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Foreword: Benjamin N. Cardozo: Judge, Justice, Scholar

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CONFERENCE
BENJAMIN N. CARDOZO: JUDGE, JUSTICE, SCHOLAR
FOREWORD

*Samuel J. Levine**

On March 23-24, 2017, Touro Law Center and the Jewish Law Institute¹ hosted a national conference: *Benjamin N. Cardozo: Judge,*

*Professor of Law and Director of the Jewish Law Institute, Touro Law Center; Conference Organizer. I thank former Dean Patricia Salkin and Dean Harry Ballan for their support and encouragement, and I thank Dean Ballan and the faculty, staff, and students at Touro Law Center for their participation.

¹ The Jewish Law Institute aims to explore the relevance of the Jewish legal experience to American law, legal practice, and legal scholarship. Toward these goals, the Institute offers a variety of programs, including courses in Jewish law, conferences, public lectures, and scholarly publications. *See The Jewish Law Institute*, TOURO COLLEGE JACOB D. FUCHSBERG LAW CENTER, <http://www.tourolaw.edu/JewishLawInstitute/jewish-law-institute>.

The conference on Benjamin Cardozo, held March 23-24, 2017 at Touro College Jacob D. Fuchsberg Law Center in Central Islip, N.Y., promoted the goals of the Institute on a number of levels. As both a judge on the New York State Court of Appeals and a Supreme Court Justice, Cardozo exemplified many of the ideals and aspirations of the American legal system. Moreover, as both a judge and a scholar, Cardozo developed groundbreaking and influential legal theories. Finally, Cardozo distinguished himself as the first Jewish judge on the New York State Court of Appeals and the second Jewish justice on the United States Supreme Court. For discussions of Cardozo's relationship to his Jewish heritage, *see, e.g.*, Samuel J. Levine, *Louis Marshall, Julius Henry Cohen, Benjamin Cardozo, and the New York Emergency Rent Laws of 1920: A Case Study in the Role of Jewish Lawyers and Jewish Law in Early Twentieth Century Public Interest Litigation*, 33 J. LEGAL PROF. 1, 20 n.123, 22-23 n.138 (2008) (citing sources).

Notably, the conference included presentations by two prominent members of the Jewish Law Institute Advisory Board: the Honorable Kermit V. Lipez, Senior Judge, United States Court of Appeals for the First Circuit, and the Honorable Louis H. Kornreich, United States Bankruptcy Judge (Ret.), Of Counsel, Bernstein, Shur, Sawyer and Nelson, P.A. *See The Jewish Law Institute Advisory Board*, TOURO COLLEGE JACOB D. FUCHSBERG LAW CENTER, <http://www.tourolaw.edu/JewishLawInstitute/?pageid=1009>.

*Justice, Scholar.*² More than thirty judges, lawyers, and scholars, hailing from across the United States, explored topics that included: Cardozo and torts; Cardozo and contracts; Cardozo and judicial decision-making; Cardozo's judicial style; Cardozo and the legal profession; Cardozo, law, and society; Cardozo's jurisprudence; and Justice Cardozo. The conference proceedings also included a keynote address by Professor Andrew Kaufman, Cardozo's biographer, and a video message from Chief Judge Janet DiFiore of the New York State Court of Appeals. The articles published in this Symposium Issue of the *Touro Law Review* provide a sampling of the papers presented at the conference, illustrating the variety of topics explored and the range of perspectives represented.

The first day of the conference opened with a panel dedicated to the subject of Cardozo and contracts, which was presented through the lens of different scholarly approaches. For example, George Cohen focused on a detailed analysis of Cardozo's landmark opinion in a single contracts case, *Sun Printing & Publishing Ass'n v. Remington Paper & Power Co.*,³ while Meredith Miller considered several cases representative of Cardozo's contracts jurisprudence, which she contrasted with the jurisprudence of the contemporary New York State Court of Appeals.⁴ The next panel, on Cardozo's judicial style, likewise comprised presentations by scholars employing different methodologies: Joel Newman offered a doctrinal assessment of Cardozo's tax opinions,⁵ while Richard Weisberg discussed Cardozo's views in *Law and Literature*,⁶ which Weisberg applied to evaluate the

² For the full conference schedule, a video recording of the conference proceedings, and photographs from the conference, see *Conferences*, TOURO COLLEGE JACOB D. FUCHSBERG LAW CENTER, <https://www.tourolaw.edu/JewishLawInstitute/?pageid=727>.

³ 139 N.E. 470 (N.Y. 1923). See George M. Cohen, *The Uncertainty of Sun Printing*, 34 TOURO L. REV. 83 (2018).

⁴ See Meredith R. Miller, *One Judge's Legacy and the New York Court of Appeals: Mr. Justice Cardozo and the Law of Contracts*, 34 TOURO L. REV. 263 (2018). Other panelists included Curtis Bridgeman and moderator Deseriee Kennedy.

⁵ See Joel S. Newman, *Two New York Tax Cases*, 34 TOURO L. REV. 301 (2018).

⁶ See BENJAMIN N. CARDOZO, *Law and Literature*, in SELECTED WRITINGS OF BENJAMIN NATHAN CARDOZO (Margaret E. Hall, ed. 1947) (originally published in Yale University Press, ed. 1925).

writing and rhetoric of both Cardozo and a number of other prominent judges.⁷

The conference continued with a panel on Cardozo and the legal profession,⁸ followed by a keynote address by Cardozo's biographer, Andrew Kaufman.⁹ Significantly, Kaufman noted that "of all the Cardozo talks [he has] given since [he] completed the manuscript 22 years ago, this one was unique because the audience [was] unique" due to its familiarity with Cardozo. Accordingly, Kaufman "focus[ed] on rather different things from what [he] usually talk[s] about," providing original and insightful reflections on his own experiences researching his book, as well as on Cardozo's life and legacy.¹⁰

After lunch, the program featured a panel on Cardozo, law, and society, in which Deborah Post considered a number of Cardozo's opinions in the context of legal education.¹¹ The final panel of the day, dedicated to the topic of Cardozo and judicial decision-making, was composed of presentations by scholars and a federal appeals court judge. Joel Goldstein¹² analyzed Cardozo's groundbreaking *The Nature of the Judicial Process*,¹³ while Randy Lee discussed a lesser-known commencement address Cardozo delivered in 1931 to the graduating students of the Jewish Institute of Religion.¹⁴ Returning to *The Nature of the Judicial Process*,¹⁵ Judge Kermit Lipez drew on Cardozo's insights to reflect upon a dissenting opinion Judge Lipez

⁷ See Richard H. Weisberg, *Cardozo's "Law and Literature": A Guide to His Judicial Writing Style*, 34 *TOURO L. REV.* 349 (2018). The panel was moderated by Myra Berman.

⁸ The panelists were Milan Markovic, Rebecca Roiphe, and moderator Ajay Mehrotra.

⁹ See ANDREW L. KAUFMAN, *CARDOZO* (1998).

¹⁰ See Andrew L. Kaufman, *Cardozo*, 34 *TOURO L. REV.* 7 (2018).

¹¹ See Deborah W. Post, *Cardozo, the Canon and Some Critical Thoughts about Pedagogy*, 34 *TOURO L. REV.* 321 (2018). Other panelists included Fred Lawrence and moderator Harry Ballan.

¹² See Joel K. Goldstein, *The Nature of the Judicial Process: The Enduring Significance of a Legal Classic*, 34 *TOURO L. REV.* 159 (2018).

¹³ See BENJAMIN N. CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* (1921).

¹⁴ See Randy Lee, *Justice Benjamin Nathan Cardozo and His Two Most Important Questions: Reflections on the Choice of Tycho Brahe*, 34 *TOURO L. REV.* 237 (2018).

¹⁵ See *CARDOZO, THE NATURE OF THE JUDICIAL PROCESS*, *supra* note 13.

had written in a particularly poignant case he heard as a member of the Supreme Judicial Court of Maine.¹⁶

The first day of the conference culminated in a reception in the Law Center's Judaica Room, which houses the Touro Gould Law Library's Abraham Goldstein and Lillie Goldstein Judaica Collection,¹⁷ followed by a dinner presentation, in the form of a video message delivered by New York State Court of Appeals Chief Judge Janet DiFiore, who shared her unique perspective of Cardozo's enduring legacy and influence.¹⁸

The second day of the conference began with a broad consideration of Cardozo's jurisprudence, including John Goldberg's portrait of Cardozo as a "great common law judge."¹⁹ The next panel turned more specifically to the topic of Cardozo and torts, as Michael Green explored Cardozo's relevance to the civil jury,²⁰ while William Nelson²¹ provided a historical analysis of Cardozo's famous *Palsgraf*²² opinion. The conference closed with a panel on Cardozo's contributions during his relatively brief tenure on the United States Supreme Court. Robert Pushaw focused on Cardozo's opinions in cases reviewing New Deal legislation,²³ while Steven Winter evaluated Cardozo's rhetoric through a survey of Cardozo's opinions on both the United States Supreme Court and the New York State

¹⁶ See Judge Kermit V. Lipez, *Justice Cardozo's The Nature of the Judicial Process: A Case Study*, 34 TOURO L. REV. 247 (2018). The panel was moderated by Rodger Citron.

¹⁷ See *The Abraham Goldstein and Lillie Goldstein Judaica Collection*, TOURO COLLEGE JACOB D. FUCHSBERG LAW CENTER, <http://www.tourolaw.edu/JewishLawInstitute/?pageid=728>.

¹⁸ See *Remarks by Chief Judge Janet DiFiore of the New York State Court of Appeals, at the Conference: Benjamin N. Cardozo: Judge, Justice, Scholar*, TOURO COLLEGE JACOB D. FUCHSBERG LAW CENTER, https://videos.tourolaw.edu/media/1_mwjmgmf1.

¹⁹ See John C.P. Goldberg, *Benjamin Cardozo and the Death of the Common Law*, 34 TOURO L. REV. 147 (2018). Other panelists included Mark Graber, Benjamin Zipursky, and moderator Joan Foley.

²⁰ See Michael D. Green & Ashley DiMuzi, *Cardozo and the Civil Jury*, TOURO L. REV. 183 (2018).

²¹ See William E. Nelson, *Palsgraf v. Long Island R.R.: Its Historical Context*, 34 TOURO L. REV. 281 (2018). Other panelists included John Dzienkowski and moderator Lawrence Raful.

²² 162 N.E. 99 (N.Y. 1928).

²³ See Robert J. Pushaw, Jr., *Analyzing Justice Cardozo's Opinions on the Constitutionality of the New Deal*, 34 TOURO L. REV. 335 (2018).

Court of Appeals.²⁴ Finally, this issue includes two additional articles about Cardozo: a co-authored article by Kenneth Abraham and G. Edward White²⁵ and an article by Alberto Bernabe.²⁶

Taken together, the articles in this Symposium Issue of the *Touro Law Review* provide a wide-ranging study of the abiding impact and influence of Benjamin N. Cardozo. The articles demonstrate that Cardozo remains a central figure in our understanding of American law, deserving of our continuing attention, consideration, and close study. As such, the proceedings of the conference, captured in this Symposium Issue of the *Touro Law Review*, will serve as an important resource for future scholarly endeavors dedicated to Cardozo's remarkable career and legacy.

²⁴ See Steven L. Winter, *Cardozo's Freudian Slips*, 34 TOURO L. REV. 359 (2018). Other panelists included Richard Friedman and the moderator, the Honorable Louis Kornreich.

²⁵ See Kenneth S. Abraham & G. Edward White, *Recovering Wagner v. International Railway Company*, 34 TOURO L. REV. 21 (2018).

²⁶ See Alberto Bernabe, *Ahead of His Time: Cardozo and the Current Debates on Professional Responsibility*, 34 TOURO L. REV. 63 (2018).