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CARDOZO, Benjamin N.

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Nature Of The Judicial Process

Padhraic Smyth



Nature Of The Judicial Process:

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The Nature of the Judicial Process Benjamin Nathan Cardozo, 2013-09 This historic book may have numerous typos and missing text Purchasers can usually download a free scanned copy of the original book without typos from the publisher Not indexed Not illustrated 1921 edition Excerpt Lecture IV Adherence to Precedent The Subconscious Element in the Judicial Process Conclusion THE system of law making by judicial decisions which supply the rule for transactions closed before the decision was announced would indeed be intolerable in its hardship and oppression if natural law in the sense in which I have used the term did not supply the main rule of judgment to the judge when precedent and custom fail or are

displaced Acquiescence in such a method has its basis in the belief that when the law has left the situation uncovered by any pre existing rule there is nothing to do except to have some impartial arbiter declare what fair and reasonable men mindful of the habits of life of the community and of the standards of justice and fair dealing prevalent among them ought in such circumstances to do with no rules except those of custom and conscience to regulate their conduct The feeling is that nine times out of ten if not oftener the conduct of right minded men would not have been different if the rule embodied in the decision had been announced by statute in advance In the small minority of cases where ignorance has counted it is as likely to have affected one side as the other and since a controversy has arisen and must be determined somehow there is nothing to do in default of a rule already made but to constitute some authority which will make it after the event Some one must be the loser it is part of the game of life we have to pay in countless ways for the absence of prophetic vision No doubt the ideal system if it were attainable would be a code at once so flexible and so minute as to supply in advance for every conceivable situation the just and fitting rule But life is too complex to

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