

# A DEVILISH LOOK AT THE CONFIRMATION PROCESS (WITH APOLOGIES TO C.S. LEWIS)

*Stephen L. Carter\**

## I

Augustine of Hippo, in his *Lectures on the Gospel of John*, warned of the human temptation to judge what is in the hearts of others. Because of our imperfect access to the innermost thoughts of those we try to judge, wrote Augustine, we fall into suspicion and error regarding what they actually think or believe. This temptation, he argued, must be resisted. Like the Greeks, Augustine believed that the ability to do right rested on the willingness to live right. So the path to thinking better of others was, for Augustine, to "desire what ought to be desired, and utterly avoid what ought to be avoided."<sup>1</sup>

We are human, of course, and avoiding what we should avoid is one of the most difficult of human tasks, particularly at a moment of significant cultural skepticism about the word *should*. American society has come to see rights as exercises of autonomy rather than, as the natural law tradition would have it, one piece of the individual's complex participation in a world of constant moral decision. The natural law position locates rights in a hierarchy of goods, and doubts both the wisdom and the morality of conveying rights upon those who have not been taught moral reasoning first.<sup>2</sup> Because of our national discomfort with the natural law approach—to say nothing of the moral teaching of the Judeo-Christian religious tradition—we have a good deal of trouble explaining to right holders (a fancy term for our fellow citizens) what they should and should not do, and why.

What has any of this to do with the subject of the symposium? Bear with me. I am, by training and commitment, a Christian, and evangelical Christians often say that the devil is always busy. One need not be an evangelical, or a Christian, or even a religious believer, to get the point. The idea behind this

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1. ST. AUGUSTINE OF HIPPO, *LECTURES ON THE GOSPEL OF JOHN*, Tractate 90, ¶ 2.  
2. References that assume or conclude that rights are by their nature not subject to the moral judgment of others are legion, and any reader of a law review will doubtless be familiar with them. For a forceful statement of the opposing view, locating rights in a hierarchy of goods, see the discussion in JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* 205-18 (H.L.A. Hart ed., 1980).

aphorism is, obviously, to keep us on our toes, warning us to remain alert for temptations that should be resisted if we are to lead upright lives. The fact that we might not all agree on what temptations should be avoided does not imply that we should not be on our guard.

Although we tend to think of temptations as occurring principally in our private lives, they occur in public life as well. The way we envision our public institutions, the way we talk about them, the way we struggle to control them, all affect the people we are. The more contentious our public battles, the more harm we do, not only to the fabric of national community and respect for government, but to our very selves. Yet it has proved remarkably easy over time for most of us to yield in public argument to temptations, to think about and even describe others in ways that we would never think about or describe those we know well.

The problem becomes particularly acute when we try to do precisely what Augustine warned us to avoid: to see into the hearts of others. If there were an Olympic competition for ascribing to those we do not know well particular venal motivations, I fear that we Americans would win the gold year after year. Because we fall into the trap Augustine had in mind: looking out from the mists of our sinfulness, we try to read the innermost feelings and beliefs of our fellow creatures. And, in so doing, we often make ourselves the worse.

The selection of personnel for the federal courts, particularly but not exclusively for the Supreme Court, illustrates the point. History is littered with the damage done to real human beings through the often nasty campaigns that are waged, by left and right alike, against nominees whose views some group of partisans does not happen to like. That the winners in such battles take such pride in their accomplishments, even throwing victory celebration parties, simply exemplifies the damage that is done even to the souls of the people doing the fighting.

I have written in the past about some of the more outrageous attacks on nominees, including the unpardonable assault on Thurgood Marshall from the right in 1967 and the equally cruel and absurd attack on Robert Bork from the left in 1987.<sup>3</sup> The lies—and there were lies—about Marshall failed. The lies—and there were lies—about Bork succeeded. Lies, exaggeration, and focus-group-tested smears have become depressingly common features of the campaigns against nominees that interest groups want to fight.

All of this ground has of course been covered before, by any number of thoughtful commentators, as well as by quite a few committed partisans out to

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3. See STEPHEN L. CARTER, *THE CONFIRMATION MESS: CLEANING UP THE FEDERAL APPOINTMENTS PROCESS* (1994).

tell war stories.<sup>4</sup> One result of the astonishing amount of metaphorical blood that has been spilled has been a seemingly endless series of thoughtful, but often impractical, suggestions on how what might be called the confirmation mess can be fixed. Although I will, toward the end of my talk, toss out some moderately radical proposals for reform, my principal concern this morning is not with finding structural tools for improving the process. My current concern is finding ways to avoid falling victim to temptation.

More particularly, my concern is about the creatures into which we so willingly transform ourselves when it comes time for a confirmation battle. A leader of one group long active in monitoring federal judicial appointments recently described the group's opposition to a particular recent nominee as intended to send the President a message. If she meant what she said, as I hope she did not, the implication would be that the nominee is now to play the role that Kant told us long ago that humans never should: he is, it seems, a means to an end rather than an end in himself. The possibility that the White House, too, sees the nominee as a means rather than an end (a way of pleasing the right constituency, for instance) only makes matters worse. It is so hard to do right, and so easy to do wrong.

Our misbehavior worries me, not because of the cost to those who might seek judicial office—although that cost is depressing, and often great—but because of the cost to ourselves, or, rather, the particular selves who engage in the public argument over these great contests. That which we are willing to make ourselves helps show what we most fundamentally are. And it is my fear for our fundamental selves—our souls—that motivates my remarks this morning.

Let us begin at the top, with the Supreme Court of the United States. Because of the awesome and practically unreviewable power that we have ceded to the institution, battles over who shall staff it are bound to be bitter and painful. As our national ability to hold serious moral conversations grows weaker, our desire to possess and control the institution on which we rely for public settlement of moral questions grows stronger.<sup>5</sup> The numbers for Supreme Court nominations are quite different. In what I have called in my work “the

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4. Probably the most thoughtful recent contribution comes from a participant in the present symposium. See MICHAEL J. GERHARDT, *THE FEDERAL APPOINTMENTS PROCESS: A CONSTITUTIONAL AND HISTORICAL ANALYSIS* (2000).

5. I focus on the Supreme Court in part because pitched battles over nominations for the President's cabinet are rare. Since World War II, the number of cabinet nominees who have been defeated or withdrawn is approximately half a dozen, and only one of nine, roughly, have failed to achieve a plurality of ninety percent in the Senate. Data through the first Bush Administration may be found in James D. King & James W. Riddleperger, Jr., *Senate Confirmation of Appointments to the Cabinet and Executive Office of the President*, 28 SOC. SCI. J. 189, 192 (1991). The Clinton Administration and the second Bush Administration have not changed the numbers significantly.

modern era"—beginning with Thurgood Marshall, in 1967, the first of the truly bitter confirmation fights after we began the ridiculous practice of requiring the nominee to testify before the Senate—a little more than one nominee in four has been defeated or withdrawn, and nearly half the nominations have been seriously contested.<sup>6</sup> One who cares about damage to the human soul might advance the tentative hypothesis that the only way to avoid these destructive contests is to reduce the power of the Court itself, but one would doubtless be shouted down by . . . well, pretty much everybody. Unfortunately.

So we proceed.

Part of the problem is the peculiar structure in which the process of appointment is imprisoned. The President nominates justices (as he does other federal judges), and the Senate votes yea or nay—that is, the Senate either confirms or fails to confirm. The President acts according to some internal political calculus; his consideration is not ordinarily a matter to which the public has access. The Senate, by contrast, ultimately acts in daylight, questioning the nominee, debating on the floor, and voting. I mention this because the President and his staff might always be saying privately the same sort of things that activists and Senators often say publicly. But the very real likelihood of private conversations in which nominees are treated like means rather than ends does not justify the public conversations in which there is no pretense that nominees are anything else.

The Framers, in their wisdom, built a system that limited the direct (or even the indirect) influence of the people over the nominations. In the 1787 Constitution, lest we forget, neither the President nor the Senate stood for popular election. The state legislatures were the primary movers. As Michael Gerhardt (a participant in this symposium) has shown, the Framers worried more about avoiding bad appointments than ensuring good ones.<sup>7</sup> Perhaps the Framers feared that the involvement of the public would have tilted the nation toward the bad ones.

Now, why do I begin with this peculiar vision?

Because my concern this morning is with us as humans, and with our politics as a politics. I am not worried today about the direction of, say, the constitutional law of the moment. I am relatively indifferent to the identities of those who sit on the Supreme Court, in part because I think the Court is a good

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6. See CARTER, *supra* note 3, at 73-79.

7. See Michael J. Gerhardt, *Toward a Comprehensive Understanding of the Federal Appointments Process*, 21 HARV. J.L. & PUB. POL'Y 467, 474-75 (1998). For an argument that the Framers fully expected battles for control of the Court, largely because of the Senate's function of blockading bad nominations, see James E. Gauch, *The Intended Role of the Senate in Supreme Court Appointments*, 56 U. CHI. L. REV. 337, 353-56 (1989).

deal weaker than it looks.<sup>8</sup> I have no brief for or against any particular individual who sought a seat on the Court and was denied one. I am, at the moment, uninterested in the outcome of a single case.

No, I am interested in us—we humans. Our frailty. Our weakness and tendency to sin. Our desire to place our hands on the levers of power in order to do good as we see it, and to impose that good on large numbers of people. And the way in which our intentions are undermined constantly by the terrible conspiracy of weakness and desire. I am worried about how the confirmation process, as now practiced, makes us worse.

The combination of weakness and desire presents a fertile ground for temptation. The attitude of activists, politicians, and journalists toward the Court might fairly be described as covetous. In our confirmation fights, we wind up seeing people—the personnel of the Court—as means rather than ends. We search for ways to rough up the ones we don't like, and we make a peculiar show of worship toward the ones we do. And, in the meanwhile, the people who care most about who is on the Court are invited into a national deathwatch, waiting, even hoping, that one or more Justices will pass away, at least if the party we like is also in power.

Indeed, one might suggest that to be in love with the Supreme Court of the United States is to be half in love with death. I mean this proposition quite seriously. If you doubt this, then consider, for a moment, what partisans on every side said about the Court during the tumultuous 2000 national election campaign. All history, it seemed, was at stake. Why? Because the new President (so the learned commentators in the media kept insisting) would likely get to appoint two, or perhaps as many as three or four, new Justices. New Justices, new direction, new binding and coercive law: oh, the temptations of power!

Now, let us take a moment and track this beastly comment to its lair. Assuming that we should care so passionately about the Court's personnel (I will confess to being one of the few law professors who does not), I fear that, at such moments, our passions get the better of us. Why, pray, did everyone seem to agree that the next President would have the opportunity (I would prefer to say *responsibility*, but I am a dinosaur on these matters), again I say the *opportunity* to appoint (I would also like to point out that the appointment follows Senate confirmation so it is not the President's duty alone—oh, never mind), again I say, to appoint so many new Justices? What does this mean?

It means the Justices we have are getting old. Let us be frank. It means

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8. I confess it: I continue to believe that there is much wisdom in ALEXANDER BICKEL, *THE LEAST DANGEROUS BRANCH: THE SUPREME COURT AT THE BAR OF POLITICS* (1962). For an overstated but still intriguing argument that the Court, as a practical matter, possesses much less power than we think, see GERALD ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* (1991).

that they are expected to die soon. Or even—I truly believe this—that some among the more passionate partisans on the issues that come before the Court even *hope* that some of them will die soon. If no Justices die—or if none grows too ill to work, for hardly any retire at the height of their powers—why, without illness and death as allies, there are no slots to fill, no future agenda to shape, no way, in short, for the advocates who gear up for appointment battles to influence the outcome of cases through our strange national habit of asking the nominees to tell us, in advance of hearing cases, how they plan to vote; and to require that they answer under oath; and to accuse them of concealment or perhaps disingenuousness when, as they must, they refuse.

To the insiders who tilt over nomination and confirmation of its members, the Supreme Court has become the occasion for an unseemly deathwatch. Which is why I say that to be in love with the Court is to be half in love with death.

## II.

Sixty years ago, at the dawn of the Second World War, the great English writer Clive Staples Lewis published his famous epistolary novel, *The Screwtape Letters*.<sup>9</sup> The book purported to be a series of letters from a senior devil, named Screwtape, to his nephew, Wormwood. Screwtape, a veteran tempter, counseled his nephew in the ways of corrupting a human soul. The letters included not only Screwtape's advice to his nephew but his acerbic responses to Wormwood's constant botching of the project. One consistent problem Wormwood faced was that, as a devil, he could do little more than whisper in the ear of the human whose soul he was trying to win for Hell—the "patient," Screwtape always called him. Another difficulty was the constant countervailing work of "the Enemy," Screwtape's word for God.

Lewis's novel was a commentary on the mores of British society of his day, and he plainly found the nation around him morally flabby and, even then, quite consumed with love of self. He also scattered through his wonderful story dozens of tiny pinpricks directed at institutions, practices, cultural trends that he deplored. At the same time, he had a set of theological points to make, on everything from the proper nature of preaching to how one should choose a church to attend.

Now, I lack Lewis's talent at this sort of storytelling, and yet I think his method might illuminate our subject. Because, unknown to C.S. Lewis, his creation Screwtape turns out to have a cousin named Redtape, who also has a nephew—Muckrake—who is a junior tempter, just learning the ropes. And Muckrake, by a happy coincidence, has recently received his first assignment, the

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9. See C.S. LEWIS, THE SCREWTAPE LETTERS (1943).

corruption of a Senator who must soon exercise his constitutional duty to pass on the fitness of a presidential nominee to the Supreme Court.

As it happens, I have come across a cache of Redtape's letters to his nephew, and I will present them momentarily. First, however, I must echo the caution that C.S. Lewis offers at the beginning of *The Screwtape Letters*: We must all remember that devils lie. Remember that. They lie and they lie and they lie. There is no reason to suppose that the Senator discussed in the letters is quite as pompous or vain as he may seem, or that the generalizations Redtape offers about any group of humans are remotely close to the truth.

But Redtape can be useful to us, for who better to explain the ways that temptation distorts the human soul than a senior devil? So let me, without further preamble, present what I suppose we must call the Redtape Letters.

### III.

#### *The First Letter*<sup>10</sup>

My dear Muckrake:

Your last letter was an absolute treasure. My heart swells with pride to learn that my own grandnephew, so early in his career as a tempter, has been assigned to so important a patient as this Senator you describe. He sounds like just the sort of morsel that tastes best at our infernal banquets: like so many of the modern humans, he wants so keenly to do good, but possesses only the thinnest, most conventional and populist, sense of what the "good" happens to be. Humans nowadays seem so delightfully terrified nowadays by the idea of transcendence. They love to escape the necessity for moral argument by parading their refusal to reach judgments as though it were a virtue. Because of our successful efforts in recent decades to cloud the human ability to reason about right and wrong, most of the wretched little bipeds seem to miss a principal point that even the pagan philosophers of Greek antiquity knew and that the Enemy would like them to remember: in the absence of a keenly developed moral faculty, it is not possible to do good!

Now, I will admit that my own experience, back when I was on active duty rather than down here in Head Office, was principally among the English humans, an odd group of whom it was rarely possible to make much sense. But I

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10. As the reader will discover, Redtape has inserted a handful of footnotes in his letters, but has offered no citations. I have occasionally supplied what I suspect are the missing sources, or, in some cases, corrected his readings of them. Notes that I have added are introduced as "Editor's Note"—in bold type for clarity.

gather from all that I have heard from you and from so many others who have fanned out across the North American continent these past few centuries that the humans of the United States are worthy successors of the English: just as prideful, just as ignorant of their past, just as stubborn when wrong, just as cautious when right, just as weary of offending anyone, even when there is every good reason to give offense. The humans of the United States, I gather, believe themselves to be humans of a superior sort because of the accident of their birth, the accident of their history, the accident of their wealth, the accident of their Constitution, as they call that silly piece of paper which their government ignores as much as possible.

But be wary. The American humans present great dangers. Despite their moral decline, they remain capable of acts of alarming moral courage. They display an unfortunate tendency to respond well to challenges. Often, they bear great risks and make great sacrifices for one another's sake. They are capable of charity and fortitude. Your Senator might well be armed with some of these traits, which will make your task of corruption a little bit harder.

But, even then, the task is not impossible. Consider this Constitution the American humans so revere. In an earlier era, many of them saw the truth, that the puny freedoms they so cherish were divinely given, for purposes that only the Enemy can fully apprehend. Were they aware of the source of their freedoms, they might use them more wisely. Happily, we have managed over the years to cloud their knowledge of this simple and obvious fact. Nowadays, I am reliably informed, even many of their history books, when discussing the other piece of paper they worship, the one they call the Declaration of Independence, omit to mention that the authors of that document were under the impression that all rights came from the Creator. From our point of view down here in Head Office, the less the humans think about the Enemy and his plan for them, the better.

I trouble to mention these facts, my dear nephew, because I would not for a moment want you to get off on the wrong hoof. Your letter worries me a bit because I fear that you are traveling exactly the wrong road. It will never do any good to appeal to the Senator on the ground of something that was laid down as law or practice more than two hundred years ago! Your Senator fancies himself modern, a man of the new century. If you whisper in his ear that he should defend what seem to him absurd positions on the ground that some scribe of the eighteenth century wrote them down in *The Federalist* or one of those other dangerous documents the Enemy keeps moving the humans to create, the Senator will laugh at you, even without knowing you are there. And you know how laughter at our whispers forces us away from our patients, at least for a while.

I quite recognize that it is often possible to tempt a human to do a good deal of evil to his own soul in response to the purported command of some ancient document that few of the humans any longer are able to understand. Quotations lifted from context in order to prove a point are an excellent tool in

this endeavor. But that will not work at all with a fellow as progressive as you describe your Senator to be. You might as well quote Justinian at him or argue in Ugaritic as try to get him to pay attention to the recent past. The American humans hate the past. They think all of life is future. When you understand that single fact, my dear Muckrake, you are well on your way to bringing more of their souls down here for our enjoyment.

My advice, therefore, is to do all you can to keep the attention of your Senator away from the past. Help him to scorn tradition as hidebound, and, at all events, hide from him the possibility that the reason a tradition survives over time is generally that it has something to recommend it. At the same time—here it gets trickier, my dear nephew!—you must urge him away from taking positions that are firm and clear and unblemished. Should your patient stand unflinchingly for some principle, you will face the serious risk that the principle for which he fights will turn out to be one that the Enemy also values. Do not fall into that trap! Remind him that standing on principle may demand a price, and that the price may be his political career.<sup>11</sup> In most cases, that will suffice to draw him away from the straight and narrow path and onto a highway of our choosing.

Accomplishing this is a delicate task, for it requires you, for a period of time, to play on turf that will necessarily be more familiar to the Enemy and his assistants than to Our Father Below and his. As I am sure you learned from Slubgob when you were yet at the Tempters School, we sometimes must use a part of the truth in order to hide the rest of it. The process you have mentioned, the selection of judges for what the humans call a Supreme Court, provides a perfect example.

Down here in Hell, we know what it is to judge, and to be judged. I am not sure the humans ever quite appreciate what it is that they are doing when they use the word. The judgments of Hell are absolute, the rules absolutely inflexible—as one American human, a man named Gilmore, a member of the peculiar guild they call legal scholars accurately predicted, due process is meticulously observed down here<sup>12</sup>—and yet our Master, as you know, is utterly arbitrary.

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11. [Editor's Note: For a discussion of the role of re-election concerns in voting on Supreme Court nominees, see Martin Shapiro, *Interest Groups and Supreme Court Appointments*, 84 Nw. U. L. REV. 935 (1990). See also Gregory A. Caldeira & John R. Wright, *Lobbying for Justice: The Rise of Organized Conflict in the Politics of Federal Judgeships*, in *CONTEMPLATING COURTS* 27, 44 (Lee Epstein ed., 1995). For an optimistic but unpersuasive argument that organized interest groups have played a reduced role since the Bork hearings, see Lauren M. Cohen, *Missing in Action: Interest Groups and Federal Judicial Appointments*, 82 JUDICATURE 119 (1998).]

12. [Editor's Note: One presumes that Redtape is here referring to Grant Gilmore's lectures on *The Ages of American Law*, where the following lines occur:

Law reflects, but in no sense determines, the moral worth of a society. The values of a reasonably just society will reflect themselves in a reasonably just law. The

Isn't that a marvelous combination? Inflexible rules, unappealable judgments, and an arbitrary will! That is what makes our Master's actions so terrifying for the millions of souls the Tempters who preceded you have carried down here over the centuries for our terrible enjoyment.<sup>13</sup>

It is very much to our advantage if the humans believe that all judges, and all judgments, are as arbitrary as ours, for this cynicism draws them away from any possible awareness of the existence of moral truths that are absolute and unwavering. If they even begin to suspect that a moral proposition can be true, they are moving toward the Enemy and out of our clutches. You do not want to lose your patient to so obvious an error. Therefore, whenever your Senator turns his mind to the matter of the courts and their judges, you must be beside him in an instant, whispering in his ear that humans are fallible, that they are influenced by the environment that spawns them, that they approach every question with settled moral and political and ideological views, and that, for humans who are judges, these views will, of necessity, affect the outcome of the cases on which they rule. Help your patient to see that legal interpretation, like every act of human imagination, is no more than the translation of political bias into high-sounding language. Do not allow him to suppose, even for an instant, that any person aspiring to be a judge might be capable of looking at law in any other way. If the Senator begins to imagine judges who are not simply pursuing politics by other means, he will be viewing others with exactly the attitude of charity that you must persuade him to avoid. Never let your Senator forget that there are good guys and bad guys! It matters not a bit which side he prefers, as long as he prefers one and condemns the other! Remember, my dear nephew, it is his immortal soul, not his politics, that concerns us.

(I should interject that I love the human worship of the name of their mortal and fallible institution, for it suggests that there is no final court of judgment the humans must face *after* they die. You would do well to persuade

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better the society, the less law there will be. In Heaven there will be no law, and the lion will lie down with the lamb. The values of an unjust society will reflect themselves in an unjust law. The worse the society, the more law there will be. In Hell there will be nothing but law, and due process will be meticulously observed.

GRANT GILMORE, THE AGES OF AMERICAN LAW 110-11 (1977). That these lines stick in Redtape's mind, and that he seems to read them as a paean to Hell, is strong evidence that devils, like television commentators, entirely lack a sense of irony.]

13. Of course, my dear, dear poppet, appealable judgments can also be terrifying. Indeed, I am assured by Nitpick that this Supreme Court of theirs has held that even after one of the humans has been convicted of a crime, it is perfectly all right to send him back again and again to be re-sentenced for the same offense until the prosecution is happy with the result. [Editor's Note: In this mysterious footnote, Redtape is probably referring to *Monge v. California*, 524 U.S. 721 (1998). It is not possible to tell for certain because, in the manner of devils everywhere, he provides no citation for his claim. If, however, he is indeed referring to *Monge*, he somewhat overstates its far narrower conclusion.]

the Senator to emphasize, as often as possible, that there is no appeal from the rulings of the Supreme Court. We must keep the minds of the humans sharply focused on the material life, or they might begin to reflect on the eternal instead, and thereby escape from us. If their political leaders, for example, speak as though the material life is all that matters, the people in general are likely to relax their vigilant regard for the attainment of the world to come. This is one reason that the current effort among the American humans to sanitize their public life of any hint of the Enemy's existence, an effort pressed for the best and highest motives, should, in the end, redound to our benefit: anything that reduces the reinforcement of the Enemy's idea that humans should not worry overmuch about the material world is of course good for us. But this is all very basic, so let me end my digression.)

The American humans, I have heard over the years, are madly in love with their courts. This has not always been so. Old Trashtalk, who once worked among the Americans, loves to tell the story of how he induced one or two of their local legislatures—how do they keep all this government straight?—to ban any mention of the English common law by their courts.<sup>14</sup> This was not so very long ago, less than two centuries, I seem to recall. But, oh, the mess it caused! The poor human judges, with no man-made law on which to rest their decisions, were forced to make up the rules as they went along. From what you and others have related to me, I gather that their judges have been making up the rules ever since. Perhaps I am misinformed, and the judges are more humble and sober. Still, your information about the way their last presidential election ended I found an especially tasty morsel. I have been trying to find out whether any of our colleagues were active in that effort, but it appears not: the American humans needed no Infernal assistance to botch their election. They did that on their own.

There is a point to my digression. In accord with some unfathomable purpose (at least unfathomable to us), the Enemy, when He created the humans, gifted them with the ability to reason. Over the centuries, these disgusting creatures have developed what they call "democracy," a system in which the humans, by the hundreds or thousands or now, unbelievably, the millions, reason together about what their nation ought to do. They seem to think that being consulted, and then participating in the decision, is an entitlement. Why the Enemy created the humans with such a restlessness I do not know; had our Infernal Master had charge of Creation, the humans would have been designed to follow orders. Now and then we find some humans who are willing to be led in this manner, and we have been able to work a great deal of mischief through them.

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14. [Editor's Note: Although I certainly hope that neither Redtape nor any other devil ever perused any of my books, I discuss this history, and similar efforts to rein in the courts during the nineteenth century, in CARTER, *supra* note 3, at 101-05.]

Humans who do not live in democracies seem to wish they did, which is very bad news for those of us who dwell Below. The good news is that the Americans, whose democracy is the mightiest of all human societies, have a delicious habit of straying from the path of reason. From what you have told me about this Supreme Court of theirs, I gather that the American humans allow this body to determine the nation's course on what the humans think of as "moral" questions. I confess that I am unable to square this predilection with what I have observed of their democratic restlessness.<sup>15</sup> For example, this Court has instructed the humans that they are not permitted, when acting as democratic citizens, to decide when human life begins.<sup>16</sup> Now, I must confess that I, as a seasoned Tempter, am quite certain that the humans, if allowed to choose, would mess it up—the precise moment of the beginning of human life is a secret that the Enemy keeps to himself<sup>17</sup>—but few humans have ever been deterred from making decisions merely because they are likely to make bad ones.

I can make little sense of this, but I suppose that a court that is willing to tell the American humans they are not allowed to select their own President would be just as likely to tell them that they cannot decide the point at which human life begins. But surely you have made at least one mistake in your reports. It seems to me implausible in the extreme that the humans who think the Court was wrong to end their election think the Court was right to tell them they cannot decide when human life begins; or that those who think the first right think the second wrong. Surely there are principled humans among the Americans who see that the same problem arises each time? Please, in the future, do not send in reports that are so poorly informed.

Your affectionate uncle,  
Redtape

#### *The Second Letter*

My dear Muckrake:

I am distressed by your last report. What do you mean when you say that the Senator is resisting your suggestions? Do you mean to imply that there was a flaw in my advice? I assume not, for I have never failed. Thus the flaw, dear

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15. On the other hand, the tendency is very old. Even hundreds of years ago, I am informed by tempters who were present, the American humans saw litigation as a way of pursuing ends they failed to attain through their politics. [Editor's Note: Unfortunately, Redtape seems to be correct. See, for instance, the comments in JON BUTLER, BECOMING AMERICA: THE REVOLUTION BEFORE 1776 93-94 (2000).]

16. [Editor's Note: There can be little doubt that the reference is to *Roe v. Wade*, 410 U.S. 113 (1973).]

17. The Enemy has, however, scattered some clues. See, e.g., *Psalm 139* (King James).

nephew, must have been in the implementation. Let us therefore go over some very basic ground.

You have to remember that humans are weak and flabby creatures. I do not refer to their physical strength, which is in any case not a factor of any moral significance, except when it is the subject of too much emphasis. I refer to their character. They are, according to the prophets of the Enemy, born into sin. Of course the Enemy wants to save them from that condition, but it is our task to keep them mired in it. Over the centuries, humans who have sought power over other humans have been, by and large, morally no better than the humans they want to control. Very often they have been worse, and the result has been many a tasty morsel for our enjoyment.

But these American humans are often clever in these matters. After I received your last letter, I had a talk with old Selfdeal, who retired from active service around two hundred human years ago, after his famous success in making the Americans of the day sufficiently covetous of the land that they were willing to drive off the indigenous people who lived on it. Selfdeal told me that our Infernal Master, fearing some new experiment of the Enemy, sent him along to observe what happened in the city of Philadelphia when the American humans were preparing this Constitution of theirs.

Selfdeal reported some worrisome news. The humans who gathered to draft that horrid document were mostly Calvinists, or, at least, thoughtful men who were educated by the followers of that frightening fellow who helped to rescue the European church when we had so thoroughly corrupted it. This Calvin, you may recall from Tempters' School, believed the world to be helplessly mired in sin. He also believed that humans were so sinful that they could not be trusted with power because they were certain to mess it up. Oh, but he was right about that one! Calvin therefore argued that all forms of authority, spiritual or temporal, should be divided up so that it was harder for the leaders, out of sinfulness, to do harm to others.<sup>18</sup> The authors of this Constitution, Selfdeal explained, took this Calvinist advice to heart, slicing the power of the government into smaller bits that would manage to check and balance each other. A very nice idea, too, if one's greatest fear is the fear of sin.

Ah, but what have they done with their government in the years since, these American humans? From what you and others say, I gather that they have simply given it more and more power! How scrumptious! They have taken a

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18. Scholars dedicated to the Enemy's service have, unfortunately, uncovered this historical fact. One hopes, however, that the discovery has come too late to do them much good. [Editor's Note: Presumably Redtape is referring to the fascinating account of Calvinist influence on the Framers contained in Marci A. Hamilton, *The Calvinist Paradox of Distrust and Hope at the Constitutional Convention*, in *CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT* 293 (Michael W. McConnell et al. eds., 2001).]

government set up along Calvinist lines and turned it into . . . well, into something much like the many other governments in the world we have long been successful in enticing into wrong. They have melded and fused what the Constitution separated, and have treated their government's authority as plenary, extending to any subject that might catch popular fancy, as though the spark of wisdom is found only in the will of the majority.

And yet, from what you say, the American humans also allow their Supreme Court to hold back those majoritarian forces. These Americans are a strange breed. They bravely trumpet their democratic pretensions, and then turn over dramatic amounts of power to this Court of theirs. Now, dear Muckrake, you told me in your earlier letter that this Senator of yours is charged under their Constitution with passing on the fitness of a human for membership on this Court. I think your instinct on this matter exactly right: whenever the next candidate for membership arrives, you will be presented with an extraordinary opportunity to corrupt a human soul.

As the Senator is a member of the human government, I take it that it will not be easy to corrupt him. Forgive me if my information does not seem quite current, but I assume that after all these thousands of years, the humans have finally learned to select as their leaders men and women of extraordinary integrity and wisdom. Your Senator, then, is presumably a paragon of virtue, a man who combines a steadfast devotion to principle with moral courage in his public life, and, in his private life, no doubt practices a continence and faithfulness to his family such as to make every Tempter cringe. Please inform me at once if I am mistaken in this, but I do not see how the American humans could have kept their pre-eminent position on that wretched planet of theirs if their leaders are not as I describe.

I mention all of this because, if the Senator is indeed a paragon, he will not easily be tempted with the ordinary devices we use to corrupt the political class: arrogance, pettiness, greed, lust. I am certain that the leaders of these American humans will be above these trivial pursuits. What, then, are you to do?

Let us begin with the fascinating notion that the Americans elect their Senators. I assume therefore that the Senator will have to run for election again at some point after he casts his vote on the next potential member of this Court of theirs. Consequently, you must get close to him and whisper in his ear that he should consider carefully, in determining his vote, whether it will help or hurt his chances for retaining the office he holds. Because he is, by hypothesis, a man of principle, he will no doubt cast frequent votes that run against the desires of the humans who are his constituents. I understand that what the humans call political scientists have argued that the incentive to be re-elected is the strongest predictor of how their legislators will vote. Surely this is a lie planted by our operatives! A great nation surely cannot remain great if its leaders are slaves to public opinion! Do tell me in your next letter if this can possibly be so; if it is true, it

makes our task easier.

You see, my dear nephew, when the humans act out of principle, they are usually lost to us, for the Enemy has gifted them with a conscience, the tiny moral voice that warns them when they stray too far from the path to the Enemy's domain, or too close to the entrance to our own. For reasons I find inexplicable, the Enemy has instilled this attention to conscience even in the humans who have been beguiled by our propaganda and do not believe that the Enemy exists. Worse, dear Muckrake, the conscience often leads humans to work against the desires of their fellow humans. That is why we spend so much time trying to obscure the humans' ability to hear that voice.

It will do no good to assault the Senator's conscience directly, however, for he presumably has spent many years learning to listen to it; he could not otherwise have risen to so exalted a position in the American government. Thus he will not be amenable to your whispered suggestions that he simply ignore his conscience in the interest of his election. No, you will have to be more subtle. You have to get him to believe that the commands of the conscience might be in conflict, even though you and I of course know, from the Enemy's creation of absolute moral truth, that a conflict is impossible. But you must try nevertheless.

The best way, I think, will be to suggest to the Senator that he consider the opinions of his constituents on this vote, even if they are in conflict with his conscience, because his election is so important to accomplishing the many other great goals he has set forth. In other words, persuade him that, just this once, he ought to ignore his conscience, because, by retaining his seat in their legislature, he can do so much good on other matters. You and I both know that the Enemy decreed long ago that humans lack the power to bring about good through evil means, but relatively few humans, even among those most advanced in the Enemy's service, are quite able to live as adherence to this maxim would require. If you are lucky, you will discover that your patient is not among the few.

Next, my dear nephew, you must persuade the humans that the word "court" actually means precisely the same thing as the word "legislature," with the important distinction that legislators who are placed on a "court" serve for life. You will remember, of course, what havoc we have caused over the centuries with our ability to manipulate language to suit our ends, so that when the humans think they are speaking of their own world they are in fact speaking of ours. Nowadays, the humans help us with this task, especially in that part of the world they call the "United States," which does not seem terribly united to me, not, at least, on matters of language.

You say that some of the humans are sticking to the idea that what a court does and what a legislature does are very different things. Evidently, these humans argue that judges are limited in what they are allowed to do, that their interpretations of the Constitution must fall within the bounds of fidelity to text

and to history.

My dear, dear poppet, surely you remember the lessons you learned at the feet of Slubgob when you were yet a tempter in training! In law, as in morals or religion or anything else, the humans of the current era have made it rather simple for us to deal with those few who continue to call attention to tradition and rules! All you need do is recruit some of your fellow devils to whisper in the ear of other humans that traditions are oppressive, created by wicked white males of the past to preserve unjust power relations by confounding the freedom of individuals to pursue in full equality their own authentic selves or their own choices or their own desires. Mind you, I haven't the foggiest notion what any of this balderdash means, but, by Beelzebub, it is useful! Indeed, persuading the humans that tradition is bad and rules are repressive serves our purposes twice over: first, by causing them to turn their backs on the wisdom of the ages, a wisdom from which they might otherwise learn caution, humility, and self-restraint, all very dangerous characteristics in patients we are hoping to win for Hell; and, second, by encouraging in the humans the illusion that their lives are their own, that they bear no responsibilities toward a larger whole, that they should be free to do as they like, an illusion that separates them further from the Enemy.<sup>19</sup>

But back to this Supreme Court of theirs. I am skeptical of some of the claims of fact you make, so skeptical that I have not even bothered to check any of the records to see if you are right. You expect me to believe that the humans of this United States insist that these judges—what do they call them, you told me? Justices? A clever play on words, that—they insist, you say, that these judges of theirs are to be free from outside influences in making decisions in the cases before them, that they swear a solemn oath to decide only according to law. Very well, I accept that much, for the humans, all through their history, have loved oaths as a way of testing the fidelity of conscience, and we devils have gained many a soul who has said the words, promising in the name of the Enemy to tell the truth, and not believed the words they were reciting. But then you have

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19. One particularly far-seeing human, what those hideous creatures call a theologian, a man named Hauerwas, has described this illusion so popular among the modern humans as the tyranny of the self over the self, or some words to that effect, and warned them that God has a very different idea. I cannot recall the exact reference. We do not read too much of Hauerwas down here in Hell, because his vision of faith is too pure and radical. We prefer the humans who invent faith on the spot and change it as they like: they always make an unusually tasty dish. Fortunately, there are plenty of them around. [Editor's Note: Presumably the Hauerwas to whom Redtape here refers is Stanley. If so, the point is one that Hauerwas has made many times. So, for example, in his book *A Community of Character*, where, in contrast to the liberal ideal of autonomy, Hauerwas offers a reminder that "for Christians our authority is neither in society itself nor in the individual; it is in God." STANLEY HAUERWAS, A COMMUNITY OF CHARACTER: TOWARD A CONSTRUCTIVE CHRISTIAN SOCIAL ETHIC 84 (1981).]

the Infernal hubris to make up some silly story about how the humans then proceed to ask these would-be judges, under their sworn oaths to tell the truth, how they will vote in cases that might come before them? The humans demand that the judges promise in advance that their minds are already made up? I have seen a good deal of inexplicable nonsense in the eons since the Enemy first created these wretched bipeds, but I have never heard of anything so silly as what you describe. Either you are mistaken, in which case you should go and check your facts before sending along another account so inept and self-contradictory, or you are intentionally trying to deceive me, in which case the next scrumptious meal to which I look forward shall be, not a sinful human, but your scheming and incompetent self. I suggest, therefore, that you go back and try again.

Your affectionate uncle,  
Redtape

*The Third Letter*

My dear Muckrake:

Progress at last! You say that your Senator was, for a time, keeping his own counsel. I am sorry you had trouble reading his mind, but, having checked your grades over at the Tempters' School, I am not terribly surprised, for you neglected to cheat on that particular examination and your score therefore reflected your true ability, which is but meager. Still, Slubgob tells me that you always displayed a certain talent for improvisation, which I see is with you still. I am glad you hit on the idea of persuading him to appear on one of those delightful television programs you have described to me, the ones on which their leaders shout at each other while being abused by imbecilic members of the guild of journalists. (Incidentally, I am sorry to say, my dear Muckrake, that I cannot tell from your description just what "television" is. But if the people who appear on it, and the people who view it, behave as you say they do, I must thank our infernal Master, who surely was behind its invention. Still, do spare me the exaggerations: even the American humans would not sit still to watch a program in which individual humans scheme and lie to deny others a monetary prize. Or don't they care about what their children learn of the adult world?)

In any event, down here in Head Office, we have a suspicion that the programs you describe—the "talk shows" I understand they are called—themselves are an invention of some senior Tempter, but nobody seems to know just which. I assure you it wasn't myself, although I rather wish it had been. What a marvelous opportunity the programs present to bring to the surface the worst in human souls!

In the case of your Senator, however, you needed no histrionics. You had but to put him on television and whisper the word "ideology" in his ear at the

right moment, and, I gather, he listened! So you seem to be right back on track. Excellent work! Mind you, I haven't the slightest idea what "ideology" means to these American humans—certainly not what it means to most of the world—but, if what you say about the process is true, your Senator's announcement that the nominee's "ideology" matters is an admission of the point you must get him to accept: that judging is nothing but a form of politics.

Once you have persuaded your Senator of this proposition, the rest of the work will largely be done for you by the bizarre American system you have described, which for some reason relies, like the ancient Rome some of us down here in Hell so fondly recall, on public spectacles, many of which must end in the destruction of the participants. You must remind the Senator that he owes his public a spectacle. I assure you that he will happily oblige.

I understand from your letter that this contest you mentioned in which the aspirants for this Supreme Court tell under oath which way they plan to vote also becomes a program on this television of theirs. As you describe it, the layout is much like all the other game shows: if the player gives the right answer, he gets the prize. If he does not, he is abused by the hosts, who tell him goodbye. (Perhaps I am confusing the confirmation show with a different one? Your letter, my poppet, was none too clear on the details.)

Now, if what you tell me is true—and, if it isn't, you shall suffer for your omissions, I assure you—but, if it is true, then you have nearly persuaded your Senator to join the group demanding of the nominee that he tell the world his views. I am sure that your patient possesses what he supposes are reasons for his inclination. So much the better. We love it when a human is led by reason down the wrong path. I seem to recall that a member of one of the human guilds, the philosophers, I believe they call them, or perhaps the historians, someone named Hilary Putnam, once pointed out that the fact that a value judgment has a reason behind it does not make it rational.<sup>20</sup> At all costs conceal this possibility from your Senator. It is important that he believe that his ability to offer reasons for his positions shows that they are the result of an exercise of his rational faculty.

Now, my dear lad, since your last letter, I have looked into the history of this mysterious process, and I have discovered that the Senators did not begin to make this demand of their nominees until after the Enemy slipped past our efforts and persuaded this Court of theirs to outlaw racial segregation in the schools to which the American humans send their children. Before that case—it had something to do with the color brown, but I do not quite recall the details, for I am not as young as I once was—in any event, before that case, from what I have learned, the American humans, nearly all of them, were of the view that to

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20. [Editor's Note: The reference must be to HILARY PUTNAM, *REASON, TRUTH AND HISTORY* 155 (1981).]

require the aspirant to participate in the spectacle that you have described would violate something called "the separation of powers." Again, I am not sure what the separation of powers is—I cannot find the words anywhere in that horrid Constitution that the American humans so adore—but, evidently, nobody is supposed to violate it.<sup>21</sup> I suppose it is more of the work of the followers of that wretched Calvin.

According to what old Colorline tells me, even after this decision about the color brown, we were able to influence the thoughts of enough of their Senators—there was a whole group we won over for a time, as a matter of fact, something called "Dixiecrats"—anyway, these Dixiecrats evidently exercised enormous power in this Senate of theirs, and they decided to have all of the nominees from that day forward come and answer their questions under oath. A lot of Senators who were not Dixiecrats thought this was a bad idea, but, happily, they did not have the power to stop it.<sup>22</sup>

When the nominees appeared, all the Dixiecrats really asked of them was that they answer questions about what they thought of the decision on brown. I find this part a little confusing. I gather that the Dixiecrats thought all the judges should be against the color brown. Colorline said something to me about preferring the color white, but he is on in years and a little addled, and I am not sure I can trust his information. As always, our written records are a little bit incomplete, but it appears that the Dixiecrats did indeed ask all the judges what they thought of the color brown, and nearly all of the judges refused to answer and were accused of being evasive. The one judge who did answer seems to have come from the working class, because Colorline's notes refer to him as a Potter—anyway, this Potter, who must also have been some sort of Steward, because the written notes refer call him the Potter Steward—when they asked the Potter Steward about brown, he told the Dixiecrats that if they were looking for a segregationist, he wasn't their man.

Few humans are as heroic as the Potter Steward was. Most of them, I gather, would rather not answer questions that would get them into trouble, although a few of them also just lie. And you know how scrumptious we find liars down here!

But, again, I digress. Let me tell you the best part. The best part is this:

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21. [Editor's Note: For an argument that judicial independence should be understood principally as "instrumental" to the greater goal of separation of powers, see Stephen B. Burbank, *The Architecture of Judicial Independence*, 72 S. CAL. L. REV. 315 (1999).]

22. [Editor's Note: Once more I have the worrisome sense that Redtape might after all have glanced at one of my books, because I cover the same ground that he does in this and the next few paragraphs in CARTER, *supra* note 3, at 54-84. My hope, however, is that the reason Redtape is familiar with this history is simply that he has heard it from other Tempters who were there when the heavy labor was being done.]

Without any further action from us down in Hell, the other Senators slowly changed their minds. Within about ten or fifteen years, scarcely an eyeblink as we measure things here, nobody in their Senate seemed to think that the separation of powers was violated. If the structures of the government of the American humans are really as malleable as this, if they can change so fast on issues they previously called fundamental, why, it may be that your path will be easier than I had supposed.

As a matter of fact, I understand from young Softcash, who was a few years ahead of you at the Tempters' School, that the guild of journalists and the guild of legal scholars and even the guild of television talk show hosts (the most powerful of the American guilds, from what I understand) have also conceded the point that the aspirant should come before the nation and promise under oath to cast votes in a particular way.

Ah, the delicious irony of the moment! You of course are too young to remember this Lincoln who was once a President of these American humans. Oh, but he was a creature of the Enemy, and we were not able to stop him from destroying the institution of slavery, so corrupting to master and slave alike, and quoting the Chrisitian Bible as he did it—but let us not be distracted by old and bitter defeats. This Lincoln of theirs, whom the Americans pretend to regard as greatest among their Presidents, was once challenged about one of his nominees to this Court of theirs. Fortunately, modern Americans, with their dim awareness of their own history, have forgotten his answer: "We cannot ask a man what he will do, and if we should, and he should answer us, we should despise him for it."

Do not at any costs allow your Senator, or his staff, access to any book in which those words are written! Or, if he should come across it, remind him at once that Lincoln was a fine man in his way but was wrong about so many things, and this was obviously one. Do not permit him to dwell for an instant on the possibility that so wise a leader as Lincoln might have something of value to teach him!

On the contrary. What we want is for your Senator to go on believing that judging is just politics. You must cloud his vision of the possibility that the role of a judge is to screen out presentiments instead of yielding to them. Do not allow him to fix on matters of judicial temperament or experience, but only on the cases about which his constituents most passionately care. Prevent him from considering the notion that an open mind might, in a judge, be a valuable asset. And, at all events, eliminate from his consciousness the possibility that roles might confer greatness, that the human of strong views might well decide to mute them precisely because of the responsibilities he has taken on as a Justice. Encourage him to join the mob that old Colorline founded after the decision on the color brown, demanding that the aspirants sit before the Senators under oath and promise to vote a particular way.

Already the American humans worry that their young have caught this disease to which they refer as apathy, but which we know for a cynical posture that avoids the necessity for courage by pretending that there is nothing worth being courageous about. The more we can persuade Senators (as well as journalists and others) to treat this Court of theirs in a way that suggests that judging and politics are the same, the more the entire confirmation process will continue to teach a cynicism and contempt for public institutions that plays right into our hands.

Your affectionate uncle,  
Redtape

*The Final Letter*

My dear Muckrake:

As the moment of decision nears, you must be positively atremble, my dear lad, with anticipation! I offer you one piece of advice at such a moment as this: do not mess it up.

Now, that out of the way, let me say that I am particularly taken by what you have said about—what is that strange human term? Oh, yes, “interest groups,” a peculiar term, managing to suggest that there exists somewhere in creation a group without an interest. I gather from what you say that if the humans were to do the sensible thing and simply return to the practice of the old days and stop requiring the nominee to testify, they would not after all be able to remove the threats to their immortal souls that are instinct in the process as it stands. And these interest groups are a part of the reason.

The groups, you tell me, take positions for or against particular people who might become nominees even before they are nominated. Ah, how I love these American humans! From what you say, they are willing to do the hard work of destroying individuals who might not even have any interest in the job, all for the sake of—what did you call it—oh, yes, “the issues.”<sup>23</sup> What you say makes my heart sing, because it seems these American humans, no matter their other strengths, often love issues more than they love their neighbors. The most fundamental command of the Enemy, one that even the atheists among them can recite in their sleep, holds little allure for the American humans when a seat on their precious Court falls open. How could my heart not sing with joy at the

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23. [Editor's Note: Redtape is surely correct in his assertion that the interest groups often go on the offensive against individuals who have not been, and may never be, nominated. But it is useful to bear in mind that the groups are aided in this effort by presidential aides who fecklessly, as well as recklessly, invite these attacks by floating names of possible nominees who have never been asked to serve and may have no interest in serving.]

thought? All these activists, working hard to crush their opponents. Plainly, they believe a great deal is at stake.

What makes the humans such easy prey is their tendency to think that the end will justify the means. That is, I suspect, why they could not help yielding so much authority to their central government: they think there is so much good to be done that they should not be held back by ancient rules and traditions. And it is also the reason they are somehow so comforted by their ability to demonize each other: making of the opponent a monster makes it easier to treat him as inhuman. We who reside in Hell know what demonization really is, and what it really does. The American humans, from what you and others tell me, are yet in the process of learning. As long as the lesson continues to go unheeded, we will be busy harvesting souls.

And here, my sweet nephew, it is fit to issue a warning. You seem, in your last letter, to be suffering from a deplorable loss of concentration. It makes no difference to us down here in Hell what a potential Justice's views actually are. We are not concerned with whether he is—what is the peculiar argot?—ah, pro-choice or pro-life. We are not concerned with whether he is for or against what the humans call capital punishment. We have no interest in his views on gay rights, the Commerce Clause, Internet pornography, gun control, or the separation of church and state. (Yes, my dear, I do keep up with the jargon, even though, at my advanced age—dear me, it sometimes seems I have been around simply forever—I can no longer figure out what much of it means.) The point, Muckrake, is that it does not matter to us here Below how the judge is inclined to rule on any particular issue. What matters to us is how many human souls we can win for our Father in Hell by fostering as big a battle as possible over whether or not he gets the foolish job. So do not waste my time with paeans to the horrors of this court decision or that one. What we want is to develop in—what did you call them? yes, to be sure, the activists—what we want is to develop, in the activists on both sides, the sinful attitudes of pride, of vanity, of a refusal to see their fellow humans as worthy of respect unless they happen to agree on everything the activist considers important. If the human rascals manage, despite your efforts, to hold a thoughtful civil conversation about this judge of yours, they will be growing closer to the Enemy, and you, Muckrake, closer to punishment; if on the other hand you can turn their little disagreement into a full-fledged cultural war, full of absurd and cruel condemnations of the other side, well, you may get a promotion out of this. We might, next time, put you to work on a presidential election campaign.

One last point: I notice that you are unable to restrain your glee at the destruction wrought against the American humans in the recent attacks on their cities, and of the destruction the American humans have wrought in return elsewhere in the world. I must remind you, as I have reminded generations of Tempters before you, that death, destruction, maiming, and horror do us very

little good down here in Hell, unless we can win souls for our Master as a result. From what you say, one unfortunate result of these attacks has been that the American humans have been engaging in extraordinary acts of heroism, kindness, and sacrifice. What advantage, pray, do we gain from this? It is our job to make people worse, not better. And I have heard from Big-Lie, who really seems quite frightened these days, that an increasing number of the American humans are returning to their places of worship, or even visiting them for the first time. They are, it seems, taking the Enemy and all He stands for seriously! Do you see my point, nephew? Devastation is wreaked on them, and they turn their hearts toward the Enemy. The demon who is in charge of these matters (yes, I know who it is, but I cannot share the information with you, an apprentice Tempter) seems to have miscalculated the spirit of these American humans quite badly. I fear that in the wake of what should have been a disaster for the Americans, the Enemy is winning the battle for their souls.

Your affectionate uncle,  
Redtape

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Here the letters end. But remember what I said at the start, borrowing from Lewis: devils lie.

So what Redtape said of the Senator probably is largely untrue, and, to the extent that it is true, it may apply to Presidents as much as to Senators. But that, of course, is not the point of the story. Redtape's instruction to his nephew is aimed not at the Court, or at the nominees, or, really, at members of the government; it is aimed at us, at We the People.

At the end of *The Screwtape Letters*, C.S. Lewis tells us what finally happened to the patient—was he saved or condemned?—and what finally happened to Wormwood, Screwtape's nephew—was he punished or promoted? I will not spoil the surprise for those of you who have not read Lewis's wonderful book by telling you how it ends.

I also cannot tell you how the career of Muckrake ends. The next step in his career as a tempter is yet to be written. It will not be written by me. It will not be written by the President or by the Senate. It will be written by us, by the same We the People I mentioned a moment ago. If we go on with the process as it is, treating the nominees as means rather than ends, engaging in our unseemly deathwatch, demonizing the other side, well, then, Muckrake wins his promotion. If, on the other hand, we trade in our cynicism and receive in return a healthy respect for our institutions; if we trade in enmity toward those with whom we disagree for charity; if we trade in our love for the Court and its power for a love for our fellow humans; well, then, we can make mock of Muckrake's efforts and

send him spinning back down below to face the judgment of his Master.

The story is over. The choice is ours.