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Oliver Wendell Holmes, Jr. spent three terrible years fighting in the Civil War. By any standard his experience was horrific. He was wounded three times, suffered a nearly fatal bout of dysentery, and endured the deaths of many of his closest friends. Without doubt, it was the most affecting period of his life. Unfortunately, however, the accounts of Holmes’ wartime experience have been notably superficial. Part of the problem has been the fact that, until recently, the chief source of information about these years was Holmes’ own diary and letters. The difficulty with these as a source has been twofold. First there is his basic reticence. It is rare that he speaks about himself, rarer still that he dwells on his feelings. Second, there is the fact that Holmes himself heavily edited his diaries and letters. If more revealing letters ever existed, they were tossed in the fire long ago.

This situation has been somewhat improved by the accumulating historical scholarship about the Civil War. In particular, there was the publication in 2005 of a detailed history of Holmes’ regiment, the Massachusetts Twentieth. This, together with related historical documents, enables us to put Holmes letters into a factual context. In addition, the letters of some of his contemporaries are now more readily available and these permit us to see Holmes through the eyes of his comrades. Filling in the details of his daily life as a soldier generates a clearer picture of the experience and the changes that took place in Holmes’ character and illuminates the role the war played in forming it.

Signing Up

When the Civil War started, Holmes was finishing his final year at Harvard College. There were many Abolitionists in Boston, but there were also many Copperheads. The commercial life of the city was tightly bound up with Southern cotton and, as a result, most of the wealthier citizens tolerated slavery. Holmes’ own family was split—his mother was against slavery; his father did not oppose it.
Holmes himself was an ardent Abolitionist. His mother was surely a factor, but there was also the strong influence of “Pen” Hallowell, his closest friend at Harvard. Most of the young men at Harvard lived on Beacon Hill or were the sons of Holmes’ family friends, but Norwood Penrose Hallowell was an exception. He came from Philadelphia and a well-known family of fighting Quakers. The Hallowells were fervently against slavery and had volunteered their home as a stop on the Underground Railroad. This choice subjected them to dangers that were unknown in the comfortable drawing rooms of Beacon Hill. Even the children bore their share of the risk. Consider, for example, the following anecdote that Hallowell described in his memoirs:

Hid away in the barn of our country residence was another fugitive, a tall, lithe, muscular man, black as anthracite, Daniel Dangerfield by name, now forgotten no doubt, but then enjoying for a brief period a national reputation. The police force of Philadelphia was watching for that man. The detectives looked mysterious as they went about on their false scents and failed to see our Daniel as he passed . . . comfortably seated in my mother’s carriage, the curtains drawn, my brother Edward on the box quite ready to use his five-shooter, and a younger brother (Hallowell) in the less heroic part of driver.²

To an idealistic young man such as Holmes, Hallowell’s willingness to defy armed authority for a noble cause must have seemed exotic and heroic. Soon they were close friends, with Hallowell exerting considerable influence. It was Hallowell who was responsible for Holmes’ growing commitment to Abolitionism; it was Hallowell’s older brother, Edward, who enlisted him in guarding Abolitionist preacher Wendell Phillips from the hostility of a tough Boston crowd; and ultimately it would be Hallowell who would be his companion during much of the Civil War.

Holmes was nineteen when the war began. When the Rebels fired on Fort Sumter, he was ready to enlist. For him, the requirements of duty were clear. He believed in the Union and, increasingly, in abolition. Furthermore, he was committed to a code of chivalry, drawn no doubt from his childhood love of Sir Walter Scott, whose description of the Black Knight summed it up nicely: he would have “no craven fears, no cold-blooded delays, no yielding up a gallant enterprise.”³ Holmes’ own strength and courage was as yet untried, but this was the requisite attitude, and the resulting desire to enlist was sure, steady, and accepted no frustration.

Without waiting for graduation, Holmes and Hallowell joined the Fourth Massachusetts Battalion. They were stationed at Fort Independence on Castle Island, a spare but comfortable camp that was less than ten miles from his home in Boston. For two young men, bored with college life, their duty could hardly be classified as a hardship. Nevertheless, there was one serious problem with the assignment. It became increasingly clear that the Fourth would never see any action—it was destined to stay in Massachusetts, performing only ceremonial duties. Since the two young men did not see this as their calling, they soon resigned and began the search for a new unit that had greater prospects of joining the fight.

It was through his father’s influence that Holmes obtained a commission in the Massachusetts Twentieth—the unit that would ultimately be called “The Harvard Regiment.” The nickname is somewhat deceptive. It was acquired by virtue of the fact that so many of its best known officers had gone to Harvard. Yet the regiment itself was composed of people from every economic class and from all over the state. This diversity was unusual as recruitment efforts were generally local. Individual towns began
the process by forming companies of volunteers; they would then join with other towns to form county-wide regiments. On paper, the Governor had the authority to appoint officers, but in actual practice he was strongly guided by local appraisals of leadership and by the candidates’ contribution to the recruitment efforts. The result was that each unit had a high degree of initial cohesion—soldiers went to war with long-standing friends and acquaintances. This meant that each man was doubly accountable—poor conduct resounded not only in your military unit but also in civilian life—and a lost friend was doubly mourned—as a comrade and as a companion of one’s youth.

Even though the Twentieth was an exception to this pattern, it had many of the same characteristics. There was, to be sure, no geographic unity. Several of the companies came from Boston, others came from Cape Cod, western Massachusetts, or other areas of the state that were too small or too isolated to field their own regiments. Nevertheless, like other Massachusetts regiments, there was a strong sense of interpersonal connection as most of the soldiers—enlisted men and officers alike—were serving with many people that they had known all their lives.

The real exceptionalism of the Twentieth came from the way its officers were chosen. Governor Andrews was a populist and an Abolitionist, and, prior to the war, he had not been popular with the wealthy men who lived on Beacon Hill. With war looming, however, he was particularly anxious to ensure their commitment to the cause and could find no better way to accomplish this than to enlist their sons in the struggle. He therefore chose William Lee as the commanding officer. Colonel Lee had all the right connections. As a successful business man and a Harvard graduate, he was well known and widely respected, and he had easy access to Boston’s elite.

Dr. Holmes went to see Colonel Lee bearing a note from Henry Lee, the Governor’s trusted aide and the doctor’s cousin, recommending Wendell for a commission. This visit was enough to settle the matter. Despite Wendell’s youth and gaunt appearance, the decision to give him a commission was really not a difficult one. His father was an influential leader in Massachusetts—just the sort of man that Governor Andrews wanted to bring on board. Wendell himself was smart, capable, and physically strong. In addition, he was an early volunteer who had some training. Thus, in July 1861, Holmes became a First Lieutenant and was initially assigned to Company G, under the command of an Irish man named Henry Sweeny. Hallowell also received a commission. Lacking Beacon Hill connections, he wrote to Governor Andrews directly, and Hallowell’s natural leadership abilities, his training at Fort Independence, and his family’s Abolitionist credentials were sufficient to convince the Governor to appoint him as well.

**Formation of the Massachusetts Twentieth**

Once the officers were chosen, it was necessary to recruit enlisted personnel. The regiment set up an office at Camp Massasoit in order to take maximum advantage of walk-ins, but the real work had to be done by the officers. Fortunately, several of the companies were headed by leaders with close ties to Boston’s German and Irish communities, which were filled with immigrants who had fled harsh conditions in their own countries and as a result were extremely patriotic and strongly opposed to slavery. Thus, the German and Irish officers were able to bring hundreds of young men into the regiment. For example, Captain Sweeny, Holmes’ superior officer, was able to recruit sixty volunteers from among his community of Irish immigrants.

The Harvard officers, however, were less successful in obtaining recruits—there was no rush to sign up from Beacon Hill. Nevertheless, a few of them did produce
results. Captain William Bartlett, for example, who had spent much of his Harvard years in pool halls and bar rooms, was able to capitalize on these connections and recruit twenty-five men. Lieutenant George Macy, a Boston businessman and cousin to R.H. Macy, the merchandising giant, sailed off to his original home in Nantucket and returned with twenty-four men. Subsequent trips yielded sixty more. Both Holmes and Hallowell did their share. Hallowell, with his charm and passionate Abolitionism, recruited ten men. Holmes returned to his old summer home in Pittsfield, Massachusetts, and recruited eleven. Finally, on July 18th, the regiment was inducted into federal service.

The beginning of its service was not auspicious. Upon inspection, Colonel Lee found “the personal material . . . very deficient in stamina and capability.” He complained that “the recruiting officers had used such desperately bad judgment” that only one-third of the recruits met the expected average. Training soon began in earnest. The soldiers were up at 6:30 in the morning and in bed by 10:00 at night. In addition to roll calls and the other routines of camp life, each day included four and one-half hours of drill, a dress parade, and one hour of regular instruction for both officers and enlisted men. For the newlyminted officers, discipline was not easy. Initially many of the men were defiant of authority. One man from Nantucket challenged Holmes by saying, “Why shouldn’t a man go where he pleased when a day’s work was done and spend his own money without asking leave of any God-damned officer?”

Answers to such questions had to be summarily given. For example, a neighborhood saloonkeeper whose hospitality had caused a fair amount of drunkenness challenged a group of officers who came to his establishment and poured his whiskey into the street. In responding, Major Paul Revere—grandson of the famous Revolutionary rider—did not mince words. He produced his pistol, laid it on the bar, and said: “This is my authority.”

By the end of the summer, all the necessary adjustments had been made and the Twentieth was ready to report for duty. Despite Colonel Lee’s initial skepticism, it was not a bad fighting force. The soldiers were physically healthy and adequately trained, although the unit was short-handed and would remain so throughout the war. The unusual way in which it had been formed meant that there would be an aspect of class conflict in many of its internal relations. There was always a division between the upper-class Harvard officers and the working-class Irish and German immigrants. This was apparent even before the regiment had reported for duty. On the way to Washington, the unit stopped in New York, where a citizen’s group had sponsored a dinner to celebrate their readiness. Governor John A. Andrew, visiting New York, was the featured speaker. According to one newspaper account, he gave a speech of “great power” and put the “house in a complete tempest” when he promised that even if New York was occupied by Confederate troops, “Massachusetts would entrench herself behind the hills of Berkshire, and make the Switzerland of New England the rampart of freedom.” However, the Beacon Hill contingent did not hear his speech, as they had preferred to arrange their own dinner at an elegant New York restaurant.

Sadly, class differences were intensified by a division over the issue of slavery: many of the Beacon Hill officers supported it while the German and Irish soldiers were unequivocally opposed. As the regiment moved southward and encountered growing numbers of fugitive slaves, the disagreement became more intense and led to disputes about what to do with them—whether to employ them or return them to their owners. As a result, the administration of the so-called “Harvard Regiment” became a source of continuing trouble that would run back-and-forth between the Massachusetts State House and the Federal military command.
Balls Bluff

On September 7, 1861, the Twentieth arrived in Washington and received its orders. The unit was to be at Edwards Ferry on the north bank of the Potomac River, just opposite the small city of Leesburg, Virginia. On the other side of the river stood the Confederate Army, and the Union Army was there to hold the enemy in check. For the next two months, both armies stayed in place, maintaining their readiness to fight.

It was not until late October that the Twentieth had its first experience of actual combat and, as was typical at this stage of the war, its efforts were defeated by confusion and error in the Union leadership. The problems began with an ambiguous order from General George B. McClellan. He had written General Charles P. Stone that Union forces had occupied Dranesvilles, a small town on the Virginia side of the Potomac. McClellan’s hope was that this move would force the Confederates to abandon Leesburg, and he ordered Stone “to keep a good lookout upon Leesburg.” He also suggested that Stone might make a “slight demonstration” that would encourage a Confederate withdrawal. Though McClellan later said that this language was not meant to authorize an attack on the enemy, General Stone not only ordered his pickets to increase their firing, but, in accordance with his more aggressive reading of the order, put together a small force to cross the river at Balls Bluff—an area marked by an incline that rises one hundred feet above the river. In the event of trouble, the Twentieth was to serve as reinforcement. They waited on Harrison’s Island, a small island that bisected the river and would serve as a staging area for any attack.

When the exploratory force returned, they reported that there was a small Confederate encampment. This news was duly passed on to General Stone, who ordered them to cross the river once again and destroy the enemy camp. Once this was done, they were to return unless they found a tenable position on the Virginia side where they could wait for reinforcements from the Union forces at Dranesville.

This was a dangerous assignment. With the Confederates close by, Colonels Richard Lee and Charles Devens had no way of knowing exactly what the situation would be when their troops returned to the top of the bluff. In addition, the invading force would be particularly vulnerable as the men climbed up the steep hill. Once there, retreat would be difficult, given the narrowness of the path that descended to the river and the scarcity of boats. There was also the fact—unfortunately unknown to Lee and Devens—that the Union forces had already abandoned Dranesville and consequently there would no possibility of reinforcement from the Virginia side of the river.

Nevertheless, the Union regiments crossed the river and climbed the bluff without incident. There was no sign of an enemy camp and this fact was passed on to headquarters. Throughout the day, there were increasing indications of Rebel activity. In the morning there were small engagements as Union forces encountered enemy pickets. By the afternoon, three Confederate regiments had marched south from Leesburg to confront them. Chaos followed. The Southern forces occupied the higher, sheltered portion of the field and were able to press their advantage. As the Union forces lost ground, they were forced to face the difficulty of their position. To save himself, each man had to scramble down the narrow path and gain a seat in one of the two small boats crossing the river. Since there were not enough boats, some soldiers attempted to swim; but, even for the physically able, the swollen river was extremely treacherous. Many were shot during the escape, and the end result was disaster. From the Twentieth, there were 40 killed, 36 wounded, and over 100 captured by enemy forces.

Given their inexperience, the men of the Twentieth acquitted themselves with honor.
They stayed calm, coolly and efficiently firing their weapons. Hallowell—now Captain Hallowell—was especially resourceful; he was able to find a flank position where he and his men could fire cleanly into the midst of the enemy force. Hallowell was especially resourceful; he was able to find a flank position where he and his men could fire cleanly into the midst of the enemy force. Holmes himself displayed real courage. With bullets in the air, he stood at the front of his troops and urged them on. Soon he was hit by a spent bullet that forced him to the ground. He crawled towards the rear where Colonel Lee suggested that he seek treatment. But Holmes examined his wound, found it was superficial, and decided he could soldier on. By his own account, he rushed forward to the front of his unit and, waving his sword, asked “if none would follow me.” Thus Holmes was hit for a second time—this time by a live bullet that

Norwood Penrose “Pen” Hallowell (above) befriended Oliver Wendell Holmes, Jr., at Harvard College, from which they both graduated in 1861. His fervent abolitionism, derived from his Quaker faith, led him to volunteer for service in the Civil War and inspired Holmes to do the same. Hallowell would volunteer to command the all-black 55th Massachusetts in 1863.

HOLMES AND THE CIVIL WAR
pierced his chest and came perilously close to his heart. Amidst considerable doubt as to his survival, he was transported back to Harrison Island and then to the mainland. He wavered in an out of consciousness. At one point, he was so certain of his own death that he considered swallowing the lethal dose of laudanum that he carried in his pocket. Sensibly, however, he postponed it, deciding that there was no point so long as there was so little pain. Within a few days, he rebounded. Ten days later, he was well enough to be transported to Philadelphia, where he stayed with Hallowell’s family. In another ten days, he was on his way to Boston.

Holmes’ homecoming was worthy of a gallant knight. In Boston, wounded soldiers were still a novelty and, of those who returned, Holmes was by far the most notable. Thus, many people came to pay their respects. In the first three weeks, there were, by his mother’s count, 133 visits in all. His callers were not just friends and family but important men as well. For example, the Abolitionist, Senator Charles Sumner, came to see him twice. There was also a visit from the English author Anthony Trollop, who happened to be traveling in America. Harvard was well represented, too—both its president, Cornelius Felton, and its best known professor, Louis Agassiz, made their way to Holmes’ door. And, of course, there were the young women who brought gifts of flowers and food.

Holmes no doubt took it all in, enjoying his time in the center of attention. He assumed a sophisticated air, describing army life as an “organized bore.” But we can only imagine how disorienting the whole experience must have been. In the course of three weeks, he had gone from a young man who had never experienced serious discomfort to one who had been tested by the reality of war. He had watched friends die and had his own very proximate brush with death. Nevertheless, in almost no time, he was back in the safety of Beacon Hill, basking in the hometown adoration that his heroics had generated.

When he was alone, there must have been time to think and there was plenty to think about. The first and foremost thing was that he approved of his own conduct. Whatever his doubts may have been about his ability to stand fast in the face of danger, they could now be put aside. While he had begun the battle “all keyed up,” his instincts had done him credit—he had not shrunk from his duty. Yet, despite his own sense of success, one disturbing reality must have slowly become apparent. The slaughter at Balls Bluff was meaningless—it had no important objective and it had accomplished nothing. The newspapers were full of it—sketching a narrative where mistake after mistake led young and inexperienced troops to needless slaughter. The public was angry and ultimately that anger forced the government to form a commission to investigate. For one who had been there, this controversy must have struck a discordant note. For him, the battle had been deeply meaningful; to outsiders, he could now see that it was a comedy—or rather a tragedy—of errors. In this new narrative, he was less of a heroic leader and more of a victim, and it must have occurred to him that heroic actions lose some of their luster when they prove to be so entirely pointless.

Holmes had begun his wartime service aspiring to the gallantry of Ivanhoe, but, like many of his comrades, he found this ideal ill-suited to the Civil War experience. Ivanhoe fought alone. He chose his battles wisely, always representing good against evil. But Holmes was part of a big war machine—a complex piece of work that, in the beginning at least, malfunctioned more often than it succeeded.

Ball’s Bluff had been Holmes’ first chance to show his gallantry, his first chance to honor his ideal. But his ideal, once fulfilled, could not carry him forward. He needed a more subtle context in which to frame his concept of heroism. One element of this context was the code of the professional
soldier. A few years earlier, Tennyson had written a well-known poem describing an incident in the Crimean war. Like Balls Bluff, the incident was caused by an ambiguous order and subsequent miscommunication and, again like Balls Bluff, many were killed and wounded. In the poem, Tennyson described the reaction of soldiers who had been ordered to charge—defenseless—into a valley that was surrounded by enemy artillery:

Was there a man dismay’d?
Not tho’ the soldier knew
Someone had blunder’d:
Theirs not to make reply,
Theirs not to reason why,
Theirs but to do and die:
Into the valley of Death
Rode the six hundred.\(^\text{27}\)

So it was at Balls Bluff. Holmes had nearly lost his life for no reason. Such a sacrifice would not have advanced the cause. It would only be a regrettable mistake. From this, Holmes learned an important lesson: war required more than swagger. When he approached the field of battle, he could not assume that he would be striking a blow for cause and country. Even pointless orders required obedience and, from this point on, he knew that his fate was not in his own hands. It would ultimately be settled as a small and unintended consequence of a larger plan of battle. Therefore, his will and his judgment had to be suspended in favor of the assigned task, whether that task was foolish or wise.

If Holmes’ actions were to be decreed by others, his determination had to spring from the deepest recesses of his soul. For this, he needed encouragement, and perhaps he turned to Emerson who had been his primary source of inspiration throughout his college years. Emerson had described his own vision of heroism:

Let him hear in season, that he is
born into a state of war, and . . . that
he should not go dancing in the
weeds of peace, but . . . let him take
his reputation and life in his hand,
and, with perfect urbanity dare the
gibbet and the mob by the absolute.
. . . rectitude of his behavior. . . . To
this military attitude of the soul we
give the name of Heroism. Its rudest
form is contempt for safety and
ease.\(^\text{28}\)

For Emerson, war required certain attitudes—urbanity, rectitude, and contempt for safety and ease. But it also required more. In “Self-Reliance,” he had argued that each person must trust his (or her) inner voice. Applied to heroism, this meant that:

There is somewhat not philo-
osophical in heroism; there is somewhat
not holy in it; . . . Heroism feels
and never reasons, and therefore
is always right; . . . [The hero]
finds [in himself] a quality that is
negligent of expense, of health,
of life, of danger, of hatred, of
reproach, and knows that his will
is higher and more excellent
than all actual and all possible
antagonists.\(^\text{29}\)

What a tall order this must have been for Holmes! In his heart, he was a philosopher with a love of reflection and deeply considered ideals. Circumstances, however, required him to be heedless, to act without thinking, and to disregard the instincts of a careful man. It is no wonder that he sought an outward token to support his inward conviction. Before he left, he wrote to Emerson, asking for an autograph. Emerson complied and, throughout the rest of the war, Holmes carried the autograph in his pocket next to his breast.

Holmes returned to the army in March 1862, in time to participate in the Peninsula Campaign.
The Peninsula Campaign

There are only 100 miles separating Washington, D.C. and Richmond, Virginia. In April 1862, General McClellan might have simply moved forward towards the Southern capital. At that point, there were approximately 50,000 Confederate soldiers standing in the way, a not insurmountable force given the superior numbers that McClellan commanded. The somewhat unlikely alternative was to approach the city from the southeast by sailing to Hampton, Virginia, and marching northwards up the Peninsula formed by the James and York Rivers. While the peninsula route meant encountering fewer enemy troops, it was also longer and logistically challenging. For reasons known only to military historians, McClellan chose the peninsula.

Given the logistics, McClellan’s first order of business had to be the fortifications at Yorktown. So long as the Confederates controlled them, necessary supplies and reinforcements could not be transported on the York River. Rather than assault Yorktown, McClellan, ever cautious, opted for a siege. The resulting month’s delay gave the Confederates ample time to adjust their forces to the new Union strategy. They drew their troops closer to Richmond and, by the time McClellan was ready for the assault, the Confederate capital was well defended, and the Union forces never attacked. They spent one month close to Richmond, and then, after two small and somewhat inconclusive battles, McClellan ordered a retreat.

Inevitably, this pointless trip up and down the peninsula was the cause of much suffering and the Massachusetts Twentieth was in the thick of it. They spent two months advancing through mud and enemy fire north towards Richmond, a month camped outside of Richmond preparing fortifications, and then five painful days guarding the rear of the Union Army as it retreated down the peninsula. In all this time—much of it in the midst of combat—Holmes was not wounded, but, like many of his comrades, he suffered severe blows to morale and spirit.

For the soldiers, the Peninsula Campaign was a time of extreme privation and danger. The Twentieth began the march towards Yorktown with inadequate shelter; their tents would not arrive for several weeks. This was important because it rained almost continuously. Ultimately, the damp, combined with little food and little rest, made most of the soldiers ill. But ill or not, they had to persevere and this required intense determination—what Holmes called pluck:

It’s a campaign now and no mistake no tents, no trunks no nothing it has rained like the devil last night all day and tonight . . . Marching will have to be slow for the roads have constantly to be made or amended for artillery . . . The men and officers are wet enough you may believe but there is real pluck shown now as these are real hardships to contend with.30

By its very nature, pluck required an almost delusional optimism. On April 23, Holmes reassured his family that “my cold seems to have finally departed” and “I have been very well.” But this was not quite true: “the two rainy days before and while on picket my bowels played the Devil with me owing to cold and wet and want of sleep.” The “want of sleep” was particularly miserable:

I forgot to say that as our camp is only about a half a mile from the pickets in the beeline we are called under arms about every third night by some infernal regiment or other getting excited and banging away for about five minutes we stand about an hour in the mud and then are dismissed.31

That Holmes would describe himself as “very well” in the face of all this bespeaks the
level of denial that was necessary to support the needed “pluck.”

The long campaign up the Peninsula culminated in the battle of Fair Oaks. For the Twentieth, even getting to the battle proved a struggle. Holmes wrote: “(We) marched for miles I should think the last part through a stream above our knees and then double-click through mud a foot deep onto the field of battle.” 32

As they neared the fighting, they saw many wounded soldiers who encouraged them on: “Give it to them, Massachusetts boys, you are just in time.” But, as is typical of war, the messages were mixed, as deserters warned them that no one could stand what was in front of them and that they would be “cut to pieces” if they moved forward. 33

Finally at 6:00 PM, they emerged from the woods and joined the battle. 34 Henry Ropes, one of the Harvard officers, described it this way:

The noise was terrific, the balls whistled by us and the Shells exploded over us and by our side, the whole scene [was] dark with smoke and lit by the streams of fire from our battery and from our Infantry in line on each side. 35

And then there was the human suffering:

Dead covered the field. The sight of the wounded was even more distressing. Some walking, some limping, some carried on stretchers and blankets, many with shattered limbs exposed and dripping with blood. 36

All in all, it was a horrifying and frightening sight.

As at Balls Bluff, Holmes’ courage did not fail. Nor was he willing to tolerate cowardice in his men. Later, he explained the mechanics of courage to his family:

But really as much or rather more is due to the file closers than anything else, I told ’em to shoot any man who ran and they lustily buffeted every hesitating brother. I gave one (who was cowering) a smart rap over the backsides with the edge of my sword— and stood with my revolver and swore I’d shoot the first who ran or fired against orders. 37

Finally, hours of fighting brought success. Holmes wrote: “Here we blazed away . . . till we were ordered to cease firing and remained masters of the field.” 38

There is nothing like victory to test men’s souls. First, there was the fleeing enemy. Like the rebel forces at Balls Bluff, the Twentieth now had the opportunity to shoot the enemy in the back fleeing from the battlefield. Hallowell, the “fighting Quaker,” found this distasteful, believing that men fleeing from the fight should be considered hors de combat. He therefore ordered his men to stop firing. This was not a popular order, but it held.

Once the enemy had left, the Twentieth set up camp on the field of battle. The smell was terrible and the sights were worse. Holmes wrote his father:

As you go through the woods you stumble constantly, and after dark . . . perhaps tread on the swollen bodies already fly blown and decaying, of men shot in the head back or bowels—Many of the wounds are terrible to look at—especially those fr. fragments of shell. 39

There was no food to speak of, distasteful as it was, many of the men were reduced to ransacking the dead bodies for something to eat.

The enemy wounded presented a different kind of problem. Their cries and yells resounded throughout the camp. Remarkably, after a long day of marching and fighting, a number of the Union soldiers felt compelled
to assist. They fetched water, gave up their blankets, and spoke with the wounded Rebels, writing down names and addresses so that they could inform Southern families about their sons’ final hours. Dr. Revere, brother of Colonel Revere and the company’s doctor, even administered precious opiates to ease their final suffering. Perhaps, as one writer suggested, the men were just trying to prove a point; they were “determined to show” that they were not just “superior soldiers” but also men of “superior sensibilities.” However, long after the point is lost, the compassion remains as one more peculiar aspect of a war among brothers.

After the battle of Fair Oaks, the Union Army began preparing for a siege of Richmond. At one point, the Twentieth was sent three miles back from the front lines so the unit could get some much-needed rest. Nearly everyone in the unit was sick. Beside the ever-present dysentery, there was an assortment of other ailments. On June 13, Holmes wrote: “Shall I confess a frightful fact? Many of the officers including your beloved son have discovered themselves to have been attacked by body lice.”

And on the 19th, he mentioned a different ailment: “The homesickness which I mentioned in my last they say is one of the first symptoms of scurvy.”

Ailments or not, the war continued. At the end of June, there were two events that marked the complete reversal of fortune for the Union Army. The first was the wounding of General Joseph Johnston, the Confederate Commander, and his replacement by the more aggressive Robert E. Lee. The second was that a skillful use of deception by the Confederates had convinced General McClellan that the rebel army was three times its actual size. These, together with two fierce battles fought outside Richmond, were enough to persuade McClellan that the assault on Richmond would be far too risky. As a result, he made a highly controversial decision to retreat.

The Twentieth received the news on the morning of the 28th. The first order of business was to move a number of railroad cars that had been left at Fair Oaks and were loaded with ammunition. With no locomotives available, the orders were to push the heavy cars three miles east to Savage Station so they would not fall into enemy hands. This meant that the Twentieth could not begin its retreat until the next morning when the unit was among the last Union soldiers to leave Fair Oaks. As the men began their march, they could see the celebration of the rebel forces as they entered the Union fortifications. This must have been a demoralizing sight; one can imagine their feelings as they voluntarily—and seemingly without reason—yielded the ground they had so recently fought for and won.

Also demoralizing was the sight of the wounded trying to follow the Army. “It was a pitiful sight,” one soldier wrote, “to see the wounded men who had been in the field hospital at Savage Station try to follow the army. Some with one leg some with arms gone others with Head tied up trying to escape from being taken prisoner which to many of them meant death.”

The Twentieth’s placement at the end of the retreating army meant that the men were part of the rear guard. Like all retreats, the march was confusing, disorderly, and filled with conflict. At one point Hallowell’s company was ordered out to harass the advancing enemy. Out in the field, Hallowell could hear troop movements behind him and gradually realized that the rest of the Union Army was pulling out. He awaited orders but none came. The question then became whether he and his soldiers were expected to follow the retreat or whether they were supposed to stay behind and die fighting. Without orders, Hallowell could only assume the latter. Thus, deep in the forest, fearful and alone with his men, he settled in to do his duty. Much later that night and to his great relief, orders finally came permitting him to abandon his post.
The way back to the main force was not easy. The night was dark and damp; the roads were more than muddy. Paul Revere managed the line and tried to boost the men’s spirits by offering encouragement, but not everyone was interested in building morale. Holmes later complained about Tremlett—another Harvard officer—who spread the word that “we must surrender or be cut to pieces within 36 hours.”

Finally at dawn, the men rested for a few hours before continuing their march. Soon they were pinned down by a Confederate artillery attack. They lay down in the mud and waited. They were tired and thirsty from their march, but the only water available came from the muddy pools beside the road. The artillery fire had set the surrounding forest ablaze. Since the trees were damp from the spring rains, there was little danger of the fire leaping to their position near the road, but nevertheless the smoke was terrible and the men were left choking and struggling to breathe. It was several hours before they could resume their march and no sooner had they done this than they received orders to join the battle at Glendale.

Glendale was the last battle on the Peninsula and, once again, the Twentieth took many casualties. Holmes lost his cousin, Jimmy Lowell—an event he would remember years later in a famous speech delivered on Memorial Day, 1884:

I see another youthful lieutenant as I saw him in the Seven Days, when I looked down the line at Glendale. The officers were at the head of their companies. The advance was beginning. We caught each other’s eye and saluted. When next I looked, he was gone.

After the battle, Holmes and his regiment returned to the safety of Harrison’s Landing. As they entered the camp, the unit struck one observer as being particularly hard hit; he described them as looking “used up,” and, in fact, they were. The Peninsula Campaign had resulted in fourteen killed, seventy-two wounded, and eight missing or captured from the unit. Hallowell and Holmes were both safe although not without considerable wear and tear. Holmes, in particular, was nearing the end of his endurance. We can hear the fatigue in his July 4th attempt to reassure his mother: “I only want to say I am well after immense anxiety and hard fighting.” But it was more than fatigue. The Peninsula had taught him that the line between life and death is very thin.

He had also learned a lesson about his own strength. Consider, for example, the extremes of discomfort that he experienced. He had been a healthy boy from a comfortable home. Further, he had been at that age when a young man imagines that he is not only immortal but downright indestructible. Conditions on the Peninsula had driven him almost to the breaking point. If he still thought of Emerson and his description of the hero, it must have seemed strangely out of reach. Emerson had written that a hero could maintain his “contempt for safety and ease” because [he] had a “self-trust which slights the restraints of prudence, in plenitude of [his] energy and power to repair the harms [he] may suffer.”

For Holmes, at this stage in the war, the belief in his own “energy and power” must have been less of a conviction and more of a desperate hope. Furthermore, the reality of human suffering could no longer be ignored. While he tells his family that he is increasingly indifferent to the carnage all around him, his indifference did not extend to the cries of the wounded or to the loss of people he knew. For example, as the Memorial Day speech makes clear, he was still suffering the loss of Jimmy Lowell twenty years after his death.

During August 1862, a much weakened regiment moved from Harrison’s Landing to Alexandria, Virginia. It had started the war with 787 men and thirty-nine officers; it was
now down to 200 men and eight officers. This meant there had to be new recruits, and Governor Andrew obliged by sending 344 men. Despite the fact that these recruits were untrained and in many cases unarmed, the unit was fighting again by the end of the month, this time in a rearguard action to protect General John Pope’s army as it retreated from Manassas.

This action was followed by a brief period of inactivity during which Holmes was able to obtain a twelve-hour pass. He spent the time in Washington buying clothing and supplies. Good food and a good night’s sleep in a quiet and comfortable bed were restorative. Though he wrote his mother that he was experiencing “spasmodic pain” in the bowels, he nevertheless insisted that he was “pretty well” and then even corrected the phrase with emphasis to “very well.” Holmes was beginning to heal, but the time of renewal would not last. On the 13th of September, they left for Antietam.

**Antietam**

We remember Antietam as the bloodiest day in American history. The battle can be divided into three distinct stages. The first stage took place in the morning when three successive waves of Union soldiers attacked the Confederate line to the north. At the center of this fight, there was a cornfield that lay between two patches of woods. The second stage began in the early afternoon when the
Union Army mounted a charge against the Confederate troops at the center of the field. This resulted in a fight over the notorious Sunken Road. The third and final stage began in the late afternoon when General Ambrose Burnside consolidated his forces and attacked the southern part of the Confederate line. The center of the third fight was a small bridge that crossed Antietam Creek.

The Twentieth fought in the morning as part of the third wave. Henry Ropes recounted the ensuing action in a letter to his father. He began by describing the march across the cornfield:

"Our division was formed in three lines, the first line Gorman’s brigade, the second ours, the third Burns. The principal musketry firing was done of course by the first line. We were under heavy fire, however, and suffered from artillery while advancing. We drove the enemy before us with tremendous loss on both sides. The slaughter was horrible, especially close to the Hagers-town Turnpike where the enemy made a stand by the fences."

Once across the Turnpike, they entered the woods where there was a momentary halt in artillery fire. As they emerged from the woods, however, they found themselves in an extremely precarious position. Ropes continued:

"We finally advanced down the slope, beyond which the enemy held a cornfield and farmhouse with barns and outbuildings, all on an opposite slope. (This was the Poffenberger farm.) The enemy had Cannon planted on the top and constantly swept us down with grape and Shrapnell shell. Our line was advanced close to the first, exposing us to an equal fire, while we could not fire at all because of our first line."

The third line was finally advanced close to the second, all this time we stood up and were shot down without being able to reply."

The problem here was that General Edwin Vose Sumner had ordered the lines formed too close together, and, as the army fought its way across the cornfield, it had turned leftward. This meant that the left-hand side had become even more tightly packed so that only the soldiers at the extreme left of the formation could fire their weapons. To make things worse, the Division was without leadership. General John Sedgwick and General Napoleon J.T. Dana had both been wounded.

In time, the Division’s bad position became worse. They found themselves surrounded on three sides. The enemy was in front of them fighting Colonel Willis Gorman’s brigade, but there were also rebel soldiers attacking both from the side and from the rear. Ropes described their predicament:

"The enemy in the meantime came round on our left and rear, and poured in a terrible crossfire. Sumner came up in time to save the Division and ordered us to march off by the right flank. We did so, but the left regiments gave way in confusion, the enemy poured in upon our rear and now the slaughter was worse than anything I have ever seen before."

Indeed, the situation was dire, but the Twentieth had earned its reputation for grace under fire. Ropes’ pride in their conduct is apparent:

"Sumner walked his horse quietly along waving his hand and keeping all steady near him. Although the regiments in rear of us were rushing by us and through our ranks in the greatest confusion, we kept our company perfectly steady, did not take a single step faster than the..."
regular marching order and brought off every man except those killed and wounded who of course were left.59

Hallowell and Holmes were among the wounded who had been left on the field. Hallowell was hit in the left arm. Dressed inconspicuously in a private’s shirt, he was able to sneak through enemy lines to a house that was located in Union territory. Holmes had been shot in the back of the neck and was lying down, drifting in and out of consciousness. He might have been left for dead but for the diligence of a man named William LeDuc, who insisted that Holmes receive attention. They gave him brandy and he revived enough to be able to stand, and with help he too made it to safety. As he entered the house, he saw Hallowell and lay down next to him.

Their relative safety would not last for long. The advancing enemy army had finally overtaken Nicodemus House—the house where Hallowell and Holmes and countless other wounded had sought shelter. While the rebels were busy in the yard, one of them performed a quiet act of empathy. As Hallowell later told it:

"The first Confederate to make his appearance put his head through the window and said: "Yankees?"
"Yes."
"Wounded?"
"Yes"
"Would you like some water?" A wounded man always wants some water. He off with his canteen, threw it into the room, and then resumed his place in the skirmish line and his work of shooting retreating Yankees. In about fifteen minutes that good hearted fellow came back to the window all out of breath, saying: "Hurry up there! Hand me my canteen! I am on the double-quick myself now." Some one twirled the canteen to him, and away he went.60

After the federal forces reoccupied Nicodemus House, the wounded were evacuated to the temporary hospital in Keedysville. Hallowell was fortunate to have his arm saved by a surgical procedure called “exsection,” and, as it turned out, Holmes’ wound was not serious. The bullet had gone straight through his neck without doing lasting injury to his airway or spinal column. Once again, he had been lucky.

Holmes’ behavior after his injury suggests that he might have felt relieved to be wounded. The next day, he wrote a short note to his parents, reassuring them:

Usual luck—ball entered at the rear passing straight through the central seam of coat & waistcoat collar coming out toward the front on the left hand side—yet it don’t seem to have smashed my spine or I suppose I should be dead or paralyzed or something—It’s more than 24 hours & I have remained pretty cocky, only of course feverish at times & some sharp burning pain in the left shoulder.62

Apparently, he felt well enough the next day to make his way to Hagerstown, where he could board a train to Philadelphia. Instead, once in Hagerstown, he delayed. "I pulled up in good quarters at Hagerstown . . . and not feeling quite inclined to undertake the journey homeward immediately alone—I decided to remain here a few days."

The delay might have been worrisome to his mother but for the fact that it was perfectly clear that Holmes was having a wonderful time. The letter itself had been dictated to a young woman with whom he was clearly enjoying a flirtation. Furthermore, it opened in a joking mood:

Tho unheard from I am not yet dead but on the contrary doing all that an unprincipled son could do to shock the prejudices of parents & of
doctors—smoking pipes partaking of the flesh pots of Egypt swelling around as if nothing had happened to me.

Finally, it ended with the promise that “I will be with you shortly for another jollification in Boston.”

The lightheartedness of this letter forms a sharp contrast with the rest of Holmes’ Civil War correspondence. Because he was wounded, he was exempt from all duties and responsibilities. Since his return in March, there had been considerable suffering, and, through it all, he had to obey orders, be a good leader, and generally live up to his own code of heroism. Now, wounded, he was free—free to stop in a comfortable home, free to flirt with a pretty girl, and free to hold his parents at arm’s length. With respect to the latter, he was explicit: “I neither wish to meet any affectionate parent half way nor any shiny demonstrations when I reach the desired haven.” Unfortunately, however, his father could not easily be brushed away. He was already en route with a pencil and paper in hand. Dr. Holmes’ story, My Search after the Captain, became a classic of Civil War literature, and young Holmes was saved from embarrassment only by the fact that, like so much of what Dr. Holmes wrote, the story was chiefly about himself.

This time, Holmes spent a mere seven weeks at home before he returned for duty. Not surprisingly, he displayed a distinct “nervousness” that was duly noted by his father. Antietam marked a turning point in his attitude toward the war. He had learned an important lesson, one difficult for a man of his age and background to internalize. Over the previous nine months, experience had been a strict and ruthless teacher. He now understood that there were limitations on his own strength, power, and spirit. He might aspire to glory in all its forms. With the greatest self-discipline, he might force himself to complete whatever task was to hand. But there was, in the final analysis, a line beyond which he could not go. And what was true for him was also true for the cause he had embraced. He now understood that the Confederate Army was determined to resist occupation; he believed that the Union Army could win a battle but not the war, and, after his seven weeks at home, he was also doubtful that the civilian world of the North was fully committed to victory. These growing realizations must have been hard to swallow, but swallow them he did. From this point forward, his skepticism about the war is apparent in his letters and diary.

His first letter home after his recuperation is a good example of the new attitude. Admitting that he was “blue,” he told his parents that he had had difficulty obtaining directions to his unit and that the army “seems to hold that you are a nuisance for not having stayed at home as indeed but for honor I should suspect I was a fool.”

No doubt, this is a reasonable sentiment, but for Holmes it represents an entirely new tone of voice, one increasingly both self-deprecating and critical of military command.

Fredericksburg

After the costly standoff at Antietam, General McClellan was finally relieved of his command. He was replaced by General Burnside, who decided upon a direct route to the Confederate capital. This meant that Fredericksburg, which lay halfway between Washington and Richmond, became the immediate target. Fredericksburg was a small city protected on the north and east by the Rappahanock River. General Burnside planned to cross the river by the use of pontoon bridges that were being sent from Washington. Unfortunately, the bridges were not delivered on time and, by the time they did arrive, the Confederate Army had moved in and fortified the town.

Nevertheless, on December 11, the Union Army attempted to take Fredericksburg. Amidst enemy fire, the engineers began
assembling the bridges. As they neared the opposite shore, the firing became so intense they could not continue. The Twentieth was assigned to guard them, but the engineers were still unable to make any progress against the well-hidden snipers. The work soon came to a halt. Burnside faced a dilemma. His army could not cross the river without bridges and the bridges could not be built so long as no one was fighting the enemy on the other side. To solve this problem, the Michigan Seventh volunteered to cross the river in pontoon boats. General Burnside thought the mission suicidal but, lacking other alternatives, he permitted it and it succeeded. Next across the river was the Massachusetts Twentieth, and to them fell the duty of clearing the main street. This meant running a gauntlet with enemy fire from all sides. Shots came from everywhere—windows, doors, roofs, basements, and alleys. The Union soldiers were an easy target while the Confederates shot from

While some have suggested that the war turned Holmes into a detached and cynical spirit, the author argues that Holmes (pictured here in uniform) was remarkable in his ability to go on with his life after the war with a renewed sense of purpose. What was it in his character that enabled him to withstand war without losing himself?
cover. The only way to prevail was for the front to keep moving forward, depending on soldiers from the rear to replace those who were shot. And this is what the Twentieth did. Holmes’ friend from home, Henry Abbott, became the hero of the day. He stood at the front of his soldiers as they were mowed down by enemy fire. When his first platoon was shot to pieces, he calmly ordered the second one forward and led “them into a storm with the same indifferent air that he has when drilling a Battalion.”

For the Twentieth, this was a dreadful day, but it was one that Holmes spent on the sidelines. In a letter to his mother, he recounted his feelings as he watched his regiment go into battle:

Yesterday morning the grand advance begins—I see for the first time the Regiment going to battle while I remain behind—a feeling worse than the anxiety of danger, I assure you—Weak as I was I couldn’t restrain my tears—I went into the Hospital . . . listless and miserable.

Holmes had a serious case of dysentery. Without antibiotics, dysentery was a lethal threat. Left untreated, it would cause the bowels to run with blood, mucus and half-digested food, leading to dehydration, starvation, and death. During the Civil War it killed 60,000 soldiers. Holmes was not only sick; his life probably hung in the balance. But staying in the hospital was not an easy thing:

We couldn’t see the men but we saw the battle—a terrible sight when your Regiment is in it but you are safe—Oh what self reproaches have I gone through for what I could not help and the doctor, no easy hand, declared necessary—And in it again the Regiment has been—Scarcely anyone now left unhurt . . . —The brigade went at an earthwork and got it with cannister.

When it was all over, he described it as “one of the most anxious and forlornest weeks of my military career.”

Fredericksburg also led Holmes to articulate some of his new attitudes about the war to his father. He now became openly sarcastic about the unjustifiable optimism in the Boston papers:

I always read now the D. Advertiser . . . —and I was glad to see that cheerful sheet didn’t regard the late attempt (Fredericksburg) in the light of a reverse—It was an infamous butchery in a ridiculous attempt—in wh. I’ve no doubt our loss doubled or tripled that of the Rebs.

Further, while reaffirming his belief in the “rightness of our cause,” he expressed his doubts about ultimate victory:

It is my disbelief in our success by arms in wh. I differ from you . . . —I think in that matter I have better chances of judging than you—and I believe I represent the conviction of the army.

He then countered the argument—presumably one made in a letter from his father, that the Southern devotion to slavery was matched by a Northern commitment to “civilization and progress” and that the North would prevail because “progress” is stronger than slavery. Holmes’ response suggests that he was rethinking the role of war in ending slavery.

If civ’n & progress are the better things why they will conquer in the long run, we may be sure, and will stand a better chance in their proper province—peace—than in war, the brother of slavery—brother—it is slavery’s parent, child and sustainer at once.

At this point, Holmes was part of an army that had become thoroughly demoralized.
The battle at Fredericksburg and the subsequent retreat brought the Union Army to its lowest point. Desertions were becoming more common and discipline was lax. Abbott may not have been exaggerating when he wrote, “The state of the army is terrible. Since the intense suffering caused by this advance, things are much worse & almost ready for mutiny.”

Morale in the Twentieth was once against threatened by class conflict. One long-standing issue became more intense during the winter of 1862-63. The Twentieth had lost so many commissioned officers that it was necessary to appoint replacements. Not surprisingly, Governor Andrew preferred to promote from within the ranks, but to the snobbish Harvard officers, this meant sharing their duties with men from immigrant families who had neither breeding nor education. The Harvard officers didn’t like it, but they were powerless to stop it.

There was also the question of what to do about a commanding officer. Up until Antietam, Colonel Lee had provided real leadership. In fact, the most fractious time for the unit occurred during his absence after Balls Bluff. Then, it was only his return from the Confederate prison that brought some measure of peace to the warring factions. After Antietam, however, Colonel Lee had a breakdown. He had disappeared from the battle and been found days later drunk in a stable. Suffering from alcoholism, he was never able to resume command. His formal resignation came soon after the battle at Fredericksburg.

Replacing Lee was a difficult issue. The Beacon Hill contingent wanted one of their own. Lt. Col. Francis Palfrey was next in line, but he had little support in the unit as he was not widely regarded as competent, nor was Governor Andrew inclined in his direction. The next in seniority after Palfrey was Capt. Ferdinand Dreher, a German-American officer, who was also not popular among his fellow officers, partly because he was not from Harvard and partly because his German accent was so thick he had a hard time making himself understood. Third in seniority was Capt. Macy, the preference of his fellow officers but not the Governor’s choice. Rumors swirled around the camp. Some thought that Dreher would be named—he was, after all, the Governor’s favorite. Others thought it might be—God forbid!—an outsider. Such rumors infuriated the Harvard officers and caused them to complain bitterly about civilian interference.

Ultimately, however, the Governor simply made the appointment in accordance with seniority. First he appointed Palfrey, but Palfrey was so disabled he resigned. Then he appointed Dreher, who barely lived long enough to receive the appointment. Finally, Macy was appointed acting Colonel with every expectation of being appointed to permanent command. Logical as this outcome seemed to the men of the Twentieth, it was not to be. Paul Revere had not yet been officially removed from the rolls of the Regiment, and he outranked Macy. He also wished to assume the command, and Governor Andrews, who was still not well disposed towards Macy, was more than willing to have that happen. Technically, since Macy was already occupying the Colonel’s slot, he had to be mustered out of the unit so that Revere could assume his place. The Harvard officers were so outraged at Revere’s interference that they refused to speak to him when he arrived. Nor were they assuaged when Revere intervened so that Macy could remain in the unit at the rank of Lieutenant Colonel. Macy himself behaved with grace, but the rest of the officers nursed their grudge.

Despite the low morale, the officers stood by the unit. Holmes was offered a staff position with General Sedgwick. Traveling with the General would have been somewhat more comfortable than living on the line. Nevertheless, he turned it down, preferring to stay in a unit that, despite its conflicts, commanded both his affection and respect.
Henry Abbott and John Ropes were also offered staff positions. They too turned them down. Pen Hallowell, however, did leave the unit, but he did not transfer to a more comfortable job at headquarters. Instead, he volunteered for one of the most difficult jobs in the Army. Together with Colonel Robert Shaw, he would form the command of the Massachusetts 54th, the first Black regiment in the Union Army. Hallowell asked Holmes to join him, but for reasons nowhere recorded, Holmes declined.75

The fiasco at Fredericksburg and the general malaise in the Army brought action from Washington. General Burnside was relieved in favor of General Joseph Hooker. Hooker sought to improve morale by rewarding units that had fought well. Naturally, this benefitted the Twentieth. As a reward, they were given additional furloughs. They were also moved into comfortable winter quarters in Falmouth, where Holmes served as Provost Marshall. As the spring wore on, wholesome food and adequate rest began to have their effect. As their situation improved and the leadership issue stabilized, the officers began to think less of unit politics and more of the coming offensive.

General Hooker had devised a complicated plan for taking Fredericksburg. He divided his army into three sections: the first would cross the Rappahanock well north of the city; the second would cross to the south; and the third smaller unit, which included the Twentieth, would remain near Fredericksburg. The point of the strategy was to leave Lee guessing about where the main attack would come.

On May 2, the pontoon bridges were once again moved into place and the Twentieth crossed into Fredericksburg. This time they did not attempt passage down the main street but instead moved to the north and approached the western fortifications from the open plain. This avoided the snipers in town but exposed them to the Confederate artillery. In a letter to his mother, Holmes gave a vivid description of the scene that followed.

Pleasant to see a d’ed gun brought up to an earthwork deliberately brought to bear on you—to notice that your Co. is exactly in range—1st discharge puff—second puff (as the shell burst) and my knapsack supporter is knocked to pieces . . . 2nd discharge man in front of me hit—3d whang the iron enters through garter and shoe into my heel.76

And whang! Holmes would be going home once again. He arrived back in Boston in the middle of May. This time the wound was not life-threatening but it would take longer to heal and required a course of rehabilitation so that he could walk properly. His father described him as being “in excellent spirits . . . (and) not at all nervous, as when he was last wounded.”77

Obviously, his life on Beacon Hill was more comfortable than life in the Army. On the other hand, the revolving contrast between home and battle must have been somewhat disorienting. The war looked one way viewed from the comfort of Beacon Hill, and looked quite different from the battlefield. As the war went on, these two perspectives must have seemed more and more at odds. For example, there were all those mutilated corpses. “As you go through the woods,” he wrote from the battlefield, “you stumble constantly, . . . perhaps tread on the swollen bodies already fly blown and decaying.”78 Compare this with the tenderness and delicacy of the letter sent by John Ropes to Holmes asking him to be a pallbearer at his brother Henry’s funeral:

The body arrived this morning. It is, I am afraid to say, not in a state to be seen. It would not do to open the coffin. All that can be seen through the glass-plate is the breast, which is bare, and in which there is a fearful wound in the region of the
heart, which must have caused instant death. I think I can discern a fragment of shell embedded in the breast. It is a sad and shocking sight—nothing of the face can be seen but the chin, round which is a handkerchief.79

Home and war are two different worlds, and it is painful to hold both in one’s heart. Back at war, Holmes himself described the problem:

The duties & thoughts of the field are of such a nature that one cannot at the same time keep home, parents and such thoughts as they suggest in his mind at the same time as a reality—Can hardly indeed remember their existence.80

**Leaving the War**

Holmes returned to the war at the end of January 1864. Then, after six more months of active service, he would be on his way home for good.

Separation from the Army was a long process—a complex one that involved several sets of changes. The first affected Holmes’ self-image as a soldier. We have seen that Holmes began the war with a somewhat romantic image of himself as a gallant knight and that this image was not to last through the events at Balls Bluff. He developed a new narrative that tied him to the war—one that drew on the duties of a professional soldier, the loyalty to one’s unit and the Emersonian ideal of heroism. Essential to the Emersonian ideal was a steadfast confidence in one’s own ability to withstand discomfort and injury, but it was this confidence that Holmes had lost on the Peninsula.

The second set of changes had to do with his perception of the war. Holmes believed in the Union cause. Up until the end, he would characterize it as the “Christian crusade of the century.”81 Over time, however, he came to believe that the North was incapable of subjugating and occupying the South. With no victory in sight, the war seemed like an endless sinkhole that chewed up men’s lives. He was there because it was his duty to be there and because his dearest friends were there. And so he weathered the dysentery at Fredericksburg I and the terrible sight of his men doing battle without him. And he suffered the wound at Fredericksburg II and the welcome trip home that came with it. He would be in Boston for six months, but six months was not nearly long enough to regain his composure. Later, much later, he confessed his secret hope that he might lose his foot entirely so that he would not have to return at all.82

His last remaining tie to the Army was also his strongest—the loyalty that he felt to his regiment. When he returned, however, the sad and simple truth was that he could not return to his regiment. The Civil War had its share of red tape. Colonel Revere had been killed at Gettysburg and Lt. Col. Macy had been wounded. Holmes was next in line for the position of Lt. Colonel. He suggested that he waive it in favor of his friend, Abbott, who was at that point commanding the unit. Abbott, however, gracefully declined and Holmes accepted the promotion. This created an anomaly in the chain of command. Abbott was a Major but, if Holmes returned as a Lt. Colonel, he would have to serve under Abbott—essentially taking orders from one of lower rank. The obvious solution—that Holmes accept a temporary demotion—was not available as the Twentieth already had its full allotment of Captains.83 There was no solution except for Holmes to leave the unit and accept a staff position at Sixth Corps Headquarters.

Holmes may have contemplated that his absence from the unit would be temporary. As late as mid-April 1864, he wrote to Charles Eliot Norton of his plan to return to the Twentieth as Lieutenant Colonel under a
Holmes greatly admired the courage of his friend Henry Abbott (left), with whom he served for two and a half years until Abbott was killed in the Battle of the Wilderness (soldiers recovering from that battle are pictured). Unlike Holmes, Abbott was a Copperhead.
recovered Colonel Macy: “In all probability from what I hear of the filling up of the Regt. I shall soon be mustered in for a new term of service as Lt. Col. Of the 20th.” Note that the “new term of service” was contingent on the circumstance that the Regiment was “filling up.” This refers to the fact that the Regiment would go out of existence on its three-year anniversary unless two things happened: it had to persuade half of its remaining volunteers to reenlist for a new term and had to recruit enough men to bring the unit up to fighting strength (844 men). Given that the Twentieth had been decimated by its years of service, these were two difficult requirements, but remarkably the Regiment passed both these tests. The result, however, was a unit that barely resembled the one that Holmes had left.

Despite the fact that Holmes intended to rejoin the Twentieth, it is clear that his commitment was somewhat problematic. Holmes had written Norton to thank him for sending his article about King Louis IX and his crusade to the Holy Land. The crusade came at a time when the fervor that had attached to the First Crusade had diminished, and the review described the devices that the King used to keep his followers attached to their mission. Obviously, such a story would be particularly meaningful to Holmes at this point in the war:

the story seems to come up most opportunely now when we need all the examples of chivalry to help us bind our rebellious desires to steadfastness in the Christian Crusade of the 19th century. If one didn’t believe that this war was such a crusade . . . it would be hard indeed to keep the hand to the sword; and one who is rather compelled unwillingly to the work by abstract conviction than borne along on the flood of some passionate enthusiasm, must feel his ardor rekindled by stories like this . . . No it will not do to leave Palestine yet.

Nevertheless, one month later his mind was made up—he was not going to re-enlist; he was going to “leave Palestine” after all. One might well wonder what happened in the intervening month to produce such a dramatic change. There were a number of factors, all caused by events on the battlefield.

Grant was now in charge of the Union forces, and with him came a new strategy for ending the war. Union plans were no longer centered on occupying Richmond. Instead, Grant recognized that the destruction of Lee’s Army would mean an end to the Confederacy. And so he began a long war of attrition. It began on May 5 with the battle of The Wilderness. For two days, there was intense fighting in difficult terrain. Toward the end of the second day, the Confederate Army outflanked the Union Army on the right side, inflicting much damage and taking a thousand prisoners from Sixth Corps. That night, Grant disengaged his forces from the fighting and resumed his march southward towards Spotsylvania Courthouse. This began the series of flanking maneuvers in which battle followed battle with little time between. It was somewhere between The Wilderness and Spotsylvania that Holmes made his decision to leave.

In this period, several events occurred that might have affected his decision. The first was that his friend Henry Abbott was killed in the Wilderness. Abbott was Holmes’ last remaining tie to the Twentieth. Holmes’ affection for him was obvious when he described him twenty years later:

There is one who on this day is always present on my mind. He entered the army at nineteen, a second lieutenant. . . . I saw him in camp, on the march, in action. I crossed debatable land with him when we were rejoining the Army together. I observed him in every
kind of duty, and never in all the
time I knew him did I see him fail to
choose that alternative of conduct
which was most disagreeable to
himself. He was indeed a Puritan
in all his virtues, without the Puritan
austerity; for, when duty was at an
end, he who had been the master and
leader became the chosen compan-
ion in every pleasure that a man
might honestly enjoy.88

In some ways, the two men were an odd
pairing. Abbott was a Copperhead89 and one
of the more elitist officers in the unit, usually
one of the first to complain about officers who
were not also “gentlemen.” Hallowell and
Holmes, on the other hand, often bridged the
divide between the anti-abolition “gentlemen
officers” and the pro-abolition “non-gentle-
men” members of the Regiment. Further-
more, they came from opposite sides of
Boston’s elite. Henry’s father, Judge Abbott,
was a practical man well connected in the
business community; Holmes’ father was a
man of letters.

The depth of this difference and the
affection that bridged it can be seen in a letter
that Abbott wrote to his father concerning
Holmes:

I am glad you are going to take
Holmes under your wing. His father,
of course, one can’t help despising.
But Oliver Junior . . . is infinitely
more manly than the little conceited
Doctor. I am very confident, that he
is worthy of your friendship, because
a man here in the hardships and
dangers of the field can easily detect
what is base in a man’s character,
and it is particularly trying to
Holmes who is a student rather than
a man of action. But since I have seen
him intimately, he has always been
most cool, cheerful, and self-sacri-
cing . . . . He is considered in the army a
remarkably brave and well instructed

 officer, who has stuck to his work,
though wounded often enough to
discourage any but an honorable
gentleman.90

Thus, it is obvious that the two men held
one another in high esteem, and certainly the
two and a half years of shared service had
made them close. One might even say that
their fates seem strangely intertwined. Nota-
ably, it was Abbott who took Holmes’ place
when Holmes was sick with dysentery during
Fredericksburg I. Had it not been for the
illness, it would have been Holmes rather than
Abbott who led his company down the streets
of the city, and perhaps Holmes would have
done it less heroically. And again it was
Abbott who led Holmes’ company at Gettys-
burg when Holmes was recovering in Boston.
The fact that Henry had died in the Wilder-
ness would have cut the last strong emotional
bond that Holmes had with his regiment.

In addition, Holmes was seeing a new
kind of fighting. There were battles that
dragged on for days and days. Troops were
digging in, building barricades and trenches.
It was also true that Holmes was seeing, for
the first time, the awesome extent of the
fighting. At headquarters, he was learning
more about the scope of the fighting; and as he
rode around attending to his duties, he was
seeing more of the destruction.

All of this was clearly taking its toll.
Holmes’ diary from the period shows
relatively constant fighting from May 5 on
with tremendous losses: “In the corner of
woods . . . the dead of both sides lay piled in
the trenches 5 or 6 deep—wounded often
writhing under superincumbent dead . . . .
The losses of our Corps in these nine days are
ten thousand five hundred & forty seven!”91

On May 16, he finally found a quiet time
to write to his parents. It is no surprise that he
was not “in the mood for writing details.”
Instead he summed up the situation:

Enough that these nearly two weeks
have contained all of fatigue and
horror that war can furnish—The advantage has been on our side but nothing decisive has occurred & the enemy is in front of us strongly intrenched . . . nearly every Regimental off—I knew or cared for is dead or wounded.

And then he told them he had had enough: “I have made up my mind to stay on the staff if possible till the end of the campaign and then if I am alive, I shall resign.”

The reasons for his resignation have led to some confusion. The Twentieth reached the end of its three-year term on July 16, 1864. On August 1, the soldiers who had not reenlisted were mustered out at a ceremony on Boston Common. Some thought that this meant the termination of the Twentieth and bemoaned the fact that its demise meant the loss of so many good soldiers. For example, Charles Page, a New York Tribune reporter, wrote:

Regiments are continually going home on the expiration of their terms of service. Among the last which have gone are the Eighteenth and Twentieth Massachusetts, historical regiments. Would that I could catalogue the names of the heroes, Bay-State born and nurtured and taught, who have fallen from these.

Practically, the most important consideration is that so many trained and valuable officers are thus lost to the service. Of the Twentieth, Oliver Wendell Holmes, Jr. . . . served more than two years steadily and chivalrously as a line officer, . . . and he goes out of service because his regiment does, not because he would taste the sweets of home.

We have seen, however, that this dispatch is not entirely accurate. The Twentieth did not go out of service; it would continue on. Furthermore, Holmes could have reenlisted; and the reason—at least the reason he gave publicly—for not doing so was that he could no longer “endure the labors and hardships of the line.”

Privately, however, the reason given to his parents speaks more to his altered conception of duty than of his disability. The fullest explanation is this one from a letter of June 17.

I can do a disagreeable thing or face a great danger coolly enough when I know it is a duty—but a doubt demoralizes me as it does any nervous man—and now I believe the duty of fighting has ceased for me—ceased because I have laboriously and with much suffering of mind and body earned the right . . . to decide for myself how I can best do my duty to myself to the country and, if you choose, to God.

This explanation, however, hides more than it discloses. It is obvious that his father, growing more and more ardent in his support of the war, had disapproved of Holmes’ plan to leave the army before the war was over. Thus, in this passage and in others, Holmes emphasized his right to decide for himself the extent of his duty. There is therefore no recital of the reasons why his duty had ceased. We do know, however, that he had talked it over with several people. For example, he mentioned a discussion with Hayward, the “mentor of the Regt,” and told his friend Anna Pomeroy that the medical director had advised him that he was “not keeping up by the strength of my constitution now but by the stimulus of this constant pressure to which we have been subjected.”

In any case, I think it is not difficult to understand how Holmes approached the issue. In the summer of 1864, the war was not winding down but rather had shifted into high gear with no real end in sight. Holmes would have been justified in feeling that another
enlistment would have meant the end of his life. The odds in favor of being killed must have seemed extremely high. And, if he were not killed, he was certainly mindful of the risk of receiving a crippling wound or worse. As he wrote to his parents, “Many a man has gone crazy since the campaign begun from the terrible pressure on body and mind.”

But these considerations simply spoke to the sacrifice involved in reenlisting, and sacrifice was what duty was all about. He must have thought hard about the nature of his duty and about what it required from him. Did the same duty that required him to enlist also require him to reenlist?

In tracing his experiences in the war, we can see three distinct circumstances that changed in the three years of his service. First, there is the question of his physical capabilities. Holmes had not held anything back—he required himself to push to the limits of his endurance. Years of this had taken their toll. While his wounds may have healed, the day-in-and-day-out punishment of his body had not. There were few men who had suffered what he had suffered and were still able to perform their duties.

Second, there was the fact that the Army had changed. It was not just that there was no longer room for him in the Twentieth; it was that the days of infantry charges were over. It was not heroism that would win the day, but a daily grind of mechanized killing. As Nathan Hayward, Holmes’ “mentor,” had put it in a letter home:

A general order from General Grant, to Meade, to Hancock, to Gibbon, to the brigade commanders, to regimental commanders—nothing to arouse enthusiasm—not the presence of generals to encourage and inspire their men with the example of their own determination—but as I say this cold blooded official order.

It was this transformation that made the old-time officers nostalgic for McClellan. Holmes might well have agreed and felt that war was no longer the kind of thing where individual effort and valor made a difference.

Many factors went into Holmes’ decision not to reenlist in the summer of 1864, including the physical and psychological toll the war had taken on his mind and body. Pictured above is his sword.
Third, and perhaps most importantly, his views about war and its relationship to abolition had changed. Holmes was certainly not a pacifist. In fact, throughout his life, he praised the military spirit that men bring to war. On the other hand, we have seen that he had arrived at the important insight that war is “the brother of slavery—brother—it is slavery’s parent, child and sustainer at once.”

One could say that Holmes was mistaken in this judgment. Within a year, the war would be over and there would be no slavery in the South. Yet, as the next hundred years would demonstrate, the war against slavery did not end in 1865. Plantation slavery would be replaced by systems of peonage, white supremacy, and lynching trees. The face of slavery had been changed but it had not been eliminated.

**War and Character**

When Holmes returned to his family in Boston, he found that little had changed. He was able to pick up where he left off, enrolling in law school in the fall of 1865. Indisputably, however, Holmes himself had changed. Those closest to him saw it as positive. Fanny Dixwell, soon to be his wife, declared that, without the war, Holmes would have been a coxcomb. Others, more distant, saw the change as negative. Beginning with the publication of Holmes’ war diaries in 1946, scholars argued that his wartime experience diminished his idealism and led him away from conventional religion and morality. This experience was also, some suggested, responsible for many of Holmes’ least appealing characteristics: his detachment, his cynicism, and the single-mindedness of his ambition.

Soon, each of his biographers attempted armchair psychology. For example, in a 1965 article, Saul Touster offered Holmes’ war experiences as the “the psychological sources of Holmes’ life style.” To the modern ear, his use of the term “life style” might suggest some form of extreme deviance but, in fact, all he really meant was:

... the deadening of sympathetic feelings, the Olympian aloofness, the spectator view, books to calm the nerves, the sentiment of honour, the belief in heroic action, the disbelief in causes—all these, by which he can somehow gain distance from the world, can be seen in him by the end of the war. ...  

This is not a flattering picture of Holmes, but it is nonetheless balanced and fair. More recent accounts are less so.

For example, in a 1995 biography, G. Edward White described Holmes’ war experience in a way that is unambiguously condemnatory. For White, Holmes is not a hero injured by things beyond his control. Rather, he is a coward whose lack of character is amplified by his wartime trauma. For example, White draws a sharp contrast between Holmes and his friend, Henry Abbott:

The one, Abbott, the very personification of soldierly duty and honor. The other, Holmes, a soldier who after being shot in the heel had hoped his foot might be amputated so that he could avoid returning to war, who had chosen to leave service before Union victory was certain, who had admitted to his parents that he could no longer endure the blows and hardships of being a line officer, [and] who had reproached himself for missing the battle that produced Abbott’s legendary bravery.

Thus, what earlier writers had seen as “survivor’s guilt” becomes, for White, “real” guilt caused by real failures of spirit. Holmes had not just lost his idealism, White suggests; he had become an amoral egoist, who thought only of himself.

Even more extreme is a 2002 study by Albert Alschuler. Noting that a negative
interpretation of Holmes’ war experience “now seems conventional,” he restates many of the negative assessments without analysis or criticism. For example, he portrays Holmes as a man obsessed with “war, power, and struggle[.]” He also notes in Holmes “[an] attraction to morbidity[.]” But for Alschuler, Holmes is not just a coward; he is almost a psychopath. “Imagine,” he says:

that your Uncle Bob is a postal clerk whose career has never been interrupted by military service, and imagine that Bob begins one day to voice the thoughts once voiced by Oliver Wendell Holmes. For example, at the dinner table one evening, Bob announces, “[W]hen men differ in taste as to the kind of world they want the only thing to do is to go to work killing.” The next day, Bob praises suicide as a more “uneconomic” form of expression than charity to the poor. You and other family members are likely to consider whether Bob needs help.

This analogy seems farfetched. Holmes is not sitting at the dinner table philosophizing about mass murder and suicide. He makes these statements in a context in which his hearers understood that he was making a larger point, one driven home by a provocative exaggeration. Even more notable is the fact Alschuler chose to compare Holmes to Uncle Bob who has spent his days delivering mail rather than fighting a war. Fighting a war—especially a civil war—is an important life experience and one that colors our estimation of those who do it. Note, for example, Saul Touster’s treatment of this issue:

Holmes was, it seems to me, a profoundly injured spirit, and his greatness as a human being can be justly viewed only in the light of this fact. . . . He had been there and come back! We are all in awe of such spirits.

One way to understand the difference in the views of Touster and Alschuler is to remember that the Vietnam War intervened. That war taught us many things. It taught us that the traumas of war make reentry into civilian life very difficult. It filled our streets and shelters with men who had been devastated by combat, who have forced us to see that the psychological wounds of battle are often worse than the physical ones. For Alschuler, this means that returning soldiers deserve sympathy, but not respect. As a result, he wonders “how and why a man brutalized by war became the great oracle of American law.” In asking this question, Alschuler is not wondering how Holmes rose to the challenge. Rather, his question assumes that Holmes was so badly damaged by his Civil War experience that he was an inappropriate candidate for high office and public esteem.

It seems to me this is the wrong question. Holmes’ experience in the war was devastating. After the war, Holmes was skeptical about conventional morality and conventional religion. He was also distrustful of simplistic idealism and he was certainly ambitious. But none of these characteristics is pathological. In short, they do not require a patronizing explanation. Many of Holmes’ Boston contemporaries shared these qualities. Many of these qualities were part of Holmes’ character well before his Civil War experience.

It is a painful truth that the hardships of war do not run off a young man’s back like so many drops of water, but what is striking about Holmes is not that he was badly damaged, for he was not. What is striking is that the war did so little to nullify his spirit. Within a year of his return, he had enrolled in Harvard Law School and begun work on his career. After law school, he visited Europe. In London, he led an active social life, his wit and striking personality making him a
popular guest at fashionable dinners and weekends. In Paris, he had no contacts, but he actively explored the city and its European culture. In Switzerland, he even did some serious climbing in the Alps.

Nor did he seem troubled when he came home. A depressed man might have lapsed into a desultory practice of law, but he did not. He remained energetic and engaged. While legal practice did not excite him, he spent his free time studying legal history and building relationships with others who were committed to intellectual pursuits. He spent long evenings with William James discussing philosophy. He went on vacation with Henry James, and flirted with the women who accompanied them. He edited a law review, and discussed legal theory with his friends. He reached out to Boston lawyer George Shattuck as a mentor and friend. Furthermore, as time went on he patiently worked his way through mountains of case law (in order to provide the annotations for a new edition of Kent’s Commentaries) and read most of the existing literature on legal theory. He married Fanny Dixwell, a woman with whom he had much in common, and they formed a life-long bond of engagement and comfort.

Furthermore, his life continued to be successful and reasonably content. He wrote articles for the American Law Review, and, by the time he was forty, he had completed The Common Law. At this point, he stood poised for appointment to the Harvard Law School faculty and soon thereafter to the state’s highest court. At no time did he show symptoms of severe psychological distress. Indeed, this is a remarkable story of achievement for one who at a young age suffered the worst experiences that war could provide.

Looking at these facts, it seems simply inaccurate to dismiss Holmes as one of those promising young men who go off to war and return to a life of loneliness and misdirection. Perhaps Holmes was lucky. But it is also possible that his background and character were well suited to withstand the pressures of war and that the war, far from disabling him, gave him qualities that fueled his success. If this is so, then it is an important story and the crucial questions would be: What was it in his character that enabled him to withstand the crisis without losing himself? How was he able to leave adversity behind and approach the rest of his life with a renewed spirit and a wholesome appetite for hard work and new adventures? Answering these questions requires that we reassess Holmes and his legacy. We should not accept the common—almost cartoonish—representation of Holmes as a detached and cynical spirit. Instead, we must recognize the depth of character that sustained him and provided him with the courage and inspiration to persevere in the face of catastrophic difficulties.

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ENDNOTES

3 Sir Walter Scott, Ivanhoe, 248 (University Press Edition), at 248
4 Miller, supra n. 1 at 27.
5 Id. at 32-33
6 Id.
7 Id. at 35.
8 Id.
9 Id. at 38-39.
10 Id. at 36-37.
11 Id. at 38.
13 Given that the North and South were at war, the notion of Northern soldiers returning slaves to their Southern
“owners” seems strange. Nevertheless, that is exactly what Colonel Palfrey (a non-Abolitionist Harvard officer) did during the period that Colonel Lee (an Abolitionist) was a prisoner of war. This was a difficult time for Hallowell who, with Holmes recuperating in Boston and the other Abolitionist Harvard officers in Southern prisons, remained the only Harvard officer who favored abolition. Never one to sit silently by, Hallowell challenged Macy: “By what authority do you make New England soldiers do such work?” “In pursuance of my orders from Gen. Stone,” Macy replied. . . . Hallowell looked at the Nantucketer and said “slowly and sadly” that “I didn’t think that any New England Gentleman would do such dirty work.” Miller, supra note 2, at 97.

See, e.g. Id. at 84-104.


Id. at 55.


Miller, supra note 1, at 81-82.

Id. at 71.

Id. at 13.

Id. at 13-18.

Baker, supra note 17 at 121.

1 Mark DEWOLFE HOWE, JUSTICE OLIVER WENDELL HOLMES 111 (1957).

Id. at 128.

Id. at 21.


HOLMES, supra note 15, at 77.

Miller, supra note 1, at 179. Exection involves cutting away the damaged bone and placing two healthy cross-sections back together. As a result of the operation, one of Pen’s arms became an inch shorter than the other.

HOLMES, supra note 15, at 64.

Id. at 67-8

Baker, supra note 1 at 144 (quoting Dr. Holmes who, describing Holmes during subsequent recuperation from his third wound, wrote that “he was not at all nervous, as when he was last wounded”).

Miller, supra note 1, at 75; see also id. at 79 (where he describes Fredericksburg as an “infamous butchery in a ridiculous attempt”).

Id. at 201.

HOLMES, supra note 15, at 74.

Id. at 76.

Id. at 77.

Id. at 80.

Id. at 129.

HOLMES, supra note 15, at 51.

Miller, supra note 1, at 131.

HOLMES, supra note 15, at 51.

Miller, supra note 1, at 132.

HOLMES, supra note 15 at 53.

Id. at 55.

Miller, supra note 1, at 139.

Id. at 145.

HOLMES, supra note 15 at 60.

Miller, supra note 1, at 147.


Miller, supra note 1, at 152.

Id. at 151.

HOLMES, supra note 15, at 57.


Holmes, supra note 15, at 123.

Id. at p.122, note 1.


Baker, supra note 17, at 145.

Holmes, supra note 15, at 122, n.1.

Miller, supra note 1, at 315.

After the slaughter at Gettysburg, all who remained of Holmes’ friends in the officer corps were Macy and Abbott. Furthermore, thanks in part to the growing practice of foreign recruiting, German was replacing English as the most spoken language in the Regiment.

Holmes, in Our Youth: Our Hearts Were Touched with Fire: Memorial Day Speech delivered May 30, 1884, at Keene, N.H., before John Sedgwick Post No. 4, Grand Army of the Republic.

Id.

Generally, the term “Copperhead” was applied to those who were so opposed to the war that they encouraged various forms of resistance. Obviously the soldiers in the Twentieth who were called “Copperheads” were not so extreme in their views.

Howe, supra note 24, at 158, n.1.

Holmes, supra note 15, at 117.

Id. at 112.

Charles L. Page, Letters of a War Correspondent 176-7 (1899).

There is much ambiguity about the continuing life of the regiment. The Twentieth had been riddled once again by losses and was ultimately absorbed into another unit. Furthermore, even as the unit continued on, there was no place left for him on the line. After Abbott’s death and Macy’s wound, a man named Magnitzky had taken the place left for him on the line. After Abbott’s death and Macy’s wound, a man named Magnitzky had taken command. Magnitzky was a German-speaking soldier who began the war as a non-commissioned soldier in Holmes’ company. Holmes thought well of Magnitzky—he would later hire him as an office manager in his law practice—but he was not about to serve under him. Nor would he attempt to upset the command structure as Revere did after Fredericksburg. Even a staff position was not available. General Sedgwick had been killed in the recent fighting and the command structure was being consolidated as the Federal Armies were gathering in one place. His alternative at that point would have been to join a new unit.

Holmes, supra note 15, at 143 (citing this as a reason to give Governor Andrew and adding, “Nothing further need be told abroad”). See also Letter to Agnes Pomeroy, “I find myself too weak from previous campaigns to do the duties of an officer of the line properly. Id. at 143, n.2.

Id. at 143.

Id. at 149.

Id. at 150.

Miller, supra note 1, at 399.

Holmes, supra note 17 at 80.

Douglas Blackmon, Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II (2008).

Baker, supra note 17, at 105, Felix Frankfurter papers Library of Congress.


Saul Touster, In Search of Holmes from Within, 18 Vand. L. Rev. 437 (1965).

Id.

The same cannot be said of an article by Yosal Rogat, which describes nothing that is positive about Holmes’ character. Rogat’s assessment was that the war had left Holmes with certain moral weaknesses that made him unappealing both as a judge and as a human being. See Yosal Rogate, The Judge as Spectator, 31 U. Chi. L. Rev. 213, 253-6 (1964).


See e.g. Touster, supra note 104, at 472.

White, supra note 107, at 70. (“His concept of duty had thus progressed from the idea of fidelity to a cause to that of loyalty to a regiment and finally to that of loyalty to oneself.”).

Albert Alschuler, Law Without Values: The Life, Work, and Legacy of Justice Holmes 50 (2000). The conventional view to which he refers is not White’s harsh judgment but the milder one by Robert Gordon: “The war experience may have laid the foundations of Holmes’s aloof detachment, his disengagement from causes and distrust of enthusiasms, and the bleakly skeptical foundations of his general outlook, according to which law and rights were only the systems imposed by force by whatever social groups emerged as dominant in the struggle for existence.” Robert W. Gordon, Introduction: Holmes’s Shadow, in The Legacy of Oliver Wendell Holmes, Jr. (Stanford University Press, 1992).

Id. at 49.

Id.

Id. at 50. The quotes from Holmes are obviously taken out of context. Neither statement was casually made at a dinner table. The first, for example, comes from a letter in which he was explaining why he found Jane Austen dull. See Wilson, supra n. 103, at 761.

Touster, supra note 104, at 471.

In fact, Alschuler’s sympathy seems a little ambivalent: “If Bob were a war hero, however, your response
might be somewhat different. The crusty talk of soldiers is part of their charm. This talk may be a way of reminding an audience of an old soldier’s history without quite boasting.” Alschuler, supra note 110, at 50.

116 Id. at 181.

117 That this is the nature of his question is evident in the answers he gives. According to Alschuler, Holmes has an undeservedly good reputation because of: (1) “his height (six foot three), his eyes, his bearing, and his mustache;” id. at 181, (2) “the lack of plausible liberal heroes on the bench of the U.S. Supreme Court;” id., and (3) “the public relations efforts on Holmes’s behalf... by Felix Frankfurter and other young admirers of Holmes.” Id. at 182.

118 Baker, supra note 17, at 179.

119 He went climbing with Leslie Stephen and the climbs were difficult enough to earn him membership in the London Alpine Club. Id. at 185-6.

120 Id at 193. See also, RALPH BARTON PERRY, THE THOUGHT AND CHARACTER OF WILLIAM JAMES (1996).

121 Id. at 199. See also, SHELDON M. NOVICK, HENRY JAMES, THE YOUNG MASTER (2007) for a fuller account of this relationship.

122 In a memorial to Shattuck, Holmes wrote: “Young men in college or at the beginning of their professional life are very apt to encounter some able man a few years older than themselves who is so near to their questions and difficulties and yet so much in advance that he counts for a good deal in the shaping of their views or even of their lives. Mr. Shattuck played that part for me.” OLIVER WENDELL HOLMES, MEMOIR OF GEORGE OTIS SHATTUCK 10 (1900). He also said: “From the time when I was a student in his office until he died, he was my dear and intimate friend.” Id. at 22.

123 JAMES B. KENT, COMMENTARIES ON AMERICAN LAW (Oliver Wendell Holmes ed., 12th ed. 1873).

124 For a description of the relationship between Holmes and Dixwell, see Baker, supra note 17, at 218-230.

125 His major writings during this period include: Codes and the Arrangement of the Law, 5 Am. L. Rev. 1 (1870); Oliver Wendell Holmes, The Arrangement of the Law—Privity, 7 Am L. Rev. 46 (1872-3); Misunderstandings of the Civil Law, 6 Am L. Rev. 37 (1871); Theory of Torts, 7 Am L. Rev. 652, (1872-3); Gas Stokers Strike, 7 Am. L. Rev. 582 (1872-3); Primitive Notions in Modern Law I, 10 Am L. Rev. 422 (1875); Primitive Notions in Modern Law II, 11 Am. L. Rev. 641 (1877); Possession, 12 Am. L. Rev. 688 (1877); Common Carrier and the Common Law, 13 Am. L. Rev. 609 (1879); and Trespass and Negligence, 14 Am. L. Rev. 1 (1880).

126 OLIVER WENDELL HOLMES, THE COMMON LAW (1881).

127 He was appointed to the Harvard Law faculty in January 1882 and to the Massachusetts Supreme Judicial Court in December 1882.