MENCKEN AND HOLMES

Henry Louis Mencken (1880-1956) has been called the master craftsman of daily journalism (by Alistair Cooke), the most influential American of his generation (by Walter Lippmann), and the best American essayist (by Robert Frost). Son of a prosperous businessman of German stock, he became a journalist, a newspaper editor at 25, a columnist, co-editor with George Jean Nathan of the *Smart Set* (1914-23), and co-founder and editor of the *American Mercury* (1924-33). That would have been more than enough for most men, but Mencken also wrote many books, including a volume of verse (1903), a critical study, *George Bernard Shaw: His Plays* (1905), *The Philosophy of Friedrich Nietzsche* (1908), six collections of his essays, *Prejudices* (1919-27), three volumes of mellow reminiscences (*Happy Days*, 1940; *Newspaper Days*, 1941; *Heathen Days*, 1943), and *A Book of Burlesques* (1916). His most scholarly work was *The American Language*, a massive compilation and study of American idioms.

Mencken is remembered chiefly as a mordant satirist of the "booboisie." Baltimore born and bred, he became famous by castigating Rotarians, as well as the "yokels" who were William Jennings Bryan's flock. He mocked their primitive religion, their cultural sterility, and their moral obsessions.

Like anyone who writes for deadlines, Mencken banged out plenty of mediocre pieces. Some of his wisecracks fell flat. Many others were only fair: "A judge is a law student who marks his own exams." He was a better critic of culture and character than of political programs. Early in his newspaper career Mencken learned that he was in the entertainment business. That realization did wonders for his style, sometimes at the expense of his substance. He could write straightforward musical or literary criticism, and it was first class. But he came to prefer extravagant social commentary. He revelled in the "carnival of buncombe" that is democratic politics. And why not? From this comic genius, with his sure eye for fraud and imbecility, sober prescriptions would have been a waste of talent. At the top of his form he was superb—amusing even when unjust, insightful even when exaggerated.

A good appraiser of his own work, Mencken assembled, in *A Mencken Chrestomathy*, hundreds of sparkling passages about

everything from "The Feminine Mind" (supremely realistic, he believed) to "The Author at Work," "Dempsey vs. Carpentier," Emerson ("The Moonstruck Pastor"), the great composers, booze, Teddy Roosevelt, Thorstein Veblen, and Justice Holmes.

Despite obvious differences, Mencken resembled Holmes in many ways. Born in comfort, they both went straight to the top, and by the 1920's shared the national limelight. They were sages who avoided platitudes, or at least managed to express them more freshly than anyone else. They were skeptics who respected science and scoffed at metaphysics. Holmes didn't think that Hegel had made "a syllogism wag its tail," and neither did Mencken. Neither of them thought that Jesus preached a sensible ethic; they disavowed altruism. Holmes said that every achievement is a bird on the wing: if you are thinking about yourself, or about mankind, you'll miss your shot. Mencken agreed:

> The value the world sets upon motives is often grossly unjust and inaccurate. Consider, for example, two of them: mere insatiable curiosity and the desire to do good. The latter is put high above the former, and yet it is the former that moves one of the most useful men the human race has yet produced: the scientific investigator. What actually urges him on is not some brummagem idea of Service, but a boundless, almost pathological thirst to penetrate the unknown, to uncover the secret, to find out what has not been found out before. His prototype is not the liberator releasing slaves, the good Samaritan lifting up the fallen, but a dog sniffing tremendously at an infinite series of rat-holes.

Both men liked a well-turned ankle, a horselaugh at life, privacy, and good manners. They found gaiety in an inscrutable universe. Each in his own way was a great stylist; Holmes austerely beautiful like Cape Ann, Mencken spicier and more luxuriant, like the South. Both wrote with directness and pungency, and both were often willing to leave the details to others. Yet they were exceedingly erudite, keen scholars who earned the right to be contemptuous of wooden pedagogues, and who were secure enough to say some shocking things, as when Holmes confessed to Laski that he saw little justification for free speech except agnosticism.

They liked capitalist economics but not capitalist culture. (Holmes, more judicious, respected the captains of industry, but his friends were aristocrats, old and new.) Like others in the age of the trusts, Holmes and Mencken yearned for the feudal virtues that had ennobled young America. To begin: a sense of heritage. They had distinguished ancestors and were naturally proud of it. Holmes was an American blueblood; Mencken derided democracy and praised aristocracy. Neither of them ever wandered far from his native ground. For Mencken it was neighborly Baltimore, and his pals in the Saturday Night Club; for Holmes, Yankee Boston and (during

his Washington exile) the Yankee coast in summer. Neither of them respected the flabby, commercial culture that was ruining their America.

What irked them most was the soul of Democratic Man. Mencken often explained that the qualities he admired were ones common men—rich or poor—conspicuously lack: self-assurance, serene detachment, tolerance of eccentricity, "a steady freedom from moral indignation," learning, traditions, public spirit, a sense of honor, and courage. This was a pretty good description of Holmes, and of Harlan II, the aristocratic Justice-to-be whose judicial detachment resembled Holmes's.

To praise a bygone aristocracy so lavishly was to reject the claims of pretenders to its throne. The plutocracy, said Mencken, is not fit to rule. It lacks all the aristocratic virtues, especially courage: "Half a dozen gabby Jewish youths, meeting in a back room to plan a revolution—in other words, half a dozen kittens preparing to upset the Matterhorn—are enough to scare it half to death." If he read that passage, the author of the *Gitlow* dissent must have chuckled.

Mencken's ideas, while radically opposed to the strain of progressive thought that emphasized social justice, were similar to the strain that wanted cultural improvement and government by an elite class of dispassionate men. Like Mencken, the progressives sometimes gasped at democratic culture. Walter Lippmann described the Republican convention of 1916 in language that sounds like Mencken on an off day. "To look at it and think of what needs to be done to civilize this nation was to be chilled with despair." It was "a nightmare, a witches' dance of idiocy and adult hypocrisy." The details of governance, Lippmann noted, must be left to "specially trained men." With Felix Frankfurter and many other progressives, he wanted an aristocracy of experts. H.G. Wells put the idea most grandiloquently, calling for "intellectual samurai" to run society wisely.

To this suggestion, one can imagine Mencken answering "samurai yes, intellectuals no." He revered men like Conrad and Twain, but for intellectuals as a class he had no great respect. Too many of them were "schoolmarms, male and female." Worse, the intellectual masses offended his libertarian sensibilities. Like Holmes, he was skeptical of social experts, because he loathed their "uplifter" morality—to him, they were pests, cousins of Comstock. In *Newspaper Days*, he recalled a time when the cop on the corner was the only expert:

> In those days that pestilence of Service which torments the American people

today was just getting under way, and many of the multifarious duties now carried out by social workers, statisticians, truant officers, visiting nurses, psychologists, and the vast rabble of inspectors, smellers, spies and bogus experts of a hundred different faculties either fell to the police or were not discharged at all.

So much for the intellectual samurai. Even in private, Holmes's comments on democracy and aristocracy were more guarded than Mencken's. He was careful, not to repress his emotions, but to label them as such, eschewing the feigned omniscience that was a Mencken trademark. Holmes was nagged, more persistently than Mencken, by a hunch that the gods smile at all of our creeds. Even so, his feelings were intense, and they resembled Mencken's. As he wrote to Laski, in 1916,

There are some advantages, *non obstant* all the drawbacks so keenly realized today, in having gentlemen at the top. You can't get the last curl to the moustache any other way, so far as heard from. And oh how I should like to see our people more intent on doing their job than on pointing out grievances—and oh how little I care for the upward and onward trend. I must say "trend" that the little *banalité* of the word correspond to the fact, of our legislation to make other people better, with teetotalism and white slave laws that make felons of young men (unless our court decides they don't) for crossing a state line with a girl, and that manifest the sacredness of Woman. I think I must be an old Fogey and proud of the title.

In their private lives, Mencken and Holmes were not devoid of compassion. But they had a crusty, Federalist disdain for levelers, a visceral conviction that however much one may tinker with the rules the serfs will always be serfs. In public life, they wanted dignity, honor, and competence. In a word, integrity. Mencken never tired of contrasting the pliant demagogues of his time with the old breed of squires. He admired the patrician masculinity of George Washington, and the frankness and courage of Grover Cleveland—"the last Roman."

The Roman qualities that Mencken saw in Washington and Cleveland bore some resemblance to what Holmes saw in faithful soldiers, and what both of them saw in every true craftsman: nature's sergeants, who do their task without constant calculations of material advantage or popular approval.[1] Not hustling salesmen,

1. Holmes's "soldier's faith" echoed some lines in *The Men of Old*, a poem by Richard Monckton Milnes (Lord Houghton), who died ten years before Holmes's famous speech. In the poem, the apparent militarism of Holmes is absent, and the feudal romanticism is more palpable, especially in these stanzas:

With rights, tho' not too closely scann'd
  Enjoyed as far as known;
With will by no reverse unmann'd,
  With pulse of even tone,
They from to-day and from to-night
  Expected nothing more
Than yesterday and yesternight

whining socialists, excitable quacks, and lying politicians.

It would be easy, and not wholly unjust, to dismiss all this as Tory nostalgia, suitable only for the fantasies of well-fed gentlemen. But that sort of criticism would miss the main point: in modern America, a code of honor is even more alien to the country club than to the pool hall. Holmes, at least, never pretended otherwise; his heart didn't fool his head. That may be why he was so indifferent to politics, as was Mencken in a different way. Their complaint was cultural and spiritual, and they seem to have known that no law could cure it.

Which is not to say they were above emitting loud snorts at the passing scene. "Drool," an epithet that ought to be revived, was Holmes's favorite term for soft-headed political theorizing. By vocation and temperament, Mencken was an even louder snorter. Few remember it today, but he was a great champion of free speech. Unlike Holmes, he was thoroughly libertarian; to him, meddlesome patriots were as obnoxious as meddlesome socialists. He hated puritans; he hated government; he lived in an era when political and especially literary censorship were real problems; he was a third-generation German who ridiculed the war against the Kaiser and suffered from the accompanying Germanophobia; and he made his living by blasting sacred cows and encouraging realistic authors like Dreiser and Lewis. It was a perfect recipe for a first amendment absolutist.

Mencken celebrated the demise of one puritan taboo after another. By 1926, he knew that comstockery had lost the battle. Unfortunately for Comstock,

> there rose up, within the bounds of his own sect, a school of uplifters, to wit, the sex hygienists, who began to merchant quite contrary ideas. They believed that sin was often caused by ignorance—that many a virtuous girl was undone simply because she didn't know what her young man was doing. These uplifters held that unchastity was not the product of a congenital tendency to it in the female, but of the sinister enterprise of the male, flowing out of his superior knowledge and sophistication. So they set out to spread the enlightment. If all girls of sixteen, they argued not unplausibly, knew as much about the dreadful consequences of sin as the average police lieutenant or midwife, there would be no more seductions, and in accordance with that theory, they began printing books describing the discomforts of

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> Had proffer'd them before.
> To them was Life a simple art
> Of duties to be done,
> A game where each man took his part,
> A race where all must run;
> A battle whose great scheme and scope
> They little cared to know,
> Content as men-at-arms to cope
> Each with his fronting foe.

Milnes, *The Men of Old*, in THE OXFORD BOOK OF ENGLISH VERSE 1250-1918 at 834-36 (A. Quiller-Couch ed. 1949).

parturition and the terminal symptoms of . . . [syphilis]. These books they broadcast in numerous and immense editions. Comstock, of course, was bitterly against the scheme. He had no faith in the solemn warnings; he saw only the new and startling frankness, and he believed firmly that its one effect would be to "arouse a libidinous passion . . . in the mind of a modest woman." But he lost the battle, and, with it, the war. After the young had read the sex hygiene books they began to observe that what was set out in novels was very evasive, and that much of it was downright untrue. So they began to murmur, to snicker, to boo. One by one the old-time novelists went on the shelf. . . . Their sales dropped off; they began to be laughed at. In place of them rose a new school, and its aim was to Tell All. . . . When I began reviewing I used to send my review copies, after I had sweated through them, to the Y.M.C.A. By 1920 I was sending all discarded novels to a medical college.

Mencken's justification for free speech was, in a sense, the opposite of Holmes's marketplace of ideas. Following Nietzsche, Mencken stressed the irresistible charm of comforting illusions. He said that the truth always frightens the mob, who rush to suppress it.

The truth, to the overwhelming majority of mankind, is indistinguishable from a headache. After trying a few shots of it on his customers, the larval statesman concludes sadly that it must hurt them, and after that he taps a more humane keg, and in a little while the whole audience is singing "Glory, glory, hallelujah," and when the returns come in the candidate is on his way to the White House. . . .

For the habitual truth-teller and truth-seeker, indeed, the world has very little liking. He is always unpopular, and not infrequently his unpopularity is so excessive that it endangers his life. Run your eye back over the list of martyrs, lay and clerical: nine-tenths of them, you will find, stood accused of nothing worse than honest efforts to find out and announce the truth. . . . The men the American people admire most extravagantly are the most daring liars; the men they detest most violently are those who try to tell them the truth.

In May 1930, Holmes was still an American icon. In that month, the *American Mercury* published Mencken's review of *The Dissenting Opinions of Mr. Justice Holmes*, a collection arranged by Alfred Lief. The review was not attentive to fine legal distinctions. But it's a good example of the shrewdness of many of Mencken's characterizations. Unfazed by his subject's titanic reputation, he pointed out that Holmes's vivid epigrams provided little guidance to lower-court judges.

Mencken was particularly intrigued by the Justice's reputation as a defender of civil liberties. After mentioning Holmes's progovernment opinions in three Espionage Act cases (*Debs*, *Fox*, and *Moyer*), Mencken propounded a theory:

My suspicion is that the hopeful Liberals of the 20s, frantically eager to find at least one judge who was not violently and implacably against them, seized upon certain of Mr. Justice Holmes's opinions without examining the rest, and read into them an attitude that was actually as foreign to his ways of thinking as it was to those of Mr. Chief Justice Hughes. Finding him, now and then, defending eloquently a new and

> uplifting law which his colleagues proposed to strike off the books, they concluded that he was a sworn advocate of the rights of man. But all the while, if I do not misread his plain words, he was actually no more than an advocate of the rights of lawmakers. There, indeed, is the clue to his whole jurisprudence.

With this explanation, Mencken reconciled opinions like the *Lochner* dissent with the "reactionary opinions" that the liberals "so politely overlook": *Bartels v. Iowa* (a war-time case, involving the prohibition of foreign-language teaching); *Debs* and other Espionage Act cases; the Mann Act case; and the Volstead Act cases.

What was wrong with Holmes's logic? A modern Bill of Rights activist might applaud Mencken's answer. "The weak spot in his reasoning" was "his tacit assumption that the voice of the legislature was the voice of the people." In reality, "it is the creature, in the main, of pressure groups, and most of them, it must be manifest, are of dubious wisdom and even more dubious honesty." "The typical lawmaker of today is a man wholly devoid of principle—a mere counter in a grotesque and knavish game. If the right pressure could be applied to him he would be cheerfully in favor of polygamy, astrology or cannibalism." "It is the aim of the Bill of Rights, if it has any remaining aim at all, to curb such prehensile gentry." In 1985 one could fill a footlocker with articles and books that make essentially the same argument in tactful academic prose.

How should we think of Holmes? As a soldier, says Mencken, albeit one of extraordinary brains and eloquence.

> And let us think of him still further as a soldier whose natural distaste and contempt for civilians, and corollary yearning to heave them all into Hell, was cooled and eased by a stream of blood that once flowed through the Autocrat of the Breakfast Table—in brief, as a soldier beset by occasional doubts, hesitations, flashes of humor, bursts of affability, moments of sneaking pity.

It was on his occasional unsoldierly days that the Justice acquired his repute as a benefactor of mankind.

> The whole uproar, one gathers, seemed fundamentally foolish to him. Did he have any genuine belief in democracy? Apparently the answer must be no. [Neither did Mencken.] It amused him as a spectacle, [Mencken again] and there were times when he was in the mood to let that spectacle run on, and even to help it on, but there were other times when he was moved to haul it up with a sharp command. That, no doubt, is why his decisions show so wide a spread and so beautiful an inconsistency, baffling to those who would get him into a bottle. He could, on occasion, state the case for the widest freedom, whether of the individual citizen or of the representative lawmaker, with a magnificent clarity, but he could also on occasion give his vote to the most brutal sort of repression. It seems to me that the latter occasions were rather more numerous than the former. And it seems to me again, . . . that what moved him when he was disposed to be complacent was far less a positive love of liberty than an amiable and half contemptuous feeling that those who longed for it ought to get a horse-doctor's dose of it, and thereby suffer a really first-rate bellyache.

Holmes's votes in specific cases may or may not have been inconsistent. (In constitutional law, inconsistency is easy to allege but hard to prove.) Unquestionably, he felt ambivalent about civil liberties, as Mencken did not. But Mencken was also ambivalent, or perhaps unrealistic would be a better word. He wanted capitalism, and freedom of expression, but not the culture they produced; science and atheism, but medieval men. Devastatingly cynical about common men, he idealized aristocrats—a delightful inversion of American pieties, but equally simplistic.

In addition, there is a sociological sense in which Mencken as well as Holmes was "inconsistent." They were reactionaries, and yet their constituency was mainly on the moderate Left—professors like Frankfurter, authors like Dreiser, and students like the Harvard boys who celebrated Mencken's victory over the Boston censors. During his glory years, Mencken surmounted this inconsistency. His targets were Babbitts and puritans (fundamentalists, censors, prohibitionists). With minor adjustments here and there, such folk were and have remained the foes of educated progressives. Comstock is gone, but now we have Falwell. What Mencken said about the vulgar rich was as scathing as any liberal's indictment of, say, the Eisenhower cabinet. Yet Mencken dismissed reformers as fools and knaves.

Of course, a civilized Tory may defend civil liberties, even while deploring radicalism. Holmes and especially Mencken exemplified that aristocratic, European kind of conservatism. Both men were too cynical and independent for any conventional faction. The herd (as they might have said) is timorous and credulous; they were neither. It should not be surprising, then, that they do not fit neatly within either the "liberal" or the "conservative" category. These categories are shorthand descriptions of patterns of belief, combinations determined less by logical necessity than by interest and ideology.

Nevertheless, a sage needs a constituency. Neither Holmes nor Mencken had a large, durable following. In part, this was because every thinker eventually comes to seem irrelevant. But it was also because they were hostile to the idea of a kindly state; economic conservatives can never be more than summer guests in the liberal mansion. Mencken's summer was the twenties. After the Great Crash, his illiberalism became all too apparent. Prohibition was soon gone, and literary freedom had become a secondary issue. The old humor was missing, because hungry yokels aren't funny. His readers now wanted a different kind of social critic—more earnest, more conspicuously compassionate, and more hopeful that the New

Deal would work. To the Left, he was exposed as a cranky reactionary; to the Right, he remained the bumptious village atheist. As a result, his popularity quickly faded.

A generation or two later, a similar fate befell Holmes. Like most old books, *The Common Law* became boring. Lawyers no longer needed to be told that law is policy. Apart from some aging New Dealers, and a few law professors, liberals abandoned the idea of judicial restraint. It became a conservative slogan. But the conservatives never really adopted Holmes. He was utterly unlike the largely religious militant Right; he left no specifically conservative legacy; and even the bookish conservatives chose other masters.

History's verdict is rarely unanimous and never final. But it seems unlikely that Holmes or Mencken will ever again be a campus hero. Does that matter? Those who cherish Holmes's letters will not concede that his stature depends on political or jurisprudential fashions. Mencken is too irreverent for most of us. But in every generation a lucky few will discover that he had more to offer than gibes at hillbillies.

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