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## BOOK REVIEWS

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BENJAMIN N. CARDOZO: AMERICAN JUDGE. *George S. Hellman, New York: Whittlesey House, McGraw-Hill Book Company, Inc. 1940. Pp. ix, 339. \$3.50.*

This book does not purport to be a complete analysis of the accomplished work of a great judge. Nor does it attempt to weigh the documented evidence of his judicial experience in an effort to ascertain the social gains due to an enlightened application of the judicial technique to the existing common law, the statutes and the constitution. Necessarily, a man's deeds are the stuff of which biographies are made. And this book is no exception in that respect. But, in his own words, the foremost object of this biographer was "the presentation of a man's character and personality, with the evaluation of his achievements—however important—as the secondary aim." Any review of this book must of necessity be limited to an examination of these objectives and their accomplishment.

Born on May 24, 1870, of a cultured mother and a brilliant father who was at the time a judge of the Supreme Court of New York, Benjamin Nathan Cardozo could also claim as his kinsmen many men and women who helped shape the early history of this nation. Some of his ancestors had fled from Portugal during the Inquisition, had gone to Holland and thence to England. Aaron Nunez Cardozo, a London merchant, came to the colonies in or about 1752 and it was he who established the Cardozo family in this country. Space is too short to outline the contributions made by this fine Jewish family and its collaterals to the development of this young but growing nation. Mr. Hellman tells this part of his story in language that tends to dramatize their part in the life of this country and this background aids immensely in explaining the Cardozo we have grown to know through his opinions, books and public utterances.

It was interesting to this reviewer to learn that Cardozo received his elementary schooling in his home, being tutored by the same Horatio Alger who glorified the poor boy in his novels that literally flooded America. While Alger was a "roly-poly little man, shy, and not at all forceful," yet he was fond of poetry "and in some measure communicated his liking for fine literature to his young pupil. Shakespeare and Browning, and especially Shelley, were early favorites of Ben."

Throughout his life, Cardozo carried his enthusiasm for the finest in literature and music. While he claimed not to understand the meaning of art, he at least kept an open mind in this area.

His brilliant career as an undergraduate at Columbia was followed by two years in the School of Law of the same university. He did not receive his law degree because in the middle of the course the trustees of Columbia raised the requirements to three years and since "I was anxious to go out into the world and make my living, I never came back for the third year." Almost immediately he was successful as a lawyer, and particularly as a lawyer's lawyer in consultation. His fees were so modest that they were the subject of comment among his colleagues and in at least one case in which he was consulted by other attorneys they insisted upon doubling what he had billed them for. His election to the Supreme Court of New York in 1913 was the start of his long and important work on the bench. Hardly a month had passed before Governor Glynn designated Cardozo to serve on the Court of Appeals to relieve congestion there, the governor having asked the members of the court to name the appointee they desired and having received the unanimous request for Cardozo. He came permanently to the Court of Appeals of New York in 1917. His work on that great court as judge and as chief judge is outlined by the author for the purpose of bringing out those qualities which he exhibited as judge and colleague on that bench.

On February 15, 1932, he was named by President Hoover to take the place left vacant by the resignation of Mr. Justice Holmes. From all over the country came assurances that he was the one who should occupy the seat recently held by one of the world's greatest jurists though there were already upon the court at that time two other justices from the East. The press has called the appointment "the arrival at high office by acclamation, comparable to the election of George Washington." And so it was. But his own modest reaction, when it was apparent that his name was being seriously considered for the appointment, is shown in his letter of January 17, 1932, in which he wrote: "I am trying to stave off the appointment. Whatever reputation I have built up has been made as a state judge. I don't want to start all over again and build up another. But most of all I don't want to live in utter loneliness away from my present associates in the Court of Appeals to whom I am much attached and away from all my relatives and friends here whom I love even better."<sup>1</sup>

The book by Mr. Hellman brings out these things and many more.

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<sup>1</sup> Pp. 203-204.

It finds that modesty which we always suspected in the reading of his opinions, that scholarship which was apparent at a glance and which became more apparent when we dug into the materials out of which Cardozo had shaped his opinions, that spirituality which evidences itself in the concern for justice above all, that industry which was needed in addition to the brilliance of mind in order to accomplish all that Cardozo did accomplish in his life. But Cardozo considered his "plugging," as he called it, the reason for his success. The book further tells us about the love for and faithfulness to his parents and his brother and sisters, and particularly of the life-long devotion to his sister, Nell. The loneliness that was Cardozo's after he went to Washington is all too apparent in every letter that he wrote. The love for this man by those who knew him speaks silently of these and other qualities that made him dear to them. The respect held for him by judges, lawyers and law teachers speaks eloquently of his learning. Mr. Hellman has built his case so thoroughly upon the deeds and writings of this great man that to summarize is all the more difficult.

When, on July 9, 1938, the report went forth that Mr. Justice Cardozo had died, the press began pouring forth eulogies which have few parallels in the history of this nation. Tributes were paid from the pulpit, from bar associations, law journals and other magazines. This book by Mr. Hellman is but another tribute, and a worthy one, to the memory of the man of whom Judge Julian W. Mack wrote the author: "I know of no man more respected, admired and loved—nor anyone who deserves it more than he. One is at a loss to decide in which he excels—learning, modesty, charm, literary grace, character. In each he is on the heights."

It is believed that the author reached his objectives in noble fashion. The book makes interesting and, at times, exciting reading. This reviewer has no hesitancy in recommending it to lawyer and layman alike for the inspiration it will bring to those who read it.

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THE CONTRACT CLAUSE OF THE CONSTITUTION. *Benjamin Fletcher Wright, Jr.*,<sup>1</sup> Cambridge, Mass.: Harvard University Press, 1938. pp. xvii, 287. \$3.50.

The present day student of constitutional law, in which the emphasis is on due process and equal protection and interstate commerce,

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