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In Search of Holmes from Within

Saul Touster*

Professor Touster here examines the Civil War experiences of Oliver Wendell Holmes in order to discover the sources of Holmes's world-view and the feelings and attitudes that dominated his life. In his war experiences the author describes the development of the Olympian aloofness, sentiment of honor, and disbelief in causes which characterize Holmes's later life.

I. PREFACE

What appears here is part of a longer psychological study of Holmes which takes as points of focus, or rather of entree, four of his life choices: his enlistment in the Union forces while still in college in 1861, his entrance into law school in 1864, his decision to give up a law professorship at Harvard in 1882 in favor of the Massachusetts bench, and finally, his move to Washington and the Supreme Court in 1902. In a sense this last was not a *choice*. There were not the clear alternatives before him as there were in the first three—he was more chosen than chooser. Still, it had all the consequences and feeling of a life choice—the tearing away from the old, the embarking on the new—and, as I read the event, it was the product of his other choices, the assault on the summit of a mountain which at each point in his life Holmes committed himself to climb. And, of course, even a chosen man can choose to say no.

In these pages I have used Holmes's enlistment as a focus for his entire Civil War experience, thereby hoping to reveal what Holmes brought into the war and what he brought out of it. We will, I think, find in this experience the sources of Holmes's world-view, of those attitudes and feelings that come to dominate his life. In a psychological study one is, I suppose, required to seek out these sources in the subject's childhood experiences, relations of father to son, and so on; no doubt, there will lie the true sources. However, the Civil War years will serve us, for two special reasons: first, whatever the attitudes and feelings are that he brings into the war, they crystallize so dramatically in this experience as to reflect on both the probabilities of what occurred before and the forms his life takes thereafter; and second, during the war Holmes suffers what can only be called a traumatic experience—an experience which sifts out and fixes, as it were, certain tendencies and terminates the open possi-

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bilities of the future by the intensity of its imprint. Not only his heart, but his psyche, was "touched with fire." Lastly there is the availability of evidence—albeit tampered with, by Holmes himself—which makes the Civil War years a richer vein to mine than the childhood which is already bathed in a mist of speculation and sentimentality.

When we speak biographically I suppose it may always be said that the subject, in a figurative sense, tampers with the evidence. He is living a life in which every act, from the large choices to the small everyday gestures, not only leaves its message in time, but cancels some previous message. Life itself, like memory, will reconstitute past events, not always accurately, and leave its own record, which in turn will be recreated in the life and mind of the subject. In this figurative, or unconscious, sense, Holmes was a great tamperer. But so, it may be argued, would any man who lived into his nineties, in a world that changed as rapidly and as fundamentally as his did. True. But given Holmes's tendency to romanticize or, inversely, to be "tough," and the disproportionate power of his pen in his later years—the fragments from youth can hardly survive the re-creations of old age—we are faced with an especially difficult task. No matter how easy this task may have been made for us by Holmes's biographer, Mark Howe, who has recovered so much evidence about the early years and presented it with such a rightness of judgment, we must remember that his is largely "an essay in intellectual history," leaving open many questions of a psychological character.¹ That Mr. Howe chose this mode may itself be said to be a reflection of Holmes—his preference for ideas over gossip, the division of his life between public (for which a fair record survives) and private (largely lost), and, finally, his tendency if not his passion for "general propositions" at the expense of "facts." Thus, Mr. Howe's first volume is an *education* in the sense the term is used by Henry Adams in his autobiography, and his second volume is the biography of a book, *The Common Law*. This last is perhaps as significant a commentary on Holmes as any. Nonetheless, despite the fact Mr. Howe has not taken the road of Lytton Strachey—for which, incidentally, we thank him—he has been forced to identify and be cautious of Holmes the tamperer.

1. One cannot work in Holmes country without being continually aware of one's debts to this man who has cleared and fertilized the ground and planted seeds of such rich suggestibility. Despite describing his own work as one "in intellectual history," Mr. Howe's volumes are replete with perceptive psychological observations. To appear thus far are the first two volumes of the biography, taking us to 1882 when Holmes ascended to the Massachusetts bench. I HOWE, JUSTICE OLIVER WENDELL HOLMES: THE SHAPING YEARS, 1841-1870 (1957) [hereinafter cited as THE SHAPING YEARS]; and II HOWE, JUSTICE OLIVER WENDELL HOLMES: THE PROVING YEARS, 1870-1882 (1963) [hereinafter cited as THE PROVING YEARS].

For Holmes, he admits, there were two Civil Wars, "the war in fact and the war in retrospect."² If it was the latter which was dominant in forming Holmes's philosophy, it was, in all likelihood, the experience of the former—the war in fact—that pushed Holmes into this frame of mind. There are some experiences that simply cannot be remembered in the raw. This repression—and this is what I think we are talking about—this fogging over of the lived experience, so that the details of it are lost and the "retrospect" becomes more real than the reality, looks to be one of the psychological keys to Holmes's character.

Then there is another kind of tampering with evidence that may be revealing, the conscious one: suppression. And Holmes was guilty of this, too. Holmes suppressed a great deal of evidence relating to his early years, the years we are concerned about when we ask why he enlisted, or why he chose law. This suppression was no doubt justified by the idea of "privacy." But what Holmes's idea of privacy was, and what other purposes were served by the suppression, are still questions to be asked. The core of the problem of suppression lies in how we treat the *text* of Holmes's Civil War experience, that is, the letters and portions of diary that have survived and been published under the title *Touched With Fire*.³ As I will indicate, it is a

2. Preface to *TOUCHED WITH FIRE*, *infra* note 3, at vii. See also *THE PROVING YEARS* 256.

3. *TOUCHED WITH FIRE: CIVIL WAR LETTERS AND DIARY OF OLIVER WENDELL HOLMES, JR., 1861-1864* (Howe ed. 1947) [hereinafter cited as *TOUCHED WITH FIRE*]. The "text" consists of 43 letters (17 to his mother, 6 to his father, 14 to his parents, 1 to his sister Ameha, and 5 where the addressee cannot be determined); and a diary (consisting of observations on his wound at Ball's Bluff, October 21, 1861, written some time after the event but apparently while still on active duty, and a contemporaneous diary containing almost daily entries from May 3rd to July 2nd 1864). As to the "diary," the Ball's Bluff pages, marked "No. 2," appear to have been torn from a diary which has not survived. "Apparently the pages were removed from that diary with some care and intentionally preserved." *TOUCHED WITH FIRE* 23 n.1. At the end of the "No. 2" diary appears a list, marked "No. 3," of officers and men of his regiment killed or wounded at battles from Ball's Bluff (October 1861) to Gettysburg (July 1863). *TOUCHED WITH FIRE* 33 n.18. This might indicate that the Ball's Bluff pages were written *after* Gettysburg but before his May 1864 diary was begun, possibly during his convalescence from his third wound. The reference to "No. 3," might be to still another diary—of which the casualty list is the recapitulation he allowed survive. The day he began his last and surviving diary (May 3, 1864), he writes that a week before he had sent home a diary. This diary has not been found. *TOUCHED WITH FIRE* 102 n.2. Could it have been the original No. 3 diary? Could we, then, conclude that there were *four* diaries?—No. 1 (no trace), No. 2 (from which the pages on Ball's Bluff survive), No. 3 (for which the casualty list stands), and No. 4 (which has survived in full). See note 16 *infra*.

In addition to the material in *TOUCHED WITH FIRE* Holmes preserved various pieces of Civil War memorabilia in two scrapbooks, the biographical material from which has been presented and cited in *THE SHAPING YEARS*. It should be noted that I have not myself examined the manuscripts or scrapbooks but have relied on Howe's transcriptions, annotations and descriptions.

corrupt text but it will reveal much by the fact and manner of its corruption, as well as by the story it tells.

II. THE REVELATIONS OF THE TEXT

Let us begin with Mr. Howe's Preface to *Touched With Fire*, and his description of the text and the conclusions he draws:

Various indications had led to the belief that none of Justice Holmes's Civil War letters to his parents had been preserved. Mr. Palfrey [Holmes's executor] and I had, therefore, assumed that there would be great difficulties in the preparation of an authentic account of his Civil War experience. It was, accordingly, a considerable surprise when the letters and diary herein reproduced were discovered at the bottom of one of the boxes in which the Justice's papers had been kept. It was evident that both Holmes and his mother had gone over the letters carefully some time after the Civil War, for the envelopes of the majority contain notations in Mrs. Holmes's handwriting describing the contents of the letters, and a large number of the envelopes also carry similar notes in the Justice's hand. The large gaps in the correspondence, and one or two annotations by the Justice, make it reasonably clear that he destroyed an appreciable number of his letters to his family. So far as I know, none of the Civil War letters of Dr. and Mrs. Holmes, or of their children, to Holmes have been preserved.

On the inside cover of the diary there is the heading "Vol. II." This, together with references in the letters to an earlier diary, makes it clear that Holmes in his first period of service with the 20th Regiment, from the summer of 1861 to the winter of 1863-1864, had kept a brief record of day to day events. That earlier diary has not, however, been found among his papers and the belief seems justified that, with the exception of a few pages, it was destroyed by him. Those few pages describing his wounding at Ball's Bluff were loosely inserted in the front of Volume II and are reproduced herein.

If this interpretation of the Justice's disposition of his Civil War letters and diaries is warranted, it may properly be said that he was himself the editor of this volume. He at least made the initial determination of which letters and records were worthy of preservation and himself eliminated those which he did not care to have other eyes see.⁴

Questions come up at every point. When did Holmes destroy his papers? What did they contain? Why does no letter from father,

In quoting from letters, I have not footnoted the page wherever I have sufficiently identified the date of the letter in my discussion, so that the reference can be easily found.

4. *Id.* at viii-x. It was, apparently, rather notorious that Holmes had destroyed his early papers. See review of Curtis, Book Review, 33 A.B.A.J. 257 (1947); and see also the recently published HOLMES-EINSTEIN LETTERS (Peabody ed. 1964), where, in his letter of September 30, 1932, Holmes remarks "I have done my best to destroy illuminating documents." From all this, I wouldn't think it tenable to propose that his mother had anything to do with the destruction.

mother, brother or sister survive? Why did he keep a diary in the first place? From the internal evidence of the materials that remain, what can be inferred? Why did he destroy what he did? Why did he let remain what remains? What was it he didn't want other eyes to see?⁵

First, let's consider the simplest problem—the fact that none of his family's letters survive. The most likely explanation is that, being a soldier in the field, pre-occupied with the experiences of war, and living often under conditions where the preservation of such letters would be difficult, he discarded them as they were received. This I will admit is not suppression, in either law or psychology. But one is reluctant to leave it at that. This explanation tells us, at least, something about the kind of man Holmes was *not*. He was not a man who would, at all costs, hold onto letters from home during hard days, as sources of warmth and affection, and then preserve them as a keepsake of this experience. The letters we do have give indication that word from home was very important to Holmes, as it is to most every soldier. A few months away from his family he is writing his mother from camp near Washington, "I long for letters—write all of you all the time . . . You ask me if I like letters like yours. I delight in 'em. They are my great pleasure."⁶ In 1862 after his wound at Ball's Bluff, he is asking his father to "Tell Amelia [his sister] & my friends to write—There is no other pleasure except receiving letters."⁷ In 1864, after three wounds, exhaustion, and doubt, it's still "your letters are the one pleasure. . . ."⁸ They were evidently dear to him, these letters, but he destroyed them either in the field, or sometime upon returning home. And if we remember that Holmes's father was the eminent physician, poet and autocrat of the breakfast table, and that *his* letters would surely be of interest to *his* biographer, their destruction tells us a little more about the son. He was apparently willing to sacrifice illumination of his father to preserve his own "privacy."⁹

5. The reviewers of *TOUCHED WITH FIRE* showed little curiosity as to why Holmes might have destroyed diary and letters—except for Leach who, in 56 *YALE L.J.* 427 (1947), asks a number of pertinent questions but leaves off with the equivocal inference that "the excisions were designed to improve the tone of the product." Howe, in dealing with the excisions in the biography, suggests only that Holmes's impulsive expressions were sacrificed to "the discretion of his middle and later years." *THE SHAPING YEARS* 151. Where obvious excisions do occur, Howe makes a number of surmises which I note.

6. *TOUCHED WITH FIRE* 12.

7. *Id.* at 54.

8. *Id.* at 123.

9. Leach asks whether the suppressed letters might not have given "an even worse drubbing to OWH's father than he receives in those published?" Leach, *supra* note 5. To which, I think, the answer must be no, for reasons I will indicate in the text. Also,

Now let's turn to Holmes's own letters and diary, and ask what meaning can be drawn from the *fact* itself that Holmes "edited" the materials as he did. To some extent this will depend on when the editing was done—whether as a young man soon after the war or years later, that is, whether it was before or after he could expect the interest of a biographer and posterity.¹⁰ In either event, we get the picture of a man who feels that *some* record of these events—not necessarily the entire one—should be preserved. But for whom? For a future biographer? Is he, at the time, so sure of his *significance*? Does he at the same time have doubts that his significance can survive the whole record? As far as the outward events, the battles fought, the courage shown, there was sufficient evidence in the already published contemporaneous accounts—so why preserve this record if it is meant only as the "public" one? And if the "private" one, why not the complete one? Or was this edited version merely for himself, to remind him that these events actually took place? The years would erase so much! Then why edit out part? Was it proof to be submitted at the day of reckoning to show how he stood in the evil day? Could it be thought that the Great Auditor—who Holmes "facetiously" imagined would on that day be checking up on his reading—would be interested in only *parts* of the record? Some of us might presume, of course, that *He* would already know about such things—the small, petty irrelevant day to day thoughts and feelings of a young soldier. But would Holmes presume it?—Holmes, for whom God was already dead, to be replaced by this imaginary figure, representing what?

Looking to the text itself, we find some internal evidence as to what was destroyed, and little as it is it goes far toward answering some of our questions. On June 19th 1862, already wounded once, a veteran promoted to Captain, having just fought bravely through bitter days at Fair Oaks, and now suffering from scurvy, he writes to his mother, "The homesickness wh. I mentioned in my last they say

except in one letter there's no "drubbing" at all. The question itself is probably a product of a gross under-estimation of Holmes, Sr. and an over-estimation of Jr.—a reflection, perhaps, of the then current vision of the father-son relationship projected by Mrs. Bowen in her popular biography. BOWEN, *YANKEE FROM OLYMPUS* (1945). In any event I find it hard to believe Holmes was motivated by a desire to "protect" his father.

10. If, as is possible, most of the material was destroyed when Holmes moved from Boston to Washington in 1902, then it parallels a comparable act of "self"-destructiveness by Mrs. Holmes who, in Boston, had stitched such striking embroidery panels that they had impressed Oscar Wilde, been exhibited in the Boston Art Museum, and received very laudatory reviews. Howe remarks that the appreciative comments on her work "make it easy to believe that Mrs. Holmes was blessed with an extraordinary talent, and make it particularly mystifying to comprehend the impulse which led her, when she moved to Washington, to destroy all but a very few of her landscapes in embroidery." *THE PROVING YEARS* 255.

is one of the first symptoms of scurvy."¹¹ The homesickness letter does not survive. Two weeks later, on July 4th, after the exhausting and murderous battle of the Seven Days he writes briefly to his mother that he is well "after immense anxiety, hardships & hard fighting," and says: "I send a note I wrote in my pocket book some time ago (June 13 —) to show my feelings."¹² The next day he refers to this note as one sent "to you in case I was ever killed."¹³ The note does not survive, but on the envelope enclosing the July 4th letter appears a penciled notation by Holmes, no doubt written at a later date, "letter referred to within destroyed—rather pompous."¹⁴ On March 29, 1863, he writes to his father about "my blowoff in one of my last."¹⁵ The blowoff letter does not survive. What then do we find, from internal evidence, was suppressed? Homesickness, feelings in time of travail about his own death, and a blowoff to the old man.

In the letter in which Holmes refers to the note sent "in case I was ever killed," there is a post-script: "Keep all letters that are at all historical as I have no diary to speak of."¹⁶ Interestingly, on that previous June 13th he had written *another* letter to his father—which was allowed to survive—about the Battle of Fair Oaks and how "My men cheered me after the fight." The young soldier writing this letter might well have considered that note, which showed his "feelings" and told his parents what to do in case he was killed, to be "historical." The older lawyer who did the editing obviously did not. The homesickness and feelings and blowoffs of a soldier are no less "historical," than how he was wounded and stood the pain and did his duty. Leaving the former out and the latter in tells us more about the historian than about history.¹⁷

11. TOUCHED WITH FIRE 55.

12. *Id.* at 57.

13. *Id.* at 60.

14. *Id.* at 57 n.1. Just before he wrote that June 13th note he wrote home saying, "If I am killed you will find a Mem. on the back of a picture I carry wh. please attend to." *Id.* at 52. This picture and memo do not apparently survive.

15. *Id.* at 86.

16. *Id.* at 61. This post-script, indicating as it does that Holmes even then was distinguishing between what would be of "historical" interest and what would not, might suggest an already formed intention to edit these materials when he got home. Of interest to us, however, is what the final editor conceived to be "historical." Another question is whether the diary he refers to here, which he doesn't think much of, is the No. 1 diary, the one of which we have no trace? We might also infer from this statement that the Ball's Bluff pages were not as yet written since they certainly were substantial and viewed so by Holmes who preserved them. See note 3 *supra*.

17. As for the argument of "privacy," it might be valid as to a particular item (*e.g.*, the what-to-do-if-I'm-killed notes might have mentioned a girl who did not become his wife), but it is not valid as to the other "feelings," or the specific subjects I shall in a moment suggest were also suppressed. Of course, anyone can keep private whatever he wants to, but when he keeps private things which are not commonly thought of as private, or does so while leaving public many expressions on subjects

But an editor does not simply edit things out, he edits things *in* as well: a tone, a perspective. Before speculating about what else Holmes may have edited out, we might try to define that tone or perspective which he may have editorially given to the work. It's a hard thing to support with evidence, but the feeling one gets reading the letters is that of an historical document. "Historical" not in the sense of its contribution to history but in its retrospective feeling. Even the small details of who was killed, who wounded, the weather, food, contribute not to the sense of the momentary, the living, the actual—but of the momentary, the living, the actual *historically re-created*. And it reads like a "document"—the three wounds are all there, and how he did his duty—a document prepared for a Plutarch.¹⁸

What we feel, then, is *distance*, and what has been edited out are probably all those expressions of the young soldier which seemed "pompous" to the old skeptic—meaning, I suppose, that he had taken on such distance from the experiences of his youth that he had lost the feeling and the sense of them. In a way, the censor's fear that we might read the expressions of a boy of twenty as those of the scholar of forty or the judge of sixty represents a deterioration of sensibility. He has lost touch, lost touch with that twenty-year-old "intellectual and poetical spirit"¹⁹ who enlists on the heels of Sumter, leaves college and marches off on a great adventure, if not a crusade. He is not an inarticulate boy, that we know, nor shy about expressing himself in writing. Surely his letters home would contain something of his interests, his sympathies, his doubts at the time. These, I suggest, make up the rest of the suppressed text, containing three general

normally considered private (*e.g.*, religious doubts), we begin to suspect that "privacy" is a rationalization for something else.

18. In Clough's 1864 Introduction to PLUTARCH'S LIVES, he explores the question of how "faithful" these biographies can be considered when fact and fable often cannot be disengaged and Plutarch himself impressed a certain viewpoint on the material. "At any rate," he writes, "if in Plutarch's time it was too late to think of really faithful biographies, we have here the faithful record of the historical tradition of his age." Clough, *Introduction* to PLUTARCH'S LIVES at xviii (Mod. Lib. ed.). In a way, Holmes's relationship to his early life seems similar to Plutarch's to his subjects; what we have in these letters is a faithful record of the historical tradition, that is, what in his early life came to be meaningful and remembered (even if not accurately) in the mind of the old judge. If Holmes has been recognized as a Roman, a great Stoic figure worthy of a Plutarch, it is not because of character and life-style alone, it is because of the way he has himself created the historical tradition, the data, on which this judgment is founded. Happily the tack taken by Howe in his "intellectual history" of Holmes, and the modesty and caution of his approach to the figure of the man, has led him to avoid the trap set by his subject. For a kind of Plutarchian portrait of Holmes—and a really excellent one—see WILSON, PATRIOTIC GORE: STUDIES IN THE LITERATURE OF THE AMERICAN CIVIL WAR 743-96 (1962); *cf.* Touster, Book Review, 76 HARV. L. REV. 434, 437-38 (1962).

19. This is from Motley's description of young Holmes in a letter written to Dr. Holmes on hearing about the wounding at Ball's Bluff. II THE LETTERS AND CORRESPONDENCE OF JOHN L. MOTLEY 214 (Curtis ed. 1889).

subjects: (1) expressions about the complex of art, literature and the writing of poetry which he is preoccupied with when he leaves college; (2) his thoughts about a future career; and (3) soul-searchings with respect to Abolition and the Union cause. All these may be said to involve expressions of feeling—but of a special kind: the feelings *for*, sympathies. That is, everything which would make a young man talk “pompous.”²⁰ To test this hypothesis we have to go back to see what Holmes is like when he enlists.

Holmes enters Harvard in 1857 at sixteen and already his interests and talent in art and literature are clear.²¹ He reads the lives of great painters. He reads Ruskin and Emerson—both of whom, he later says, “set me on fire.” (But it is the early Ruskin, of the aesthetics, not the social critic and reformer.) He sketches. In his sophomore year he publishes an essay on “Books” in which he contrasts the man “who lives only in events and can relish nothing but the College gossip” with the man who “can find higher food for thought” by struggling with “the great questions of right and wrong, and on the relations of man to God.” One of these questions is: “Do men own other men by God’s law?” That is, the burning question of slavery, very much involved in “events.” At the sophomore banquet he delivers the class poem. He joins the Christian Union, in order—he says as a senior—“to bear testimony in favor of a religious society founded on liberal principles in distinction to the more ‘orthodox’ and sectarian Platform of the Xian Brethren.” His philosophical interests quicken under inspiration of Plato and Emerson. He becomes an editor of *The Harvard Magazine* and Secretary and Poet of *Hasty Pudding*. In his senior year he publishes, along with a number of anonymous reviews, an essay on Plato, “Notes on Albert Dürer,” and a brief piece on Pre-Raphaelitism. They are all distinguished by a kind of Platonic or Emersonian idealism, and they express religious doubts, which, as one orthodox fellow student put it, set him in the camp of “a dreamy, transcendental, artistic religion.” If his grades reflect his talents or interests, they are literary rather than scientific. In his senior year, 1861, he is elected Class Poet, just about the same time as he is publicly admonished by the faculty for “repeated and gross indecorum” in the class of a professor who is an orthodox Christian philosopher. On April

20. One reviewer of the book, rather innocently, ignoring the fact of Holmes’s editing, notes the absence of certain material that might be expected in the correspondence of a youth, and concludes that young Holmes had “too fine a sense of the proprieties of the occasion, he was too conscious of the limitations of his youth, too conscious of the momentous events in which he was participating to indulge in sophomoric effusions.” Walsh, Book Review, 33 VA. L. REV. 392-94 (1947). The message of Holmes, the censor, had apparently gotten through.

21. The material in this paragraph is taken essentially from Chapter 2 of *THE SHAPING YEARS*.

12, 1861, Fort Sumter is fired upon and within a few days Holmes enlists, risking loss of graduation. In June, having in the meantime returned under pressure for examinations, he delivers the Class Poem. He is allowed to graduate and in the Class Album writes: "The tendencies of the family and of myself have a strong bent for literature . . . If I survive the war I expect to study law as my profession or at least for a starting point."

Now, in all this there is little to indicate that Holmes was certain of his future career or was being "kicked" into the law by his father—as he suggests much later—or was being kicked anywhere. Already in the service, a private awaiting a commission, and having shown plenty of rebelliousness, he speaks of a bent for literature but an expectation he will study law, "at least for a starting point." Holmes might have meant he chose the law initially the way his father did—out of indecision, the confusion of a young man of literary tastes as to how to earn a living. If so, did he figure that, like his father, he too could pull out of the law for literature—or medicine, or anything else? His father had tried the law school at Harvard for a year but was soon "sick at heart of this place and almost everything connected with it [T]he temple of the law . . . seems very cold and cheerless about the threshold."²² From which temple he fled—to write poetry, take up medicine, eventually to commit himself to a literary life. Even to stick it out at law school, as James Russel Lowell had, did not mean one had to give up literature. On the contrary, there was no more open situation for a gentleman of parts in 1861 than that provided by law study which, if a literary career succeeded, could be gracefully scrapped, or if it did not succeed, could provide a decent if not adventurous living.

Looking back then at Holmes at college, his interests, and the open possibilities of career, what more normal expectation than that a young man such as this would reflect, in his letters, upon such interests and concerns? Throughout the war he is reading and asking for books from home. Why no comment on art, philosophy, poetry, the books that have been sent him? Why no reflections upon choice of a career, especially with a father with a common bent (literature) who had lived through an experience (law school) he was expecting to go through? Did the father, perhaps, "kick" him into the law in those exchanges which, I conclude, existed once and now are missing? That such exchanges occurred is indicated by the letter of March 29, 1863 to his father which, although full of regimental pride, is written in a moment of melancholy. It begins, "I had my blowoff in one of my

22. TILTON, *AMIALE AUTOCRAT: A BIOGRAPHY OF OLIVER WENDELL HOLMES* 60 (1947). See also I MORSE, *LIFE & LETTERS OF OLIVER WENDELL HOLMES* 79-81 (1896).

last and now let bygones be bygones—if *you* will—for I fear I was somewhat in the mood wh. would have led to sass had I been at home.” The “blowoff” letter, as I mentioned, does not survive. At the end of the same letter he refers to his father’s advice that he read the Bible and Homer; he’ll stick for the time, says Holmes, to reading Regulations and books on war and fiction. If other exchanges about books do not survive, why it may be asked was this one letter preserved? Because it is essentially a peroration on his beloved 20th Regiment, and the reference to books is only incidental, as the mention of “homesickness” was only incidental in the letter about suffering from scurvy.²³

Whether we could have expected in Holmes’s letters ruminations on Abolition as well as on culture and career depends largely upon how deep his ideals were on this score when he enlisted. We know of his concern over “the great question,” as expressed in his essay; and his precipitous enlistment after Sumter. We also know that earlier, in January 1861, he was involved with a group of abolitionists in protecting Wendell Phillips at an Anti-Slavery Society meeting from the threats of a Boston mob, and was listed at that time in the *Liberator* as a contributor to the cause.²⁴ And then finally there is another, a mysterious item found in one of Holmes’s Civil War scrap books. It is the following letter from a dear, perhaps his closest friend and fellow officer in the 20th Regiment, which, it should be noted, was a Regiment heavily Copperhead in sentiment.

State House, Boston
Feb. 7th (?) [1863]

Dear O.W.

By a power as irresistible as fate I am drawn into the colored regiment (54th) as Lt. Col. Would you take the majority? not that it would be offered to you certainly, but your name would command attention. Bob Shaw has accepted the Coloneley.

Difficulties of every kind rise up. One by one they will be overcome. I retain my position in the 20th for the present.

Thine affectionately
N. P. Hallowell

23. There is only one other literary reference in the letters and that is to Motley whom Holmes describes as “a noble manly high-toned writer.” The complex meanings of the letter in which this appears (Dec. 20, 1862) is explored intensively in the text ahead; for now, we might ask whether other literary references in the suppressed text might not have been of this character and so suppressed as being, if not pompous, then jejune. We might also ask why no letters to his brother Edward survive? If Holmes wrote him, a boy of 15 when the war begins, might we not expect that such letters would possess qualities of both playfulness (about his “set”) and seriousness (about the cause) from the 20 year old elder brother? That is, qualities which would appear “pompous” to the censor but were in fact evidence of feelings, sympathies, fraternal interest.

24. THE SHAPING YEARS 66-68.

The Massachusetts 54th was then being organized and recruiting its officers from among "young men of military experience, of firm anti-slavery principles, ambitious, superior to a vulgar contempt of color, and having faith in the capacity of colored men for military service . . . I [the Governor] shall look for them in those circles of educated anti-slavery society which, next to the colored race itself, have the greatest interest in this experiment." What Holmes's response to Hallowell's inquiry was we do not know. We can conclude that to his friend Hallowell, at least, Holmes's commitment to the cause was intense enough to invite the inquiry.²⁵

When we consider that Dr. Holmes, the father, was quite aloof if not contemptuous of the abolitionist cause *before* the war, but became something of a Northern jingoist committed to the cause after the war had begun, and the son enlisted as a convinced abolitionist, wavering during the war, when we consider the possibilities of this encounter in the correspondence, we must regret whatever "editing" there was. That this kind of material was edited out of the letters, I am convinced. The only reference to slavery that appears in the letters is one to his father, on December 20th 1862, where in effect he asks whether the cause of anti-slavery is worth the butcher's bill. This letter seems to suggest that the subject is not a new one between them. It is written just after what I call "the passion at Fredericksburg," an event so special I shall give it extended treatment, and speaks of war itself as worse than slavery, as being "slavery's parent, child and sustainer at once."

As for Holmes's later recollections, on at least two occasions he mentions having before the War, been "deeply moved by the Abolition cause—so deeply that a Negro minstrel show shocked me and the morality of *Pickwick* seemed to me painfully blunt."²⁶ Still

25. The foregoing letter and material on the 54th can be found in *THE SHAPING YEARS* 152-53. Howe concludes, very correctly I think, that the letter "clearly suggests that Holmes, despite the effort of his other friends in the Twentieth to make him a good Copperhead, had not lost all of the crusading spirit." See also *id.* at 159 where it is suggested this offer was renewed, or at least was still being considered in October 1863. Evidence, however, of Holmes's "crusading spirit" is to be found not in the surviving letters home, but in a letter (discussed later) over which Holmes had no control.

26. Letter to Arthur Garfield Hays, April 20, 1928, quoted *id.* at 49. A slightly different form of this recollection appears in an earlier letter to Laski, November 5, 1926: "[I]n my day I was a pretty convinced abolitionist and was one of a little band intended to see Wendell Phillips through if there was a row after the meeting of the Anti-Slavery Society just before the war. How coolly one looks on that question now—but when I was a sophomore I didn't like the nigger minstrels because they seemed to belittle the race. I believe at that time even *Pickwick* seemed to me morally coarse. 'Now his nerves have grown firmer,' as Mr. Browning says, and I fear you would shudder in your turn at the low level of some of my social beliefs." *II HOLMES-POLLOCK LETTERS*, *op. cit. infra* note 27, at 893.

Abolition is mostly anathema in his mouth. He associates it, any number of times in his later letters, with *fanaticism*: "The slight superior smile of the man who is sure he has the future," who is certain that anyone who doesn't agree with him is "a knave or a fool," who has "the martyr spirit." The word "abolition" is associated not with young men of deep sympathies and generous sentiments but with Communists, Christian Science, the Catholics on Calvin, Calvin on the Catholics, Trotsky on Stalin, Prohibitionists, Emma Goldman.²⁷ There may well have been *two* abolitionists in Holmes: the real one and the one in retrospect, and it is the latter that probably censored the former.

To get a sense of the *real* abolitionist we must go to the only contemporaneous letter on the subject that survives, one written to Charles Eliot Norton on April 17th 1864, just three months before Holmes pulls out of the war, exhausted. At the time he is apparently still struggling as to whether the butcher's bill is worth it—having already paid some of that bill with his own three wounds and "the passion at Fredericksburg." Norton, a man fifteen years Holmes's senior, was part of the Cambridge-Boston literary circle, a friend of his father, whom Holmes must have known fairly well. Holmes writes expressing appreciation of an article by Norton on the first part of Joinville's *Memoirs of the Most Christian King St. Louis*. The article is an interpretive essay on the life and character of St. Louis, the last great Crusader, and tells of his first crusade: his taking the Cross, his campaign against Egypt, the retreat and rout of his army, the hardships, his defeat and capture, his bearing faith, his ransom, and then his lingering four years more in Palestine in the hopes of collecting an army to deliver Jerusalem, returning at last to France having failed. Holmes writes:

I have long wanted to know more of Joinville's chronicle than I did, but the story seems to come up most opportunely now when we need all the examples of chivalry to help us bind our rebellious desires to steadfastness in the Christian Crusade of the 19th century. If one didn't believe that this war was such a crusade, in the cause of the future of the whole civilized world, it would be hard indeed to keep the hand to the sword; and one who is rather compelled unwillingly to the work by abstract conviction than borne along on the flood of some passionate enthusiasm, must feel his ardor rekindled by stories like this In all probability

27. The references and quotes may be found in the following letters dating from 1918 to 1930: II HOLMES-POLLOCK LETTERS 252-53, 893, 942, 948, 1265, 1291 (Howe ed. 1961); I HOLMES-LASKI LETTERS 164, 689, 772 (Howe ed. 1953); ROSENFELD, PORTRAIT OF A PHILOSOPHER: MORRIS R. COHEN IN LIFE AND LETTERS 321, 356 (1962). Only in one of these letters in 1919 does Holmes admit that among the abolitionists there were "some or many [who] were skeptics as well as dogmatists." ROSENFELD, *op. cit. supra* at 321.

from what I hear of the filling up of the Regt. I shall soon be mustered in for a new term of service as Lt. Col. of the 20th and so with double reason I am thankful to read of the great dead who have "stood in the evil day." No—It will not do to leave Palestine yet.²⁸

This letter can best be understood, by reference to the article that stimulated it. In the article there is a passage on the thirteenth century so suggesting America in the Civil War that one cannot help but feel that Holmes identified with Louis and read it as a description of his own fate when he marched off.

The [nineteenth] century was one of transition from an old to a new order of things. In such a period enthusiasm and fervor are apt to burn with uncertain fires. Fifty years later a crusade was impossible, and even at this time it was almost an anachronism. But [Holmes] did not recognize, or acknowledged but in part to himself, the change that had taken place since the days of the earlier "wars of the Lord." His good sense was powerless to appeal from the dictates of his conscience; and what he esteemed his duty to [himself and humanity] was enforced upon him by the accounts of the distress and sufferings of the [Negro slaves] which now came with every arrival from the [South].²⁹

"No," said Holmes, "it will not do to leave Palestine yet."

If this is the real abolitionist in Holmes,³⁰ whose expressions of

28. From transcription of original manuscript; a slightly variant version appears in TOUCHED WITH FIRE 122 n.1. The views of the recipient of this letter should be of interest. Norton was by no means a "radical" abolitionist, and though he took an anti-slavery position on moral grounds he was a gradualist and moderate. He had made his reputation as a critic of art, letters and society and had, before the War, developed the theme of "the redemptive power of suffering" in studies on the Renaissance. The Joinville essay smacks heavily of this theme which, no doubt, reached a receptive mind in the exhausted thrice-wounded Holmes. See VANDERBILT, CHARLES ELIOT NORTON: APOSTLE OF CULTURE IN A DEMOCRACY 47-49, 77-78 (1959).

29. 98 NORTH AM. REV. 425 (1864). For *nineteenth* century read in the original "thirteenth" century; for *Holmes* read "Louis"; for *himself and humanity* read "Christ"; for *Negro slaves* read "Christians of the Holy Land"; and for *South* read "East." In a sense it's difficult to find a substitute for "Christ" in the young atheist, but I think that the shifting combination of egotism and altruism suggested by the phrase "himself and humanity" conveys the ambiguous state Holmes was in during the war. We might also note about the article that Norton's reading of Louis' character so resembles what I think was coming to be Holmes's view of himself as to be uneasy. Holmes could not have missed it. Louis, Norton writes, "was a true enthusiast— [and yet] he was also a man of prudent and forecasting counsels; and it is this mingling in him of the nature of the visionary and of the man of practical sense that gives to his character an unusual interest, and has made it difficult for men to agree as to the true interpretation of it. His complete nature must be comprehended by the sympathetic imagination. His self-contradictions, his weaknesses and his strength, his virtues and his faults, his moral incongruities, are to be interpreted by the predominance at one time or another in his life of the opposing elements in his soul. At one time enthusiasm sweeps with its irresistible flood over the dikes of reason and judgment, but the flood passes, and the old walls of good sense, that had been hidden under the waters, reappear." *Id.* at 433.

30. Although Howe points out that few indications of the *extent* of Holmes's

sympathy and doubt and feelings for the distress of the Negro were suppressed by the retrospective one, we are confronted then by a strange inversion. This is not simply the case of a disappointed idealist turning against his cause, or against all causes, because the butcher's bill was too high. For the old censor, war becomes the challenge to noble deeds, Abolition a fanatic's game. The tendency toward enthusiasm remains, but in an anti-cause.

So much for the text and what its editing reveals. We should remember, however, that suppression of feeling may be the product not of the absence of feeling, but an excess of it. Actually, the letters that survive show a great deal of feeling—they refer to fear, intense anxiety, thoughts of home. In fact they suggest a man overpowered by feelings, but they are the feelings to be borne and overcome by a soldier doing his duty. What has been suppressed is that broad range of volatile sensibilities—the interests, the doubts, the gripes, the sympathies, the compassion—that must have been expressed by the young man who had been deeply moved by a Negro minstrel show and found the morality of *Pickwick* coarse. One wishes letters to the younger brother Ned had survived! What remains are those feelings, intense enough, which an "old soldier," already fixed in his notion of what war and noble deeds mean, could be proud of—indeed, their very intensity will be the measure of his achievement.

We cannot, I suppose, restore that broad range of sensibilities to the text. However, even what remains cannot be untouched by them; for the feelings revealed in doing one's duty will invariably suggest other feelings. The suppression to be really effective would have had to have been complete and Holmes was not up to this. If the letters, then, do not tell of a crusade for others, they tell of himself "standing in the evil day." That he suppressed part of them, revealed much. What he left reveals more.

III. STANDING IN THE EVIL DAY

A. *The First Wound: Ball's Bluff: 1861*

On October 21, 1861,³¹ within an hour of going into action at Ball's

commitment to abolition survive, his treatment of the material seems to indicate that he views the commitment as having been a substantial one. See *THE SHAPING YEARS* 49, 65-67, 71, 152-53, 159. See also Howe, *The Positivism of Mr. Justice Holmes*, 64 *HARV. L. REV.* 529, 535 (1951), where he speaks of Holmes being moved to enlist by "an abolitionist fervor."

31. The account that follows is taken from his letter home of October 23rd and the pages of the Ball's Bluff Diary. *TOUCHED WITH FIRE* 13-33. Although I have generally used the third person, I have followed Holmes's own language as closely as possible. In some strange way it seemed to me that, as I transposed the "I" to a "he," the letters took on more *presence*—as if a second editing had cut down his own

Bluff, Lt. Holmes, an officer of the best "set," is knocked down by a spent shot and ordered to the rear, but in a few moments rushes to the front waving his sword, asking if none would follow him, and falls at his Colonel's side a bullet clear through his breast. First Sgt. Smith lugs him to the rear, opens his shirt and ecce! two holes in his breast. Quite faint, he sees Sgt. Merchant lying near him shot through the head and covered with blood, and is sickened—and then the thinking begins. Shot through the lungs? Spitting blood? Yes. That Maryatt story where the heroine shot through the lungs dies in great agony—what should he do? The bottle of laudanum. Yes, it's here. But no, he'll wait till the pain begins. Somehow he is gotten down the bluff, into a scow—he thinks of some act of gallantry of Sir Phillip Sidney under comparable circumstances—and is ferried with a load of bloody wounded to an island midstream, bullets striking around them. "Armchaired" to the field hospital, he is sickened to come upon the bloody scene: a red blanket with an arm lying on it—instinct tells him it's John Putnam's; a surgeon calmly grasping a man's finger and cutting it off—both standing. He is bleeding from the mouth very freely. "How does it look, Doctor, shall I recover?" "We-ell, you *may*. . . ." "That means the chances are against me, don't it?" "Ye-es, the chances are against you." They probe the wound. He feels for the laudanum again, faints, awakes light-headed. Pen Hallowell comes in, kisses him and goes away. Thinking of death he is, at first, tremulous but then says to himself: "By Jove, I die like a soldier anyhow . . . shot in the breast doing my duty up to the hub—afraid? No, I am proud." He doesn't believe in God, but there'll be no deathbed recantation. No. "Father and I had talked of that and were agreed that it generally meant nothing but a cowardly giving way to fear . . . has the approach of death changed my beliefs much? . . . No. Then came in my philosophy." More speculation and with a "God forgive me if I'm wrong," he sleeps again.

"Well Harry I'm dying but I'll be G. d'd if I know where I'm going." Fainting and coming to again, swearing terrifically. He thinks of several fair damsels he isn't quite ready to leave. It seems hard to die. The next day he is carried across the island on a blanket, lies comatose on the bank, is ferried to the Maryland shore, the wounded smashed about in the hold of a canal boat. He is taken in a two wheeled ambulance with Capt. Dreher who has been shot through the head: two black cavities seem all that's left for eyes, beard

historical distance. I have followed this practice throughout the descriptive passages that follow, citing the source letters only. I think it is clear where my own interpolations occur. In general I have tried to stick to Holmes's own facts and to supply, from Howe and other sources, only such other facts which are necessary to place the letters in context.

matted with blood which pours black from the mouth, and a most horrible stench. At regimental hospital, his breast wounds are probed and plugged and bandaged, and he's told he's going to live. Joy! Whiskey, light-headedness, laudanum—the old idea still haunting him—he looks up and sees Willy Putnam, calm & lovely, and dead. From a third to a half of his company are dead or wounded or prisoner. Only eight officers out of twenty-two make it back unhurt.

And so the first wound of an aristocratic young man of twenty who will go back to Boston to be admired, written about, and fussed over by New England's great men and many a "fair damsel." His father will write that "Wendell is a great pet in his character of young hero with wounds in the heart, and receives visits *en grand seigneur*. I envy my white Othello, with a semicircle of young Desdemonas about him listening to the often told story which they will have over again."³² The charge, the sword waving, the wound in the breast, the blood, Marryatt, the laudanum (Yes, there it was), gallant Sir Phillip Sidney, the shock of the hospital, facing the end (No deathbed recantation, he!), Philosophy, the dead and dying friends—the story will be told over again. He will recuperate and during the winter be detailed to recruiting duties through the state. What, one wonders, will he say to the boys in those New England towns? That there is a great testing of character and philosophy to be had out there in the field? Or will he speak of the nation and slavery—holding together one, wiping out the other? Or will he be silent? The War is not going well. He surely can't tell them the struggle will be a short one. In March of '62 he will return to his regiment, a green lieutenant still.

32. II MORSE, *op. cit. supra* note 22, at 158. This remark, associating young Wendell with Othello, seems singularly inapt. Although it is true that, in the play, it is mentioned how the tale of Othello's life—his hardships and bravery—as drawn from him by Desdemona's father, had the effect of "wooing" her, it is impossible to associate that grave and tortured Moor with a young lieutenant receiving visits *en grand seigneur* and telling his own tale over and over again. Since Dr. Holmes himself had great faith in "unconscious mental association" (see his *Mechanism in Thought and Morals* in VIII Works 260), one might venture the following analysis of this remark: that the son's sympathetic feeling for Negroes during his college years was so intense as to lead the father, who was *not* an abolitionist, to view his son's feeling as symbolically making a Negro out of him; later, his own strong identification with his wounded son leads him to view the son as the noblest Negro that could be brought to mind—and a Negro, mind you, who was wronged as perhaps he himself had wronged his son by being unsympathetic, if not derisive, of the boy's Negro-feeling. If this is true it sheds great light on the quality if not the intensity of young Holmes's sympathetic feelings for the Negro when he marched off. To indicate to what extent Dr. Holmes's thought is congenial to a psychoanalytic approach see OBERNDORF, *THE PSYCHIATRIC NOVELS OF OLIVER WENDELL HOLMES* (1946).

B. *The Second Wound: Antietam: 1862*³³

The Twentieth then engages in the Peninsula campaign—skirmishes, shelling, marches, transport across the Potomac, guard, bivouacs, pickets, casualties. Things are not easy. It's a campaign now & no mistake. There's rain, mud, more casualties. John Putnam, whose arm Holmes saw on the hospital floor after Ball's Bluff, and who like Holmes returned to combat, is sent back because things are too rough and he can't stand it. Holmes has a cold but his spirits are high enough. If he can stand this very rough beginning, he writes home, it will be good for his health. But he longs for letters from home. More mud. Shelling. He's over his cold. But two rainy days while on picket, and his bowels play the Devil with him owing to cold, and wet, and want of sleep. Otherwise he has been very well. Still, he regrets the diminishing chance of a fight as the campaign seems to peter out. He makes some sketches in the field and sends them home. He asks for more letters. He is named Captain. It's clear, he's no longer green.

The "fight" comes in its own time, May 31st, at Fair Oaks, and a bloody one at that. Five thousand Union, seven thousand Confederate casualties. Holmes has been in the thick of it, leading his company with pistol and sword, holding his line, and writes home describing the movement of forces (with accompanying diagram), a letter interrupted by firing near at hand. It turns out to be Rebs firing at a party of his men who are burying *their* dead! Back to the letter. It is pleasant and hot. "It is singular," he writes, "with what indifference one gets to look on the dead bodies in gray clothes wh. lie all around. . . . As you go through the woods you stumble constantly, and, if after dark, as last night on picket, perhaps tread on the swollen bodies already fly blown and decaying, of men shot in the head, back or bowels." As yet, it would seem, he is not indifferent to the sight of the dead bodies in blue, especially his friends. "Well we licked 'em and this time there was the maneuvering of a battle to be seen—splendid and awful to behold." They have had twenty-five men killed and wounded, and no officers. "If I am killed you will find a Mem. on the back of a picture I carry wh. please attend to." On the envelope is written "Send a toothbrush in a big envelope."

A week and a half of rain. Heat. Lice—"caught perhaps from the men, perhaps from the dirty places" they have been forced to live in. He receives the toothbrush and a bunch of letters, three from blushing maidens. He complains that the Twentieth was not given a fair

33. The account that follows is taken from 18 letters, March through September 1862. TOUCHED WITH FIRE 37-68.

shake in the news reports of Fair Oaks. But more important the men behaved like bucks through it all. He thinks they like him, and they cheered him after the fight. He likes being a company commander. Then he notes: "It's queer that I stand this exposure and hard work better than many a stout fellow who looks more enduring than I." But most important of all: please write!

Rest. On the alert. His bowels again. Scurvy this time. Lemonade. "The homesickness wh. I mentioned in my last they say is one of the first symptoms of scurvy." June 29th. Fighting again. The Seven Days' Battles. Retreat. Stores destroyed. The wounded left to the enemy. Shelling. Musketry. Thirst. The field of action. Malvern Hill. Men falling. An outfit on his left breaks and runs disgracefully. Not a waver in his Regiment. Flanked. Confusion. Marching. No sleep. Heavy casualties. July 4th,

Dear Mother, We have had hard work for several days—marched all night—lain on our arms every morn'g & fought every afternoon—eaten nothing—suffered the most intense anxiety and everything else possible—I'm safe though so far—But you can't conceive the wear & tear—Lowell is probably dead, bowels cut—Patten wounded leg. Abbott wounded arm. Miller wounded and probably prisoner. Our Co. had 9 or 10 wounded & some missing out of 37. Give my love to all my friends & remember me in y'r thoughts & prayers—Your loving son O. W. Holmes, Jr.

And the next day again to Mother and Father a more complete picture, and Penrose Hallowell, his dearest friend, cut on the side, thankfully not hurt. "I was awfully frightened about him." And finally: "It was the thought of you dear ones sustained me in terrible trials. . . . The hardest seems over now—at any rate I'm ready." The Peninsula Campaign is over, pretty much of a failure, and the Twentieth is withdrawn in early September to Washington where Holmes arrives with nothing but a private's blouse and trousers. But the hardest is not over, by any means.

September 17th. On bivouac again. By candlelight he writes. Rain has set his bowels off again as usual. Since the exposures of Fair Oaks he hasn't been himself. One damp night recalling those dreary times plays the deuce with him. A fight's in the offing but he won't pull a long mug every time he may be killed. By noon of that day he lies in a farmhouse on the field of Antietam, a bullet through his neck. Among the other wounded that fill the house and yard, is Penrose Hallowell with a shattered arm. For a while the house is within enemy lines. Holmes, fearful he might faint and be unable to tell who he is, writes a note: "I am Capt. O. W. Holmes 20th Mass. Son of Oliver Wendell Holmes, M.D. Boston." But the rebel lines are pushed back and by afternoon the wounded are taken off. The

next day he writes his parents that the ball "don't seem to have smashed my spine or I suppose I should be dead or paralyzed or something." Although a surgeon thinks he's a goner, Holmes is right and in a few days he is one of the walking wounded trying to make his way home. En route he gets nursing and care from a kindly family in Hagerstown, Md., from where he writes home a gay letter, dictated to the daughter of the house. Although his left arm is partly paralyzed, he is, he confesses, really disgracefully well. He walks about all day and is in no respect in the condition of one who has been hit again within an inch of his life. He will be home shortly for another "jollification," and to prove his right arm is all right he encloses a sketch, and closes in his own hand with: "My right nerf hasn't forgot his cunning—Good news hyah!" The gayety is understandable. He is alive. Hallowell's arm seems to have been saved. He can look forward to a long holiday from the wet days, the cold ground, trouble with his bowels, stumbling over the dead. And so the second wound of a toughened young company commander, who will return home—but this time not for a "jollification."

C. *The Passion at Fredericksburg: December 1862*

During his convalescence neither Boston nor the Captain are green. In the field, a Union victory seems hopeless. From Washington, Lincoln issues his preliminary proclamation of emancipation and suspends the writ of habeas corpus. McClellan is replaced with Burnside. The radical Republicans and the conservatives agitate. Emancipation—the writ—victory—treason—up McClellan—down McClellan. In the November state election Holmes votes radical. In the December issue of *Atlantic Monthly* Dr. Holmes publishes his famous memoir of *My Hunt After "The Captain,"* telling how he went south and found his wounded boy en route home. There is no record of how Holmes felt about his father's journey south, though he had expressly written that he did not wish to meet any affectionate parent half way. Nor how he felt about his father's use of the colorful war material. His feelings were probably mixed. In any event, less than six weeks after he's come home, Holmes is ordered back to his regiment—too soon, perhaps—and leaves with his good friend and fellow officer, Henry Abbott, "Little" Abbott, a Copperhead, one of the finest soldiers in the regiment. After an enervating week of "beastly" railroad cars, bed bugs, Washington—absolutely loathsome—cross country marches, rain and mud, on November 19th they find the "vagrant" regiment. Its morale is as low as his, as low as the whole Army of the Potomac, which he finds tired out with its hard and terrible experience and still more with its mismanagement. "I think before long the majority

will say that we are vainly working to effect what never happens—the subjugation (for that is it) of a great civilized nation. We shan't do it—at least the Army can't." A week with Copperhead Abbott, as well as the terrible realities, take their toll. Burnside prepares an offensive and the Regiment is brought up for the assault on Fredericksburg. Holmes comes down miserably sick with dysentery, growing weaker each day from illness and starvation, and is sent finally to hospital, Henry Abbott filling the post of Acting Major which, by seniority, would fall to Holmes. At this point something happens. A bridgehead has been established across the Rappahamock, and the Twentieth moves forward under Abbott's command into the city under murderous fire. But Holmes is in hospital and this is what he writes home to his mother in a diary letter.

Dec. 12, 1862.

Near Falmouth Va.
Hosp 20th Mass. V.

My Dear Mother

(Show this to F.McG)

These have been very trying times for me I assure you—First after being stretched out miserably sick with the dysentery, growing weaker each day from illness and starvation, I was disappointed in getting my papers sending me to Philad^a by the delay at the various Head-Q's & the subsequent business causing them to be overlooked just as they reached the last-Summer's—Then—yesterday morn'g the grand advance begins—I see for the first time the Regt going to battle while I remain behind—a feeling worse than the anxiety of danger, I assure you—Weak as I was I couldn't restrain my tears—I went into the Hosp—the only tent left here—listless and miserable. They were just moving out a dead man—while another close to death with the prevailing trouble (dysentery &c.) was moaning close by—In the Hosp all day with no prospect of being moved or cared for, and this morning we hear the Regt. has been in it.—Exaggerated rumors; then it settles down that poor Cabot is killed—and several, among them my 2nd Lt. wounded—The cannonading of yesterday hasn't recommenced this morning but the day is young and I expect before night one of the great battles of the war—I was on the point of trying to get down there but found I was too weak for the work—Meanwhile another day of anxious waiting—of helpless hopelessness for myself, of weary unsatisfied questioning for the Regt. When I know more I will continue my letter—I have no books I can read I am going to try to calm myself by drawing, but now four days have passed in disappointed expectations.—*Later—*

*Dec. 13—*Quiet all yesterday—Wrote James in the afternoon (may not send it)—This morning there's heavy caunonading and just now there's a very lively musketry practise going on—and many a nice fellow going off, I doubt not. Still the popping keeps up lively but somehow it doesn't seem to settle down to a good steady roll—but it's brisk—Today will settle I fancy whether we fight more or not, if not whether it shall be one or two—

Dec. 14. Today begun with a smart rattle but later the quiet has been oppressive—They fought all yesterday till after dark with great determination—Lt. Willard (late 1st Sergt Co D Capt. N.P.H.) & I climbed a neigh-

boring hill & saw the smoke of the musketry; the flash of the shell as they burst; & the rest—We couldn't see the men but we saw the battle—a terrible sight when your Regt is in it but you are safe—Oh what self reproaches have I gone through for what I could not help and the doctor, no easy hand, declared necessary—And in it again the Regt. has been—Scarcely anyone now left unhurt Macy & Patten (Adj't) Abbott & Murphy—these are all, as far as I can hear—The brigade went at an earthwork & got it with cannister—

Dec. 15. Last night a sharp volley probably from some Reg wh. got scared on picket—I rejoice to hear that in addition to the four mentioned as safe Mason & Ropes are all right, also Perkins; Half my company is wounded but none killed I judge from the serg't's report—

Lt. Alley—Abbott's 2nd Lt. is killed—and I heard incidentally that the Rev^d Fuller (frère Margaret—who stowed our valises at Wⁿ for us) had perished—Hayward they say looked like a butcher, red up to chin & elbows—Mem. Pay F. W. Palfrey at once what I owe & apologize for delay—twenty odd dollars—you'll find mem. in one of the last pages of my old Mem. Book in Desk. Send me a note of other debts on same page—I've *paid* Lt. Milton & the Sutler—Owe LeDuc, Leech, F. W. P. Rec'd today LeDuc's letter & y^rs of Dec. 6. but for some days at any rate mails will be shabby—I shouldn't think we'd gained much as yet, unless Franklin has driven back their left a little—I hear the Reb^s have warned our wounded out of Fred^sburg & sure enough the shelling on one side or both has just begun—This is afternoon—you see I write a little from day to day; it will be an interesting diary of one of the most anxious and forlornest weeks of my military experience. I'm not on the spot but I'll try to give an idea from memory of the situation—

[A sketch of the view of Fredericksburg looking south from the heights on the north shore of the river appears here.]

This isn't very correct but will do to give an idea (gentle slopes from the Reb. batteries down to the River.) Well—yesterday the fellow I spoke of as near death the day of my going to Hospital, perished & there's another candidate now—Poor devils—there's little enough comfort in dying in camp except it be that one gets accustomed to it (as an Irishman might say) and has plenty of company—But it's odd how indifferent one gets to the sight of death—perhaps, because one gets aristocratic and don't value much a common life—Then they are apt to be so dirty it seems natural—"Dust to Dust"—I would do anything that lay in my power but it doesn't much affect my feelings—and so I'll stop for the present—

I include a letter to James & send this off hastily having a fair chance—The Regt. has been relieved I hear & is on this side—

Affly

O W H, Jr.

Can we help but stop at that moment on the hill above Fredericksburg? *"I remain behind . . . I couldn't restrain my tears . . . another day of anxious waiting, of helpless hopelessness for myself, of weary unsatisfied questioning for the Regt. . . I have no books I can read, I am going to try to calm myself by drawing . . . I climbed a neighboring hill & saw the smoke of musketry . . . We couldn't see the men but we saw the battle. . . Scarcely anyone now left unhurt. . . I*

owe . . . one of the last pages of my old Mem. Book . . . I've paid . . . & owe . . . But it's odd how indifferent one gets to the sight of death . . . I would do anything that lay in my power but it doesn't much affect my feelings—and so I'll stop for the present . . ."

He'll stop for the present. Stop the letter and stop the feelings. It's all too much. He's indifferent now to them all, the dead in blue as well as in grey. What a height that is, above Fredericksburg! You can look back and forward, across the fields, and see everything clear. That he should have let this letter survive! And illustrated too with a sketch, from where he stood on that height. *We couldn't see the men but we saw the battle.* And all the time young Abbott in his place! A Yankee on Olympus? No, an exhausted soldier of twenty-one whose gut is griped by dysentery and whose feelings are gone. But where have they gone? Dammed up? Swallowed? Or have the feelings swallowed *him*? Drowned him, left him numb? When night comes, the dysentery still gripes the gut. Overhead are the stars, below debts to pay. Debts listed in the last pages of his Mem. Book.

It's indelibly etched in the mind, that view of Fredericksburg—the finest print in his collection. Even when the paper yellows and cracks as the years race on, this will only make the print rarer, more valuable. If it is not to be found on those red Wedgewood plates—*Views of Harvard*—it should be. Do we need confirmation that this moment on the heights, this view of Fredericksburg, has fixed in his mind not only a "terrible sight" but a way of looking? That a whole body of sympathetic feeling has been dammed up, whose power will transform him and his view of the world? Confirmation exists everywhere—in the great unconscious text of his figures of speech, the cast of his memories, the obsessional point of view—the height from which he will see not the men but the battle. Later he will say, a man can't "swallow the universe." Or, if the cosmos has any significance, it is "in its belly."³⁴ It surely was. And always one calms one's nerves with books.

Even the rhetoric of his later years is moulded here, quite literally. He no longer speaks of the scene, *it* speaks through him. Seventeen years later, at a Harvard commencement, he tells how "Memory spreads a floor of light from summit to summit of our experience, across which our vision moves easily and uninterrupted. Between there lie broad valleys wrapped in darkness, and many men wrapped in sleep. But we see them not."³⁵ *We see them not.* But it speaks nonetheless, and through the mist the figures of Henry Abbott "comes

34. Holmes's letters are full of such figures. These are from a letter to Cohen, ROSENFELD, *op. cit. supra* note 27, at 316; and to Dr. Wu, in HOLMES: BOOK NOTICES, UNCOLLECTED LETTERS, AND PAPERS 179 (Shriver ed. 1936).

35. OCCASIONAL SPEECHES OF JUSTICE OLIVER WENDELL HOLMES 1 (Howe ed. 1962).

before me . . . plainly." And again, four years later, in his Memorial Day Address in 1884, the pages of the Mem. book not yet faded, it is Henry Abbott, the creditor, who is seen most vividly among his dead comrades. And if then he sees "the armies of the dead" sweep before him, "wearing their wounds like stars," where could he have seen that sight but in the skies above him at Fredericksburg?

"Literally" I've said, for if we go back to Fredericksburg and the view from the heights on that December 11th, we'll see that Holmes's rhetoric is a literal description of what he saw. What is the view like from the Confederate side, from Marye's Heights above the town on the opposite shore? On the 11th "a dense fog covered the country, and we could not discern what was going on in the town." This from a reb artilleryman looking down from batteries Holmes has marked on his sketch. "The morning of the 12th was also foggy, and it was not until 2 p.m. that it cleared off, and then we could see the Stafford Heights across the river At dawn the next morning, December 13th . . . heavy fog and mist hide the whole plain between the heights and the Rappahannock At 12 o'clock the fog had cleared . . ." ³⁶ And the same from the Union side. But on the night of the 12th "the sky was clear, and thickly . . . the stars sparkled overhead." On the 13th "the night chill had woven a misty veil over the field." Memories from summit to summit, and between a broad valley wrapped in mist.

36. These quotes and the ones that follow are taken from II *THE BLUE AND THE GRAY: THE STORY OF THE CIVIL WAR AS TOLD BY PARTICIPANTS*, 235, 237, 240, 248 (Commager ed. 1950). Here we can find a description of what it looked like from a Confederate earthwork under assault at Fredericksburg—perhaps by the Twentieth itself.

"Hardly had he spoken, when a brisk skirmish fire was heard in front, toward the town, and looking over the stone-wall we saw our skirmishers falling back, firing as they came; at the same time the head of a Federal column was seen emerging from one of the streets of the town. They came on at the double-quick, with loud cries of "Hi! Hi! Hi!" which we could distinctly hear. Their arms were carried at "right shoulder shift," and their colors were aslant the shoulders of the color-sergeants. They crossed the canal at the bridge, and getting behind the bank to the low ground to deploy, were almost concealed from our sight. It was 12:30 P.M., and it was evident that we were now going to have it hot and heavy.

"The enemy, having deployed, now showed himself above the crest of the ridge and advanced in columns of brigades, and at once our guns began their deadly work with shell and solid shot. How beautifully they came on! Their bright bayonets glistening in the sunlight made the line look like a huge serpent of blue and steel. The very force of their onset leveled the broad fences bounding the small fields and gardens that interspersed the plain. We could see our shells bursting in their ranks, making great gaps; but on they came, as though they would go straight through and over us. Now we gave them canister, and that staggered them. A few more paces onward and the Georgians in the road below us rose up, and, glancing an instant along their rifle barrels, let loose a storm of lead into the faces of the advance brigade. This was too much; the column hesitated, and then, turning, took refuge behind the bank.

But another line appeared from behind the crest and advanced gallantly, and again we opened our guns upon them. . . ." *Id.* at 237.

But what happened down there in the streets of Fredericksburg, what happened to "Little" Abbott? Holmes tells of it in that Memorial Day Address of 1884 where, it seems, all those dammed up feelings pour forth so beautifully to reverence the dead. But remember, Abbott does not die here, at Fredericksburg, but in the Wilderness the next year.

There is one who on this day is always present to my mind. He entered the army at nineteen, a second lieutenant. In the Wilderness, already at the head of his regiment, he fell, using the moment that was left him of life to give all his little fortune to his soldiers. I saw him in camp, on the march, in action. I crossed debatable land with him when we were rejoining the army together. I observed him in every kind of duty, and never in all the time that I knew him did I see him fail to choose that alternative of conduct which was most disagreeable to himself. He was indeed a Puritan in all his virtues, without the Puritan austerity; for, when duty was at an end, he who had been the master and leader became the chosen companion in every pleasure that a man might honestly enjoy. In action he was sublime. His few surviving companions will never forget the awful spectacle of his advance alone with his company in the streets of Fredericksburg. In less than sixty seconds he would become the focus of a hidden and annihilating fire from a semicircle of houses. His first platoon had vanished under it in an instant, ten men falling dead by his side. He had quietly turned back to where the other half of his company was waiting, had given the order, "Second platoon, forward!" and was again moving on, in obedience to superior command, to certain and useless death, when the order he was obeying was countermanded. The end was distant only a few seconds; but if you had seen him with his indifferent carriage, and sword swinging from his finger like a cane, you never would have suspected that he was doing more than conducting a company drill on the camp parade ground. He was little more than a boy, but the grizzled corps commanders knew and admired him; and for us, who not only admired, but loved, his death seemed to end a portion of our life also.³⁷

Holmes is speaking here more truly than he believed. Or rather, again, it—the scene—is speaking through him. Does it say that Holmes actually saw Abbott in the streets of Fredericksburg? No, but it implies as much. A kind of lie, perhaps. But it is right. For Holmes saw Abbott the way no one else could have seen him when, on the heights above the city, he swallowed all feeling and ingested, as it were, his substitute, the man who stood for him below. Many are remembered by Holmes in that speech, but it is only Abbott's "death seemed to end a portion of our life."³⁸

37. OCCASIONAL SPEECHES OF JUSTICE OLIVER WENDELL HOLMES 11-12 (Howe ed. 1962).

38. Holmes recognized, I think, in some deep way the significance of that Fredericksburg experience. His friend Louis Einstein remarks: "More than once he related that he had cried with rage as he lay wounded in a hospital near Fredericksburg because he could not be with his regiment on the day of that grim assault. And he

The next letter we have after Fredericksburg seems to have a strange movement about it. It is surprisingly light and cheerful in the beginning, then deadly earnest, and then light-headed again. One wonders whether it is so playful because he has secured sick leave, or because he has somehow been relieved of the burden of feelings by having grown indifferent to them. It is the only surviving letter on slavery and when we consider how Holmes will, later, romanticize war and anathemize "causes" the strangeness is compounded.

Dec. 20, 62.
[Falmouth, Va.]

My Dear Governor

After the inspiration of a night which would have been rather a nipper in your furnace-warmed house with double glass, passed here with a couple of blankets in one of the tents wh. I suppose Gen Halleck (whom may the Lord confound) would enumerate among the "luxuries" of the Army of the Potomac—I sit down to give you the benefit of my cheerfulness—I always read now the D Advertiser religiously as well as other papers—and I was glad to see that cheerful sheet didn't regard the late attempt in the light of a reverse—It *was* an infamous butchery in a ridiculous attempt—in wh. I've no doubt our loss doubled or tripled that of the Reb^s. However that's neither here nor there—I've just been reading Mr. Motley's letters to Billy Seward What a noble manly high-toned writer he is—I always thought his letters to you were more thoroughly what a *man* should write than almost any I ever saw—I never I believe have shown, as you seemed to hint, any wavering in my belief in the right of our cause—it is my disbelief in our success by arms in wh. I differ from you & him—I think in that matter I have better chances of judging than you—and I believe I represent the conviction of the army—& not the least of the most intelligent part of it—The successes of wh. you spoke were to be anticipated as necessary if we entered into the struggle—But I see no farther progress—I don't think either of you realize the unity or the determination of the South. I think you are hopeful because (excuse me) you are ignorant. But if it is true that we represent civilization wh. is in its nature, as well as slavery, diffusive & aggressive, and if civn & progress are the better things why they will conquer in the long run, we may be sure, and will stand a better chance in their proper province—peace—than in war, the brother of slavery—brother, —it is to slavery's parent, child and sustainer at once—At any rate dear Father don't, because I say these things imply or think that I am the meaner for saying them—I am, to be sure, heartily tired and half worn out body and mind by this life, but I believe I am as ready as ever to do my duty—

would add, 'If I had been I would probably not be here.'" HOLMES-ENSTEIN LETTERS, *op. cit. supra* note 4, at xvii. Although he speaks of the tears he shed at Fredericksburg as being of "rage," it seems clear that they were also, most deeply, of sorrow. In one of his Occasional Speeches in 1896 he says: "[F]or most of us the fountain of tears is early dried. One after another we see our brothers go down, and death becomes an ever present companion of our thoughts. The skeleton is always in the corner mumming his silent part, until at last I have come to believe that he is necessary to make the scene complete. Without despair there is no triumph: without death the poignancy departs from life." *Op. cit. supra* note 35, at 88.

But it is maddening to see men put in over us & motions forced by popular clamor when the army is only willing to trust its life & reputation to one man—

At this point Holmes moves into a couple of jokes and high spirits and ends with "Please send me also by mail—books go cheap—Cairnes' book [*The Slave Power*]."39

War, he says, is "the brother of slavery—brother—it is slavery's parent, child and sustainer at once." One might imagine that Holmes at this point has experienced a moment of illumination, recognizing that war and its inhumanity is worse than slavery; that the coercion and brutality of slavery, the social institution, is the parent of the coercion and brutality of arms exercised not only against an enemy but against the will of its own soldiers. What a banner he might have ridden under! That great well of sympathetic feelings whose passing he prematurely pronounced just a week before has, in effect, reached its flood here. After this they will recede until, much later, the land is left dry. He will do his "duty," but apparently this isn't enough; he needs books, Cairnes' *The Slave Power*, for instance. Perhaps an economic analysis of the disadvantages of slave labour will keep his hand to the sword; in four months he will need Joinville and the examples of the Crusades.

One thing seems clear. Although childhood experiences may have sowed the seed, which the Puritan soil of New England would

39. It might be interesting to analyze the joking at the end of this letter: "Please send me by mail 6 of the best kind of photogs of me—(the 2/3 lengths—they are stunners—I think I'd rather play my game with that dummy than in person)—I want to give them to some of the officers—By Ged (the vowel is an E) the Regt did behave gloriously in the late *rumpi*. I feel a sort of dispassionate pride combined with my regret at my own absence—Isn't this a bully kind of a letter—I shall get Patten to direct it so that you may think it a bill—"

Assuming that the "game" he'd rather play with a "dummy than in person" was the war game, who could that dummy be? Was it Holmes himself, the idealist Holmes, the "dummy" who had so believed in the cause and is now beginning his disillusionment? The earlier part of the letter—war is worse than slavery—might very well indicate such a reading. It is also possible that this was an unconscious reference to the dummy who had, just a week before, played the war game for him—that is, Abbott, "Little" Abbott, not much more than two-thirds his size. More important, perhaps, is why he has someone else address the envelope so that Dad, the "governor," will think it's a bill. Does Holmes in some way think his father owes *him* something? The letter opens with a reference to the father in his "furnace-warmed house with double glass" while Holmes is under a couple of blankets and in a tent. Could Holmes be saying: "I'm now doing this for you, not for myself. Here's the bill"? Or, "All of you back home, quite comfortable, who try to push us back into the cannon's mouth with talk of cause, owe us something." This would support the "dummy-idealist" reading of the preceding portion. Perhaps this is one of those unconscious "jokes" that are a vehicle for all the readings: "Abbott stood in my place and I owe him something, but not so much as you owe me for what I'm doing here. I'm paying my part of the butcher's bill. Are you?" In any event, we get the feeling here that Holmes is beginning to see himself after Fredericksburg as somehow different from before.

nourish, it is here at Fredericksburg that Holmes's disassociation between mind and feeling begins to blossom and take its form. Whatever sympathetic feelings went into his belief in the cause are to be purged, and the cause will be supported, if at all, by "abstract conviction." Understandable enough. But a cause without sympathetic feelings is an empty shell, and is soon transformed into "duty" divorced from cause and "heroism" divorced from meaning. From here on, every doubt in the cause may be taken as a sign of a giving up of sympathetic feeling. This is not a necessary relationship, but it does occur in Holmes until, in the letter to Norton, he begins to speak as if "abstract conviction" and "passionate enthusiasm" are alternative motives, mutually exclusive. An increasingly abstract sense of "duty" and compulsions of "honour" will keep his hand to the sword until all faith in the cause is gone and he pulls out of the crusade.⁴⁰

But the process of dissociation will not be complete until, in 1895, Holmes tells us that "the faith is true and adorable which leads a soldier to throw away his life in obedience to a blindly accepted duty, in a cause he little understands, in a plan of campaign of which he has no notion, under tactics of which he does not see the use."⁴¹ That God was dead he knew at Ball's Bluff. At Fredericksburg he knows all causes are, if not dead, mortally wounded. But at what cost? To fall back on what? The sentiment of honour? Jobbism? Remembering that from Fredericksburg on is a long and winding

40. Although Howe recognizes the "special significance" of Fredericksburg, he does not, I believe, put it in proper psychological perspective. "Holmes, who had entered the war a radical and had clung to his convictions despite accumulating doubts realized that had he been called upon to perform Abbott's duties at Fredericksburg he might have failed. Would his conviction have sanctified his failure? Had Abbott's doubts diminished his triumph? Surely it was clear that success or failure in these matters did not depend upon conviction." To the extent Howe is suggesting that Holmes recognized that heroism did not depend on the cause you fought for or even the soldier's conviction in that cause, one cannot argue the point. But this does not seem to be the significant thing about Fredericksburg. For surely Holmes had already seen the courage and grace of young Southern officers dying for *their* cause; and surely he knew of *their* doubts—how many Southern Abbotts there were who had no use for slavery but were fighting valiantly nonetheless. The point is rather that inside Holmes the whole complex of sympathetic feeling associated with the "cause" gets turned upside down. He is, in a sense, mesmerized by the "pure" heroism of Abbott, and his emotional commitment then begins to turn away from the "cause" and attach itself to acts *dissociated* from their intentions or meanings. If he had been a "romantic" abolitionist when he entered the war, he would leave it skeptical of causes, yes, but a "romantic" still. See THE SHAPING YEARS 144-45; Howe, *The Positivism of Mr. Justice Holmes*, 64 HARV. L. REV. 529, 535-38 (1951).

41. *The Soldier's Faith* in OCCASIONAL SPEECHES OF JUSTICE OLIVER WENDELL HOLMES 76 (Howe ed. 1962). Howe seems to me right in associating this speech with "the feelings of one who had seen his closest friends die in a war mismanaged by generals and committed to objectives in which they did not believe." THE SHAPING YEARS 145.

road, with other choices to be made, and remembering also that the vision of a man is not necessarily his fate, we might recall what Burckhardt said in 1860 about the sentiment of honour: "This is that enigmatic mixture of conscience and egotism which often survives in the modern man after he has lost, whether by his own fault or not, faith, love and hope . . . yet, nevertheless, all the noble elements that are left in the wreck of a character may gather around it."⁴²

D. *The Third Wound and Out: 1863-1864*

The streets of Fredericksburg and the heights above it were too important to be left unexplored. If the rest of the war should now seem anti-climatic, it was probably so for Holmes as well. But remember, the feelings which he tried to bury are still alive. Their interment is to be a gradual process.

In January, not fully recovered from his dysentery, he gets leave which he spends in Philadelphia at the Hallowells. His parents visit him. By the end of the month he is back with the Twentieth, which (like the whole Army) is in the dumps, and rife with Copperhead sentiments. Now, in February, with Holmes in Virginia, he receives from Boston, from his friend, Penrose Hallowell, the note asking if he would take the majority in the 54th, the colored regiment. Had this possibility been discussed during his leave? The Hallowells are Quakers, strong abolitionists. Had Holmes written home about this? We don't know. From his return from leave in January there are no letters home until March 18th and March 29th, and these with pages, or parts of pages, torn off. In the letter of March 18th Holmes tells of some feelers from General Sedgewick about a staff assignment. Holmes is tempted but won't leave the 20th. In the letter of March 29th, to his father, he refers to a "blowoff" in a prior (missing) letter. It is bouncy, this last letter, full of pride in the 20th, and of Abbott. The 20th is ready to move, and a fight is not far off, in the face of which he confesses to being a bit melancholy. "Ah well, I am trying to see things straight in my own mind before it all begins so as to be ready and cheerful."

And now another silence—or hiatus—and the next word home, on May 3rd, brings news that he's been hit again, before Chancellorsville, in the heel. A post script says "I've been chloroformed & had bone extracted—probably shan't lose foot"—and the rest is torn away. But Dr. Haywood, who attends him, reports that "Holmes seemed to be rather sorry he wasn't to lose his foot," and seventy-one years later Holmes recalls his prayers that he might lose his foot so that he wouldn't have to return to action.⁴³

42. II BURCKHARDT, *THE CIVILIZATION OF THE RENAISSANCE IN ITALY* 428 (1958).

43. *THE SHAPING YEARS* 155.

His convalescence this time is even less "jollification." In June, Gettysburg, slaughter among the 20th, and the bodies of friends coming back to Boston. The wound is not healing well. There are problems of promotion: Where does Holmes stand in the 20th now? Would he accept the Lieutenant Colonelcy? Should he waive in favor of Abbott? He reads philosophy. Bob Shaw of the 54th has been killed. It needs officers. Is this still a possibility? In August Holmes learns to ride. He will never again, apparently, lead a company on foot. Still, he heals slowly. In October he receives a letter from Abbott who is pleased to learn Holmes has decided to return to the Twentieth "instead of absurdly wasting yourself before the shrine of the great nigger."⁴⁴ One can imagine that a titanic struggle was going on inside Holmes between the Hallowell in him (Quaker idealist) and the Abbott in him (Copperhead cavalier). Since Fredericksburg, however, it seems unlikely that the Hallowell would prevail. It is not until January that he returns to the 20th—but only for a short while. The command berths are filled—who's left anyway?—and he accepts a temporary staff appointment as aide to the divisional commander, General Wright.

On horseback now, but by no means above it all, he will be riding through the firing and killing and exhaustion of the Wilderness and Spotsylvania. He keeps a diary for a time—and this one survives. The letter to Norton. Doubts. May 1863. Divisional command is shelled. Riding here and there with messages. He hears that the 20th is having a time of it. Abbott is killed. General W's staff always within range of enemy shells. Up all night in the saddle. Fatigue. Men lost in a marsh. Reports and sights. "Woods afire and bodies of Rebs and our men just killed and scorching." Sharpshooters. The commanding general of the corps is killed. Reconnaissance. Artillery. Despatches. Orders. In the saddle all day. A word with Grant. Sharpshooters. A brilliant and useless charge. No pitched battles but losses of three thousand or so a day. Someone attacked on the right. Bullets around HQ. Someone's left is threatened. Pickets. The trees are in shivers. "The dead of both sides lay piled in the trenches 5 or 6 deep—wounded often writhing under superincumbent dead." Nights riding, no food, getting lost, fatigue. More of the

44. Howe reads this letter as suggesting Holmes had again been weighing a proposal to join the 54th. *Id.* at 159. Further support that Holmes had seriously considered joining a Negro regiment may be found in his letter of June 24, 1864 where he says "Father'd better not talk to me about opinions at home & here. On the staff one can form a far better opinion of the *particular campaign* than one at home. It's true [General] Smith says the niggers will fight—I heard him." *TOUCHED WITH FIRE* 148-49. Apparently, as I surmised in Part II, there *had* been correspondence between father and son on this subject.

same. No respite. But good news from Sheridan. And from Sherman. Weeks of it and on May 16th he writes home:

Dear Parents . . .

Before you get this you will know how immense the butcher's bill has been . . . nearly every Regimental officer I knew or cared for is dead or wounded.

I have made up my mind to stay on the staff if possible till the end of the campaign & then if I am alive, I shall resign. I have felt for sometime that I didn't any longer believe in this being a duty & so I mean to leave at the end of the campaign as I said if I'm not killed before.

The duties & thoughts of the field are of such a nature that one cannot at the same time keep home, parents and such thoughts as they suggest in his mind at the same time as a reality. Can hardly indeed remember their existence—and this too just after the intense yearning which immediately precedes a campaign. Still your letters are the one pleasure & you know my love.

Your Aff. Son
O.W.H.Jr.

Riding all day. All night. No sleep, no food. Fights here, skirmishes there, withdrawals. The ground stinks of dead men and horses. Back at HQ, brandy, hard tack and guava to revive him. Manoeuvring. Struggling. Marauding. Artillery. Lines established, broken. Riding. A quiet day. More riding. An important dispatch—don't spare the horse! Must get through! Rebs in line ahead. "Halt! Surrender!" Spurs to horse, much shooting, and met by a reb unslinging his carbine, he puts pistol to his breast & pulls trigger. Misfire. A whole line of rebs firing. Lying alongside of horse, Comanche fashion, he makes a run for it. Makes it, and returns to HQ having been given up for lost. May 30th. He writes home about it, but even now, so heroic, there's no disguising the fact: he's had it. He will waive promotion in the 20th. "I am convinced from my late experience that if I can stand the wear & tear (body & mind) of regimental duty that it is a greater strain on both than I am called on to endure. . . . I am not the same man (may not have quite the same ideas) & certainly am not so elastic as I was and *I will not acknowledge the same claims upon me under those circumstances that existed formerly.*"

More of the same. Very hard day. On the line. Nasty night. Dust horrible. No breakfast, nearly dropping from his saddle with fatigue. Losses. Attacks ordered. At the front. Sharpshooters. Rain. Dodging bullets. Letters from home. Early June. Heat and dust. His nerves are edgy. Someone from home has raised a question about his intention to leave service. He claims he is not demoralized. "I started in this thing a boy. I am now a man and I have been coming to the conclusion for the last six months that my duty has changed." It is,

of course, almost six months to the day from the view of Fredericksburg. He admits that his doubts demoralize him as it does any nervous man. He can face danger coolly enough when he *knows* it's a duty. But now . . . ? He will waive promotion and leave the service. He wants to end the argument. He has decided. "The ostensible and sufficient reason is my honest belief that I cannot now endure the labors and hardships of the line." Riding horse (a little above things) is bad enough, but back in the line—never.

More riding. Sketches of the front. Severe shelling. He gets tight on rum. Little sleep. Hot and nasty days. Picket lines. "I think there is a kind of heroism in the endurance (Interrupted . . .) in the endurance I was going to say of the men. I tell you many a man has gone crazy since this campaign begun from the terrible pressure on mind & body." He hopes for success in the campaign by end of summer—"but at what a cost and by & by the sickness will begin. I hope to pull through but don't know yet." More riding. Pickets. Very dusty. Very hot. And then on July 8th, the final letter home:

H.Q. 6th C.
July 8th 1864

Dear Mammy

Prepare for a startler—Unless something unexpected happens I shall probably leave this army for home about the 17th! The Regt. ceases to exist as a Regt and the few old men not reenlisted leave for home to be mustered out—

The rest of the Regt^t continues as a battalion of 6 or 7 Co^s and I of course shall not go in for 3 yrs more as Capt. of Inft^y having given up promotion for the sake of leaving the line—I might, to be sure, stay longer if I were one of the 3 aides allowed the Gen^{ls} by law but as I'm not and am liable to go back to the Regt if any change sh^d take place. I leave—if it should be necessary to go into the service again I should try for a commission from the Presdt but I shan't bother myself abt that for the pres^t

Do you think I could get a place for my nagur boy if I brought him with me? Answer this last by the next mail after getting this—

Yr loving OWH, Jr

It was time, at last, to leave Palestine. Why? The ostensible reason is certainly sufficient. May I also suggest another, for which Holmes's conception of "duty" in these late letters is the key. If he entered the war, as I suggested, committed to the abolition cause, he leaves the war only when that commitment is exhausted. Despite the recreations of the later Holmes that would have us read "The Soldier's Faith" of 1895 into the young captain's letters of 1864, he was *not* a man to fight for a cause he did not believe in. When he lost belief, finally, after long struggle, he pulled out. There was more crusade than self-testing in that sea of death than we are led to believe.

If in the end the Hallowell in him did not prevail, neither did the Abbott—not, at least, until some years later.

E. *The Untuned Lyre*

In two of his letters home before Ball's Bluff, Holmes asked his mother to hand around a poem of his to various friends. It is difficult to say whether the poem that was found among the cache of letters is that poem. Although it is about anguish and the search for release—"Lost and long-wandering at last I brake / From a deep forest's sullen-opening jaws"⁴⁵—thus leading one to conclude it was written later in the war, still it is so formal in tone and manner as to suggest that it is an early one. In any event, after Ball's Bluff there are no poems or reference to poetry in the letters. How much there was, and was suppressed later, it's hard to say. We do know that toward the end of the war the Class Poet with a bent for literature is moved sufficiently to write a memorial sonnet on the death of Henry Abbott:⁴⁶

H.L.A.

Twentieth Massachusetts Volunteers

He steered unquestioning nor turning back,
 Into the darkness and the unknown sea;
 He vanished in the starless night, and we
 Saw but the shining of his luminous wake.
 Thou sawest light, but ah, our sky seemed black,
 And all too hard the inscrutable decree.
 Yet, noble heart, full soon we follow thee,
 Lit by the deeds that flamed along thy track.
 Nay, art thou hid in darkness, shall we say,
 Or rather whisper with untrembling lips;
 We see thee not, yet trust thou art not far,
 But passing onward from this life's eclipse
 Hast vanished only as the morning star,
 Into the glory of the perfect day.

Even here are the echoes of Fredericksburg: "We see thee not, yet trust thou art not far."

Two days after arriving home, at a reunion of the class of '61, Holmes reads these verses:⁴⁷

How fought our brothers, and how died, the story
 You bid me tell, who shared with them the praise,
 Who sought with them the martyr's crown of glory,
 The bloody birthright of heroic days.

45. *Id.* at 6.

46. THE SHAPING YEARS 165. The poem was published anonymously in a Boston paper.

47. *Id.* at 175.

But, all untuned amid the din of battle,
 Not to our lyres the inspiring strains belong;
 The cannon's roar, the musket's deadly rattle
 Have drowned the music, and have stilled the song.

Let others celebrate our high endeavor
 When peace once more her starry flag shall fling
 Wide o'er the land our arms made free forever;
 We do in silence what the world shall sing.

"Untuned amid the din of battle." A memorial to himself almost, and certain feelings. He has, after three years in a sea of death, come back to face the same problem he had before: what shall he do? Could he tune-up that lyre? Or have the sources of feeling dried up? Is poetry or art *possible* after all this? Perhaps it's more than possible, it's *necessary*—at least if certain feelings are to survive. The next choice will tell.

IV. AFTERWORD

I have tried to trace some of the psychological sources of Holmes's life-style in his Civil War experience, especially in that traumatic concentration of emotion experienced at Fredericksburg. The deadening of sympathetic feelings, the Olympian aloofness, the spectator view, books to calm the nerves, the sentiment of honour, the belief in heroic action, the disbelief in causes—all these, by which he can somehow gain *distance* from the world, can be seen in him by the end of the war, if only in embryo.⁴⁸ *We couldn't see the men but we saw the battle*. The dissociation of sensibility which is, perhaps, more a Puritan inheritance than a personal "achievement," is already taking its peculiar shape.

That an early biographer should have been tempted to describe Holmes as an "uninjurably man"⁴⁹ is probably testimony less to his own lack of insight than to the grandeur of Holmes whose life-style could suppress even other people's reality. Holmes was, it seems to me, a profoundly injured spirit, and his greatness as a human

48. For some perceptive observations on Holmes as full-blown "spectator" in his later days, see Rogat, *Mr. Justice Holmes: The Judge as Spectator*, 31 U. CHI. L. REV. 213 (1964). The degree to which the "spectator" role was integral with Holmes's other personal characteristics may be observed in his "voyeurism"—he was an habitué of burlesque shows. For an early excellent piece, placing Holmes the man and Holmes the myth in perspective, see Hamilton, *On Dating Mr. Justice Holmes*, 9 U. CHI. L. REV. 1 (1941). The bookishness, the aloofness, the inflexibility, the quick unstudied judgments are noted, and Holmes is seen: "Aloof from it all, secure in income, position, interest, he gets the course of human events by hearsay—and carries on." *Id.* at 7. See also Hurst, Book Review, 9 J. LEGAL ED. 566, 568 (1957).

49. BENT, *JUSTICE OLIVER WENDELL HOLMES* (1932).

being can be justly viewed only in light of that fact.⁵⁰ And that fact will, as well, go far toward explaining the impact he made on other people, and the reverence done him, and the mythos his *person* seemed to create. He had been there and come back! We are all in awe of such spirits. What, *professionally*, his life meant was not enough to create this kind of response, although it probably supported it. This alone may account for a psychologically sophisticated observer like the late Judge Frank describing Holmes—in the face of obsessional characteristics which are by now apparent—as “the completely adult jurist.”⁵¹ But that story belongs to a later time, after other choices and other influences. That is, a time when the felt experience of the war is replaced by the whole defensive system—tough talk and sentimentality, general propositions and few facts—which began at Fredericksburg when the dead became indifferent to him and nothing much could affect his feelings. Of course, its life's revenge that the dead should pre-occupy men who are indifferent to it.

After other choices have been made, these strains which are observable by the end of the war will be changed or adjusted somewhat, or will take slightly different form, but the core around which they revolve seems to be fixed at Fredericksburg. This is not to make a moral judgment but rather to locate a man's world-view in the felt experiences of his life—and I might note here that one of the most marvelous features of the later Holmes, old censor that he was, was his ability to see himself more clearly than his admirers ever did, and to bring to consciousness the psychic wounds he bore. Here is Holmes writing to Pollock in 1919, in language resonant with the “belly” and “books” of Fredericksburg:

Brandeis the other day drove a harpoon into my midriff with reference to my summer occupations. He said you talk about improving your mind, you only exercise it on the subjects with which you are familiar. Why don't you try something new, study some domain of fact. Take up the textile industries in Massachusetts and after reading the reports sufficiently you can go to Lawrence and get a human notion of how it really is. I hate facts. I always say the chief end of man is to form general propositions—adding that no general proposition is worth a damn. Of course a general proposition is simply a string for the facts and I have little doubt that it would be good for my immortal soul to plunge into them, good also for the performance of my duties, but I shrink from the bore—or rather I hate

50. Edmund Wilson does just that in *Patriotic Gore*. It is his view that Holmes, together with a whole generation of Civil War soldiers, had become preoccupied with death, and yet, despite the bleakness of spirit and rigidity of view that kept him from responding to life, “managed to survive, to function as a first-rate intellect, to escape the democratic erosion.” WILSON, *op. cit. supra* note 18, at 782. See also *id.* at 621, 667-68, 765. But see my comments in note 18 *supra*.

51. FRANK, *LAW AND THE MODERN MIND* pt. 3, ch. II (1930).

to give up the chance to read this and that, that a gentleman should have read before he dies. I don't remember that I ever read Machiavelli's *Prince*—and I think of the Day of Judgment.⁵²

One final point which cannot go unnoticed is that of *guilt*. When Holmes, in one of his last letters home, spoke of the possible successful end of the war, he added—"but at what cost and by & by the sickness will begin." This reference to "cost" and "sickness" seems to be a nice way of describing the debits to be entered in that unconscious accounting system in which guilt is the currency. For success at arms, the butcher's bill is huge. For any success, the cost will be high. And to have survived? What do you pay for that? Do you thereafter make the choices which will be the most painful? Take the lines of *most* resistance, so as to pay for your success by the sacrifice of your impulsive life? The themes so observable in Holmes of "proving" himself, taking the "manly" course, may only be aspects of this larger theme of guilt. But these are questions which I hope to take up at another time, when I consider those other choices Holmes made: law as against art, the bench as against scholarship, the Supreme Court as against—well, by then, who can say what alternatives were open? He is sixty by then—one would think he had become pretty much what he had been; or, perhaps, having paid off his debts, he was free for a richer life.

52. II HOLMES-POLLOCK LETTERS 13-14 (Howe ed. 1961).