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EPILOGUE

Moralizing on the human predicament is a self-indulgence which traditionally accompanies one's retirement. And so, as retiring editors of Volume 49, we cannot resist offering our reflections on the national malaise of the past year—fully aware as we are that our exercise will be more satisfying to ourselves than instructive to our readers.

Now that the strange morality play of Watergate has concluded, and a new President sits in the White House, what lessons should we—new lawyers, beginning the practice of our profession—draw from the drama we have witnessed? Foremost, perhaps, is that our civilization happily retains a measure of vitality. It was said of Rome that, even while the state remained militarily potent:¹

The greatest political events passed over the heads of the people like black or golden clouds. Later it was to watch even the ruin of the Empire and the coming of the barbarians with indifference. It was a worn-out body whose fibres no longer reacted to any stimulus.

That Americans still are capable of outrage, still avidly debate the issues of the day, demonstrates that the fibers of our civilization remain healthy. But the shocks which have buffeted us in the decade since President Kennedy's assassination undoubtedly have exerted a dulling impact on our ability to recognize and respond to moral problems. Rest restores overtaxed faculties; order in society, promoted by general respect for the stabilizing influence of the law, may be therefore of greater relative importance in the immediate future than in less anxious periods of our history. The denouement of Watergate has itself induced respect for the law; politicians, professors, students, the former silent majority—all have agreed before television cameras that ours is a government of laws, laws equally applicable to all.

Respect for "law and order" is not an ultimate goal, however, but a means to desired social and individual objectives. John Locke, our Constitution's spiritual grandfather, himself observed that securing the public good may outweigh the value of a blind obedience to law:²

1. F. LOT, *THE END OF THE ANCIENT WORLD AND THE BEGINNINGS OF THE MIDDLE AGES* 181 (Harper paperback ed. 1961).

2. J. LOCKE, *THE SECOND TREATISE OF GOVERNMENT* § 159 (1690).

Many things there are which the law can by no means provide for; and those must necessarily be left to the discretion of him that has the executive power in his hands to be ordered by him as the public good and advantage shall require; nay, it is fit that the laws themselves should in some cases give way to the executive power

Lest we be thought mere apologists for “executive privilege,” we recall that our generation itself recently invoked a higher law of God and nature to support civil disobedience toward laws of man believed unjust and oppressive to individual freedoms. For law is a human invention, reflecting human frailties; ultimately it commands obedience only insofar as it accomplishes goals valued by those asked to obey.

A final lesson to be drawn from recent events, and to be recalled often in our professional lives, is the need for a renewed civility toward each other. To many of us, those with whom we have disagreed often have seemed evil incarnate. “I have always tried to do what is best for the nation,” President Nixon declared when resigning. One need be neither maudlin nor blind to Mr. Nixon’s faults to concede him that quantum of sincerity—but few of us have been willing to do so. An old adage exhorts us to “hate sin, but love the sinner.” In the coming years, in our professional lives as well as in public affairs, it would be well to remember that advice in our dealings with legal, political and philosophical adversaries. In a dark world posing baffling and complex problems we need to respect and value that tiny spark in each of us, whatever its nature, that keeps us all, friend and foe alike, walking on two legs rather than four.

August 9, 1974