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MR. JUSTICE CARDOZO

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MR. JUSTICE CARDOZO

THE qualities which made Benjamin N. Cardozo a unique personality and a great judge defy precise analysis, even by those who knew him best. We can only give appropriate emphasis to traits of mind and character which seem most to have contributed to the result, without attempting to account for that mysterious alchemy by which personality is wrought into something greater than the sum of its parts.

Nature and the circumstances of his life conspired to qualify him for a distinguished judicial career. From youth his finely tempered mind was subjected to a course of training and self-discipline which ended only with his last day on the bench. Through a lifetime of scholarly toil he became learned in the law. His spiritual nature burned with an inner fire which, ever urging him on to give of his best, enabled him, despite the handicap of a frail body, to sustain long continued and exhausting intellectual effort. His mind, of remarkable acuteness and clarity, was graced by something of the poet's vision and sensitiveness to beauty. The one gave direction and insight to his thought, the other enabled him to give it perfect expression in singularly facile and lucid English.

Of inestimable worth to him who must sit in judgment were his firmness and decision of character, tempered always by a healthy skepticism and a capacity for self-searching, to which he gave free

rein until the moment of decision. Eager to hear and to weigh every relevant argument, he was receptive always to the ideas and opinions of others. Decision, when finally reached, was arrived at by the exercise of his own skilled and self-reliant judgment. Then, and only then, were doubts put aside in the serene and justified confidence that he had done all that was humanly possible to seek out and proclaim the truth.

Few men have so fully realized the spiritual values of life or have been so aware of its realities. His every thought and action were mellowed by gentleness and humility of spirit and purity of soul. Nobility of character exalted and ruled the order of his life. No prejudices, no desire for popular acclaim, nor any unworthy motive distorted his judgments. They were unaffected by any ambition other than an abiding passion to serve justice and the law. Their final guide was wisdom — that indefinable distillate of mind and spirit upon which mankind must place its ultimate reliance as the solvent for the problems of human experience. Through a lifetime of judicial service wisdom, supported by learning and technical skill, and untiring zeal for the advancement of the law, inspired universal confidence in his work and gave to it enduring worth.

For eighteen years he sat upon the bench of the New York Court of Appeals, five of them as its Chief Judge. There his profound knowledge of the law, and the objectivity and literary quality of his opinions, speedily won for him a distinction recognized wherever the law is the subject of study and reflection. His learning aided but did not dictate decision. He believed, as did Mr. Justice Holmes, that the law must draw its vitality from life rather than the precedents, and that "the judge must be historian and prophet all in one." He saw in the judicial function the opportunity to practice that creative art by which law is molded to fulfill the needs of a changing social order. The brilliant essay on *The Nature of the Judicial Process*, by which he pointed the way to the attainment of that end, is by far the most illuminating discussion of the aims and method of sociological jurisprudence that has appeared. Its philosophy and literary merits would have won for him enduring fame, apart from his distinction as a judge.

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It was no accident, and it was altogether fitting, that he should succeed Mr. Justice Holmes on the bench of the Supreme Court of the United States. That in his all too brief service there he was not overshadowed by that towering figure of the law is proof of the quality of the man. He brought to the Court the benefit of his great abilities, seasoned by years of judicial experience, and gave of them unsparingly even at the sacrifice of health. The relatively unimportant cases assigned to him gained distinction at his hands; his opinions in constitutional cases will remain landmarks in the law.

Inclination, and the drafts by judicial duties upon his time and strength, impelled him to lead the retired life of the scholar and restricted his social contacts. But an unfailing friendliness and charm of manner, a genial sense of humor, and the elevation of his thought, united to form a singularly winning personality which attracted and held the friendship and admiration of all who were privileged to know him.

Justice Cardozo gave his life on the battle line as truly as any soldier of the Republic. The recollection of a life so useful, so complete, so beautiful, admits of only one regret — that he could not yet for a time have carried on, to its full fruition, the work so nobly begun on the Supreme Court. His death, after only six years of service there, has brought irreparable loss to the Court and to the Nation.

Harlan F. Stone.

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