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A CASE OF DEDUCTION, OR, UPON THE FIRST MEETING OF SHERLOCK HOLMES AND OLIVER WENDELL HOLMES, JR.*

John H. Watson, M.D.**

In documenting the cases of my friend Mr. Sherlock Holmes,¹ I ventured in each to present insight into his analytical reasoning and the value of his methods of investigation. The latter of which has matured in the judgment of the public from being peculiar to

* This article attempts to show the similarities that exist between Sherlock Holmes and his contemporary, Justice Oliver Wendell Holmes, Jr., despite the apparent contradiction of some of their most famous aphorisms. The similarities between the two, ranging over their lives, careers, and, most of all, expression of ideas, have not gone unnoticed or without comment. See, e.g., Carl W. Herstein, *Real Property: Annual Survey of Michigan Law June 1, 1996-May 31, 1997*, 44 WAYNE L. REV. 1019, 1025 n.22 (1998); see also Richard M. Steuer, *Counseling Without Case Law*, 63 ANTITRUST L.J. 823, 852 (1995) (concluding that the modern antitrust practitioner must be one part Sherlock Holmes and one part Justice Holmes). The captivating characteristic of Sherlock Holmes is his ability for logical deduction through observation, and his application of this ability to solve baffling crimes. As noted by Herstein, consideration of Justice Holmes's most famous comment, "[t]he life of the law has not been logic: it has been experience," creates an initial impression of contradiction between the two men's philosophies. See Herstein, *supra*, at 1025 n.22 (quoting OLIVER WENDELL HOLMES, *THE COMMON LAW* 1 (Boston, Little, Brown & Co. 1881)). As discussed further below, the contradictions become illusory when the overarching themes of Justice Holmes's writings are compared to the statements and methods of deduction employed by Sherlock Holmes.

** Sir Arthur Conan Doyle (1859-1930) published sixty stories detailing the adventures of Sherlock Holmes between 1887 to 1926. Doyle acknowledged that the stories originated from the notes of Holmes's biographer, friend, and investigative partner, Dr. John H. Watson. Most stories originally appeared in the British magazine, *The Strand*, and were told from Watson's point of view. MICHAEL HARRISON, *Foreword to IN THE FOOTSTEPS OF SHERLOCK HOLMES* (1972) [hereinafter FOOTSTEPS]. Collectively, Sherlockian scholars refer to Doyle's publications as "the Canon." *Id.* While traveling Europe in the summer of 1996, Mac Golden (Assistant Criminal Justice Coordinator, Arkansas Supreme Court; J.D., University of Arkansas at Little Rock School of Law; B.S., Arkansas State University) stumbled upon an undiscovered cache of Dr. Watson's notes, including this account of the first meeting of Sherlock Holmes and United States Supreme Court Justice Oliver Wendell Holmes, Jr. Dr. Watson's estate wishes to thank Mr. Golden for his able assistance in the compilation of this article.

1. Although the first record of Sherlock Holmes's adventures, *A Study in Scarlet*, was not published until 1887, it can be said that his professional career as a "consulting detective" began as early as 1871, but no later than 1878. *Id.* at 61. Further details of his life can be found in the excellent biography by WILLIAM S. BARING-GOULD, *SHERLOCK HOLMES OF BAKER STREET: A LIFE OF THE WORLD'S FIRST CONSULTING DETECTIVE* (1962). See also JUNE THOMSON, *HOLMES AND WATSON* (1995).

being commonplace, if not expected, in the investigations of Scotland Yard and its brother agencies elsewhere.² It is in my reflection upon the former that brings me, as my friend's biographer,³ to the matter of which I am now about to write—a matter that fails to yield itself to popular publication, but which I have come to believe a record should be made, for the historian if none other, for insight into the similar minds of two remarkable persons.⁴

2. One of Sherlock Holmes's most famous sayings is "when you have eliminated the impossible, whatever remains, *however improbable*, must be the truth." SIR ARTHUR CONAN DOYLE, *THE SIGN OF THE FOUR* (1890), *reprinted in THE WORKS OF SIR ARTHUR CONAN DOYLE* 713 (Longmeadow Press 1984) [hereinafter *FOUR*]. In all matters, Sherlock Holmes worked "by the exercise of his reason, rather than of his intuition." FOOTSTEPS, *supra* note **, at 218. In addition, he stayed atop forensic science and contributed important monographs to the field, including *On Variations in the Human Ear*; *On the Influence of a Trade upon the Form of the Hand*; *On Tattoo Marks*; *On Secret Writings*; *On the Dating of Documents*; and *On the Tracing of Footsteps*. *Id.* at 218-19. Sherlock Holmes also developed the first test to detect human bloodstains, but he never shared it with Scotland Yard and the test was eventually developed by others. See MICHAEL HARRISON, *THE LONDON OF SHERLOCK HOLMES* 196 (1972) [hereinafter *LONDON*]. See generally Peter Cooper, *Holmesian Chemistry*, in *BEYOND BAKER STREET: A SHERLOCKIAN ANTHOLOGY* 67 (Michael Harrison ed., 1976); Philip Dalton, *Sherlock Holmes and New Scotland Yard*, in *BEYOND BAKER STREET: A SHERLOCKIAN ANTHOLOGY* 74 (Michael Harrison ed., 1976).

3. As recounted in *A Study in Scarlet*, Dr. Watson met Sherlock Holmes in 1881, perhaps on New Year's Day. See, e.g., H.R.F. KEATING, *SHERLOCK HOLMES: THE MAN AND HIS WORLD* 22 (1979). The meeting of Watson and Holmes favorably compares with the meeting of Samuel Johnson and James Boswell in Tom Davies's bookshop. FOOTSTEPS, *supra* note **, at 61. Boswell, who stated his profession as barrister, authored what is arguably the greatest biography written, *The Life of Samuel Johnson, L.L.D.* Sherlock Holmes clearly regarded Dr. Watson as his biographer. He once stated, "I am lost without my Boswell." ARTHUR CONAN DOYLE, *A Scandal in Bohemia*, in *THE ADVENTURES OF SHERLOCK HOLMES* (1891), *reprinted in THE WORKS OF SIR ARTHUR CONAN DOYLE* 1, 4 (Longmeadow Press 1984) [hereinafter *Scandal*].

4. The other figure which this article focuses upon is Oliver Wendell Holmes, Jr. Theodore Roosevelt nominated Holmes to the United States Supreme Court in 1902, and he was confirmed four months later. FELIX FRANKFURTER, *MR. JUSTICE HOLMES AND THE SUPREME COURT* 14 (1938); G. EDWARD WHITE, *JUSTICE OLIVER WENDELL HOLMES: LAW AND THE INNER SELF* 299-306 (1993). He resigned in 1932. FRANKFURTER, *supra*, at 14. Justice Holmes was a remarkable person and Justice by any measure, but it was his contribution to jurisprudence that remains the high-point on the legal landscape. As Justice Benjamin Cardozo aptly observed:

As historian and mere technician his place would be secure in any survey of the legal scene. But he has come in these later years to fill another place also, and that still more august. He is today for all students of the law and for all students of human society the philosopher and the seer, the greatest of our age in the domain of jurisprudence.

SELECTED WRITINGS OF BENJAMIN NATHAN CARDOZO 79 (Margaret E. Hall ed., 1947).

As I once noted, the only change that occurred in my companion "was when he turned his mind from the evil-doer of the town to track down his brother of the country."⁵ If I had suspected such was the occupation of Holmes's mind that long day in the Summer of 1882,⁶ then perhaps my mood would have been of anticipatory excitement when I sullenly acquiesced to accompanying him to a play. The play held little of interest that now jogs my memory, yet Holmes's expressed observations had livened me as usual.⁷ When he followed them with uncharacteristic lingering in the theater lobby and requested the driver of the brougham⁸ to delay, suspense began to boil with the prospect of a late night adventure.⁹ What followed was just as invigorating, upon reflection, as if Professor Moriarty's henchmen gave us chase through London.¹⁰

5. ARTHUR CONAN DOYLE, *The Adventure of the Cardboard Box*, in *THE MEMOIRS OF SHERLOCK HOLMES* (1894), reprinted in *THE WORKS OF SIR ARTHUR CONAN DOYLE* 188, 188 (Longmeadow Press 1984).

6. This reference by Watson pinpoints June as the most likely month in which the meeting of Sherlock Holmes and Oliver Wendell Holmes, Jr. occurred. Justice Holmes made several trips to Europe, especially in the years of 1866-1882. MARK DEWOLFE HOWE, *JUSTICE OLIVER WENDELL HOLMES: THE PROVING YEARS, 1870-1882*, at 96-134 (1963) [hereinafter HOWE]; WHITE, *supra* note 4, at 225-52. He particularly frequented England, enjoying the dinners, garden parties, and balls of London. HOWE, *supra*, at 100. And, "he spent a very large portion of his time in the company of men who shared his professional and intellectual interests." *Id.* Holmes stated in letter to an English friend, Lady Burghclere, "I always feel twice the man I was, after I visit London." *Id.* Although no elaborate record remains, he left for Europe on May 20, 1882, and spent the first month in England. *Id.* at 272-73. Accounting for travel time from the United States to England, most of the first month would have occupied June. It is possible, although less likely, that the meeting could have occurred in late August, as Justice Holmes left England to travel the continent, arriving back in London on August 15, 1882, to depart for home sometime soon after. *See id.*

7. One possibility of the identity of the play is *Far from the Madding Crowd*, by J. Comyns Carr and Thomas Hardy, which was staged at the Globe Theatre in London, beginning April 29, 1882. *See* Thomas Hardy Association, *Hardy and Drama: Major Professional Productions Staged in Hardy's Lifetime: Checklist*, at <http://www.yale.edu/hardysoc/Welcomed/welcomet.htm> (last visited May 21, 2002).

8. A brougham is a closed carriage with the driver's seat outside. WEBSTER'S NEW WORLD DICTIONARY 80 (Warner Books 1983). Despite the romantic image of Holmes's London and Doyle's use of the hansom, brougham, and growler as means of travel in "the Canon," at least 1500 horse-drawn buses and tramcars were plying London's roads by 1878. FOOTSTEPS, *supra* note **, at 59.

9. Sherlock Holmes often engaged melodrama to build suspense before revealing his conclusions, or to prod Watson, in a friendly but manipulating manner.

10. Sherlock Holmes's arch-enemy, Professor Moriarty, was thought to have brought about the death of Holmes at the Reichenbach Falls (much to the dismay of Doyle's readers). *See* ARTHUR CONAN DOYLE, *The Adventure of the Final Problem*,

As I sat in reflection in the cab, Holmes suddenly leaped to the door and flung it wide.

"I would suggest, Sir, that the writer of such a provocative legal text¹¹ should not submit himself to the possibly debilitating effects of the London air at night, lest the legal community possibly lose him to respiratory infection."

Just to whom Holmes spoke I could not see, but the tone of his voice conveyed an emotion he rarely revealed outside of reference to his brother Mycroft¹²—admiration.¹³ It was at this point that I

in THE MEMOIRS OF SHERLOCK HOLMES (1893), reprinted in THE WORKS OF SIR ARTHUR CONAN DOYLE 315 (Longmeadow Press 1984) [hereinafter *Problem*]. Moriarty has been characterized as the Victorian equivalent of the twentieth century mafia godfather. John Gardner, *Moriarty and the Real Underworld*, in BEYOND BAKER STREET: A SHERLOCKIAN ANTHOLOGY 111, 114 (Michael Harrison ed., 1976). Holmes described him as "the Napoleon of crime." *Problem, supra*, at 317. While Sherlock Holmes survived the Reichenbach Falls, Moriarty did not. In noting how boring London had become since Moriarty's death, Holmes commented,

With that man in the field one's morning paper presented infinite possibilities. Often it was only the smallest trace, Watson, the faintest indication, and yet it was enough to tell me that the great malignant brain was there, as the gentlest tremors of the edges of the web remind one of the foul spider which lurks in the centre. Petty thefts, wanton assaults, purposeless outrage—to the man who held the clue all could be worked into one connected whole.

ARTHUR CONAN DOYLE, *The Adventure of Norwood Builder*, in THE RETURN OF SHERLOCK HOLMES (1903), reprinted in THE WORKS OF SIR ARTHUR CONAN DOYLE 354 (Longmeadow Press 1984). Conversely, it has been observed that Justice Holmes was without an antagonist: "Holmes's warfare was not waged with men but with ideas . . ." George W. Kirchwey, *Foreword* to THE DISSENTING OPINIONS OF MR. JUSTICE HOLMES, at x (Alfred Lief ed., 1929).

11. The detective refers to Justice Holmes's *The Common Law*. Just as Sherlock Holmes utilized provocative melodrama to emphasize his deductions and conclusions, Justice Holmes also often framed his theses provocatively. See Robert P. George, *One Hundred Years of Legal Philosophy*, 74 NOTRE DAME L. REV. 1533, 1534 (1999). Such provocation had led some to describe Justice Holmes's writings as being contradictory within and between themselves. For example, Robert Gordon contends that *The Common Law* "contains multiple and contradictory strands of thought, taken from contemporary positions that often conflict sharply with one another." Robert W. Gordon, *Holmes' Common Law as Legal and Social Science*, 10 HOFSTRA L. REV. 719, 720 (1982). For a comprehensive analysis of *The Common Law*, see WHITE, *supra* note 4, at 149-93. By utilizing provocative, and apparently contradictory statements, Justice Holmes snared his reader and more effectively conveyed his idea. It also should be noted that the publication of *The Common Law* in the spring of 1881 strikes a parallel in the career of Sherlock Holmes. As Sherlock Holmes met Watson in January of 1881, the benchmark beginning of the detective and the justice occurred relatively contemporaneously. See *supra* note 6 and accompanying text.

12. Watson did not learn that Holmes had a brother until a year and a half

realized that the performance witnessed earlier in the evening had taken place on the proscenium, and that the curtain was about to be opened. And like an experienced actor, precisely pausing before making an entrance, in stepped a man of bearing. Having not had the length of time in which to absorb fully Holmes's methods of observation, which I later came to gain some proficiency in, I could only inventory the makeup of the man's appearance as he settled in the seat opposite and spoke.¹⁴ Yet, I possessed the sense to conclude that the man was the cause of Holmes's earlier, contradictory behavior, and, from his piercing gaze alone, that he possessed a keen intelligence.¹⁵

after they met. FOOTSTEPS, *supra* note **, at 149-50. Holmes regarded his brother as having even better powers of observation than he. ARTHUR CONAN DOYLE, *The Adventure of the Greek Interpreter*, in *THE ADVENTURES OF SHERLOCK HOLMES* (1903), reprinted in *THE WORKS OF SIR ARTHUR CONAN DOYLE* 280 (Longmeadow Press 1984). "I said that he was my superior in observation and deduction. If the art of the detective began and ended in reasoning from an arm-chair, my brother would be the greatest criminal agent that ever lived." *Id.* Mycroft Holmes was not, however, a detective, but rather was one of the most trusted agents of the British Government. See *id.* at 281.

13. Sherlock Holmes reserved intellectual admiration for three people in the stories comprising "the Canon." As previously discussed, he admired the intellects of both his brother Mycroft and Professor Moriarty. Add to them Irene Adler, who certainly matched Holmes in *A Scandal in Bohemia*. See *Scandal*, *supra* note 3. "To Sherlock Holmes she is always *the* woman." *Id.* at 1.

14. Sherlock Holmes once commented to Watson:

You see, but you do not observe. The distinction is clear. For example, you have frequently seen the steps which lead up from the hall to this room. Frequently. How often? Well, some hundreds of times. Then how many are there? How many! I don't know. Quite so! You have not observed. And yet you have seen. That is just my point . . . Now, I know that there are seventeen steps, because I have both seen and observed.

Id. at 2-3.

15. Again, contradiction repeatedly raises its head where Sherlock Holmes and Justice Holmes are concerned. And it is in Justice Holmes's famous dissent in *Lochner v. New York* that an apparent contradiction marks the place in time that Justice Holmes's jurisprudential contributions became fully realized, and later, recognized for their importance. For Holmes's famous dissent, see 198 U.S. 45, 75 (1905). "The *Lochner* dissent contains one of Justice Holmes's most famous statements: 'General propositions do not decide concrete cases.' Yet the Holmes dissent was based more on general propositions than on concrete rules or precedents." BERNARD SCHWARTZ, *A BOOK OF LEGAL LISTS* 90-91 (1997). But, a better understanding of Justice Holmes's provocative statement in *Lochner* lies in review of the dissent as a whole. See 198 U.S. at 75-76 (Holmes, J., dissenting). Looking beyond the provocative opening of its last paragraph, Justice Holmes's dissent reveals itself to be consistent, not contradictory, with his writings both before and after *Lochner*. *Id.* (Holmes, J., dissenting). In *Lochner*, the majority held invalid a New York labor law "setting maximum working hours for employees in bakeries on the ground

that such a regulation violated the 'freedom of contract' that was held to be implicit in the Due Process Clause of the Fourteenth Amendment." See George, *supra* note 11, at 1538; *Lochner*, 198 U.S. at 64 (Holmes, J., dissenting). In his dissent, "Holmes argued that this so-called 'substantive due process' doctrine was an invention designed to authorize what was, in fact, the illegitimate judicial imposition of a theory of economic efficiency and the morality of economic relations on the people of the states and the nation." George, *supra* note 11, at 1538; *Lochner*, 198 U.S. at 75-76, (Holmes, J., dissenting). Although the dissent as a whole would have been less enlightening and poetic, Holmes could have limited it to his last paragraph, which encapsulates his thinking:

General propositions do not decide concrete cases. The decision will depend on a judgment or intuition more subtle than any articulate major premise. But I think that the proposition just stated, if it is accepted, will carry us far toward the end. Every opinion tends to become a law. I think that the word liberty in the Fourteenth Amendment is perverted when it is held to prevent the natural outcome of a dominant opinion, unless it can be said that a rational and fair man necessarily would admit that the statute proposed would infringe fundamental principles as they have been understood by the traditions of our people and our law. It does not need research to show that no such sweeping condemnation can be passed upon the statute before us. A reasonable man might think it a proper measure on the score of health. Men whom I certainly could not pronounce unreasonable would uphold it as a first installment of a general regulation of the hours of work. Whether in the latter aspect it would be open to the charge of inequality I think it unnecessary to discuss.

Lochner, 198 U.S. at 76 (Holmes, J., dissenting). Justice Holmes's *Lochner* dissent embodies the novel jurisprudential philosophy that he formulated and expressed years earlier, which Felix Frankfurter stated simply as "the great theme of his judicial life – the amplitude of the Constitution as against the narrowness of some of its interpreters." FRANKFURTER, *supra* note 4, at 36. *But cf.* Barry Friedman, *The History of the Countermajoritarian Difficulty, Part Three: The Lesson of Lochner*, 76 N.Y.U. L. REV. 1383 (2001) (questioning revisionist and conventional accounts of *Lochner*-era judicial decision-making, and positing that Justice Holmes's dissent was nothing novel). Some suggest that twentieth century legal philosophy began on January 8, 1897, with Justice Holmes's delivery of *The Path of the Law* lecture dedicating a new hall at the Boston University School of Law. George, *supra* note 11, at 1533. Justice Holmes, however, foreshadowed his philosophy of judicial self-restraint at least six years earlier while serving on the Massachusetts Supreme Court in a case surprisingly similar to *Lochner*. See SAMUEL J. KONEFSKY, *THE LEGACY OF HOLMES AND BRANDEIS* 16 (1956). In *Commonwealth v. Perry*, the majority held unconstitutional a Massachusetts statute prohibiting an employer of weavers from withholding wages from an employee for imperfections in their work. 28 N.E.2d 1126, 1126-27 (Mass. 1891). The majority reasoned that such a constraint violated the fundamental right to acquire, possess, and protect property, including the right to make reasonable contracts. *Id.* Holmes had "the misfortune to differ from [his] brethren." *Id.* at 1127 (Holmes, J., dissenting). He wrote:

The prohibition, if any, must be found in the words of the constitution, either expressed or implied, upon a fair and historical construction. What words of the United States or state constitutions are relied on?

"Thank you, gentlemen. Your charity I shall not refuse, as it appears the transportation union has plotted against my safe travel this evening."

By his dress, the man most certainly attended the performance. As to the origin of his dilemma, I could only surmise, but at that instant, both myself and the stranger registered the breadth of knowledge embedded in Holmes's invitation.

Holmes sat satisfied as our eyes turned to him.

The newcomer said, "I believe your advantage over me is one I prefer to resolve. A good time to do so would be after I convey my destination to the driver."

"My apologies, Professor. I have also availed myself of arranging with the driver your safe arrival to the two steps outside your

The statute cannot be said to impair the obligation of contracts made after it went into effect. So far as has been pointed out to me, I do not see that it interferes with the right of acquiring, possessing, and protecting property any more than the laws against usury or gaming. In truth, I do not think that that clause of the bill of rights has any application. It might be urged, perhaps, that the power to make reasonable laws impliedly prohibits the making of unreasonable ones, and that this law is unreasonable. If I assume that this construction of the constitution is correct, and that, speaking as a political economist, I should agree in condemning the law, still I should not be willing or think myself authorized to overturn legislation on that ground, unless I thought that an honest difference of opinion was impossible, or pretty nearly so.

Id. (Holmes, J., dissenting). Justice Holmes also expressed judicial self-restraint in his first opinion as a member of the United States Supreme Court, *Otis v. Parker*, making "it plain that he would assign a very limited role to the judiciary."

KONEFSKY, *supra*, at 29; see *Otis*, 187 U.S. at 606. Holmes wrote:

It is true, no doubt, that neither a state legislature nor a state Constitution can interfere arbitrarily with private business or transactions, and that the mere fact that an enactment purports to be for the protection of public safety, health, or morals, is not conclusive upon the courts. But general propositions do not carry us far. While the courts must exercise a judgment of their own, it by no means is true that every law is void which may seem to the judges who pass upon it excessive, unsuited to its ostensible end, or based upon conceptions of morality with which they disagree. Considerable latitude must be allowed for differences of view as well as for possible peculiar conditions which this court can know but imperfectly, if at all. Otherwise a constitution, instead of embodying only relatively fundamental rules of right, as generally understood by all English-speaking communities, would become the partisan of a particular set of ethical or economical opinions, which by no means are held *semper ubique et ab omnibus*.

Otis, 18 U.S. at 608-09. Justice Holmes urged restraint and deference to the legislature's law-making in all three of the above opinions, and moreover, the language he utilized parallels in each as well.

door. I am Sherlock Holmes, and this is Dr. Watson. Watson, may I present Professor Oliver Wendell Holmes."¹⁶

And with that introduction, my companion tapped his cane upon the floor and we, no doubt, began moving toward the professor's destination. I admit, as on many occasion to follow, Holmes had startled me. Yet, it was my ignorance of the literature authored by our new traveling companion to which I stood astonished, for Holmes generally disdained any literature beyond the sensational or that necessary for his business.¹⁷ I would learn in later years that Holmes had come upon the professor's work during his research into the properties of tobacco as expressed by the professor's father.¹⁸

16. In the summer of 1882, Justice Holmes accepted a position at Harvard. WHITE, *supra* note 4, at 201-02. He was to begin teaching in the fall. *Id.*

17. On one occasion, Watson attempted to make a catalog of Holmes's attributes. I could not help smiling at the document when I had completed it. It ran in this way:

Sherlock Holmes – *his limits*.

1. Knowledge of Literature – Nil.

2. “ “ Philosophy – Nil.

3. “ “ Astronomy – Nil.

4. “ “ Politics – Feeble.

5. “ “ Botany – Variable; well up in belladonna, opium, and poisons generally. Knows nothing of practical gardening.

6. “ “ Geology – Practical, but limited. Tells at a glance different soils from each other; after walks has shown me splashes upon his trousers, and told me by their color and consistency in what part of London he had received them.

7. “ “ Chemistry – Profound.

8. “ “ Anatomy – Accurate, but unsystematic.

9. “ “ Sensational Literature – Immense. He appears to know every detail of every horror perpetrated in the century.

10. Plays the violin well.

11. Is an expert single-stick player, boxer, and swordsman.

12. Has a good practical knowledge of British law.

ARTHUR CONAN DOYLE, *A STUDY IN SCARLET* (1887), *reprinted in* THE WORKS OF SIR ARTHUR CONAN DOYLE 635, 642 (Longmeadow Press 1984) [hereinafter SCARLET].

18. Sherlock Holmes penned several monographs, including one on tobacco: *Upon the Distinction Between the Ashes of the Various Tobaccos*. FOUR, *supra* note 2, at 715. Sherlock Holmes's monograph on tobacco was most likely inspired by the work of Justice Holmes's father, Dr. Oliver Wendell Holmes, Sr. Indeed, it is generally regarded that Doyle named his most famous creation after Dr. Holmes, a man he much admired and respected, and crafted a good deal of Dr. Holmes into his famous detective. See MARTIN BOOTH, *THE DOCTOR AND THE DETECTIVE: A BIOGRAPHY OF SIR ARTHUR CONAN DOYLE* 113 (1997); CHARLES HIGHAM, *THE ADVENTURES OF CONAN DOYLE: THE LIFE OF THE CREATOR OF SHERLOCK HOLMES* 68 (1976). Doyle wrote of Dr. Holmes in *Through the Magic Door*, “[n]ever have I so

The professor smiled slightly. "Indeed. It is a pleasure to meet you Dr. Watson." "And you," said the professor, after a pause, "Mr. Sherlock Holmes."

The silence that followed could not be characterized as lengthy to any extent. But an opening existed nonetheless, and the professor seized the initiative.

"So all life is a great chain, the nature of which is known whenever we are shown a single link of it.' I believe that deduction I enjoyed most of all. That is not to say, however, that I did not find the sum of your article profound."¹⁹

known and loved a man whom I had never seen." BOOTH, *supra*, at 107 (quoting ARTHUR CONAN DOYLE, *THROUGH THE MAGIC DOOR* (1907)). Both Higham and Booth suggest that numerous parallels exist between Dr. Holmes and his fictional inspiration, the most obvious being Dr. Holmes's pioneering developments in medicine and criminal psychology, numerous monographs, quick wit, eloquent turns of phrase, and expert knowledge of tobacco. *Id.* at 113; HIGHAM, *supra*, at 68. Doyle missed meeting Dr. Holmes in 1894 while visiting America. BOOTH, *supra*, at 200; HIGHAM, *supra*, at 137. He arrived in Dr. Holmes's "native city just in time to lay a wreath upon his newly turned grave." BOOTH, *supra*, at 200 (quoting ARTHUR CONAN DOYLE, *THROUGH THE MAGIC DOOR* (1907)). Dr. Holmes died on October 7, 1894. *Id.* For the curious, I note that Doyle originally had settled upon the name "Sherringford Hope," after the whaling ship, the "Hope," on which he had served as ship's surgeon at the age of twenty. HIGHAM, *supra*, at 68. It is speculated that the name "Sherlock" was inspired either by a cricket player Doyle had competed against, or the well-known violinist of the time, Alfred Sherlock. *Id.*

19. This statement is taken from *The Book of Life*, a magazine article Sherlock Holmes published anonymously in 1881 regarding the science of observation, deduction, and analysis. TREVOR H. HALL, *THE LATE MR. SHERLOCK HOLMES AND OTHER LITERARY STUDIES* 1 (1971); SCARLETT, *supra* note 17, at 644. As described by Watson,

It struck me as being a remarkable mixture of shrewdness and absurdity. The reasoning was close and intense, but the deductions appeared to me to be far-fetched and exaggerated. The writer claimed by a momentary expression, a twitch of a muscle or a glance of an eye, to fathom a man's inmost thoughts. Deceit, according to him, was an impossibility in the case of one trained to observation and analysis. His conclusions were as infallible as so many propositions of Euclid. So startling would his results appear to the uninitiated that, until they learned the processes by which he had arrived at them, they might well consider him as a necromancer.

"From a drop of water," said the writer, "a logician could infer the possibility of an Atlantic or a Niagara without having seen or heard of one or the other." So all life is a great chain, the nature of which is known whenever we are shown a single link of it. Like all other arts, the Science of Deduction and Analysis is one which can only be acquired by long and patient study, nor is life long enough to allow any mortal to attain the highest possible perfection in it. Before turning to those moral and mental aspects of the matter which present the greatest

The professor's statement carried a familiarity about it which I could not place. But I now look back upon that moment in bemusement, for knowing Holmes as I do now, his expression unmistakably hinted at astonishment. And often being the subject of his deductive wit, I recall what followed in playful delight.

The professor said, "I need not be a logician when granted the name of a gentlemen upon meeting to infer that Mr. Sherlock Holmes is the man who makes his trade as a 'consulting detective,' a unique position in the world if I am not mistaken. Combining that knowledge with gossip gathered in certain circles regarding the aptitude with which the detective has displayed in performing his job,²⁰ and employing the methods detailed in the wholly peerless exposition contained in an otherwise routine magazine, I cannot but deduce that the author of that article, a man who is a stranger but familiar with my work and my vacation residence, is none other than the man who sits before me."²¹

difficulties, let the inquirer begin by mastering more elementary problems. Let him, on meeting a fellow-mortal, learn at a glance to distinguish the history of the man, and the trade or profession to which he belongs. Puerile as such an exercise may seem, it sharpens the faculties of observation and teaches one where to look and what to look for. By a man's fingernails, by his coat-sleeve, by his boot, by his trouser-knees, by the callosities of his forefinger and thumb, by his expression, by his shirt-cuffs — by each of these things a man's calling is plainly revealed. That all united should fail to enlighten the competent inquirer in any case is almost inconceivable.

SCARLETT, *supra* note 17, at 644.

20. Justice Holmes's societal involvement in London could have led to his hearing of Sherlock Holmes's early adventures, well before they appeared in *The Strand*, beginning in 1887. For example, *A Study in Scarlet* occurred in 1881, and *The Adventure of Charles Augustus Milverton* occurred in 1882. Well before Sherlock Holmes met Watson, however, he had solved various cases between 1878 and 1881: "the Tarleton murders, the case of Vamberry, the wine-merchant, the adventure of the old Russian woman, the singular affair of the aluminum crutch, and the case of Riccoletti of the club-foot and his abominable wife." FOOTSTEPS, *supra* note **, at 40-41. It is most likely that Justice Holmes had caught wind of the detective's early cases, completed sans Watson.

21. Justice Holmes's theory of judicial self-restraint parallels Sherlock Holmes's methods. Sherlock Holmes consistently displayed self-restraint by refusing to reach a conclusion in a case until he had gathered all the facts available to him. "It is a capital mistake to theorize before one has data. Insensibly one begins to twist facts to suit theories, instead of theories to suit facts." *Scandal*, *supra* note 3, at 3. The Great Detective stated in *The Sign of the Four*: "It is of the first importance . . . not to allow your judgment to be biased by personal qualities. A client is to me a mere unit—a factor in a problem. The emotional qualities are antagonistic to clear reasoning." FOUR, *supra* note 2, at 719. The detective's statement mirrors Justice Holmes's words in *Otis v. Parker* that judges should refrain from basing

At that point, Holmes took up the cause.

"Thank you, Professor, for your kind words and for your application of my science. As you reasoned, the solution to your puzzle hid in the concrete, free of any emotion or bias engendered by my unexpected invitation."

"As you have expressed some familiarity with the law,²² thus I must beg the question, Mr. Holmes, as to how or whether the role of history figures into your equations?"²³ "History of a case or the

their opinions in their own morality, and similarly, his statement in *Lochner* that his agreement or disagreement with the economic theory upon which the case was decided "has nothing to do with the right of a majority to embody their opinions in law." *Lochner v. New York*, 198 U.S. 45, 75 (1905); see *supra* note 15. Yet, in seeming contradiction, Justice Holmes stated, "Theory is my subject, not practical details." Oliver Wendell Holmes, Jr., *The Path of the Law*, 10 HARV. L. REV. 457, 477 (1897), reprinted in 78 B.U. L. REV. 691, 699 (1998) [hereinafter *Path*]; see also Gordon, *supra* note 11, at 719 (describing *The Common Law* as a work of theory, not of history). Although Justice Holmes's statement in *The Path of Law* might be interpreted as being in contrast to Sherlock Holmes's philosophy, such interpretation only occurs if focus is placed on Justice Holmes's use of the word "theory." Justice Holmes sought results in the concrete, in history, in policy, and in facts. E.g., Herstein, *supra* note *. Recall in *Lochner* where Holmes wrote, "General propositions do not decide concrete cases." 198 U.S. at 76. Thus, as Justice Holmes would suggest, judges should not twist facts to suit their opinions, but should reach a decision only after studying the facts.

22. Watson noted in *A Study in Scarlet* that Sherlock Holmes "[h]as a good practical knowledge of British law." SCARLETT, *supra* note 17, at 642. Some suggest that this indicates that Holmes was a trained lawyer, but Andrew G. Fusco makes a convincing case to the contrary. Andrew G. Fusco, *The Case Against Mr. Holmes*, in BEYOND BAKER STREET: A SHERLOCKIAN ANTHOLOGY 95 (Michael Harrison ed., 1976) (discussing Holmes's knowledge of the law and concluding that he was not a lawyer).

23. Justice Holmes stated, "The rational study of law is still to a large extent the study of history. History must be a part of the study, because without it we cannot know the precise scope of the rules which it is our business to know." *Path*, *supra* note 21, at 708. Without question, Justice Holmes's philosophy "set revolutionary new directions in our jurisprudence." Willard Hurst, *Justice Oliver Wendell Holmes: The Proving Years, 1870-1882*, 77 HARV. L. REV. 382, 385 (1963) (book review); see also FRANKFURTER, *supra* note 4, at 28. Hurst identifies four "stand-out" contributions: "significant legal theory would be fact-based and fact-tested; it would deal with law not as an abstraction but as relative to the life of a particular society; it would see the full significance of the element of force in law; it would focus on the sustained working of social institutions which made their impact through the everyday incidents of life." Hurst, *supra*, at 385. *But cf.* G. Edward White, *Revisiting Substantive Due Process and Holmes's Lochner Dissent*, 63 BROOK. L. REV. 87 (1997) (comparing orthodox jurisprudential framework in 1905 with Holmes's framework, and identifying two mythologies about early twentieth century constitutional jurisprudence). "Holmes insisted that law did not exist in some timeless and placeless realm of its own being. Law was always the law of a par-

actors within it plays a role only if observation leads you to its pages. Take for instance the all-but-exceptional criminal. Were he to embrace observation and master it, his crimes would more likely go unheralded, and thus his career successful. If he were to equip himself with such knowledge and apply it to prediction of the actions and reactions of his targets, instead of expending energy in the vaguer business of planning, casing, and dreaming about the gold of his desire, he would relieve himself of his own history, which inevitably leads to defeat in most instances, of the history of

ticular society with its particular structure of forces and goals, to be studied in its particular circumstances." Hurst, *supra*, at 386. As Justice Holmes so eloquently stated in *The Common Law*:

The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics.

OLIVER WENDELL HOLMES, *THE COMMON LAW* 1 (1881). In turn, Hurst's observations readily apply to the deductive reasoning and methods of Sherlock Holmes. Paralleling Hurst, it could be said that Sherlock Holmes insisted that a case did not exist in some timeless and placeless realm of its own being, but was to be approached absent of abstraction, studied in its particular circumstances, and based in facts. He once remarked,

The ideal reasoner . . . would, when he has once been shown a single fact in all its bearings, deduce from it not only all the chain of events which led up to it, but also all the results which would follow from it. As Cuvier could correctly describe a whole animal by the contemplation of a single bone, so the observer who has thoroughly understood one link in a series of incidents, should be able to accurately state all the other ones, both before and after. We have not yet grasped the results which the reason alone can attain to. Problems may be solved in the study which have baffled all those who have sought a solution by the aid of their senses. To carry the art, however, to its highest pitch, it is necessary that the reasoner should be able to utilise all the facts which have come to his knowledge, and this in itself implies, as you will readily see, a possession of all knowledge, which, even in these days of free education and encyclopedias, is a somewhat rare accomplishment. It is not so impossible, however, that a man should possess all knowledge which is likely to be useful to him in his work, and this I have endeavored in my case to do. If I remember rightly, you on one occasion, in the early days of our friendship, defined my limits in a very precise fashion.

ARTHUR CONAN DOYLE, *The Five Orange Pips*, in *THE ADVENTURES OF SHERLOCK HOLMES* (1891), reprinted in *THE WORKS OF SIR ARTHUR CONAN DOYLE* 59, 65-66 (Longmeadow Press 1984).

those who have went before him, and of the history of his victim, the substance of which he erroneously studied without properly observing. Yet, because my adversaries, thus far, have ignored the methods I have laid before them, my knowledge of the history of crime and the criminal's past endeavors is an essential tool, when the evidence is laid before me, for application of my science."²⁴

"I do believe, Mr. Holmes, that our minds in many respect parallel, and that the night could burn away before the heat of our discussion. But, I deduce that we have arrived at my door, with the two steps before it, and that I must now retire." The professor smiled. "If I were not delayed in my arrival, and I would be all the

24. Compare the detective's statement with Justice Holmes's directive to adopt the viewpoint of the "bad man" when trying to understand the law.

If you want to know the law and nothing else, you must look at it as a bad man, who cares only for the material consequences which such knowledge enables him to predict, not as a good one, who finds his reasons for conduct, whether inside the law or outside of it, in the vaguer sanctions of conscience.

Path, *supra* note 21, at 701. Justice Holmes utilized his "bad man" to explore the "evil effects of the confusion between legal and moral ideas." *Id.* at 699-700. He did so through examples of contract and tort. While it might occur to compare Justice Holmes's "bad man" with Sherlock Holmes's adversary, Professor Moriarty, Justice Holmes did not apply his viewpoint to the criminal "bad man" because he viewed criminality as innate. See David Laban, *The Bad Man and the Good Lawyer: A Centennial Essay on Holmes's The Path of the Law*, 72 N.Y.U. L. REV. 1547, 1565-67 (1997) (referring to Holmes's discussion of the criminal in *The Path of the Law*). Sherlock Holmes evidently viewed criminality as having some genetic basis as well. In describing Colonel Sebastian Moran, Professor Moriarty's top henchman and the "second most dangerous man in London," Holmes commented, "I have a theory that the individual represents in his development the whole procession of his ancestors, and that such a sudden turn to good or evil stands for some strong influence which came into the line of his pedigree." ARTHUR CONAN DOYLE, *The Adventure of the Empty House*, in *THE RETURN OF SHERLOCK HOLMES* (1903), reprinted in *THE WORKS OF SIR ARTHUR CONAN DOYLE* 339, 351 (Longmeadow Press 1984). As Laban states, Justice Holmes was not mounting "an attack on the moral status of legal duties," but was proposing the elimination of moral terms from the law to avoid "extralegal connotations." Laban, *supra*, at 1567-68. This is not to suggest that the paradox of the "bad man" should only be reduced to such a simple interpretation. The breadth of over 100 years of scholarship on *The Path of the Law* belies such. See, e.g., Symposium, *The Path of the Law After One Hundred Years*, 110 HARV. L. REV. 989 (1997); Symposium, *The Path of the Law Today*, 78 B.U. L. REV. 691 (1998). It should also be noted that Justice Holmes's philosophies extol an Emersonian and romantic basis. See, e.g., Anne C. Dailey, *Holmes and the Romantic Mind*, 48 DUKE L. J. 429 (1998). A pertinent example is the "good man" who finds reason in "the vaguer sanctions of conscience." *Path*, *supra* note 21, at 701; see also Jack M. Beermann, *Holmes's Good Man: A Comment on Levinson and Balkin*, 78 B.U. L. REV. 937 (1998). But cf. Sanford Levinson & J.M. Balkin, *The "Bad Man," The Good, and the Self-Reliant*, 78 B.U. L. REV. 885 (1998).

more so if not for your courtesy, I would invite you inside to continue the dialogue. As it is one I wish to continue, might I request that we do so by correspondence."

"Indeed," said Holmes.

And with that, the professor shook our hands and was out the door. The clatter of his footfall echoing on the double-step and the sound of the door closed the most invigorating episode. I looked to Holmes, but his eyes held the glassy glare of abstraction that would overcome him. He never spoke of any subsequent correspondence, and I never witnessed the arrival of any. The fact that he remained speechless on the matter for the rest of our time revealed to me that he ever considered the import of the all-too-brief conversation, and sought to assimilate it and the evolving philosophy of the professor as expressed in his writings after donning the robes of impartiality.

That evening encounter was brief, but substantive, as fits the participants' character. And as I now reflect upon it, I must conclude that it was pre-arranged. Holmes's sense of the dramatic, and skill at manipulation, easily could have brought about its occurrence. The reason behind its occurrence I myself cannot deduce. Holmes never spoke on the matter again. Yet, as the answer to my musing would satisfy the curious, but not lessen the relevance of the meeting, I shall let the account speak for itself, and leave its origin a mystery.