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Benjamin N. Cardozo: Sixty Years After His Appointment as New York's Chief Judge

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Benjamin N. Cardozo: Sixty Years After His Appointment as New York's Chief Judge

Living Greatly in the Law

Dear Colleagues:

From time to time, the NYSBA Committee on Membership works with the Journal presenting articles that we hope are of special interest to special groups of attorneys, as well as of general interest to all. In 1985, we did that with the issue on women, and the response was extremely gratifying.

During this past year, the Committee on Membership has undertaken special efforts to encourage all New York attorney judges to become members of their state-wide bar association. In furtherance of such efforts, the Committee plans to promote a series of articles focused on former chief judges of the Court of Appeals and other well-known New York State jurists. The first such article, by long-time Membership Committee member, Professor Jay C. Carlisle of Pace University, and Janessa Nisley reviews decisions of Judge Benjamin N. Cardozo. Other articles are in process on Judge Robert Jackson and Judge Oliver Wendell Holmes. Our Committee would appreciate volunteers to write future articles for the series.

Membership in the NYSBA has demonstrated steady growth in the 1980's, encouraged by Bar leadership efforts. It is our hope that judges, with so much to offer the various sections and committees, will actively support the NYSBA, joining their fellow attorneys in membership.

Sincerely,
Miriam M. Netter
Chair, NYSBA Membership

Sixty years after his appointment as Chief Judge of the New York State Court of Appeals, Benjamin N. Cardozo's place in history as one of the country's most outstanding jurists and preeminent legal philosophers is secure. He is widely acclaimed for being a successful practitioner, a brilliant legal scholar and a man who is ranked among the preeminent American judges, along with Marshall, Kent, Story and Holmes.¹ He was a giant of his era who, while spending all but six years of his professional life in New York, exerted a powerful national influence upon his own times. He was praised not

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¹ Choper, *The Supreme Court and its Justices*, 104 (1987).

only for his knowledge of the law, but for his ability to convey his ideas in literate and lucid prose and for his dedication in applying them to each case no matter how mundane. He was respected for his gentleness, his kindness, his helpfulness and his consideration for others.² Such is Cardozo's heritage that his analyses are still valued and his opinions and writings are still frequently quoted by judges and law review authors.³

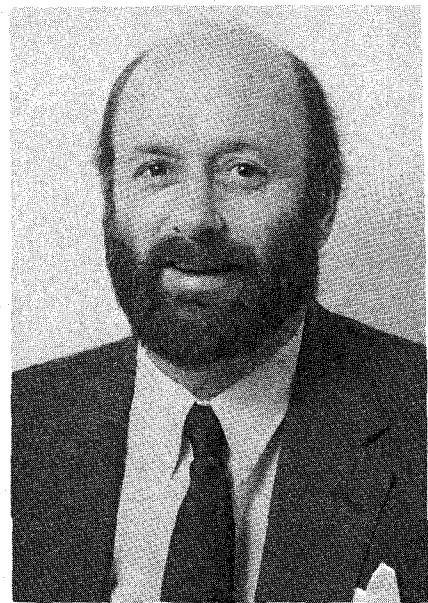
While Cardozo was an Associate Justice of the U.S. Supreme Court from 1932 until his death in 1938, it was during his tenure on the New York State Court of Appeals that he was most productive and happy. As Associate Judge of the Court of Appeals from 1914 to 1926 and as Chief Judge from 1927 to 1932, he wrote his most significant opinions and developed his judicial philosophy on a bench that was regarded as the preeminent appellate court in the country. Indeed, many commentators have concluded that the Cardozo Court contributed more than its contemporary Supreme Court to the development of American Common law.⁴ His years on the Court of Appeals were also enormously satisfying to him personally, because of the collegiality of the bench and the close friendships he formed in Albany.⁵

Benjamin N. Cardozo was born in New York, on May 24, 1870. He was admitted to Columbia University at the age of fifteen and graduated with honors in 1889. He was admitted to the New York Bar in 1891 and practiced in a New York City law firm with his brother for twenty-two years. He specialized in corporate and commercial law. Despite his reserved manner, he was a successful trial lawyer who presented 75 cases before the New York Court of Appeals and authored a technical manual in 1904 on *The Jurisdiction of The Court of Appeals of The State of New York*. His father, Albert Jacob Cardozo, had been a State Supreme Court

justice and in 1913, Cardozo was elected to the same position as a reform candidate. Six months later, he was appointed as an associate judge of the Court of Appeals by Governor Glynn. Governor Whitmore redesignated him to serve as associate judge on January 15, 1917 and he was elected in November 1917 for a fourteen year term. On January 1, 1927 he was sworn in as Chief Judge of the New York Court of Appeals, a position he held until his appointment to the U.S. Supreme Court in 1932.

During his tenure on the Court of Appeals, Cardozo gained national recognition for his opinions in many cases, including *MacPherson v. Buick Motor Company*,⁶ *Schuylkill Fuel Corp. v. Nieberg Realty Corp.*⁷ and *Palsgraf v. Long Island Railroad*.⁸ Also he was nationally recognized for his theories on the judicial process which were presented in a series of lectures at the Yale Law School in 1921 and published as *The Nature of Judicial Process*. He elaborated his ideas in a second series in 1923, entitled *The Growth of the Law*. In 1928 at Columbia, he presented a further series, *Paradoxes of Legal Science*. His theories were derived from his own analysis of the judicial process. He evaluated the principles underlying past decisions with precedential value, discussing them in their social and historical milieu and determining whether prior rules should be altered in light of contemporary values. He did not focus on an ideology, but a means or process by which legal principles could be adopted to evolving public policy so as to produce a just result in a given case. His ideas, which were presented in lucid prose is at once persuasive and pleasurable to read, lent authority to his judicial opinions.

Cardozo described the Court of Appeals as "a great common law court [whose] problems are lawyer's problems"⁹ and he once advised Robert H. Jackson "If you have a



chance to go on the New York Court of Appeals, by all means do so."¹⁰ Each of his opinions represented the best possible decision he could reach. The anguish that preceded these opinions prompted Learned Hand to observe "again and again, like Jacob, he had to wrestle with the angel all through the night, and he wrote his opinions with his very blood."¹¹

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² Hellman, Benjamin N. Cardozo - American Judge (New York: Whittesey House, 1940) at p. 63.

³ For example, *MacPherson v. Buick Motor Company*, 217 NY 382 (1916) has been cited thousands of times and was a principal case discussed in more than twenty-six law reviews, including those of Columbia, Cornell, Harvard, NYU, Stanford, Chicago and Virginia Law Review. Similarly, *Palsgraf v. Long Island Railroad*, 248 N.Y. 339 (1928) has been discussed in more than twenty-two law review articles, including those of Fordham, Hofstra, New York, St. Johns and Syracuse Law Reviews.

⁴ Address by Hon. Robert H. Jackson before the Association of the Bar of the City of New York, December 12, 1944, on the occasion of the Fourth Annual Benjamin N. Cardozo Lecture reprinted at 45 Columbia Law Review 1, (1945).

⁵ Note 2, supra at 145.

⁶ 217 N.Y. 382 (1916).

⁷ 250 N.Y. 304 (1929).

⁸ 248 N.Y. 339 (1928).

⁹ Jackson, supra note 4 at 1.

¹⁰ *Id.*

¹¹ Note 1, supra at p. 109.

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In January of 1932, Oliver Wendell Holmes, almost 91 years of age, resigned from the Supreme Court. Chief Judge Cardozo was considered a likely successor to the great Holmes and Senator Robert Wagner urged President Hoover to appoint him to fill the vacancy. Hoover was reluctant to do so because there were already two New Yorkers, Chief Justice Charles Evans Hughes and Associate Justice Harlan Fiske Stone, on the Court. Another important consideration was the fact that there was already one Jewish member of the Court, Associate Justice Louis D. Brandeis. Other choices were available to President Hoover, but at a crucial moment in the selection process, Justice Stone offered to resign so that the nation would have the benefit of a jurist of Cardozo's stature. Reports of Stone's gesture reached the press with dramatic effect. President Hoover yielded and Cardozo accepted the appointment. His nomination was sent to the Senate on February 15, 1932 and was greeted with great enthusiasm. Nonetheless, Cardozo was reluctant to leave Albany. He confided in Governor Herbert Lehman that "I hate the thought of leaving here where I have made so many friends . . . but [I don't] see any way in which I could refuse the appointment of the President of the United States."¹²

Cardozo's last day as Chief Judge of the Court of Appeals was on March 3, 1932. Prior to hearing the first case, Judge Cuthbert W. Pound, who was subsequently appointed chief judge by Governor Franklin D. Roosevelt, praised Cardozo:

The bar knows what earnestness of consideration, fairness of grasp, and force

and grace of utterance you have made your power felt; with what evenness, courtesy and calmness you have presided over the sessions of the Court. Only your associates can know the tender relations which have existed among us; the industry with which you have examined and considered every case that has come before us; the diligence with which you have risen before it was yet dawn and have burned the midnight lamp to satisfy yourself that no cause was being neglected . . . You were appointed (to the Supreme Court) neither for political nor geographical considerations, but in defiance of them and because the whole country demanded the one man who could best carry on the great Holmes tradition of philosophic approach to modern American jurisprudence. Our loss is the gain of the high court to which you go . . . We shall miss not only the great Chief Judge whose wisdom and understanding have added glory to the judicial office but also the true man who has blessed us with the light of his friendship, the sunshine of his smile.¹³

Cardozo served six years on the U.S. Supreme Court. Among his many notable opinions was *Helvering v. Davis*,¹⁴ and other social security cases upholding the constitutionality of the federal Social Security program. However, what pleased him the most was being referred to as a worthy successor to Holmes. With characteristic modesty, he stated, "I am not in his class at all, but even so, it gives me a thrill of pride to be spoken of as a fit successor to him."¹⁵ Once in Washington, D.C. Cardozo frequently expressed a desire to return to New York and wrote "Washington is my legal domicile now, but not the domicile of my spirit."¹⁶ In early 1938, Cardozo had a stroke. He convalesced in the Port Chester, New York home of his close friend, Court of Appeals Judge and Mrs. Irving Lehman. It was there that he passed away on July 9, 1938, at the age of 68.

On October 1, 1938, the Court of Appeals convened for its first session since the death of Cardozo. Judge Frederick Crane paid tribute to his former chief and remarked:

His power of analysis, of clear and precise statement, and ability to apply the authorities to the point involved were delightful to listen to and frequently removed the doubts under which his associates labored after careful study . . . I talk of Judge Cardozo's work as though this was the principal thing which impresses us - not so! The man himself was greater than anything he did or produced. His gentleness, his kindness, his helpfulness, his consideration for the feelings of others [and] the moderation of his language made him at all times and under all circumstances the gentlemen, and endeared him to all his associates.¹⁷

Chief Judge Cardozo remains a role model for today's bar and judiciary. A Cardozo award is annually presented by the Jewish Lawyers Guild to a distinguished New York lawyer, the Association of the Bar of the City of New York presents an annual Benjamin N. Cardozo lecture and Yeshiva University has named its law school in his honor. His exemplary conduct serves as a frequent reminder that the law is a noble profession. On this, the sixtieth anniversary of Benjamin N. Cardozo's appointment as Chief Judge of the New York Court of Appeals, it is appropriate that we rejoice for being blessed by the legacy of this wonderful human being and eminent jurist.

¹² Note 2, *supra* at 207.

¹³ Address by Hon. Cuthbert W. Pound in honor of Chief Judge Benjamin N. Cardozo, reprinted at 258 N.Y. 1 (1932).

¹⁴ 301 U.S. 619 (1937).

¹⁵ Note 2, *supra* at 237.

¹⁶ *Id.* at 275.

¹⁷ *Id.* at 63.

