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Holmes-Laski Letters (1953)

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BOOK REVIEWS

HOLMES-LASKI LETTERS, Harvard University Press, 1953, pp. 1650.

In 1916, Felix Frankfurter introduced Harold Laski to Justice Holmes. An aristocratic Yankee, 75, and an upstart, middle-class Englishman just 23, whose father was in trade, they made friends and wrote to each other for 18½ years, until Holmes's death. One looked like Hitler, the other like Uncle Sam. They had in common: an interest in law, philosophy and literature; egotism; deep learning; a concern for liberty. Each was familiar with the thought and leading thinkers of the other's country. Each was happily married to a woman older than himself. Each had had trouble with his father. Former Brandeis clerk David Riesman would call both "inner directed."

The letters contain accounts of daily life, comments on reading and adventures among ideas. They are intellectual and warm. One man wrote to the son he never had, the other to the father he preferred. They did not hide their basic differences about what is and does the public good.

When those two buzzing minds touched they sent off a dazzling shower of sparks. Its volume of brilliance is unsurpassed by other published correspondence except perhaps Voltaire's. Holmes's letters to Pollock and Wu were not as frequent or interesting. Those men stimulated him less; one was from too like a background, the other too alien.

This book is a spur to become educated, while it lifts one's standards until they pass from reach again. As a reader, Laski was prodigious in both appetite and capacity. He published more than most college graduates read after college. He wrote with grace, clarity and wit, but without Holmes's rare combination of hard logic and that artistry which gives a man's ideas all the credit they are worth, sometimes more. Holmes's letters are shorter but say as much. In compression of statement he was a rival of Tacitus and an equal of Bacon.

During the correspondence, one life waxed, the other waned. Both men declined, one to his grave at Arlington, the other to a temporary loss of faith in freedom and a reduction of integrity, a peaceful virtue which was hard for a crusader to keep in a time of violence and despair. The flow of Holmes's letters dwindled and stopped. Laski loyally wrote on for two more years.

Holmes wrote of his work on the Court, of opinions he tackled and turned out. He complained of the doctrine of *Swift v. Tyson*, the notion held by some of his brethren that the common law could be found brooding in the sky. He was discreet and tolerant. Only McReynolds came in for more than the most oblique criticism.

They scorned Wilson's outspoken morality as Victorian; yet Laski was enchanted by Dickens, and Holmes was sentimental about war. For our day, both were prudish. There is no hint of the Rabelaisianism said to be a trait of Holmes, no mention of his supposed taste for burlesque shows. Perhaps this had gone by then, and its loss is what he meant by, "Oh, to be 80 again." (If Holmes ever made this remark, he plagiarized a 17th Century French scholar to whom Laski's letter attributes it.)

Laski despised the crowd because composed of average men, while Holmes ignored it as a meaningless abstraction. Laski looked down upon the masses, rich and poor, as ignorant and stupid, but in his moral values the upper economic class ranked below the lower as bearing a greater burden of guilt.

Part of Laski never grew up. He continued his name dropping and his breathless yearning to be at the center of great affairs and pretending to be there. (At last he

got there.) He made out that he was the Grey Eminence attached to every British Cabinet. He is not convincing when he mentions "Winston" or "Ramsay." (Did Churchill call him "Harold?") Holmes raises no doubts when he mentions his boyhood companions "Bill" and "Harry" James, Brooks and Henry Adams, Cabot Lodge and other eminent men. As a bold spirit who had discarded illusion, he was the more mature of the two; as a pessimist, the more modern.

Laski gave generously of himself, while Holmes did not put himself out for anyone. Sometimes Laski was insulting in order to indulge his wit or scourge the folly of another. Holmes forbore to cross the line between an attack on someone's ideas and his precious person.

Laski scrambled hard and had to; Holmes never had to scramble and never did. Laski often boasted; Holmes did not need to. He had been secure from birth, in circumstance and nature. From 1882, he had a permanent job which he knew he was equipped to perform. Except among ideas, he was almost a recluse. Laski was insecure, although he had confidence in his uncommon gifts. A little 4-F who took the side of the weak in continual battles with vested power, put up with snubs and condescension, and lived at a time of deepening gloom, he watched the failure of leadership and the black shadow of the gas chamber ahead.

Holmes's life spanned much of our history. When he was a boy, John Quincy Adams, a neighbor, lit his own fire with flint and steel. His grandmother told him of seeing the British march into town and quartered at the Old South Church. It is stirring to see him climb down the long ladder of his memory. The great coal strike reminds him of the time he went with John Stuart Mill to a discussion of the predicted exhaustion of Britain's coal supply. A page of Greek sends him back 63 years to the Seven Days when he, like Ulysses, longed to see that evening sun go down.

Most old men with zest are perpetual boys. Even a titan like Churchill has a youthful bounce. Holmes was both sparkling and adult. When a man gets old he finds it a bore to think and say the same things after years of repetition. Some avoid boredom by sticking to the particular so as to let the subject matter supply the originality that has left their mind. Although frozen in his views like any man his age, Holmes used effort to state them in new and graceful ways. Except on concrete matters within their experience, the thinking of most old men is commonplace. Holmes still could illuminate when far afield. He delighted the young by speaking with them as an equal. In parlor debate he used his intellect but not his eminence.

Neither man had strong ambition for title or prize. The imperative command of Holmes's inner self was to put his life into his work. He wanted to keep his gears meshed in the world, felt that to be disconnected was not to live. Both puritan and artist, he was driven to turn out first rate work, unwilling to relax his grip. As his powers began to fade, he held his own by bearing down with grim effort. He did not let himself coast until he became unfit for work. Without morbidity or fear he faced his impending death. Daily routine became a steepening uphill grind; there was little savor left. The last years seem such painful toil as to suggest that after a point, Rabbi Ben Ezra was wrong, that attainment of the '80s is not a worthwhile aim for younger men unless science gives a help.

Laski spread himself thinner than Holmes whose attention was fixed on the law. Although they agreed on principles of education, Laski abhorred the limitations of the expert, while Holmes thought one should look at the universe through some single window. Both men were concerned with action to the extent of putting their thought to use. They enjoyed philosophy in fireside talk, but kept it there.

Holmes was a true agnostic, less opinionated than Laski, slower to pass judgment on others. Laski was hostile to organized religion, Holmes indifferent. Laski believed in equality, Holmes in force, tempered by politeness. A paternalistic humanitarian,

Laski disagreed with Holmes on the chance to better mankind's lot by legislation: "I have convictions built on faith, while you have doubts built on fears." If he had had the "judicial temperament," and had been on the bench, he would have been a warrior tribune like Black.

Laski swung between iconoclasm and utopianism. Holmes was an intrepid sceptic all the way; yet from his emotions sprung ideals to which he had both offered and devoted his life. (Only an idealist would make his residuary beneficiary the United States of America.) Two of his inarticulate major premises were Calvinism and knighthood. (His background made him both Cavalier and Roundhead.) His skepticism tended to be of the mind, *e.g.*, "Little as I believe in it (freedom of speech) as a theory, I hope I would die for it and I go as far as anyone whom I regard as competent to form an opinion, in favor of it."

In this uncertain day when answers are so hard to find, the pendulum is swinging far toward determinism and authority, and many seek shelter in some absolutist creed. It took more faith in rationality than Holmes had to steer a course between the comfortable absolutes of ignorance and truth. Unlike Bertrand Russell and Morris Cohen, he was unwilling to put down his bets on the power of thought. As a thinker, he scorned those who declaim against the universe of which they are a part. But in action, he admired Prometheus.

An educated gentleman who had important work to keep him busy, he disdained to construct a system. He was content to throw out shafts of light, many of which suggest a half-true picture of faith in his own skepticism and in "life" itself, an outlook as ingenuous as that of Theodore Roosevelt. His contradictions were cemented together to form an integrated whole.

Each man left his deepest mark on the world as a teacher. Laski electrified students from Paris to Seattle; he fired them to learn, to think, and to question their first principles. Holmes's main impact on the law was through the next generation which formed majorities according to the lessons of his dissents. As teachers, Laski inspired men to educate themselves, Holmes to "live greatly in the law."

Each lived by the words Pericles spoke at the burial of Athenian dead, "The secret of happiness is freedom, and the secret of freedom is a brave heart."¹

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¹ See *Whitney v. California*, 274 U.S. 357, 375 (1927).

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