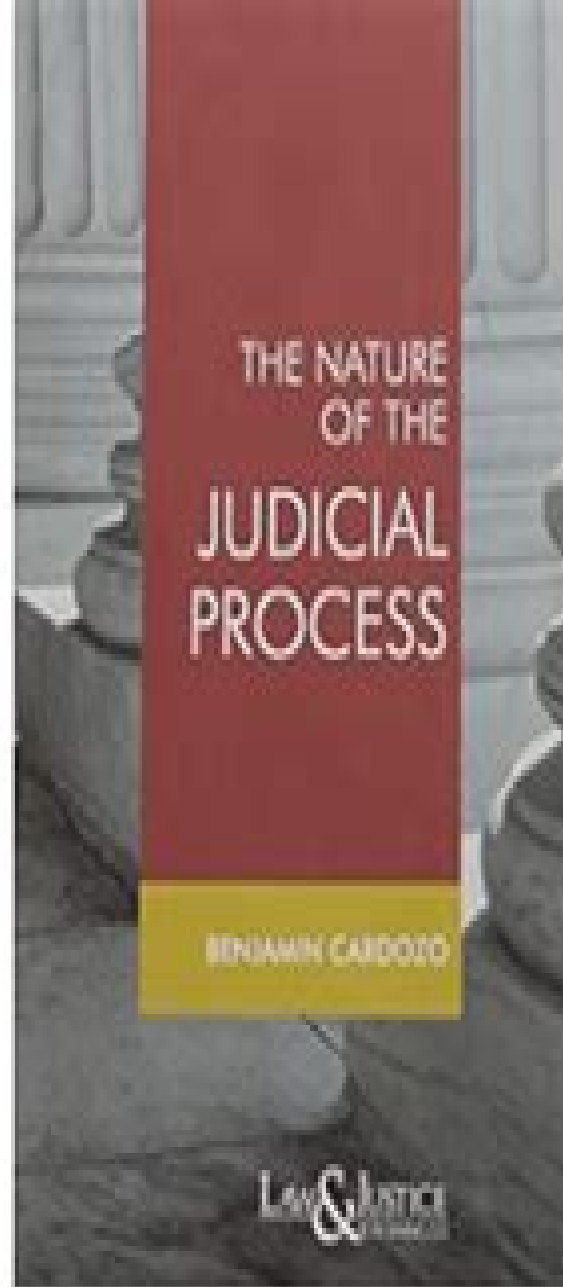




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The Nature Of The Judicial Process

B. N. Cardozo



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and later a Justice of the U S Supreme Court Cardozo filled the lecture hall at Yale when he finally answered the frank query
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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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