

A Mind As It Reasons

*Introduction of Stanford Law School Dean Kathleen Sullivan
at the Radcliffe Institute Inaugural Lecture Series
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WHEN KATHLEEN SULLIVAN was an undergraduate at Cornell in the early 1970s, she concentrated in literary studies and was especially captured – as she herself has said – by the moral dilemmas that she found so strikingly portrayed in fiction.

It was just then that the political drama of Watergate was unfolding, and Dean Sullivan began “to see law as a practical arena [in which] to find solutions to moral and ethical problems.”

Perhaps not surprisingly, Dean Sullivan (following a sojourn at Oxford as a Marshall Scholar) was ultimately drawn to the field of American constitutional law: the field in which questions of value; of rights and obligations; of freedoms, potential restrictions, public goods, and private as well as public responsibilities come dramatically into play – more continuously, more perplexingly, more subtly, and more significantly than in any other legal field.

Dean Sullivan studied at the Harvard Law School, where she worked with Professor Laurence Tribe – not only as a student,

but also as a colleague – on a well-known Supreme Court case in which they defended the right of the Hare Krishna sect to proselytize at the Minnesota State Fair.

The records of the case do not disclose why members of the Krishna sect ever thought the Minnesota State Fair might be a fertile sphere for missionary zeal. But thanks to their unconventional evangelical foray, the team of Tribe & Sullivan was created – and later went on to tackle several other major cases involving the defense of privacy rights, of free speech issues raised in the so-called “Titicut Follies” twenty-four-year litigation marathon, and of the right of newly arrived poor mothers in California to receive AFDC benefits at the same level as long-term California residents.

Kathleen Sullivan began teaching at Harvard Law School in 1984 and remained at Harvard until 1993, when she was lost – inexplicably – to Stanford, where she became Dean of the Law School in 1999. She has written about a wide range of constitutional issues and has won any number of awards and honors, including the most prestigious award for excellence in teaching that the Harvard Law School bestows.

For me, the pleasure in reading Dean Sullivan’s work is a very distinct one, because her writing manages to fuse the forms of persuasion that flow from conviction and commitment with those that are the result of such deft and skilled analysis that the activity of the mind as it reasons, and the almost indiscernible interpolation of evidence, are carried forward without any sense of rhetorical or argumentative “forcing,” without any more pressure than the minimum required.

If we want to think carefully, for example, about the difference between judges who tend to view the law and the Constitution in terms of a set of rules, as contrasted to a set of standards, then there just is no better reading than Dean Sullivan’s 1992 *Harvard Law Review* article on that subject. It is an article that explores why a Supreme Court which included Justices Rehnquist, Scalia, Thomas, O’Connor, Kennedy, and Souter did not turn out to be

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as “conservative” as many people – including Presidents Reagan and Bush – had expected.

This is not the time or the place to try to summarize Dean Sullivan’s hundred pages of text and footnotes, except to say that the essay examines quite beautifully how some (not all) individual justices on the Supreme Court began in the 1980s to use historical precedent in quite different ways, on different occasions – depending on the circumstance and the larger context of specific cases. They became, in other words, more engaged with the particularities of each dilemma or situation and (to some extent) less inclined to invoke more general rules in reaching conclusions. The article also elaborates on how the Court must – within limits – function as a collective, deliberative body, thereby creating for itself a sense of responsibility for, and consciousness of, a more comprehensive and heterogeneous range of views than an analysis of the past practice and views of each individual justice would have led us to predict.

In short, as we read this article, we come to see and feel the developing changes in position or stance, in perspective and amplitude, in the very conception of how law should be interpreted and applied, on the part of several justices: we can trace the kinds of moves and shifts that often occur in any small group whose number of members is highly limited, because at least some of the members soon come to see themselves (and their views) less in fixed or absolute terms, than as parts of a whole in which their own roles are defined (to some extent) in relationship to the roles adopted by their colleagues.

In reading Dean Sullivan’s article, we experience and understand the subtlety and nuance of all the changes I have just mentioned, because of the skillful analysis and the lucid prose that guide us at every stage in this unfolding mini-drama. Beyond that, we also begin to sense – gradually – the presence of a larger design in the work, because the entire piece is in fact motivated by a deep conviction concerning the essential integrity of the Court

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as an institution that somehow discovers and follows a kind of invisible internal compass – that achieves and adjusts its own equilibrium, responding to the necessities of the Constitution as an enduring document, to historical precedents that act as a partial guide, and to the living society in which the law must function with credence and effectiveness. Because the equilibrium of the Court is always subject to constant shifts and changes, predicting how the Court may resolve any particular case becomes very difficult. But this “openness” tends in itself to increase rather than decrease confidence in the responsiveness as well as the strength of the system.

Confidence or trust in significant institutions is not noticeably in great abundance at the present time. It is a rare thing to encounter writing that offers us some considerable measure of persuasive reassurance about the nature of our Supreme Court and the workings of our constitutional legal system. The achievement is all the more impressive because the reassurance is born not from sentiment or any mere simplicity but from the articulateness and clarity of a complex mind in elegant motion.