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Cardozo

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CARDOZO*

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When I started to prepare this talk, I realized that of all the Cardozo talks I have given since I completed my book 22 years ago, this one was unique because the audience is unique. I can presume some familiarity with my subject matter and so I can focus on rather different things from what I usually talk about.

I thought I could do that best by starting with some biographer stories. I took so long completing the Cardozo book that enough things occurred along the way that I could make up a book of interesting back stories. The first involves a Touro connection, Chief Judge Sol Wachtler. I learned early on in my researches that the Court of Appeals had a collection of 600 memoranda circulated to the court by Cardozo in matters originally destined to be handled per curiam. Five successive chief judges – Conway, Desmond, Fuld, Breitel, and Cooke – understandably refused me permission to see them on the ground that they were written as confidential documents solely for the other judges. Not long before I finished my manuscript I paid a visit to Chief Judge Wachtler. His attitude was that the court should be helping me, not hindering me, and he persuaded the court to let me see them. I only had to show the court what use I made of them. Eventually, I submitted them to Chief Judge Kaye who not only read the sections of the book that use those memos but she also read the whole manuscript for me and commented on various parts.

While I was in Chief Judge Wachtler's office, he told me the following story on himself. He pointed to his desk and said it had been Cardozo's desk. And then he said that he had shown the same desk to

*This is a slightly edited version of the keynote address given at the Touro Cardozo conference. The talk itself is a much abridged version of a video presentation prepared as part of a legal history series created in 2017 to celebrate the 200th anniversary of the founding of the Harvard Law School. The expanded talk may be found at http://200.hls.harvard.edu/talks/harvardx/.

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a visitor who responded that after Wachtler had finished using it, the desk would still be "Cardozo's desk." I am sure that wherever that desk is today, it is still "Cardozo's desk."

One of the first things I did when I began research was to try to talk to people who had known Cardozo personally. There weren't too many still around because Cardozo had been dead for almost 20 years when I started work in 1957. One was Charles Burlingham, who was then thought of not only as the dean of the New York bar but also as a behind the scenes judgemaker. He was influential not only in putting Cardozo on the bench and advancing Cardozo's judicial career but he also did the same for Learned Hand and others. Burlingham was 99 and blind when I interviewed him but his mind was still exceedingly sharp. When the interview was over, he told me to shake his hand. After I did so, he said that I had now shaken the hand of a man who had shaken hands with Abraham Lincoln. Burlingham's father was an inspector of the Union's Sanitary Commission during the Civil War. He took his six-year old son Charles with him to Washington for a Commission meeting in 1865 and Charles had gotten to shake the President's hand. (After lunch, you may shake my hand if you'd like to shake the hand of a man who shook the hand of a man who shook hands with Abraham Lincoln.)

One mystery while I was writing the book was the sound of Cardozo's voice. Although he spoke to me constantly during the 38 years I worked on the book – usually saying "what's taking you so long – get on with it," I had been puzzled by descriptions of the enthusiastic reactions to Cardozo presentations. They were hard to square with the other contemporaneous descriptions of a "gentle, modest, self deprecating Cardozo." Just before I turned in the manuscript for my biography, David Warrington, head of Special Collections in the Harvard Law School library, who knew that I was looking for a recording of his voice, saw that the Library of Congress had just acquired a wax recording that had been made of a talk given by Cardozo in 1931 at a dinner to honor Nicholas Murray Butler, the president of Columbia University. But when I got a copy of that record and listened to Cardozo's quite mundane remarks on that occasion, I was just blown away. I could have been listening to William Jennings Bryan himself. Cardozo was an orator in the 19th century style. And I understood immediately why he was such a captivating speaker, and

also why he had been such an effective trial and appellate lawyer – because he just had the most marvelous speaking voice.[1]

The shelf life of judicial reputation is short. How many judges from 100 years ago can anyone, even a lawyer, recall, except perhaps as a name? Benjamin Nathan Cardozo is an exception. He is one of the very few judges of that era whose name currently means something to the legal profession and beyond. Unlike any other contemporary, he is still remembered for his career as a state court judge and also, albeit somewhat less, for his career on the United States Supreme Court. The messages he left behind, in both his judicial and his extrajudicial writing, still resonate today.

Benjamin Cardozo lived for the law and the law made him famous. I have time for just a few highlights from his life as a human being – as a lawyer for 23 years, and as a judge for another 23 years. His heritage was an important part of his life. Benjamin took pride in the fact that his Cardozo and Nathan ancestors arrived in New York before the Revolution and that their synagogue, Shearith Israel, the Spanish and Portuguese Synagogue, was already over 125 years old when the Revolutionary War was won. Its rabbi, Gershom Seixas, was the first Jewish trustee of the college that was to become Columbia University. Benjamin Cardozo would be the second. His uncle, Benjamin Nathan, for whom he was named, was a Vice-President of the New York Stock Exchange. In Benjamin Cardozo's generation, one first cousin, Emma Lazarus, was the author of the poem that graces the base of the Statue of Liberty; another first cousin, Maud Nathan, was a well-known suffragist, social reformer, and president for thirty years of the Consumer's League of New York; and yet a third first cousin, Annie Nathan Meyer, was a playwright and the founder of Barnard College. The Cardozos, the Nathans, and other Sephardic Jews were well established in this country economically and even politically and socially when the waves of immigration from Central and then Eastern Europe began in the last third of the nineteenth century. Small wonder that they considered themselves the aristocracy of American Jewry.

Cardozo's growing up years were shadowed by the experience of his father, one of Boss Tweed's Tammany judges, who resigned from the bench just as he was about to be impeached for corruption by

[1] The expanded talk referred to in note * contains a brief recorded excerpt from that recording.

the legislature. Although his father returned to the practice of the law, the family disgrace surely had an impact. Cardozo had a private tutor who tutored him for two years from the age of thirteen for the entrance exam to Columbia. The tutor's name was Horatio Alger, the Horatio Alger of rags to riches literature who earned a living, in part, by tutoring the children of the wealthy. Earlier in his life he had been dismissed from his position as a minister for sexually abusing children of his congregation. No evidence exists of subsequent misconduct either with his many tutees or with the large numbers of homeless street boys whom he subsidized, but of course the question remains.

Cardozo's youth ended with his career at Columbia, which he entered at age 15, the youngest in his class. He lived at home with his twin sister, two older sisters, and an older brother who was practicing law in their father's firm. Benjamin's mother had died when he was nine and his father died during Benjamin's first year at college. Benjamin did not participate much in the social life of the school. He worked hard, did very well, won several prizes, and went straight from college into Columbia Law School. The instruction there consisted mostly of lectures about the rules and doctrines of law without much analysis. The Socratic method of questioning students and analyzing doctrine critically that was associated with the Harvard Law School of Christopher Langdell arrived at Columbia Law School during Cardozo's second year. He did not much take to it. Columbia had recently added a third year of study, but Cardozo, along with two-thirds of his class, left at the end of his second year. He was not yet 21.

Cardozo was admitted to the bar as soon as he reached 21. He joined his brother in their father's politically-oriented firm, and began practicing law. Almost immediately, he began to make a name for himself, arguing several cases in the New York Court of Appeals in the first years of his practice. The practice of law was very different then from what it has become. The bar was relatively small, and most major firms had just a few partners. A good lawyer could make his (and they were virtually all "his") way quickly, and Benjamin Cardozo established himself as a good lawyer very early in his career.

Early success also imbued him with a self-confidence that demonstrated itself at a crucial moment in the history of his congregation. While Cardozo was still a young lawyer, he made a dramatic appearance at Shearith Israel. The efforts of German Reform Judaism throughout much of the nineteenth century to "modernize" Jewish religious traditions and practices had been increasingly

successful in the United States. The "modernization" issue was raised at Shearith Israel at a congregational meeting in 1895 in the context of a motion to end gender-segregated seating. The minutes of the meeting record matter of factly that four speeches in support of the motion were made, all by Cardozo's close relatives, and that Dr. Mendes, the preacher, and another spoke in opposition. The minutes then characterize a final speech by Benjamin Cardozo as "a long address, impressive in ability and eloquence." The progressive judge would support bringing the practices of the congregation into the modern era, right? Wrong. He argued that the principle of the separation of the sexes was embodied in the synagogue's Constitution because that document specifically forbade any boy from entering the women's gallery. A vote by the electors to adopt the motion would violate that Constitution. Cardozo warned that if that was done, there were laws outside the synagogue to which the opponents could turn. The electors then rejected the motion overwhelmingly.

There were three notable features to this event: that Cardozo appeared, that he spoke, and that he spoke in opposition to the motion to end segregated seating. He had long been absent from religious services in the synagogue. Moreover, his father, a man of prominence in the Sephardic community, had lived out his life in disgrace after resigning from the bench. It therefore took a strong sense of self, some chutzpah, for the twenty-five-year-old Cardozo to have taken a leadership position on this issue. The incident certainly demonstrates that in a few short years of professional life the young man, who had been perceived as a shy and aloof student at Columbia, had gained an enormous public presence. It is apparent that the shyness concealed a self-confidence that came forth very early in his professional career. It also demonstrates that although Cardozo had ceased to engage in the practice of the Jewish faith, he had not fled his Jewish heritage. He thought of himself as a Jew to the point where he returned in a moment of crisis, not to pray, but to uphold a major formal feature of the religious practice of his Congregation.

The court records from his years at the bar show a very active trial and appellate practice. As time went on and he demonstrated his ability, more and more lawyers referred their important or difficult cases to him. His practice was largely oriented toward commercial and family matters. Modern-style brief writing was not yet well established. Many, perhaps most, briefs consisted of conclusory arguments coupled with citation of, and quotation from, relevant cases.

Cardozo immediately adopted the modern, more useful style that began with a statement of the facts and the questions to be decided and then went on to argument based on critical analysis of doctrine and policy supporting the desired result. When the policy arguments were not strong, Cardozo argued from the facts, and he could make technical arguments with the best. In short, he used the best available ammunition to support his case that he could find, and he argued persuasively, and with style.

Cardozo's skill as a lawyer was not solely in the setting of the appellate courts; he was also a fine trial lawyer. His approach was that of an advocate, not an academic. And what an advocate! Cardozo was a tiger, who would attack the opposition with every weapon at hand – the facts, the law, technicalities, humor, sarcasm, even barbs directed at the parties, witnesses, and counsel on the other side. His ability and his connections in the Sephardic community brought him business, and most of his business consisted of difficult matters that were referred to him first by his Jewish friends and later by a wider circle of New York lawyers.

Although, with time, the matters he handled involved larger sums of money and his practice became more varied, he never became a Brandeis-type lawyer taking on large social issues of great public importance. Only once did he engage in communal legal work. At the request of the activist Jewish lawyer Louis Marshall, Cardozo represented, pro bono, the Russian Massacre Fund on the question of the disposition of the remainder of the funds that had been raised for the benefit of Russian Jews who had suffered as a result of pogroms. Other than that, he did no communal work of any sort during his years of practice.

As he entered his early forties, his professional path seemed set. Then chance intervened. 1913 was the occasion for a periodic convulsion in the New York City political world. A diverse group of reformers, anti-Tammany Democrats, and Republicans united to produce a joint Fusion ticket in the local elections to try to wrest control of the local government from Tammany Hall. Putting together a ticket for the various executive and judicial positions required considerable negotiation among the different groups. A subcommittee on judges was looking for a Jew to balance the ticket. Cardozo's name was eventually suggested to the subcommittee chair, Charles Burlingham, who made the case for Cardozo to the Fusion group. The Fusion ticket was generally successful, and Cardozo, running against

an incumbent, barely squeaked through with the aid of some Bronx County dissident Tammany Democrats.

As he took the bench in 1914, he had been a practicing lawyer for 23 years. Those practice years had a major impact in preparing Cardozo for his judicial career.

> His college and law school education provided a substantial amount of intellectual capital and the habits of reading and study that lasted his whole life. His work matured him socially, and his colleagues soon discovered not only his ability but the strength of his character and personality. Having lived a sheltered personal life, he used his work as his window on the world. A good litigator gets to understand people, both their strengths and their weaknesses. His work gave him firsthand experience with the human condition, with human frailty, trickery, and deceit. A good litigator also learns a good deal about the subject matter of his cases. Cardozo read widely and was more familiar with new ideas than most practicing lawyers, but he came to the bench with a view of the judge's role as a resolver of disputes, not as a dispenser of legal theory. Even though his experience as a judge would enlarge his view of the judicial role, Cardozo never lost his lawyer's touch.[2]

Cardozo tried cases as a trial court judge for just one month before he was appointed by the Governor to fill one of the temporary Court of Appeals positions that existed to help that court clean up its backlog. Three years later he was appointed and then elected to a regular term on the Court of Appeals. Cardozo's first few years on the Court of Appeals were a time of legal ferment. The realist movement roiled the academic world, and its critique influenced judicial decision-making. Some of Cardozo's early opinions were instant hits. *Wood v. Lucy, Lady Duff Gordon*,[3] involving interpretation of a contract with an eye to the nature of business relationships, and *MacPherson v. Buick Motor Co.*,[4] found their way very quickly into law school curriculums.

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[2] ANDREW KAUFMAN, CARDOZO 112-13 (Harvard University Press 1998).

[3] 118 N.E. 214 (N.Y. 1917).

[4] 111 N.E. 1050 (N.Y. 1916).

The latter especially was heralded as an example of adapting ancient common law doctrine to the needs of modern industrial society.

Cardozo is remembered as one of the judges who brought the common law into the twentieth century, a judge who adapted the general principles underlying centuries of traditional law to the dynamic changes of an industrializing society, a judge who realized that the atomized societies of previous centuries were becoming more and more interdependent and that law needed to recognize the new economic and social reality. While a careful reading of the body of Cardozo's work supports that conclusion, it does not portray the whole Cardozo. There was another Cardozo, who gave more weight to, or put more burdens on, the other organs of government. A great many of his most famous opinions are matched by an opinion in an analogous case in which he did not modernize the law, did not create a new duty to reflect changes in society. Cardozo modernized most in situations where the way had been foreshadowed, or at least hinted at, in previous legislative or judicial action in his own state.

On the other hand, Cardozo believed that his position as a judge in a democratic society counseled leaving the responsibility for law reform to the legislature when issues were complex and the consequences for change uncertain. His references in many opinions to possible limits on the doctrine being enunciated were not window dressing to be ignored in subsequent opinions. Quite often the lawyerly ingenuity that expanded a principle enunciated a limitation to the principle as well. For example, the seminal opinion imposing liability on auto manufacturers to the ultimate buyer of its defective product is matched by an opinion refusing to impose liability on a public utility to the company whose property was destroyed by fire, allegedly because of failure of the water company to supply water at specific hydrants.[5] Indeed, a series of cases in which Cardozo invoked doctrine and policy in support of liability based on foreseeability of risk or danger is matched by a series of cases in which he invoked doctrine and policy to deny foreseeability-based liability. One can find other series of such paired cases throughout the various areas of doctrine that he considered during his 18 years on the New York Court of Appeals.

In just a few years on the bench Cardozo made a name for himself. By 1921 his growing reputation was recognized in three distinct ways. He was selected to the Board of Overseers of Harvard

[5] Moch Co., Inc. v. Rensselaer Water Co., 159 N.E. 896 (N.Y. 1928).

University. He was invited to lend his support to a project of the Association of American Law Schools to organize what would become the American Law Institute, most known for regularly publishing "Restatements" of bodies of law such as contracts and torts. Finally, he delivered the Storrs Lectures at the Yale Law School. Those lectures have been read by hundreds of thousands in the succeeding years under the title of *The Nature of the Judicial Process*.[6]

Cardozo was the first judge in modern times to try his hand at describing what judging was all about. Indeed, *The Nature of the Judicial Process* helped create what has become a cottage industry as interest in the subject of judicial decision-making has grown not only in the academy but perhaps more importantly among the general public. First Cardozo and then other judges and judicial philosophers have written in increasingly theoretical fashion about the subject. However, over ninety years later Cardozo's initial effort is still being read, with profit.

When Cardozo delivered his lectures, the diverse academic movement known as "legal realism" was in full flower. A theme of that movement was its attack on what it portrayed as a formalist, mechanistic approach to judging. The previous half century had been characterized for its emphasis on judge-made law as having its own internal consistency, with doctrines derived from first principles independent of the politics of the day. Judges, it was said, "found" and did not "make" law, and they deduced the governing rules in a particular case from the decided precedents. The extent to which that portion of the realists' attack on their predecessors was based on inaccurate caricature is still a matter of some debate, but there is little doubt that one of Cardozo's purposes in delivering *The Nature of the Judicial Process* was to acknowledge the importance of sources beyond precedent for judicial decision-making as well as the inevitable element of "law-making" discretion that appellate court judges exercise in close cases.

Cardozo described four major sources of material for judicial decision-making – logic, history, custom, and public policy.[7] He devoted a lecture to each of these. He treated history and custom as more specialized doctrines that were powerful decision-making factors only in those relatively few cases when there was enough evidence of

[6] BENJAMIN N. CARDOZO, THE NATURE OF THE JUDICIAL PROCESS (1921).

[7] *Id*. at 30-31.

either to be relevant. He regarded logic, the use of deductive analysis from principles already established, as having a certain presumption in its favor and as governing in the absence of strong arguments from history, custom, or public policy. While logic as he defined it was backward looking, his incorporation of the notion of deciding by analogy also had a forward-looking aspect.

The bulk of Cardozo's lectures, however, consisted of analysis of the effect of public policy considerations – a normative approach based on contemporary values – on judicial decision-making. He both endorsed the importance of using law to achieve social justice and warned against the dangers that could accompany the abandonment of established principles, certainty, and order. Judges were agents of change, but not too much and not too often. The trick was to know when to innovate and when to refrain.

Cardozo was no revolutionary. His vision of the judicial role was a version of what English and American judges had done for centuries, reaffirmed and adapted for modern use. He believed that the major role in guiding social change in a democracy belonged to the legislature and the executive. Thus, he innovated most when the step to be taken was modest and when the innovation did not violate what he saw as the prerogatives of other institutions of government – and ideally when the legislative or executive branch had already pointed the way. While Cardozo often adapted law to new social conditions, he also often declined to make such adaptations. Fairness was important to him, but he did not believe that judges could always do what they thought was fair or just. Cardozo believed that he had to respect precedent, history, and the powers of other branches of government. Judging involved taking all these factors into account, methodically and as impartially as he could.

A common complaint offered by judges and others is that Cardozo's prescription does not help a judge to decide a particular case. Of course not. Indeed, in a way, a subtheme of Cardozo's lectures is that judicial decision-making involves a nuanced approach among different considerations, any one of which may be dominant with respect to a particular issue or in the context of particular facts. He was essentially an accommodationist, but the totality of his messages was ambiguous. That ambiguity, I think, has contributed to his enduring reputation. How one applies Cardozo to different situations depends on what strand of thought is emphasized in different contexts. Even judges who subscribe fully to his messages will put the elements of

decision-making together in different ways in particular cases, each side able to cite different Cardozo words for support.

Cardozo carried forth his prescription into the field of constitutional law as well, expressing the view that public policy considerations had their strongest justification in that field. Indeed, he outlined a controversial view, which he expounded as a Justice of the Supreme Court, that "the content of constitutional immunities is not constant, but varies from age to age."[8]

The Nature of the Judicial Process was not a work of philosophy. Although Cardozo was well read in works of philosophy and often quoted or cited philosophers to support a particular insight, he was not interested in attempting to set out a comprehensive theory of judging that was grounded in philosophy. His purpose was to explain the art of judging from his perspective as a judge and former practicing lawyer. At the end of the Lectures, he issued a word of caution about everything he said. While he refused to quarrel with the notion that a judge reflects "the spirit of the age," he was skeptical about what that was. "The spirit of the age," he wrote, "as it is revealed to each of us, is too often only the spirit of the group in which the accidents of birth or occupation or fellowship have given us a place."[9]

The years following the delivery and publication of *The Nature of the Judicial Process* saw the transformation of Benjamin Cardozo from a well-known judge to a judge with a national reputation. The academy lionized him even before he became chief judge of the New York Court of Appeals, and the court itself was seen as the outstanding state court in the country. It had several notable judges, Cuthbert Pound, William Andrews, and Irving Lehman, to name just three, but it was Cardozo's opinions that caught the academic public's eye and were incorporated into law school casebooks throughout the country. This was a time when virtually all judges, and not their law clerks, wrote their judicial opinions. Cardozo wrote in a distinctive style, with many one-liners that sharpened his meaning. Occasionally flowery and ornate, at its best the style was crisp and persuasive, and it constitutes a large part of the explanation for his continuing popularity in the legal academy. He had the knack of making a great case out of what would have been humdrum in the hands of most judges. He also had a distinct personality. He was well bred, well educated, elaborately courteous,

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[8] *Id*. at 82-83.

[9] *Id*. at 174-75.

and his personal kindliness and gentleness in his later years led many to refer to the "saintly Cardozo." But no one who was as successful a courtroom lawyer as Cardozo had been could accurately be described as a saint. Underneath the gentle demeanor that he later projected was a self-confident, ambitious, tough-minded man who looked out for himself and those he loved in a conscientious pursuit of success. He had the human failings of vanity and prejudice, but he was a good man with extraordinary talents.

Cardozo never married, but his relationship with his older sister Nellie provided him with support and warmth as she helped raise him in his early years, as they presided together over their family and their home, and finally as he took care of her during her long, last illness. These experiences helped contribute to his strong personal values of duty, honor, and individual responsibility that were often evident in his judicial opinions. Cardozo's family life and his loyalty to his Sephardic heritage also reflected a moral and social conservatism that balanced his progressive, modernizing instincts. His professional achievements during his forty-six years as lawyer and judge would help redeem the family name.

The same balanced approach exhibited on the New York Court of Appeals and in *The Nature of the Judicial Process* between judicial innovation and judicial restraint characterized his work during the relatively brief period he served on the Supreme Court of the United States. I do not have time, in this talk, to do more than note that while on the Court he wrote some important opinions, some published and some not published, that forcefully defended an expansive notion of the importance of the First Amendment. And then more generally Cardozo, invoking John Marshall and Oliver Wendell Holmes, took sides in the theoretical debate of his day – and indeed of ours as well – with those who believed that the open-ended provisions of the Constitution were to be reinterpreted in light of changing political, social, and economic conditions in the country.

Finally, Cardozo is remembered for his style. Cardozo's main hobby was reading and he read widely in literature, philosophy, and even to some extent in science. He was fascinated by language and its ability to convey thought in striking fashion. He employed his love of words in a constant effort, occasionally a bit strained, to express his reasoning in memorable language. That unique style helped make him known in his day and has helped perpetuate his memory as law teachers use his opinions to catch the interest of their students. I have

ended many a talk I have given about Cardozo by letting him speak for himself. I can think of no better way to end a lecture devoted to the memory of Cardozo than by quoting some of his more memorable words:

"The prisoner is to go free because the constable has blundered."[10]

"Not lightly vacated is the verdict of quiescent years."[11]

"Metaphors in law are to be narrowly watched, for starting as devices to liberate thought, they end often by enslaving it."[12]

"The tendency of a principle to expand itself to the limit of its logic may be counteracted by the tendency to confine itself within the limits of its history."[13]

"Danger invites rescue."[14]

"The timorous may stay at home."[15]

"The assault upon the citadel of privity is proceeding in these days apace."[16]

"A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior."[17]

"One who is a martyr to a principle . . . does not prove by his martyrdom that he has kept within the law."[18]

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[10] People v. Defore, 150 N.E. 585, 587 (N.Y. 1926).
[11] Coler v. Corn Exchange Bank, 164 N.E. 882, 884 (N.Y. 1928).
[12] Berkey v. Third Ave. Ry. Co., 155 N.E. 58, 61 (N.Y. 1926).
[13] CARDOZO, *supra* note 6, at 51.
[14] Wagner v. Int'l Ry. Co., 133 N.E. 437, 437 (N.Y. 1921).
[15] Murphy v. Steeplechase Amusement Co., 166 N.E. 173, 174 (N.Y. 1929).
[16] Ultramares v. Touche, 174 N.E. 441, 445 (N.Y. 1931).
[17] Meinhard v. Salmon, 164 N.E. 545, 546 (N.Y. 1928).
[18] Hamilton v. Regents of the University of California, 293 U.S. 245, 268 (1934).

"[Of freedom of thought and speech] one may say that it is the matrix, the indispensable condition, of nearly every other form of freedom."[19]

"[W]e are not to close our eyes as judges to what we must perceive as men."[20]

"Justice is not to be taken by storm. She is to be wooed by slow advances."[21]

"[A] great principle of constitutional law is not susceptible of comprehensive statement in an adjective."[22]

And finally what I believe to be the most quoted words from my biography are not from his judicial writings but rather the words he uttered when he performed the marriage ceremony of a relative:

> Three great mysteries there are in the lives of mortal beings: the mystery of birth at the beginning; the mystery of death at the end; &, greater than either, the mystery of love. Everything that is most precious in life is a form of love. Art is a form of love, if it be noble. Labor is a form of love, if it be worthy; thought is a form of love, if it be inspired; and marriage is love incarnate. So may it be for you throughout all the years to come.[23]

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[19] Palko v. Connecticut, 302 U.S. 319, 327 (1937).

[20] People ex rel. Alpha Portland Cement Co, v. Knapp, 129 N.E. 202, 208 (N.Y. 1920).

[21] BENJAMIN N. CARDOZO, GROWTH OF THE LAW 133 (Yale University Press 1924).

[22] Carter v. Carter Coal Co., 298 U.S. 238, 327 (1936).

[23] Cardozo, Commonplace Book, II, Columbia Cardozo Collection, Rare Book and Manuscript Library, Butler Library, Columbia University, New York, N.Y.