20 million a year should not be spent. Let it go.

It is against this background of law, history, and human behavior that the gentleman raises his one-issue banner. Last year the House had roughly eight hundred substantive roll-call votes, the Senate about five hundred. To the apostle

*While I would defend the right of
the one-issue zealots to vote
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mild observation that the trend
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endangers the two-party system*

of one-issue politics, none of these other votes matters. If a man is not right on abortion (or gun control, racial-balance busing, the Panama Canal, snowmobiles, or a balanced budget), out with him! Send the rogue away!

Having read Mr. Rees's shrill essay on abortion, I would not for the world resist the gentleman's tunnel-vision activism. Indeed, I have engaged in some one-issue activism myself, by urging well-heeled corporations not to contribute to universities whose departments of economics undermine the marketplace system. Mr. Rees and his like-minded friends have every right to vote as they damn well please.

So, of course, do the rest of us, and if abortion were to become the be-all and end-all—if nothing else were to count except pro-fetus on the one hand and pro-freedom on the other—Mr. Rees would find himself in a bad way. The results of a recent Gallup poll on this issue were announced in April. Twenty-two per cent of the people think abortion should be legal "under all circumstances," and 54 per cent think it should be legal "under certain circumstances," while only 19 per cent think it should be illegal "under all circumstances," and 5 per cent have no opinion. The percentages haven't changed much in the past four years, and Catholic opinion is only slightly more opposed to abortion than Protestant opinion.

While I would defend the absolute right of the one-issue zealots to vote their convictions, I do venture the mild observation that the trend toward one-issue politics further endangers the already moribund two-party system. Maybe it is time for the two-party system to go. We have lived by it politically since the days of Adams and Jefferson, but the system is not necessarily immortal. But if we are going to abandon the two-party structure and move to a maze of shifting coalitions, splinter parties, political action committees, and the like, we had better give the prospect more thought than it has received so far. It makes more sense to me to consider a candidate's whole record, and to vote in terms of general adherence to a political philosophy, than to let everything turn on single yea or nay. □

IN WRITING *The True Confession of One One-Issue Voter*, I was not trying to prove the case against abortion. Had that been my aim, I'd have devoted most of the article to a discussion of what a fetus is. It would have been an article about biology and psychology and metaphysics, about heartbeats and brainwaves and fingerprints and pain. I would have painted a picture of the unborn child and placed it alongside the reader's picture of a "human being" to show him how closely the two pictures matched.

But others have drawn these pictures better than I can. Besides, how could I hope to persuade with a word-picture someone to whom even a real picture of a fetus is nothing but a symbol or a slogan, a badge of zealotry to be ignored or ridiculed?

So instead of agreement, I sought understanding. I asked the reader to take me at my word on only one thing: not that the fetus *is* human, but that that there are people who *believe* it to be. Then I asked the reader what he would do if he believed people were now being killed in a clinic down the street.

If I had a political goal, it was to raise the level of the abortion debate. I would readily concede that rape, incest, threats to mental health, and even severe inconveniences are sufficient justifications for destroying any mere "mass of cells"; and virtually nobody would argue that any of these is a good enough reason to kill, say, a two-year-old child. So isn't it time we stopped arguing about things we don't disagree on?

I had hoped to persuade the reader to re-examine the evidence on the only question that really matters in the abortion debate: What is the fetus? I had hoped to show that anti-abortion one-issue voting can only be stopped by evidence (if evidence exists) that the fetus is something less than human; not by ridicule or invective, and not by focusing on the woman and ignoring her unborn child.

Perhaps I have failed. James J. Kilpatrick's response might easily have been written by one who had not seen

Mr. Rees, a New Orleans attorney, is replying to Mr. Kilpatrick's response to his "True Confession of One One-Issue Voter," both of which pieces appeared in the May 25 issue.

BROTHER TO BROTHER

Summa contra Kilpo

GROVER REES III

my article. Not for an instant does he accept my invitation to stand in the shoes of the one-issue voter. He attempts neither to refute my premise—that the fetus is a person—nor to assume its validity for the sake of argument so as to demonstrate my errors. Instead, he levels a few ugly charges (I am shrill, the voice of zealotry, a one-issue man who turns Mr. Kilpatrick off, a breaker-up of barrooms, a grinder of the faces of the poor) lest the reader not notice these things about me and be inclined to consider my arguments at face value; then he adopts me, at least for literary purposes, as his "brother" and proceeds to construct a dazzling debater's case for abortion.

Like all dazzling cases for weak propositions, it is done with mirrors. The reader is drawn to the fancy footwork; he is transfixed as Kilpatrick makes short work of several dull-witted straw men; the unborn child and his advocate are left in a neutral corner, just outside the range of the spotlight:

1) "Let me respond by talking a little history, a little law, a little politics. . . . Arguments of theology, morals and medicine are not before the house."

WHY NOT? If I were a legislator voting on a law, I would first assemble the data on the subject. If the law were one forbidding the destruction of a certain being, I would consult scientific and medical data to determine its physical characteristics. Then I would apply my understanding of metaphysics (a field distinct from theology, but apparently not before the house either, according to Kilpatrick's Rules of Order) to decide as best I could what kind of being it was. Then I would make a moral judgment about whether that kind of being ought to be protected by law.

History and law would tell me what judges and politicians of the past have decided—presumably applying their own understanding of medicine and meta-

physics and ethics. Politics would help me gauge my chances of success. But if medicine and metaphysics told me that the fetus (or Bigfoot, or Dred Scott) is a human being, and if ethics told me that all human beings ought to be protected by law, then I would work very hard to substitute my own views for those of earlier politicians and judges. Unlike Burke's self-caricature, I would support the immediate abolition of headhunting, even if it were a hallowed tradition.

Notice that without the exclusion of medical, metaphysical, and moral evidence, Mr. Kilpatrick would lose his own debate. The skillful advocate can defend *any* proposition if he can enforce the exclusionary rule of his choosing. Exclude the bloody dagger because the policeman illegally seized it, and the murderer cannot be proved guilty. Exclude moral arguments, and you can prove that Hitler was a great man

2) "[N]owhere in the law—in common law, case law, statutory law, or constitutional law—has a week-old fetus ever been defined as a 'person.'"

That assertion, which has been making the rounds in pro-abortion circles, is false. For instance, Louisiana Civil Code article 29, enacted in 1825 and in force today, provides that "[c]hildren in the mother's womb are considered, in whatever relates to themselves, as if they were already born. . . ." *Wallis v. Hodson*, a 1740 English case, held that an unborn child of unspecified gestation was "*en ventre sa mère* . . . and consequently a person *in rerum natura*, so that by the rules of both the common and civil law, she was, to all intents and purposes, a child, as much as if born in the father's life-time."

Nor should Mr. Kilpatrick be allowed to confine the historical inquiry to a "week-old" fetus. Under Justice Blackmun's decision, whose provisions Kilpatrick says he would support as legislation, the destruction of a *three-month* fetus is "generally comparable to nipping out a child's tonsils." The Black-

mun-Kilpatrick Abortion Act further provides that *any* fetus—even a fully-developed baby about to be born—may be destroyed if its mother can find one doctor who says its continued existence will be dangerous to her physical or mental health.

At common law, the fetus was variously said to be a person, and its destruction a form of homicide, from the moment of "quickening," or of its "formation" or "animation." These points, ranging from several weeks to about four months of gestation, were chosen because the philosophers and scientists and lawmakers of the day did not know that there was such a thing as "conception" as we know it. They believed that sperm entered the mother's womb and was nurtured there, and at some point *became* a fetus. In the early nineteenth century it was discovered that two separate things, the sperm and the egg, actually *united* to become one being. This discovery prompted the movement for tough anti-abortion laws.

Most American statutes were modeled after the 1828 New York statute, which prohibited the destruction of any fetus from the moment of conception, except where necessary to save the mother's life. The anti-abortion movement was led by doctors. In 1859 a committee of the American Medical Association decried the "wide-spread popular ignorance of the true character of the crime—a belief, even among the mothers themselves, that the fetus is not alive till after the period of quickening." Belief in the humanity of the unborn child is the cornerstone in the legislative history of American anti-abortion legislation. So Mr. Kilpatrick's attempt to dodge the question whether the fetus is a person in fact, by claiming that it has not historically been regarded as a person at law, does not bear scrutiny.

3) "Admit one exception, such as the universal exception to save the life of the mother, and the notion of the legal personhood of the fetus is destroyed."

Really? The soldier who shells a village, killing innocent people, does not deny their legal or actual personhood. If he is doing it because it is absolutely necessary to save other innocent lives, then a case can be made for his action. If he does it for any other reason, it is inexcusable. In any case it is killing.

Most of the laws admitting exceptions other than for the life of the moth-

er were of the modern "liberalized" variety. The right-to-life movement opposed these laws, precisely because they were inconsistent with the proposition that every human being has a right to live. But advocates of the new laws did not necessarily deny that the fetus is human. As one Connecticut politician, who later became a judge, told me: "Listen, I agree with you. It's murder. But what are we going to do about all these people on welfare?"

4) "Suppose it is medically determined at an early stage that the fetus is deformed? . . . Suppose the pregnant woman is an unmarried woman in a household or a community where the bearing of an illegitimate child is a matter of lifelong shame?"

I thought medical and moral arguments were not before the house. We must now be operating under Kilpatrick's Rules Newly Revised.

The plight of the unwed mother, or of the parents of a retarded child, is not a pleasant one. It can be alleviated by a wide range of private and public actions, not the least of which are long-overdue changes in our attitudes toward illegitimacy and the handicapped. But being deformed or illegitimate is no crime, and it does not merit the death penalty. Incidentally, some of the most zealous right-to-lifers are unwed mothers and parents of retarded children. They were urged to abort their children. Their nightmares about abortion are more vivid even than mine.

5) "I can close my eyes and still see the body of a beautiful girl, maybe 16 or 17, lying on the stainless steel table of the Morgue. She had tried abortion by knitting needle, and had died in the agonies of peritonitis."

This is the most persuasive line in Mr. Kilpatrick's article. It fills me with sorrow and anger. I am angry at those who told the girl that her baby was just a mass of cells; that being an unwed mother was worse than being an abortionist; that an abortion is "comparable to nipping out a child's tonsils." I hope we can stop illegal abortions, not just by vigilant enforcement of abortion laws and prison terms for abortionists (who, unlike pregnant women, are motivated by greed rather than panic, and who know exactly what it is they are destroying), but also by convincing girls and women that abortion is the worst of all possible alternatives.

If Mr. Kilpatrick wishes to swap horror stories, I urge him to imagine what it would be like to be cut limb from limb with a scalpel, or burned to death in a saline solution. . . . What's that? Excuse me, I almost forgot. Anti-abortion horror stories are shrill. Pro-abortion horror stories are deeply moving.

6) "If a man is not right on abortion (or gun control, racial balance busing, the Panama Canal, snowmobiles, or a balanced budget), out with him! Send the rogue away!"

Thus Kilpatrick derides the one-issue voter. By lumping abortion together with these other issues, and with Prohibition, he implies that nothing more is at stake.

I WONDER if anything could make Mr. Kilpatrick a one-issue voter. Suppose the United States had killed six million Jews in gas chambers. Suppose the Russians were invading Virginia. Could he vote under any circumstances for a politician who proposed to continue the gassing, or not to resist the invasion?

If not, then we are indeed brothers. We differ only in this: He believes abortion is like snowmobiles. I believe it is like gas chambers.

We can resolve our differences only by embarking in good faith on the essential inquiry: Is the unborn child a person? Not a "person" under the Rule in Throckmorton's Case or according to the latest Gallup Poll, but a person *in fact*. Is it more like a newborn baby or an appendix? No exclusionary rules against medical or metaphysical evidence, no straw man, no mirrors will be necessary: we are long past keeping score. I would listen sincerely to any argument he could make that there is some point after conception and before the age of reason at which an essential change takes place, at which it is possible to say, "A moment ago there was a mass of cells. Now there is a person, with the right not to be killed." And I hope he would listen sincerely to my argument that life is a continuum, from the moment the new being comes into existence until the moment of natural death, and that it is too precious to trifle with.

Perhaps if we could have such a sincere talk, I would no longer be shrill. And perhaps he would no longer be tone-deaf. □