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OLIVER WENDELL HOLMES: FATHER AND SON

ARNOLD L. GOLDSMITH

The author is Assistant Professor of English in Wayne State University, Detroit, Michigan. Among other articles from his hand are the following: "Henry James's Reconciliation of Free Will and Fatalism" (forthcoming) in *NINETEENTH-CENTURY FICTION*; "THE DEVELOPMENT OF FRANK NORRIS'S PHILOSOPHY" a chapter in forthcoming *STUDIES FOR JOHN WILCOX*. He is Co-editor with Dr. MILTON B. BYRD of *OPPORTUNITIES FOR PUBLISHING LITERARY AND LINGUISTIC SCHOLARSHIP AND LITERARY CRITICISM* (forthcoming)—EDITOR.

Ever since Catherine Drinker Bowen's biography of the Holmes family, it has been popularly believed that the Autocrat and the Jurist did not get along together. The egotistical son of a conceited father was bound to rebel against the latter's dogmatic preference for medicine as a career over law. That Wendell was unable to confide in his father concerning the origin and development of his philosophical ideas, Miss Bowen has convincingly dramatized, but does that necessarily exclude any intellectual influence of one on the other.

For many years now, Professor Harry H. Clark has been entertaining his students in American literature by calling Oliver Wendell Holmes, Jr., a block off the old chip. Though it is amusingly evident that the six foot, three inch judge did not inherit many physical characteristics from his five foot, five inch father, the possibility of an intellectual debt remains. This paper does not claim that Holmes, Sr., was the most important intellectual influence on Wendell, but that there is a relationship here that has never been explored.

Probably the most obvious connection is the scientific world view that both men shared. Even Harold R. McKinnon, one of Justice Holmes's severest critics, has summarized the Judge's "unsystematic" philosophy as the mental "attitude of positive science utilized as the only valid method of knowledge. In other words, it is anti-metaphysical, skeptical, and disdainful of any constants or universals beneath the flux of change."¹ This scientific attitude Wendell developed at home as well as in school. His father was not only Boston's beloved wit and occasional poet, but also a respected professor of anatomy at Harvard, the man who popularized the microscope, discovered (along with others at the same time) the cause of puerperal fever, and first used the term "reflex movement" years before Pavlov. No man was more aware of the flux of change than Wendell's father.

This interest in the "new" science eventually led Holmes, Sr., to the problems of psychology, and he began making close observations of human behavior and the sense of moral responsibility. The narrow theological tenets of his ancestors he found repulsive, so he substituted hereditary and environmental determinism for Calvinistic

¹ HAROLD R. MCKINNON, *THE SECRET OF MR. JUSTICE HOLMES* (Berkeley, 1950), p. 2. In *EVOLUTION AND THE FOUNDERS OF PRAGMATISM* (Cambridge, 1949), p. 173, PHILIP WIENER briefly mentions that Holmes, Jr., gave "credit for his skepticism to the 'scientific way of looking at the world' which his father had."

predestination in the case of those persons who are morally sick. These people, he said in "Crime and Automatism," are free from all moral responsibility when their inherent idiosyncrasies reach such an extreme degree that they are beyond their control. Such persons do not have free will and their "apparent self-determinations or voluntary actions" are really "reflex movements, automatic consequences of practically irresistible causes existing in the inherited organization and in preceding conditions."² Holmes illustrated this theory by creating three characters, Elsie Venner, Myrtle Hazard, and Maurice Kirkwood, whose will is restricted like "a drop of water imprisoned in a crystal,"³ confined by "organization, education, and condition."⁴ These unfortunates have only one-tenth free will, "nine-tenths of their perversity being the result of "outside influences!"⁵

Normal, healthy people, on the other hand, said Doctor Holmes in "Mechanism in Thought and Morals," at least experience the sensation of willing, of self-determination and, in most cases, this belief in volition is strong enough to motivate their behavior along moral lines. In other words, though free will may be, and probably is, an illusion, it has pragmatic value because "Our thinking ourselves free is the key to our whole moral nature."⁶

Justice Holmes was as deeply interested in the problem of moral responsibility as was his father. A striking illustration of this can be found in "The Common Law," in which he raised the question whether traditional criminal law did more harm than good. "Does punishment deter?" he asked. "Do we deal with criminals on proper principles?"⁷ Holmes did not think so and sided with the new school of continental criminalists who insisted that the criminal, not the crime, be considered above all else. Admitting that even this formula left much to be desired, he was at least pleased to see the problem being examined on principles "based on science for the first time."⁸

If the typical criminal, he continued, is a degenerate, bound to swindle or to murder by as deep seated an organic necessity as that which makes the rattlesnake bite; it is idle to talk of deterring him by the classical method of imprisonment. He must be got rid of; he cannot be improved or frightened out of his structural reaction. If, on the other hand, crime, like normal human conduct is mainly a matter of imitation, punishment fairly may be expected to help keep it out of fashion. The study of criminals has been thought by some well known men of science to sustain the former hypothesis. The statistics of the relative increase of crime in crowded places like large cities, where example has the greatest chance to work, and in less populated parts where the contagion spreads more slowly, have been used with great force in favor of the latter view. But there is weighty authority for the belief that, however this may be "not the nature of the crime, but the dangerousness of the criminal, constitutes the only reasonable criterion to guide the inevitable social reaction against the criminal."⁹

² OLIVER WENDELL HOLMES, SR., PAGES FROM AN OLD VOLUME OF LIFE (Boston, 1892), p. 330.

³ OLIVER WENDELL HOLMES, SR., THE AUTOCRAT OF THE BREAKFAST TABLE (Boston, 1892), p. 86.

⁴ *Ibid.*, p. 89.

⁵ OLIVER WENDELL HOLMES, SR., ELSIE VENNER (Boston, 1892), p. 228.

⁶ OLIVER WENDELL HOLMES, SR., PAGES FROM AN OLD VOLUME OF LIFE (Boston, 1892), p. 181.

⁷ MAX LERNER, THE MIND AND FAITH OF JUSTICE HOLMES (Boston, 1943), p. 84.

⁸ *Ibid.*, p. 85.

⁹ *Ibid.* At the end of this passage, Holmes is quoting Havelock Ellis.

In this passage, Wendell acknowledged two possible schools of thought concerning the cause of criminal behavior; hereditary and environmental determinism. His father was a noted exponent of the former, but had also mentioned the latter in his essays.¹⁰ Possibly Wendell had Holmes, Sr., in mind as one of the "well known men of science." This possibility is strengthened by the following passage from "The Poet at the Breakfast-Table," written in 1872, eight years before "The Common Law." Wendell's father criticized the traditionalists who,

When they have come across a moral monster . . . seemed to think that he put himself together, having a free choice to all the constituents which make up manhood, and that consequently no punishment could be too bad for him.

I say, hang him and welcome, if that is the best thing for society; hate him, in a certain sense, as you hate a rattlesnake, but if you pretend to be a philosopher, recognize the fact that what you hate in him is chiefly misfortune, and that if you had been born with his villainous low forehead and poisoned instincts, and bred among creatures of the Races Maudites whose natural history has to be studied like that of beasts of prey and vermin, you would not have been sitting there in your gold-bowed spectacles and passing judgment on the peccadilloes of your fellow creatures.¹¹

Not only are the ideas of the two men similar according to these passages, but so is the language in which they are expressed. One of the most interesting similarities is the common reference to the rattlesnake. Did Wendell make just a casual reference to this particular reptile or did he remember "Elsie Venner?" Miss Bowen says that Wendell received an autographed copy of all of his father's books since 1848, and while the doctor was writing this book in 1861, he talked about nothing else. Wendell, during this year, received his commission as a first lieutenant after graduating from Harvard. His regiment then trained during the summer at Camp Massasoit in Readville, Massachusetts and, after his first wound on October 23, 1861, Wendell was on leave in Boston on recruiting duty. All of these facts mean that Wendell could not have escaped hearing about the ophidian young lady whose mother, while pregnant with Elsie, had been bitten by a rattlesnake. And furthermore, there is every reason to believe that the young officer saw the stuffed rattlesnake which now hung over his father's books. In fact, the enthusiastic, talkative doctor may have taken Wendell to his Medical School Laboratory, where he kept a long garter snake in a cage in order to study its movements as part of the research for his novel.

This is, of course, only hypothetical, but the important fact is that Wendell unequivocally agreed with his father that the criminal's will is often strictly limited, that such a person is usually unable to choose morally between right and wrong. As was mentioned above, an "The Autocrat of the Breakfast-Table" Holmes had said that three things strictly limit the human will: physical organization, education and material environment. The following statement by Justice Holmes is remarkably similar to that of his father. He pointed out that

Theory and fact agree in frequently punishing those who have been guilty of no moral wrong, and who could not be condemned by any standards that did not avowedly disregard the personal peculiarities of the individuals concerned. If punishment stood on the moral grounds which are proposed for it, the first thing to be considered would be those limitations in the capacity for choosing

¹⁰ In fact, *A MORTAL ANTIPATHY* (1881) dramatizes a case of environmental determinism.

¹¹ OLIVER WENDELL HOLMES, SR., *THE POET AT THE BREAKFAST-TABLE* (Boston, 1892), p. 226.

rightly which arise from *abnormal instincts, want of education, lack of intelligence, and all other defects which are most marked in the criminal classes.*¹²

If unidentified, this passage might mistakenly be attributed to Doctor Holmes. But much more significant to the cultural historian is that these ideas eventually became a part of this country's jurisprudence, sanctioned by the highest court in the land. Although Holmes, Sr., did not live to hear Wendell deliver the majority decision of the Supreme Court in the case of *Buck v. Bell*, in 1927, he most certainly would have been proud of his son. The case involved Carrie Buck, who was the daughter of a feeble-minded mother and who had a feeble-minded child. Speaking for an almost unanimous Court, Holmes upheld the 1924 Virginia statute which legalized the sterilization of inmates in institutions for the feeble-minded. Although he was always a champion of civil liberties, Holmes here considered society as a whole in danger from deterioration of the race. An abridgement of this famous decision follows:

An act of Virginia, approved March 20, 1924, recites that the health of the patient and the welfare of society may be promoted in certain cases by the sterilization of mental defectives, under careful safeguard, . . . that the Commonwealth is supporting in various institutions many defective persons who if now discharged would become a menace but if incapable of procreating might be discharged with safety and become self-supporting with benefit to themselves and to society; and that experience has shown that heredity plays an important part in the transmission of insanity, imbecility, etc.

It is better for all the world if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes. . . . Three generations of imbeciles is enough.¹³

Sterilization of the feeble-minded is a measure which Doctor Holmes never suggested, though it is obviously one of the logical results of a philosophical and scientific determinism. Justice Holmes may have read or heard about Dugdale's, Goddard's, McCulloch's, and Blackmoor's careful case studies of congenitally defective and degenerate families, and Harry Elmer Barnes's warning against "the disastrous results which attend the promiscuous and unrestricted breeding"¹⁴ of such subnormal persons. For a man who firmly believed in Darwinian evolution, who saw enacted before him in the courts the daily struggle for survival, it is not surprising that Justice Holmes sanctioned sterilization as the modern way of helping along natural selection for the good of the human race.

Although Justice Holmes was optimistic about the ultimate progress of Man, he was, like his father, skeptical about the possibilities of self-determination. One of the most explicit statements the Justice ever made revealing his denial of free will is found in a letter he wrote at the age of 88 to Professor Otto, at the University of Wisconsin. Professor Otto had humbly asked Holmes' opinions on philosophical matters. Although the reply to this letter makes no reference to his father, it would certainly have received the Doctor's whole-hearted endorsement.

In the letter, Wendell admitted to Professor Otto "the possibility, so far as I know, that the supposed free will of man may here and there add an atom of force to

¹² LERNER, *THE MIND AND FAITH OF JUSTICE HOLMES*, p. 47. Italics mine.

¹³ *Ibid.*, pp. 357, 358.

¹⁴ HARRY ELMER BARNES, *THE REPRESSION OF CRIME* (New York, 1926), p. 180.

the universe. . . . But looking at man as I see him I don't feel much ground for believing it."¹⁵ Holmes preferred to call himself a "bettable-arian" because "although we are not certain—we can bet pretty safely that certain things will come to pass."¹⁶ Then, in a passage revealing the scientific pessimism prevalent at the turn of the century, he added the solemn observation that

man has taken himself much too seriously as a little god over against the universe—instead of regarding himself as a cosmic ganglion. I think he regards his self as more of a unit, more indivisible, more fixed in contour and content than he is. Because he has an outline he thinks he can separate himself from the streams of energy that cross and make white light for a moment.¹⁷

This skepticism did not make the two Holmeses bitter but gave them a keen awareness of human frailty and made them question conventional concepts of moral responsibility. Though the son was less optimistic than his father, both men showed a profound understanding of and pity for the wrong-doing of others. Both rejected the doctrine of original sin and realized that men are often the unfortunate victims of forces beyond their control and, consequently, need compassion and benevolence, not consignment to the flames of hell. Both would certainly have accepted for their epitaph these lines from the Doctor's poem "Wind-Clouds and Star-Drifts":

My heart is simply human; all my care
For them whose dust is fashioned like mine own;
These ache with cold and hunger; live in pain,
And shake with fear of worlds more full of woe;
There may be others worthier of my love,
But such I know not save through these I know.¹⁸

¹⁵ MAX OTTO, *On Truth, Majority Vote, Free Will, and Necessity*, 38 *JOUR. OF PHILOS.* (1941), 391.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ OLIVER WENDELL HOLMES, SR., *Wind-Clouds and Star-Drifts*, *MAJOR AMERICAN POETS*, ed. HARRY H. CLARK, (New York, 1936), p. 577.