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JUSTICE HOLMES

From a painting by Charles Hopkinson.

"Her Voice Was...Soft"

WE have read with a good deal of sympathy the advertisements of various salesmen offering to teach the correct use of English. The institutions they represent are the beauty shops of language. Here the poor aints and he dont's and we was's and oughts of's go in to be stretched and lifted and smoothed until the speaker can open his lips without toads falling out of them. We are, frankly, a little skeptical of the results often promised, for the idea is too commonly expressed that a little grammar and spelling will accomplish what really needs a mental development. Good English comes from a good mind, and no other. And if the mind is good and the English irregular there may be merit in its irregularity.

But another kind of cultural beauty shop, if it exists, has few customers. The thronging girls on the noon-hour streets of a great city are hysterically aware of the need—

Still to be neat, still to be dressed

As you were going to a feast.

And they patronize, we suspect, the grammar shops occasionally, for an overheard conversation will sometimes have an almost priggish correctness in the selection of words. But, O the voices! And O the enunciation! The Darwinian idea that fine clothes, like fine feathers, are sex appeals and nothing else was much too simple. A good share of this finery has nothing to do with sex. It is an attempt to assert the social position of the wearer in a great anonymous civilization where the individual must assert or be unknown. The hat says, I am not too poor; the dress, I have some taste; the shoes, I know style when I see it. This is what advertisers call, in its inverted form, the snob appeal, but the term is harsh. Put a strange chicken in a chicken yard and watch it after awhile begin to plume and strut a little, as if to say, I myself am somebody, I am one of you and not of the lowliest! In a village every one is known. Strutting is useless. But in a city, the anonymous he or she must hang out some signal to the crowd, some advertisement of native worth. The female signals the male; but not only the male; she informs her betters in taste, in style, in spending money, that she herself has points which they can appreciate.

How strange then that language, and
(Continued on page 600)

An Ornament of Society

JUSTICE OLIVER WENDELL HOLMES.
By SILAS BENT. New York: The Vanguard Press. 1932. \$4.50.

Reviewed by JOSEPH PERCIVAL POLLARD

M R. BENT has written here the first full-length study of Justice Holmes the man. It is a revealing work, and the author is not to be blamed for letting his subject write most of it himself, for the judge's speeches and writings, many of them privately printed, have been kept too long from the eyes of an admiring public. The available data has been collected, arranged, and interpreted admirably, with a restraint that serves to enhance the reader's enthusiasm for the judge's many talents—as soldier, scholar, statesman; poet, philosopher, jurist, and wit.

More than anything else this life of Holmes is the saga of a soldier. It tells in moving detail of the struggles and hardships of actual war, but it tells further of the fight for ideals which began when arms were laid aside at Appomattox. The Civil War was a tragic but glorious experience in which the young Harvard graduate learned to lay his future course, to believe, as he told other young graduates thirty years after:

That the joy of life is living, is to put out all one's powers as far as they will go; that the measure of power is obstacles overcome; to ride boldly at what is in front of you, be it fence or enemy; to pray, not for comfort, but for combat; to keep the soldier's faith against the doubts of civil life, more besetting and harder to overcome than all the misgivings of the battlefield, and to remember that duty is not to be proved in the evil day, but there to be obeyed unquestioning.

It is a theme which threads every step in his career. He was the son of Dr. Holmes, the autocrat, the idol of the Saturday Club whose members composed the most select literary group America has produced. He was the friend and protégé of the great Emerson. Yet he might not have cared enough for the soldier's faith. We see that faith take hold of him as he dons, with boyish enthusiasm, the blue coat of a lieutenant in the Twentieth Massachusetts Volunteers; as he gets his baptism of fire at Ball's Bluff and almost loses his life for his bravery; as he goes on through the Virginia campaigns and miraculously escapes death twice more before the finish. Cloistered then in the calm
(Continued on next page)

Jane Hamlin

By SELDEN RODMAN

J ANE HAMLIN I met on the road who gave me
These gifts out of herself, then left;
Then walked over the mountains brightly

Into the forever valley God cleft.
She smiled giving, took nothing, she asked
No questions: herself excuse; her gifts
Made peace of the angered, unmasked the masked
Softly as sharp corners before the fog lifts.

Six years after the time I knew her
I met one of her lovers who said "Jane
Was virtuous, was good. This drew her
Down: she obeyed the heart through sun
and through rain . . ."
And headshaking changed his butt for a
newer
Cigarette whose thick smoke covered my
pain.

The Gates of Conjecture

By JOHN O'HARA COSGRAVE

L ITERARY persons who don't follow the science news now so plentifully distributed by the newspapers may not be aware that at a recent National Academy of the Sciences convention Dr. Henry Fairfield Osborn, the hierarch among paleontologists, exorcised the Natural Selection myth and thereby reopened the whole field of origins to speculation. Hereafter it is not correct to credit Mother Nature with the parentage of her broods of vital organisms. All she furnishes is breeding space and provender. Genealogies stand as before, but ancestries are again up in the air. Though this amounts to nothing so florid as a rehabilitation of Genesis, one can no longer be snooty about that version of our arising.

After we had all accepted the assurance of authority that King Log possessed the properties which older dispensations had assigned to King Stork, this apostasy at headquarters is confusing. It is especially hard on the eminent individuals who went on record with creeds in "Living Philosophies," most of whom were satisfied that the Bible was old stuff and a God out of date.

Of course, Dr. Osborn's guarded admissions may not seem to bear the inferences that I'm drawing herewith. Probably he will indignantly disclaim such presumptions, but what are you going to do about it when he states in so many words that "variations of species is the result of an original creative pattern within the germ-plasm which was there from the beginning," and that the evidence now available "is antagonistic to the theory that nature does anything by accident"? Darwin is thereby struck out and so is Lamarck. In the same swoop he removes Adaptation, Heredity, Fitness-of-the-environment, even Emergent Evolution, as causal factors, and says we are compelled to return to a creative conception. Nor does it do him a bit of good to qualify the word "creative" as used without any of its old theological or philosophical connotations, or to insist that it is distinct from "created." Evade as he may, Dualism is reinstated. Purpose, architecture, design, forbidden words under Automatic Determinism, regain legitimacy, and, sooner or later, Responsibility will rear its ugly head.

"Too sweeping," you say? Well, let Dr. Osborn speak for himself:

Among the older hypotheses as to the causes of evolution, paleontology proves that Lamarck was wrong in his main assumption that acquired characteristics are inherited; Darwin was wrong in adding Lamarckian to his original selection theory. De Vries was wrong in believing that species arise by the selection of fortuitous mutations. Weismann was wrong in his subsidiary super-selection assumption that fortuitous variations of the germ-plasm give rise to new species. . . . Darwin knew not a single case of intergradations between living species; we now know thousands of intergradations in fishes, birds, reptiles, and mammals. . . . Grant the whole argument of the Lamarckians, ancient and modern, the larger part of bio-chemical evolution would be unaccounted for.

A bit upsetting to the physiological psychologists, the following:

Spencer believed that mind was built

up through experience. But observed fact proved otherwise. We have found that much larger intelligences exist among primitive peoples than there is any actual need for, intelligences capable of grasping mathematical concepts among Eskimos who had no need even to count on their fingers.

None of this will have immediate effect on the economic system nor abate Soviet zeal. It will neither restore prosperity nor discourage Dr. Crile in his search for the secret of life in protoplasmic cells. No heredity sharp will realize that his major premise has been vacated. Biologists and behaviorists will go on construing issues in the terms of implementage—Paderewski as the product of a piano. As is usually the case, news of the revolution will reach the ears of professors from their students. Magazine editors will learn of it from contributors with manuscripts to sell but will print nothing until the novelty has become publisher's gossip. It will be glad tidings for Dr. Fosdick until he realizes that Dr. Osborn has taken the gimp out of modernism and will mean little in particular to Dr. Manning. In the office of the *Commonweal* there will be murmured "I-told-you-so's," and among Jesuits who grasp the full significance of the repudiation, sagacious heads will nod approval.

At first glance the passing of a fundamental hypothesis may seem to have slight bearing on contemporary literature. The novelist takes his protagonists as evolved, physically, and proceeds on the basis of what has been conceded. Primitive slimes or aboriginal dwellings do not concern him. Society and circumstances furnish the stuff of fiction. Time, place, current convention, and occupational pursuits determine types. The struggle for existence or for almost anything out of reach, supplies motives for action. Out of adjustments of aspirations and clash of personalities incidents arise and characters are defined or developed. Tragedy and comedy emerge as the results of mechanical interactions. Processed products.

Yet what science assumes or affirms as

This Week

- "MOZART."
Reviewed by CARL ENGEL.
- "WAY OF THE LANCER."
Reviewed by ARTHUR RUHL.
- "1919."
Reviewed by MATTHEW JOSEPHSON.
- "THAT AMERICAN WOMAN."
Reviewed by ELEANOR VAN ALLEN.
- HUMAN BEING.
By CHRISTOPHER MORLEY.
- "LATIN AMERICAN PROBLEMS."
Reviewed by WALLACE THOMPSON.
- "SUCCESSFUL LIVING IN THIS MACHINE AGE."
Reviewed by FELIX MORLEY.
- "TOWARDS A BETTER LIFE."
Reviewed by C. HARTLEY GRATTAN.

Next Week, or Later

- IN MEMORIAM: O. W. FIRKINS.
By RICHARD BURTON.

to the nature of man sooner or later filters into the racial consciousness. His status three generations ago, as set by the theologians, derived from Genesis. Today, it is fixed according to Darwin. He is of the earth earthy. Life is an accident; its object sustaining it. Divinity and immortality are out of the picture. Behaviors are not greatly altered by ascription, being set by law and custom, not by beliefs, but attitudes may be. Allot a man the potential of a soul and he becomes more of a person. His status has been lifted from weed to plant. New perspectives enlarge viewpoints. Thereafter he is liable to be more pretentious about his place in the scheme of things.

There had been a growing suspicion that life was not nearly as simple as it appeared to the biologists. To do what a man did required machinery that their specifications did not include, but so long as the evolutionary front was maintained unbroken there could be no appeal from that dogma. Dr. Osborn's "New Theory" reopens no more than discussion. It may be epoch-making but, at the moment, only by inference. If, as he proves, what evolves in material form, as flower, bee, beast, and man preëxisted as pattern in germ plasm, the presence of a power adequate to such occasion is hinted. Also an interest forwarded by occurrence. But before authority formally countenances an increase in humanity's estates we are in for as bitter a controversy as provoked its degradation. So, though there may be immediate license for broader conjectures and richer backgrounds, it is unsafe to jump at cosmic relations, despite such encouragements as Jeans, Eddington, and Millikan have already extended. But these are no longer untenable. Who derides them may think he is being hard-boiled, but is only showing that he is not up-to-date.

Once the universe gets into the picture as a unity and astro-physics become table-talks, gravitation and etheric influences may be taken into the home and planetary pulls and pushes allowed to include the individual. That would tend to give color to the entertaining presumptions of astrology in which there are lots of good plots. Even without dispensation, it would astonish the old guards of the Players or the Dutch Treat Club to learn the number of members in good standing who govern their conduct by horoscopes. If intelligence be a quantity apart from application, Christian Science is given at least a putative foothold. Its fictional possibilities have hardly been aired, and it abounds in spectacular possibilities. Someone seeking a new milieu might dramatize a practitioner, or at least delineate, if he cannot explain, the workings of the system. Such subject-matter, however, should be handled with the same seriousness nowadays devoted to biographies of up-from-the-soil heroes or Main Street personalities. Far more romantic stuff than is offered by the dull routines of farm, fireside, and factory on which so many of our "best sellers" are founded, is available in the annals of "New Thought." In these connections it might be mentioned that coincidence and the will-to-believe are no longer accepted as competent rebuttal of unconventional phenomena and that even professors of physiology have stopped shrugging their shoulders at faith-healing.

There's immense color and flavor in the broad field of esoterics and no end of picturesque detail that might be turned to literary profit in the theosophical primers. No one who has not explored the pages of Ouspensky, Leadbeater, or Besant (not that they should be spoken of in the same breath, belonging as they do in different categories) dreams of the wealth of material stored there for broader diffusion. What a relief from the procession of sterile folk that have furnished protagonists for latter-day scribes to be introduced to a seer or a superman. In circles attuned to what are called "higher vibrations" one can hear whispers of "old souls" around, masquerading in everyday bodies, in touch with the "Higher Wisdom" and subtly shaping the trend of events. Not so long ago there was in New York a mystic whose devotees spoke of

him as an "Avatar." A simple, sunny little man, he came to a few who knew his fame and departed without having uttered a word. He was under a vow of silence. No one could have made "news" of this person since he offered none, but he was story stuff to whoever knew enough to provide the right scenery for his presentment. As Yeats-Brown exhibited in his "Bengal Lancer," there is still magic abroad for the right seeker.

For the accommodation of strange backgrounds we have technic aplenty. Our tale tellers are adroit weavers, but as to their disposition for adventure there is as much doubt as to appetite for them among readers. John Erskine remarked once that American literature was practically unscathed by the development of the arts. Save in its skepticism of spirituality it shows but slight trace of that advancement of scientific knowledge from which the period derives its significance. One may question the attributions of the psychology to which, of late, so much newspaper space has been given, but that it offers new bases for assessments of conduct is undeniable. Is it that our novelists are ignorant of this wealth that so little use is made of it in character delineation? Even if at this stage it does set up physical reactions as causal factors it defines inclinations and processes invaluable for the understanding of human relations. At least it informs observation and enriches interpretations. Familiarity with the somewhat anomalous verbiage and psycho-analysis is not a substitute for the culture represented by Freud and Jung, though many of our contemporaries seem so to have persuaded themselves. A self-respecting psychiatrist would as soon report the ravings of a lunatic as the babblings of a stream of consciousness puddling its vagarious way among the cells of an average cerebrum, yet the method has become a badge of realistic characterization.

When one remembers that it takes as much advertising to launch a fresh idea as is required to create a demand for a new breakfast food, perhaps I'm optimistic in imagining that the denouncement of Nature Selection will relieve obsessions that anyone recognizes as such, or arouse curiosity as to ancestries detached from old moorings. Still I shall be surprised if a decade hence it is not admitted in the publishing profession that courses in bio-chemistry and physics furnish sounder groundwork for literary careers than any amount of majoring in English or esthetics.

John O'Hara Cosgrave is a journalist of note who has been managing editor and editor of Everybody's Magazine, managing editor of Collier's Weekly, and Sunday editor of the New York World.

An Ornament of Society

(Continued from preceding page)

of Harvard Law School, both as student and as teacher, we see the soldier still as he searches the musty lore of jurisprudence with a view to exposing what is bad and weeding it out. He published "The Common Law" in 1882, and with it started the revolutionary doctrine that law should be considered in the light of social needs. It won him instant recognition in high places, and the governor of the commonwealth offered him a position on the supreme judicial bench. The choice was not an easy one, for Holmes liked teaching, but the soldier in him saw that the fight was thickest where the troubles of men were settled in reality rather than in theory, and, much to the dismay of President Eliot, he left Harvard for the bench. There, for almost fifty years, twenty in Boston, twenty-nine in Washington, he struggled consistently for high principles, gave splendid evidence of the good to be derived from combining democracy with discipline, from balancing humanitarian feeling with the restrictions imposed by the rules of the game, and enriched the literature of the law as has no judge before or since. And he carried on gladly until the close approach of his ninety-first birthday.

Surely the record of a soldier. Made possible perhaps by that further impor-

tant tenet of his life's philosophy, that feeling of acceptance of man's insignificant place in the mystery of the universe. "Man cannot set himself over against the universe as a rival god, to criticize it, or to shake his fist at the sky, but his meaning, his only worth is as a part of it, as a humble instrument of the universal power." Here is a humility that is soothing, that counters the high tension of the fighter, that makes for longevity as well as for the approval of people to whom arrogance would dim the glory of great deeds.

Humor, too, is here to help win plaudits for an awesome figure, who cares not for plaudits, but only to do the job handsomely, and leave it unadvertised. Given to expressing views sometimes more advanced than those of his brethren on the bench, he was much impressed with the story told him of the man who deducted five dollars from his valet's wages "for lack of imagination." "The lack is not confined to valets," said Holmes. There is his comment on Justice Harlan, that belligerent contender for the rights of the individual: "I do not venture to hope that Harlan and I will ever agree in an opinion, but he has a place in my heart. He is the last of the tobacco-spittin' judges." The Olympian has that touch of Mephistopheles that he has commended to the naïveté of other judges, and it relieves him of the burden of subjective seriousness, however ardent his fighting for the rights of others, legislatures, victims of proprietary or governmental oppression. And Puritan though he is by descent and by sympathy with the virtues of work and duty, he has little use for the reformer. Even Brandeis, whom Holmes personally reveres, has been the butt of raillery at times: "I'm afraid Brandeis has the crusading spirit. He talks like one of those upward-and-onward fellows."

A very human figure emerges from these pages. We see him on the bench in Boston trying not to laugh at the lawyer who argues that a child with its mother on a street car is comparable to a parasol, and hence should not be required to pay any fare at all. We see him deeply moved by the death of his old associates of camp or bench, and delivering speeches that are brief, but brief gems of eloquence. He disdains the reading of newspapers, does not really care what is exciting the politicians, but revels in French novels, and enjoys both Rabelais and the modern humorists when not engrossed in reading a Latin poet in the original. He has a high admiration for the English political thinkers who were and are his friends, Lord Bryce, Leslie Stephen, Sir Frederick Pollock, but in spite of an urbane cosmopolitanism, he is intensely patriotic, and especially proud of his New England. And he is as conservative in his private economic views as he is tolerant of social experimentation by the representatives of the people:

I believe that the wholesale regeneration which so many seem to expect cannot be affected appreciably by tinkering with the institution of property, but only by taking in hand life, and trying to build a new race. That would be my starting point for an ideal for the law. The notion that with socialized property we should have women free and a piano for everybody seems to me an empty humbug.

Unlike many of his colleagues, Holmes never allowed his personal views to mar the consistency of his constitutional philosophy—that the legislature has a right to try to improve the social and economic condition of citizens. Mr. Bent brings out very well the fallacy of calling Holmes a States Rights man. That misplaces the emphasis. Holmes is in favor of the free play of any legislature, state or federal, but as a practical matter the state body is usually the forum involved because of the constitutional limitations on Congress. And here for the first time is an adequate treatment of Holmes's work on the Massachusetts court. It is important both as a revelation of the way in which a superior mind deals out justice in the ordinary run of litigation in state courts, and as an indication of the judge's attitude on broad social problems which was to make him a national figure in later years. In Massachusetts he exhibited no hostility to labor unions, sustained picketing as a valid weapon in labor's hands, voted to uphold

welfare legislation, interpreted words in statutes and private contracts in the light of common sense, deplored legalism and technicality while giving established rules of law their due, and in every way foretold the often troubled and defeated course he was to pursue on the highest court in the land.

The picture is here of an aristocrat in the most powerful branch of the government, the judiciary, attempting to carry out the democratic purpose of the nation's founders, and in the twilight of his struggle meeting with some success; of a man whose guiding star is his faith in the worth of doing one's task with one's might, though man is but a ganglion within a mighty and inscrutable universe; of a soldier who, though aged, still likes to think of the heroes:

In the portraits of some of those who fell in the civil wars of England, Van Dyck has fixed on canvas the type of those who stand before my memory. Young and gracious figures, somewhat remote and proud, but with a melancholy and sweet kindness. There is upon their faces the shadow of approaching fate, and the glory of generous acceptance of it. I may say of them, as I once heard it said of two Frenchmen, relics of the *ancien régime*, "They were very gentle. They cared nothing for their lives." High breeding, romantic chivalry—we who have seen these men can never believe that the power of money or the enervation of pleasure has put an end to them. We know that life may be lifted into poetry and lit with spiritual charm. . . .

It is that poetry and that charm in the life of the Justice which Mr. Bent has caught and fixed upon these pages. With it, however, the author pays several minor penalties. While his writing is calm and admirably detached, it yet seems pedestrian beside the words of his subject. While his journalistic competence enables him to interpret the judge through his work with much plausibility, it does not always hide his mistaken understanding of the legal points involved in some of the important social cases he discusses. This may be just as well, for a lawyer's emphasis on complex minutiae would be unimportant as well as uninspiring to the lay reader. It is unfortunate that more letters are not included, but the judge's reticence and sense of privacy, and the honoring of it by others, raised that barrier at the outset. We would like to have more emphasis on Holmes the artist; and more on the man of prophetic vision, a linking up of later accomplishments in the law with what Holmes predicted years ago. It would be well, too, to have more of the whys and wherefores of those unique traits of character, his fundamental skepticism, his stoic faith that supplants any orthodox religion, his magnificent detachment from the excitements of mankind. But the book is primarily a chronicle of accomplishment; and a book to make the reader feel the essential nobility of an attitude which, achievement aside, makes for that "complete human life" which Chief Justice Hughes accused Holmes of leading.

The *Minnesota Daily*, writing editorially of Oscar W. Firkins, who died on March 8th, says:

"Oscar Firkins was a man who possessed a fine talent for many things, for teaching, for writing, for appreciation, for criticism, for delicate and true thinking, for living and doing. . . .

"His writings in criticism, in the theatre, in biography, assure him a place forever in the hearts of a small but intelligent and appreciative audience—the sort of audience that alone he cared to reach. His exquisite touch in the turning of a phrase, the point of his soft irony, are things that must be kept, and will be kept, by a highly intelligent group of readers in this country and England. . . .

"One of the finest things about Oscar Firkins was the sureness of his own stand on every subject, and his detestation of every form of cant and hypocrisy. One and all, superiors in rank, and inferiors in rank and intellect, always knew his attitude and thought, for he said what he meant—fearlessly and well. When he detected untruthfulness or deception or weasling in the thought of another he was prompt to say so, preserving only the manner and the speech of a gentleman."