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BENJAMIN NATHAN CARDOZO

1870-1938

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BY EDGAR J. NATHAN, JR.

Justice, justice shalt thou follow  
That thou mayest live and inherit the land  
Which the Lord thy God giveth thee.  
*Deuteronomy 16.20.*

In an address to the graduates at the commencement exercises of an institute for the training of Rabbis, Preachers and Teachers in Israel, Benjamin Nathan Cardozo, then Chief Judge of the Court of Appeals of the State of New York, speaking on "Values", gave an insight into his religious soul and, perhaps unwittingly, revealed the inspiration of his zeal for the pursuit of justice, which he inherited from the tradition of his people. He said:

"The submergence of self in the pursuit of an ideal, the readiness to spend oneself without measure, prodigally, almost ecstatically for something intuitively apprehended as great and noble, spend oneself one knows not why—some of us like to believe that this is what religion means . "

Later in the same address, referring to the Hebrew "prophets and saints and heroes and martyrs", he said:

"In persecution and contumely they knew that there were values of the spirit greater than any others, values for whose fruits they would have to wait 'perhaps a hundred years, perhaps a thousand', values whose fruits might elude them altogether, yet values to be chosen unflinchingly uncomplainingly with cheer and even joy."

In a home imbued with religious spirit, where the observance of the Jewish religion was an integral part of the family life, Benjamin Nathan Cardozo was born, on May 24, 1870 in New York City. On the following day his father, Albert Cardozo, a Justice of the Supreme Court

of the State, delivered the chief address at the laying of the cornerstone, on Lexington Avenue at Sixty-sixth Street, for the new building of Mt. Sinai Hospital, of which his uncle, Benjamin Nathan was then President. A newspaper editorial on the succeeding day paid tribute to the value and beauty of the substance of the address, and said of it: "It is seldom that so finished an oratorical effort has been witnessed or heard in the City of New York." His son was to continue in this classic tradition.

On both sides Benjamin Nathan Cardozo was descended from Sephardic Jews who, since before the American Revolution, had been connected with Congregation Shearith Israel, the Spanish and Portuguese Synagogue in New York City.

On his father's side, Justice Cardozo was the grandson of Michael Hart Nunez Cardozo and Ellen Hart, the great grandson of Isaac Nunez Cardozo and Sarah Hart, and the great great grandson of Aaron Nunez Cardozo, who arrived in New York City in 1752.

His mother was Rebecca Washington Nathan, the daughter of Seixas Nathan and Sarah Seixas, and the granddaughter of Simon Nathan, the first of the family to come to this country, who married Grace Seixas.

In 1889, at the age of nineteen, Justice Cardozo was graduated with high honors from Columbia College and was awarded his M.A., the following year. He attended Columbia University Law School for two years, was admitted to the bar of the State of New York in 1891, and for the following twenty-two years he was essentially a barrister. In 1902, he was admitted to the Bar of the United States Supreme Court. In 1913 he was elected a justice of the Supreme Court of the State of New York for a term beginning January 1, 1914. From that time on, his promotion was rapid. On February 2, 1914, at the request of the Court of Appeals, Governor Martin H. Glynn designated him to serve as a temporary member of that Court; on January 15, 1917, Governor Charles S. Whitman appointed him to a vacancy in one of the permanent places on that Court; in the autumn of 1917, as the candidate of both major parties, he was elected a Judge of the Court of Appeals for a full term of fourteen

years; and in 1926 he was elected Chief Judge of that Court. On February 15, 1932, President Herbert Hoover appointed him an Associate Justice of the Supreme Court of the United States.

In the fall of 1927 Justice Cardozo had declined the appointment, tendered to him by President Calvin Coolidge, as a member of the Permanent Court of Arbitration at the Hague. At that time he wrote: "After many inward struggles I have come to the conclusion that a Judge of the Court of Appeals best serves the people of the State by refusing to assume an obligation that in indeterminate, if improbable, contingencies might take precedence of the obligations attached to his judicial office."

The honors that were accorded him attested to the admiration and high esteem in which he and his accomplishments were held.

He received the degree of Doctor of Laws from his Alma Mater, Columbia University, in 1915, and the honorary degree of Doctor of Laws from Yale University in 1921, New York University in 1922, University of Michigan in 1923, Harvard University in 1927, St. John's College in 1928, St. Lawrence University, Williams College, Princeton University and the University of Pennsylvania in 1932, Brown University and the University of Chicago in 1933, and from the University of London in 1936. In 1935 he received the honorary degree of Doctor of Humane Letters from the Yeshiva College in New York City, and in that year he was elected an Honorary Fellow of the Jewish Academy of Arts and Sciences. In 1931 he was awarded the Theodore Roosevelt Memorial Association Medal of Honor for Distinguished service, and Harvard Law School conferred on him the Ames Medal for Meritorious Essays or Books on Legal Subjects.

Recognition of Justice Cardozo's distinguished qualities brought him other honors outside of the academic field. He became a trustee of Columbia University in 1928, the second Jew to hold that office; the first was his great great uncle, Gershom Mendez Seixas, whose name appears in Columbia's charter as one of the incorporators, and who was the first native-born Rabbi of Congregation Shearith

Israel in New York City. Justice Cardozo was a member of the Board of Governors of the American Friends of the Hebrew University in Palestine, a member of the Executive Committee of the American Jewish Committee, a member of the Executive Committee of the Jewish Welfare Board, and a member of the Committee on the Advisor to the Jewish students at Columbia University. At the time of his death he was a member only of the Executive Committee of the Jewish Welfare Board, to which he was elected in December, 1932; and of the Committee on the Advisor to the Jewish students at Columbia University, having resigned from all the other offices when he became a Justice of the Supreme Court of the United States.

He was one of the founders, and a member of the Council of the American Law Institute which was founded in 1923, of which he was vice president from that date to 1932. His recommendation, in 1925, that a permanent agency be set up in New York State, to function between courts and legislature, to consider changes essential to the proper administration of justice in a changing civilization, was the basis of the legislation of 1934 creating the Judicial Council of the State of New York and the Law Revision Commission.

Among his literary works are the following: *The Jurisdiction of the Court of Appeals* (1903); *The Nature of the Judicial Process* (1921); *The Growth of the Law* (1924); *The Paradoxes of Legal Science* (1928); *Law and Literature and Other Essays* (1931). In addition to these, there are numerous addresses delivered at meetings of bar associations, commencement exercises, and other public functions, including several at Congregation Shearith Israel, of which he was a lifelong member.

This factual summary of the career of a sensitively modest man points a moral for those who like to think there is an easy road to fame. Justice Cardozo aspired to no office, he sought not fame. But he labored, with single-minded love and devotion in the profession he chose. Unusually early in his career he had won the esteem and high regard of both bench and bar, to such a degree that there arose a public demand for his elevation to the Bench and, almost immediately, there followed his promotion

first to the highest court of his State and then to the highest court of the Nation. On the occasion of each appointment the press revealed ever increasing public acclaim. On his appointment to the United States Supreme Court, the entire country rejoiced; and on his death he was mourned throughout the land.

In a commencement address given at the Albany Law School in 1925, he gives the secret of his unsought success and steady growth to fame. Subconsciously, it seems, he knew why he was a great man, even if consciously he knew not that he was. In that address he wrote:

“Growth is not the sport of circumstance. Skill comes by training, and training persistent and unceasing is transmitted into habit. The reaction is adjusted ever to the action. What goes out of us as effort comes back to us as character. The alchemy never fails.”

His closing words to the graduates on that occasion follow:

“You will study the wisdom of the past, for in a wilderness of conflicting counsels, a trail has there been blazed. You will study the life of mankind, for this is the life you must order, and to order with wisdom, must know. You will study the precepts of justice, for these are the truths that through you shall come to their hour of triumph.

Here is the high emprise, the fine endeavor, the splendid possibility of achievement to which I summon you and bid you welcome.”

Many have written of his opinions and other writings and it is to be hoped that all these will now be collected and published. It is beyond the compass of this memorial to do more than refer to them. His style is lucid and chaste, and the approach to his subject matter is always sympathetic, understanding, and comprehensive. The reader senses the modesty of a Moses. In an article entitled “The Opinions and Writings of Judge Benjamin N. Cardozo” found in the *Columbia Law Review* (May 1930), Justice Bernard L. Shientag applies what was said of the deep learning of Lord Acton as descriptive of the writings of Justice Cardozo: “When Lord Acton answers a question put to him, I feel as if I were looking at a

pyramid. I see the point of it, clear and sharp, but I see also the vast subjacent mass of solid knowledge." Throughout all his writings there is felt an eagerness to find the path that will encourage the growth of the law to permit the growth of civilization. And he succeeded in this quest. Liberal in his social views, a vigorous champion of the democracy upon which his country was founded, and withal a sound realist, he blazed new paths for judicial decisions. In "The Nature of the Judicial Process" he wrote:

"My duty as a judge may be to objectify in law, not my own aspirations and convictions and philosophies, but the aspirations and convictions and philosophies of the men and women of my time. Hardly shall I do this well if my own sympathies and beliefs and passionate devotions are with a time that is past."

Earlier in the same volume he wrote:

"We are getting away from the conception of a lawsuit either as a mathematical problem or a sportsman's game . . . We are thinking of the end which the law serves, and fitting its rules to the task of service."

His efforts to make law consonant with the spirit and needs of the times were recognized in the citation which accompanied the award, in 1931, of a medal of honor by the Theodore Roosevelt Memorial Association. In making this award, Dr. James R. Garfield, President of the Association, said in part:

"His judicial opinions and decisions have high authority in all parts of the United States, revealing a spirit convinced that human sympathy is not incompatible with judicial integrity and reverence for the past and a mind supple enough to go into the great armory of legal maxims and draw out the one best fitted to bring the law into accord with the present strivings and deserts of mankind. His creative intellect has played a significant part in the adjustment of legal and judicial conceptions to changing social conditions."

But passing reference should be made to his private life, for as one of his most intimate friends has so aptly said, ". . . he guarded jealously his personal privacy. He would be distressed if what he disclosed to a friend were exhi-

bited to the world.' His affection for those near to him was deep and abiding; his devotion to them was complete. His keen sense of humor, always gently expressed, if only by a merry twinkle in his eye, his appreciation of the beautiful — literature, music, art, philosophy — and above all else his love of his fellow man, endeared him to all. His modesty and graciousness made the humblest at ease in his presence. Sweetness and kindness, mingled with unflinching integrity, made his character, in the words of Chief Justice Hughes, "an extraordinary combination of grace and power." He was the last of a family of six, four sisters, one of them his twin and the only one who married, and a brother. There are now none surviving in the direct line of his family.

On July 9, 1938, this great and gentle soul passed on to everlasting peace at the home of his close friends, Judge and Mrs. Irving Lehman in Portchester, N. Y. He had been moved there from Washington as soon as his condition permitted following a partial recovery from the illness which came upon him the previous December. A great career was ended, and the mourning throughout the nation at his death was as universal and genuine as was the acclaim which had greeted his appointment to the Supreme Court of the United States.

In Washington, D. C., on November 26, 1938, the Bar of the Supreme Court of the United States and its officers met in the Court Room, in commemoration, as is the custom, "of a Justice of the Supreme Court who quits his life and service together." Resolutions were there adopted from which the following is quoted:

"It was a grievous loss to the Court and the nation that fate should have granted him less than six full terms on the Supreme Bench. That in so short a time he was able to leave so enduring an impress on the constitutional history of the United States is a measure of his greatness. To say that Mr. Justice Cardozo has joined the Court's roll of great men is to anticipate the assured verdict of history. His juridical immortality is not due to the great causes that came before the court during his membership; it is attributable to his own genius. With astonishing rapidity he made the adjustment from preoccupation with



the restricted, however novel, problems of private litigation to the most exacting demands of judicial statesmanship. Massive learning, wide culture, critical detachment, intellectual courage, and exquisite disinterestedness combined to reinforce native humility and imagination, and gave him in rare measure, those qualities which are the special requisites for the work of the Court in whose keeping lies the destiny of a great nation. It is accordingly resolved that we express our profound sorrow at the untimely passing of Mr. Justice Cardozo, and our gratitude for the contributions of his life and labors, the significance of which will endure so long as the record of a consecrated spirit has power to move the lives of men, and Law will continue to be the ruling authority of our nation."

On this occasion many leaders of the Bar spoke. Fortunately, a record of these proceedings has been published. Quotations from two of the addresses then given are appropriate in this memorial of a "great and beautiful spirit", as Mr. Justice Oliver Wendell Holmes, whom he succeeded on the bench of that Court, described him.

Mr. Monte M. Lemann of New Orleans, said:

"The language of his addresses to law students and his demeanor upon the Bench exhibited the qualities of patience, sympathy and reasoning encouragement which the strong and the famous do not always have for the young, the inept and the weak. The nobility and gentleness of his spirit, the truly religious character of his nature stand out from the record of his life and his work."

Judge Irving Lehman of the New York Court of Appeals, said:

"His ancestors were driven from their homes in the Spanish peninsular more than four hundred years ago because they would not yield conscience and principle to force and abandon the faith of their fathers. In Colonial days they found a home here, and many of them gave to this country the service which only men, steadfast in principle and guided by conscience, can give. The same spirit which impelled his ancestors to hold fast to their principles, though it made them homeless outcasts, animated Justice Cardozo. He could not compromise where

principle was involved. He could not abandon his standards of right; he could not reject what he believed to be true. He loved America with a surpassing love because he believed that her institutions are founded upon the divine commands that men shall love their neighbors and their God; commands first given to his fathers in Palestine and, centuries later, proclaimed in Palestine for all the world to hear by Him who for almost two thousand years has guided the world along the ways of love. Justice Cardozo believed that our constitution is the bulwark of freedom of action and speech and conscience without which life is not worth living. To the preservation of that constitution he consecrated his every thought. His last years were saddened by the knowledge that, again, in other parts of the world, men who are his kin in blood and spirit are being driven from their homes; that, again, Caesar, pretending to speak in the name of God, is demanding that men should render unto Caesar that which is God's; but his confidence that America would never abandon its great ideals, that right would not forever triumph over wrong, that democracy would again resume its onward march, never wavered. He died in well-earned peace and serenity, for he had gained the love of many friends; the affectionate respect of all the members of the bar, and the gratitude of a nation."

In accepting the resolutions on behalf of the Supreme Court, Chief Justice Hughes said:

"The tribute in the resolutions you present comes most fittingly from the members of the Bar who find the ideals of their profession realized in a career of extraordinary worth. It is of special significance at this time that these sentiments of lawyers will find a warm response in the hearts of millions of our fellow-countrymen, who, without learning in the law, have a keen sense of the public benefit that has come from the quiet unselfish and humane labors of a great jurist working in the public interest with a consuming zeal . . .

"It is sufficient to say that no judge ever came to this Court more fully equipped by learning, acumen, dialectical skill, and disinterested purpose. He came to us in the full maturity of his extraordinary intellectual power, and no

one on this bench has ever served with more untiring industry or more enlightened outlook. The memory of that service and its brilliant achievements will ever be one of the most prized traditions of this tribunal . . .

"His gentleness and self-restraint, his ineffable charm, combined with his alertness and mental strength made him a unique personality. With us who had the privilege of daily association, there will ever abide the precious memory not only of the work of a great jurist, but of companionship with a beautiful spirit, an extraordinary combination of grace and power."

In his will, which he wrote out by hand, after providing for one who had devoted her life in faithful service to his sisters and finally to him, and making personal bequests and gifts to charities, including one to Mt. Sinai Hospital, perhaps remembering the dedication of its earlier building the day following his birth, he gave the residue of his estate to Columbia University "—with the expression of the wish and hope, which however shall not be construed as a mandatory direction, that the gift shall be applied to the foundation or maintenance of a chair of jurisprudence in the law school of the University, to be associated with my name, and to perpetuate the scientific study of a subject which has been one of my chief interests in life."

It may be that to posterity the name of Justice Benjamin Nathan Cardozo, associated with this chair of jurisprudence, will come to be a legend by which the tradition of the "just judge" will be carried forward from generation to generation.