

LOYOLA UNIVERSITY CHICAGO SCHOOL OF LAW
THE INDUCTION OF BARRY SULLIVAN AS THE COONEY & CONWAY
CHAIR IN ADVOCACY

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The Morality of Advocacy as a Law School Concern:
Appointment of Barry Sullivan to Loyola University
Chicago Law School's Cooney & Conway Chair

Remarks of Judge Joan Gottschall*

As a young lawyer new to Chicago, I often studied or did research in Loyola's law library. I can't remember what excuse I used to come here, but I remember clearly why I did it—scattered around the library, unavoidably, were signs of Loyola's religious connection: pictures, religious books, statuary. As a non-Catholic who had attended a secular law school, I wondered if learning law or practicing law felt different if one learned or practiced from a Catholic perspective. I wondered whether coming from a religious perspective would help me reach some kind of peace with my growing discomfort with practicing law. My cases often involved important public issues, to be sure, but I found myself pressing the side not that I necessarily believed was the right or best, but that which I was paid or assigned to represent. Even more important, it wasn't part of my job description to worry about whether the side I was paid or assigned to represent was consistent with the public good. I felt that this was something I was better off not thinking about very much.

The passage of years has accustomed me to living with my questions about law practice, but has hardly resolved them. Given the time I spent pondering these issues in Loyola's law library, I was not surprised when Loyola established a chair in advocacy and chose Barry Sullivan to fill it. As long as I have known Barry Sullivan—and that is most of our professional lives—he has been thinking, speaking, and writing about

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the issue of whether the vocation of the lawyer, the advocate, is a good or moral one. Loyola's recognition of Barry's unique suitability to lead such an inquiry is something for which we all should celebrate both this institution and this individual.

Many years ago, in an essay entitled "Legal Scholarship and Moral Education," Anthony Kronman, formerly the Dean of Yale Law School, explored this problem.¹ His thesis was that in legal education, as opposed to other types of graduate education, there is a diversion between most students' professional goal—to practice law—and the professional goals of their teachers. Professors of law, like other professors, have chosen a vocation of scholarship, in which they pursue their own interests in the hope of advancing the search for truth. Law students, on the other hand, expect their professors to train them for a life of advocacy, the goal of which is not the search for truth but excellence in persuasion. Kronman discussed the difference between truth and persuasion: that one can and frequently is persuaded of something that is not true. In a courtroom, we strive to advance our client's interests, whether or not our argument is true or even in the public good. An advocate, Kronman observed, is not concerned with truth for its own sake but only strategically, insofar as it aids persuasion. "In advocacy," Kronman said, "the desire to persuade determines what role truth-seeking is to play, not the other way around."²

The problem of the moral meaning of advocacy matters. That lawyers are unhappy in the profession is a truism. That lawyers feel that their personal beliefs are largely immaterial and must be subordinated to whatever position they are hired to advance is the way law is practiced almost everywhere these days. It is all too common to hear lawyers complain that if they tell their client what the client should do, rather than supporting whatever the client wants to do, they will lose the client and the revenue the client represents. As a trial judge, I routinely hear lawyers object to their opponents' modest requests, such as for a brief period of extra time to do something, that any reasonable concept of courtesy would compel agreement to. They explain—hoping that their explanation will cause me to think better of them—that they are objecting only because their client insists upon it. I don't say what I feel—that such an explanation hardly improves my view of the lawyer making it. If lawyers feel that they can no longer follow their consciences—or the demands of common decency—on such small and

1. Anthony T. Kronman, *Foreword: Legal Scholarship and Moral Education*, 90 YALE L.J. 955 (1981).

2. *Id.* at 961.

insignificant matters, how are they determining what position to take on behalf of their client on matters of importance? I worry—I think we should all worry—about how much each of them, among our society’s most well-educated, well-to-do and powerful, is concerned about what the common good is.

Kronman wondered what effect training in advocacy has on the character of law students, given that the defining characteristic of advocacy is indifference to the truth. And he wondered what law professors, who have chosen different professional objectives, can do to contribute in a positive way to the formation of their students’ characters. How can scholarship, the law teacher’s vocation, he asked, act as “an antidote to the cynical carelessness about truth that advocacy encourages?”³

While I have not come to any fixed answer about the moral problem of advocacy, I have come to a tentative peace with my career, concluding that advocacy is in fact a highly moral enterprise—albeit a morally perilous one. What makes it moral is that the advocate speaks for another human being and is charged with the responsibility of understanding that human being’s predicament so fully and sympathetically that he or she can make it comprehensible to a neutral, the judge. A good lawyer also knows where his or her opponent is coming from, meaning he or she has undergone the same imaginative probing of the opponent’s position, and indeed, must similarly understand the predicament of the decision-maker.⁴ Getting away from self-regard, to an imaginative appreciation of the situation of another, is a highly moral undertaking. Yet it is perilous as well, because one uses one’s understanding to ensure the victory of whatever side one finds oneself on, regardless of whether it is for a cause one believes in or merely for a cause it is in one’s economic or professional self-interest to advance. We begin as advocates by attention to others, not to ourselves. This is a good thing. We end by doing what is in our client’s interest, and in our economic and professional self-interest, to do. This is much more troubling.

I don’t know whether there is a satisfactory answer to my questions about the practice of law. I can’t answer the question Kronman asked which is so pertinent here: whether there is anything law teachers can and should do to contribute positively to the formation of their students’

3. *Id.* at 967.

4. *See generally* ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* (1995) (discussing the spiritual crisis of the American legal profession and the collapse of the lawyer-statesman ideal).

characters as advocates. What I do know is that these questions are important, and that asking them takes courage. Indeed, given that we do not live in paradise, and are stuck trying to act in a messy world, questioning the moral meaning of what we do may be the best we can do for our souls. In establishing this new and exciting chair, Loyola has made clear that it views these questions as worth asking. In choosing Barry Sullivan to inaugurate this chair, Loyola has guaranteed that it will not be disappointed.