

## Benjamin N. Cardozo (Book Review)

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of the work. The appendix includes the Negotiable Instruments Law and the English Bill of Exchange Act. Reference is made after each section to the explanatory material in the text. Differences and omissions between the statutes are pointed out and, in addition, many interesting observations are made by the author after some of the sections. For example, under Section 157, providing "a bill which has been protested for non-acceptance may be subsequently protested for non-payment" the author observes, "this section may remind the student of a point in the Law of Contracts in reference to the doctrine of 'anticipatory breach'". Innumerable examples of these pertinent suggestions might be mentioned, but it is sufficient to note that the author is not resorting to slipshod copying or filling in space. He has accomplished his purpose of giving to beginners an excellent condensed work on this technical subject.

A disparaging book note appeared in the March issue of the *Harvard Law Review*. Unfortunately, no specific objections to Professor Humble's book were stated and the very brief review was limited to loose generalities. The author of this review thought himself an exception to the thoroughness, which, although apparent in the book, was entirely undiscovered by him. This note, referring to the book in the nature of a naïveté, states that "it makes not the faintest pretense to either critical scholarship or lawyerly thoroughness". A similar criticism might have been made of the great Emancipator's Gettysburg Address at the time it was delivered. There are people even today who can recognize scholarship although it is not critical. The suggestion is made that the "reviewer" has solved the mystery as to the book's place and function. He notes that the book includes the Negotiable Instruments Law, and it therefore possesses high utility for the lawyer who is insufficiently acquainted with the statutes of his state to locate the Negotiable Instruments Law in their perplexing maze. Lawyers are not so confounded. The statement is, nevertheless, cheap. A "reviewer" who is so ready and willing to flatter himself for solving the mystery in a naïveté might possibly become a better detective than a reviewer.

All credit to you, Professor Humble, for a job well done.

WILLIAM TAPLEY.\*

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BENJAMIN N. CARDOZO. By George S. Hellman. New York: Whittlesey House, 1940, pp. x, 339.

In 1928, Benjamin N. Cardozo, then Chief Judge of the New York Court of Appeals, delivered his inspiring commencement address, *Our Lady of the Common Law*, to the first graduating class of the Law School of St. John's University. Those who heard it have not forgotten it. At St. John's, it is still faculty custom to compare subsequent law school commencement addresses with *Our Lady of the Common Law*. The address was reprinted in the April, 1939 number of the St. John's Law Review, with the following prefatory editor's note written by my colleague, Professor Edward J. O'Toole:

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In respectful memory of Justice Benjamin N. Cardozo, jurist, philosopher, humanitarian and man of letters, we republish his inspiring address to our first graduating class in 1928. No words can honor him so adequately as his own. No eulogy can proclaim his position among the immortals so eloquently and so convincingly as his tribute to our Lady of the Common Law. As words of wisdom are eternal so in like manner is the memory of their gifted author.

Early this year, Mr. Hellman's biography of Cardozo made its appearance.

## I

Biographers of Cardozo start with a serious handicap. Worshippers at the Cardozo shrine appraise the works of these ministering priests by the lofty standards of their god. But ministering priests are not gods. They are intermediaries for a more effective communion with the object of their shrine. Hellman's book, I believe—though other reviewers think differently—opens the door for such communion with the spirit of Cardozo. Little that came from the mouth or pen of Cardozo had escaped my attention—so I thought—until I read Hellman's book. But its pages soon revealed important biographical data, much of it hitherto unpublished. And for this—if for nothing more—I am grateful.

The prime object of Hellman's biography is to portray Cardozo's character and personality.<sup>1</sup> Though a recipient of letters signed by Cardozo, "Your devoted and faithful friend",<sup>2</sup> Hellman makes no pretense of having belonged to the small group of Cardozo's intimates.<sup>3</sup> His book is based largely on Cardozo's public addresses, letters written by and to Cardozo, and interviews with friends of Cardozo and members of his family. The jurisprudential achievements of Cardozo take second place in Hellman's book. Hellman is not a lawyer, and disclaims familiarity with legal lore. He is primarily a literateur, with a slant for the poetic. That such a person could portray the aims, aspirations and character of the great jurist Cardozo, speaks volumes for the ability of the former, and for the greatness of the latter.

## II

I select for treatment Hellman's portrayal of Cardozo's graciousness to youth, and his appreciation, to the end, of youth's devotion to him.

Cardozo was then a Justice of the Supreme Court of the United States. A student of the Law School of St. John's University, before submitting his manuscript to the *St. John's Law Review*, wrote to Cardozo, and inquired as to the merits of his article. Cardozo declined to pass upon its merits, but wrote the following note: "If you reflect upon the matter, you will see that there are many

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<sup>1</sup> Pp. viii, 317.

<sup>2</sup> P. viii.

<sup>3</sup> Cardozo's intimates "could be counted on the fingers of a one-armed man." P. ix.

reasons why a member of the Supreme Court must lay upon himself a self-denying ordinance admitting no exceptions." With this gentle admonition, Cardozo closed his note: "I wish you success and happiness in the profession of your choice."<sup>4</sup>

Several years before, in his commencement address, *Our Lady of the Common Law*, Cardozo had expressed the demands which the Lady of the Common Law made upon her votaries, and had indicated the standards for measuring success and happiness in the legal profession. "*Our Lady of the Common Law*," he told his hearers, "—I say it with the humility that is due from an old and faithful servant—our Lady in these days is no longer an easy one to please. She has become insatiate in her demands. Not law alone, but almost every branch of human knowledge, has been brought within her ken, and so within the range of sacrifice exacted of her votaries. Those who would earn her best rewards must make their knowledge as deep as the science and as broad and universal as the culture of their day. She will not be satisfied with less."<sup>5</sup>

But knowledge alone, said Cardozo, is not enough. The legal profession requires persons of character—persons of industry and fidelity, conscience and honor—persons who not only know the law, but who dare make combat to lift it up, and who resist all efforts to drag it down. "It lies with you," said Cardozo to the law school graduates, "to uplift what is low, to erase what is false, to redeem what has been lost, till all the world shall see, and seeing shall understand, that union of the scholar's thought, the mystic's yearning, the knight's ardor, and the hero's passion, which is still, in truest moments of self-expression, the spirit of the bar! You will not fail us, I am sure. After all the main thing is to dare."<sup>6</sup>

A ministry of justice bears similitude to a ministry of religion. In 1931, Cardozo delivered a commencement address to the graduating class of a seminary of religion.<sup>7</sup> This, the most exquisite of all Cardozo's addresses, is set forth in full in Hellman's book.<sup>8</sup> The theme of the address was *Values*. Values are standards of measurement. But values, Cardozo noted, may none the less vary—for we may be measuring the value for the hour, for the day, for the morrow, for the near or distant future. Each of these values is peculiarly significant. But multiple values make possible—indeed demand—a choice. And fortunately we do not all make the same choice.

<sup>4</sup> P. 271.

<sup>5</sup> P. 77.

<sup>6</sup> Cardozo, *Our Lady of the Common Law* (1939) 13 ST. JOHN'S L. REV. 231, 241.

<sup>7</sup> The address was delivered May 24, 1931, at the sixth Annual Commencement of the Jewish Institute of Religion.

<sup>8</sup> P. 166. Hellman expresses the opinion that it is "the finest of all Cardozo's speeches." P. 173. So far as I know, this is the first time that the address has been published in full, though last year the Jewish Institute of Religion was good enough to furnish me with a mimeographed copy of the address for my use in the preparation of an address which I delivered at the thirteenth annual dinner of the St. John's Law Review Association on April 28, 1939. Some of the matter included in my address is incorporated in this book review.

To the young graduates of the seminary, Cardozo told the parable of Tycho Brahe. Tycho lived four centuries ago. He was born in Denmark, of fine lineage. In his boyhood, he aspired to the study of law. But he watched the skies, and the movements of the planets, and wondered at the mystery of it all. He resolved to make himself the master of the law "whereby the stars are steered". He studied astronomy at the University of Copenhagen, and soon discovered a new star. The discovery brought him fame in lands near and far, and he attracted the attention of the King of Denmark, who was a patron of learning. The King built for Tycho an observatory at the center of a small island which Tycho called "Uraniborg—the City of the Heavens". Here Tycho labored night and day. At night, he made his observations. By day, he made his calculations. Thus for twenty years, he set down upon his charts, star after star, with exquisite precision.

But as in the days of Joseph of Egypt, there arose a new king, and he knew not Tycho. Young Prince Christian ascended the throne of Denmark. Unlike his father, he was not a patron of learning. His courtiers begrudged Tycho the gold spent for the maintenance of the observatory. They demanded to know what was the value of it all, and messengers of the King went to Uraniborg to quiz Tycho, and to pit their values against his. They demanded that Tycho tell them what he had been doing with the King's gold these past twenty-five years. Tycho showed them the tables of the stars—seven hundred of them—each set down in its proper place. "Is this all?" they demanded. "Not all, I hope," answered Tycho, "for I think before I die, I shall have marked a thousand." Mirth and laughter from the King's messengers ensued. Cardozo's comment is characteristically noble:

You can almost hear their laughter, can you not? All the prophets and the seers have listened to the like. Einstein has heard it in our day, and every lover of truth and beauty, every man who has seen visions and tried to live them in his life, has heard the same sardonic mirth. To what end, said the messengers, to what end the travail and the waste? Show its uses to us now, show them now before we go. Resounding through the centuries I hear familiar echoes. Never a philosopher has lived, nor a saint nor a scientist nor an artist, but has been summoned to a like proof—to show the value for today—not the value for the unplumbed future, but the value for today.

Some years ago, Alfred Noyes wrote a trilogy entitled *The Torch-bearers*. The theme of his trilogy was that the human race now and then produces men who bear the torch of truth, and express eternal ideas in new terms. *Watchers of the Sky* was the first of the trilogy, and in it Noyes told the story of Tycho Brahe. From this poem, Cardozo read Tycho's response to the King's messengers:

"In time to come,  
Perhaps a hundred years,  
Perhaps a thousand, when our own poor names  
Are quite forgotten, \* \* \*  
On one sure certain day, the torchbearers  
Will \* \* \* see a light  
\* \* \* They shall see it,—

A new creation rising from the deep,  
 Beautiful, whole.  
 We are like men that hear  
 Disjointed notes of some supernal choir.  
 Year after year we patiently record  
 All we can gather. In that far-off time,  
 A people that we have not known shall hear them  
 Moving like music to a single end."

The King's messengers could not understand, and Tycho was driven into exile. One dark day, before his departure, Tycho called his young disciples round him, and bade them farewell.

"An end has come," he said, "to all we planned.  
 Uraniborg has drained her treasury dry.  
 Your alma mater now must close her gates \* \* \*  
 Yes, I still hope in some more generous land  
 To make my thousand up before I die.  
 Little enough, I know—a midget's work!  
 The men that follow me, with more delicate art  
 May add their tens of thousands: yet my sum  
 Will save them just that five-and-twenty years  
 Of patience, bring them sooner to their goal,  
 That Kingdom of the law I shall not see.  
 We are on the verge of great discoveries.  
 I feel them as a dreamer feels the dawn  
 Before his eyes are opened. Many of you  
 Will see them. In that day you will recall  
 This, our last meeting at Uraniborg,  
 And how I told you that this work of ours  
 Would lead to victories for the coming age.  
 The victors may forget us. What of that?  
 Theirs be the palms, the shouting and the praise.  
 Ours be the father's glory in the sons."

And so Tycho Brahe made his choice of values. His exile began. But Uraniborg, the City of the Heavens, soon went down into dust.

After telling them this parable of Tycho, Cardozo summoned the novitiates of the ministry to choose the eternal values, and to follow the path of Tycho Brahe. "When the course is finished, when the task is ended, when the books are closed," concluded Cardozo, "may the last appraisal of all values reveal his choice as yours."

### III

Soon, *his* course was finished. His task was ended. His books were closed. On January 8, 1938, Justice Cardozo suffered a paralytic stroke.<sup>9</sup> Though he fought hard against the advance of paralysis, he lay stricken and unmoving, but with mind ever active. During these last months, he appreciated, especially, the attentions from young people. "When a young Washington girl—Kate Meyer—sent him an orchid, he insisted on having it placed in a vase on the table

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<sup>9</sup> P. 304.

next to his bed so that he need but turn to see what for him was a symbol—the devotion of youth.”<sup>10</sup>

In May, 1938, he left Washington forever. He died on July 9, 1938, in the country home of his beloved friends, Judge and Mrs. Irving Lehman.

The coffin was lowered to its final resting place. His cousins, in their last farewell, gently cast bits of earth to cover their mortal kinsman. Drops of rain were gently falling. Nature pronounced the only eulogy.

#### IV

The mantle of Justice Cardozo descended upon Justice Frankfurter. Perhaps some day, the successor may, in some grand work, mark out the jurisprudential achievements of his great predecessor. In the meantime, I am grateful to biographer George S. Hellman for resurrecting memories of the nobility of character of Benjamin N. Cardozo.

LOUIS PRASHKER.\*

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CORPORATE READJUSTMENT AND REORGANIZATION. By Louis P. Starkweather, M.B.A., D.C.S. Copyright by the author, 1940, pp. 99.

This monograph on corporate reorganization should prove extremely useful to the practitioner and of great interest to the student. Those of us who are familiar with old-style reorganizations and equity receiverships, the defects of which were made available to the public in Mr. Lowenthal's book *The Investor Pays*, will realize how much progress has been made in this field in the past ten years. From the closely controlled reorganization proceeding, arranged by committees in most cases designated by the very bankers who had floated the original issues in cooperation with the management that had produced the defaults, to the modern proceedings under Chapters X and XI of the Federal Bankruptcy Act, closely supervised by highly skilled observers in the Securities and Exchange Commission, is a long step. The step could not have been taken by legislation alone although, without it, judges in the United States District Courts and more fair-minded bankers and lawyers were practically powerless to arrest the steady course of activities in reorganization where the main purpose seemed always to be "denuding the bondholders".

Professor Starkweather has undertaken the difficult task of outlining the causes leading to the need for reorganization, both external and internal, and of considering the steps in reorganization and readjustment in the light of these causes. The author shows a close familiarity with the problems involved and is master of the art of making complicated affairs seem very simple. He has, in addition, collected numerous data, both of historical interest and practical utility. For example, he shows that for the eighteen years beginning 1920 and ending

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<sup>10</sup> P. 309.

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