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Holmes As Correspondent

G. Edward White*

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I. INTRODUCTION

"My life is in my wife and my work—but . . . that does not prevent a romantic feeling which it would cut me to the heart to have you repudiate." "[M]y work . . . is two[-]thirds of my life."²

This Article explores the function of letter writing in the life of Justice Oliver Wendell Holmes. I argue that letter writing was a by-product of an effort by Holmes to compartmentalize his life into professional ("my work") and domestic ("my wife") spheres, a compartmentalization that had its constraining effects. Because of this compartmentalization, a series of pursuits to which Holmes was attracted, ranging from speculation in the realms of literature and philosophy to flirtations with attractive women, were relegated implicitly to secondary stature, causing strain. In this context, letter writing functioned as a release for Holmes: a release from the routine of judicial duties and the obligations of provincial Boston, official Washington, and his reclusive wife. But letter writing also served as a confirmation and reinforcement of the compartmentalization scheme.

* Copyright © 1990 by G. Edward White. John B. Minor Professor of Law and History, University of Virginia. The Author thanks Mrs. Faneuil Adams, Michael Hoffheimer, Alfred Konefsky, Carrie McIntyre, Sheldon Novick, and Richard Posner for their comments on earlier drafts of this Article. The Author also thanks George and Robert Boyle for providing him with access to the Percy La Touche-Clare Castletown letters in the Bisbrooke Hall collection.

1. Letter from Oliver Wendell Holmes to Clare Castletown (Oct. 7, 1896), reprinted in *OLIVER WENDELL HOLMES PAPERS* (1985) (available on microfilm) [hereinafter *HOLMES PAPERS*].

2. Letter from Oliver Wendell Holmes to Canon Patrick Augustine Sheehan (Apr. 1, 1911), reprinted in *HOLMES-SHEEHAN CORRESPONDENCE* 41 (D. Burton ed. 1976).

Holmes's letter writing reveals the presence of a "correspondent self," a being who used the medium of correspondence to reintegrate into his structured life themes that his efforts at compartmentalization had denigrated. The crucial characteristic of this correspondent self was its simultaneous engagement with and distance from the persons to whom it was revealed. As much as Holmes "opened up" in his letters, demonstrating the periodic frustrations he felt with Boston society, the Supreme Court, his largely solitary life, or his wife, the limiting factors of Holmes's pen and his separation from his readers controlled those revelations. Correspondence thus became a way in which Holmes could acknowledge implicitly the difficulties raised by the single-minded structuring of his life yet retain that structure largely intact.

A brief chronology of Holmes's life as a correspondent can place his letter writing in perspective. Holmes lived for ninety-four years, and corresponded for at least seventy-three of them, but the intensity of his correspondence varied. After an outpouring of letters during the Civil War, his letter writing became sporadic for the next seventeen years, while he was attending law school, establishing a law practice in Boston, writing articles for the *American Law Review*, editing the twelfth edition of James Kent's *Commentaries*,³ working on the lectures that became *The Common Law*,⁴ and briefly teaching at Harvard Law School before accepting a judgeship on the Supreme Judicial Court of Massachusetts in 1882. Even though Holmes began a correspondence with Sir Frederick Pollock in 1874 that was to last for nearly sixty years, his letter writing was comparatively sparse during the 1870s and early 1880s. Holmes was obsessed in his late twenties and thirties with making his mark in the legal profession and somewhat uncertain how best to achieve that goal. William James referred to Holmes during this period in his life as "a powerful battery, formed like a planing machine to gouge a deep self-beneficial groove through life."⁵ Because of the intensity of Holmes's ambition, the success of those he considered his intellectual peers in publishing their work,⁶ and his own belief that "if a man was to do anything he must do it before 40,"⁷ letter writing was understandably a low priority.

3. J. KENT, COMMENTARIES ON AMERICAN LAW (O.W. Holmes ed. 1873).

4. O.W. HOLMES, THE COMMON LAW (1881).

5. Letter from William James to Henry James (July 5, 1876), reprinted in 1 R. PERRY, THE THOUGHT AND CHARACTER OF WILLIAM JAMES 371 (1935).

6. In the years between 1870 and 1880 Holmes corresponded with Henry Adams, Frederick Pollock, and the English scholars Leslie Stephen, James Bryce, and Albert Dicey. Each of these persons, who were rough contemporaries of Holmes, published books in that decade.

7. Letter from Oliver Wendell Holmes to Mrs. Charles S. Hamlin (Oct. 12, 1930), quoted in M. HOWE, JUSTICE OLIVER WENDELL HOLMES: THE PROVING YEARS 1870-1882, at 135 (1963) [hereinafter PROVING YEARS].

After Holmes went on the Supreme Judicial Court in 1883, his life settled into more of a routine, his anxiety about his professional stature receded, and he began to increase the flow of his correspondence. In 1881 he wrote Pollock, "I have failed in all correspondence . . . for a year to accomplish a result which I now send you by mail in the form of a little book *The Common Law*."⁸ He envied Pollock "in being able to afford time to philosophy."⁹ Two years later, after nearly a year as a judge, he began a letter to Pollock, "I have so many things to say that I hardly know where to begin."¹⁰

Holmes wrote regularly to Pollock for the duration of his tenure on the Massachusetts Supreme Court, which ended in 1901, and he developed other correspondence friendships as well. Several of these friendships stemmed from his travels to England in 1882, 1896, 1898, 1901, 1903, 1907, 1909, and 1913. Holmes was active socially during those visits, and he kept in contact with several of his acquaintances through letters. By the time he began his tenure on the United States Supreme Court in 1902, Holmes had a comparatively wide circle of correspondence friendships.

His ascension to the Supreme Court enlarged that circle even further. Between 1902 and the last years of his life in the 1930s, Holmes kept up a correspondence that fairly can be described as extraordinary. Several reasons account for the broadening of his role as correspondent while a Supreme Court Justice. First, Holmes was more of a personage, and others accordingly were motivated to write him and grateful to receive letters from him. Second, a younger generation of intellectuals, including such persons as Harold Laski, Felix Frankfurter, Morris Cohen, and Lewis Einstein, "discovered" Holmes in the early years of the twentieth century, finding in his approach to judging a modernist judicial philosophy with which they could identify. Holmes, for his part, observed the deaths of many of his contemporaries and warmed to the company of younger intellectuals to perpetuate his reputation and ward off old age. Third, Holmes found letter writing increasingly compatible with his life style as a Justice, especially as he and his wife withdrew from social contacts and Holmes ceased to travel. Holmes rapidly developed the fatalistic posture toward constitutional interpretation that was to mark his tenure on the Supreme Court, and in general found the task of writing opinions, which he disposed of with little concern for painstaking research or elaborate exposition, comparatively easy. Holmes's

8. Letter from Oliver Wendell Holmes to Frederick Pollock (Mar. 5, 1881), reprinted in I HOLMES-POLLOCK LETTERS 16 (M. Howe 2d ed. 1961).

9. *Id.*

10. Letter from Oliver Wendell Holmes to Frederick Pollock (Nov. 5, 1883), reprinted in I HOLMES-POLLOCK LETTERS, *supra* note 8, at 23.

rapid completion of his judicial responsibilities and the reduction of his social contacts freed him to write. At the same time he abandoned efforts at original scholarship and even ceased making extrajudicial addresses. Letter writing filled the gaps.

A flowering of his role as correspondent thus marked the last thirty-odd years of Holmes's life. Laski, Frankfurter, Cohen, Dr. John C.H. Wu, a Chinese scholar, and the Baroness Moncheur, the wife of a Belgian diplomat who had been posted in Washington, wrote to and received letters regularly from Holmes. They were only some of Holmes's regular correspondents; older correspondences, such as those with Pollock, Lady Clare Castletown, and Nina Gray, also persisted. By Holmes's death in 1935 thousands of his letters existed in collections in America, England, and elsewhere. His obvious prominence contributed to the preservation of much of his correspondence, despite his warnings to his acquaintances to destroy his letters. Interestingly, Holmes retained many of his correspondents' letters, despite his belief that letter writing was a private activity. As a consequence, his life as a correspondent can be documented richly.

II. THE SELECTION OF CORRESPONDENTS

Holmes's original motivation to correspond with others, as reflected in his Civil War letters, seems to have been simply to indulge his interest in writing. He noted in an autobiographical sketch for his Harvard College class album in 1861 that the "tendencies of the family and of myself have a strong natural bent to literature";¹¹ while at Harvard he published essays on *Books*, the engraver Albrecht Dürer, and Plato, and was named class poet.¹² The Civil War letters represented a continuation of his interest in what he called "the luxury of writing a decent looking letter,"¹³ and they were a vehicle that he used to document the profound effect the war experience had had on him, and to document his growing independence from his parents, especially his father.¹⁴

By the 1870s correspondence had come to serve a somewhat differ-

11. Manuscript in Harvard College Class Album 329 (1861), quoted in Fiechter, *The Preparation of an American Aristocrat*, 6 *NEW ENG. Q.* 3, 5 (1933).

12. See Holmes, *Notes on Albert Durer*, 7 *HARV. MAG.* 41 (1860); Holmes, *Plato*, 2 *U.Q.* 217 (1860); Holmes, *Books*, 4 *HARV. MAG.* 408 (1858); see also M. HOWE, *JUSTICE OLIVER WENDELL HOLMES: THE SHAPING YEARS 1841-1870*, at 43-58 (1957) [hereinafter *SHAPING YEARS*]; Hoffheimer, *The Early Critical and Philosophical Writings of Justice Holmes*, 30 *B.C.L. REV.* 1221 (1989).

13. Letter from Oliver Wendell Holmes to Amelia Holmes (June 7, 1864), reprinted in *TOUCHED WITH FIRE: CIVIL WAR LETTERS AND DIARY OF OLIVER WENDELL HOLMES JR.* 141 (M. Howe ed. 1946) [hereinafter *TOUCHED WITH FIRE*].

14. For a perceptive account of the Civil War's effect on Holmes, see Hoffheimer, *Justice Holmes: Law and the Search for Control*, 1989 *SUPREME CT. HIST. SOC'Y Y.B.* 98, 100-06 and Touster, *In Search of Holmes from Within*, 18 *VAND. L. REV.* 437 (1965).

ent purpose for Holmes. It was now a method of exchanging ideas and maintaining contacts with men whom he regarded as his professional peers. Pollock became the most prominent of Holmes's correspondents to serve in this capacity, but Henry and William James and the British man of letters, Leslie Stephen, played comparable roles.

After Holmes's appointment to the Massachusetts court, the orientation of his correspondence again changed, demonstrating a wider range of subjects, with an emphasis on literature and philosophy. His correspondences of long duration, such as that with Pollock, reflected this change in emphasis. Holmes's correspondence friendships that began after he became a judge, such as those with Frankfurter¹⁵ or Laski,¹⁶ also were wide ranging and not devoted exclusively to professional issues.

Holmes's most frequent correspondents of the younger men to whom he wrote during his tenure on the Supreme Court were Frankfurter and Laski, but there were others, particularly Lewis Einstein,¹⁷ Morris Cohen,¹⁸ Learned Hand,¹⁹ and Dr. John C.H. Wu.²⁰ Holmes, during his lifetime, also corresponded extensively²¹ with a group of other men: James Barr Ames,²² Franklin Ford,²³ Canon Patrick Augus-

15. Holmes's correspondence with Felix Frankfurter, spanning the years 1912 to 1934, is unpublished and available in *HOLMES PAPERS*, *supra* note 1.

16. Holmes's correspondence with Harold Laski has been published in *HOLMES-LASKI LETTERS* (2 vols.) (M. Howe ed. 1953).

17. See generally *THE HOLMES-EINSTEIN LETTERS* (J. Peabody ed. 1964). Lewis Einstein first began corresponding with Holmes in 1903 when he was 26 and Holmes was 61. *Id.* at v.

18. Morris Cohen, a professor of philosophy at the City College of New York, corresponded with Holmes for many years. Most of this correspondence is unpublished and available in *HOLMES PAPERS*, *supra* note 1. A fragment was published as Cohen, *The Holmes-Cohen Correspondence*, 9 *J. HIST. IDEAS* 1 (1948).

19. Holmes's correspondence with Judge Learned Hand, spanning the years 1912 to 1934, is unpublished and available in *HOLMES PAPERS*, *supra* note 1.

20. A significant number of Holmes's letters to John C.H. Wu have been published in *JUSTICE HOLMES TO DOCTOR WU: AN INTIMATE CORRESPONDENCE, 1921-1932* (1947).

21. "Extensive" refers to any correspondence from which at least 80 letters have been deposited in the *Oliver Wendell Holmes Papers* at Harvard Law School. That criterion may exclude some correspondences in which letters did not survive, but, with one exception, to be subsequently discussed, no evidence exists that Holmes engaged in any important correspondence the records of which were destroyed. See text accompanying note 152 (quoting Holmes's letter to Clare Castletown in which he tells her to destroy his letters).

22. James Barr Ames's correspondence with Holmes, spanning the years 1885 to 1895, is unpublished and available in *HOLMES PAPERS*, *supra* note 1.

23. Franklin Ford's correspondence with Holmes, spanning the years 1907 to 1917, has been published in *PROGRESSIVE MASKS: LETTERS OF OLIVER WENDELL HOLMES, JR. AND FRANKLIN FORD* (D. Burton ed. 1982).

tine Sheehan,²⁴ Leslie Stephen,²⁵ William Howard Taft,²⁶ and John Wigmore.²⁷ While the subject matter of these correspondences varied,²⁸ their emphasis was on ideas, books, and other topics from the world of the intelligentsia. They have been characterized as remarkably similar in content: Mark DeWolfe Howe once suggested that if Holmes's letter to one correspondent had been sent inadvertently to another, little but the salutation would have revealed the error.²⁹

Holmes thus selected his male correspondents primarily because he enjoyed exchanging ideas with them. Because his older male correspondence friendships—those with the Jameses, Pollock, Ames, and Leslie Stephen—were forged when Holmes was more intense about his professional ambitions and more competitive with his peers, one sometimes can note a self-consciousness to Holmes's comments.³⁰ Conversely, in the correspondences with men many years younger than Holmes, such as Frankfurter, Laski, and Wu, a tone of pontification or seniority occasionally surfaces.³¹ Holmes's contributions to his male correspondents for the most part are nonetheless remarkably similar and uniform, and his attention is focused primarily on matters of the intellect.

One might expect a contrasting tone or emphasis in Holmes's several extensive correspondences with women. Holmes, throughout his life, was enamored of women: flirtatious, attentive, and chivalric. One observer said that he was "a great ladies man" and that he liked "women of the world with enough brains and beauty to meet him on his

24. Much of the correspondence between Holmes and Canon Sheehan has been published in *HOLMES-SHEEHAN CORRESPONDENCE*, *supra* note 2.

25. Holmes's correspondence with Leslie Stephen, spanning the years 1866 to 1902, is unpublished and available in *HOLMES PAPERS*, *supra* note 1.

26. Holmes's correspondence with William Howard Taft, spanning the years 1909 to 1930, is unpublished and available in *HOLMES PAPERS*, *supra* note 1.

27. Holmes's correspondence with John Wigmore, spanning the years 1888 to 1932, is unpublished and available in *HOLMES PAPERS*, *supra* note 1.

28. Holmes wrote the Jameses, who had been his neighbors and contemporaries in Boston, more about mutual friends and local gossip than he did Canon Sheehan or Dr. Wu, and he wrote James Barr Ames more about issues of legal scholarship than he did the novelist Franklin Ford.

29. *SHAPING YEARS*, *supra* note 12, at 254. Some of the correspondences analyzed in this Article qualify that statement.

30. *See, e.g.*, Letter from Oliver Wendell Holmes to William James (Dec. 15, 1867), *reprinted in HOLMES PAPERS*, *supra* note 1. Holmes wrote:

I have written three long letters to you at different intervals on *vis viva*, each of which I was compelled to destroy because on reflection it appeared either unsound or incomplete. . . .

Writing is so unnatural to me that I have never before dared to try it to you unless in connection with a subject.

Id.

31. *See, e.g.*, Letter from Oliver Wendell Holmes to Felix Frankfurter (July 12, 1923), *reprinted in HOLMES PAPERS*, *supra* note 1. Holmes wrote: "Think not, my son, to introduce me to Marcel Proust. I read *Du Coté de Chez Swann* after it came out. . . ." *Id.*

own level."³² Another observer stated Holmes's interest in women somewhat differently:

He relished the opportunity for a conversation which gave him occasion to employ a courtly if somewhat baroque phraseology that was redolent with the faint aroma of distant, very distant, romance. . . . Oddly enough certain women . . . with whom he corresponded . . . were by no means of an intellectual or even of a distinguished type, but their talk provided him with a facile medium for the flow of his own ideas which must often have risen far above their heads. The swift gyrations of the Justice's rapier-like brain were sufficient in themselves not to require a comeback from his listener. He far preferred the silent sympathy of their acquiescence to the drooling platitudes and lengthy pomposities which he complained that he was obliged to listen to from certain of his fellow judges on the Bench.³³

Holmes himself once said that he far preferred the company of a pretty girl to a dull judge, and that as a result he sometimes may have been the object of gossip.³⁴ Holmes corresponded frequently with women: his papers contain extensive correspondences with Nina Gray,³⁵ Lady Clare Castletown,³⁶ Ellen A. Curtis,³⁷ Lady Ethel Desborough,³⁸ Baroness Charlotte Moncheur,³⁹ Lady Ethel Scott,⁴⁰ and Clara S. Stevens.⁴¹ These correspondences were as extensive as any Holmes had with men with the exceptions of Pollock, Frankfurter, and Laski.

At one level Holmes's correspondences with women were not strikingly different from those with men. He was slightly more personal, more inclined to talk about his feelings, and clearly less inclined to talk about technical legal matters or his judicial opinions. He wrote repeatedly of books, ideas, and his reactions to the intellectual contributions of others, however, and he unburdened himself of aphorisms and pithy phrases to women as well as to men. He also repeated his favorite

32. I HOLMES-POLLOCK LETTERS, *supra* note 8, at xxviii.

33. THE HOLMES-EINSTEIN LETTERS, *supra* note 17, at xx.

34. Letter from Oliver Wendell Holmes to Lady Clare Castletown (Feb. 17, 1898), *reprinted in* HOLMES PAPERS, *supra* note 1.

35. Holmes's correspondence with Anna Lyman (Nina) Gray (the wife of his close friend John Chipman Gray), spanning the years 1893 to 1932, is unpublished and available in HOLMES PAPERS, *supra* note 1.

36. Holmes's correspondence with Clare Castletown is unpublished and available (in part) in HOLMES PAPERS, *supra* note 1.

37. Holmes's correspondence with Ellen A. Curtis, spanning the years 1900 to 1933, is unpublished and available in HOLMES PAPERS, *supra* note 1.

38. Holmes's correspondence with Lady Ethel Desborough, spanning the years 1889 to 1934, is unpublished and available in HOLMES PAPERS, *supra* note 1.

39. Holmes's correspondence with Baroness Charlotte Moncheur, spanning the years 1907 to 1933, is unpublished and available in HOLMES PAPERS, *supra* note 1.

40. Holmes's correspondence with Lady Ethel Scott, spanning the years 1896 to 1934, is unpublished and available in HOLMES PAPERS, *supra* note 1.

41. Holmes's correspondence with Clara S. Stevens, spanning the years 1902 to 1916, is unpublished and available in HOLMES PAPERS, *supra* note 1.

lines,⁴² and remembered his birthdays⁴³ and the dates of his war wounds⁴⁴ to both sexes.

Nonetheless, an important distinction existed for Holmes between male and female correspondents. He did not consider the latter in the sphere of "work." Although he discussed philosophy, belles lettres, and what he called "sociology" (and meant social and cultural history) in his letters to women, he very rarely discussed his life as a judge. Moreover, he was much more likely to make observations of social life or social customs or practices to women. That tendency is evident particularly in instances when he wrote to both partners in a marriage.⁴⁵

Holmes's selection of correspondents, then, roughly tracked the bifurcation of his life into professional and domestic spheres. His most extensive male correspondences were with men he considered his professional contemporaries, such as Pollock, or whom he considered a link to professionals in the future, such as Frankfurter or Laski. His most extensive female correspondences were with women whose company he clearly found stimulating: they constituted a surrogate for the social life that Holmes had abandoned early in his career. That many of Holmes's female correspondents were English or European underscores his use of letter writing as a release from the imperatives of his life, one of which was the confined domestic sphere of his wife, who preferred not to travel or to entertain. Travel in England was a liberating experience for Holmes, and correspondence with English and European women pro-

42. See, e.g., Letter from Oliver Wendell Holmes to Lewis Einstein (Oct. 28, 1912), reprinted in THE HOLMES-EINSTEIN LETTERS, *supra* note 17, at 74 (stating that "the crowd now has substantially all there is"); Letter from Oliver Wendell Holmes to Canon Patrick Augustine Sheehan (July 5, 1912), reprinted in HOLMES-SHEEHAN CORRESPONDENCE, *supra* note 2, at 45 (same); see also, e.g., Letter from Oliver Wendell Holmes to Clara Stevens (Nov. 12, 1907), reprinted in HOLMES PAPERS, *supra* note 1 (stating that the "truth is what . . . I can't help thinking"); Letter from Oliver Wendell Holmes to Frederick Pollock (Oct. 27, 1901), reprinted in I HOLMES-POLLOCK LETTERS, *supra* note 8, at 99 (stating that "[a]ll I mean by truth is the road I can't help travelling").

43. See, e.g., Letter from Oliver Wendell Holmes to Ellen Curtis (Mar. 8, 1905), reprinted in HOLMES PAPERS, *supra* note 1; Letter from Oliver Wendell Holmes to Frederick Pollock (Mar. 9, 1884), reprinted in I HOLMES-POLLOCK LETTERS, *supra* note 8, at 24.

44. See, e.g., Letter from Oliver Wendell Holmes to Harold Laski (Sept. 15, 1926), reprinted in 2 HOLMES-LASKI LETTERS, *supra* note 16, at 875; Letter from Oliver Wendell Holmes to Nina Gray (Oct. 23, 1910), reprinted in HOLMES PAPERS, *supra* note 1.

45. In 1895, for example, he wrote Lady Pollock that "English women are brought up, it seems to me, to realize that it is an object to be charming, that man is a dangerous animal—or ought to be—and that a sexless *bonhomie* is not the ideal relation." Letter from Oliver Wendell Holmes to Lady Pollock (Aug. 11, 1895), reprinted in I HOLMES-POLLOCK LETTERS, *supra* note 8, at 59. This was followed by another letter to Lady Pollock, discussing riding a bicycle, his health, and two books he was reading, which added: "Forgive me if this time I put a word of law, etc. on the next page, to your husband, as my time is short. . . ." Letter from Oliver Wendell Holmes to Lady Pollock (Sept. 13, 1895), reprinted in I HOLMES-POLLOCK LETTERS, *supra* note 8, at 62. In his postscript to Sir Frederick Pollock, Holmes discussed the external standard of liability in tort. See *id.* at 62-63.

longed that experience. Moreover, because his correspondents were separated from him by geography, Holmes maintained the distance that he valued in his relationships.

Thus, the selection of Holmes's correspondents was by no means accidental: his major correspondences tracked the spheres into which he had divided his life. Within those spheres, however, each correspondent performed a slightly different role, reflecting particular professional and personal concerns of Holmes.

III. ILLUSTRATIVE CORRESPONDENCES

I have selected four of Holmes's correspondences as particularly illustrative of this Article's themes. Two were with men, two with women, and the emphases of the correspondences tracked the differences in gender. One was with a male contemporary, Sir Frederick Pollock, and one with a female contemporary, Nina Gray. Another was with a male noncontemporary, Felix Frankfurter, and the last was with Clare Castletown, a woman who could be said to symbolize a world of "escape" for Holmes, the world of upperclass English society. In each of the correspondences, dimensions of gender, age, and status were reflected in Holmes's posture. Holmes's overarching conception of how his life ought to be structured, however, ultimately controlled all of the correspondences. That conception provided the basis for the emergence of Holmes's correspondent self.

A. *Sir Frederick Pollock*

The correspondence between Holmes and Pollock, which spanned the years from 1874 to 1932, was that of two contemporaries who had comparably long and eminent professional careers. It serves as an index of Holmes's attitude toward his professional development. In the first phase of the correspondence, from the 1870s until Holmes's appointment to the Supreme Judicial Court of Massachusetts, Holmes's letters are preoccupied exclusively with legal issues and demonstrate an acute sensitivity toward and competitiveness with his peers who have scholarly ambitions. Holmes sends Pollock his early articles in the *American Law Review* and the correspondents discuss them.⁴⁶ He tells Pollock of

46. See, e.g., Letter from Frederick Pollock to Oliver Wendell Holmes (Feb. 10, 1880) (Holmes had sent *Trespass and Negligence*, 14 AM. L. REV. 1 (1880)); Letter from Oliver Wendell Holmes to Frederick Pollock (July 16, 1879) (Holmes is sending *Common Carriers and Common Law*, 13 AM. L. REV. 609 (1879)); Letter from Frederick Pollock to Oliver Wendell Holmes (Nov. 26, 1878) (Holmes had sent *Possession*, 12 AM. L. REV. 688 (1878)); Letter from Frederick Pollock to Oliver Wendell Holmes (July 26, 1877) (Holmes had sent *Primitive Notions in Modern Law* (pt. 2), 11 AM. L. REV. 641 (1877)); Letter from Frederick Pollock to Oliver Wendell Holmes (May 2, 1876) (Holmes had sent *Primitive Notions in Modern Law* (pt. 1), 10 AM. L. REV. 422 (1876));

the possibility that he may be appointed to a federal district judgeship,⁴⁷ and he comments on the scholarship of his contemporaries.⁴⁸ Holmes speaks of being "very hard driven with work, day and night,"⁴⁹ and in 1881, when he sends Pollock a copy of *The Common Law*, he notes that he has "failed in all correspondence and . . . abandoned pleasure as well as a good deal of sleep for a year."⁵⁰ He envies Pollock "in being able to afford time to philosophy,"⁵¹ and he feels that "one gets ahead but slowly when his only chance is to sit down after dinner and after a day of more or less hard work."⁵²

After his Lowell Lectures in 1880, which resulted in *The Common Law*, Holmes's professional life changed rapidly. Six months after the publication of *The Common Law* he was offered, and accepted, a professorship at Harvard Law School. He began his classes in the fall of 1882 and in December of that year was offered and accepted an associate justiceship on the Supreme Judicial Court of Massachusetts. These developments assuaged his fears that he would reach forty without having made his mark in his profession; the result was an altered tone in his correspondence with Pollock. His letters from 1883 through the completion of his tenure as a Massachusetts judge are similar to one he wrote in March of that year, when he said: "I have pretty well given up dining out, as I can't do it and feel as well and fit for work the next day and am amusing my evenings by reading a little *belle lettres*."⁵³ The letter contains no references to Holmes's scholarship and no comments on the work of contemporaries. Holmes was no longer working nights and was reading literature rather than law in the evenings.

Most of the letters Holmes wrote to Pollock between 1883 and 1902 were in a literary and philosophical vein. He occasionally set forth questions raised by a case before him and asked Pollock's advice;⁵⁴ he talked

Letter from Frederick Pollock to Oliver Wendell Holmes (July 3, 1874) (Holmes sent two book notices and *The Theory of Torts*, 6 AM. L. REV. 723 (1872) and 7 AM. L. REV. 652 (1873)). These letters are quoted, respectively, in I HOLMES-POLLOCK LETTERS, *supra* note 8, at 13, 11, 8, 7, 5, 3.

47. Letter from Oliver Wendell Holmes to Frederick Pollock (Dec. 9, 1878), *reprinted in* I HOLMES-POLLOCK LETTERS, *supra* note 8, at 10.

48. *See, e.g.*, Letter from Oliver Wendell Holmes to Frederick Pollock (June 17, 1880), *reprinted in* I HOLMES-POLLOCK LETTERS, *supra* note 8, at 15 (commenting on Melville Bigelow's work on the history of procedure in England); Letter from Oliver Wendell Holmes to Frederick Pollock (Dec. 9, 1878), *supra* note 47 (commenting on Travers Twiss's edition of Bracton).

49. Letter from Oliver Wendell Holmes to Frederick Pollock (June 17, 1880), *supra* note 48.

50. Letter from Oliver Wendell Holmes to Frederick Pollock (Mar. 5, 1881), *supra* note 8.

51. *Id.*

52. Letter from Oliver Wendell Holmes to Frederick Pollock (June 17, 1880), *supra* note 48.

53. Letter from Oliver Wendell Holmes to Frederick Pollock (Mar. 25, 1883), *reprinted in* I HOLMES-POLLOCK LETTERS, *supra* note 8, at 21.

54. *See, e.g.*, Letter from Oliver Wendell Holmes to Frederick Pollock (Mar. 17, 1898), *reprinted in* I HOLMES-POLLOCK LETTERS, *supra* note 8, at 81; Letter from Oliver Wendell Holmes to Frederick Pollock (Apr. 2, 1894), *reprinted in* I HOLMES-POLLOCK LETTERS, *supra* note 8, at 50;

periodically about philosophy and other academic subjects, sometimes to Lady Pollock;⁵⁵ he very occasionally discussed contemporary affairs;⁵⁶ and he complained if his speeches or opinions were criticized.⁵⁷ The intensity that characterized his earlier letters and his preoccupation with professional matters receded. Holmes's correspondence with Pollock was still primarily about professional subjects, unlike that at later stages, but his consuming interest in having Pollock react to his academic work, and his abiding concern with the scholarly projects of his contemporaries, both had lessened.

A letter written to Pollock in April 1894 offers a portrait of his professional life during his tenure on the Massachusetts court:

I have known and done almost nothing but law. The next *Harv. Law Rev.* will have an article of mine, "Privilege Malice & Intent," a supplement to the doctrine of the external standard. Little more than platitudes, yet things not generally known. The last two or three years I have found myself separated from my brethren on some important constitutional questions; the last a few days ago on the power of the legislature to pass an act subject to approval of the people by vote. . . . My brethren deny it & I affirm it, and among the respectable there are some who regard me as a dangerous radical. . . .

Why is not the true doctrine that title passes by judgment (for substantial damages) in trover not by satisfaction? I am aware of the remarks of your Willes, Blackburn *et al.*, but why is not the true theory (undealt with by them) that as against the converter one may have the value of the chattel in damages or the chattel at his election but not both, and that judgment *determines the election*. Trespass and trover on the one side and replevin on the other stand on opposite ground. As the old books put it the former *disaffirms* the latter *affirms* property in the plaintiff. The former, that is, say the property is in the defendant *now* by his wrongful act & I demand damages for the act which divested my property. The latter says I have the *right* of property and demand restitution. . . . The question arises here. We have no binding authority, and I am pressing the above argument, but I fear some compromise expression. . . .

I have read some philosophy (especially Windelband's *History of Philosophy*, an extremely good book, translated, & published by MacMillan), novels, and confusing arguments on bimetalism etc., and have been a recluse.⁵⁸

Letter from Oliver Wendell Holmes to Frederick Pollock (Feb. 23, 1890), reprinted in I HOLMES-POLLOCK LETTERS, *supra* note 8, at 32; Letter from Oliver Wendell Holmes to Frederick Pollock (Mar. 12, 1886), reprinted in I HOLMES-POLLOCK LETTERS, *supra* note 8, at 27.

55. See, e.g., Letter from Oliver Wendell Holmes to Lady Pollock (Oct. 27, 1901), reprinted in I HOLMES-POLLOCK LETTERS, *supra* note 8, at 99; Letter from Oliver Wendell Holmes to Lady Pollock (Apr. 11, 1897), reprinted in I HOLMES-POLLOCK LETTERS, *supra* note 8, at 72; Letter from Oliver Wendell Holmes to Frederick Pollock (Apr. 2, 1894), *supra* note 54.

56. See, e.g., Letter from Oliver Wendell Holmes to Frederick Pollock (May 13, 1898), reprinted in I HOLMES-POLLOCK LETTERS, *supra* note 8, at 86 (discussing the Spanish-American War); Letter from Oliver Wendell Holmes to Frederick Pollock (Dec. 27, 1895), reprinted in I HOLMES-POLLOCK LETTERS, *supra* note 8, at 66 (discussing the Venezuelan boundary dispute).

57. See, e.g., Letter from Oliver Wendell Holmes to Frederick Pollock (July 16, 1899), reprinted in I HOLMES-POLLOCK LETTERS, *supra* note 8, at 95; Letter from Oliver Wendell Holmes to Frederick Pollock (Dec. 27, 1895), reprinted in I HOLMES-POLLOCK LETTERS, *supra* note 8, at 66.

58. Letter from Oliver Wendell Holmes to Frederick Pollock (Apr. 2, 1894), *supra* note 54 (footnotes omitted) (emphasis in original).

The letter is characteristic in its attention to, but not preoccupation with, legal matters. Holmes asks Pollock about a question of property law, but makes it clear that he already holds a view, and that the question is before his court. He mentions that he has an article coming out in the *Harvard Law Review*, but does not ask Pollock for his comments on it, and he describes it as “[l]ittle more than platitudes.” He comments briefly on his judicial views and notes in an offhanded fashion their controversiality and the disagreement of his colleagues. He indicates that he has been reading philosophy, novels, and one subject of contemporary interest, bimetallism (the question as to whether the United States ought to make silver as well as gold a standard for its currency was debated hotly in the 1890s). He characterizes himself as a “recluse.” The letter’s concerns were typical of Holmes in his maturity as a Massachusetts judge. He still was seeking to develop his jurisprudential views and his emphasis was on the analytical and philosophical foundations of legal doctrine, what he called the “true theory.” He was not disinclined to dissent from others on his court and preferred to express his views independently rather than have a “compromise expression” surface. He continued to read widely in nonlegal subjects, notably philosophy and literature, and he rarely entertained or sought social contacts.

In August 1902 Holmes wrote Pollock that he had been nominated for the Supreme Court of the United States. Earlier he had been named Chief Justice of the Massachusetts Supreme Judicial Court, but that nomination had been based principally on seniority. The Supreme Court appointment was different, and while Holmes expected to be confirmed, he did not resign his Massachusetts post. There were “powerful influences against me,” he reported to Pollock, “because some at least of the money powers think me dangerous, wherein they are wrong.”⁵⁹ The confirmation process was not particularly difficult, and Holmes wrote Pollock in December 1902 that “[t]he work of the past seems a finished book—locked up far away, and a new and solemn volume opens.”⁶⁰ In the midst of waiting to be confirmed, however, Holmes wrote one of the very few letters that he used to express some strong feelings:

I am just back from this week’s circuit and must vent a line of unreasoning—rage I was going to say—dissatisfaction is nearer. There have been stacks of notices of me all over the country and the immense majority of them seem to me hopelessly devoid of personal discrimination or courage. They are so favorable that

59. Letter from Oliver Wendell Holmes to Frederick Pollock (Aug. 13, 1902), reprinted in I HOLMES-POLLOCK LETTERS, *supra* note 8, at 103.

60. Letter from Oliver Wendell Holmes to Frederick Pollock (Dec. 28, 1902), reprinted in I HOLMES-POLLOCK LETTERS, *supra* note 8, at 109.

they make my nomination a popular success but they have the flabbiness of American ignorance. I had to get appreciation for my book in England before they dared say anything here except in one or two quarters. . . . And now as to my judicial career they don't know much more than that I took the labor side in *Vegeahn v. Guntner* and as that frightened some money interests, and such interests count for a good deal as soon as one gets out of the cloister, it is easy to suggest that the Judge has partial views, is brilliant but not very sound, has talent but is not great, etc., etc. It makes one sick when he has broken his heart in trying to make every word living and real to see a lot of duffers, generally I think not even lawyers, talking with the sanctity of print in a way that at once discloses to the knowing eye that literally they don't know anything about it.

. . . .
. . . . [Y]ou can understand how at a moment of ostensible triumph I have been for the most part in a desert. . . . Occasionally someone has a glimpse—but in the main damn the lot of them.⁶¹

Not many of Holmes's letters are as revealing as this one. Of particular interest is his reference to another one of the great moments in his life, the publication of *The Common Law*, and his disappointment at the book's largely being ignored by the American press. He suggests that no one understood his book, and no one knew anything about his career as a judge except that he voted for labor in one case. The absence of public appreciation of his talents, he says, puts him "in a desert . . . at a moment of ostensible triumph." This reaction appears peculiar, given Holmes's professed disdain for public adulation and repeated professions that he was writing for an audience of elite scholars.⁶² This letter suggests that Holmes coveted public praise far more than he admitted, and defined accomplishment partially in terms of recognition.

Holmes's achievement of honors or prestigious positions never lessened his drive to secure eminence. His reduced intensity in securing a judgeship and seeing *The Common Law* published before his fortieth birthday should be understood in relative terms. However exalted his position, Holmes was proud of his work, protective of his own ideas and modes of expression, and sensitive to criticism. Throughout a lifetime of reading, writing, and thinking Holmes never reached a point, which he attributed to others such as John Gray or Henry James, at which he felt he need learn no more. He was seeking constantly to improve his mind. Thus, the broadening of his correspondence topics after he became a Supreme Court Justice, and the comparatively less attention to his work as a judge, should not be viewed as evidence that Holmes tacitly had decided to rest on his laurels. On the contrary, as he began to

61. Letter from Oliver Wendell Holmes to Frederick Pollock (Sept. 23, 1902), reprinted in I HOLMES-POLLOCK LETTERS, *supra* note 8, at 106 (footnote omitted).

62. *E.g.*, Letter from Oliver Wendell Holmes to Frederick Pollock (June 20, 1921), reprinted in II HOLMES-POLLOCK LETTERS, *supra* note 8, at 71. Holmes wrote: "My aim . . . has been solely to make a few competents like you say that I had hit the *ut de poitrine* in my line, . . ." *Id.*

feel that his ideas on law were relatively fixed and settled, he investigated other fields to explore and confirm his ideas on those subjects.

In his early years on the Court Holmes found the work absorbing and found the demands on his time considerable. He wrote Pollock that the "pressure here is very constant, and I find that even this week with my cases all written I have been kept so occupied that I have had no time to read."⁶³ He also noticed, however, that his general views on legal issues remained relatively unchanged. "My intellectual furniture," he wrote the Pollocks in 1904, "consists of an assortment of general propositions which grow fewer and more general as I grow older."⁶⁴ By 1909 he wrote Pollock:

[I]t is absurd to be afraid of any book, as it is to be so of any case. I long have said there is no such thing as a hard case. I am frightened weekly but always when you walk up to the lion and lay hold the hide comes off and the same old donkey of a question of law is underneath.⁶⁵

After the first few years on the Supreme Court, Holmes's correspondence with Pollock and others began to flourish. As noted, his correspondence flourished in part because Holmes abandoned legal scholarship,⁶⁶ and he was not overly preoccupied with his work on the Court. His correspondence expanded to fill the time previously spent on judging or scholarship. In addition, the subject matter of his correspondence became oriented more consciously toward nonlegal matters. Even his correspondence with Pollock reflected this trend. After 1902 the two men discussed literature far more than law.

Holmes's correspondence with Pollock culminated in a note Holmes wrote after Pollock had paid tribute to him in the 1931 *Columbia Law Review*. Holmes was ninety years old and Pollock was eighty-six, and the note captured the long history of their friendship, which had been sustained principally through letters:

Friendship for a moment became articulate and uttered tender and moving things. Of course we have known the friendship long. It is part of my life. But to hear the note of affection along with praises that are so precious when they come from you, is a surprise in spite of all that I know without being told. It would put heart into a brass andiron and I shall die the happier for it.⁶⁷

63. Letter from Oliver Wendell Holmes to Frederick Pollock (Jan. 2, 1904), reprinted in I HOLMES-POLLOCK LETTERS, *supra* note 8, at 115.

64. Letter from Oliver Wendell Holmes to Frederick & Lady Pollock (Sept. 24, 1904), reprinted in I HOLMES-POLLOCK LETTERS, *supra* note 8, at 118.

65. Letter from Oliver Wendell Holmes to Frederick Pollock (Dec. 11, 1909), reprinted in I HOLMES-POLLOCK LETTERS, *supra* note 8, at 156.

66. Holmes's last serious piece of scholarship, *Law in Science and Science in Law*, was written in 1899. See Holmes, *Law in Science and Science in Law*, 12 HARV. L. REV. 443 (1899).

67. Letter from Oliver Wendell Holmes to Frederick Pollock (Mar. 21, 1931), reprinted in II HOLMES-POLLOCK LETTERS, *supra* note 8, at 283.

Pollock had been a symbolic figure for Holmes as Holmes's professional career developed—the elite lawyer and intellectual to whom Holmes had directed his work. At each phase of Holmes's career Pollock had responded tacitly to Holmes's concerns: reading and commenting on drafts in the years that Holmes desperately sought recognition; continuing a dialogue on points of legal doctrine as Holmes honed his perspective as a judge; reassuring Holmes that elite commentators appreciated his intellectualized version of judging even though it was misunderstood by the lay public;⁶⁸ participating in the increased volume and diversity of Holmes's correspondence late in his life; and lionizing Holmes in his old age. For Holmes, Pollock was a fellow survivor who, like Holmes, had taken the long path from unrealized and scattered ambition through accomplishment to eminence.

B. *Felix Frankfurter*

In the Pollock correspondence one sees the ambition and competitiveness that characterized Holmes's commitment to a career in law, especially in its early stages. In Holmes's correspondence with Felix Frankfurter, one encounters another dimension of Holmes's professional ambition. Pollock was a contemporary of Holmes; Frankfurter was forty-two years younger. Pollock was an English common-law scholar; Frankfurter was an American lawyer and law professor with a particular interest in the Supreme Court. Holmes's friendship with Pollock was formed when the two men were launching their careers; his friendship with Frankfurter began after Holmes had been a lawyer for over forty years and on the Supreme Court for a decade. Pollock thus signified for Holmes a parallel presence in his progress toward increasingly greater prominence in his profession, whereas Frankfurter signified the presence of another generation of elite lawyers.

The distance in age and status between Holmes and Frankfurter set the tone for their correspondence. The two men assumed distinctive roles: Frankfurter the neophyte and acolyte and Holmes the sage and mentor. But despite the surface continuity of the relationship, the roles did not remain fixed over time, and the disparity in status between the correspondents did not result in a lopsided importance attributed to the relationship by its participants. Frankfurter was as significant a friend to Holmes as Holmes was to Frankfurter.

68. In response to Holmes's outbreak of pique at the response to his nomination Pollock wrote: "How should the lay gentry, or even the average lawyer, understand the development of the Common Law, or the work that men such as you and Bowen put into it?" Letter from Frederick Pollock to Oliver Wendell Holmes (Oct. 3, 1902), reprinted in *I HOLMES-POLLOCK LETTERS*, *supra* note 8, at 107.

Holmes's elevation of Frankfurter to a position of importance in his professional life shows the distinctive form that ambition took in Holmes's later career. Early in his professional life Holmes's ambition had been overt, manifesting itself in a striking competitiveness toward the accomplishments of his peers, a singular pride and possessiveness about his contributions, a drive to secure recognition before he was forty, and the "fearful grip" others observed his work had on him. Later, as Holmes's comments to Pollock on his appointment to the Supreme Court suggest, his ambition surfaced in a desire to be recognized adequately by his audience. He had persevered and judgeships had followed. Now Holmes wanted his judicial contributions appreciated. The public comments on those contributions when he had been nominated to the Supreme Court depressed him, and he was searching for a more appropriate reaction. Frankfurter, because of his own ambitions, his tendency toward effusive flattery, and his symbolic significance for Holmes, provided that reaction. As Holmes wrote very early in the friendship:

It will be many years before you have occasion to know the happiness and encouragement that comes to an old man from the sympathy of the young. That, perhaps more than anything else, makes one feel as if one had not lived in vain, and counteracts the eternal gravitation toward melancholy and doubt. I am quite sincere in saying that you have done a great deal for me in this way and I send you my gratitude and thanks.⁶⁹

The Holmes-Frankfurter correspondence had a complex progression through time. Because the correspondence started when Holmes was far more senior and established than Frankfurter, its surface tone took the form of a conversation between unequals, with Frankfurter seeking advice and wisdom and Holmes dispensing those commodities. From the beginning of the correspondence, however, there were indications that Frankfurter did not regard himself as a neophyte, and that his principal interest in Holmes was as an aspirational figure whose successful cultivation reinforced Frankfurter's sense of his own abilities. There were also indications that Holmes recognized this fact and was much more interested in receiving the flattery that confirmed his continued importance to a younger generation of lawyers than he was in actually having any impact on Frankfurter's career.

An exchange between the two men in July 1913 illustrates the complexities beneath the correspondence's surface tone. In late June of that year, Harvard Law School contacted Frankfurter to ascertain whether he would be interested in accepting a position on its faculty should one

69. Letter from Oliver Wendell Holmes to Felix Frankfurter (Mar. 8, 1912), reprinted in *HOLMES PAPERS*, *supra* note 1.

become available.⁷⁰ On July 4 Frankfurter wrote to Holmes asking for Holmes's reaction to the Harvard inquiry. "You once agreed," Frankfurter stated, "that a young fellow should not bother about the advice of a man above thirty-five. I respect that rule in asking for *your* views!"⁷¹ The letter appears to fit the stereotyped terms of the correspondence: Frankfurter acknowledges the gap in age between the participants, claims that Holmes is sufficiently young in mind and spirit to be "under thirty-five," and asks Holmes for advice.

The body of Frankfurter's letter suggests, however, that he is not so much seeking advice as seeking confirmation of a decision he has reached already. He wrote that "this thing doesn't hit me merely as a tempting bait for an academic career," but as an opportunity to "evolve this 'sociological jurisprudence' that [Roscoe] Pound had been talking about. . . . [P]erhaps I ought to give myself a try-out to see how much I *have* got. . . . I wonder whether it isn't worthwhile as, say, a five years try."⁷² He then reviewed his options and dismissed the alternatives to teaching at Harvard. He had been working in the War Department of the Wilson Administration and said that, "I'm beginning to feel the point of saturation is fast being reached under this administration."⁷³ He said that his other alternative was entering private practice in New York, and "to make the necessary livelihood out of it would absorb my vital powers most in lines not dominantly attractive to me."⁷⁴ His posture in the letter seemed to be that of one who had made a decision and merely wanted others to reinforce his judgment.

Holmes responded in a letter that bears quoting at length:

As to your question I should answer with something of the reserve one would bring to a question of marriage, with an impression superadded that you already have made up your mind. . . . As to the place the objection that occurs to me is that academic life is but half life—it is a withdrawal from the fight in order to utter smart things that cost you nothing except the thinking them from a cloister. . . . Academics hardly are a further preparation for active life and you would not be as fit for the fight at 35 after being a professor, as now—at least that would be my guess. . . . On the other side there is the question of your opportunities to break in—as to which I know nothing . . . and of your desires—always assuming that the latter are not led by a feeling that a professorship is the line of least resistance. A man once wrote to me with some truth that the line of *most* resistance is the one to choose. . . . I would not decide this question for you if I could—and I might repeat to you what Brandeis said to me years ago—whichever you choose—I think you will come out all right. Always provided you don't overtax your health. I wish I could

70. For the details of this inquiry, see H. HIRSCH, *THE ENIGMA OF FELIX FRANKFURTER* 38 (1981) and M. PARRISH, *FELIX FRANKFURTER AND HIS TIMES: THE REFORM YEARS 59-61* (1982).

71. Letter from Felix Frankfurter to Oliver Wendell Holmes (July 4, 1913), *reprinted in HOLMES PAPERS*, *supra* note 1.

72. *Id.*

73. *Id.*

74. *Id.*

say better things but I am too far out of it to be much good.⁷⁵

Holmes's response shows that he has penetrated beyond the surface terms of the correspondence. He speaks of an impression that Frankfurter has decided already, but the terms of the friendship require that he not trivialize Frankfurter's request for advice. He therefore treats Frankfurter's inquiry as ingenuous and speaks his mind.

He first invests the decision with solemnity. A career choice at the age of thirty, involving a professorship at Harvard, is akin to a decision to marry and needs to be approached with "reserve." Holmes suggests that one does not intervene decisively in a friend's determination to marry, and likewise, one does not intervene in this sort of career decision. Because Holmes once made a similar choice, accepting a professorship at Harvard in 1882 after having been in law practice, however, he feels qualified to expound on it. He proceeds to characterize academic life as "withdrawal from the fight," a "cloister," and an environment that makes one not "as fit for the fight" after immersion in it. The military metaphors, given the background of Holmes's Civil War experience and his Social Darwinism, are not meant frivolously: he is concerned that academic life, which he terms "but half life," may be a "line of least resistance" for Frankfurter. All of these comments, coupled with the memory of advice to Holmes to choose "the line of *most* resistance," reinforce his own decision to leave academics promptly and precipitously when offered a judgeship three months after he began teaching.

Holmes's comments are not intended as advice. He prefaced them with the suggestion that Frankfurter has made a decision already and that his posture is necessarily one of "reserve" on so significant and individualized a matter. He then follows his comments with disclaimers: he "knows nothing" of Frankfurter's "opportunities to break in" to New York law practice, and while he recognizes the importance of Frankfurter's "desires," he is not able to weigh them. He "would not decide the question" for Frankfurter even if he could, he believes things will work out whatever Frankfurter decides, and he is "too far out of it" to offer much good advice. At the close of the letter Holmes reverts to the stereotyped terms of the correspondence, in which he is an "old man" not qualified to give advice to younger persons.

Unraveled in this fashion, the exchange is not quite what it seems. The younger Frankfurter does not truly ask advice from the older Holmes, but asks for confirmation. Holmes does not truly give advice to Frankfurter, but rehearses his objections to academic life and reinforces a career decision he made long ago. When the exchange is complete

75. Letter from Oliver Wendell Holmes to Felix Frankfurter (July 15, 1913), reprinted in HOLMES PAPERS, *supra* note 1.

Frankfurter has the satisfaction of feeling that he has informed and consulted Holmes about the possibility of joining the Harvard faculty. Holmes has the satisfaction of discussing the question of academic life versus the "real world" without any particular cost. Holmes is flattered in being consulted by a far younger man, and Frankfurter is flattered in being permitted to consult Holmes about his future.

The surface tone of the Holmes-Frankfurter correspondence remained constant over time, but the perspectives of the correspondents changed. Frankfurter grew more prominent, both within and outside the legal academic profession.⁷⁶ Holmes remained active on the Court and his reputation grew, in part because of Frankfurter's endless championing of his virtues. Frankfurter's letters, while still deferential, increasingly contained praise for Holmes's accomplishments rather than requests for advice. Indeed, Frankfurter supplied Holmes with abundant "advice" himself, in the form of comments on opinions or constitutional issues and in the selection and placement of Holmes's law clerks.

The meaning of the correspondence to Holmes becomes clearer when one of its common themes is exposed. Frankfurter remained constant in his outpouring of sympathy, praise, flattery, and general support for Holmes and his work, while Holmes remained constant in his gratitude for the receipt of those sentiments. But Holmes articulated his gratitude in two quite different ways. One was through conventional expressions of his pleasure in being appreciated by a younger generation of lawyers. The other, however, was through expressions of his fears and doubts whether he could continue to occupy the exalted professional status that Frankfurter was ascribing to him. In this latter version of gratitude one sees the nature of Holmes's professional ambition in the latter stages of his life. Having acquired high professional status, he now seeks eminence. He looks to and depends on the acclaim of younger elite lawyers as a confirmation that he has achieved eminence. He recognizes, however, that the very gaps in age and status between Frankfurter and himself that give a special meaning to Frankfurter's praise may suggest that the praise is ritualistic or insincere.

In a 1915 letter Holmes speaks of having "great cause to be proud of having counted for something in your life," the pride coming from a sense of continuing to be meaningful for a new generation and conceiva-

76. Frankfurter became an advisor on public affairs, a spokesman for various liberal causes, and the center of a placement network for Harvard Law School graduates, which included clerkships with Justice Holmes. See White, *Felix Frankfurter, The Old Boy Network, and the New Deal: The Placement of Elite Lawyers in Public Service in the 1930s*, 39 *ARK. L. REV.* 631 (1986).

bly for posterity.⁷⁷ In the same letter he refers to his "rather fearful hope that I may never fall from the place you have given me."⁷⁸ In a 1916 letter Holmes states that he "look[s] forward to the inspiring continuance of a friendship that has stepped in just when those of my youth have disappeared in death."⁷⁹ The friendship is "inspiring" because it confirms Holmes's continued appeal to young persons, but the fear that Holmes himself may "disappear" with his contemporaries also is present. Furthermore, Holmes writes in a 1919 letter that, "I do believe that your kindness for me has not been shaken by the sight you have had of so many impressive personalities," and adds that his friendship with Frankfurter has "brought a great deal of comfort and companionship to the natural loneliness of old age."⁸⁰

Thus, the Frankfurter correspondence signified a different dimension to Holmes's definition of his professional aspirations. Unlike the Pöllock correspondence that both tracked and confirmed the path of Holmes's professional ambition, the Frankfurter correspondence concerned the different sort of ambition he felt once high achievement had come. That latter sort of ambition—a yearning to distinguish oneself even from the exalted of the law, by appealing to posterity in the form of the attention of disciples and acolytes—was accompanied by the fear that even with eminence would come age, death, and disappearance. A 1932 letter, written after Holmes had retired from the Supreme Court and Frankfurter was just about to become an insider in the Roosevelt administration, captures this dimension:

You are now a high light and I have dropped into the final obscurity. I haven't written because I find it so hard to write—physically at least. I hope I shall see you before you go to Oxford. When? I am inclined to agree with Brandeis against Att.Gen/Sol.Gen. ship and I surmise that is settled. For me I see no achievement ahead—but leisure and some amusements. . . .⁸¹

A letter of Frankfurter's prompted this letter. Frankfurter had employed the standard terms of the correspondence, telling Holmes that, "Now I know more profoundly than ever . . . how powerful [is] the inspiration for me to draw upon."⁸² While mouthing those sentiments,

77. Letter from Oliver Wendell Holmes to Felix Frankfurter (Mar. 9, 1915), *reprinted in HOLMES PAPERS, supra* note 1.

78. *Id.*

79. Letter from Oliver Wendell Holmes to Felix Frankfurter (Mar. 8, 1916), *reprinted in HOLMES PAPERS, supra* note 1.

80. Letter from Oliver Wendell Holmes to Felix Frankfurter (Sept. 25, 1919), *reprinted in HOLMES PAPERS, supra* note 1 (alluding to Frankfurter's participation in an international peace conference).

81. Letter from Oliver Wendell Holmes to Felix Frankfurter (Nov. 26, 1932), *reprinted in HOLMES PAPERS, supra* note 1.

82. Letter from Felix Frankfurter to Oliver Wendell Holmes (July 13, 1932), *reprinted in HOLMES PAPERS, supra* note 1.

however, Frankfurter did not consult Holmes on being offered the possibility of a position in the Roosevelt administration, which he decided to turn down. Instead, he had consulted Justice Louis Brandeis, still active on the Court, from whom Holmes had learned of the matter. Thus, even the seeking of advice in a ritualistic fashion is absent from Frankfurter's end of the correspondence, and it is Holmes who asks Frankfurter to come and see him. Holmes, now approaching his ninety-second birthday, has difficulty even writing letters. Frankfurter is a "high light"; Holmes has dropped into "obscurity."

Frankfurter's implicit task in his friendship with Holmes, then, was to keep Holmes's presence in "light" rather than "obscurity." The dramatic upsurge of Holmes's reputation in the 1920s and 1930s testifies to how successfully Frankfurter performed that task. Holmes was lionized in law review articles and books.⁸³ A biography was published in 1932,⁸⁴ he gave a national radio address on his ninetieth birthday,⁸⁵ and he was paid a courtesy call by President-elect Franklin Roosevelt in 1933.⁸⁶ From Holmes's point of view, his friendship with Frankfurter had not been just a buffer against age, it had helped him imagine that his reputation might continue to flourish even after he had dropped into obscurity.⁸⁷

C. *Clare Castletown*

Holmes's correspondences with Pollock and Frankfurter reflected quite different dimensions of his professional world and quite different manifestations of his continual drive to distinguish his professional achievements from those about him. Despite the differences, however, the correspondences were similar in that they involved the subject matter of a circumscribed professional and intellectual world. Holmes wrote about law, philosophy, literature, and the personalities that inhabited those realms to both Pollock and Frankfurter. That is all he wrote about. This sphere of correspondence is as notable for what it did not include as for what it did.

Most conspicuously, women were not one of the subjects of either correspondence. The exclusion of women might not seem remarkable in

83. See White, *The Rise and Fall of Justice Holmes*, 39 U. CHI. L. REV. 51, 59-65 (1971).

84. S. BENT, *JUSTICE OLIVER WENDELL HOLMES* (1932).

85. See *id.* at 315-17.

86. For an account of Roosevelt's visit to Holmes, see the recollections of Donald Hiss, Holmes's law clerk for the 1932 Term, in *THE MAKING OF THE NEW DEAL: THE INSIDERS SPEAK* 36-38 (K. Louchheim ed. 1983).

87. In 1932, after his retirement from the Supreme Court, Holmes described himself as "a ghost on the battlefield with bullets flying through me." Memorandum of Felix Frankfurter, Aug. 8, 1932, Felix Frankfurter Papers, Library of Congress, quoted in S. NOVICK, *HONORABLE JUSTICE* 376 (1989).

correspondence carried on between two men, but for Holmes to exclude the subject of women was to exclude one of his abiding interests.

Francis Biddle once reported Holmes as suggesting that "[t]he fun of talking to women . . . was that they carried you away, so that you could express your innards with all the appropriate rapture, floating on the exquisite breath of your own egotism."⁸⁸ Biddle added that Holmes sometimes felt the egotistic impulse would reach "so far that [after rhapsodizing] suddenly you might look at her and say: 'By the way, my dear, what is your name?'"⁸⁹ These comments suggest that Holmes held a frivolous, patronizing attitude toward women, and others indicate that Holmes's flirtations were not inconsistent with this attitude. Alice James, the sister of Henry and William, wrote in her journal in 1889 that she had heard that Holmes, who was about to arrive in London, "has certainly broken loose [from his wife] and is flirting as desperately as ever."⁹⁰ Harold Laski wrote to Holmes in 1924 that a woman had "remembered you most perfectly in the 'nineties as the most perfect flirt in London."⁹¹ Holmes's comment to William James in 1868 that he liked to spend an hour with "a girl of some trivial sort"⁹² also could be seen as consistent with an attitude that women were persons whose company was to be enjoyed but who were not to be taken seriously.

The role of women in Holmes's life takes on another dimension when one becomes familiar with some features of his marriage. Holmes married Fanny Bowditch Dixwell in 1872, when she was thirty-two and he a year younger, and he referred to her at the time as "for years my most intimate friend."⁹³ Fanny's father, Epes Dixwell, had taught Holmes from the age of eleven until he went to Harvard at sixteen. During and after his college years Wendell Holmes and Fanny Dixwell were close friends; however, there is no indication that Holmes was particularly smitten with Fanny until after he returned to Boston from his Civil War service. A diary he kept in 1866 revealed that he called on her regularly and wrote to her frequently when her family visited Hart-

88. F. BIDDLE, *MR. JUSTICE HOLMES* 148-49 (1942).

89. *Id.* at 149.

90. Journal entry by Alice James (June 16, 1889), *quoted in* A. BURR, *ALICE JAMES—HER BROTHERS—HER JOURNAL* 93 (1934).

91. Letter from Harold J. Laski to Oliver Wendell Holmes (July 29, 1924), *reprinted in* 2 *HOLMES-LASKI LETTERS*, *supra* note 16, at 638.

92. Letter from Oliver Wendell Holmes to William James (Apr. 19, 1868), *reprinted in* *HOLMES PAPERS*, *supra* note 1.

93. Letter from Oliver Wendell Holmes to Mrs. Howard Kennedy (Mar. 11, 1872), *quoted in* *PROVING YEARS*, *supra* note 7, at 7. Throughout this Article I refer to Fanny Dixwell by her first name in order to distinguish her from Holmes's mother, Amelia Jackson Holmes.

ford.⁹⁴ For a considerable time after others had identified Fanny and Holmes as a couple,⁹⁵ they did not seem inclined to marry. When announcing their engagement in 1872 Dr. Holmes referred to their "very long and faithful . . . attachment" and spoke of them as "dating almost since childhood."⁹⁶ The day Fanny and Holmes were married Holmes noted in his diary that he had become the "sole editor of the Am[erican] L[aw] Rev[iew]."⁹⁷ The couple took no honeymoon and moved in with Holmes's parents.

A month after the marriage, Fanny contracted a severe case of rheumatic fever and was bedridden for at least three months.⁹⁸ She recovered, but the illness accentuated a tendency toward solitariness and eccentricity. Holmes once said of Fanny that "[s]he is a very solitary bird, and if her notion of duty did not compel her to do otherwise, she would be an absolute recluse. . . ."⁹⁹ Fanny allegedly was not close with any of the members of her family,¹⁰⁰ she avoided social contacts, and in her later years kept the shades drawn in her house.¹⁰¹ In the early years of her marriage one observer described her as pretty,¹⁰² but later observers emphasized her plainness and her lack of concern with her ap-

94. See SHAPING YEARS, *supra* note 12, at 253-54.

95. See, e.g., Letter from William James to Garth Wilkinson James (Mar. 21, 1866), reprinted in 1 R. PERRY, *supra* note 5, at 227-28.

96. Letter from Dr. O.W. Holmes, Sr. to Ann Holmes Upham (Mar. 11, 1872), reprinted in S. NOVICK, *supra* note 87, at 131.

97. Diary entry by Oliver Wendell Holmes (June 17, 1866), reprinted in HOLMES PAPERS, *supra* note 1.

98. The Holmeses apparently never made this illness public. Confirmation of its existence can be found in two letters written by Dr. Holmes to Thornton Hunt. The first, dated Aug. 23, 1872, stated that "my daughter-in-law is down with rheumatic fever." Letter from Dr. O.W. Holmes, Sr. to Thornton Hunt (Aug. 23, 1872) (available in the Thornton Hunt Papers collection, Keats House, Hampstead, England). The second, dated October 4, 1872, referred to the "severe and long-continued illness of my daughter-in-law," and noted that "[m]y daughter-in-law has not yet got downstairs." Letter from Dr. O.W. Holmes, Sr. to Thornton Hunt (Oct. 4, 1872) (available in the Thornton Hunt Papers collection, *supra*). Dr. Holmes had two daughters-in-law at the time, Holmes's brother Edward having married Henrietta Wigglesworth in 1870, but because the Edward Holmeses were traveling in Europe in the summer of 1872, the daughter-in-law in question was Fanny. See also Letter from Oliver Wendell Holmes to John Chipman Gray (June 1, 1907), reprinted in HOLMES PAPERS, *supra* note 1 (stating "As you know my wife has had two rheumatic fevers"); Letter from Oliver Wendell Holmes to Nina Gray (June 16, 1896), reprinted in HOLMES PAPERS, *supra* note 1 (confirming a second attack of rheumatic fever suffered by Fanny in 1895 or 1896); *infra* note 122 and accompanying text.

99. Letter from Oliver Wendell Holmes to Lady Ethel Scott (Jan. 6, 1912), reprinted in HOLMES PAPERS, *supra* note 1.

100. Mark DeWolfe Howe, Holmes's authorized biographer, quoted Thomas Barbour, an "intimate friend of Holmes" whose wife was a cousin of Fanny's, as saying that Fanny "had no close friends and 'hated' most of her sisters." SHAPING YEARS, *supra* note 12, at 200.

101. J. MONAGAN, THE GRAND PANJANDRUM 54 (1988) (quoting Isabella Wigglesworth, the wife of Fanny's nephew).

102. See SHAPING YEARS, *supra* note 12, at 200 (quoting John Fiske).

pearance. One close friend described her in middle age as "look[ing] like a monkey with a long upper lip, darting black eyes and the restless manner of a small bird."¹⁰³ Another said that she had "deep sunken eyes and . . . had her hair skinned back . . . [S]he never made any attempt to do anything for herself."¹⁰⁴

The relationship between Holmes and Fanny seems to have been structured by two compelling themes of their early marriage, his ambition and her illness. It was in some respects a close relationship. Fanny consistently was supportive of Holmes's professional aspirations. She helped him proofread the manuscript of his edition of *Kent's Commentaries*¹⁰⁵ and assumed the domestic responsibilities of their household so that he could concentrate on his work.¹⁰⁶ After Holmes became a judge and concluded that reading in the evenings would strain his eyesight, Fanny, who had had some eye problems earlier in her life,¹⁰⁷ read aloud to him. She played practical jokes on him,¹⁰⁸ wrote him wry notes when he became agitated or overserious,¹⁰⁹ and sometimes poured out her love for him.¹¹⁰ Evidence shows that he recognized these efforts and appreciated them highly.¹¹¹

103. Letter from Mrs. James B. Ayer to Mark DeWolfe Howe (Oct. 25, 1955), *quoted in* J. MONAGAN, *supra* note 101, at 53.

104. J. MONAGAN, *supra* note 101, at 54 (quoting Isabella Wigglesworth).

105. For a note of Fanny's proofreading of the Kent manuscript, see diary entry by Oliver Wendell Holmes (Mar. 3, 1873), *reprinted in* HOLMES PAPERS, *supra* note 1.

106. See Letter from Oliver Wendell Holmes to Canon Patrick Augustine Sheehan, (Apr. 1, 1911), *supra* note 2.

107. In two letters to William James, Holmes spoke of Fanny's having difficulty with her eyes. The earlier one refers to Fanny as having "suffered a good deal for some time past with her eyes," but their being "nearly well." Letter from Oliver Wendell Holmes to William James (Dec. 15, 1867), *reprinted in* HOLMES PAPERS, *supra* note 1. The latter speaks of "Fanny Dixwell's eyes [as] hav[ing] given her but little pain since I last wrote although she has to be careful in their use." Letter from Oliver Wendell Holmes to William James (Apr. 19, 1868), *reprinted in* HOLMES PAPERS, *supra* note 1.

108. See, e.g., F. BIDDLE, *supra* note 88, at 140-41 (describing an episode in 1911 when Fanny and Francis Biddle, then a secretary for Holmes, conspired to plant a fake cockroach in a flour bin in the Holmes's cellar as an April Fool's trick).

109. In one note, Fanny admonished Holmes for misplacing a book in his library and demanded that his secretaries replace it, when the book was in plain sight. The note read, "I'm a very old man and I have many troubles, most of which never occur." J. MONAGAN, *supra* note 101, at 55 (quoting note from Fanny Dixwell Holmes to Oliver Wendell Holmes).

110. See, e.g., Letter from Fanny Dixwell Holmes to Oliver Wendell Holmes (June 11, 1907), *reprinted in* S. NOVICK, *supra* note 87, at 285-86. Fanny's letter read in part:

Please—please—You did not think I did not care. I was in a maze and shall be till heavenly September comes—I wanted to throw myself away when you went out of sight. . . .

Fanny without her husband finds the joyless house mournful tonight.

Don't ever think I am rough or cold or anything but your [a]doring [w]ife.

One of Holmes's solitary trips to England prompted the letter. It suggests that Holmes may have perceived Fanny on occasion as indifferent to him: "rough" or "cold."

111. See, e.g., Letter from Oliver Wendell Holmes to Canon Patrick Augustine Sheehan (Apr. 1, 1911), *supra* note 2 (stating that "my wife has made my whole life a path of beauty [and]

In other respects the Holmeses occupied quite different worlds. Fanny had no particular interest in affiliating herself with the social prerequisites of her husband's success. She never entertained in Boston and only did so in Washington when it had become clear that the wives of Cabinet officials and Supreme Court justices were expected to have regular "open houses" for ceremonial purposes.¹¹² When Fanny joined Holmes on trips to Europe she did not relish the social whirl that he found exhilarating, and she did not like the traveling. On their 1874 trip to England she kept a diary, noting early in the ocean crossing, "Will never never never put myself in such a fix again. [Fourteen] days more of it perhaps."¹¹³

After the visit in 1874 Fanny agreed to go again to England in 1882 when the Holmeses also visited the Continent. Thereafter, until 1909, she refused to go, and Holmes went alone in 1889, 1896, 1898, 1901, 1903, and 1907. When Holmes received an honorary degree from Oxford in 1909 Fanny accompanied him, but the visit was brief. Holmes went alone again, for the last time, in 1913. On some occasions Fanny declined to accompany Holmes because of the press of other duties, such as taking care of Dr. Holmes or fixing up the Holmeses' new Washington house, and on others she was too ill to go. She insisted that Holmes go alone, a result that made him feel slightly guilty, perhaps because he felt liberated and rejuvenated by the trips, while she found them wearing.¹¹⁴

Holmes's relationship with Clare Castletown was a product of his solitary trips to England. Not only did the relationship develop differently in Fanny's absence, but its very existence was spawned, on Holmes's behalf, by the circumscribed patterns of his career and his marriage. Holmes's preoccupation with professional achievement and Fanny's reclusiveness, when added to the burdens the couple may have felt from being affiliated so closely with a prominent circle of Bostonians, resulted in their avoiding social contacts during the years they lived in Boston. English society freed Holmes from these sorts of burdens and the additional burden of respecting his wife's disinclination to

has devoted all her powers to surrounding me with enchantments").

112. Fanny seemed, nonetheless, to have been accomplished in her role of presiding over the "at homes." Holmes wrote Ellen Curtis in 1903 that Fanny "has been a great success [as a hostess] although she won't believe it." Letter from Oliver Wendell Holmes to Ellen Curtis (Feb. 7, 1903), reprinted in *HOLMES PAPERS*, *supra* note 1.

113. Diary entry by Fanny Dixwell Holmes (May 30, 1874), reprinted in *HOLMES PAPERS*, *supra* note 1.

114. See Letter from Oliver Wendell Holmes to Lady Winifred Burghclere (Sept. 17, 1898), reprinted in *HOLMES PAPERS*, *supra* note 1. Holmes told Lady Burghclere: "I always feel twice the man I was, after I visit London. Personality there is in higher relief than in my world here with its limited experience and half culture." *Id.*

socialize. In England Holmes could get away from Boston, from being a judge, and from Fanny.

Holmes saw his trips to England as an opportunity not only to get away but to get to something. He had in mind the society of the professional and social friends that he had first encountered in 1866, a mix of lawyers, aristocrats, country squires, and intellectuals. On his first solo trip after his marriage to Fanny, in 1889, he carefully cultivated that society. The points of entry were twofold: His old professional friends, such as Leslie Stephen and Frederick Pollock; and a social circle that included Ethel Grenfell and her uncle, Henry Cowper, whom Holmes had met in 1866 and again in America in 1867, and who had made a "decided impression" on him.¹¹⁵ Henry Cowper had died suddenly in 1887, and the next year Ethel Grenfell traveled to Canada and the United States, stopping to visit the Holmeses in Boston in September.¹¹⁶

Holmes arrived in England in early July and sought companionship. Although he saw Pollock and Stephen and their families, Ethel Grenfell's circle provided him with a more congenial base. The Grenfells were members of a group of young, wealthy aristocrats known as "The Souls," whose interest in politics and intellectual topics, acceptance of women as participants in the world of ideas, and unconventional attitudes on artistic and aesthetic topics distinguished them from the "Marleborough House Set," the other circle of young aristocrats, which centered around Edward, the Prince of Wales.¹¹⁷ Holmes secured an invitation to stay with the Grenfells at Taplow Court, in Maidenhead, outside of London, for most of August.

Holmes encountered Clare Castletown through "The Souls." Clare was the wife of an Anglo-Irish aristocrat, Bernard Castletown, whom she had married at the age of nineteen in 1874.¹¹⁸ The Castletowns occupied a flat in London for the summer season, and their social activities overlapped with those of "The Souls." Clare was a member of "The Ascendancy," a group of Anglo-Irish landowners who dominated politi-

115. For an expression of Holmes's admiration for Cowper, see Letter from Oliver Wendell Holmes to William James (Dec. 15, 1867), reprinted in *HOLMES PAPERS*, *supra* note 1.

116. See Letter from Ethel Grenfell to Fanny Dixwell Holmes (Sept. 12, 1888), reprinted in *HOLMES PAPERS*, *supra* note 1. Ethel, whose parents had died when she was very young, had been raised by Cowper and his wife and could expect to inherit the Cowper family fortune. A year before her visit she had married Willy Grenfell at the age of 20.

117. For more detail on "The Souls" and the "Marleborough House Set," see A. LAMBERT, *UNQUIET SOULS* (1984).

118. Bernard Castletown had gone to Eton, where he had been a contemporary of Arthur Balfour, a member of "The Souls" and later Prime Minister of England. For a discussion of Balfour's connection with "The Souls," see *id.* at 49-71. For a discussion of Bernard Castletown's early career, see LORD CASTLETOWN, *EGO: RANDOM RECORDS OF SPORT, SERVICE, AND TRAVEL IN MANY LANDS* 8-23 (1923).

cal and social life until they were overthrown during the Irish Rebellion of 1916.¹¹⁹ Bernard Castletown was involved in politics, being elected to Parliament in 1880, and spent a good deal of his time on big game hunting expeditions. Clare did not share her husband's interest in hunting, but was an enthusiastic rider and horticulturist.

In 1891, when his collected volume of extrajudicial addresses, *Speeches*, was published, Holmes sent Clare Castletown a copy with a cover note reminding her of their 1889 meeting. She responded that she "was so much pleased to receive your little book . . . & the letter which accompanied it & I feel quite flattered at your remembering my existence after all this time!"¹²⁰ She added that if Holmes came to England he should "let us know & come & stay with us [at Granston Manor]."¹²¹ Holmes did not return to England until 1896; that year or the previous year Fanny suffered another attack of rheumatic fever, from which she was still recovering in the summer of 1897.¹²²

On arriving in London, Holmes sent out cards and letters, including one to Clare, in search of social companionship. She responded by asking him to luncheon at the Castletowns' flat,¹²³ and subsequently they went to an art exhibition,¹²⁴ and she invited him again to lunch and to dinner.¹²⁵ By the time the London season had ended Clare had invited Holmes to stay with her at Doneraile Court, one of the Castletown's two estates in Ireland. He arrived for a week's visit and found that Bernard Castletown was not in residence but that another man, Eustace Bechen, also had been invited.¹²⁶

119. See M. BENCE-JONES, *THE TWILIGHT OF THE ASCENDANCY* (1987).

120. Letter from Clare Castletown to Oliver Wendell Holmes (Feb. 19, 1892), reprinted in *HOLMES PAPERS*, *supra* note 1.

121. *Id.*

122. Holmes wrote to Nina Gray in June 1896, stating that "my wife has had the rheumatic fever and although much better still seems weak." Letter from Oliver Wendell Holmes to Nina Gray (June 16, 1896), reprinted in *HOLMES PAPERS*, *supra* note 1. Holmes wrote to Pollock on July 20, 1897 that "my wife . . . hasn't by any means got back to where she was before her rheumatic fever." Letter from Oliver Wendell Holmes to Frederick Pollock (July 20, 1897), reprinted in *I HOLMES-POLLOCK LETTERS*, *supra* note 8, at 75.

123. Letter from Clare Castletown to Oliver Wendell Holmes (July 4, 1896), reprinted in *HOLMES PAPERS*, *supra* note 1.

124. Letter from Oliver Wendell Holmes to Clare Castletown (Aug. 6, 1897), reprinted in *HOLMES PAPERS*, *supra* note 1 (discussing Holmes's and Clare's attendance of an art exhibition in "the middle of July").

125. Diary entry by Oliver Wendell Holmes (July 17, 1896), reprinted in *HOLMES PAPERS*, *supra* note 1.

126. Holmes noted the presence of Bechen and two other guests, Mr. and Mrs. Godfrey Levinger, in his 1896 journal. In a September 17, 1896 letter to Clare, Holmes wrote that he was interested that Bechen had continued to stay with Clare after he had left. Apparently there was some competition between Bechen and Holmes for Clare's attention because Holmes noted in the letter that "I chuckled over my twiggling your invitation to him. However it was not I who was sent to shoot rabbits." Letter from Oliver Wendell Holmes to Clare Castletown (Sept. 17, 1896), re-

By the time Holmes left Doneraile to sail home, he was enraptured with Clare Castletown. He wrote her a letter on the day of his sailing, and thus initiated a correspondence that was in some respects unlike any of his other correspondences. The letters from Holmes to Clare have been described as "love letters,"¹²⁷ and the description seems apt, although their relationship remains obscure. A September 5, 1896 letter exemplifies the tone of Holmes's letters to Clare:

I have just this moment received your most adorable letter. It is what I have been longing for and is water to my thirst. You say and do everything exactly as I should have dreamed. I shall keep it and when I am blue and you seem far away I shall take it out and read it and be happy again. Do I often come back? I love your asking it. . . . Oh yes indeed I do and shall. I do not forget easily, believe me—and your letter was all that was wanting to assure me that we should abide together. . . . I still carry in my pocket a handkerchief (one of my own) with a little infinitesimal dark smear upon it—with it I once rubbed away a —Do you remember? I long every day to hear from you, and live Doneraile over—I picture you to myself in all sorts of ways. By and by we shall settle into some sort of rhythm in writing—but I have not yet learned patience in waiting. The thing to believe and take comfort in, however, is that we are not going to part company—and I am very sure that if we do it will not be I who does it—I am only less confident that it will not be you.¹²⁸

Nothing like this letter appears in any other of Holmes's correspondences. No other letters contain an emphasis on the intimacy of his relationship with the other correspondent, or language conveying how he misses the other's presence, or expressions of anxiety about the future of the relationship. In most of Holmes's letters his emotional feelings are unexpressed or tightly controlled. In this letter he lets them pour out. He refers to an intimate moment when he apparently rubbed away a tear from her eye, and he declares that he longs to hear from her every day. He writes like a lover rather than the detached, controlled author of his other correspondences.

All of Holmes's letters to Clare Castletown did not match the tone of the one quoted above. Between September 1896 and May 1899, however, when Holmes wrote her one hundred letters, there are far more examples in this vein than examples consistent with the traditional body of Holmesian correspondence. In a September 1898 letter, for example, Holmes wrote:

Now I go partly on faith—need I tell you how deep the faith is? Whatever you say or don't say I believe in you and trust you & love you dearly. I long long long for

printed in HOLMES PAPERS, *supra* note 1. Holmes's letter to Lady Burghclere, *supra* note 114, indicates that he did not meet Bernard Castletown until 1898.

127. See Monagan, *The Love Letters of Justice Holmes*, BOSTON GLOBE MAG., Mar. 24, 1985, at 15.

128. Letter from Oliver Wendell Holmes to Clare Castletown (Sept. 5, 1896), reprinted in HOLMES PAPERS, *supra* note 1.

you & think think think about you. You would be satisfied I think.¹²⁹

The tone and language of this letter, which arguably is closer to that of a schoolboy than to that of the typical Holmesian epistle, suggest a considerable infatuation with Clare.

Because of the sparsity of source material, the precise nature of Holmes and Clare Castletown's relationship defies reconstruction. Few of Clare's letters to Holmes have survived, and a large gap exists in the correspondence between 1899 and 1914. One extant letter from Clare to Holmes, written in May 1899, suggests that she felt some romantic attachment to him. Holmes apparently had written a letter addressed to "Dear Clare," as distinguished from his usual salutations of "Beloved Hibernia"¹³⁰ or "My dear Lady." She responded:

Please—I don't admire this way of beginning your epistles—it gives me a shiver & chill. I don't know why—I *do* like to be given my name by you but not in that bald sort of way! You will say it is dreadful foolery but I don't care . . . So . . . keep Clare up your sleeve & only let it fall accidentally & tenderly & as if it meant more than just a formal approach to a letter—you know what I mean . . .?¹³¹

This letter shows clearly that Clare wanted Holmes to treat their relationship as intimate, not "formal" or in a "bald" fashion. She liked him to address her by her first name,¹³² but only "accidentally & tenderly." She added that a "formal" address gave her "a shiver & chill." What intimacy with Holmes meant to Clare, however, remains unclear.

One clue to their relationship is provided by Holmes's sentence in his September 1898 letter in which he says, after telling Clare that he longs for her and thinks about her, "[y]ou would be satisfied I think."¹³³ This suggests that Holmes believed Clare took particular satisfaction in hearing words of devotion from him. Whether she returned comparable sentiments is not clear. Indeed, one of the correspondence's themes is Clare's coquettishness, a theme that is given additional meaning by a fuller exploration of Clare's extramarital relationships.

After Holmes's visit to Doneraile in 1896 he and Clare exchanged momentos. She sent him a photograph of her in October of that year,¹³⁴

129. Letter from Oliver Wendell Holmes to Clare Castletown (Sept. 16, 1898), *reprinted in HOLMES PAPERS, supra* note 1. This letter was written after Holmes had visited Clare a second time at Doneraile Court in August 1898. The details of that trip are discussed *infra* at text accompanying notes 149-52.

130. This salutation was a reference to Clare's ancestry.

131. Letter from Clare Castletown to Oliver Wendell Holmes (May 8, 1899), *reprinted in HOLMES PAPERS, supra* note 1.

132. At the turn of the century this was unusual outside intimate friendships, and very rarely done in correspondence.

133. Letter from Oliver Wendell Holmes to Clare Castletown (Sept. 16, 1898), *supra* note 129.

134. Letter from Oliver Wendell Holmes to Clare Castletown (Oct. 23, 1896), *reprinted in HOLMES PAPERS, supra* note 1.

which he framed and hung in his library.¹³⁵ He responded by sitting for one to send to her, which he sent in February 1897.¹³⁶ She sent him a pin in the shape of a heart for Christmas 1896, which he wore when sitting as a judge.¹³⁷ At the same time, however, she made oblique references to other relationships. In a November 1896 letter, for example, Holmes wrote that Clare took "a malicious satisfaction in hinting at transitory tragedies in your wanderings—and at a frame of mind not unlike some of those portrayed in *Lettres des Femmes*."¹³⁸ This piqued him: he added that "I hate the thought of anyone except me being admitted to know anything about your real feelings."¹³⁹

Subsequently, in a May 1897 letter Holmes inquired about the status of a male friend of Clare's:

I notice that for a long time I have heard no more of the substantial *other*—the same I suppose who wanted to kill me etc. Will you kindly advert to him. Is he still in statu quo? . . . Has his importance grown? or how otherwise? or has he happily demised?¹⁴⁰

The "substantial other" was Percy La Touche, an Irish aristocrat and sportsman with whom Clare was having an affair during the time of Holmes's 1896 visit. A fair amount of correspondence between La Touche and Clare Castletown has survived, and it reveals that La Touche was not only involved with Clare at the time of Holmes's visit, but he was aware of and strongly resented Holmes's presence. On August 17, 1896, the second day of Holmes's visit, Clare received a letter from La Touche:

Don't work too hard and don't flirt with Mr. Holmes and don't let him flirt with you but remember that I love you with all my heart and soul, that I want you to be all only mine, and that I would like to murder every man that dares to look at you or that you look at. Be good dearest and remember. . . .

I don't feel at all inclined to laugh about your Bostonian and fairly hope he will go out shooting. How long is he going to stay? If he wasn't going to be at Doneraile on Friday I would come and have luncheon with you that day—I would have to go back in the evening but I would so like to come and see you but I don't want to see

135. Letter from Oliver Wendell Holmes to Clare Castletown (Dec. 19, 1896), reprinted in *HOLMES PAPERS*, *supra* note 1. The library was at his home in Boston, and Holmes had other portraits of women in it as well. See Letter from Oliver Wendell Holmes to Ellen Curtis (Apr. 19, 1915), reprinted in *HOLMES PAPERS*, *supra* note 1; Letter from Oliver Wendell Holmes to Clara Stevens (May 12, 1903), reprinted in *HOLMES PAPERS*, *supra* note 1 (each referring to their portraits being in his library).

136. See Letter from Oliver Wendell Holmes to Clare Castletown (Feb. 2, 1897), reprinted in *HOLMES PAPERS*, *supra* note 1.

137. Letter from Oliver Wendell Holmes to Clare Castletown (Dec. 28, 1896), reprinted in *HOLMES PAPERS*, *supra* note 1.

138. Letter from Oliver Wendell Holmes to Clare Castletown (Nov. 21, 1896), reprinted in *HOLMES PAPERS*, *supra* note 1.

139. *Id.*

140. Letter from Oliver Wendell Holmes to Clare Castletown (May 7, 1897), reprinted in *HOLMES PAPERS*, *supra* note 1.

him . . . I don't like his being there alone with you at all and I am sure you will find plenty to do with him and a great deal that I shouldn't like at all and I don't know how much you will do or how far you will go and I am not happy but jealous.¹⁴¹

This letter reveals a fair amount about Clare Castletown's initial motivation in entering into a relationship with Holmes. First, even though Holmes believed that Eustace Bechen was a rival for Clare's attention, Clare apparently had given La Touche reason to be jealous of Holmes even before Holmes arrived at Doneraile. Second, the letter indicates that La Touche believed Clare would flirt with Holmes and perhaps even attempt to seduce him: he was "sure you will find . . . a great deal [to do with Holmes] that I shouldn't like at all." Third, Clare seems to have presented her relationship with Holmes to La Touche in a light-hearted vein because La Touche wrote that he was not "inclined to laugh about your Bostonian." In sum, the letter suggests that Clare had developed an interest in Holmes in London and that she had invited him to Doneraile to further that interest, but that she did not view the relationship particularly seriously.

Clare continued to vex La Touche with Holmes's presence after Holmes returned to Boston. In a letter written to Clare nine days after Holmes had left, La Touche asked, "Do you recognize how heartlessly cruel it was to undeceive me about these thoughts when I had deceived myself? . . . I cannot imagine how you could have done it . . . I do not ask you not to think but why why why must you tell me of your thoughts?"¹⁴² By September La Touche genuinely was concerned that Holmes might displace him in Clare's heart. He wrote her that "I have often likened you to a snake . . . but I wish there was a little more of the deaf adder about you so that you would not unfold your lovely curls at the voice of a charmer (with an American accent)."¹⁴³ He went on:

I try and tell myself . . . that I am too strong to fear any foe however formidable and however insidious, that I can win you back and that I will do so. . . . But I don't know—my heart aches with distrust. I have played for the highest stake for which every man gambled and I almost dread seeing you for fear I may have lost it.¹⁴⁴

By the spring and summer of 1897 La Touche's relationship with Clare was faring better,¹⁴⁵ and Holmes was encountering some difficul-

141. Letter from Percy La Touche to Clare Castletown (Aug. 17, 1896) (available in the Castletown Papers collection, Bisbrooke Hall, Leicestershire, England). [Editors Note: These letters are in private hands and were unavailable at time of publication.]

142. Letter from Percy La Touche to Clare Castletown (Aug. 31, 1896) (available in the Castletown Papers collection, *supra* note 141).

143. Letter from Percy La Touche to Clare Castletown (Sept. 18, 1896) (available in the Castletown Papers collection, *supra* note 141).

144. *Id.*

145. In a May 11, 1897 letter La Touche reminded Clare of his "sweet recollections of one

ties with Clare. In an August 1897 letter Holmes observed that "you never speak of that other man—who was the dark horse earlier in our correspondence. Why? You will pass this question in silence & I shall remember & regret."¹⁴⁶ By the close of the year he had become fatalistic:

I wonder if I am to infer from a line that you have vouchsafed me at last . . . that you have been up to mischief and doing damage. Well I wont [sic] make myself miserable about it until you bid me to—more definitely. . . . During the last year you have kept me pretty well at the point of your rapier.¹⁴⁷

In these letters Holmes attributes the same qualities to Clare that La Touche did in his letters. Holmes is suspicious of Clare and concludes that she likely has been "up to mischief." Almost twenty years later Holmes was to retain the same impression. He asked Clare, "What has become of the other? I never keep his name in mind. I thought he had put my nose out of joint—and yet I am fond enough of you to really wish that you may have anything that makes life happier."¹⁴⁸

In 1898 Holmes was given another opportunity to pique La Touche. After much agonizing, he resolved to travel to England and Ireland again, and to visit Clare. In January he wrote her:

Do you swear that I should see a great deal of you if I come? or would it depend on chances which I will not seek to analyze more precisely? You have been such a dear lately—all your kindest best self, that I feel as if it were absurd to ask this question. Yet London is a busy place and you are a busy person.¹⁴⁹

By this time Clare clearly had been intimate with La Touche, but Holmes's diary reveals that he and Clare were regularly in each other's company in London. He met Bernard Castletown for the first time in London on July 11, and was invited to visit the Castletowns at Grans-ton Manor in August and to spend a few days with Clare at

lovely night," and of a rendezvous "at Moore Abbey where first I pressed my lips upon your hand." Letter from Percy La Touche to Clare Castletown (May 11, 1897) (available in the Castletown Papers collection, *supra* note 141). In another, undated, letter, discovered next to the May 11, 1897 letter in the Bisbrooke Hall collection, La Touche gave an explicit description of Clare's anatomy that would be consistent with the attitude of one who anticipated continued sexual intimacy with the other correspondent. See Letter from Percy La Touche to Clare Castletown (undated) (available in the Castletown Papers collection, *supra* note 141). The timing of these letters dovetails with Holmes's sense that Clare was "up to mischief," as he said in a December 17, 1897 letter to her. Letter from Oliver Wendell Holmes to Clare Castletown (Dec. 17, 1897), *reprinted in HOLMES PAPERS, supra* note 1.

146. Letter from Oliver Wendell Holmes to Clare Castletown (Aug. 19, 1897), *reprinted in HOLMES PAPERS, supra* note 1.

147. Letter from Oliver Wendell Holmes to Clare Castletown (Dec. 17, 1897), *supra* note 145.

148. Letter from Oliver Wendell Holmes to Clare Castletown (Jan. 10, 1915), *reprinted in HOLMES PAPERS, supra* note 1. Percy La Touche was still alive at the time. He died in 1921. See M. BENCE-JONES, *supra* note 119, at 234.

149. Letter from Oliver Wendell Holmes to Clare Castletown (Jan. 18, 1898), *reprinted in HOLMES PAPERS, supra* note 1.

Doneraile.¹⁵⁰

The summer apparently intensified Holmes's feelings for Clare. One piece of evidence supporting that supposition is the attack of shingles Holmes suffered just as he was boarding the steamer for home. He wrote to Clare from Beverly Farms on September 5 that he was "in the kind of collapse that comes after nervous tension" and that he still "[couldn't] sleep through even 6 or 7 hours without a dose" of pain-killer.¹⁵¹ Additional evidence comes from the tone of that same letter:

And now do you think that you can meet time and distractions and still care for me as much? I believe you will. I firmly believe that time will make no difference to me. Oh my dear what joy it is to feel the inner chambers of one's soul open for the other to walk in and out at will. . . . By the by permit me to suggest that you do not put my letters into the waste paper basket which you trust so much. Fire or fragments and the water ways when you destroy if you do as I do. . . . It is rather odd to read letters of Sir W? Knollys to his sister, saying how much he would like to make many a mother if his existing incumberances [sic] only might be gathered away, as he had a lawful lady.¹⁵²

This letter has all the signs of being written by one who sees himself as infatuated with a person other than his spouse. Holmes's language lacks his usual control, and he resorts to clichés such as "the inner chambers of one's soul." He painstakingly describes how he burns and immolates Clare's letters and encourages her to do likewise, as if the sentiments his correspondence contained would be incriminating. He alludes to the letters of Sir William Knollys, a married man who would like to have affairs were his "incumberances" removed.

Just when Holmes's letters to Clare reached their greatest level of intensity, a massive gap appears in the correspondence. After May 1899, when Clare wrote to Holmes about the use of her first name, no letters appear until April 1914. Thus, little information about their relationship in that interval exists, although on four subsequent trips abroad, in 1901, 1903, 1907, and 1913, Holmes visited the Castletowns at Doneraile.¹⁵³

150. Diary entry by Oliver Wendell Holmes (July 30, 1898), *reprinted in HOLMES PAPERS*, *supra* note 1.

151. Letter from Oliver Wendell Holmes to Clare Castletown (Sept. 5, 1898), *reprinted in HOLMES PAPERS*, *supra* note 1. Holmes was still feeling the effects of the shingles in December of that year. He wrote Pollock on December 9, 1898 that "I brought home from Ireland a little case of the shingles . . . and my shoulder still aches and the small of my back does the like." Letter from Frederick Pollock to Oliver Wendell Holmes (Dec. 9, 1898), *reprinted in I HOLMES-POLLOCK LETTERS*, *supra* note 8, at 89-90.

152. Letter from Oliver Wendell Holmes to Clare Castletown (Sept. 5, 1898), *supra* note 151.

153. Evidence of three of the visits can be found in *HOLMES-SHEEHAN CORRESPONDENCE*, *supra* note 2, at 3, 18, 27, 30, 64. Canon Patrick Augustine Sheehan was a Catholic priest whose parish was at Doneraile. Bernard Castletown introduced Holmes to Sheehan during Holmes's 1903 visit. *HOLMES-SHEEHAN CORRESPONDENCE*, *supra* note 2, at 3. Evidence of the fourth visit comes from Holmes's travel diary for 1901 and a July 1901 letter from Holmes to Mrs. John Chipman

Apparently, the relationship entered another stage after 1899. In that year Clare suffered a serious eye injury in a riding accident,¹⁵⁴ which was still affecting her in 1910.¹⁵⁵ Holmes's journal for 1901 indicates that he spent three weeks with the Castletowns at Doneraile in August, but the entries are cryptic, revealing only that it rained, causing some of Holmes's side effects from his Civil War wounds to return, and that the Castletowns had other guests.¹⁵⁶

Two letters from Holmes to his friend Nina Gray, the wife of Harvard law professor John Chipman Gray, provide insights on his 1903 visit. In August 14 of that year he wrote to Gray from Granston Manor:

Here I intend to take a time of such quiet as I can get and rest. . . . I realize that I am older. . . . It is time to be old—To take in sail—But London does much to make one forget which is a gain for a vacation at least—It is rather pleasant when everybody is making love all round, unless one is so out of it that he doesn't dare to speak to anyone for fear of interrupting a tragedy. There was at times perhaps rather too much bliss to the square foot but now I am settling down. . . .¹⁵⁷

This letter suggests that the London social season had gone much as before: flirtations, "tragedies," and "bliss." Holmes, however, feeling that he may be a little old for such badinage, writes that he hopes to "rest" and "take in sail" at the Castletowns. That comment is noteworthy because it suggests that perhaps his relationship with Clare has become more comfortable and less intense: he equates staying with her with a respite from "making love all round."

A second letter was written from Doneraile two weeks later:

It is impossible to write a decent letter in the row of a houseful of people with

(Nina) Gray. See diary entry by Oliver Wendell Holmes (Aug. 8, 1901), reprinted in *HOLMES PAPERS*, *supra* note 1; Letter from Oliver Wendell Holmes to Nina Gray (July 15, 1901), reprinted in *HOLMES PAPERS*, *supra* note 1.

For additional evidence of the 1907 visit, see Letter from Oliver Wendell Holmes to Baroness Charlotte Moncheur (Aug. 14, 1907), reprinted in *HOLMES PAPERS*, *supra* note 1, in which Holmes says he is planning to stay with the Castletowns and is "about to telegraph to make sure." Another letter from Holmes to Moncheur provides evidence that Holmes's correspondence with Clare Castletown did not cease after 1899. In a 1910 letter Holmes wrote, "I had a letter from my friend Ly. Castletown the other day." Letter from Oliver Wendell Holmes to Baroness Charlotte Moncheur (Dec. 18, 1910), reprinted in *HOLMES PAPERS*, *supra* note 1.

Holmes did not visit the Castletowns on his 1909 trip, when he and Fanny went to Oxford in connection with his receiving an honorary degree. That trip was brief and confined to England.

154. See Letter from Bernard Castletown to Oliver Wendell Holmes (June 18, 1899), reprinted in *HOLMES PAPERS*, *supra* note 1 (indicating that Clare was "a little better but it is a very slow recovery" and that she was not yet able to read Holmes's correspondence on her own).

155. See Letter from Oliver Wendell Holmes to Baroness Charlotte Moncheur (Dec. 18, 1910), *supra* note 153.

156. See diary entries by Oliver Wendell Holmes (Aug. 8-Aug. 27, 1901), reprinted in *HOLMES PAPERS*, *supra* note 1.

157. Letter from Oliver Wendell Holmes to Nina Gray (Aug. 14, 1903), reprinted in *HOLMES PAPERS*, *supra* note 1.

a garden party in prospect—how I hate such disturbances of a quiet life! . . . [E]verything, pretty nearly, has gone according to one's wishes except the incursion of alot [sic] of people when one longs for quiet. You would think it a boon and want 'em all—but I prefer the quiet corner out of the wind. They play bridge of an evening and I am left to some chance lady or a book. . . . I might shoot or fish if I liked while here—but I prefer the role of Samson in the lap of Delilah so far as permitted. . . .

I cannot help a sort of amusement—I won't say that, it is too wicked—But the men I have known here turn up so far as they have not run off with their neighbor's wives or otherwise disposed of themselves . . . and it is not without a tragical side to come to places and think how more than possible it is that it is for the last time.¹⁵⁸

In the second letter Holmes is playing the role of observer of society rather than participant in it. He prefers a "quiet corner out of the wind," he declines to play bridge, shoot or fish, and he is left alone in the evenings to entertain an unoccupied lady or to read. Moreover, his detached, frivolous tone has returned in describing his company: he is amused by the philandering of his old acquaintances, who "turn up so far as they have not run off with their neighbor's wives." It is hard to imagine this attitude as consistent with an intense courtship of Clare.

Most of the letters from Clare that have survived in the *Holmes Papers* are dated late in her life. These are remarkably matter-of-fact, with occasional outbursts of depression or gallows humor. She is preoccupied with the troubles that members of "The Ascendancy" were having in Ireland.¹⁵⁹ She refers to herself in one letter as "half blind & deaf & lame," and she says, after a discussion of the prospect of the Castletowns' houses being burned down, that "one can only die once & it won't make much difference how one does it."¹⁶⁰ She speaks in another letter of "never hav[ing] anything to say that is at all likely to interest you nowadays."¹⁶¹ She recalls "the merry days that we used to have . . . 100 years ago—when all the world was young . . . & one didn't shiver in June," and she suggests that "the longer one lives the less one likes living."¹⁶² In short, she finds "life . . . utterly futile & hopeless & generally disgusting."¹⁶³

Holmes's letters to Clare after 1914 are strikingly different from his

158. Letter from Oliver Wendell Holmes to Nina Gray (Sept. 2, 1903), reprinted in *HOLMES PAPERS*, *supra* note 1.

159. Letter from Clare Castletown to Oliver Wendell Holmes (Dec. 20, 1922), reprinted in *HOLMES PAPERS*, *supra* note 1.

160. Letter from Clare Castletown to Oliver Wendell Holmes (undated), reprinted in *HOLMES PAPERS*, *supra* note 1 (although the letter is undated, it was clearly written in 1922 because it refers to Holmes's 81st birthday, which was on Mar. 8, 1922).

161. Letter from Clare Castletown to Oliver Wendell Holmes (June 14, 1923), reprinted in *HOLMES PAPERS*, *supra* note 1.

162. *Id.*

163. *Id.*

earlier ones: they much more resemble his standard correspondence. One, written in 1916, is representative:

In fact there is nothing new to tell you about the routine of my life either in Washington or here [Beverly Farms, Massachusetts, his summer residence]. Here I read and take the open air, there I write and breathe the atmosphere of the Court. As usual, I started my reading with improving books—but after getting through a certain amount . . . I dropped to George Moore's *Confessions of a Young Man*, unfortunately expurgated. . . . I am mitigating it with a little Greek, the *Oedipus* of Sophocles, with translation and dictionary by my side, but I have not yet got [sic] into this floating realized leisure. Everything seems a duty. . . . Take a half-hour off, and remember one who thinks much of you.¹⁶⁴

Here, twenty years into their correspondence, one encounters a letter that could have been written to any of Holmes's other correspondents. He describes the routine of his life, makes a familiar distinction between books read for self-improvement and those read for amusement, and he ends with the reflexive acknowledgement of friendship characteristic of his letters to others. This is a striking metamorphosis from the earlier letters to Clare, which were singular in their being suffused with emotion and lacking in detachment, irony, or any of the devices Holmes used to maintain a posture of control in his letter writing.

The Holmes-Castletown correspondence ended with Clare's death in April 1927, which, Holmes wrote to Harold Laski, left "a great gap in my horizon."¹⁶⁵ Clare was, he added, "one of my oldest and most intimate friends."¹⁶⁶ Their correspondence raises two separable but related inquiries. The first of those pertains to Holmes's attitude toward Clare; the second pertains to the role of the correspondence in Holmes's life as a letter writer.

The scattered and uneven quality of sources and the difficulty of reconstructing the world of Holmes and Clare in light of modern social relationships make observations about their relationship extremely hazardous. Even if one assumes that at a point in their relationship Holmes and Clare Castletown had concluded that they were in love with one another, it was barely conceivable, given their social worlds, that either would have divorced his or her spouse. While Holmes and Clare were in one sense products of quite different social subcultures, temporarily brought together by the London social season, both of those subcultures shared the assumption that divorce was taboo. Even though extramarital affairs were not unusual for Clare and her contem-

164. Letter from Oliver Wendell Holmes to Clare Castletown (July 30, 1916), reprinted in *HOLMES PAPERS*, *supra* note 1.

165. Letter from Oliver Wendell Holmes to Harold Laski (Apr. 29, 1927), reprinted in 2 *HOLMES-LASKI LETTERS*, *supra* note 16, at 938.

166. *Id.*

poraries,¹⁶⁷ they might well have been in the worlds of Boston and Washington that Holmes frequented, especially given his status as a judge.

Moreover, speculation about the degree of Holmes's involvement with Clare may rest on unwarranted assumptions about the nature of that involvement. Holmes's other comments about women suggest that while he found them amusing and entertaining company, and enjoyed flirtations, fundamentally he did not take them seriously. Nowhere in Holmes's comments about women does one find evidence of the sort of attitude displayed by Percy La Touche in his comments to Clare, that of a desperate, passionate search to court and possess the object of one's desires. Even Holmes's letters to Clare do not convey this tone. He is seeking intimacy and an opportunity freely to confess his preoccupation with her, but he is not possessive, markedly jealous, angry, or explicit about his sexual desires. The closest he comes to courtship is a suggestion that if she will not be able to frequent his company, he will be disinclined to visit England.

Indeed, Holmes's conception of his relationship with Clare appears to be more an abstracted and idealized romance than a concrete, passionate affair. In contrast, Clare's conception of the relationship appears far more strategic and practical: she was not disinclined, for example, to play Holmes and La Touche off against one another, informing each of the other's existence. One feels that Holmes, who for all his flirtations had not had a serious relationship with a woman before his marriage, and whose social contacts were extremely limited as compared with those of Clare, was the far less worldly and experienced of the two. The juxtaposition of Holmes's painstakingly burning Clare's letters, while Clare was preserving many of Holmes's letters in her family papers, serves to signify the relative positions from which each of the parties viewed their relationship.

From Holmes's allusions in his correspondence with Clare to moments spent together, prospective rides in hansom cabs,¹⁶⁸ trysts in the conservatory at Doneraile, the smell of jasmine,¹⁶⁹ and the great well of sentiment she summoned up in him, it is clear that he was seeking to

167. The modern history of the "Souls" social circle alludes to the frequency of extramarital liaisons among its members, while at the same time noting the infrequency of divorce. See A. LAMBERT, *supra* note 117, at 37-38. The modern history of the "Ascendancy" describes Clare Castletown in 1916 as the "old flame" of Percy La Touche and also mentions La Touche's celebration of his golden wedding anniversary in 1920. See M. BENCE-JONES, *supra* note 119, at 178, 193.

168. Holmes stated: "I imagine all sorts of adorable romantic visits or excursions . . . even a hansom [sic] in London is an enchanted solitude." Letter from Oliver Wendell Holmes to Clare Castletown (Feb. 17, 1898), *supra* note 34.

169. Diary entry by Oliver Wendell Holmes (Aug. 19, 1896), *reprinted in HOLMES PAPERS*, *supra* note 1.

make Clare into the great romance of his life, in contrast to Fanny, who was his great anchor. And for at least a time in the relationship, Clare's "shimmering" letters to Holmes,¹⁷⁰ the physical reaction she had to his using her first name, her sending him presents and sprigs of plants from the conservatory,¹⁷¹ and the obvious concern La Touche exhibited about Holmes's presence indicate that she shared and reinforced the romanticization of their relationship.

Clare's tacit agreement to assume the role of Holmes's great romance, despite her other involvements, gave Holmes's correspondence with Clare its unique character. This was the one occasion in which Holmes's letters demonstrate that his attraction for intimacy with women¹⁷² could overpower his attraction to control every feature of his life, including his "intimate" friendships. It was the one occasion in which Holmes's capacity for measured, understated, but emotion-laden prose deserted him, and the emotion in his sentences ran out of control, making them appear juvenile or clichéd. It was the one occasion in which Holmes indulged himself in a correspondence fantasy that was irreconcilable with his carefully structured professional life. Emily Ursula Clare St. Leger Castletown and Oliver Wendell Holmes, Jr. lived in and would continue to live in immeasurably distant worlds, and Holmes knew it. Yet he announced to Clare that he and she would "abide together."¹⁷³

D. Nina Gray

Many of Holmes's excursions into the world of feminine company were shared vicariously by a female correspondent, who received the news of his escapades and commented on them. The correspondent was Anna Lyman (Nina) Gray, whom Holmes had known since her marriage in 1873 to Holmes's old friend John Chipman Gray. For many years, while Fanny and he were in Boston, Holmes called on Mrs. Gray once a week. If one assumes that the conversation in those meetings resembled their discussions in subsequent letters, then Holmes and Nina Gray directed a fair amount of their attention toward others who frequented

170. Holmes once referred to a letter from Clare as containing "the passionate eloquence and the ever elusive shimmer . . . which you command so well." Letter from Oliver Wendell Holmes to Clare Castletown (Feb. 2, 1897), *supra* note 136.

171. Clare sent Holmes a cotling from the conservatory at Doneraile Court and a note, "sniff, and think?" Letter from Clare Castletown to Oliver Wendell Holmes (May 8, 1899), *supra* note 131.

172. This attraction for intimacy surfaced as early as his freshman year in college, when he wrote to a female friend that he "like[d] to be on intimate terms with as many [women] as I can." Letter from Oliver Wendell Holmes to Miss Lucy Hale (May 21, 1858), *reprinted in HOLMES PAPERS*, *supra* note 1.

173. Letter from Oliver Wendell Holmes to Clare Castletown (Sept. 5, 1896), *supra* note 128.

their social circles in Boston, and Gray served as a sounding board for Holmes's discourses on the foibles of others and on his own personal or professional frustrations.¹⁷⁴ Holmes's correspondence with Gray, which began in the 1890s and extended over a period of more than forty years, thus provides a running commentary not only on experiences to which he attached significance during that time period but also on his own reactions to those experiences.

In an 1891 letter, for example, one gets a glimpse of the self-preoccupation, self-consciousness, and ambition that characterized Holmes in the early years of his professional life.¹⁷⁵ He writes of the surfacing, when he is confronted with new ventures or experiences, of "the same futile shrinking from new things . . . which kept me from skating, riding, [and] dancing [as a youth]."¹⁷⁶ He mentions his desire "to put in permanent form whatever expresses anyone [sic] of my genuine thoughts or feelings about life," and finds in writing "that society and joy which my Countrymen seem somewhat penurious in offering."¹⁷⁷ It is as if when writing Gray, Holmes resolved to step back from whatever activities currently engaged him and comment, in a dispassionate fashion, on the significance of those activities to himself.

The Gray correspondence thus provides a different perspective on some of the central themes of Holmes's life, most notably his relationship with women. For example, an 1896 letter from England, written shortly after Holmes had become reacquainted with Clare Castletown, confirms the impact that his excursions to London had on him, while demonstrating that his reaction to London society contained elements of self-consciousness. Holmes wrote Gray that London was

[a] wonderful romantic place to an outsider momentarily let-inside [sic]. . . . One is pretty sure that his neighbor at dinner will have a lot of psychologic small change at her command, enough to secure admission to the interior of the building. So an endless procession of possibilities streams before one's eyes which once in awhile realizes itself and you swear eternal friendship and forthwith vanish. I think one gets enough of the whole business in a month. After all one is not of it, . . . It is play not what one wants to do for life.¹⁷⁸

174. In 1899, when Holmes was appointed Chief Justice of the Supreme Judicial Court of Massachusetts, Gray wrote him that "[o]nce in a while . . . I know you have had . . . a little the feeling that every man's hand was against you." Letter from Nina Gray to Oliver Wendell Holmes (July 28, 1899), *reprinted in HOLMES PAPERS, supra* note 1.

175. See Letter from Oliver Wendell Holmes to Nina Gray (July 20, 1891), *reprinted in HOLMES PAPERS, supra* note 1.

176. *Id.*

177. *Id.*

178. Letter from Oliver Wendell Holmes to Nina Gray (July 17, 1896), *reprinted in HOLMES PAPERS, supra* note 1. In the same letter Holmes noted that he was planning to visit "two or three Irish places" after the season in London ended; therefore, he already was entertaining Clare Castletown's invitation to visit Doneraile Court. *Id.*

Holmes's description of London society superficially resembles that which he had given to Lady Pollock and Lady Burghclere in letters written about the same time:¹⁷⁹ an exciting, romantic place where one has to use one's wits. In his description to Gray, however, Holmes has taken his analysis one step further. He sees the experience as transitory: he is "an outsider momentarily let-inside," and the season lasts "a month." More fundamentally, the experience is "play, not what one wants to do for life" and "one is not of it." The "endless procession of possibilities" is just a collection of romantic fantasies. One may "swear eternal friendship" at a dinner party, but then one's partner vanishes.

In this description we get a sense of female society as being fundamentally trivial that is reminiscent of other correspondences, but not present in the Clare Castletown correspondence. Holmes is liberated or restored by his immersion in the world of Clare and "The Souls," but ultimately he returns to "what one wants to do." Thus, when he writes Gray in October 1896, commenting on his visits to Doneraile, statements such as "I had an enchanting finish to a generally rejuvenating experience" or "[i]t blows out the wind and makes one take more liberal views of life to plunge into a different world"¹⁸⁰ take on a somewhat different meaning from that in the Castletown correspondence. "Enchanting, rejuvenating," and "liberal" appear as words emanating from the posture of a Boston judge who is on vacation from his ordinary world.

In the Gray correspondence Holmes creates an opposition between the world of his professional ambitions ("work") and the world of social pursuits ("play"). He describes himself as "living apart, and not being *in it*" in the sense of being a devotee of society, and he finds "the passion for being in it . . . destructive to personality . . . at least if one ha[s] large ambitions."¹⁸¹ He notes after a 1901 trip to England that "nothing impressed me so much as a kind of resentment which I felt . . . at continuing the pursuits of pleasure."¹⁸² After too much immersion in "the pursuits of pleasure" Holmes begins to see himself as frivolous and he recoils. In the two letters, previously quoted, that Holmes wrote to Gray from Ireland in 1903 one can see him assuming this

179. See *supra* notes 45, 114.

180. Letter from Oliver Wendell Holmes to Nina Gray (Oct. 2, 1896), reprinted in HOLMES PAPERS, *supra* note 1.

181. Letter from Oliver Wendell Holmes to Nina Gray (Aug. 12, 1897), reprinted in HOLMES PAPERS, *supra* note 1.

182. Letter from Oliver Wendell Holmes to Nina Gray (Sept. 15, 1901), reprinted in HOLMES PAPERS, *supra* note 1. Holmes previously wrote to Gray that "[t]his is the third week that I have been at it—hard. Luncheon and dinners every day, it will last this week and more or less, next—and I shall have had all I want." Letter from Oliver Wendell Holmes to Nina Gray (July 15, 1901), *supra* note 153.

stance: he is taking "a time of such quiet as I can get";¹⁸³ he prefers a book and a "quiet corner out of the wind" to the frivolities of a garden party.¹⁸⁴

In letters to Gray after 1902, when Holmes was appointed to the United States Supreme Court, he portrays the opposition between his work and his social life even more starkly. He describes the work on the Court as "solemn and august and vast," the Court as "a center of great forces," and the job as "call[ing] on all one's energies."¹⁸⁵ He notes that in his new job "[y]ou don[']t hold time in the hollow of your hand as I got to feeling about the work of the Court in Boston."¹⁸⁶ "[F]or the first time," he confesses, "I seem to feel too absorbed for curiosity."¹⁸⁷

The meaning of the term "curiosity" is spelled out in a letter written a month later:

I have been so fiercely at work. . . .

. . . I don't see the women—I don't see the chance—I don't feel the inclination—not to speak of. . . .

. . . [I]t is strange how small a part the society of women plays in my life here—Apart from memory I hardly should know that they existed.¹⁸⁸

Holmes's 1903 letters to Gray from Doneraile suggest that after Holmes's appointment to the Supreme Court his relationship with Clare Castletown may have entered a new phase, one marked by less intensity.¹⁸⁹

One possible explanation for the change in the relationship could be that Holmes concluded that he could not afford any exposure given the visibility of his new position.¹⁹⁰ But a more plausible explanation would center on the division between professional work and social frivolity made by Holmes in his correspondence with Gray. After several years on the Supreme Judicial Court of Massachusetts he held time in the hollow of his hand and used social encounters with women and trips to London to fill the void. After coming to Washington he became absorbed sufficiently in his work to relegate women to a "memory." This change in his attitude not only served to reinforce his view that the

183. See *supra* note 157 and accompanying text.

184. See *supra* note 158 and accompanying text.

185. Letter from Oliver Wendell Holmes to Nina Gray (Jan. 4, 1903), reprinted in HOLMES PAPERS, *supra* note 1.

186. *Id.*

187. *Id.*

188. Letter from Oliver Wendell Holmes to Nina Gray (Feb. 15, 1903), reprinted in HOLMES PAPERS, *supra* note 1.

189. This conclusion can only be tentative because of the absence of surviving correspondence between Holmes and Castletown for this period.

190. In a 1903 letter to Gray he spoke of Washington as a "center of gossip," and noted that "I made one call of politeness of a Sunday afternoon and heard of it at once." Letter from Oliver Wendell Holmes to Nina Gray (Feb. 15, 1903), *supra* note 188.

companionship of women was ultimately frivolous and trivial, but may have affected his view of his relationship with Clare, especially because the distance and gulf between their lives meant that she and he hardly could establish a permanent relationship without great cost.

A 1904 letter to Gray captures the calculus toward work and social life that Holmes adopted after moving to Washington:

[At a wedding reception] I somehow found myself talking to a very pretty girl whom I failed to get my wife to introduce me to the other evening and we gave each other notice of hostile intentions and that we were out for scalps & she told me that I might play in her backyard if I didn't play with other girls. . . . But I fear the tragedy ends there—as I don't have time to play in backyards. . . . I am hoping to read some philosophy or some law in my breathing spells—that does me more good than playing in backyards. . . .¹⁹¹

In this passage philosophy and law are juxtaposed against “playing in backyards”; work against play. Holmes's comments about women are not quite what they seem: not the anecdotes of a ladies' man as much as an elaborate sort of posturing in that role. Holmes seems to take pleasure in feminine company principally for the ego gratification it provides and for the respite it furnishes from his circumscribed and intense professional life.

Thus, the Gray letters raise the possibility that for all his interest in “be[ing] on [as] intimate terms with as many [women] as I can,”¹⁹² Holmes implicitly delegated all women—Fanny Dixwell and Clare Castletown included—to the world of “play” in a compartmentalized universe in which men “work” and women do not. Holmes's flirtations, seen in this light, appear as attempts to establish pseudo-intimacy, elaborate games whose real purpose is to liberate or rejuvenate Holmes, not to cement friendships or to explore seriously the possibility of affairs. Despite periodically feeling stimulated by the atmosphere of London society, Holmes quickly tired of it and recoiled. He may have “broken loose” and flirted “desperately” in Boston or in London in the 1890s, but when he moved to Washington in 1902, and encountered an atmosphere in which he was preoccupied with his work, in which light-hearted badinage was not the norm of social discourse, and his social calls on women were remarked upon, he concluded that he would rather spend time on philosophy.

The Gray letters give the sense that Holmes carefully controlled his acquaintanceships and friendships, as he did the rest of his life. They help put his relationship with Clare Castletown in context. While that relationship was one in which Holmes was not able to control fully his

191. Letter from Oliver Wendell Holmes to Nina Gray (Feb. 8, 1904), reprinted in HOLMES PAPERS, *supra* note 1.

192. Letter from Oliver Wendell Holmes to Lucy Hale (May 21, 1858), *supra* note 172.

feelings or his goals, its great attraction to him seems to have been the opportunity to idealize a woman and to write her properly chivalric and romantic letters. Even though Holmes was not completely successful in fitting Clare into a niche in his world—the niche of the idealized sweetheart of medieval romance—he sought to conceptualize the relationship in such terms. He had, after all, fitted Fanny Dixwell into another kind of niche, the domestic “genius” who made the one-third of his life not devoted to work “a path of beauty.”¹⁹³

The correspondences examined thus reveal Holmes as an essentially solitary being whose circumscribed professional and domestic life served as a comfort for him as much as a constraint on him. While some of the effects of that circumscription may have chafed at times, such as the extremely narrow domestic sphere in which he and Fanny operated, Holmes preferred the regimented and restricted terms of his life, just as he preferred correspondence friendships for the control and the comfortable degree of distance that they afforded, to more spontaneous and potentially distracting versions of intimacy.

In this vein, it is suggestive that in none of his correspondences does Holmes indicate that he is an intimate friend of any of the judges or Justices with whom he sits. He is close to Justice Edward White in his early years on the Court and after White's death to Justice Louis Brandeis, but that closeness emanates from shared professional concerns and mutual respect. Neither Justice is a social intimate of Holmes. Holmes prefers the regimented solitude of his own life, perhaps sensing that only in such an environment could his omnipresent ambition be sustained. In 1910, one year from being able to retire from the Supreme Court on full salary, he wrote Gray of “my aspirations to being the greatest legal thinker in the world—or as near to it as I can get.”¹⁹⁴ This aspiration may have required, in his view, a minimum of the sorts of distractions from “work” that close personal friendships might demand. At any rate, for much of his professional life Holmes had not been in search of close personal friendships. He had been in search of correspondence friendships.

IV. CONCLUSION: THE CORRESPONDENT SELF

In analyzing the question of what correspondence ultimately meant to Holmes, it is instructive to reconsider his choice of correspondence topics, emphasizing what topics he left out or minimized in his letters. “Two[-]thirds” of his life, Holmes once told Canon Patrick Augustine

193. See *supra* note 111.

194. Letter from Oliver Wendell Holmes to Nina Gray (Dec. 2, 1910), reprinted in HOLMES PAPERS, *supra* note 1.

Sheehan, was in his "work," which meant his work as a judge.¹⁹⁵ Reading, solitaire, writing letters, and going to teas and dinner parties was not work. It is the latter topics, however, that dominate his letters, not his life as a judge.

Indeed, as a source of information about his judicial career, Holmes's correspondence is quite deficient. First, he gives almost no attention to analyzing the process by which he arrived at decisions or wrote opinions, describing that process in a noticeably cryptic or elliptical fashion. Characteristic of his descriptions of how he worked was one to Frederick Pollock: "when you walk up to the lion and lay hold the hide comes off and the same old donkey of a question of law is underneath."¹⁹⁶ That comment is reminiscent of a description he probably would not have rendered in a letter. "[S]olving some problem in the law," he said to his law clerk Mark Howe in 1934, "is a good deal like pissing. When you piss . . . [y]ou simply exert a pressure generally you don't quite know where. . . . So it is with reaching many solutions—you exert a dim pressure—you don't quite know where and the solution appears."¹⁹⁷ Taken together, these descriptions of the judicial decision-making process emphasize a moment when the judge sees "the old donkey of a question of law" in the case before him and a moment when he "exerts a dim pressure" and resolves it. They hardly can be called a full or precise account of how Holmes made decisions. Indeed, these descriptions appear designed to conceal rather than reveal his decision-making process.

Second, Holmes very rarely employs correspondence to characterize his collegial behavior as a judge, or the behavior of his fellow judges, even though he spent his entire judicial career on courts that made their deliberations in a collegial fashion. He notes occasionally that one Chief Justice conducts conference at a brisker pace than another, or is more inclined than his predecessor to stop an advocate when the Court clearly has made up its mind.¹⁹⁸ He makes no judgments about such comparisons, however, and when he makes a reference to his own collegial behavior, it is cryptic. In one letter to Pollock he suggests that as a Chief Justice Edward White "would be more politic" than he, but he gives no reasons for that suggestion.¹⁹⁹ In sum, his correspondence pro-

195. Letter from Oliver Wendell Holmes to Canon Patrick Augustine Sheehan (Apr. 1, 1911), *supra* note 2.

196. Letter from Oliver Wendell Holmes to Frederick Pollock (Dec. 11, 1909), *supra* note 65.

197. Diary entry by Mark DeWolfe Howe (Feb. 21, 1934), *reprinted in* MARK DEWOLFE HOWE PAPERS (available in Harvard Law School Library).

198. *See, e.g.*, Letter from Oliver Wendell Holmes to Harold Laski (Jan. 7, 1924), *reprinted in* 1 HOLMES-LASKI LETTERS, *supra* note 16, at 579.

199. Letter from Oliver Wendell Holmes to Frederick Pollock (Sept. 24, 1910), *reprinted in* 1 HOLMES-POLLOCK LETTERS, *supra* note 8, at 169. This comment was made after President William

vides almost no basis for speculations about how his fellow judges perceived Holmes as a colleague or how he perceived them.

Finally, while Holmes's letters contain references to the individual judges with whom he served, and some characterizations of them, these references are uncharacteristically bland and adulatory. They lack the biting detachment that manifested itself in Holmes's vivid and sometimes astringent portraits of other of his contemporaries;²⁰⁰ in his discussions of his fellow judges Holmes largely confines himself to vague pleasantries.

In the Pollock and Frankfurter correspondences brief characterizations can be found of many of the Justices with whom Holmes sat. These characterizations are overwhelmingly positive. One of the least favorable, that of Justice John Harlan the elder, said only that "that sage, although a man of real power, did not shine either in analysis or generalization and I never troubled myself much when he shied. I used to say that he had a powerful vise the jaws of which couldn't be got nearer than two inches to each other."²⁰¹ Nor was Holmes, who was inclined to be impatient with lesser intellects, condescending in his comments on his less-gifted fellow Justices. Mahlon Pitney, whose career might be described charitably as mediocre, precipitated the following comment:

When he first came on the bench he used to get on my nerves, as he talked too much from the bench and in conference, but he improved in that and I came to appreciate his great faithfulness to duty, his industry and his candor. He had not wings and was not a thunderbolt, but he was a very honest hard working Judge and a useful critic.²⁰²

Taft apparently had resolved to appoint the next Chief Justice, succeeding Melville Fuller, from the sitting Court, making Holmes a possibility. Holmes enjoyed recounting that he and Joseph McKenna, who had a most undistinguished career on the Court, were the only two sitting Justices not mentioned in connection with the Chief Justiceship in 1910. See, e.g., Letter from Oliver Wendell Holmes to Harold Laski (June 17, 1926), reprinted in 2 HOLMES-LASKI LETTERS, *supra* note 16, at 845.

200. Holmes wrote, for example, of Henry Adams:

I knew Henry Adams quite well. He had two sides. He had distinction, great ability, and great kindness. When I happened to fall in with him on the street he could be delightful, but when I called at his house and he was posing to himself as the old cardinal he would turn everything to dust and ashes. . . . But he did first class work—wrote the best piece of American history there is. . . .

Letter from Oliver Wendell Holmes to Frederick Pollock (June 27, 1919), reprinted in II HOLMES-POLLOCK LETTERS, *supra* note 8, at 18. Holmes also wrote of Theodore Roosevelt: "He was very likeable, a big figure, a rather ordinary intellect, with extraordinary gifts, a shrewd and I think pretty unscrupulous politician. He played all his cards—if not more." Letter from Oliver Wendell Holmes to Frederick Pollock (Feb. 9, 1921), reprinted in II HOLMES-POLLOCK LETTERS, *supra* note 8, at 64.

201. Letter from Oliver Wendell Holmes to Frederick Pollock (Apr. 5, 1919), reprinted in II HOLMES-POLLOCK LETTERS, *supra* note 8, at 7-8.

202. Letter from Oliver Wendell Holmes to Frederick Pollock (Feb. 24, 1923), reprinted in II

Very rarely, Holmes would rail at some internal incident involving the Justices. He wrote Pollock in March 1912 that he was

weary with work and some slightly worrying incident of the job, *e.g.* a week ago Monday the C.J. [White] dissented with [Justice Charles Evans] Hughes & [Justice Joseph] Lamar from a decision by [Justice Horace] Lurton under the patent law. [Henry v. A.B. Dick Co., 224 U.S. 1 (1912)]. I didn't care a straw about the case one way or t'other and thought I could have written a better opinion on either side. But the Chief has Irish blood—he is naturally a politician and a speaker—and much as he abhorred the outbreak of Harlan in the Oil and Tobacco cases, I thought he made a stump speech that was no better and that had more tendency to hurt the Court. . . . I am too near the time when I can hop off, if I want to, to care personally, but I regretted the performance very much, especially as I thought it not only bad in tone but very thin and beside the point in the reasoning. . . . All this of course just between ourselves.²⁰³

This sort of outburst was very rare, however, and more commonly Holmes defended his colleagues against a correspondent's suggestion that they were unqualified or otherwise unsatisfactory as judges.²⁰⁴

The absence of critical comments in Holmes's correspondence about his fellow Justices could be seen simply as an indication that he was extending the conventions of confidentiality practiced by sitting Justices to cover any sort of peer criticism in a letter that might be made public. His delicate treatment of Justices with whom he regularly clashed in internal disputes would seem consistent with that supposition.²⁰⁵ But this explanation does not address a more intriguing feature

HOLMES-POLLOCK LETTERS, *supra* note 8, at 113.

203. Letter from Oliver Wendell Holmes to Frederick Pollock (Mar. 21, 1912), *reprinted in* 1 HOLMES-POLLOCK LETTERS, *supra* note 8, at 190 (footnotes omitted).

204. Harold Laski wrote Holmes in October 1923 after some new appointments had been made to the Supreme Court, that "You, I take it, are at the end of *certioraris* and watching the clans assemble. At least you have the company of Brandeis—a great solace. Your new men, of course, I do not know, though evil things have been said to me of Butler." Letter from Harold Laski to Oliver Wendell Holmes (Oct. 6, 1923), *reprinted in* 1 HOLMES-LASKI LETTERS, *supra* note 16, at 548. Laski then went on to propose "an admirable Supreme Court" on which Holmes, Brandeis, Learned Hand, Felix Frankfurter, the philosopher Morris Cohen, and he would sit. *Id.* Holmes responded on October 19:

I want to say a deprecatory word as to some of your implications past and present. McReynolds has improved wonderfully and I think is a useful and quite suggestive man. . . . He controls his impulses much more than at first and now that Clarke has gone, with whom he couldn't get along (queer, for they both are kindly men), and with the present C.J. things go as smoothly as possible. Butler has shown none of the difficult qualities that were attributed to him and Sanford is a very pleasant chap with valuable experiences from the Circuit bench.

Letter from Oliver Wendell Holmes to Harold Laski (Oct. 19, 1923), *reprinted in* 1 HOLMES-LASKI LETTERS, *supra* note 16, at 544-55.

205. An example would be Holmes's comments on Justice Joseph McKenna. Professor Alexander Bickel, in his history of the Supreme Court from 1910 to 1921, has argued convincingly that "[a]n odd . . . little rivalry existed between [Justices Holmes and McKenna]," although "[r]elations were never broken, and were, indeed, not only polite but often cordial." 9 A. BICKEL & B. SCHMIDT, *THE JUDICIARY AND RESPONSIBLE GOVERNMENT, 1910-21*, at 238 (1984). While Holmes "remained . . . apparently unruffled and above it all," Professor Bickel suggested, "he did not hold McKenna in high regard." *Id.* at 239. Further, Professor Bickel has shown that Holmes and McK-

of Holmes's treatment of his fellow Justices in his correspondence: the fact that he rarely wrote about them at all. If his work as a judge was "two-thirds" of his life, and he spent at least half of his working time in the company of his fellow judges, why would he not be more inclined to allude to their presences, which obviously occupied a large amount of space in his working world?

The absence of comments about his fellow judges in Holmes's correspondence helps clarify the purpose of letter writing in his life. Holmes often said in his letters that when he was carrying around ideas for an opinion in his head he could not write decent letters. He regularly began a letter announcing that Court had adjourned, or the summer vacation had begun, or because of a holiday or a Sunday he had some respite from his judicial duties. He regarded letter writing, as he did reading, as a respite from being a judge. Letter writing and reading were the other parts of his intellectual life, the counterparts to his judicial work. When he turned to letter writing he also turned to reading, and he turned away from being a judge. In that frame of mind he naturally would be moved to write about the subjects of his lei-

enna, as Justice Brandeis put it, "r[a]n a race of diligence in finishing an opinion assigned to either," *id.* at 241 (quoting Brandeis-Frankfurter Conversations (Nov. 30, 1932)) (available in the Felix Frankfurter Papers, Harvard Law School Library), and that this competition sometimes spilled over into overt antagonism, as when the two exchanged words during one of the Court's conferences in the spring of 1922. *Id.* at 239 (citing correspondence between Holmes and Chief Justice William Taft in the William Howard Taft Papers (available in the Library of Congress)).

Some of Holmes's comments to Justice Frankfurter on McKenna vary from his characteristically affectionate treatment of his judicial colleagues. An April 20, 1921 letter refers to "[McKenna's] frequent references to where are you going to draw the line?" as a "mode of argument that to my mind shows a failure to recognize the fundamental fact—that, I think I may say, all questions are ultimately questions of degree." Letter from Oliver Wendell Holmes to Felix Frankfurter (Apr. 20, 1921), *reprinted in HOLMES PAPERS, supra* note 1. The context of those remarks was McKenna's dissent from Holmes's majority opinion in *United States v. Cohen Grocery*, 255 U.S. 81 (1921), which, Holmes added in the letter, "criticised the opinion as such, which I think bad form." *Id.* Ten days later Holmes returned to the same subject: "McKenna as you say is unpredictable—a few days ago he was saying to me that all in life is a question of circumstances. . . . He has intimations that perhaps come out oftener in his talk than in his opinions." Letter from Oliver Wendell Holmes to Felix Frankfurter (Apr. 30, 1921), *reprinted in HOLMES PAPERS, supra* note 1.

Then, in a January 4, 1922 letter, Holmes writes, with obvious pleasure, "I fired off . . . an opinion as to lien on government ships after they got into private hands which . . . rather pleased me and greatly disturbed McKenna judging by his jeremiad concurred in by Day & Clarke—talking as if we overruled cases. We overrule nothing but talk." Letter from Oliver Wendell Holmes to Felix Frankfurter (Jan. 4, 1922), *reprinted in HOLMES PAPERS, supra* note 1. When McKenna retired in 1925 and died a year later, however, Holmes retreated to his conventional tone, writing Frankfurter on January 6, 1925 that McKenna would leave "affectionate memories behind him." Letter from Oliver Wendell Holmes to Felix Frankfurter (Jan. 6, 1925), *reprinted in HOLMES PAPERS, supra* note 1. Accordingly, he wrote to Harold Laski on November 23, 1926 that McKenna had been "a truly kind soul [who], like the rest of us had his vanities but I think he also had humility." Letter from Oliver Wendell Holmes to Harold Laski (Nov. 23, 1926), *reprinted in 2 HOLMES-LASKI LETTERS, supra* note 16, at 896.

sure—literature, philosophy, sociology, social companions, and the like—and not about the subjects of his work, including his colleagues.

The break from work that letter writing represented to Holmes, however, was more than a respite. It was also an extension of himself as a writer into a different genre, an effort to communicate about themes and interests he did not find sufficiently explored in his life as a judge. Holmes was a singularly solitary figure in a profession that while it has its isolating features—because judges often bear the ultimate responsibility for decisions, they are expected to be impartial and disinterested and, consequently, remain somewhat aloof from most other people—is also a profession that requires a large amount of intimate contact, given the collegial decision-making practices of appellate courts. Holmes, however, characterized himself as “lonely” on the Supreme Court. As he put it once to Canon Sheehan: “you are lonely, but so am I although I am in the world and surrounded by able men—none of those whom I meet has the same interests and emphasis that I do.”²⁰⁶ In short, despite Holmes’s close contacts with his judicial colleagues, his attitude toward most of them seems to have been one of detachment.

Moreover, for Holmes, judging was basically a routine. He was assigned a case and he turned to it, looking for the donkey under the lion’s skin and waiting for the pressure of a solution to emerge. When it did, he tried to express that solution in the freshest and most arresting prose he could summon. His correspondence is filled with references to his brethren deleting particularly vivid passages from his opinions, typically rendered as “[t]he boys made me emasculate one,”²⁰⁷ or in similar metaphors of castration. This was Holmes’s way of saying that he sought to write opinions with style, to make them a species of literary expression. He bristled when his style was criticized, either for being too cryptic or too epigrammatic,²⁰⁸ and he took great satisfaction in expressing himself in an original and riveting manner. He once wrote to Sheehan: “The thing I have wanted to do . . . is to put as many new ideas into the law as I can, to show how particular solutions involve general theory, and to do it with style.”²⁰⁹

206. Letter from Oliver Wendell Holmes to Canon Patrick Augustine Sheehan (Apr. 1, 1911), *supra* note 2.

207. *E.g.*, Letter from Oliver Wendell Holmes to Harold Laski (Nov. 17, 1920), *reprinted in* 1 HOLMES-LASKI LETTERS, *supra* note 16, at 291; *see also* Letter from Oliver Wendell Holmes to Frederick Pollock (Jan. 24, 1918), *reprinted in* 1 HOLMES-POLLOCK LETTERS, *supra* note 8, at 258.

208. For example, Holmes wrote a letter to Harold Laski in which he mentions that Judge Charles Hough, in a *Harvard Law Review* article criticizing an admiralty opinion of Holmes’s, had “treat[ed] me as if I searched for epigrams,” and said “I am *hors concours* in hurdling a difficulty.” Letter from Oliver Wendell Holmes to Harold Laski (Mar. 16, 1924), *reprinted in* 1 HOLMES-LASKI LETTERS, *supra* note 16, at 601. Holmes responded, “I swear I don’t hunt for epigrams.” *Id.*

209. Letter from Oliver Wendell Holmes to Canon Patrick Augustine Sheehan (Dec. 15,

One is struck, in reflecting on Holmes's conception of judging, by how solitary the experience is, and by how little one's colleagues count in it. Holmes alone thinks through a case, driven by his fear that it will baffle him and his desire to finish his work. Holmes alone writes up his outcome in his distinctively cryptic, ambiguous, allusive, and striking prose. Holmes then offers his product to "the boys," whose contributions are to delete its most vivid passages. The frustrations Holmes articulates to others about judging do not focus on reaching results or analyzing doctrine, but on limits on his stylistic expression. He once confessed to Pollock that "in an opinion, where you are subject to the dominion of the thesis . . . I think it a heart breaking task to give an impression of freedom[,] elegance and variety."²¹⁰ Despite his being a member of a collegial decision-making body, the essence of judging does not seem located, for Holmes, in the internal dynamics of his institution. It is located in Holmes the individual, his material, and his craft as a writer. It does not for the most part involve others.

Thus, it seems fair to conclude that although Holmes was involved passionately with his work as a judge,²¹¹ he was not involved passionately with his fellow judges. Their comings and goings, the complexities of their characters, and their own juristic contributions were not central in his universe. In this fashion Holmes represents the obverse of Justice Felix Frankfurter as a Supreme Court Justice. Just as one is struck by the degree to which Frankfurter, in his tenure on the Court, became subsumed in the personalities, political maneuverings, and interactions of his colleagues,²¹² one is struck comparably by the limited extent to which Holmes's judicial colleagues made an impact on his life.²¹³

1912), reprinted in HOLMES-SHEEHAN CORRESPONDENCE, *supra* note 2, at 56.

210. Letter from Oliver Wendell Holmes to Frederick Pollock (Aug. 13, 1906), reprinted in I HOLMES-POLLOCK LETTERS, *supra* note 8, at 131. The comment was prompted by Holmes's having read H. FOWLER & F. FOWLER, *THE KINGS ENGLISH* (1906), which "made me miserable over my own legal style," and made him feel "that my sentences read as if they had been written by a schoolboy on a slate." Letter from Oliver Wendell Holmes to Frederick Pollock (Aug. 13, 1906), *supra*.

211. One can see this passion reflected in his zeal to complete his opinion assignments, his hushanding of his resources in later years to leave strength for his Court work, his desire to be known as the "greatest jurist in the world," and perhaps most tellingly in his staying on the bench for eighteen years after he could have retired at full salary.

212. See, e.g., H. HIRSCH, *supra* note 70, at 3-10, 177-200, 206-10.

213. A metaphor Holmes once used in a letter to Frankfurter, written at a break during a Supreme Court conference, is instructive. He wrote that "I stepped out of a cloud of biting mosquitoes for a word of freedom with you. Now I go back in the swamp." Letter from Oliver Wendell Holmes to Felix Frankfurter (Mar. 28, 1922), reprinted in HOLMES PAPERS, *supra* note 1.

Both the metaphor's connotations (Holmes marched through swamps filled with mosquitoes in the Peninsula campaign during his Civil War service) and its imagery are suggestive. Holmes appears as a larger figure than the mosquitoes who bite him, but a bedeviled one nonetheless, and when he steps out of the "cloud" of his colleagues he finds "a word of freedom" in his correspondence. Not a *moment* of freedom, but a *word*, as if the "swamp" and the "cloud of mosquitoes"

In recreating Holmes's stance as a correspondent, then, one can see it as a stance with layers of detachment: the detachment secured by physical distance between the writer and the other correspondent, who is not present to interrupt the flow of the writer's thoughts; the detachment that comes from moving from the realm of "work" to the realm of "play," in which professional stakes and consequences have been lowered; and the detachment that characterized Holmes's general approach to most people he encountered. Given this stance, it is natural that the topics Holmes corresponded about were those that fit most easily into the solitary, self-absorbed, contemplative role that he fashioned for himself.²¹⁴

Holmes wrote primarily about books and ideas, authors and intellectuals. He wrote about people whom he encountered in his reading or in some other part of his nonjudicial life, often because they had written something clever or thought provoking, sometimes because they were accomplished socially or, with women, attractive physically, and sometimes because they had played significant roles in his life. He wrote about his birthdays, anniversaries of years spent as a judge, the date when he could retire at a full pension, the year forty, by which time a man needed to have accomplished something, and the year eighty, when a man grew old.

Holmes did not write about politics or current events, except war. He did not read the newspapers and only sporadically kept up with the *New Republic*. Occasionally he would write on technical questions of law, principally in letters to Pollock, written as exchanges of ideas between savants. He corresponded regularly on abstract jurisprudential questions, such as sovereignty or the nature of law, but he viewed these as "philosophy" and identified them as such. Beyond those topics he wrote, with great animation and obvious pleasure, about the details of his life's routine: the changing seasons, embodied in flowers and shrubs; the trips from Beverly Farms to Washington and back; the walks and drives; the solitaire games; the occasional entertainment. In one sense Holmes's correspondence was astonishingly broad ranging: the number of books, ideas, and intellectuals on which he comments is staggering. In another sense it was astonishingly circumscribed, representing, for

principally bothered Holmes's ability to use language.

214. This Article is not psychologically oriented, but the importance that detachment and skepticism played in Holmes's intellectual orientation suggests that they may have been defenses against a tendency to react emotionally to persons and events, one that he felt should be suppressed at all costs. Holmes once wrote to Canon Sheehan, "I am a regular Danton-Herod on paper and in theory. I am not very hard hearted in practice." Letter from Oliver Wendell Holmes to Canon Patrick Augustine Sheehan (Nov. 7, 1907), reprinted in HOLMES-SHEEHAN CORRESPONDENCE, *supra* note 2, at 21.

all its variety of detail, a tiny passage through life, the passage from which Holmes chose not to deviate.

In a life as consciously regimented as Holmes's, the time he allotted to his extensive correspondence was surely no accident. Why did Holmes write so many letters, and how did he conceive of his role as a correspondent? What light can his conception of that role shed on his life as a whole? Can one better understand Holmes the judge, or Holmes the person, from examining his correspondence?

Taking these questions in inverse order, one might conclude from the earlier discussion that Holmes's correspondence is not a particularly good source of insight into his life as a judge. As noted, he rarely discussed in detail the cases on which he was working, gave almost no clues on how he decided cases, and provided little information about his interactions with his fellow judges. In his correspondence his cases appear as chores to be disposed of before he can turn to the pleasures of reading and writing, and his fellow judges are merely the backdrop to what appears as an intense, and tightly circumscribed, process in which the solitary figure of Holmes seeks to decipher the meaning of a case and write his conclusion about it.

On reflection, however, Holmes's correspondence does help to reveal how he conceived his role as a judge. His correspondence creates an overwhelming impression of judicial work as a job to be disposed of as quickly and efficiently as possible. Holmes's letters give no sense that judging was something to be avoided or put off. On the contrary, judging is a "duty" that one needs to attend to promptly, conscientiously, and persistently. His correspondence suggests that before Holmes completed an opinion, he carried it around in his head, and it stood in the way of other forms of expression. Correspondence invariably takes second place to judging; it is a reward for having finished one's assigned judicial tasks. Even though judging is a chore, it is one to be performed faithfully and assiduously. Moreover, it is important. Holmes's reputation depends upon it, and his ambition to become the greatest jurist in the world is wholly tied to his opinions. In contrast, he has no ambition to secure any reputation from his letter writing. On the contrary, he urges his correspondents to destroy his letters.

Judging, then, is vitally important: it is "work" and correspondence, like conversations with women at social gatherings, is "play." But judging is a chore, and correspondence is a pleasure. That Holmes found pleasure in his letter writing goes without saying: not only did he sustain correspondence with a great many persons, but he often expressed the same thoughts to different correspondents. One can imagine his sitting down on a Sunday, reading Spinoza or John Dewey, and speculating about his relation to the cosmos. He will attempt an articu-

lation of that relationship to Harold Laski, then offer a modified version to Frederick Pollock, then perhaps another to Lewis Einstein or to John Wu or to Canon Sheehan. In these simultaneous letters his language rarely is identical, but the substance of his thoughts is constant. He not only has an urge to express a particular set of thoughts, but an urge to experiment with the various ways they can be expressed.

One obvious source of the pleasure in correspondence for Holmes, then, was the opportunity to hold a certain kind of intellectual conversation with others. Holmes controlled the conversation by introducing the topic, reaching a conclusion, and expressing it to the other without interruption or modification. The conversation was also spontaneous, however, because it had been precipitated, for the most part, by Holmes's exposure to literature. Typically, the philosophical ruminations in his letters are set off by his reading rather than the comments of his correspondents. The ruminations are part of an intellectual exchange between Holmes and the other correspondent, but Holmes seeks to fix the terms of that exchange. While sometimes Holmes's correspondents will respond to ideas he previously has expressed, Holmes feels no obligation to respond further. He may prolong a discussion, but more commonly he will move on to something else. The urge to converse with someone about material he has just read dominates his correspondence, but the urge to control that conversation dominates it even more.

The issues about which Holmes seeks to converse with others are rarely legal issues. One could of course find this feature of his correspondence consistent with Holmes's conception of letter writing as a break from his judicial duties, play rather than work. But the volume and character of his correspondence, especially in the years when it flowered, suggests that he took the subjects of his letter writing and the exercise of writing letters itself quite seriously. This fact invites investigation of the subject matter of Holmes's correspondence from another angle.

We have seen that shortly after coming on the Supreme Court Holmes wrote to Pollock that "[m]y intellectual furniture consists of an assortment of general propositions which grow fewer and more general as I grow older."²¹⁵ He expressed this view several times in his correspondence, and his ease in converting particular issues to "general propositions" may have made the decision of cases comparatively easy and even routine for him. His opinions' strong attention to the philosophical implications of legal doctrines seem consistent with that view, and while Holmes's ability to see the general in the particular lent a

215. Letter from Oliver Wendell Holmes to Frederick & Lady Pollock (Sept. 24, 1904), *supra* note 64.

pithiness and depth to his opinions, it also may have lent a sameness to his decision making, a sameness he was disinclined to dwell on in correspondence.

One wonders whether the same tendency might have surfaced in Holmes's nonjudicial reading. Might he similarly have converted the ideas of others to his framework of "general propositions," factoring them in as he factored in legal issues? Abundant evidence shows that Holmes did exactly that. Regularly his extraction of the ideas of others is pitted against his own "intellectual furniture," with the result that the ideas are endorsed, criticized, or dismissed. Statements such as "[i]f Berkeley's assumption that the Ego is simple and immediately known were tenable, I should be a Berkeleian: but Hume and Kant showed conclusively that it is not"²¹⁶ are common in his correspondence.

Even though the writings of novelists and scholars may well have taken on a comparable sameness to Holmes as the cases he decided, he went on reading and reacting anyway. When he talked in his correspondence about the purpose of his reading, he often associated that purpose with self-improvement. A common Holmesian image was that of mastering a sufficient number of classic works before the Day of Judgment, when he might be held accountable. The image initially may strike one as curious, given Holmes's atheism, but his Boston upbringing not only manifested itself in memories of church bells and the clatter of churchgoers' feet but in a Calvinistic vision of the hereafter. In 1918 in a letter to Harold Laski, Holmes wrote that he thought he had coined the saying that he did not believe in hell but was afraid of it and was disappointed to hear that the remark had been attributed to someone else.²¹⁷

Holmes not only constantly read books for self-improvement, but he usually finished the book he had begun. His correspondence is filled with comments such as the following to Laski:

I have read all of Acton that I mean to—as I shall omit . . . the chapters on Döllinger[,] etc. I feel his learning, of course—and respect his impartiality about facts—but I suspect his conclusions are the preferences of his religion and his class. I was instructed without delight—and turned with pleasure to Jules Lemaître. Alas, in these days books rarely give me the pleasure that so many seem to give you. Those that improve are generally dull—my appetite for novels has fallen off—and if a volume has charm I am likely to feel that I have not been improved. I cannot say as John Gray and Harry James did to me at different times that I thank God I have ceased to read for improvement.²¹⁸

216. Letter from Oliver Wendell Holmes to Frederick Pollock (Nov. 15, 1905), *reprinted in I HOLMES-POLLOCK LETTERS*, *supra* note 8, at 121.

217. Letter from Oliver Wendell Holmes to Harold Laski (May 8, 1918), *reprinted in I HOLMES-LASKI LETTERS*, *supra* note 16, at 153.

218. Letter from Oliver Wendell Holmes to Harold Laski (Aug. 10, 1918), *reprinted in I HOLMES-LASKI LETTERS*, *supra* note 16, at 162.

What did Holmes mean by "self-improvement"? One possibility is that he meant the phrase straightforwardly and simply was extending into his adulthood the habits of his youth, in which education and intellectual development had been linked closely with books. Another is that the assiduous attitude he brought toward his work spilled over into his leisure, and he felt uncomfortable with a dramatic break from necessary if not invariably pleasant "professional" reading. It is possible, however, that Holmes intended self-improvement to mean the improvement of his own views, as implicitly tested against the contributions of others. Continuous reading in weighty sources was a way of confirming that his own ideas were sound. The Day of Judgment image seems to fit this supposition. Holmes often linked the image with some sort of examination, in which an imagined gatekeeper to heaven sought to test Holmes on the philosophical soundness of his views. If someone else refuted a view he strongly advanced, and Holmes had not read that source, the examiner surely would be displeased.

Holmes was a nonbeliever: it is hard to imagine he seriously entertained the possibility of any consequences following from his not getting into Heaven. It is possible to see the gatekeeper in Holmes's Day of Judgment image, however, as one admitting Holmes to the world of the elect: persons whose "intellectual furniture" suggested not only that they could make a claim to being "the greatest jurist in the world" but that they were capable of discoursing with others who had been admitted. Should Holmes be admitted to the world of the elect, his choice to circumscribe his life in the apparently paradoxical fashion that he had—so that he was "lonely" in the midst of the "work" he considered two-thirds of his life, and the subjects of the other one-third, from flirtations to reading philosophy and literature, were ones in which he took a particularly keen interest—would be justified.²¹⁹

Thus, Holmes's reading, his "self-improvement," and his correspondence as a whole can be seen as "play" in one sense, but deadly serious work in another. Correspondence was a medium in which Holmes sought to sharpen and reinforce the critical stance that he

219. The Day of Judgment image, the conception of judicial work as "duty" or "chores," and the preoccupation with self-improvement are consistent with a New England literary tradition that invested intellectual activity with great seriousness and pictured it as a calling in a quasi-religious sense. That tradition was very strong in Holmes, whose father was arguably the leading literary personage of his age. Holmes also knew Emerson, Lowell, Longfellow, and others of the "American Renaissance." While he had abandoned a literary career for the law, his concern with style in his opinions, his interest in extrajudicial speeches and scholarly writings, and his voluminous correspondence testifies to his continued interest in literary pursuits. The Day of Judgment image could be seen as flowing from a conception of literature as a calling, and reading and writing as pursuits with serious implications, even for the hereafter. I am indebted to Alfred Konefsky for calling my attention to the importance of the New England literary tradition in Holmes's correspondence.

hoped, if properly honed, would make him a member of the elect. Correspondence enabled him to reach out from his solitary existence to communicate with others, thereby helping alleviate some of the strains of solitude and isolation. Correspondence also allowed him to fix those communications in the terms he chose, terms that were compatible with the set priorities of his life. Holmes's correspondence ultimately reveals his profound self-absorption and comparably profound detachment from the very humans with whom he was reaching out to communicate.

