

## THE DEVIL'S CASEBOOK

*The Cynic's Lexicon*, published by St. Martin's Press in 1984, is a fine anthology of sardonic aphorisms. What has it got to do with constitutional law? Nothing at all, which is worth pondering. Off-hand, one might suppose that a cynic in constitutional law would be like the proverbial child in a candy store. In fact, however, only the most pious of thinkers are attracted to this field. Of course, law in general is heavy stuff. One occasionally encounters a cute judicial opinion—in verse, for instance—but it is always in bad taste. For a sampler of more respectable judicial styles, I recommend *The Marble Palace*, John Frank's superb book on the Supreme Court. It has an amusing chapter with several specimens of judicial prose, including "Legal Massive" (Stone), "Rock Bottom Contemporary" (Vinson), and "Legal Lucid" (Holmes, Douglas). My favorite is Justice Shiras's style, "Legal Lumpy":

It is argued that, even if this Court will not take notice of the contents of the petition for a rehearing, in which the protection of the Constitution of the United States was in terms invoked, yet that, as well by the recitals in the opinion as by the said averments in the answers of the railway company and of Hovck, it affirmatively appears that the federal questions were raised, and that no formal objection or exception to the action of the Court in striking out those averments was necessary. We do not think it necessary to narrowly inquire whether the record formally discloses that the respondents relied upon and pleaded rights under the Constitution of the United States, because we are of opinion that, even if it be conceded that the respondents did, in form, invoke the provisions of the Federal Constitution, yet no Federal question was really raised.

One could compose an even funnier chapter on scholarly writing. Some similarities between the legal and the scholarly styles would be apparent. Both have a certain ponderous sobriety, exemplified by the standard eighty-page law review article. If a law professor advocates slitting the throats of the bourgeoisie, you may be sure his argument will be anchored with 550 carefully-checked footnotes.

By *Strunk and White's* standards, our writing is mediocre—prolix, abstract, and dull. If you like, blame it on our genes: on one side, we are descended from the man who wrote the first deed; on the other from the author of the definitive study of fresh-water mollusks. Seriously, though, one wonders whether the criticisms of legal writing—now becoming fashionable—are wholly realistic. "Any lawyer who writes so clearly as to be intelligible," said H. L.

Mencken, “is an enemy to his profession.” That’s an exaggeration, perhaps, but there’s no doubt that experts on style tend to overlook the sociology of expository writing. They forget that advice about how to write, like advice about how to dress, should vary with the occasion. The most important variable is the readers’ purpose. Our readers aren’t sipping martinis in deck chairs. Few read us except in the course of professional duty; so we needn’t be pleasant to read. (Those who want pleasant reading don’t make it through Civil Procedure.) It suffices that we can be understood by our fellow specialists. What they want is information.

Gravity and prolixity are the hallmarks of our style. This is probably inevitable, given the importance of thoroughness and accuracy in legal and academic endeavors. To paraphrase the cliché about legal ethics, we need both thoroughness and the appearance of thoroughness. Of the two, appearance is sometimes more important. That’s one reason why the cardinal sin of a law review editor is not a foolish idea but an error in citation form.

Clever sayings are fine for creative, literary people—entertainers aren’t supposed to be dignified, or to be right about anything practical. But one-liners are usually as inappropriate for law professors as for doctors, morticians, and engineers. They often aren’t strictly relevant to a legal issue. Some have no practical purport at all, or a highly inexact one. They often exaggerate for effect, and their charm would be spoiled by qualifications.

Yet there is something to be said for a lighter touch now and then, even in the teaching of constitutional law. Richard Babcock’s *The Zoning Game* is wonderfully cynical and breezy, yet it is one of the best books on American law; neither its style nor its substance has the moldy quality that we expect from academic lawyers—no doubt partly because he isn’t an academic lawyer. Holmes is a more familiar example; he proved that even an epigram may be solemn enough for legal occasions. Of course, his epigrams were no substitute for scholarship, and a good case can be made that they were unhelpful to the practicing bar. (The second Justice Harlan was a better model for judges.) Holmes’s sayings are now neglected, probably because today they seem trite or false—the fate of most old wisdom. But they expressed the jurisprudence of their time, more memorably than any plodding discussion.

A few law professors have tried to do the same thing. Edward (“Bull”) Warren at Harvard had some vivid summaries of property law: a fixture, he told his classes, is “realty with the taint of a chattel past and the fear of a chattel future.” Outside the academy, one can easily find more daring illustrations. “Violence,” observed a

British radical, "is the way of ensuring a hearing for moderation." As a legal argument, that would be worse than useless; it would imply that politically-motivated crimes should go unpunished. But as a sociological assertion, it is sometimes true, and pertinent to several constitutional cases.

We could multiply examples, but this is one of those topics where earnest arguments are out of place. Truth to tell, the best aphorisms are the garlicky, cynical ones. If you like garlic, you don't care whether it improves your circulation.

You do worry, however, about giving offense, and there's the rub. Of brevity, we can find scattered examples in the literature of the law. Of levity there is even less, and of cynicism still less. Cynicism is taboo. Sinclair Lewis's character, Professor Max Gottlieb, was

hated by his colleagues, who were respectful to his face, uncomfortable in feeling his ironic power, but privily joyous to call him Mephisto, Diabolist, Killjoy, Pessimist, Destructive Critic, Flippant Cynic, Scientific Bounder Lacking in Dignity and Seriousness, Intellectual Snob, Pacifist, Anarchist, Atheist, Jew.

Once they described Gottlieb as a cynic, most of his colleagues' other accusations were merely colorful redundancies.

Henry Stimson called cynicism "the only deadly sin." Even Mark Twain saved his most cynical thoughts—and they were bleak indeed—for posthumous publication. Holmes, who could get away with a degree of stylistic and substantive daring, was careful to say that he intended no cynicism by his reference to the bad man's perspective. And he was one of the most cynical of our famous legal thinkers.

Or was he? "Cynical" is a tricky word to define, although in context its meaning is usually clear enough. For some reason, the subject doesn't appeal to scholars; I can't find a single book about cynicism in the University of Minnesota library, except works on the ancient Greeks.

Cynicism was originally a school of philosophy, if anything so disorganized can be called a school, lasting from the fourth century B.C. to the sixth century A.D. Cynical doctrines are traceable to Antisthenes, a disciple of Socrates, about twenty years older than Plato. Bertrand Russell, in his *History of Western Philosophy*, says that Antisthenes lived in the aristocratic circle of his fellow disciples, showing no signs of unorthodoxy until after the death of Socrates. "But something—whether the defeat of Athens, or the death of Socrates, or a distaste for philosophic quibbling—caused him, when no longer young, to despise the things that he had formerly valued." He did not become cynical in any worldly sense. On the

contrary, he was “rather like Tolstoy,” and “would have nothing but simple goodness.” Dressing like a worker, associating with workers, preaching in the open air, he described all refined philosophy as worthless, claiming that “what could be known, could be known by the plain man.” He believed in a return to nature, advocating abolition of government, private property, marriage, and established religion. “His followers, if not he himself, condemned slavery.” Although not exactly ascetic, Antisthenes “despised luxury and all pursuit of artificial pleasures of the senses.”

Diogenes, a disciple of Antisthenes, became more famous than his master, and has always been regarded as the arch-Cynic. “He decided to live like a dog, and was therefore called a ‘cynic,’ which means ‘canine.’” Like Antisthenes, he was an idealist who “sought virtue and moral freedom in liberation from desire: be indifferent to the goods that fortune has to bestow, and you will be emancipated from fear.” Legend has it that Diogenes lived in a tub, “but Gilbert Murray assures us that this is a mistake: it was a large pitcher, of the sort used in primitive times for burials.” In any event, Diogenes was not foppish.

Classical Cynics like Diogenes were not cynical in our senses of the word. Yet there is some similarity, since Diogenes “rejected all conventions—whether of religion, of manners, of dress, of housing, of food, or of decency.” Accordingly, Russell criticizes classical Cynics in much the same way that he and others have criticized modern cynicism:

[Diogenes’s] doctrine, though he was a contemporary of Aristotle, belongs in its temper to the Hellenistic age. Aristotle is the last Greek philosopher who faces the world cheerfully; after him, all have, in one form or another, a philosophy of retreat. The world is bad; let us learn to be independent of it. External goods are precarious; they are the gift of fortune, not the reward of our own efforts. Only subjective goods—virtue, or contentment through resignation—are secure, and these alone, therefore, will be valued by the wise man. Diogenes personally was a man full of vigour, but his doctrine, like all those of the Hellenistic age, was one to appeal to weary men, in whom disappointment had destroyed natural zest. And it was certainly not a doctrine calculated to promote art or science or statesmanship, or any useful activity except one of protest against powerful evil.

Cynicism’s themes—the world as Vanity Fair, rejection of all conventional values, and reversion to a simple life—recur at several stages of Western civilization. “Vanity of Vanities, saith the preacher, all is Vanity.” The author of Ecclesiastes was, like the Greek Cynics, a product of the Hellenistic age. But it takes only one bright color to change the picture. For instance, what about Jesus? He was, after all, an itinerant rabbi who forsook carpentry, denounced the rich and respectable—“woe unto you, lawyers!”—and said that “that which is highly esteemed among men is abomi-

nation in the sight of God." Did Norman Vincent Peale and Mary Baker Eddy worship a Cynic? Of course, not even atheists call Jesus cynical, for he preached human redemption. But so did Diogenes, in his way, and Jesus seems to have resembled Diogenes more closely than he did Henry Stimson.

In America, Thoreau was Diogenes's spiritual descendant; an early reviewer of *Walden* called him "the Yankee Diogenes." In 1986, we would not take seriously the fear that Thoreau's doctrines encourage apathy among the young, any more than we would expect our children, after reading the Bible, to sell their stereos and give to the poor. Indeed, the average corporate executive would be amazed and delighted to find that his teen-age son had picked up a copy of *Walden*. It would be interpreted as a sign that perhaps the sluggard will make something of his life after all.

Strange word, cynicism. It now embraces Diogenes, H.L. Mencken, and the Grand Inquisitor. The concept has become so elastic that one wonders who is *not* in any sense a cynic. My thesaurus lists three sets of antonyms for cynical: philanthropic, humanitarian; hopeful, optimistic; credulous, ingenuous. Who embodied these? Isadora Duncan, surely:

Art is not necessary at all. All that is necessary to make this world a better place to live in is to love as Christ loved, as Buddha loved . . . That was the most marvelous thing about Lenin: *he* really loved mankind. Others loved themselves, money, theories, power: Lenin loved his fellow men . . . Lenin was God, as Christ was God, because God is Love and Christ and Lenin were all love!

You will notice that she sounds cynical about art, as well as about the "others" who differed from Lenin. Let that pass. Doesn't this passage have the child-like innocence of Diogenes? Yet to us it seems the antithesis of cynicism.

Ever since Diogenes, cynicism and idealism have blended in fascinating combinations. In our time, the label "cynical" is often used to describe hard-bitten men who are in most respects the opposite of Diogenes, as in "the cynicism of Soviet officials." In this usage, there is a connotation of insincerity and amorality. But not necessarily of weariness and resignation. These cynics do not lack hustle; they lack ideals.

The cynical beliefs of ambitious people are private, because cynical talk would repel those whom they want to manipulate. They are too cynical to seem cynical. Politicians, for example, do not talk cynically in public, except sometimes about their opponents; one of the most cynical things they do is to court voters by talking idealistically. Of course, this is cynical only if dishonestly done; politicians, like salesmen and lawyers, often persuade them-

selves. Even when they are insincere, it may be a misuse of the word to describe them as cynical. Is a “Machiavellian” politician necessarily cynical? This is Sir Isaiah Berlin’s summary of Machiavelli’s most cynical-sounding ideas:

Men are not as they are described by those who idealise them—Christians or other Utopians—nor by those who want them to be widely different from what in fact they are and always have been and cannot help being. Men (at least his own countrymen for and about whom he was writing) seem to him for the most part to be ‘ungrateful, wanton, false and dissimulating, cowardly and greedy . . . arrogant and mean, their natural impulse is to be insolent when their affairs are prospering and abjectively servile when adversity hits them.’ They care little for liberty—the name means more to them than the reality—and they place it well below security, property or desire for revenge. . . . Men are easily corrupted, and difficult to cure. They respond both to fear and to love, to the cruel Hannibal and to the just and humane Scipio. If these emotions cannot be combined, fear is the more reliable: provided always that it does not turn to hate, which destroys the minimum of respect that subjects must retain for those who govern them. . . . In order to cure degenerate populations of their diseases . . . founders of new states or churches may be compelled to have recourse to ruthless measures, force and fraud, guile, cruelty, treachery, the slaughter of the innocent, surgical measures that are needed to restore a decayed body to a condition of health.

Yet Berlin says that Machiavelli “was not cynical.” Why not? Because, “His patriotism, his republicanism, his commitment, are not in doubt.” Idealistic goals, in this account, are a defense to a charge of cynicism. Berlin presumably would disagree with an article in *The New Republic* that deplored “the cynical constituency-building of Jesse Jackson.” Like Machiavelli, Mr. Jackson is entitled to tactical insincerity in the service of an ideal—say, improvement of the lot of the poor. Or does Machiavelli get off the hook because he was a writer, describing how politicians succeed, rather than a practitioner? If that is the defense, it shouldn’t matter whether he had ideals. Anyhow, if Berlin’s usage is correct, then very few politicians are demonstrably cynical, even if they are often insincere. Since “the devil himself knoweth not the mind of man” the cynics among us become as ghostly as the spy in a LeCarré novel that never ends.

Bertrand Russell deplored “cynicism such as one finds frequently among the most highly educated men and women of the West.” Yet *A Cynic’s Lexicon* has fourteen entries under his name. For instance: “Man is a credulous animal and must believe something. In the absence of good grounds for belief, he will be satisfied with bad ones.” “The fact that an opinion has been widely held is no evidence whatsoever that it is not utterly absurd. Indeed, in view of the silliness of the majority of mankind, a widespread belief is more likely to be foolish than sensible.” “It seems to be the fate of idealists to obtain what they have struggled for in a form which

destroys their ideals." "The infliction of cruelty with a good conscience is a delight to moralists—that is why they invented hell." If these aren't cynicism, what is? The answer, no doubt, is that Russell equated cynicism with apathy and lack of ideals, sins of which he was not guilty.

Oscar Wilde knew that a cynic "knows the price of everything and the value of nothing." But he was an elegant cynic, with fifty-eight entries in the *Lexicon*—more than anyone else. Including: "A man who moralizes is usually a hypocrite and a woman who moralizes is invariably plain." "One should always be in love. That is the reason why one should never marry." "I never came across anyone in whom the moral sense was dominant who was not heartless, cruel, vindictive, log-stupid and entirely lacking in the smallest sense of humanity." "It is absurd to divide people into good and bad. People are either charming or tedious." "The public have an insatiable curiosity to know everything. Except what is worth knowing." Does Wilde's contribution to literature absolve him of Russell's charge against cynics? If so, then what famous cynic is guilty?

Justice Holmes, while disclaiming cynicism, enjoyed Mencken, and asked lawyers to wash their ideas "in cynical acid." Mencken himself, a cynic and proud of it, criticized the "democratic" tendency to impugn an adversary's motives. In other words, he criticized a type of cynicism of which he was a master. What is it about cynicism that confuses us so?

Let's try to define the term. My unabridged edition of *The Random House Dictionary* defines a cynic as "a person who believes that only selfishness motivates human actions and who disbelieves in or minimizes selfless acts or disinterested points of view." That is the core idea, but the definition is incomplete. For one thing, it ignores the pejorative connotation. A scholar may wish to discuss cynicism dispassionately, with no connotation of disapproval. But in everyday speech "cynical" usually denotes excess. Not only of doubts about human motives, but more loosely of other negative attitudes—unprincipled, pessimistic, misanthropic or skeptical. It complements "realistic," which means *appropriately* unprincipled, pessimistic, misanthropic, or skeptical.

It would not be cynical to say that Hitler, despite his protestations to the contrary, invaded Poland without provocation. A comparable statement about Franklin Roosevelt (say, that he welcomed the attack on Pearl Harbor), though formally similar, would seem cynical, because most listeners would strongly disagree. (But it might not be cynical if it were in a thick book, of which more anon.)

Since cynicism is excessive skepticism, men's ideas of the cynical have been as variable as their ideas of truth. Paris's common sense was Rome's cynicism. Max Gottlieb was "cynical" partly because he was a pacifist, an anarchist, and an atheist—in his circle, those were cynical beliefs. Medieval theologians praised heaven and described life on earth as miserable. Today, it is not cynical to disagree with them about heaven; but it is cynical to agree with them about life on earth. In the heyday of eugenics, it might have been cynical to say that "eugenics provided a scientific basis for class and racial bigotry"; but today such a sentence would be a yawning commonplace. Or consider the subject of war. The Duke of Wellington thought that "there are no manifestoes like cannon and musketry." He sounds cynical about peace. Abraham Lincoln, in one of his most fatuous utterances, claimed that "the ballot is stronger than the bullet." Was this cynicism about war? Von Moltke held that "war is a part of God's world order," in which "are developed the noblest virtues of man, courage and abnegation, dutifulness and self-sacrifice at the risk of life." Melville was more to our taste, declaring that "all wars are boyish, and are fought by boys, the champions and enthusiasts of the state." Among these four men, who were the cynics?

To be sure, "cynical" is occasionally used in a neutral or even approving sense, as in Holmes's reference to cynical acid. There is even a tiny handful of avowedly cynical authors such as Mencken and Bierce. They reject the usual pejorative connotation of the word. But even they fall far short of consistent cynicism. Unless you are morbidly depressed, or insane, you will have your enthusiasms and your faiths. Diogenes did. At the same time, unless you are a simpleton you will have some cynical ideas. William F. Buckley and John Kenneth Galbraith fairly reek with cynicism—about their political opponents. Yet neither is called a cynic. We are all selective cynics; a "cynic" is one who directs his cynicism at unconventional or unusually numerous targets. Cynicism is acceptable, a cynic might say, only if it is inconsistent.

Charles Beard's *Economic Interpretation* made Holmes angry: "notwithstanding the disavowal of personal innuendo, it encouraged and I suspect was meant to encourage the notion that personal interests on the part of the prominent members of the Convention accounted for the attitude they took." Should Beard or Holmes or both be called cynical? (Another definitional issue: is it cynical to impute unconscious motives? If so, some of our best history is more or less cynical. Or does it depend on whether you are right?)



Holmes is a complicated case. More precisely, he exemplifies the inadequacy of labels. In a coldly intellectual sense, he was full of what Bertrand Russell called "cosmic despair." He doubted the ultimate validity of our most sacred ideas, wondering "if cosmically an idea is any more important than the bowels." But "despair" is precisely the wrong word for Holmes. To Lewis Einstein, he wrote that "One of my old formulas is to be an enthusiast in the front part of your heart and ironical at the back." To understand his thought, one must recall that he was not depressed by ideas that some find intolerably gloomy. He was not a professional philosopher, but we know that he was able to believe with his heart while doubting with his mind. His commitments, to craft and country, were more devout than those of most unskeptical men. "On the whole," he wrote to Lady Pollock, "I am on the side of the unregenerate who affirms the worth of life as an end in itself, as against the saints who deny it." By Bertrand Russell's criterion he was anything but cynical. Everyday cynicism often amounts to little more than hand-wringing, a habit of which Holmes was contemptuous. Pagan aristocrat that he was, he felt no need for approval by a cosmic parent, and did not feel betrayed or confused when he was unable to discover one. Yet Holmes strikes many readers as too positivist, and too committed to a pessimistic Spencerian and Malthusian social theory. To them, he was something of a cynic, despite his patriotism, his zest for work and life, and despite (or because of!) his belief in social redemption through eugenics. They might classify him as a cynic and Beard as an idealist—like Max Gottlieb.

The Legal Realists, at their worst, display the adolescent qualities of cynicism at its worst: pseudo-sophistication, lack of balance, a pretentious aversion to pretense, a naive, self-righteous kind of idealism. Nevertheless, if it comes to a vote, they must be acquitted of cynicism. They wrote books. For reasons that are not entirely clear, the label "cynical" is rarely applied to literature or formal thought. Journalism can be cynical, but not a doctoral dissertation. If it has the smell of the lamp, it isn't cynical. *Dover Beach*, *The Waste Land*, the *Rubaiyat*, and *A Shropshire Lad* look good on our shelves, next to Hardy, Hobbes, Voltaire, Samuel Johnson, and Shakespeare.

Without his pessimism, Shakespeare would have been a spiritual eunuch.

Out, out, brief candle!  
Life's but a walking shadow, a poor player,  
That struts and frets his hour upon the stage,  
And then is heard no more. It is a tale

Told by an idiot, full of sound and fury,  
Signifying nothing.

Nothing is more cynical and nothing is more beautiful. But we savor it at night, alone, or in a theater (alone, really), not at a luncheon for three on Monday. Perhaps the dramatic form buffers the depressing thought. We know that Shakespeare didn't necessarily agree with Macbeth. That doesn't seem to be the major explanation; one can find as many examples of "cynicism" in the works of the major social thinkers and philosophers as in fiction. Literature domesticates all wild ideas, from free love to bloody revolution to cynicism. In the Great Books, what ideas recur more often than that people are selfish and deluded, bad people prosper, and life is a mystery as well as a vale of tears? Call the roll, beginning with Lord Acton: "Great men are almost always bad men, even when they exercise influence and not authority . . ." Henry Adams: "Man is an imperceptible atom always trying to become one with God." Addison: "Men who cherish for women the highest respect are seldom popular with [them]." Aristophanes: "To plunder, to lie, to show your arse, are three essentials for climbing high." Aristotle: "The mass of mankind are evidently slavish in their tastes, preferring a life suitable to beasts." Raymond Aron: "What passes for optimism is most often the effect of an intellectual error." Augustine: "The greatest virtues are only splendid sins." The rest of the alphabet is for you to fill in.

Machiavelli seems to be the only great thinker who is perceived by many—*pace* Isaiah Berlin—as objectionably cynical. This may be because his "cynical" ideas are—at least in a vulgar form—clear enough to be grasped by ordinary folk. The message in *The Prince* comes through undiluted, as it does not in the case of other major thinkers. Turgid cynicism is an oxymoron.

Ideologues aren't thought of as cynical. We usually do not think of hedgehogs, who see One Big Sham, as cynics; only the foxes, who see many different shams, are so described. Bierce, a fox, wrote that philosophy is "a route of many roads leading from nowhere to nothing"; Lenin, a hedgehog, wrote that the "fundamental thesis of dialectics" is that "there is no such thing as abstract truth, truth is always concrete." Bierce was a cynic; Lenin wasn't. Radical feminists are sometimes described as crazy, but not as cynical. It is not customary to call Marx or Freud cynical. To some people, cynicism implies a touch of irony, deliberate exaggeration, and humor, or at least an epigrammatic style; Freud and Marx were too earnest, and too massive, to deserve the label. There is a kind of institutional cynicism in historical, sociological, psychologi-

cal and anthropological speculation that we take for granted and do not label cynical.

Similarly, philosophers are not thought of as cynics in the modern senses of the word. After he is done with the Greeks, Frederick Copleston hardly ever uses the term in his history of western philosophy. *The Encyclopedia of Philosophy* has none but Greeks under "cynicism." In philosophical garb, modern cynicism becomes positivism, or existentialism, and acquires respectability.

We find cynicism most offensive in casual, face-to-face conversation, especially about everyday life. Margaret Mead could, with impunity, describe love as "a cultural artifact," "the invention of a few high cultures," which we "periodically attempt" to make a requisite for marriage. But size up your companions before you repeat her ideas. The taboo against cynicism isn't designed to suppress error as such. Its purpose, rather, is to suppress unpleasantness, whether true, false or neither. It's largely a question of manners, like public nudity, or talking too much about death. The explanation may be that in daily conversation one is expected to be pleasant and constructive; cynicism (unless amusing or carefully selective) violates those rules. If you are about to be married, you don't want to be told that romantic love is an illusion. "Save that for a book," you might reply.

Like other questions of truth and manners, cynicism varies among social classes. The men in the trenches are more cynical than the officers at divisional headquarters. The middle-class is notoriously concerned about propriety and appearances, so it is averse to cynicism. What Diogenes, Mencken and the Grand Inquisitor had in common was hostility to middle-class values. But on school busing, a middle-class Boston mother—who might be shocked by other kinds of cynicism—is likely to have a cynical opinion of senators and Harvard professors. She is a victim, and victims make cynical observers.

Most of what we call cynicism arouses—in many listeners—despair or the fear of despair. Or it threatens to dissolve the social cement. But are the cynics themselves unhappy? Certainly some of them conform to the stereotype of an alienated, frustrated fellow. Ambrose Bierce settled his affairs, wrote goodbye to friends, and vanished into Pancho Villas's Mexico, never to be heard from again. Some speculate that Oscar Wilde's epigrams were related to his homosexuality, and indeed this is transparently true of several of the best ones. But not all cynics are bitter, as Mencken's happy, successful life (and Holmes's, if you count him) proves. Mencken

claimed that “no one is happier than a cynic except lazy dogs and fat bishops.”

As our readers know, *Constitutional Commentary* has a strict policy against irreverence. I have decided to make an exception to this policy. My purpose is to destroy cynicism by exposing it to view. For in a free and open contest, who can doubt that truth will prevail? It is my earnest hope that any incipient cynical tendencies among our readers will be quashed by a convincing demonstration that irreverence sheds no light on constitutional law. For this purpose, my model will be Ambrose Bierce’s famous *Devil’s Dictionary*. This is how a stalwart cynic like Bierce might have annotated a casebook of constitutional law.

Forgive me, Justice Shiras.

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*Personnel Administrator of Massachusetts v. Feeney*

Whatever women do they must do twice as well as men to be thought half as good. Luckily this is not difficult.

Charlotte Whitton  
1896-1975

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*Village of Arlington Heights v. Metropolitan Housing  
Development Corp.*

A racially integrated community is a chronological term timed from the entrance of the first black family to the exit of the last white family.

Saul Alinsky

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*Muller v. Oregon*

The function of the expert is not to be more right than other people, but to be wrong for more sophisticated reasons.

Dr. David Butler  
British Psephologist

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*Katzenbach v. Morgan*

The ratio of literacy to illiteracy is constant, but nowadays the illiterates can read.

Alberto Moravia  
1907- Italian Writer

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*Miami Herald Pub. Co. v. Tornillo*

Everything you read in the newspapers is absolutely true, except for that rare story of which you happen to have first-hand knowledge.

Erwin Knoll  
1931- American Editor

Freedom of the press is guaranteed to those who own one.

A.J. Liebling

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*Regents of the University of California v. Bakke*

A liberal is a person whose interests aren't at stake at the moment.

Willis Player  
1915- American Writer

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*United States v. Ballard*

If you talk to God, you are praying; if God talks to you, you have schizophrenia.

Thomas Szasz  
1920- American Psychoanalyst

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*Washington v. Davis*

He that has nothing but merit to support him is in a fair way to starve.

Anon., *Characters and Observations*, early 18th century

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*Cohen v. California*

We are all born charming, fresh and spontaneous and must be civilized before we are fit to participate in society.

Judith Martin  
American Etiquette Specialist

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*Korematsu v. United States*

You can't learn too soon that the most useful thing about a principle is that it can always be sacrificed to expediency.

W. Somerset Maugham

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*Wisconsin v. Yoder*

Education is an admirable thing, but it is well to remember from time to time that nothing that is worth knowing can be taught.

Oscar Wilde

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*Bills of Attainder Decisions*

I don't make jokes; I just watch the government and report the facts.

Will Rogers

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*New York Times Co. v. Sullivan*

I don't care what is written about me so long as it isn't true.

Katharine Hepburn

[I]n pollyticks th' worst men ar-re often libeled, so what can th' best exptic? It's a good thing, too, f'r it keeps sensitive an' thin skinned men out iv public life and dh rives thim into journalism.

Finley Peter Dunne

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*Abrams v. United States* (Holmes, J., dissenting)

The ideas that conquer the race most rapidly and arouse the wildest enthusiasm and are held most tenaciously are precisely the ideas that are most insane. This has been true since the first "advanced" gorilla put on underwear, cultivated a frown and began his first lecture tour. . . . The capacity for discerning the essential truth, in fact, is as rare among men as it is common among crows, bullfrogs and mackerel.

H.L. Mencken

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*Standing*

If you are sure you understand everything that is going on, you are hopelessly confused.

Walter Mondale

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*Epperson v. Arkansas*

The kind of man who demands that government enforce his ideas is always the kind whose ideas are idiotic.

H.L. Mencken

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*Freedom of Speech*

Freedom of speech in America is nearly absolute, except of course in the universities.

D. Powell  
1935- English Scholar

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*Equal Protection of the Law*

This home iv opporchunity where ivry man is th' equal iv ivery other man before th' law if he isn't careful.

Finley Peter Dunne

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*Miller v. California*

Love is the answer, but while you are waiting for the answer, sex raises some pretty good questions.

Woody Allen

What is neither hidden nor forbidden is seldom very charming.

H. L. Mencken

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*Schad v. Borough of Mount Ephraim*

The puritan hated bear-baiting, not because it gave pain to the bear, but because it gave pleasure to the spectators.

T.B. Macaulay

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*Children's Rights*

Happiness is an imaginary condition, formerly attributed by the living to the dead, now usually attributed by adults to children, and by children to adults.

Thomas Szasz

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*Any Judicial Opinion*

The average man's opinions are much less foolish than they would be if he thought for himself.

Bertrand Russell

Judge—A law student who marks his own examination papers.

H. L. Mencken

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*Euclid v. Ambler Realty Co.*

When Dr. Johnson defined patriotism as the last refuge of a scoundrel, he ignored the enormous possibilities of the word reform.

Senator Roscoe Conkling  
1829-1899



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*The Federalist*

A classic is something that everyone wants to have read and nobody wants to read.

Mark Twain

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*Dean Milk Co. v. City of Madison*

It is a sin to believe evil of others, but it is seldom a mistake.

H. L. Mencken

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*Fullilove v. Klutznick*

We'd all like a reputation for generosity, and we'd all like to buy it cheap.

Mignon McLaughlin  
American writer

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*Plessy v. Ferguson*

Practical politics consists in ignoring facts.

Henry Brooks Adams

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*Dennis v. United States*

The human race never solves any of its problems. It merely outlives them.

David Gerrold  
1944- American  
science fiction writer

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*Matters of Principle*

An Englishman does everything on principle: he fights you on patriotic principles; he robs you on business principles; he enslaves you on imperial principles.

George Bernard Shaw

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*Keyes v. School District No. 1*

Conservative, *n*: a statesman who is enamoured of existing evils, as distinguished from the liberal who wishes to replace them with others.

Ambrose Bierce

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*Buck v. Bell*

It is unfortunate, considering enthusiasm moves the world, that so few enthusiasts can be trusted to speak the truth.

Arthur James Balfour

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*Critical Legal Studies*

Your American Critical Legal Studies is idiocy—redeemed by turgidity.

D. Powell

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*Law and Economics*

See Critical Legal Studies.

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D.P.B.