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## Book Review of Justice Oliver Wendell Holmes: Law and the Inner Self, by Edward White.

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only mentioned incidentally in Louis R. Harlan's biographies of the Wizard. Nina Gomer, Du Bois's first wife, is a prominent figure in Lewis's text. Du Bois was a feminist but treated his wife poorly. He seems to have abandoned his wife and children for his research. The death of their first child, Burghardt, in 1899 constituted a major turning point in their relationship. Nina blamed Du Bois for their child's death. Writing about this incident a half-century later, Du Bois observed, "in a sense my wife died too. Never after that was she quite the same in her attitude toward life and the world" (p. 228). The birth of another child (Yolande) temporarily papered over the differences between Du Bois and his wife. The couple were sexually incompatible, and Du Bois filled this void in his life by having a number of extramarital affairs.

The last eight chapters of the biography are devoted to the Du Bois/Washington controversy and the organization of the NAACP. Lewis's discussion of the Du Bois/Washington disagreement builds on and breaks new ground in its analysis of the debate. Washington and Du Bois were initially allies but went down divergent paths over the issues of racial accommodation and industrial education. In exploring the difficulties between Du Bois and Washington, Lewis examines the attitudes and opinions of some of the prominent whites who supported Washington. This tactic provides a new angle for understanding the Du Bois/Washington rivalry for leadership of the "race" (p. 297). For William H. Baldwin Jr., Robert C. Ogden, and Theodore Roosevelt, Du Bois was a Negro who did not know his place. Baldwin's explanation of Du Bois and his peers was that their assertiveness was "purely an attempt on their part to be white people" (p. 241). Negroes, in short, were deluded if they thought whites would accept them as their equals. If a white man like Baldwin held such a low opinion of Du Bois and the Talented Tenth, what did he and others who supported the Wizard of Tuskegee really think of their protégé? Washington, in brief, does not come off well in this book. Washington's strategy of racial accommodation did not work and rested on a number of dubious assumptions, which became obvious as the twentieth century dawned.

Finally, this book makes it clear that after the turn of the century, Du Bois abandoned his naive faith that scientific investigation would solve the race problem. The organization of the NAACP in 1909 and Du Bois's assumption of the editorship of *The Crisis* in 1910 gave him a national platform to combat racism and other forms of social injustice in the United States. This volume concludes during the "Red Summer" of 1919, a period of unprecedented racial unrest and labor strife in the United States. Lewis has established a very high standard for himself in the first half of his biography of W. E. B. Du Bois, and the second volume will, I think, also be a tour de force.

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*Justice Oliver Wendell Holmes: Law and the Inner Self.* By G. Edward White. (New York and Oxford: Oxford University Press, 1993. Pp. xii, 628. \$37.50, ISBN 0-19-508182-X.)

The recent opening of Justice Oliver Wendell Holmes's private papers, delayed for decades in the interest of a never-finished "authorized" biography (p. 4), has spurred an outpouring of scholarship. In a highly competitive field,

G. Edward White's new biography stands in the first rank. Blending the wealth of prior scholarship with a sensitive reading of Holmes's personal papers, White has produced a sensitive and judicious interpretation of "the relationship between Holmes's personal and intellectual life" (p. 4).

Reflecting White's steady focus, the richness of his sources, and the textual orientation of much contemporary scholarship, the book scrutinizes the language of Holmes's writings and provides a series of incisive and broadly informed readings that probe the connections between Holmes's "inner self" and his development as both theorist and judge. It explores, for example, the nagging disquiet induced by the shadow of Holmes's famous literary father, the haunting unease that resulted from his decision in 1864 to leave the Union army before victory had been secured, his deeply felt, but nevertheless rigidly controlled, desire for companionship and intimacy, and the fervent but constricted "romance" (p. 107) he sustained for many years with Clare Castletown, a wealthy and landed Irish aristocrat. Above all, of course, it examines and continually returns to the towering ego, ambition, and selfishness that drove Holmes throughout his life.

The book's examination of Holmes's evolving jurisprudence is perceptive and well balanced, though its treatment of his judicial career, especially on the United States Supreme Court, is highly selective. This is not a criticism. Understandably, the multitude of issues Holmes faced and the variety of debates previous scholarship has provoked forced White rigorously to limit the doctrinal subjects he could discuss in depth. He chose, quite sensibly, to focus on two central areas where Holmes's jurisprudence was particularly important—economic regulation and free speech.

To consider the book's significance in a short review is to "pluck plums." White confirms the scholarly rejection of the idea that Holmes was a "great liberal" (p. 4), emphasizing, in particular, his hostility to civil rights claims in general and to the rights of blacks in particular. He traces the evolution of Holmes's thinking on First Amendment issues from an unconcerned acceptance of an extremely narrow common-law view in the years prior to World War I to a complex, emotional, and egotistical commitment to dramatically new and expansive ideas in the twenties. In this last phase, too, White shows that Holmes's First Amendment opinions were not only pathbreaking and inspiring but also confused, inconsistent, and disingenuous.

The book argues further that Holmes—even granted his undoubted brilliance—was less innovative in his thinking and more a creature of his age (or, more accurately, a creature of two or perhaps three ages) than has often been recognized. On one level, Holmes shared a great many of the attitudes and assumptions that marked his contemporaries, including Christopher Columbus Langdell. In a revealing section, for example, White shows that contemporary reviews portrayed *The Common Law* (1881) not as "alone in a jurisprudential wilderness but" rather "as a representative of 'modern' attitudes in the ascendancy" (p. 184). On another level, the nearly legendary reputation that glowed ever more brightly around Holmes after about 1910, and even some of his most influential jurisprudential ideas, grew in varying degrees from the designing efforts of others. A group of progressive intellectuals, including Zechariah Chafee Jr., Harold Laski, and, of course, Felix Frankfurter,

strove both to create and celebrate a politically useful image of Holmes and to help shape his substantive legal thinking as well.

Though White does not directly address the issue, his book also suggests a significant contribution to recent efforts to reconsider the allegedly formalistic and conceptual nature of late-nineteenth- and early-twentieth-century American legal—especially judicial—thought. Early on, of course, Holmes anchored his reputation as a theorist to the proposition that legal thinkers had overemphasized “logic” to the detriment of “experience” (p. 149). White shows that Holmes, though he shared many or most of the jurisprudential ideas of his contemporaries in the latter half of the nineteenth century, nevertheless went to great lengths to give “the misleading impression” (p. 152) that his scholarly work was highly original. This suggests one element of a much broader explanation for the subsequent acceptance of formalism and conceptualism as characterizations of a distinctive and time-specific type of legal thought. Holmes concocted a distorted image of his predecessors and contemporaries as a calculated method of spotlighting his own originality and heralding his own importance, and the utility that progressives subsequently saw in his labels, his ideas, his judicial position, and his dramatic potential as a public icon helped make those characterizations vibrant and persuasive. The long ascendancy of “progressive” (p. 327) interpretations of the period from Reconstruction to the New Deal enshrined both the specific catchwords and the general image.

Consider, for example, Langdell’s fate. In spite of his eventual success as an educator, Langdell as an archetypal formalist was hardly representative of judges or practitioners in the late nineteenth and early twentieth centuries, and it seems doubtful that he was representative of more than a minority of legal writers and law professors, even by the turn of the century. Indeed, to the limited extent that some of his more distinctive and abstract jurisprudential ideas (as distinguished from his general positivism, his commitment to craft values, his pedagogical use of the case method, and his acceptance of a rather traditional view of legal “science” [p. 197]) fairly support his widely proclaimed image as a formalist, those ideas had little, if any, impact on the assumptions, methods, and values of American judges and practitioners, and they had only a limited impact on American legal thought in general. Quite early on, however, in 1880, Holmes hastened to the attack, tarring Langdell unforgettably as “the greatest living [legal] theologian” (p. 197). Thereafter, Langdell’s reputation gradually bloated from academic reformer to eponymous jurist. It did so, however, not because of the intrinsic power or social impact of Langdell’s distinctively formalistic jurisprudential ideas but because of his enduring utility as a foil. While Langdell has served that function for more than a century, it was Holmes who first recognized and exploited his potential.

White has written a superb book, and these comments only hint at its range, depth, and suggestiveness. Among its other achievements, it should help stimulate a broad-gauged reconsideration of late-nineteenth- and early-twentieth-century legal thought that will challenge inherited categories, illuminate the period’s tangled complexities, and most likely spur revisions of many basic interpretations. The book will long stand as a lucid and engross-

ing examination of the complexities of Holmes's life and as a stimulating guide to scholars in a variety of fields.

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*The Masterless: Self and Society in Modern America.* By Wilfred M. McClay. (Chapel Hill and London: University of North Carolina Press, c. 1994. Pp. xiv, 366. Paper, \$16.95, ISBN 0-8078-4419-5; cloth, \$45.00, ISBN 0-8078-2117-9.)

In this engaging survey of intellectual life since the Civil War, Wilfred M. McClay portrays Americans tossing and turning in their dreams—on one side conjuring up visions of the liberal isolato striking westward, while on the other yearning to cast off narrow egotism and fall into the loving arms of the nation. *The Masterless* is both a history of these competing ideals of individualism and social cohesion in American thought and an astute analysis of a pervasive cultural ambivalence. McClay wants to understand a land where people demand rights and crave community, where they arm themselves with assault weapons while longing for a spread in the suburbs.

As the United States developed into a national, industrial society from the Civil War to the Progressive Era, McClay describes how Edward Bellamy, Lester Frank Ward, John Dewey, and other intellectuals hesitantly discarded antebellum individualism and cultivated in its place a vision of social consolidation. They voiced the social ideal in different idioms: as religious longings for redemptive union with God, as martial zeal during the Civil War for the unified discipline of a marching army, and, during the Progressive Era, as scientific dedication to the disinterested pursuit of truth. Nevertheless, McClay argues that these thinkers all shared a commitment to a society where individuals would sacrifice their own desires in favor of participation in the common good.

By the middle of the twentieth century, that utopia had turned sour. Faced with the terror of German fascism or writing in America under a looming monolith of bureaucratic corporations, mass culture, and big government, New York intellectuals and the Frankfurt school developed a critique of the ideal of social consolidation. McClay suggests that Reinhold Niebuhr, Hannah Arendt, David Riesman, and Norman Mailer, among others, forged a new individualism embodied in the figure of the alienated, critical, ironic intellectual.

Within this historical narrative, McClay develops a broad cultural critique. He argues that Americans, left lonely and isolated by individualism, consequently have always sought something larger than the self. Glancing around at the snarling confusion of other individuals, their only hope for social cohesion has seemed to lie in complete self-sacrifice before an authoritarian god or general or state. This chasm between the individual and the corporate has fostered a constant flip-flop in American thought as intellectuals since Emerson have swung between struggles for self-reliance and fantasies of dissolving into "a transparent eyeball" (p. 57). Taking his title and theme from D. H. Lawrence, McClay indicts the negative freedom demanded by "the masterless" and follows such writers as Robert N. Bellah and Christopher Lasch by calling for Americans to enter into local, intimate