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Law and Literature, by Benjamin N. Cardozo

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BOOK REVIEWS

LAW AND LITERATURE. By Benjamin N. Cardozo. New York: Harcourt, Brace & Co. 1931. 190 pages. Price \$2.75.

Aside from those engaged purely in literary pursuits, lawyers probably do more writing than any other professional men. It is therefore surprising that more attention has not been given to style by this large class of writers. One style alone they have developed, and in a highly commendable way. They have evolved a formal manner of writing, a manner which conveys meanings with a remarkable precision in view of the fact that language as a vehicle of expression is more adapted to the play of the poet than to the exacting demands of the logician. That style, one of the most useful tools of the profession, has as its dominating end the isolation of particular meanings so that those particular meanings are emphasized as the thought and purpose in the mind of the writer. The criticism of the profession as writers is that they carry their technical language with them into non-technical pursuits. John Austin's wife once said that his love letters read like old equity pleadings. Too often an essay which is intended to impart simple information or to entertain the reader smacks of the deed and the statute book. And it is not without significance that great popularity has gone with the old saw about the lawyer who made a gift of an orange, the language accompanying the gift being sufficient, if economically employed, to convey an entire orange grove. Moreover, conscious attempts at style by members of the profession have for the most part proved disastrous, the results usually resembling the gingerbread architecture of the last century, in which the house could scarcely be discerned beneath its embellishments. See, for example, some of the memorials in the United States Reports and the addresses often given at bar meetings.

But the law has never been entirely without its stylists, nor is it so today. Chief Judge Cardozo, one of our most adept commanders of words, has presented us with a volume which not only discusses the place of literature in law, but also, by its very manner of execution, shows what a legal literary style can be. The title essay, *Law and Literature*, from a literary standpoint is among the finest writings that have been done in the law. It is not overburdened with a phantasmagoria of flowery language, nor is it without poetic force; in his nicely balanced diction the good taste of the author is manifest without being conspicuous. This essay, in fact this book of essays, should be of use as a form to be copied in those composition classes in which pre-law students are segregated. It might even be of value to some of those ex-law students who deliver addresses or write semi-popular essays. And it is not to be forgotten that the Chief Judge has very often been able to carry the simplicity of his convincing style even into the technical field of judicial opinion. It is, in fact, with the style of judicial opinions that he is concerned in the title essay. He distinguishes six types. A mere listing of them is interesting, recalling to every lawyer's mind various judges and their judicial speech. "There

is the type magisterial or imperative; the type laconic or sententious; the type conversational or homely; the type refined or artificial, smelling of the lamp, verging at times upon preciosity or euphuism; the type demonstrative or persuasive; and finally the type tonsorial or agglutinative, so called from the shears and the pastepot which are its implements and emblem."

In his previous works Chief Judge Cardozo has drawn very largely upon his learning; in this he gives us of his wisdom. Each of the essays has been published elsewhere or has been delivered as an address. The titles suggest the subject matter, and necessitate little comment. *A Ministry of Justice* is a marshaling of the possible functions which such an agency could fulfill. *What Medicine Can Do for the Law* was addressed originally to an academy of medicine, and points out some of the contributions we can ask from that science, especially with respect to criminal law and the defense of insanity. *The Home of the Law* was a dedicatory address for a new home of the New York County Lawyers' Association. The other titles, *The American Law Institute*, *The Game of the Law*, *The Comradeship of the Bar*, are self-explanatory.

One sentence from the book will bear repetition here. It is a courageous admission from a notably courageous judge. In discussing the writing of opinions Chief Judge Cardozo says: "I often say that one must permit oneself, and that quite advisedly and deliberately, a certain margin of misstatement." How many judges would like to make that admission to the host of disappointed advocates who have had private thoughts, doubtless not too often complimentary, as to the width of that margin?

DANIEL JAMES.