

Address of Hon. Robert H. Jackson

On Accepting First Annual Cardozo Memorial Award

(Note: The following address was delivered by Robert H. Jackson, Attorney General of the United States, in acceptance of the Cardozo Memorial Award presented by Tau Epsilon Rho Law Fraternity on February 22, 1941 at the Mayflower Hotel, Washington, D. C. On behalf of the fraternity the presentation was made by Hon. Isadore Bookstein of the Albany Graduate Chapter. Space does not permit the publication of Judge Bookstein's address.—Editor)

I salute the courage of any group which dares award an honor to a living man — particularly one still in office — and in such times as these.

When events so defy the guidance of established principles, who knows what caprice of individual conduct, what errors of judgment, what straying from principle may lie ahead to make you regret your choice? If I were on a board of award I should choose a living office-holder for honors only if he gave bond at once to retire and to keep silence while life should last.

Of course, I earnestly appreciate being chosen at such hazards to receive an honor bearing the name of the late Benjamin N. Cardozo, especially since the selection has been made by those who revere his name and know how to value his contribution to our jurisprudence.

Time plays havoc with much of the proudest work of each generation and with the individual reputations based on it. But Justice Cardozo had the esteem of his contemporaries and at the same time his position with the future seems singularly secure. Perhaps we can find understanding and encouragement in looking at some of the foundations of his place and his work.

Justice Cardozo will always have a high place among those who exemplify an attitude toward the law which for want of a more definitive term we call "liberal." He possessed one of those rare minds that was emancipated from the "power of the beaten path." He did not shrink from an idea just because it could not be traced a hundred years in print. He did not think creative judicial work came to an end years ago.

But it would be a mistake to think the foundations of his work rested on this alone. Thousands of others have shared his liberalism, his progressive views, and his daring. But they have not shared his fame or his service. It is not merely the possession of a liberalism, but it is the quality of his liberal-



Judge Isadore Bookstein presenting T.E.R. Cardozo Memorial Award to Attorney-General Robert H. Jackson.

ism no less, that we honor, and it is that quality which I would accent tonight as a guide to our own strivings.

Benjamin Cardozo was willing for adequate reason to leave the path that the past had beaten. But always he first found out where that path was, and he knew where he left it, and why, and where he would join up with it again. His departure from the beaten path was never the wanderings of one who was intellectually lost or confused as to the points of the compass.

Liberal legal scholarship has nothing in common with loose scholarship or indifferent knowledge of the history and reason of the law. Loose thinkers whose claim to liberalism is only a lack of discipline or effort find no comfort in Cardozo.

He was first of all an exacting and painstaking scholar, both of the law in general and of the particular case in hand. He followed a challenged rule to its roots, learned why it flourished and what need had brought it into being. He tore up nothing in carelessness, in ignorance, or in haste. He did not try to extemporize doctrines to supplant customs that were deep in the consciousness of the race. He did not

cast aside rules vindicated by long usefulness because of some temporary inconvenience. His willingness to help remould the law was coupled with deep veneration for the older pattern.

Liberalism in the philosophy of Benjamin Cardozo had no kinship with lawlessness. There are many who talk of "protecting our liberties" as though they were gems in a safe deposit box or speak of "preserving our freedom" as though it were a pickle to be kept in brine. The fact is that liberty is a part of our law and cannot exist apart from it. Freedom is never a product of anarchy but is the child of order. It is only possible for men to be free where there is a social order that sanctions patterns of conduct which respect freedoms.

Through the institutions and the doctrines of the law, society seeks to maintain its order and at the same time to assure its development by constantly revising its order. There are those who would stand by the old order so closely as to stifle all development; others would make such haste in promoting real or imagined development that they

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would sacrifice the continuity of our order.

To hold a wise balance between stability and progress is the task of moderate and enlightened judicial statesmen.

Personal affection for Justice Cardozo as a friend, that frail claim to remote identity with him which comes from appearing as an advocate in some of his leading cases, both in the New York Court of Appeals and on the United States Supreme Court, and a deep conviction that his approach to the law is all that keeps it useful to an advancing culture unite to make me a profound admirer of his work and a deep respecter of his tradition.

This, as well as my respect for your good opinion, makes this honor most deeply appreciated. I shall strive to prove worthy of your award.