



# WILL LAW SURVIVE THE 1960S?

*J. Harvie Wilkinson III*

**L**ONG AFTER THE 1960S, I had the good fortune to become a federal judge. Litigation is something that is never in short supply, and in most cases, the law seems to work pretty well. But America's legal culture is also terribly divided – over abortion, affirmative action, capital punishment, church-state relations, executive authority and war powers, and many other things.

To a great extent, these divisions in the law reflect nothing more than divisions within our country at large. It has always been so. But there is an ominous edge to the current divide. Liberals and conservatives want their view of religious practice or abortion or gay rights to be the law, whatever the cost. And if they can nail down their view of things in our Constitution, so much the better.

Ideology über alles was the mantra of the Sixties. But it has done the law incalculable harm. The idea that the end justifies the means is the very opposite of what the law was meant to be. Yet in the 1960s, the end became everything, and law became, like politics or demonstrations or even riots, just another means of getting to wherever it is one wants to go. When that happens, law lacks its

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own integrity. There is no rule of law left, only the propensities and impulses of men.

Racial justice was a noble end, and ending the Vietnam war seemed almost as urgent by the end of the decade. Law had brought the civil rights struggle a long way, but increasingly, as the Sixties progressed, violence began to supplant it. So we reaped the whirlwind of chaotic campuses, ravaged cities, and assassinated leaders, all because people felt their own view of what was right supplanted their obligation to respect the general view reflected in the law.

Could this ever happen again? Will the subtler disrespect for law sown by the 1960s break into the open contempt likewise sanctioned by the decade? People assure me that the 1960s will never be repeated. But I wonder. The example of the Sixties still remains. Social volcanoes go quiet for a time, only to erupt when crisis conditions come again. We are a changed country because of the Sixties, more prone to larval protest and destruction than before. There will be a next time, and I worry the law will not stand in its way. Much of its back was broken long ago.



“The Law.” The Dean spoke with a hush, as if in the presence of a deity. “I have,” he confided, “an unabashed, undiluted love of The Law.”

It was September, 1967 when we arrived at the University of Virginia Law School. The Dean, along in years, had become a legend. He was one of those who had communed with The Law; no one doubted that. The Law had cloaked its servant in all its pomp and majesty, and now he spoke atop the mountain of authority.

The Law had imposed its marvelous order on the chaos of human affairs, he declared. It had replaced primitive anxieties with basic securities. Criminal law secured man’s person. Property law secured his possessions. Contract law secured his expectations. Tort law secured him from unexpected misfortune. Family law secured his hearth. Estate law secured his inheritance. Tax law secured the blessings of government. The secure man, the Dean intoned, was less tempted to revert to the savage state.

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Even that, remarkably, failed to do justice to the power of The Law. “Laws are the great river banks between which society flows,” the Dean continued. Progress and achievement owed their being to the influence of The Law. “Architects of a stable society,” he concluded, “that’s what lawyers are and will ever be.”

It didn’t dawn on us at first that we were about to study law in one of the most lawless decades ever. You don’t often think of the big picture when you’re struggling to survive. If the Sixties posed one giant question to authority, it was not the place of fledgling law students to question the Dean’s view. Besides, I couldn’t figure law school out. Classes ran on the currency of socratic method: the Dean too often answered questions with another question; one obscure answer from the podium outweighed a dozen clear ones. In grateful appreciation of this approach, students labeled one class “mystery hour,” and another twelve o’clock session “darkness at noon.”

“What is it, young man, A or B?” the professor asked.

“A”, I said confidently.

“No!”

“Well then, B.”

“No!”

My classmates were smiling. Not A, not B. Where for heaven’s sake was C? The answer must be somewhere, and I wanted to take a sledgehammer and slam down hard on its head.

“Well . . .,” said the professor. Nothing was so lethal in this profession as silence.

We proceeded through classes much as our predecessors. The venerable canons of the common law were remote from the passions roiling the world outside. In Property class, we learned of bailments and bona fide purchasers, in Contracts of offer, acceptance, and consideration – rote lessons of The Law since the days of Blackstone. Lawyers delighted in categories; we learned what *alternate legal contingent remainders in fee simple* were and *express promissory dependent conditions precedent* (the latter being law’s answer to the structure of a protein molecule).

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As in college, our formal education seemed detached from contemporary conflict. Oh sure, we law students studied conflict aplenty, but it was mostly of the private, trivial sort. The word “conflict” in college meant momentous arguments over civil rights and Vietnam. The endless personal quarrels we read about in law school seemed almost demeaning to the student minds the Sixties nurtured. Why law school went so far as to reduce people and principles alike to algebraic symbols (O sues A for Blackacre). Someone was always accusing: of breaching his contract, taking his property, trampling his rights. In a Domestic Relations course, we learned how husband and wife could not live together; in Torts, how people couldn’t move without injuring one another; in Trusts, how fiduciaries breached duties toward others; in Contracts, how apparent meetings of minds erupted ever in misunderstandings.

All these endless private squabbles seemed petty and selfish and ever so bourgeois. The whole point of the Sixties was to move beyond such things. Had law no vision of this better day? Had law nothing to do with human harmonies? Cases exposed mainly prey and predator, the whole lush habitat of the human jungle. Did hospitals desensitize doctors to death? Then courtrooms hardened lawyers to those imaginative ways people gouge each other while alive.

I might have succumbed to that view of things, but the Dean would not hear of it. It was in the resolution of conflict that The Law was most ennobling. The human beast, he said, would either take up his club or seek satisfaction in the courtroom. “Which, my dear fellow, would you choose?” The Law, he told me, had verbalized aggression. By reducing conflict to mere words, The Law had tamed and civilized it. It was but a short step from words to reason and then from reason to understanding. The grand thing about the adversary system, he reminded, “was having to listen to your adversary’s case.”

There was one thing on which the Dean and the lowliest first-year law student were agreed. There was to be law school and nothing else. Devotion was the Dean’s thing – you knew just by looking at him that he had given wholly of himself. So too my previous life was to be beside the point. At college, I’d outgrown homework,

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but now again I was a schoolboy, demeaned by daily preparations. Law school contracted thought, and like some angry accordionist, squeezed out all the air. Everything had to be reunderstood. There was layman's time, and then there was legal time, where "the day of the act, event, or default from which the designated period of time begins to run shall not be included." It was all very precise. I thought in square corners and I walked in straight lines. In self defense, I turned into a syllogism.

But it wasn't only devotion to the law that sealed so many law students off from the Sixties. Social consciousness was less important than the \$15,000 salary offered first-year associates by Cravath, Swaine and Moore. That salary was the talk of the school. It conveyed the stirring message of how important we were. It also carried the weight of human bondage. Of the myopia of our labor there would be no doubt. New York paid the highest salaries, and New York did the best S-1 forms. We were to be schooled in the details of draftsmanship. At the price, who could protest?

The Sixties insisted we not snuff out our better selves: The recruiters for these corporate firms seemed a suffocating insult to all that we believed. For a time, I was tempted to quit and go to graduate school in history. Law would squint our souls, but history, with its Napoleons and Churchills, its Middle Ages and its Age of Pericles, must abound in scope and vision. The great historians created character, atmosphere, narrative tension; they had the novelist's gifts, anchored by truth. The historian's joy was to soar back before his birthdate, to sit in Thomas Jefferson's parlor, to endure Lincoln's great siege. Exploration ... that was freedom, while law school was a ball and chain.

The Dean's eyes twinkled just as it seemed the moment could not, for the life of it, become more earnest. He was a disconcerting man, an *eminence grise* who could quote Yogi Berra. His demeanor left no doubts. One looked at him and supposed law school the only place to be, at least for someone with a nickel's worth of sense. Why go to graduate school? The Law, he reminded, was the highest form of history.

The Law matured. The Law adapted. The Law, declared the Dean, had the marvelous invention known as precedent which ensured that history was constantly revised, even as it was continually consulted. Precedent stood as the great guardian against radical change; The Law had mastered the art of evolution. Old cases, said the Dean, *Kingston v. Preston*, *Brown v. Kendall*, *Swift v. Tyson*, *Dred Scott*, *Plessy v. Ferguson*, ruled as long, and as regrettably, as any Napoleon. Just as The Law seemed buried by its past, there sprung within the system of precedent the seeds of peaceful regeneration. Precedent, he said, embodied George Bernard Shaw's advice to his generation: "We must not stay as we are, do always what was done last time, or we shall stick in the mud. Yet, neither must we undertake a new world as catastrophic utopians and wreck our civilization in our hurry to mend it."

His eyes took on their distant look. The Dean was living a vision; I was lucky to get my daily assignments done. The Law might indeed be great, but what did one little law student matter? My grasp of things kept slipping; causation, jurisdiction, reliance, estoppel all unconnected in my head. When I said ridiculous things, my parents used to tell me of the boy who, with every silly utterance, kept shrinking in size until one day he got lost for good under the sofa. The Law made a first-year law student feel just that small.

So, if not history, then politics. That, not law, might be my calling. How could law compare with the fanfare of a convention, the rituals of the Senate, the pace and tempo of a tough campaign? What mere lawyer debated war and peace or the spending of unfathomable sums? Law cloistered people in the small circle of their clients; politics launched them large into the world.

Besides, studying law was sedentary. Politics was motion. Motion was getting somewhere. Sitting down was going nowhere. Or so it felt. I looked at campaign itineraries – nine stops a day. In law school all you did was move from class to class.

Two summers before law school, I had chauffeured Willis Robertson, United States Senator from Virginia, in a hotly contested Democratic primary. Robertson was real old-time; he salted his rhetoric with quotations from Jonathan Edwards, Shakespeare,

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and the Bible; he warned of Ahab and his vineyard, spoke of armageddons and of Gabriel's horn. On the stump he could be fearsome, peering down on audiences from under thick, bushy brows. All the July days he stumped, at catfish fries and barbecues, and he spoke hard and pumped his fists, and shook hands 'til even his strong grip was sore. What had law to compare to his quest, to the delicious exhaustion of one last voter won?

In the middle of law school, I left to run for Congress. I won the Republican nomination and faced a conservative incumbent Democrat, David Satterfield, in the general election. The campaign was something of a lark. I had little chance of winning, but blasting an opponent's record sure beat being in law school. My strategy was to sweep the black and labor vote, which was disenchanted with Satterfield, and capture enough of the increasingly Republican suburbs for a victory. I was supposed to deliver to the Lee-Davis Country Club on Saturday and to African-American church goers on Sunday a consistent, and equally inspiring, message.

There was yet another problem. I looked younger than my twenty-five years. The campaign managers and consultants were afraid to use my picture. So they resorted to radio ads with deep, husky voice-overs, and to etchings, not photographs. When a picture absolutely had to be used, I was surrounded by senior citizens. My opponent had a slogan to capitalize on that: "Send Satterfield back to Congress and Wilkinson back to school." The voters generously took up that suggestion.

I had not, somehow, been disheartened by this defeat, but so exhilarated by the prospect of holding public office that I prepared to run the next year for the state legislature. As a matter of courtesy, I stopped to inform the Dean that I was about to abandon my legal education. I was prepared for him to try to talk me out of it, and I was even more determined not to let him do so.

Cheer up, he said. If it was glamour that I wanted, The Law had a glamour all its own. Most people were well diverted from remaking the world to making a living. And The Law, he was wont to say, was not only a good way to make a living but a grand way to make a life. He would never, it seemed, place his dignity at the sufferance

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of politics. It was as if politics made men supplicants; The Law alone made them statesmen. Politics brewed passions; The Law treasured reason.

The glory of the judicial process, he believed, was that it did not rush to judgment. And so, as seemed fitting, the Dean was made a judge. It was said, shortly after his appointment to the World Court, that a neighbor met him at the gate of his Rugby Road home and inquired, "How am I supposed to address you now?" And the Dean had replied, inscrutably, "Holiness, I suppose will do."

There comes a time, I think, when one simply stops resisting. My campaign had been a bust, and everyone but me had known it. The Dean had put it gently – that he wasn't cut out for politics either. He offered not a consolation prize but what was dearer to him than life: The Law. The Law was like a foreign language; one day you stop fighting it and start thinking it. Before kissing my date, I pondered the full import of offensive battery and dignitary tort. The day a car almost hit me, I went home and wrote a holographic will. I was getting fancy with my tax returns. I watched myself on the verge of contract with the auto mechanic and the soda jerk. We were being trained "to think like lawyers" – that was the mystic phrase – which meant, I suppose, investing life's more inconsequential moments with legal significance:

"I see you're telling me to drive 55 mph.  
Why not 65? I'm in a bit of a hurry."

"Oh, come," says the speed limit.  
"You can answer that. Because there's  
too much carnage at 65."

"If you're worried about that, why don't  
you make me drive 50? If you said 50,  
you'd save more lives."

"Maybe, but people wouldn't go as  
fast as they want to. And if I said 50,  
they wouldn't respect me anyway."

"Not respect you? You're the law!"



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“That’s not enough these days. And besides, being a law doesn’t give me the right to be unreasonable.”

“The people that made you thought you were reasonable.”

“It’s what the people who obey think that counts these days. And I’m sensitive about stepping on their rights.”

“Stepping on their rights? How do you do that?”

“By not letting them drive as fast as they want to.”

“Wait a minute. When did they get that right?”

“Just lately, it seems. If they want to drive faster than 55, perhaps they should be able to.”

“Cut that out. If you’re a law, then act like one. I don’t want speed limits like you pussyfooting around the highways. I got my rights too, you know. Like not being in a crash. If I’m to heed you, make damn sure that green Chevy does also.”

“Well still I think I should be changed. Instead of saying ‘Maximum Safe Speed 55 mph’ I’d like to say ‘Please drive 55 mph.’ Then I wouldn’t hurt so many feelings.”

“Hurt feelings! A good law can’t be friends with everybody. Someone’s going to hate you.”

“Yea, they used to. Hated or loved, but never ignored.”

“Oh quit feeling sorry for yourself.”

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“Well I’ve a right to. I’m not doing the job. All us laws feel in the dumps these days. Me, I haven’t kept the highways safe. People die under my eyes. And then I get up the gumption to yell, ‘Drive 55, for your own sake,’ but they ignore me, especially you young people. And if I haven’t kept people safe, I haven’t gotten them where they want to go, either. They’re angry at me now for tie-ups. What’s a law to do?”

Law indeed was on the run. We read where some 200 black students from Florida A&M marched to protest the arrest of their schoolmates and segregation in the county jail. Asked by the sheriff to leave the premises, many refused, singing freedom songs and clapping, blocking the jail’s entrance and driveway, until they were arrested too. As we pondered the most venerable of laws, that of trespass, put at the disposal of the most corrupt of practices, that of segregation, it seemed that my friend, the speed limit, had been right: law was sorely beset.

What was the spirit of the Sixties, the lawmaker’s authority or the lawbreaker’s arrest? What mattered, the closing statements in the courtroom or the provocation in the street? Fire became the new mode of expression. Flags in flame, to protest the war. Draft cards burned on courthouse steps. Speakers shouted down, offices overrun, police pelted, judges insulted – was it because law had cast its lot with Lyndon Baines Johnson, become high executioner of the War, henchman for the draft and Army, not a beacon of freedom, but authority’s brute boot?

I remember one summer driving through the countryside of eastern North Carolina. The only folks not farming seemed to work in tractor dealerships on the edge of town. Suddenly, right in the middle of a tobacco field, standing guard like a scarecrow, I saw an “Impeach Earl Warren” sign. It had been bleached by the sun, but it was clear the farmer was not shrinking from it, and I supposed the sign was repainted with each planting. Tobacco farming was hard work, and it struck me that this was the one message the farmer

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wanted in the field, hour after hour, to console him: Impeach Earl Warren. I wanted to laugh, but I kept asking: Why did this terrible sign mean so much? Because, of course, the farmer believed himself God-fearing, segregationist, and a patriot, and there was Earl Warren, tearing down his world.

No wonder my friend the speed-limit felt so helpless. All laws did. What mere law could unite the anti-war activist and the anti-Warren farmer? Somehow the same law was supposed to govern both, yet the activist identified courts with repression, the farmer with a revolution. So both had taken to their posters, and law got cursed from all sides.

With law, as in so many areas, the Sixties seemed to push an all-or-nothing choice: total allegiance or total contempt. I wondered what the Dean would say about all this. He was, I knew, the reason I remained in school at a time when I was tempted by a thousand other things. Yet his influence was not that of a friend, or even a counselor, for I mostly saw him walking corridors, and mainly heard him from a platform. At the law school, he was less talked to than about; he instructed by example from afar. Cushing said once that “no bubble is so iridescent or floats longer than that blown by the successful teacher,” when the pupil imitates the mentor, not so much in action or in manner, but in the intimacy of thought. So I found myself thinking that The Law would always show the Middle Way. The Court, under Earl Warren, opened the arteries of change, broadened the franchise, equalized access to schools and facilities, gave the common man the First Amendment, and donated to a society in turmoil its lasting gift of peaceful change.

Whether the Dean would have put it that way I doubted, but the sentiment was surely his. He would make of The Law a rock to cling to, more than that, a veritable mountain of stability and justice thrusting high above the turmoil of the Sixties, towering over the encircling din.

Our great hope was that Vietnam would be settled not by arms but by diplomacy. It was as far as I could see. The Dean hoped all that and more. Even diplomacy, he told us once, was “episodic.” Diplomatic solutions were inherently “ad hoc,” abating momentary

tensions without the predictability needed for an ordered world. The world might lessen tensions only by absorbing them within a legal system. The practical difficulties to international law were prodigious, and he recounted all of them. “But . . .,” he said, “world peace might one day be possible, with a mighty contribution from The Law.”

Nothing is so poignant as a man who keeps faith as his world crashes around him. The Dean’s world crashed in the 1960s, and his beloved law became a bloodied anachronism. The Law might regulate the formation of contracts, but it had nothing to say to the smoldering cities. To watch the rioters in Watts was to sense the law’s impotence. The Law had not only failed to check black rage; the “motherfucking” cops ignited it. Those rocks and bottles weren’t just heaved at passing motorists; they were aimed straight at The Law. Didn’t the Dean know that the Watts riots broke out four days after the Voting Rights Act took effect? Law had become irrelevant to life on the street, and the tales that had served the Dean in such good stead for so many student generations – legendary fables of peppercorns and the like – now seemed faded in the face of the urban fires.

What the Dean saw as an object of reverence became an agent of oppression. Bull Connor placed The Law at the service of brutality; George Wallace used The Law of his state to defy the dictates of a national constitution. Law itself thus sank in esteem. Arrest became a badge of honor – the hallowed moments of the decade were those spent by King in a Birmingham jail. Soon enough all restraint would be removed. “It is a miracle,” warned Malcolm X, “that twenty-two million black people have not risen up against their oppressors – in which they would have been justified by all moral criteria . . . .” Thus exonerated, the mobs took to the streets exhilarated. Slogans – Black Power, Burn, Baby, Burn – served as the fuse. The Dean’s world was gone with the flames and the wind.

Even on the Dean’s own turf, the campus, The Law came into disrepute. Law was, after all, a system of rules, but the Sixties believed rules existed to be broken. As events in Birmingham energized the civil rights movement, events in Vietnam energized the

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campus. Sit-ins at soda fountains inspired sit-ins at administration buildings. The Law seemed on the outs; disobedience seemed in.

As the war's toll mounted, so did campus violence. "Professors learned to live with bomb threats," wrote Garry Wills. "A vestige of student politeness made one demonstrator ask a friend of mine to leave his office in an administration building so they could set it on fire." If the cities had been moved by the hopelessness of poverty, the students were tormented by the aimlessness of affluence. So a counterculture of bearded rebels and beaded drifters soon emerged. The Weathermen wanted to stone The Law; the Yippies simply to urinate upon it. Yippies demanded legalization of marijuana, the abolition of money, and legislation permitting people to "fuck all the time, anytime, whomever they want ... ." What there was left of The Law became reserved for ridicule.

The irony was that the 1960s witnessed real triumphs of law, most notably the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the *Miranda* and reapportionment decisions of the Warren Court itself. Side by side with all its lawlessness, the Sixties showcased law's potential for bringing peaceful change. The tragedy was that all the progressive legislation and enlightened Court decisions seemed to make no difference. The riots and assassinations and disdain for rights of others only escalated on both right and left. And those who led change early in the decade were themselves overwhelmed by lawlessness by the end.

Events seemed even to engulf Earl Warren. "On the morning of March 31, 1966," he wrote, "David Paul O'Brien and three companions burned their Selective Service registration certificates on the steps of the South Boston Courthouse. A sizable crowd, including several agents of the Federal Bureau of Investigation, witnessed the event. Immediately after the burning, members of the crowd began attacking O'Brien and his companions ... O'Brien stated to FBI agents that he had burned his registration certificate because of his beliefs, knowing that he was violating federal law." That the Supreme Court eventually upheld the convictions amounted to no more than a judicial finger in the dike. What was protest to some

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was treason to others, and the passions were leaving The Law in the dust.

None of this, of course, was helping me to prepare for final exams. Law school exams were jumbo trembles, the entire year's grade riding on a three-hour test in June. There must be a medical term for examination nightmares:

“with clock tick, ticking on the wall,  
Cannot recall, cannot recall.”

The only way to prepare was to pretend you did not live. Daily indulgences such as shaving and the sports section were shoved aside. The course outline accompanied me to the bathroom. I couldn't decide whether I wanted the exams to come or not. They were rumored not to be exercises in regurgitation, but inductions into the rigors of analysis. No, I definitely did *not* want them to come. Anticipation was a horror exceeded only by the event.

Well, of course, they came. All except Contracts. It was last, and the hardest to make myself study for. So I got my study food, a huge box of Sugar Corn Pops, snatched some FM station, and settled down for the night. I was reviewing the area of minors' contracts – whether one should hold 16-year-olds to bad bargains where the adult party had negotiated in good faith – and I was getting ever so slightly interested when suddenly the radio turned grave.

There it was again. The lethal footage run and rerun (I had now turned on the television), the pained horror of bystanders, the practiced cadence of the media, the instant celebrity of the psychopath, the instant manufacture of remembrances, the reshuffle of the political deck (the decent interval for TV deaths was twenty minutes), assassinations had usurped conventions as the political rituals of our times.

I rushed to Sherry's apartment. Sherry and I had lately been at odds. But tonight there was a truce; I offered her my Sugar Pops. I could not believe what my TV was saying. Could I listen to hers? Her set was different, and maybe mine had lied.

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I always had excuses to dismiss Robert Kennedy. Cocksure and insecure. To prove himself, he flattened everyone he knew. Not like Jack. Robert's vision was something he smacked into. When he visited the ghetto and the Delta, I was wary. When he travelled to the reservations, I was cool. When he called on migratory labor, I was indifferent. When he spoke of the coal mines, I had been unmoved. Then I faced the draft and Robert Kennedy opposed The War, and I said here at last was a man who grew.

Even now, on the night of his death, still I wondered what I mourned. Was it for the man and his family? For the country and its loss? For the dispossessed without a champion? Or for something far more selfish – had I loved only his last cause?

It was a long night. One where hope broke faith, where death stalked dreams anew. A night beyond comfort, where Sherry was a perfect host, because she felt free to speak aloud dark moods. There was a scene from the Nebraska primary where a breeze blew Kennedy's speech into the crowd, and he had yelled, "Give me that back quickly. That's my farm program." On and on in self-deprecating humor, the Robert Kennedy nobody knew. But Sherry said now that she knew why he was shot, because these were the days when death stalked laughter too.

It is supposed to be a relief, amidst death, to have things that one must do. So I stared at the Contracts book before me. Its pages turned slowly in the best of times. Now they froze, and I thought I had lost the ability to read, or, rather, to read anything so trifling as a contract again. All it implied – its promised land of stability and predictability – was unworthy of belief that evening, or any evening when a bullet decided to reroute history anew.

I got no sleep that night. At first, I thought, surely the school would postpone this thing. But the examination took no cognizance of grogginess. It featured the most gruesome business problem, one probing the penumbras of the Uniform Commercial Code. Somehow I managed to hand something in. It was horrible, but maybe the papers would be uniformly horrible, and we'd all stagger through. It was, I thought, fitting that my last exam that year was

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Contracts; the thing that would not cease for death was commerce; funerals were fertile ground for bargains too.

I left law school in low spirits as if, suddenly, a hoax had been revealed. The Law could not bring back Robert Kennedy. It could avenge, but it could not restore or heal. It could assess damages, it could impose sentences, like any sovereign, it could whip and flail. The Law was left to salvage what it could for refugees from mishap, but it had no balm for the stricken, no solace, it stood impotent in the end, the rule of Law in its full majestic futility, the emperor with no clothes.

I had seen the Dean that day walking down the law school steps as he always did. Behind him the columns and the two great urns. Above him the motto:

THAT THOSE ALONE MAY BE SERVANTS OF  
THE LAW WHO LABOR WITH LEARNING,  
COURAGE AND DEVOTION TO PRESERVE  
LIBERTY AND PROMOTE JUSTICE.

The death of last evening would have saddened him, but not shaken him. That was the difference. I watched him now from a widening distance. What would it take to make him understand? The faith he lived had become a thing unto itself, impervious even to the evidence his profession craved.

Like the Dean, Robert Kennedy believed in the system. On race, he believed in the capacity of The Law, that stateways could change folkways. As Attorney General, he was The Law against those who drew their lines of defiance in the dust. On Vietnam, he represented peace through peaceful change, through an election. He said of the radical students what he said of the reactionary segregationists: "If we let this hatred and emotion control our lives, we're lost." As much as any man, Robert Kennedy represented the shining promise of The Law, and couldn't the Dean see that with his death something of The Law died too.

In the end, chaos seemed to consume everyone and everything. Not even assassination could bring to the Sixties a suitable period of peace and mourning. The Chicago police and rampaging demonstra-



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tors at the Democratic convention in 1968 gave vent to violent hatreds, but not a thought to the rule of law or vision of America to which Robert Kennedy gave his life.

It had started so differently. The non-violent civil disobedience of the early civil rights movement had been more than benign – it was uplifting. But the decade made early on the grave miscalculation that lawbreaking could be limited to good causes. It seemed not to recognize, until too late, what a mindless monster it had sired. Beyond its mayhem lay a sort of stalking madness, a prowling indulgence in the commission of crimes without compunction. In loosening the constraints of law, the decade brought upon itself a final, haunting question: were those who slew the true heroes of the Sixties persons whom in some deranged way its lawless spirit had launched forth.

More and more, I came to suspect the answer might be yes. Not that we know why the leaders of that age were killed. But by the end of the Sixties, there would be no end to slaughter which in the lawbreaker's brain seemed just. The jihadists of 9-11 had this at least in common with the worst moments of the decade: a belief that contempt for the civilizing force of law could only hasten the dawn of one's own right and perfect day.

The Sixties taught us that no society is forever free of upheaval, any more than a body is forever free of disease. Whether upheaval comes next from climate change or pandemic or nuclear terror, or from some form unforeseen, the Sixties teaches it will come. The Law can play its part in moderating chaos, but not in a nation where mutual distrust overwhelms any sense of shared and common enterprise. America lacked that shared belief and purpose in the Sixties, and this ever so divided nation sadly lacks them once again today.

I shall always believe the Dean deserves better from us, now and then. In the end, the Sixties shattered his grand vision of The Law. It reduced to rubble the dreams of a noble man. The Dean alone seemed not to recognize it. His dress was as dignified, his eyes as steady, his hair as much in place, his gait as regular as ever. He would look no different on this, the last day of class. Was it reassur-

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ance or unconcern? He was such a puzzle. Why would someone place hope in reason that was no match for madness, in order that was at the mercy of chaos, in light that shone only for priests in the darkness of the tomb? Why won't he answer? Answer questions with questions. Why would he live – how could we live – without faith that Law can and will prevail?

