

# ESSENTIAL CIVIL WAR CURRICULUM

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## Oliver Wendell Holmes, Jr.

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Oliver Wendell Holmes, Jr. may not have been one of the Civil War's most memorable soldiers, but he became perhaps its most famous veteran. Twenty years after he left the Union army, he delivered an address on Memorial Day to the Union veterans' organization, the Grand Army of the Republic (GAR), in New Hampshire and said: "Through our great good fortune, in our youth our hearts were touched with fire. It was given to us to learn at the outset that life is a profound and passionate thing."<sup>1</sup> By the time he delivered this address, Holmes was a judge on the Supreme Judicial Court of Massachusetts. Before another twenty years had passed, he would be an Associate Justice on the Supreme Court. But he never forgot the Civil War.

Holmes was just twenty years old, and a student at Harvard when the war broke out. He was keen to join up, even though he had not yet taken his final exams. And when Abraham Lincoln called for 75,000 troops, to be raised through the state militias, Holmes was quick to respond. Along with many of his fellow students, including Norwood Penrose (Pen) Hallowell, Henry Livermore Abbott, his brother William, James Jackson Lowell, William Lowell (Willie) Putnam and William Francis (Frank) Bartlett, he signed up for duty in the Boston unit of the Massachusetts Volunteer Militia, the New England Guards or Fourth Battalion. In the traumatic years that followed, some, such as Pen Hallowell, would achieve fame by becoming officers in the African American regiments raised after 1863, notably the 54<sup>th</sup> and 55<sup>th</sup> Massachusetts. Some, such as Frank Bartlett sustained horrific wounds in the course of the war; Bartlett lost a leg. Many, such as James Jackson Lowell, Willie Putnam, and Henry Abbott, would achieve fame by dying. Out of that particular band of brothers, Holmes was unusual. He survived largely unscathed, at least physically.

Although all these Harvard students were keen to join up to fight they were not all prompted to do so for the same reasons. The Pennsylvanian Pen Hallowell was a devoted abolitionist. So was Willie Putnam, for whom a "century of civil war [was] better than a day of slavery." Putnam prayed "that every river in this land of ours may run with blood,

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<sup>1</sup> Oliver Wendell Holmes, Jr., "Memorial Day Address, May 30 1884," in Richard A. Posner (ed.), *The Essential Holmes: Selections from the Letters, Speeches, Judicial Opinions, and Other Writings of Oliver Wendell Holmes, Jr.* (1992. Reprint. Chicago and London: The University of Chicago Press, 1996) 80-87.

and every city be laid in ashes rather than this war should come to an end without the utter destruction of every vestige of this curse so monstrous.” Bartlett was undecided in 1861. He wondered if fighting for the Union was “fighting rather against my principles, since I have stuck up for the South all along.” Holmes, at this point, was more on Hallowell’s side than Bartlett’s. He and Hallowell had both been involved in anti-slavery agitation in Massachusetts just before the war. In January of 1861 they had served as bodyguards for the famous abolitionist Wendell Phillips (in fact a distant cousin of Holmes’) when Phillips faced hostile crowds before he spoke at a Massachusetts Anti-Slavery Society meeting in Boston.<sup>2</sup>

Holmes’ initial experience of the Civil War in the spring of 1861 gave no hint of the horrors ahead. At first it seemed almost like a game. Assigned to garrison duty, the Fourth Battalion was mainly involved in drilling at Fort Independence in Boston Harbor. And Holmes reveled in the experience. “I’m in bully condition,” he wrote to his mother, “and have got to enjoying the life much.” He even drew her a little sketch of his short haircut and new moustache. His mind was on food, not fighting. He asked her to send him butter, “fresh meat” and olives, plus a carpet bag and some handkerchiefs. He sounded as if he was already on the front-line. But in May, when he wrote to his mother, he was only in Boston Harbor. By the end of that month, it looked as though he was not going to get much further. On May 25 the Fourth Battalion was disbanded.<sup>3</sup>

By this time, however, new three-year regiments were in the process of being raised. And Holmes soon joined Pen Hallowell and Frank Bartlett in one of these, the 20<sup>th</sup> Massachusetts Volunteer Infantry, known as the Harvard Regiment since so many of its officers had come from the college. Recruitment to these new regiments was an important part of the early Union war effort, and especially so after the Union’s defeat at First Bull Run (Manassas) in July. So Holmes and Bartlett spent the summer of 1861 in Pittsfield, seeking suitable recruits. By the early Fall, having signed up some eleven men, they headed back to Boston, to Camp Massasoit, and then moved south, first to Camp Kalorama in Washington, then Camp Burnside close to the Capitol, and finally to Camp Benton in Maryland, located between Poolesville and Edwards Ferry on the banks of the Potomac.

Holmes was initially enthusiastic about his military experience. He was enjoying, he told his mother, “a regular soldier’s life.” There were “all sorts of camps around” him, he told her. What Holmes was seeing were the various component parts of the Army of the Potomac, then under the command of Major General George Brinton McClellan,

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<sup>2</sup> Putnam quoted in Russell Duncan (ed.), *Blue-Eyed Child of Fortune: The Civil War Letters of Colonel Robert Gould Shaw* (Athens and London: University of Georgia Press, 1999) 156; Bartlett quoted in Sheldon M. Novick, *Honorable Justice: The Life of Oliver Wendell Holmes* (New York: Dell Publishing, 1990) 33.

<sup>3</sup> Holmes to Amelia Holmes (mother), 1 May 1861, in Mark DeWolfe Howe (ed.), *Touched With Fire: Civil War Letters and Diary of Oliver Wendell Holmes, Jr., 1861-1864* (Cambridge, Mass.: Harvard University Press, 1946) 3-4.

organizing itself for what would be the Peninsula Campaign. Holmes' regiment was just one small part of the Third Brigade of Brigadier General Charles Pomeroy Stone's Corps of Observation that comprised twelve infantry regiments, including the 42<sup>nd</sup> New York (Tammany) regiment, a cavalry regiment, and four batteries.<sup>4</sup>

Compared to many other volunteer regiments, the 20<sup>th</sup> Massachusetts was relatively lucky in having a professional soldier and West Point graduate, Colonel William Raymond Lee, as its commanding officer. Many of the others had inexperienced, political appointees in charge. It also benefitted from three regimental surgeons, all Harvard graduates. And one of these, Henry Bryant, had served with the French Army during the Algerian War, so at least he had some knowledge of battlefield surgery. This would become important in the future, but at the time there were many who thought the 20<sup>th</sup> Massachusetts needed all the help it could get. Made up of men from all walks of life—laborers, porters, seamen, farmers and industrial workers accounted for well over 50 percent of the regiment—what many of the volunteers had in common was their inexperience. Inexperience that was often married to an unwillingness to submit to military discipline. Holmes found it hard to control the men he found himself in charge of. For some, however, it was officers like Holmes who posed the biggest problem for the 20<sup>th</sup> Massachusetts. Colonel Charles Devens, for example, the commander of the 15<sup>th</sup> Massachusetts, regarded the regiment as too “blue-blooded” to ever be an effective combat force.<sup>5</sup>

At first Devens' worries were moot, at least as far as Holmes was concerned. The only action Holmes had seen in the fall of 1861, he told his mother, was “one man in a straw hat sitting unconcernedly on his tail apparently a guard on duty for the seceshers.” As Union pickets stationed along the Potomac exchanged conversation and even newspapers with their Confederate counterparts on the opposite bank, all Holmes seemed required to do was “sit & look & listen to their drums.” Holmes might have assumed that the war would offer him no greater threat. Many did make that assumption, or at least chose to let their families believe it, including the future colonel of the 54<sup>th</sup> Massachusetts, Robert Gould Shaw, who would later die on the ramparts of Fort Wagner in Charleston Harbor. There “is not much more danger in war than in peace at least for officers. There are comparatively few men killed,” he wrote, in the summer of 1861, and by “far the greater number die of diseases, contracted by dirt & neglect of all laws of health.” Officers, he reassured his mother, were not susceptible to such risks.<sup>6</sup>

The events of the following month, however, would contradict Shaw's assurance. Toward the end of October, the 20<sup>th</sup> Massachusetts was mustered into action for the first

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<sup>4</sup> Holmes to mother, 11 September 1861, in Howe, *Touched With Fire*, 6-7.

<sup>5</sup> Devens quoted in Novick, *Honorable Justice*, 38; Richard F. Miller, *Harvard's Civil War: A History of the Twentieth Massachusetts Volunteer Infantry* (Hanover and London: University Press of New England, 2005) 34-37.

<sup>6</sup> Holmes to mother, 23 September 1861, in Howe, *Touched With Fire*, 8; Robert Gould Shaw to mother, 9 June 1861, in Duncan, *Blue-Eyed Child of Fortune*, 107.

time under the overall command of Colonel Edward Baker, senator for Oregon, who had some limited military experience gained during the Mexican War (1846-48). Holmes' regiment was detailed, together with the 15<sup>th</sup> Massachusetts, the 42<sup>nd</sup> New York (Tammany) and the 71<sup>st</sup> Pennsylvania infantry regiments, to cross to the western bank of the Potomac, navigate the narrow strip of land—Harrisons Island—mid-river, scale the bluff—Ball's Bluff—and engage the enemy in what was expected to be only a minor skirmish.<sup>7</sup>

Frank Bartlett later described the ascent by Union forces on October 20 and 21, 1861, up a “steep bank one hundred and fifty feet high with thick wood on it,” on which there was “not room enough to form ten men.” The “banks were so slippery,” he reported, “that you could not stand.” Positioned in the field as support for the 15<sup>th</sup> Massachusetts, the men of the 20<sup>th</sup> were told that “they *must stand fast* if the Fifteenth came running down the road” in order to cover their retreat. “It looked rather dubious,” Bartlett commented dryly, “[t]he Fifteenth might get across, but we must check the advance of the enemy and get cut to pieces.” In effect, the 20<sup>th</sup> Massachusetts was positioned, as Holmes' friend Henry Abbott described it, in “one of the most complete slaughter pens ever devised.” With the enemy in front of them and at their backs the steep banks of the bluff they had just struggled up, they were “cut off alike from retreat and re-enforcements.” Defeat was inevitable. Surrender was inconceivable, as Charles Devens made clear in his subsequent report. Had the Union “been contending with the troops of a foreign nation, in justice to the lives of men, it would have been our duty to surrender; but it was impossible to do this,” he argued, “to rebels and traitors.”<sup>8</sup>

In the face of withering enemy fire, the Union troops fled in disarray. Many slipped and died on the rocks beneath Balls Bluff. Others drowned trying to reach the Maryland shore. Holmes himself, shot through the chest, was put into a boat, barely conscious, and crossed the river. He recalled being transported to Camp Benton in “one of the two wheeled ambulances which were then in vogue as one form of torture.” But he had been one of the lucky ones. When Dr. Bryant arrived on the scene, expecting to treat a few minor injuries, he was horrified at what he discovered. “Many of the wounded were crying and shrieking and the whole floor was covered with blood,” Bryant recalled: “one man had three balls through his head, one taking off his nose and one of his eyes—

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<sup>7</sup> Holmes to mother, 23 September 1861, in Howe, *Touched With Fire*, 11-12.

<sup>8</sup> Francis William Palfrey, *Memoir of William Francis Bartlett* (Boston: Houghton, Mifflin and Company, 1881) 17; Henry Abbott to father, October 22 1861, in Robert Garth Scott (ed.), *Fallen Leaves: The Civil War Letters of Major Henry Livermore Abbott* (Kent, OH: The Kent State University Press, 1991) 60; Report of S. Williams (General Orders No. 32), October 25, 1861, in *The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies*, 128 vols. (Washington: Government Printing Office, 1880-1901, hereinafter OR) Series 1, Vol. 5, 291; Report of Col. Charles Devens, Fifteenth Massachusetts Infantry, October 23, 1861, OR, Series 1, Vol. 5, 308-312; for a detailed account of the battle of Ball's Bluff from the perspective of the Twentieth Massachusetts see Miller, *Harvard's Civil War*, 51-83.

another man was lying near him with brain projecting from a wound in the side of his head,” and “poor Lieutenant [Willie] Putnam was lying near the fireplace with his intestines projecting from a wound in his abdomen.” Willie Putnam, the “martyr boy” of Massachusetts, did not survive.<sup>9</sup>

Holmes had believed that he would die, too. He thought about taking the laudanum that his father, Dr. Holmes, had given him before he left for the front, but held off, “determined to wait until pain or sinking strength warned me of the end being near.” But he was soon strong enough to be moved from Camp Benton to Pen Hallowell’s home in Philadelphia, where he spent a week recuperating before being brought back to Boston by his father. At home his “honorable wounds” proved to be a source of pride to his parents, even as they appreciated that their son had had “a most narrow escape from instant death!” Holmes basked in the attention, but being shot was no sinecure. He had been wounded badly enough to keep him out of action for many months. He only returned to his regiment in late March the following year.<sup>10</sup>

Although in the years following the war Holmes would become famous, at least in a Civil War context, because of the two Memorial Day addresses he delivered, first in 1884 and then again in 1895, the Holmes legend really began at the Battle of Ball’s Bluff in Virginia in 1861. In an editorial published in the popular magazine *Harper’s Weekly*, entitled “New England Never Runs,” the battle was described in detail and Holmes was singled out as an example of New England bravery because he had been shot in the chest; “not in the back,” *Harper’s* declaimed, “no, not in the back. In the breast is Massachusetts wounded, if she is struck. Forward she falls, if she fall dead. Long familiar with his father’s fame, this was the northern public’s first introduction to Oliver Wendell Holmes, Jr., but not its last sight of him in print.<sup>11</sup>

When Holmes returned to his regiment in 1862, now stationed in Washington, it was rather different from the one he had left the previous year. The capture of its colonel, William Lee and one of its surgeons, Edward Revere, together with the death or wounding of many of its most committed abolitionist officers had produced a significant shift in the regiment’s outlook, and a concomitant change in public reactions to it. Rumors that the 20<sup>th</sup> Massachusetts had been complicit in returning escaped slaves to their owners appeared in the papers. One anonymous source even claimed that the regiment’s officers were proud “of their pro-Slavery opinions and purposes,” a charge that the Governor of Massachusetts, John Albion Andrew, forcibly denied. Although the

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<sup>9</sup> Holmes to mother, 23 October 1861, in Howe, *Touched With Fire*, 13-19; Bryant quoted in Miller, *Harvard’s Civil War*, 80-81; Mary Trail Spence Lowell Putnam, *William Lowell Putnam* (1862. Reprint. Cambridge, Mass.: Riverside Press, 1864) 9.

<sup>10</sup> Holmes, Diary entry in Howe, *Touched With Fire*, 23-24; John T. Morse, *Life and Letters of Oliver Wendell Holmes*, 2 Vols. (London: Sampson Low, Marston and Company, 1896), II, 157-59.

<sup>11</sup> *Harper’s Weekly*, 9 November 1861.

controversy soon blew over, it cast a shadow over Holmes' regiment, and highlighted the fact that not every member of it saw the war in the same way.<sup>12</sup>

Holmes soon had other things on his mind anyway. Only a few days after he returned, the regiment sailed from Washington aboard the transport vessel *Catskill*, headed for Hampton Roads, Virginia, along with the rest of the Army of the Potomac. By this time the Army of the Potomac comprised well over 120,000 men, sufficient, McClellan hoped, to push toward Richmond up the James Peninsula. Blocked at Yorktown, the Union army settled in to besiege the town. The weather turned against them. It rained heavily. The tents were delayed. Those that did arrive offered no protection against the elements. This is "a campaign now & no mistake," Holmes told his parents. "No tents, no trunks—no nothing—it has rained like the devil," he reported, and everyone was soaked through, up to their knees in mud, and had been enduring "volleys and scattering shots from the enemy" for days.<sup>13</sup>

At the end of May Holmes found himself in the most serious engagement of the Eastern Theater yet at the battle of Fair Oaks (Seven Pines). It was at Fair Oaks that McClellan had famously described himself as "tired of the sickening sight of the battlefield, with its mangled corpses & poor suffering wounded." Holmes tried to sound less concerned than his commander, but the brutal reality of the battlefield appalled him. Although the survivors were burying the dead "as fast as we can," Holmes reported that there was a danger, especially at night, on picket duty, of treading "on the swollen bodies already fly blown and decaying, of men shot in the head back or bowels—Many of the wounds," he told his parents, "are terrible to look at—especially those fr. fragments of shell."<sup>14</sup>

After Fair Oaks, Holmes also reported suffering "scorbutic symptoms," and well knew the cause; "want of *fresh food*." In their weakened state, fighting the series of rear-guard actions that comprised the Seven Days Battles, as the Union army moved back towards Harrison's Landing on the James River, was an enervating experience for the men of the 20<sup>th</sup> Massachusetts. Holmes witnessed the destruction of the Union's stores and the abandonment of the wounded at Savage's Station, the main Federal supply depot. He reported marching in intense heat with no water, straight into battle, past "a deserted battery the dead lying thick around it." On the penultimate day of the Seven Days, 30

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<sup>12</sup> This controversy is covered in careful detail in Miller, *Harvard's Civil War*, 96-100, and the official correspondence relating to the charge can be followed through the OR, Series 2, Vol. 1, 784-799 in the correspondence between Governor Andrew, Secretary of War, Simon Cameron, and McClellan; John A. Andrew to Simon Cameron, 7 December 1861, OR, Series 2, I, 784.

<sup>13</sup> Miller, *Harvard's Civil War*, 112-3; Holmes to parents, 7 April 1862, in Howe, *Touched With Fire*, 39-42.

<sup>14</sup> McClellan quoted in David J. Eicher, *The Longest Night: A Military History of the Civil War* (2001. Reprint. London: Pimlico, 2002) 279; Holmes to parents, 2 June 1862, in Howe, *Touched With Fire*, 48-50, 51-2.

June, 1862, and almost exhausted, the 20<sup>th</sup> Massachusetts had ceased marching at a crossroads, Glendale, formed a line of battle and began to advance.<sup>15</sup>

Glendale was a costly action for the 20<sup>th</sup> Massachusetts, and for Holmes. Pen Hallowell was wounded, albeit not seriously. Henry Abbott received a more debilitating wound in his right arm that put him out of action until early August. Holmes emerged unscathed, but the “anxiety” he endured during the Battle of Glendale had, he wrote home, “been more terrible than almost any past experience.” And one awful moment from that afternoon in June 1862, just as the Union advance began, would remain with Holmes for the rest of his life. He glanced down the line and caught the eye of his cousin, James Jackson Lowell, saluted, looked back a moment later, and Lowell was gone.<sup>16</sup>

By the time the Battle of Glendale took place, the Lincoln administration was in the process of implementing legislation to facilitate emancipation. The First Confiscation Act (1861) had permitted the removal by Union forces of rebel property, including slaves. The passage of the Second Confiscation Act in July 1862 extended this remit to facilitate the emancipation of slaves in those areas that came under Union control. To a great extent the legality of the matter was moot. By 1862, so many slaves had already escaped to Union lines, that, for many, emancipation was effected long before it had been officially enacted.

Back in Boston, Governor Andrew was already arranging the raising of African American regiments. Pen Hallowell was quick to offer his services in one of these, and soon would join one of the most famous African American regiments of the war, the 54<sup>th</sup> Massachusetts Volunteer Infantry. A month later he became colonel of its sister regiment, the 55<sup>th</sup> Massachusetts. He urged Holmes to join him; “your name,” he told Holmes, “would command attention.” But Holmes refused. It was a parting of the ways for the former friends. But before Hallowell left the regiment, he and Holmes would fight, and almost die, together again at the battle that really established the Holmes legend as far as the Civil War was concerned, the single bloodiest day of that war, Antietam.<sup>17</sup>

As at Ball’s Bluff, at Antietam, fought on September 17, 1862 the 20<sup>th</sup> Massachusetts suffered heavy losses. In contrast to Ball’s Bluff, where Holmes had been shot in the chest, at Antietam he was shot in the back of the neck, whilst fleeing the field

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<sup>15</sup> Holmes to parents, 5 July 1862, in Howe, *Touched With Fire*, 58-59.

<sup>16</sup> Holmes to parents, 5 July 1862, in Howe, *Touched With Fire*, 59-60; the Battle of Glendale is also known as the Battle of Nelson’s Farm and often, in Confederate memoirs, Frazier’s Farm; Holmes recalled the death of Lowell in his Memorial day Address of 1884, Holmes, “Memorial Day Address, May 30 1884,” in Posner, *The Essential Holmes*, 83.

<sup>17</sup> Miller, *Harvard’s Civil War*, 135; Hallowell quoted in Novick, *Honorable Justice*, 75, 79.

as fast as he could. This was “not so good for the newspapers,” he later recalled.<sup>18</sup> But in fact Antietam made Holmes famous. When the telegram arrived in Boston, telling Dr. Holmes that his son had been wounded, he set off immediately for the front. He would later write up this journey and publish it as “My Hunt After ‘The Captain,’” in *The Atlantic Monthly*, a narrative that was much more than an account of the search for one man.

What Dr. Holmes gave his readers was nothing less than a psychological and physical study of the landscape of conflict. He began by invoking the dread that many families would have recognized:

In the dead of the night which closed upon the bloody field of Antietam, my household was startled from its slumbers by the loud summons of a telegraphic messenger. The air had been heavy all day with rumors of battle, and thousands and tens of thousands had walked the streets with throbbing hearts, in dread anticipation of the tidings any hour might bring.

As he moved through the battlefield and hospitals on the front line, Dr. Holmes reacted as many northerners, on similar quests for their loved ones, would have done. He thought he saw his son everywhere, but it was never him: “as the lantern was held over each bed, it was with a kind of thrill that I looked upon the features it illuminated,” he recounted. “Many times, as I went from hospital to hospital in my wanderings, I started as some faint resemblance the shade of a young man’s hair, the outline of his half-turned face recalled the presence I was in search of.”

Dr. Holmes finally found his son and namesake on a train. “In the first car, on the fourth seat to the right, I saw my Captain; there saw I him, even my first-born, whom I had sought through many cities. How are you, Boy? How are you, Dad? Such are the proprieties of life, as they are observed among us Anglo-Saxons of the nineteenth century.” In the course of this narrative, Dr. Holmes’ effectively made his son a form of everyman. In his account’s Biblical allusions of the prodigal “son and brother [who] was dead and is alive again, and was lost and is found,” Dr. Holmes was striving for, and arguably achieved a national sense of return, rebirth, and regeneration that would appeal to readers across the North.<sup>19</sup>

And in future years, when Holmes was appointed, by Theodore Roosevelt, to the Supreme Court, it was his father’s story that the newspapers recalled. They published extracts from it, to show the public what kind of man the new Supreme Court Justice was.

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<sup>18</sup> Holmes to Sir Frederick Pollock, 28 June 1930, in Mark DeWolfe Howe (ed.), *Holmes-Pollock Letters: The Correspondence of Mr. Justice Holmes and Sir Frederick Pollock, 1874-1932*, Second Edition: Two Volumes in One (Cambridge, Mass.: The Belknap Press of Harvard University Press, 1961) II, 269-70.

<sup>19</sup> Oliver Wendell Holmes, Sr., “My Hunt After ‘The Captain,’” *The Atlantic Monthly*, 10:62 (December, 1862): 738-64.

He was a war hero. His father had said so. Holmes himself said so quite often, too. Holmes would return often to the battle of Antietam over the course of his life; the battle at which, he frequently reminded himself and others, he “was nearly killed.” In this way he located himself in the larger story of the Civil War, but especially that moment when the war for the Union became something bigger. It was the Union victory at Antietam that gave the Lincoln administration the confidence to issue the Preliminary Emancipation Proclamation and, on January 1, 1863, the final Emancipation Proclamation.<sup>20</sup>

But at the time, Holmes chose not to be part of that larger story. He may have begun to share Henry Abbott’s sentiments about the direction the Union war was taking. “The president’s proclamation is of course received with universal disgust,” Abbott observed, “particularly the part which enjoins officers to see that it is carried out. You may be sure,” he stressed, “that we shan’t see to any thing of the kind, having decidedly too much reverence for the constitution.” In Hallowell’s absence, and having forged a stronger friendship with Abbott over the winter of 1862/63, Holmes’ earlier abolitionist enthusiasm was certainly not one he could continue to express.<sup>21</sup>

Holmes disenchantment may, of course, simply have had a physical cause. He had returned to the regiment in November, 1862. But it was a miserable winter. He was, as he wrote home, still “stretched out miserably sick with dysentery, growing weaker each day from illness and starvation.” He was so ill that he was unable to join the regiment in the Battle of Fredericksburg at the end of 1862. And by that point his suffering was psychological as much as physical. He felt guilty at not being in the battle; “what self reproaches I have gone through,” he told his mother, “for what I could not help and the doctor, no easy hand, declared necessary.” By the spring of the following year he was recovered, up to a point. But at the start of May, just outside Fredericksburg, Holmes was shot again, this time in his heel. It seemed minor. There was no danger of amputation. But in later life, Holmes recalled wishing that he might have lost his foot, and thereby been honorably discharged from a war that held no more meaning for him. As it was, he was out of action for much of the summer and fall of 1863. As his regiment fought at Gettysburg, and the 54<sup>th</sup> Massachusetts stormed the ramparts at Fort Wagner, Holmes was back in Boston in a state of what now might be diagnosed as depression.<sup>22</sup>

By the time Holmes returned, yet again, to the 20<sup>th</sup> Massachusetts the regiment was battling through the Wilderness in Virginia, part of Ulysses S. Grant’s relentless Overland Campaign. But Holmes was already considering leaving. The war had become just too much to bear. Towards the end of May, he only narrowly escaped death when his pistol misfired. His days were spent burying the dead, dealing with exhaustion, absorbing

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<sup>20</sup> See, e.g., Holmes to Lady (Ellen) Askwith, 18 September 1914 and 17 September 1919, in OWH Papers, Harvard Law School (HLS).

<sup>21</sup> Henry Abbott to Aunt Lizzie, 10 January 1863, in Scott, *Fallen Leaves*, 161.

<sup>22</sup> Holmes to Amelia Holmes, 16 November 1862; to mother 12 December, in Howe, *Touched With Fire*, 70-73, 74-76.

the sight of “the dead of both sides...piled in the trenches 5 or 6 deep—wounded often writhing under superincumbent dead.” Even the trees, he noticed, “were in slivers from the constant peppering of bullets.” Union losses were running at over a thousand per day; “nearly every Regimental off—I knew or cared for,” Holmes despaired, “is dead or wounded.” On July 18, 1864, the three-year enlistment period for the 20<sup>th</sup> Massachusetts expired. Some of the few remaining men would reenlist, and the war itself would last for another year. But Holmes was exhausted. He had observed that there was “a kind of heroism in the endurance,” but he could no longer find that heroism in himself. “I started in this thing a boy,” he told his mother; “I am now a man.” But, as he had already stressed to both parents, he was “not the same man (may not have quite the same ideas) & certainly am not so elastic as I was.” Holmes left the battlefield behind, entered Harvard Law School, and started on the path that would take him, by 1902, all the way to the Supreme Court.<sup>23</sup>

Before he got to Washington, however, Holmes had already established a reputation in which his legal expertise and his Civil War service shared almost equal prominence. While serving on the Supreme Judicial Court of Massachusetts, he had begun to develop his talent for public speaking beyond his profession. And by the time that he was appointed as a judge in Massachusetts, the Civil War had become a national obsession. *Century Magazine*’s “Battles and Leaders” series was proving hugely popular. The Union Veterans’ organization, the Grand Army of the Republic (GAR) had emerged as powerful political and cultural force, with some 400,000 members by 1890. And it was in this atmosphere that Holmes was invited to deliver what became his most famous, certainly his most quoted, speech; his Memorial Day address delivered to the John Sedgwick Post No. 4 of the (GAR) at Keene, New Hampshire.

Holmes spoke on that occasion not as a judge but as a veteran. And he established his own Civil War credentials by detailing his experiences during the war, and invoking “the armies of the dead” who had fallen in the cause of Union. Then he directly addressed the living. The “generation that carried on the war has been set apart by its experience,” he told them:

Through our great good fortune, in our youth our hearts were touched with fire. It was given to us to learn at the outset that life is a profound and passionate thing. While we are permitted to scorn nothing but indifference, and do not pretend to undervalue the worldly rewards of ambition, we have seen with our own eyes, beyond and above the gold fields, the snowy heights of honor, and it is for us to bear the report to those who come after us. But, above all, we have learned that whether a man accepts from Fortune her spade, and will look downward and dig, or from Aspiration

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<sup>23</sup> Holmes Diary, 12 May 1864; Holmes to parents 16 May, 30 May, 7 June, 24 June, 1864, in Howe, *Touched With Fire*, 115, 122, 135, 142-43, 149.

her axe and cord, and will scale the ice, the one and only success which it is his to command is to bring to his work a mighty heart.<sup>24</sup>

Just over a decade later, in 1895, Holmes had an opportunity to return to the theme of the Civil War on Memorial Day, this time to graduating students at Harvard. But in his 1895 address, the speech that has come to be known as “The Soldier’s Faith,” Holmes was no longer really talking just about the Civil War. He was addressing the social and economic concerns of the Progressive Era. He drew a clear distinction between commerce and conflict, and bemoaned the fact that “war is out of fashion” in a world whose “aspirations” were those of wealth.

The society for which many philanthropists, labor reformers, and men of fashion unite in longing is one in which they may be comfortable and may shine without much trouble or any danger...I have heard the question asked whether our war was worth fighting, after all. There are many, poor and rich, who think that love of country is an old wife’s tale, to be replaced by interest in a labor union, or, under the name of cosmopolitanism, by a rootless search for a place where the most enjoyment may be had at the least cost.<sup>25</sup>

At times Holmes sounded quite harsh in this address. He seemed to elevate suffering in the service of strength, to praise struggle almost as an end in itself. “I rejoice at every dangerous sport which I see pursued,” he declared. “The students at Heidelberg, with their sword-slashed faces, inspire me with sincere respect. I gaze with delight upon our polo players. If once in a while in our rough riding a neck is broken, I regard it, not as a waste, but as a price well paid for the breeding of a race fit for headship and command.” He seemed, too, to glorify war, to see life itself as a battle. Above all, he wanted his student audience to understand that “the joy of life is living, is to put out all one’s powers as far as they will go; that the measure of power is obstacles overcome; to ride boldly at what is in front of you, be it fence or enemy; to pray, not for comfort, but for combat; to keep the soldier’s faith against the doubts of civil life, more besetting and harder to overcome than all the misgivings of the battlefield.”<sup>26</sup>

Holmes’ perspective by that point was a world away from that of his former comrade and friend, Pen Hallowell. Hallowell gave his own Memorial Day address the year after “The Soldier’s Faith.” But where Holmes had emphasized that “those who stood against us held just as sacred convictions that were the opposite of ours,” and stressed that “we respected them as every man with a heart must respect those who give all for their belief,” Hallowell, speaking in Memorial Hall in Harvard, used the location to remind his audience of the war’s meaning. Although “it is pleasant to dwell upon the

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<sup>24</sup> Holmes, “Memorial Day Address, May 30 1884,” in Posner, *The Essential Holmes*, 86.

<sup>25</sup> Holmes, “Memorial Day Address, May 30 1895,” in Posner, *The Essential Holmes*, 87-88.

<sup>26</sup> Holmes, “Memorial Day Address, May 30 1895,” in Posner, *The Essential Holmes*, 92.

virtues of our old friends, the enemy,” Hallowell acknowledged, “yet there should be neither mental nor moral confusion as to the real meaning of this Memorial Day and this Memorial Hall.” In particular, he warned against the tendency, already evident by the turn of the century, to forget there were ever two armies or two causes.”

Fidelity to conviction is praiseworthy; but the conviction is sometimes very far from praiseworthy...Such monuments as Memorial Hall commemorate the valor and heroism that maintained certain principles,— justice, order, and liberty. To ignore the irreconcilable distinction between the cause of the North and that of the South is to degrade the war to the level of a mere fratricidal strife for the display of military prowess and strength.<sup>27</sup>

Whether or not Hallowell intended his address as a corrective of conscience to what his former brother-in-arms had said, Holmes’ 1895 address was certainly not universally popular. Although sometimes credited with persuading Roosevelt to appoint Holmes to the Supreme Court, the speech drew intense criticism at the time. The *New York Evening Post*, for example, attacked it as “sentimental jingoism,” designed “to glorify war and the war spirit.” Holmes, the paper charged, had “abused the holiday occasion.” It vented its outrage that “a Judge of the Massachusetts Supreme Court” should deliver “an address to young men in favour of war – that is, of killing people and destroying their property – on the ground that if you put it off too long, your character runs down and you get too fond of money.”<sup>28</sup>

The contemporary critical response to Holmes’ famous address underlines the complex and sometimes contradictory reactions to the Civil War, at the time and since, in the northern states especially. Even within Holmes’ regiment, those like Hallowell who fought for freedom for the slave stood shoulder to shoulder with men like Abbott, who were hostile to emancipation, and who fought for the maintenance of the Union alone. And in a sense Holmes exemplified the contradictions inherent in his regiment and in the Union war. He was a man whose abolitionist idealism seemed, by the time he achieved national status as a Supreme Court Justice, to have been simply youthful enthusiasm rather than fundamental to his character. But thanks in no small part to his father’s moving account of his search for his son on the battlefield of Antietam, Holmes was able to cross constituencies in his combined public roles of Supreme Court Justice and Civil War veteran. Whatever his private perspective on the war had been, in the popular mind Oliver Wendell Holmes, Jr. would always be what his father had made him; the universal Union soldier.

### **Oliver Wendell Holmes, Jr.**

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<sup>27</sup> N.P. Hallowell, *An Address by...Delivered on Memorial Day, May 30, 1896 at a Meeting Called by the Graduating Class of Harvard University* (Boston: Little, Brown, and Company, 1896) 6-8.

<sup>28</sup> Anon, “Sentimental Jingoism,” *New York Evening Post*, 16 December 1895; Anon, “Force as a Moral Instrument,” *New York Evening Post*, 17 December 1895.

Born	March 8, 1841, Boston Massachusetts
Died	March 6, 1935, Washington D.C.
Buried	Arlington National Cemetery
Father	Oliver Wendell Holmes
Mother	Amelia Lee (Jackson) Holmes
Career Milestones	Spring 1861 left Harvard to enlist in the New England Guards Massachusetts state militia   Summer 1861 commissioned Lieutenant in the 20 <sup>th</sup> Massachusetts   October 21, 1861 shot in the chest at the Battle of Balls Bluff   May 31-June 1, 1862 Battle of Fair Oaks (Seven Pines)   June 30 1862 Battle of Glendale   September 17, 1862 wounded in the back of the neck at The Battle of Antietam   April 30-May 6, 1863 wounded in the heel at The Battle of Chancellorsville   July 18, 1864 mustered out when the three year enlistment of the 20 <sup>th</sup> Massachusetts was up   1866 Admitted to the Bar and entered into law practice in Boston   1881 published <i>The Common Law</i>   December 15, 1882 appointed Chief Justice of the Massachusetts Supreme Judicial Court   May 30, 1884 Memorial Day Address   May 30 1895 Memorial Day Address   August 11, 1902 appointed to the US Supreme Court serving until retirement January 12, 1932.

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