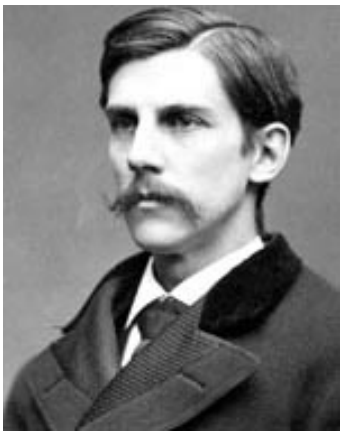
"Holmes and His Impact: The Life, the Opinions, the Continuing Relevance"



Oliver Wendell Holmes, Jr.

Honorable Thomas A. Balmer
Associate Justice, Oregon Supreme Court

Other resources:

Thomas A. Balmer, *Present Appreciation and Future Advantage: A Note on the Influence of Hobbes on Holmes*, 47 Amer. J. Legal Hist. 412 (2005) (available online Multnomah County Library JSTOR Public Library Collection I).

Hear also Death plucks my ear. Radio recording of Justice Holmes on the occasion of his 90th birthday. March 7, 1931. http://prawfsblawg.blogs.com/prawfsblawg/2007/02/death_plucks_my.html (click on the "Here" in "Here it is.")

Holmes on Law as a Business and a Profession

Thomas A. Balmer

It is fashionable these days to decry the transformation of law from a profession into a business. And it is true that earlier generations of lawyers were blissfully ignorant of marketing brochures, timekeeper realization rates, and proper billing for computer research. Yet our predecessors faced many of the same tensions between law as a business and law as a profession that we do today. Few have written more eloquently about these tensions than Oliver Wendell Holmes, Jr. His thoughts about law as a way to make a living and law as a profession for thinkers and people of action are characterized by a mixture of wit, resignation, and philosophy that rings true a century later.

Holmes's awareness of the hard reality of private practice—the need to find a client and earn a fee—began with his first day on the job. He was admitted to the Massachusetts bar on March 9, 1867, at the age of twenty-six. "My first day as a lawyer," he noted in his diary. "The rush of clients postponed on account of weather."[1]

Fourteen years later, Holmes published *The Common Law,* widely considered the greatest legal work ever written by an American. Shortly thereafter he received a letter from his law partner, George Shattuck, who was vacationing in Italy. Shattuck viewed Holmes's stunning achievement from the pragmatic perspective of private practice: "I congratulate you on the publication of your book . . . . I see from the papers that you have argued the will case. It would be well if we could look into that class of cases—"[2]

As in so many other areas of his life, Holmes confronted the dilemma of private practice without flinching. He recognized the economic realities of the profession and did not denigrate the "wish to make a living and to succeed . . . . [W]e all want those things," he told fellow members of the Boston Bar Association.[3] But he also saw that mere financial success would not bring contentment. "[H]appiness," he said, "cannot be won simply by being counsel

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1. Sheldon M. Novick, Honorable Justice: The Life of Oliver Wendell Holmes 118 (Boston, 1989) (quoting Oliver Wendell Holmes Diary (Apr. 4, 1867)).
2. Id. at 165 (quoting Letter from George Shattuck to Oliver Wendell Holmes (Apr. 2, 1881)).
3. Speech at a Dinner Given to Chief Justice Holmes by the Bar Association of Boston on March 7, 1900 [hereinafter Boston Bar Speech], *reprinted in* Collected Legal Papers 244, 246 (New York, 1921).

for great corporations and having an income of fifty thousand dollars."[4] The practice of a profession had to mean something more.

But where in the law was that elusive "something more"? Holmes's view of the actual practice of law—"the listless solitude of an office"[5]—was as clear-eyed as his understanding of the economic reality of practice. He knew all too well the indissoluble link between law and the often tedious details of daily life. And he readily acknowledged that the law does not offer the higher spiritual and intellectual rewards of philosophy or religion, poetry or art. He framed the question vividly in the conclusion to his lecture, "The Profession of the Law": "How can the laborious study of a dry and technical system, the greedy watch for clients and the practice of shopkeepers' arts, the mannerless conflicts over often sordid interests, make out a life?"[6]

Holmes's response was characteristic. He refused to resign himself to the view that law is nothing more than a business, with the drudgery of practice alleviated only by the possibility of financial reward. But just as strenuously he rejected the notion that the practice of law is the detached pursuit of the good or of social justice; it did not lead to "flowery paths and beds of roses . . . where brilliant results attend your work."[7] Holmes avoided both of these common characterizations of the practice of law. "I confess," he said, "that altruistic and cynically selfish talk seem to me about equally unreal."[8]

Instead, Holmes embraced the practice of law as a way to earn a living, but also as a way to "make out a life" and to "live greatly." Living greatly did not necessarily mean achieving public renown—although in his early years as a lawyer and judge Holmes often regretted his lack of renown. Rather, for Holmes, "living greatly" meant living to the full and striving for something greater than oneself:

> I say . . . that a man may live greatly in the law as elsewhere; that there as well as elsewhere his thought may find its unity in an infinite perspective; that there as well as elsewhere he may wreak himself upon life, may drink the bitter cup of heroism, may wear his heart out after the unattainable.[9]

The profession of law allowed one to struggle each day with the concerns, both significant and petty, of clients, "the mannerless conflicts over often sordid interests."[10] But in this very struggle the lawyer could transcend the immediate narrow issue and look for "the rational connection between your fact and the frame of the universe."[11] The practice of law could—not necessar-

4. The Path of the Law, 10 Harv. L. Rev. 457, 478 (1897), *reprinted in* Collected Legal Papers, *supra* note 3, at 167, 202.

5. The Bar as a Profession (1896), *reprinted in* Collected Legal Papers, *supra* note 3, at 153, 155.

6. The Profession of the Law: Conclusion of a Lecture Delivered to Undergraduates of Harvard University, on February 17, 1886, *reprinted in* Collected Legal Papers, *supra* note 3, at 29, 29.

7. *Id.* at 31.

8. Boston Bar Speech, *supra* note 3, at 247.

9. The Profession of the Law, *supra* note 6, at 30.

10. *Id.* at 29.

11. *Id.* at 30.

ily would, but could—be a starting point for the lawyer to seek to understand the larger forces of society and history. And these "more complex and intense intellectual efforts mean a fuller and richer life. They mean more life. Life is an end in itself, and the only question as to whether it is worth living is whether you have enough of it."[12] This full pursuit of life, of the universal through the particular, was possible in the practice of law.

It would overstate the case to suggest that Holmes resolved, for himself or anyone else, the tension between law as a business and law as a profession. Indeed, he did not particularly enjoy practicing law—he left private practice to teach at Harvard and later found his true calling on the bench. But throughout his career Holmes confronted the same doubts, both personal and universal, that practicing lawyers do today. Is making a living enough? What else is there to this life in the law? And while Holmes's answers may be somber and not wholly satisfying, they show a courageous and restless mind striving to make sense of life and law. They give us guideposts which hint at the practice of law as both a business and a profession—and, perhaps, as a way to "make out a life."

12. Boston Bar Speech, *supra* note 3, at 248.

THE COMMON LAW.

LECTURE I.

EARLY FORMS OF LIABILITY.

THE object of this book is to present a general view of the Common Law. To accomplish the task, other tools are needed besides logic. It is something to show that the consistency of a system requires a particular result, but it is not all. The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics. In order to know what it is, we must know what it has been, and what it tends to become. We must alternately consult history and existing theories of legislation. But the most difficult labor will be to understand the combination of the two into new products at every stage. The substance of the law at any given time pretty nearly

The preservation of the just powers of the States is quite as vital as the preservation of the powers of the General Government.

When this court had before it the question of the constitutionality of a statute of Kansas making it a criminal offense for a contractor for public work to permit or require his employés to perform labor upon such work in excess of eight hours each day, it was contended that the statute was in derogation of the liberty both of employés and employer. It was further contended that the Kansas statute was mischievous in its tendencies. This court, while disposing of the question only as it affected public work, held that the Kansas statute was not void under the Fourteenth Amendment. But it took occasion to say what may well be here repeated: "The responsibility therefor rests upon legislators, not upon the courts. No evils arising from such legislation could be more far-reaching than those that might come to our system of government if the judiciary, abandoning the sphere assigned to it by the fundamental law, should enter the domain of legislation, and upon grounds merely of justice or reason or wisdom annul statutes that had received the sanction of the people's representatives. We are reminded by counsel that it is the solemn duty of the courts in cases before them to guard the constitutional rights of the citizen against merely arbitrary power. That is unquestionably true. But it is equally true —indeed, the public interests imperatively demand—that legislative enactments should be recognized and enforced by the courts as embodying the will of the people, unless they are plainly and palpably, beyond all question, in violation of the fundamental law of the Constitution." *Atkin* v. *Kansas*, 191 U. S. 207, 223.

The judgment in my opinion should be affirmed.

MR. JUSTICE HOLMES dissenting.

I regret sincerely that I am unable to agree with the judg-

ment in this case, and that I think it my duty to express my dissent.

This case is decided upon an economic theory which a large part of the country does not entertain. If it were a question whether I agreed with that theory, I should desire to study it further and long before making up my mind. But I do not conceive that to be my duty, because I strongly believe that my agreement or disagreement has nothing to do with the right of a majority to embody their opinions in law. It is settled by various decisions of this court that state constitutions and state laws may regulate life in many ways which we as legislators might think as injudicious or if you like as tyrannical as this, and which equally with this interfere with the liberty to contract. Sunday laws and usury laws are ancient examples. A more modern one is the prohibition of lotteries. The liberty of the citizen to do as he likes so long as he does not interfere with the liberty of others to do the same, which has been a shibboleth for some well-known writers, is interfered with by school laws, by the Post Office, by every state or municipal institution which takes his money for purposes thought desirable, whether he likes it or not. The Fourteenth Amendment does not enact Mr. Herbert Spencer's Social Statics. The other day we sustained the Massachusetts vaccination law. *Jacobson* v. *Massachusetts*, 197 U. S. 11. United States and state statutes and decisions cutting down the liberty to contract by way of combination are familiar to this court. *Northern Securities Co.* v. *United States*, 193 U. S. 197. Two years ago we upheld the prohibition of sales of stock on margins or for future delivery in the constitution of California. *Otis* v. *Parker*, 187 U. S. 606. The decision sustaining an eight hour law for miners is still recent. *Holden* v. *Hardy*, 169 U. S. 366. Some of these laws embody convictions or prejudices which judges are likely to share. Some may not. But a constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the State or of *laissez faire*.

It is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar or novel and even shocking ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States.

General propositions do not decide concrete cases. The decision will depend on a judgment or intuition more subtle than any articulate major premise. But I think that the proposition just stated, if it is accepted, will carry us far toward the end. Every opinion tends to become a law. I think that the word liberty in the Fourteenth Amendment is perverted when it is held to prevent the natural outcome of a dominant opinion, unless it can be said that a rational and fair man necessarily would admit that the statute proposed would infringe fundamental principles as they have been understood by the traditions of our people and our law. It does not need research to show that no such sweeping condemnation can be passed upon the statute before us. A reasonable man might think it a proper measure on the score of health. Men whom I certainly could not pronounce unreasonable would uphold it as a first instalment of a general regulation of the hours of work. Whether in the latter aspect it would be open to the charge of inequality I think it unnecessary to discuss.

of our government into contempt and disrepute, and language of like character and intended to produce like results directed against the President and Congress, the agencies through which that form of government must function in time of war. But it is not necessary to a decision of this case to consider whether such distinction is vital or merely formal, for the language of these circulars was obviously intended to provoke and to encourage resistance to the United States in the war, as the third count runs, and, the defendants, in terms, plainly urged and advocated a resort to a general strike of workers in ammunition factories for the purpose of curtailing the production of ordnance and munitions necessary and essential to the prosecution of the war as is charged in the fourth count. Thus it is clear not only that some evidence but that much persuasive evidence was before the jury tending to prove that the defendants were guilty as charged in both the third and fourth counts of the indictment and under the long established rule of law hereinbefore stated the judgment of the District Court must be

Affirmed.

Mr. Justice Holmes dissenting.

This indictment is founded wholly upon the publication of two leaflets which I shall describe in a moment. The first count charges a conspiracy pending the war with Germany to publish abusive language about the form of government of the United States, laying the preparation and publishing of the first leaflet as overt acts. The second count charges a conspiracy pending the war to publish language intended to bring the form of government into contempt, laying the preparation and publishing of the two leaflets as overt acts. The third count alleges a conspiracy to encourage resistance to the United States in the same war and to attempt to effectuate the purpose by publishing the same leaflets. The fourth count lays a con-

spiracy to incite curtailment of production of things necessary to the prosecution of the war and to attempt to accomplish it by publishing the second leaflet to which I have referred.

The first of these leaflets says that the President's cowardly silence about the intervention in Russia reveals the hypocrisy of the plutocratic gang in Washington. It intimates that "German militarism combined with allied capitalism to crush the Russian revolution"—goes on that the tyrants of the world fight each other until they see a common enemy—working class enlightenment, when they combine to crush it; and that now militarism and capitalism combined, though not openly, to crush the Russian revolution. It says that there is only one enemy of the workers of the world and that is capitalism; that it is a crime for workers of America, &c., to fight the workers' republic of Russia, and ends "Awake! Awake, you Workers of the World! Revolutionists." A note adds "It is absurd to call us pro-German. We hate and despise German militarism more than do you hypocritical tyrants. We have more reasons for denouncing German militarism than has the coward of the White House."

The other leaflet, headed "Workers—Wake Up," with abusive language says that America together with the Allies will march for Russia to help the Czecko-Slovaks in their struggle against the Bolsheviki, and that this time the hypocrites shall not fool the Russian emigrants and friends of Russia in America. It tells the Russian emigrants that they now must spit in the face of the false military propaganda by which their sympathy and help to the prosecution of the war have been called forth and says that with the money they have lent or are going to lend "they will make bullets not only for the Germans but also for the Workers Soviets of Russia," and further, "Workers in the ammunition factories, you are producing bullets, bayonets, cannon, to murder not only the Ger-

mans, but also your dearest, best, who are in Russia and are fighting for freedom." It then appeals to the same Russian emigrants at some length not to consent to the "inquisitionary expedition to Russia," and says that the destruction of the Russian revolution is "the politics of the march to Russia." The leaflet winds up by saying "Workers, our reply to this barbaric intervention has to be a general strike!," and after a few words on the spirit of revolution, exhortations not to be afraid, and some usual tall talk ends "Woe unto those who will be in the way of progress. Let solidarity live! The Rebels."

No argument seems to me necessary to show that these pronunciamentos in no way attack the form of government of the United States, or that they do not support either of the first two counts. What little I have to say about the third count may be postponed until I have considered the fourth. With regard to that it seems too plain to be denied that the suggestion to workers in the ammunition factories that they are producing bullets to murder their dearest, and the further advocacy of a general strike, both in the second leaflet, do urge curtailment of production of things necessary to the prosecution of the war within the meaning of the Act of May 16, 1918, c. 75, 40 Stat. 553, amending § 3 of the earlier Act of 1917. But to make the conduct criminal that statute requires that it should be "with intent by such curtailment to cripple or hinder the United States in the prosecution of the war." It seems to me that no such intent is proved.

I am aware of course that the word intent as vaguely used in ordinary legal discussion means no more than knowledge at the time of the act that the consequences said to be intended will ensue. Even less than that will satisfy the general principle of civil and criminal liability. A man may have to pay damages, may be sent to prison, at common law might be hanged, if at the time of his act

he knew facts from which common experience showed that the consequences would follow, whether he individually could foresee them or not. But, when words are used exactly, a deed is not done with intent to produce a consequence unless that consequence is the aim of the deed. It may be obvious, and obvious to the actor, that the consequence will follow, and he may be liable for it even if he regrets it, but he does not do the act with intent to produce it unless the aim to produce it is the proximate motive of the specific act, although there may be some deeper motive behind.

It seems to me that this statute must be taken to use its words in a strict and accurate sense. They would be absurd in any other. A patriot might think that we were wasting money on aeroplanes, or making more cannon of a certain kind than we needed, and might advocate curtailment with success, yet even if it turned out that the curtailment hindered and was thought by other minds to have been obviously likely to hinder the United States in the prosecution of the war, no one would hold such conduct a crime. I admit that my illustration does not answer all that might be said but it is enough to show what I think and to let me pass to a more important aspect of the case. I refer to the First Amendment to the Constitution that Congress shall make no law abridging the freedom of speech.

I never have seen any reason to doubt that the questions of law that alone were before this Court in the cases of *Schenck*, *Frohwerk* and *Debs*, 249 U. S. 47, 204, 211, were rightly decided. I do not doubt for a moment that by the same reasoning that would justify punishing persuasion to murder, the United States constitutionally may punish speech that produces or is intended to produce a clear and imminent danger that it will bring about forthwith certain substantive evils that the United States constitutionally may seek to prevent. The power undoubtedly is

greater in time of war than in time of peace because war opens dangers that do not exist at other times.

But as against dangers peculiar to war, as against others, the principle of the right to free speech is always the same. It is only the present danger of immediate evil or an intent to bring it about that warrants Congress in setting a limit to the expression of opinion where private rights are not concerned. Congress certainly cannot forbid all effort to change the mind of the country. Now nobody can suppose that the surreptitious publishing of a silly leaflet by an unknown man, without more, would present any immediate danger that its opinions would hinder the success of the government arms or have any appreciable tendency to do so. Publishing those opinions for the very purpose of obstructing however, might indicate a greater danger and at any rate would have the quality of an attempt. So I assume that the second leaflet if published for the purposes alleged in the fourth count might be punishable. But it seems pretty clear to me that nothing less than that would bring these papers within the scope of this law. An actual intent in the sense that I have explained is necessary to constitute an attempt, where a further act of the same individual is required to complete the substantive crime, for reasons given in *Swift & Co.* v. *United States*, 196 U. S. 375, 396. It is necessary where the success of the attempt depends upon others because if that intent is not present the actor's aim may be accomplished without bringing about the evils sought to be checked. An intent to prevent interference with the revolution in Russia might have been satisfied without any hindrance to carrying on the war in which we were engaged.

I do not see how anyone can find the intent required by the statute in any of the defendants' words. The second leaflet is the only one that affords even a foundation for the charge, and there, without invoking the hatred of German militarism expressed in the former one, it is evi-

dent from the beginning to the end that the only object of the paper is to help Russia and stop American intervention there against the popular government—not to impede the United States in the war that it was carrying on. To say that two phrases taken literally might import a suggestion of conduct that would have interference with the war as an indirect and probably undesired effect seems to me by no means enough to show an attempt to produce that effect.

I return for a moment to the third count. That charges an intent to provoke resistance to the United States in its war with Germany. Taking the clause in the statute that deals with that in connection with the other elaborate provisions of the act, I think that resistance to the United States means some forcible act of opposition to some proceeding of the United States in pursuance of the war. I think the intent must be the specific intent that I have described and for the reasons that I have given I think that no such intent was proved or existed in fact. I also think that there is no hint at resistance to the United States as I construe the phrase.

In this case sentences of twenty years imprisonment have been imposed for the publishing of two leaflets that I believe the defendants had as much right to publish as the Government has to publish the Constitution of the United States now vainly invoked by them. Even if I am technically wrong and enough can be squeezed from these poor and puny anonymities to turn the color of legal litmus paper; I will add, even if what I think the necessary intent were shown; the most nominal punishment seems to me all that possibly could be inflicted, unless the defendants are to be made to suffer not for what the indictment alleges but for the creed that they avow—a creed that I believe to be the creed of ignorance and immaturity when honestly held, as I see no reason to doubt that it was held here, but which, although made the subject of examination at the

trial, no one has a right even to consider in dealing with the charges before the Court.

Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or your power and want a certain result with all your heart you naturally express your wishes in law and sweep away all opposition. To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says that he has squared the circle, or that you do not care whole-heartedly for the result, or that you doubt either your power or your premises. But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year if not every day we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country. I wholly disagree with the argument of the Government that the First Amendment left the common law as to seditious libel in force. History seems to me against the notion. I had conceived that the United States through many years had shown its repentance for the Sedition Act of 1798, by repaying fines that it imposed. Only the emergency that makes it immediately dangerous to leave the correction of evil counsels to time warrants

making any exception to the sweeping command, "Congress shall make no law . . . abridging the freedom of speech." Of course I am speaking only of expressions of opinion and exhortations, which were all that were uttered here, but I regret that I cannot put into more impressive words my belief that in their conviction upon this indictment the defendants were deprived of their rights under the Constitution of the United States.

MR. JUSTICE BRANDEIS concurs with the foregoing opinion.

HOLMES'S MAXIMS DUG DEEP INTO LIFE
By The Associated Press.
New York Times (1857-Current file); Mar 6, 1935; ProQuest Historical Newspapers The New York Times
pg. 16

HOLMES'S MAXIMS DUG DEEP INTO LIFE

The Place for a Man Complete in All His Powers Is in the Fight, Said the Justice.

HORSECAR NOT A RAPIER

Yet No Gentleman Should Die Before He Has Read Thucydides, So He Started at 90.

By The Associated Press.

WASHINGTON, March 5.—Known as the "Great Dissenter," Justice Oliver Wendell Holmes's philosophy was summed up in the words:

"The place for a man who is complete in all his powers is in the fight."

That conviction was exemplified in his life, first in mortal combat during the Civil War, then during his long years on both State and Federal benches.

An uncompromising warrior against legal views he could not accept, his minority opinions frequently in later years provided guides for national policy.

In all his long experience on the bench, only once did he stand alone. He hated the name the "Great Dissenter," and his record shows that while his dissents attracted much attention, he was found with the majority of the court at least ten times as often as with dissenters.

Most of his best known dissents came when the court divided closely 5 to 4 or 6 to 3 on some question of great national import.

After Justice Brandeis joined him on the bench the two were generally found on the same side of all questions, but in his dissents he frequently had the support of Justices Hughes, Van Devanter, McReynolds and other "brethren," as he always called his associates on the bench.

In his first dissent rendered in 1903, Justice Holmes stated he considered it "useless and undesirable, as a rule, to express dissent" but he "felt bound to do so."

Justice Holmes was almost 90 when he procured a copy of Thucydides in the original Greek.

Night after night he pored over it in his library at home. Some one asked him why at his age he had chosen such a task.

"Because," he said, "no gentleman should go to his grave without first having read Thucydides in the original."

Relied on Homely Maxims.

In his decisions, the justice eschewed formal legal language except where it was necessary and used instead homely maxims. Some of them were:

A horsecar cannot be handled like a rapier.

A man cannot shift his misfortunes to his neighbor's shoulders.

Most differences are merely differences of degree when nicely analyzed.

Every calling is great when greatly pursued.

The notion that with socialized property we should have women free and a piano for everybody seems to me an empty humbug.

There is no general policy in favor of allowing a man to do harm to his neighbor for the sole pleasure of doing harm.

One of the eternal conflicts out of which life is made up is that between the efforts of every man to get the most he can for his services and that of society disguised under the name of capital to get his services for the least possible return.

Free competition is worth more to society than it costs.

Nature has but one judgment on wrong conduct—the judgment of death. If you waste too much food you starve; too much fuel, you freeze; too much nerve, you collapse.

The man of action has the present, but the thinker controls the future.

Man must face the loneliness of original work.

We cannot live our dreams. We are lucky enough if we can give a sample of our best, and if in our hearts we can feel that it has been nobly done.

Life is action, the use of one's powers. As to use them to their height is our joy and duty, so it is the one end that justifies itself.

As to Life, Have You Had Enough?

Life is an end in itself, and the only question as to whether it is worth living is whether you have had enough of it.

There is in all men a demand for the superlative, so much so that the poor devil who has no other way of reaching it attains it by getting drunk.

We are all fighting to make the kind of a world that we should like. Others will fight and die to make a different world with equal sincerity and belief.

The life of the law has not been logic; it has been experience.

The Constitution is an experiment as all life is an experiment.

Great constitutional provisions must be administered with caution. Some play must be allowed for the joints of the machine.

Legislatures are ultimate guardians of the liberty and welfare of the people in quite as great a degree as the courts.

The word "right" is one of the most deceptive of pitfalls—most rights are qualified.

Congress certainly cannot forbid all effort to change the mind of the country.

Persecution for the expression of opinion seems to me perfectly logical.

The best test of truth is the power of the thought to get itself accepted.

We should be eternally vigilant against attempts to check the expression of opinions that we loathe.

When differences are sufficiently far reaching, we try to kill the other man rather than let him have his way.

A dog will fight for his bone.

There is no basis for a philosophy that tells us what we should want to want.

His Remark to Mme. Schwimmer.

One of Justice Holmes's outstanding dissents was rendered in the case of Rosika Schwimmer, who was denied citizenship because of her refusal to take an unqualified oath of allegiance. Later, Mme. Schwimmer called on the aged justice to express her thanks for his support.

In their conversation, he explained that he was taking life leisurely, and admitted when asked about his reading that he no longer cared to read improving matter, preferring to read murder stories. On leaving, Mme. Schwimmer expressed the hope of visiting him again. His philosophy was shown in his reply:

"If I live."

"Oh, do not speak that way," his visitor urged. "You are younger than 99 per cent of others."

"Well, I am 92 per cent," he replied, referring to his age.