Holmes-Cohen Correspondence

Felix S. Cohen
Yale Law School

Follow this and additional works at: http://digitalcommons.law.yale.edu/fss_papers

Part of the Judges Commons, and the Legal History, Theory and Process Commons

Recommended Citation
http://digitalcommons.law.yale.edu/fss_papers/4363

This Article is brought to you for free and open access by the Yale Law School Faculty Scholarship at Yale Law School Legal Scholarship Repository. It has been accepted for inclusion in Faculty Scholarship Series by an authorized administrator of Yale Law School Legal Scholarship Repository. For more information, please contact julian.aiken@yale.edu.
THE HOLMES-COHEN CORRESPONDENCE
Edited with a Foreword by Felix S. Cohen

Foreword

"To have known Holmes," wrote Morris R. Cohen soon after the death of America's great jurist, "was to have had a revelation of the possibilities of . . . human personality. His conversation and bearing were like rare music that lingers in one's memory. One is fortunate to hear some reverberating echo of it. It is the function of the great biographer to catch such echoes, and from conversations, letters, and scattered writings reconstruct some idea of the original integrated life."

In this reconstructing of a life that is gone, yet still so much with all of us who value thought and freedom of thought, the correspondence between Justice Holmes and Professor Cohen may serve as a clue to a part of the great judge's mind that has not often been revealed or noticed. To most of his biographers Holmes has been the Great Olympian. Yet this is perhaps the least admirable and the least distinctive of his qualities. It is easy for judges to assume divinity. The few inches of altitude that separate judges on the bench from former colleagues at the bar may easily assume the proportions of Mt. Olympus if gazed at intently for prolonged periods. What is distinctive about Justice Holmes is that he never lost "a childish curiosity about the universe."

Resisting the common judicial assumption that omniscience is donned ex officio with the robes of office, Justice Holmes persisted, down to the last days of his life, in studying, reading, looking for new light on the ancient problems of law and life. It is

* Grateful acknowledgment is made to Professor Mark DeWolfe Howe who not only made available portions of the following correspondence found among Justice Holmes' papers, but also collaborated in identifying the references contained in this correspondence, and generously advised in the entire task of editing these letters.

2 In his Meaning of Human History (Open Court, 1947), Cohen refers to Holmes along with Einstein and Socrates as men who "never outgrow a childish curiosity about the universe and continue as long as they live, to ask questions of the world and to revise mistaken views" (p. 175).
this eternally youthful side of Justice Holmes’ mind that shows forth in his correspondence with his philosophical confidant. There is a recurring concern as to whether a given book on philosophy or history is one he can afford to leave unread or one of those on which St. Peter will examine him before Final Judgment. The youthfulness that expresses itself in delightful tricks and pranks—‘We will twist the tail of the Cosmos until it squeaks’—expresses itself also in the willingness to doubt one’s own first principles. For such doubts, as Justice Holmes used to say, are the mark of a civilized man.

The liberal faith that drew together, in 1915, an obscure young teacher of philosophy and America’s most distinguished jurist, found its basis in a common humility that Justice Holmes formulates in one of the earliest letters of this series:

‘... I think we are at one in not believing that man can swallow the universe. I at least go on very comfortably without the belief that I am in on the ground floor with God or that the cosmos, whether it wears a beard or not, needs me in order to know itself.’ (May 27, 1917.)

Beyond this common recognition of the frailty of human claims to omniscience was a world of disagreements between these two men. One was a soldier who believed in the survival of the fittest, and who, despite persistent doubts as to the objective validity of his own political and economic predilections, was a staunch Republican and a believer in capitalism and the iron laws of Ricardian economics. The other was an unabashed infidel in politics and economics, who probed with merciless logic what seemed to him the failures of capitalism, militarism, nationalism, and the worship of evolution or success. Holmes thought that the life of the law was experience, not logic. Cohen wrote in dispraise of life and experience and in praise of logic. Beyond these and other differences of opinion and viewpoint were equally vital differences of background. Holmes was born into the New England intellectual aristocracy in that Golden Day when it still combined the Puritan

4 The Common Law, 1.
5 The epilogue of Reason and Nature, which is dedicated to Justice Holmes, is entitled “In Dispraise of Life, Experience, and Reality.”
discipline of plain living and high thinking with wide cosmopolitan interests and contacts, and he was favored with a brain and a body that enabled him to do a prodigious amount of concentrated work day after day without lessening his amazing and ever youthful buoyancy."

Morris Cohen was born into an equally intense but very different intellectual and economic atmosphere. The first twelve years of his life, in Russia, were dominated by the intellectual framework of Talmudic learning and circumscribed by poverty and hunger that took a premature toll of physical energies. It was only in the last years of the century, when Holmes was already a great legal scholar and a distinguished judge, that the youthful immigrant, Morris Cohen, made his way into the language and intellectual currents of American life. It was an immigrant Scottish teacher, Thomas Davidson, who launched his East Side pupil upon a life-long quest, a dreamer’s journey, dominated by the urge to bring together two visions. Like many thinkers of earlier ages, Morris R. Cohen sought to unite the insights of the Hebraic tradition, with its passion for a social justice that is never wholly achieved, and the values of the Hellenic tradition, with its pervading quest for a truth that is never wholly caught.

In the field of jurisprudence, this became a struggle to bring a scientific outlook into the law, and thus to make of law a more effective tool in the cause of social justice. Fellow soldiers in this struggle, Harold J. Laski, Felix Frankfurter, and Louis D. Brandeis, were devoted friends of Morris R. Cohen and Oliver Wendell Holmes. The interplay of these friendships offers a bright page in the development of American legal thought.

Holmes and Cohen, each in his own way, were loyal to the values of a great cultural heritage without succumbing to its provincialisms. Two civilized men who valued the challenges that save thought from stagnation could disagree on issues so basic that most of the conflicts of our times seem petty in comparison, and could yet submit their differences to the court of reason and enshrine them in warm affection. The depth of the affection colors many of the following letters. It tempered the most resolute of their oral battles.


7 Part of this story is told in Book 6 of the autobiography of Morris R. Cohen, A Dreamer's Journey, now in course of publication.

8 Unfortunately several of the Holmes-to-Cohen letters and a good many of the Cohen-to-Holmes letters, particularly from 1925 to 1931, have not been found.
It overflowed and was shared by those closest to these two men. In 1921 a letter from Mary R. Cohen tells how much the Justice's friendship meant to her husband and remarks, "'Your photograph, with its inscription, is one of our dearest possessions.'" To his last days Morris R. Cohen kept on his bedroom wall the treasured picture of the "courageous thinker and loyal friend" to whom his philosophical *magnum opus* was dedicated.

Such a relationship between man and man offers heartening demonstration of the potential of understanding that is carried by genuine humility. For however Olympian Justice Holmes seemed to the lawyers who stood at the bar, or Professor Cohen to "the youth who sat at his feet," there was in each of these men that spirit of genuine humility that acknowledges the finitude of all mortal vision and the "pathetic frailty of the knowledge or beliefs on which our life depends." Under the aegis of that spirit, creed and breed and birth set up no barriers and walls long builted crumble to dust.

THE HOLMES–COHEN CORRESPONDENCE

The College of the City of New York
Department of Philosophy
St. Nicholas Terrace and 139th Street

April 10, 1915

My dear Justice Holmes:

Mr. Frankfurter has forwarded to me your kind letter with reference to my paper on *History vs. Value*. It is, of course, always gratifying to have

9 A volume entitled *Morris Raphael Cohen*, published by "The Youth Who Sat at His Feet" on the occasion of the 25th Anniversary of Professor Cohen's teaching at the City College, contains the message (Oct. 3, 1927) from which the quoted phrase is taken: "Nothing could give me more pleasure than to join as I do in this expression of honor to Professor Cohen. I have read his writings with admiration and great profit. I have enjoyed his conversation with equal profit, affection and reverence. I am proud that he calls me friend. I envy the youth who sit at his feet.

Very truly yours,

O. W. HOLMES."


1 Published in *Journal of Philosophy*, vol. 11, p. 701 (Dec. 17, 1914). This was originally delivered as an address before the American Philosophical Association in December, 1913. It was projected, and subsequently published, as a chapter of *Reason and Nature* (1931).
one’s intellectual output appreciated; but in this case, I assure you, it is unusually gratifying, since it makes me feel that I have been able in some slight measure to repay for the great pleasure I have derived from reading your Common Law, your articles in the Harvard Law Review, and your published decisions or dissents. Not being a lawyer, the latter do not lose their value to me by the accidental fact that the majority of the court do not always see the truth as you do.

I have taken the liberty of sending you some more of my fugitive papers, as a token of my indebtedness for intellectual stimulus derived from your writings. Needless to add, this does not involve any obligation on your part to read any of these papers which are for the most part of purely technical interest.

Respectfully yours,

MORRIS R. COHEN

April 12, 1915

My dear Mr. Cohen:

Your letter and the accompanying articles gave me much pleasure—although of course as yet I have only noted their subjects. I have just sent to Wigmore at his request a few lines—a page or two—or three—written currente calamo—repeating some of my chestnuts that I have not printed before—apropos of the theme of Ideals—suggested by your article and Del Vecchio’s book (I merely refer to your article as an excellent one)—I adverted some years ago in noticing Holdsworth’s History to how little as


4 Del Vecchio, Formal Bases of Law (1914), Modern Legal Philosophy Series, vol. 10.

5 The passage to which reference is made reads: “For the last thirty years we have been preoccupied with the embryology of legal ideas . . . The reaction . . . seems to me an advance, for it is toward the ultimate question of worth. That is the text of an excellent article by Morris R. Cohen . . .” (p. 303).

yet with their preoccupation with the embryology of legal ideas, people had had to say concerning the worth of those ideas.

I am glad that a philosopher is interested in the law—I hardly should be interested in it—if it did not open a wide door to philosophizing—and enable me to illustrate another of my chestnuts that the chief end of man is to frame general ideas—and that no general idea is worth a straw—

If you come to Washington I hope I shall see you.

Very sincerely yours,
O. W. Holmes

Supreme Court of the United States,
Washington, D. C.
May 15, 1915

My dear Professor Cohen:

Here are a few chestnuts that I was stimulated to scribble off and print,7 by the joint effect of a request from my friend Wigmore and reading your article. I say chestnuts, because they mostly are old formulas of mine, but I hope they may be less so to others. At all events they will be evidence of my regard for your writing and you.

Very sincerely yours,
O. W. Holmes

No need to say anything.

Supreme Court of the United States
Washington, D. C.
March 9, 1916

Dear Professor Cohen:

Your kind letter gives me great pleasure and I thank you for it. I have a constant reminder of you in a volume of your essays that I have had bound and that bears your name upon the back. But I am grateful for this one of later date, and really pleased to think that you still remember me.

Sincerely yours,
O. W. Holmes

Supreme Court of the United States,
Washington, D. C.
Nov. 17, 1916

Dear Mr. Cohen:

You will be welcome whenever you come8 and I hope it may be at a

7 The reference is to a copy of Holmes’ essay, “Ideals and Doubts,” note 3, supra.
8 Letter missing from Cohen to Holmes between Mar. 9, 1916 and Nov. 17, 1916.
moment when I am not too driven by work to get all the pleasure and profit
I should expect from meeting you. I thank you for the articles, which de-
lighted me. I do not always have time to read the New Republic but what-
ever bears your signature I read unless it escapes my eye. I am conscious
of so much agreement that I rise in my own opinion as I read.

Sincerely yours,
O. W. Holmes

Supreme Court of the United States,
Washington, D. C.

May 27, 1917

Dear Mr. Cohen:

Would that you might embody any of your opinions in a booklet or a
folio if you prefer. I am sure we should be the wiser for them. My
pleasure in meeting you was as great as yours could have been and I only
regretted that the time was so short. I think we are at one in not believing
that man can swallow the universe. I at least go on very comfortably
without the belief that I am in on the ground floor with God or that the
cosmos, whether it wears a beard or not, needs me in order to know itself.
I suppose it needs me as it needs any grain of sand, because I am here. And
the whole, if there is a whole, would be I know not how much other, if an
atom were subtracted from it, but I do not believe that a shudder would
go through the sky if our whole ant heap were kerosened. But then it
might—in short my only belief is that I know nothing about it. Truth may
be cosmically ultimate for all I know. I merely surmise that our last word
probably is not the last word, any more than that of horses or dogs. It is

9 The following pieces by Cohen had appeared in recent issues of the New
Republic: Review of John Dewey, Essays in Experimental Logic, 8 (Sept. 2, 1916),
118, reprinted in Preface to Logic, 196; "New Leadership in the Law," 6 (Mar. 11,
1916), 148 (on the appointment of Roscoe Pound as Dean of the Harvard Law
School), reprinted in Law and the Social Order, 32; Review of E. A. Parry, Law
and the Poor, 4 (Aug. 7, 1915), 25, reprinted in Law and the Social Order, 3; "The
Legend of Magna Charta," 3 (June 12, 1915), 136, reprinted in Faith of a Liberal
(1946), 91; "Shall the Judges Make the Laws?" 3 (May 15, 1915), 31; "The Bill
of Rights Theory," 2 (April 3, 1915), 222, reprinted in Law and the Social Order,

10 Of the foregoing pieces, "The Legend of Magna Charta," "The Bill of Rights
Theory," and "The Bill of Rights Again" were unsigned editorials; the review of
Judge Parry's book was also unsigned.

11 Letter missing from Cohen to Holmes between Nov. 17, 1916, and May 27,
1917.

reprinted in Collected Legal Papers, 310, 315.
our last word nonetheless. And I don’t see why we shouldn’t do our job in the station in which we were born without waiting for an angel to assure us that it is the jobbest job in jobdom. But we are all like the old Knights who wouldn’t be satisfied with your admission that their girl was a very nice girl, but would knock your head off if you didn’t admit that she was the best ever—bar the Virgin Mary, perhaps.

I must shut up as I have other things to do but this will assure you of my great satisfaction at having met you and my hope that it was not the last time.

Sincerely yours,
O. W. HOLMES

Littleton, N. H.
Sept. 5, 1917

My dear Mrs. Holmes:

 Permit me to express to you again my delight at finding that you are a granddaughter of the Nathaniel Bowditch to whom I am so greatly indebted personally. To the exoteric public, mathematics is a cold dehumanized game with symbols, but to the initiated it is a celestial music that ennobles and makes worth while the pains of existence. LaPlace’s Mécanique Celeste is one of those noble celestial symphonies that is made audible to lesser mathematical spirits like myself by your grandfather’s great commentary. Many otherwise weary hours have been brightened for me by the lone volume of the Mécanique Celeste which my College possesses. I dare not say this to the Judge—he looks so sternly at me whenever I speak of mathematics that I’m afraid he will call me sentimental as well as good. But you as the granddaughter of a great mathematician will understand.

 Permit me to add that among the many delights of my visit to Beverly Farm that of seeing your beautiful plants and flowers was not lost.

 With kind regards,
			MORRIS R. COHEN

Supreme Court of the United States,
Washington, D. C.

Jan. 5, 1918

Dear Mr. Cohen:

 Except in the news of trouble in your family your letter\textsuperscript{13} gives me great pleasure, as has everything that I have seen of or heard from you. If I had not been breathlessly busy I should have written to you to express my delight at your recent article in the N. R.\textsuperscript{14} pointing out that the assump-

\textsuperscript{13} Letter missing from Cohen to Holmes between May 27, 1917, and Jan. 5, 1918.

\textsuperscript{14} The reference seems to be to a review of Emile Boutroux, The Contingency
tion of quantitatively fixed relatives as uniform in similar sequences was itself more or less of a fiction—(I hope I don’t make you shudder at this attempt to recall your theme by an act of distracted memory and to put it in a phrase—as other people always do, when they purport to repeat what one has said.) Still as a bettabilitarian I should lean to that as against any single system of the interstitial miraculous based on your doubt. I should like to sit and talk with you—but pressed as I am I can do no more than thank you for your letter and reciprocate every good wish.

Sincerely yours,
O. W. HOLMES

Beverly Farms
Aug. 31, 1918

My dear Cohen:

Frankfurter read to my wife and me just now your article Rewards, Penalties and Plato,15 and I just write a line to say with what delight we listened. It is “Acme—A. 1.” in my humble judgment—uniting learning wit profundity and deuced good writing. Accept my envying felicitations.

Ever sincerely yours,
O. W. HOLMES

Beverly Farms
Sept. 3, 1918

Dear Mr. Cohen:

Your letter16 has just been received. I should be delighted to see you and can put you up if you can stop over night as I hope. Evidently you haven’t received my second letter expressing my delight at your piece in the New Republic about Plato and a book17—as I am having a button sewed on—I was about to say I couldn’t stop to get the title but it is done. Still however I remember that I can’t, because my N. R. hasn’t come. The privileged Frankfurter read it to me. It was ripping. I have been moved by a book on Natural Law (which I don’t think much of) to write a few words for the Harvard Law Rev.18 i.e. Laski19 impounded them to that end. I say nothing that I haven’t said a thousand times in conversation but one


16 Letter missing from Cohen to Holmes between Aug. 31 and Sept. 3, 1918.

17 See note 15, supra.

18 See note 12, supra.

19 Laski was Book Review Editor of the Harvard Law Review during the academic year 1917–1918.
rather likes to see one's fundamentals in print. So I wound up with a nice
twist at the tail of the cosmos—agreeing with the Natural Lawyers that we
have to come back to them. I should like to read it to you—it is short. Our
feeding hours are 1 p.m. and 7 p.m. (breakfast 8.30 or later).

In hopes of seeing you,

Ever sincerely yours,
O. W. HOLMES

Beverly Farms
Sept. 10, 1918

Dear Mr. Cohen:

If you come not much later than the 22d we can put you up and shall
be glad to see you. On the 28th we leave and in view of the nearness of
time I consulted my wife to know whether it would be all right. She says
yes. So I still shall hope to see you. Please let me know the exact time.
If there is no change the trains leave Boston at 10:45 a.m. (in time for the
midday meal at 1), 2, 3, 4 (qu. 4?) a good train—5 etc. Other trains
in addition Saturday. So if I know the date and train I will tell the stable
man to meet you. I have just been reading Bertrand Russell's Mysticism
and Logic with much less liking for A Free Man's Worship than, I gather
from Laski, you feel. It seems to me no better than shaking your fist at the
sky. It presupposes a πορος outside the universe. Also I inferred from
our former talk and your writing that you would agree with him in think-
ing reason paramount to the universe. Whereas I don't see that it stands
any differently from my preference of champagne to ditch water. It is
one of my Can't Helps, and no doubt is paramount in my universe, but as
a bettabilitarian, I bet there is (with apologies to the unknown for even
that predicate) a universe of which mine is only a very inadequate aspect,
from which my Can't Helps come and that may or may not be superior to
them. I admit that it is among the non apparentibus as to which specula-
tion is useless but we all like to try a twist at the tail of the cosmos (as I
believe I said before). If you come you shall expound and I will listen.
I venture another remark on B. R.—Mathematics is a tool with which to
work on given premises. The premises are a matter of insight—not of
mathematics—and I have thought that some mathematicians were not so
strong on them as they were in handling their tool. But I wish I knew
their beastly language, as I feel very helpless when they sail off on the
aeroplane of their calculus. But in general it requires a tough fibre not to
repine at spending one's energies on the transitory law when you fellows
are shaping the (relatively) eternal. But the transitory also shapes the
eternal as Mons. Jourdain talked prose, without knowing it.

Sincerely yours,
O. W. HOLMES

20 Letter missing from Cohen to Holmes between Sept. 3 and Sept. 10, 1918.
Dear Mr. Cohen:

It was a disappointment not to see you and a pleasure to read your article.\(^21\) I have felt but never so articulately expressed to myself the confusion between logical relations and the psychological process of discovering them. As to certainty, by a coincidence, in the article I handed to Laski the other day, I said certitude is not a test of certainty\(^22\)—explaining by adding that we all have been cocksure of things that were not so. This week ends my vacation and, I fear, my chance for philosophical reading. I have bored myself by trying to improve my mind and have been repaid by reflections when the dull books were read. I shrink somewhat from novels, which I used to devour, partly perhaps because time grows more precious. Is it a paradox to call it precious when the damned worm is gnawing away while one sleeps to consume one’s vitals?

Well, I trust that I shall survive to have another good talk with you, and hope that every day will see an improvement in your health.

Sincerely yours,
O. W. Holmes

I turned two pages
instead of one but
don’t stop to copy.

21 Coburn St., Yonkers N. Y.
Dec. 9, 1918

Dear Justice Holmes:

I received your note\(^23\) and the extract from the Harvard Law Review on Natural Law\(^24\) which I read with profound admiration and delight. All of the things you say I agree to, though I could never say them as well; and if I find certain logical qualifications necessary, to put a beard on your doctrine (to use your own words), that only means that you and I have somewhat different styles of fighting for the same good cause. I hope you are not averse to my regarding myself as a companion in arms.

I am hoping to be able to come to Washington the New Year’s week, and I hope to have a chance to make up for the conversation I lost last September.

With kind remembrance to Mrs. Holmes,
Sincerely yours,

Morris R. Cohen

\(^{21}\) "The Subject Matter of Formal Logic," \textit{Jour. of Phil.}, 15 (Dec. 5, 1918), 673, originally delivered as an address before the American Philosophical Association in December, 1917, and appearing subsequently as the first chapter of \textit{Preface to Logic} (1944).


\(^{23}\) Letter missing from Holmes to Cohen between Sept. 28 and Dec. 9, 1918.

\(^{24}\) Note 12, \textit{supra}. 
Dear Mr. Cohen:

The Subject Matter of Formal Logic\textsuperscript{25} is received and has been read with the usual pleasure I have in reading what you write. It found me ready to accept your view, which, indeed, I don't see how anyone can quarrel with. And it makes me feel like a worm because of my ignorance of mathematics. How I wish I knew what the non-Euclidean geometry is! I don't understand the sentence p. 677 "2 + 2 + 4 is impossible therefore" etc.\textsuperscript{26} If you know some golden book, not too long, philosophic, sociologic or otherwise calculated to expand the judicial mind sit down at once and name it and stick it in an envelope directed to me—for I have the promise of a little leisure beginning today and I want to make the most of it. Alas! I am, what I think ominous for significance, I am industrious—I have bought a little etching by Ostade that I think fit to make one cry.

Yours ever,
O. W. Holmes

Supreme Court of the United States,
Washington, D. C.

Feb. 5, 1919

Dear Mr. Cohen:

Oh no—it was not Voltaire\textsuperscript{27}—it was the influence of the scientific way of looking at the world—that made the change to which I referred. My father was brought up scientifically—i.e. he studied medicine in France—and I was not. Yet there was with him as with the rest of his generation a certain softness of attitude toward the interstitial miracle—the phenomenon without phenomenal antecedents, that I did not feel. The difference was in the air, although perhaps only the few of my time felt it. The Origin of Species I think came out while I was in college—\textsuperscript{28} H. Spencer had an-

\textsuperscript{25} See note 21 supra and note 29, infra.

\textsuperscript{26} As it originally appeared, the passage ran: "2 + 2 \neq 4 is impossible, in any universe, in which 2, 4, and \neq have the meanings assigned in our arithmetic." Justice Holmes apparently misread the inequality sign, \neq.

\textsuperscript{27} Holmes had remarked that of all the intellectual gaps between generations the gap between his own and his father's appeared to him the widest. In a missing letter received by Holmes on Feb. 4 or 5 Cohen had asked whether this intellectual shift might be ascribed to Voltaire.

\textsuperscript{28} Holmes was at Harvard College from the Fall of 1857 to April 1861. The Origin of Species was published in 1859. Herbert Spencer published his Social Statics in 1850 and Synthetic Philosophy in 1860. In 1905 Justice Holmes made his famous comment: "The Fourteenth Amendment does not enact Mr. Herbert
nounced his intention to put the universe into our pockets—I hadn’t read either of them to be sure, but as I say it was in the air. I did read Buckle—now almost forgotten—but making a noise in his day, but I could refer to no book as the specific cause—I never have read much of Voltaire and probably at that time had read nothing. Emerson and Ruskin were the men that set me on fire. Probably a sceptical temperament that I got from my mother had something to do with my way of thinking. Then I was in with the abolitionists, some or many of whom were sceptics as well as dogmatists. But I think science was at the bottom. Of course my father was by no means orthodox, but like other even lax Unitarians there were questions that he didn’t like to have asked—and he always spoke of keeping his mind open on matters like spiritualism or whether Bacon wrote Shakespeare—so that when I wanted to be disagreeable I told him that he straddled, in order to be able to say, whatever might be accepted, well I always have recognized etc., which was not just on my part.

I wrote to you yesterday, before the arrival of your letter—I had perceived this similarity of your article to what I read last summer but could not remember accurately and so said nothing about it. The second reading gave me the pleasure I expected—and it would be nonetheless if it was true as it is not that the article is of no use. The useless is the ideal expression of man. Doing a stunt in vacuo—like going to the North Pole is the final expression of man’s contribution to morality which as my father used to say of the atmosphere is an empirical mixture.—Woman, the mother, contributing living for others, man, the fighter, contributing achievement. This profound generalization I worked off on my wife at Niagara Falls many years ago when I was just too late to see a man drowned in going through the rapids, and my wife said sadly, if it had been of any use. But I must deny you that highest praise because the article is a real help towards understanding our thinking. By the by—did I ever mention—probably I have—the anticipation of Bergson in Rejected Addresses—“Thinking is but an idle waste of thought?”

Sincerely yours,

O. W. Holmes

I repeat from yesterday that I should be glad to know of some book to read that will illumine a darkened soul.

Supreme Court of the United States,
Washington, D. C.

Feb. 11, 1919

Dear Mr. Cohen:

The books have arrived this morning. It is most kind of you but of Spencer’s Social Statics,” in his dissenting opinion in Lochner v. New York, 198 U. S. 45, 75–76. The dissent has since become the law.

Supra.

29 See notes 21 and 25 supra.
course I didn't mean to ask you to be at that trouble. Being here I shall hang on to most of them as long as I have a chance to read them. At the moment I am expecting an assignment of cases to write, but it will go hard if I have not some time before the adjournment ends. Two or three I shall return ὅτι τὰξιστὰ as I have read them. The other day I took from the shelves and began to read Plato's Phaedo. I found on it my note Feb. 3, 1860. It was fifty-nine years almost to a day since I last read it! What a queer thing to hear people talk of the "inexorable logic" by which Socrates led to his conclusions. You could drive a six mule team through the gaps—but it is wonderfully taking literature even when you rebel or rather smile at the admissions that this that and the other is evident from the proof.

Yours sincerely,
O. W. Holmes

The College of the City of New York
Department of Philosophy
St. Nicholas Terrace and 139th Street
March 7, 1919

My dear Justice Holmes:

March 8 is, I believe, your birthday and so I take this occasion to express my heartiest congratulations and best wishes. I cannot subscribe altogether to your father's dictum "Old Time is a liar," but I have never seen the spirit of man defy time so chivalrously as in your case. Every time I read what you write or have the good fortune to see you personally I feel refreshed and rejuvenated. I hope that both you and Mrs. Holmes will continue to enjoy for many more years the wise happiness which comes with ripe experience.

Sincerely yours,
Morris R. Cohen

P.S. I ought to have answered your last letter which came with the returned books; but the illness of my children distracted me somewhat. . . . The Davidson Society is still in existence, though in financial difficulties. As to Joachim of Fiore I am not sure that your question was a call for cold

30 In October, 1860, Holmes's undergraduate essay Plato had been published in The University Quarterly, vol. 4, p. 205.
31 Letter missing between Feb. 11 and March 7, 1919, from Holmes to Cohen, returning books and inquiring about Joachim of Fiore and the Davidson Society.
32 The Thomas Davidson Society, devoted to the cause of adult education and particularly workers' education, is an outgrowth of the school established by the Scottish philosopher, Thomas Davidson, on New York's East Side, in 1899. (See Cohen's essays on Davidson in Monroe's Cyclopaedia of Education, vol. 2, p. 255, and in Encyclopaedia of the Social Sciences, vol. 3, p. 10.) Cohen was the first principal of the school after Davidson's death in 1900.
information. Briefly, Joachim was a Calabrian monk of the 12th century who wrote many commentaries on the prophets and prophecies of his own. His main idea seems to have been that there was to be a third dispensation following the first dispensation under the Old Testament (God the Father) and the second dispensation of the New Testament (God the Son). The third dispensation was to be of the Holy Ghost, and a regime of mystic monks was to succeed the temporal and ecclesiastical hierarchies. Joachim died in the year 1202 or 1207 but in 1256 some monk wrote a liber introductorius ad evangelium aeternum in which Joachim’s ideas were developed with little regard to the feeling of those who value the temporal interpretation of Christianity, the Papacy etc. It caused considerable trouble in the Franciscan order and Dante who was a Franciscan lay brother seems to have been very much influenced by it. Davidson used to talk to me a great deal about the matter, but after digging for myself on the basis of Renan’s study of Joachim (in his Nouvelles Études de l’hist. rel. pp. 217–322) I found that there was no earthly nourishment in the whole business except to explain Dante’s line, 140–141 in the Paradiso XII. Joachim’s works were printed in Venice early in the 16th century, but are difficult to obtain now, and I doubt very much whether they would interest you in the least.

M.R.C.

Washington, D. C.
Nov. 23, 1919

My dear Cohen:

No letter accompanies your proofs33 so I assume they are to be read and returned. I like your discourse immensely and I think there is not a word in it with which I do not heartily agree. I always have told our beloved Laski that his are counsels of perfection not true theories of divided sovereignty. As long as law means force—(and when it means anything else I don’t care who makes it and will do as I damn choose—) force means an army and this army will belong to the territorial club. Therefore the territorial club will have the last word—subject to the knowledge that if it does too much there will be a war in which it may go under in its present form. Also I am with you in your partially expressed rebellion against the notion that something particular has happened and that all our old ideas are upset—Even Pound sometimes talks as if it were a recent discovery that social considerations are paramount when you come to a final issue. I am thoroughly with your defense of the philosophic attitude, and so I might go on. . . .

33 “Communal Ghosts and other Perils in Social Philosophy,” Jour. of Phil., 16 (Dec. 4, 1919), 673. The substance of this article constitutes Book III, chapter 3, of Reason and Nature.
I didn’t answer your former letter as to my little contribution— the only thing to say is that it only inadequately expresses my sense of the value of your thinking to the world. 

Queer—yesterday morning before receiving your proofs I was writing to an English friend of mine on his theme how few were detached in their thinking.

Ever sincerely yours,

O. W. HOLMES

Supreme Court of the United States,
Washington, D. C.

Nov. 26, 1919

My dear Cohen:

Your article had been read and returned with my hearty agreement before your letter came. When I go out this morning I shall get the photographer to do up a photograph and shall send it to you as you request. It makes me vain that you should want it.

Ever sincerely yours,

O. W. HOLMES

21 Vista Ave., Yonkers

Dec. 4, 1919

My dear Justice Holmes:

I have been away from home for a few days, and am glad to find that your letter and photograph arrived while I was away. My gratitude is enhanced by the reading of the dissenting opinion in the Abrams case. I have seldom read anything which seemed to me to [be] so timely and yet of such permanent importance, so courageous and yet so just to all the relevant considerations.

I am very sorry to hear from Frankfurter of Mrs. Holmes’ ill health. I ardently hope that she will soon regain her strength.

Gratefully yours,

MORRIS R. COHEN

34 In his autobiography, *A Dreamer's Journey* (in course of publication), Morris R. Cohen refers to the contribution of which Justice Holmes speaks: “My dream of publishing a treatise on scientific method had taken on new life in 1919. In that year Justice Holmes, Judge MacK and other good friends had helped me over a period of vast discouragement and financial difficulty by subsidizing a sabbatical year in which I was able to devote myself to reading and writing without the distraction of college classes.” Cf. *Reason and Nature*, xvi.

35 See note 33, supra.

36 Letter missing from Cohen to Holmes between Nov. 23 and Nov. 26, 1919.

My dear Cohen:

Your papers 39 came in due time and I have read them indeed had read most of them before. As to Einstein I sh"nt like to be called on to recite, but as to the philosophers I think you are very sound—except that I wonder in what sense you accept pragmatism and reserve the doubt of ignorance as to Charles Peirce. It always seems to me that one must remember that W. James was in large part an Irishman and as such of course was stronger on aperçus of human nature than in continuously sustained logical thought. The modest place given to C. J. Marshall (by implication) when you get into the [ ] 40 rather tickles me—of course it is quite right. If you were comparing men as totals he would stand a good deal higher, though I never have worshipped at his shrine. I was reading Hoernlé’s book 41 the other day and found it intelligent but not specially illuminating—I dont see why anyone should bother over the suggestion that consciousness is an epiphe-nomenon—It is the way the cosmos acts when it gets a certain knot in its guts—and I don’t perceive why there is any more right to think away con-sciousness than there is to think away nerve tissue—the total is the datum. And you can take it or leave it—but you can’t take part and say that the rest is cosmically unnecessary—because, (salva reverentia,) you dont know anything about cosmic necessities. But that is only one of several cases in which the philosophers seem to me to make needless trouble—Achilles and the tortoise is another—Your postulate is that whatever sort of an infinite you get up it has got to go into five minutes and half a mile—and then you (not you, Cohen,) say I have an infinite . it must take eternity. But I speak timidly on such themes to you—As to pragmatism I must quote something I said in 1891 before I ever heard of it. Of course I recognize that the utilitarian pragmatic tests are more exquisite than my words. “I do not believe that the justification of science and philosophy is to be found in improved machinery and good conduct. Science and philosophy are themselves necessaries of life. By producing them civilization sufficiently accounts for itself, if it were not absurd to call the inevitable to account.” 42 I had previously said that the passionate pursuit of the mystery was self

38 Letter missing from Cohen to Holmes between Dec. 4, 1919, and July 13, 1920.

39 Apparently the enclosures included a series of articles “On American Philosophy” in the New Republic, devoted to Royce (20 [1919], 148), James (20 [1919], 255), Dewey (22 [1920], 82), and Santayana (23 [1920], 221), and also a series of two articles on “Einstein's Theory of Relativity” appearing in the New Republic, 21 (Jan. 21, 1920), 228 and 21 (Feb. 18, 1920), 341.

40 Word blotted and illegible.


42 Speech to Yale Alumni, February 3, 1891, Speeches (1913) 4, 5.
justifying & the satisfaction of it an end in itself. Your insistence on similar views always gives me great pleasure. I am sorry the meeting didnt come off and sorry for your troubles—better luck perhaps later.

Yours sincerely,

O.W. Holmes

The College of the City of New York
Department of Philosophy
St. Nicholas Terrace and 139th Street

Aug. 7, 1920

My dear Justice Holmes:

Your good letter of July 21 has just reached me, owing to my absence from the city. What you say about philosophy delights me, even though you pass over the matter on which I was most anxious to get your opinion—the Einstein articles. For some years I have been planning a book on the foundations of physical science, and as a preliminary exercise have undertaken to write a more or less popular book explaining my main points. The two Einstein articles are part of this plan and I was anxious to get your reaction, because of the remarkable diversity of opinion as to their intelligibility which has reached me—some thinking them remarkably luminous and others remarkably not so.

My agreement with pragmatism extends to the main point made by Peirce, viz. that the way to make our ideas clear is to examine their possible consequences, or in technical language, all their possible implications. It is an attempt to extend the experimental method to the handling of ideas, and very fruitful if used logically, for the essence of intellectual liberality consists in the realization that what is familiar to us is only one of a number of possibilities. Logical pragmatism as a method of exploring the field of logical possibilities is, therefore, of the highest value. This aspect however, has not been developed by James or Dewey because they are not interested in logic and metaphysics but only in psychology.

What you say about Hoernlé’s book seems to me very true. I should go further and say that Hoernlé and his master Bosanquet are peculiarly insensible to the vast penumbras and vaster darkness that surrounds even our clearest ideas. Their philosophy thus lacks any of the spirit of resolute adventure which makes the human glory of philosophy. Starting with the assumption that everything is ultimately known or knowable, they cannot possibly do much for the genuine extension of the realm of human knowledge.—I hope to have time to write a review of Hoernlé’s book and will try to explain my attitude a little more fully.

I expect to be in Boston on Tuesday or Wednesday and hope to enjoy some oral exchange of opinions at Beverly Farms.

With kindest regards to Mrs. Holmes,

Sincerely yours,

Morris R. Cohen
My dear Cohen:

This is an explosion of delight. Tourtoulon\textsuperscript{43} came the other day and I am now almost exactly half through him. I was reading just now and stopped because I must tell you what joy I was getting. It seems to me that I hear him saying lots of things that I thought few knew except myself—others that I never knew and that make me sit up—and all with such wise and cautious scepticism. One or two little places seemed to me not quite up to the mark but they were slight. I havent had such pleasure from a book for a long time—I must have his volume for my own. Cant I pay whoever owns this and get it? or must it be returned? I feel as if I wanted to have it by my side forever more—meaning by forever such months or years as I stick it out \textit{ici bas}!

I dont dare direct simply to West Springfield and therefore write to your locus. I want to make notes on the flyleaf and little \checkmark in the margin, but have strictly respected the virginity of what is not my own. Please when you answer be as simple as I am in my avowal of my wishes and say you cant have it or you may have it for $x$ & $y$ cents and add another to the favors that you have done me.

Ever sincerely yours,

O. W. Holmes

\textbf{August 31, 1920}\textsuperscript{44}

My dear Cohen:

Of course it is a pride and pleasure to have Tourtoulon as a gift from you—It is only my sense of Justice that rebels. I asked for it and it seems that you bought it—I thought you said that you had two copies and therefore inferred that you could part with one. I think I ought to pay for it but I leave it to you. I value what you say very greatly but it reminds me of a case I argued when young—A man sued for salvage of a boat in which he had sailed two or three thousand miles from a sinking ship—Lowell J. said that as the boat seemed to have saved the man as much as the man the boat he thought that account was in \textit{aequilibrio}. I wrote to Laski that I wished that he might read Tourtoulon—that there was a little more distinguishing and systematizing than I care for but that I thought it the best corrective I know for people who were astraddle of a formula like the Webbs or Cole (Social Theory), wh. Laski has a little tendency to be. Systems are forgotten—only a man’s aperçus are remembered. I used to say extravagantly

\textsuperscript{43} Tourtoulon, \textit{Les Principes Philosophiques de L’Histoire du Droit} was translated and published in 1922, under the title, \textit{Philosophy in the Development of the Law}, as a volume of the Modern Legal Philosophy Series, under the direction of Professor Cohen, who also wrote an introduction to the volume.

\textsuperscript{44} Letter missing from Cohen to Holmes between Aug. 23 and Aug. 31, 1920.
of course that Kant could have told his main points to a young lady in ten minutes after dinner. Isn’t there some truth in it? I have finished reading the book but shall go over it again—(after finishing Dumas’ Les Quarante Cinq—) I followed it with a book of selections of early English prose that I happened to see in the shelves and was delighted with the simplicity and force of some of the writing—very different from Milton when he is not soaring—Well—I thank you with all my heart—

Sincerely yours,

O. W. Holmes

I shall look with eagerness for your book on legal philosophy—my chief interest in the law has been in the effort to show the universal in the particular—That has kept me alive—whatever the result may have been.

West Springfield, N. H.
Sept. 1, 1920

Dear Justice Holmes:

I hope your sense of justice will not continue to rebel when you learn that I had been intending to present the Tourtoulon volume to you from the beginning; but owing to my timidity about asking people to invest their time in reading a new book, I maneuvered to have you ask for it so that in case you did not find it interesting you would have been free to drop it. The other copy I am using in revising the English translation which is to appear soon in the Legal Philosophy Series.

Of course I thoroughly agree with you as to the relative importance of insight (aperçus) and system. I used to illustrate it with the names of Plato and Aristotle—though that is a trifle unfair to the latter who was not devoid of insight of his own apart from that which he utilized from Plato. But in recent years I have been impressed more and more with the tragic ineffectiveness of insight that is not properly uniformed, housed, advertised or as the modern phrase goes properly capitalized and ‘sold’ to the public. It takes a great deal of wisdom and experience to recognize insight in its raw state, and all sorts of social institutions, red tape, symbols and ceremonies are necessary to emphasize the importance of things which the multitude would not notice otherwise. A great deal of Kant’s insight, for instance, is to be found in the Cambridge Platonists, but they never impressed the philosophic world because they had not the imposing apparatus and machinery. The tendency of American life seems to me to emphasize beyond any reasonable limit the role of the promoter, the popularizer or distributor rather than the creator or inventor—to glorify Edison and Marconi

45 A projected treatise on Law and Justice was never completed, but fragments of it were embodied in two volumes of legal essays, Law and the Social Order (1933) and Studies in Juristic Philosophy (in press).

46 See note 43, supra.
and to ignore Willard Gibbs and Theobald Smith. But after all it is of importance not only that wireless electric waves should be discovered but also that they should be commercially exploited. I am saying all this because I am beginning to feel that the arts of system-building, rhetorical and formalistic persuasion and the like, are of the utmost importance in preparing the soil from which the tall trees of intellectual genius arise. The law does a great deal to interfere with the expression of rare individuality, but it also compensates this destructive tendency by creating favorable soil for future growth.

With kindest regards to Mrs. Holmes,

Sincerely yours,

MORRIS R. COHEN

Sept. 6, 1920

My dear Cohen:

The Tourtoulon incident is closed by your reassuring statement and once more I thank you for the most stimulating book I have read for a long time. Now I write to fire off a suggestion but with the real timidity with which I always should offer a philosophic thought to you. It is this. Man is like a strawberry plant, the shoots that he throws out take root and become independent centres. And one illustration of the tendency is the transformation of means into ends. A man begins a pursuit as a means of keeping alive—he ends by following it at the cost of life. A miser is an example—but so is the man who makes righteousness his end. Morality is simply another means of living but the saints make it an end in itself. Until just now it never occurred to me I think that the same is true of philosophy or art. Philosophy as a fellow once said to me is only thinking. Thinking is an instrument of adjustment to the conditions of life—but it becomes an end in itself. So that we can see how man is inevitably an idealist of some sort, but whatever his ideal and however ultimate to himself, all that he can say to anyone else is—Je suis comme ça. But he can admit that a person who lives in a certain emotional sphere should be indifferent to intellectual justifications although he reserves to himself his advantage of believing that he can explain the other and that this other can't explain him.

That is all that I wanted to say but I will add apropos of the acquired superiority of means to ends—that we think the statesman better than the man who simply eats his dinner, travels to and fro and begets—yet the statesman is only a means to his doing so. Also an anecdote of when I was young—a man who called himself a juridical traveller said: We speak of the Remorse of Conscience—a thousand years ago more or less we said The Ayen Bite of Inwit—the image is the same—biting back on oneself—and is equally intelligible to you or me—but the introduction of a dead language has made it unintelligible to the man in the street—And so by the mere force of lan-
guage (he concluded) we are creating a spiritual aristocracy. The answer again is that the derivation has got new roots—that we no more think of the image than does the man in the street—and that he knows what remorse means as well as we do.  

I think the best image for man is an electric light—the spark feels isolated and independent but really is only a moment in a current. 

Have I talked banalities or was it worth saying?

Yours ever,
O. W. Holmes

Sept. 11, 1920

My dear Justice Holmes:

I am very much interested and, indeed, delighted with your figure of the strawberry shoots to illustrate the relation of means to ends in human affairs. But though I agree with the main contention and all the practical or concrete applications I prefer my own way of underpinning these results. I am sceptical for instance, about your assertion that “thinking is [originally] an instrument of adjustment to the conditions of life.” Thinking may be just an accident which has become partly adjusted to the conditions of life and in part not so—if we interpret life narrowly or biologically. The relation of means to ends does not seem to me a very fundamental part of nature. It is just our way of picking certain threads of relation between things that interest us. Nature in itself is not a prudent artisan, but just proliferates in all the possible ways. The primary relation is not that of means to ends but of blind impulse in all possible directions. In the helter skelter of impulses many defeat themselves, and many get so adapted to conditions, and flow in regular grooves or channels, that we associate their happy endings with their origin. They become illumined and we call them rational. But the fact that impulses and tendencies not conducive to the prolongation of life tend to eliminate themselves, does not mean that our nature is originally or even now free from them. For the most obvious fact at which most philosophies blink is that death—not only the death of the moment or individual but also of the species and of the physical system—is just as natural and just as prevalent as life. It is only in the order of preference that one of these towers above the other.

This being my general background I never can look at any “means” as merely means. Each impulse that is subordinated to the attainment of another is like a servant who subordinates himself to his master, but always maintains a life of his own in some respect. As we become enlightened we realize more that the choice of ends includes that of means, and hence the sterility of the old casuistic problem, Does the end justify the means? An end that includes certain means, like a household that includes certain kinds of servants, becomes ipso facto undesirable.
Of course the life of man compared with that of the larger whole in which
he figures is like that of an electric spark. But the latter might speak up:
Why do you say I am only an electric spark? I am a full royal electric
spark, and there are no electric currents without me or the like of me.

I shall lecture at Baltimore in February and March and hope to be able
to visit Washington several times this winter.

With kindest regards to Mrs. Holmes and yourself,

Morris R. Cohen

Sept. 14, 1920

My dear Cohen:

Many thanks for your letter—I have no disposition to disagree with any-
thing in it. Only I think we are not quite *ad *idem. In my image of the
electric spark I was not lapsing into what we both contemn, the notion that
consciousness is an epiphenomenon, but endeavoring to illustrate what I
live on a good deal, that whereas personality presents itself as isolated and
over against the universe, it really is a moment in the intersection of currents
that come from and go out beyond it—that man is a cosmic ganglion and
inseparable from his time and place—

As to means and ends I was not going beyond the sphere of conscious
thought. As to the function of that I was merely firing a Bergsonian snap
shot and for my purposes did not care very much whether the analysis was
correct or not—the point was simply that miser, saint, philosopher, painter
all illustrate the so to speak physiological destiny of man to live to ends out-
side himself and so to be an idealist and a martyr, while most of the misers
saints and the rest don’t recognize that they are examples of the same thing.
Of course what you say as to nature not being a prudent artisan and as to
blind impulses seems to me O.K. but not quite relevant to what I had in view.
This is not to bother you for an answer but simply to limit the scope of what
I wrote before. I hope I shall see you next February—a month in which I
generally have more leisure than before or after.

Sincerely yours,

O. W. Holmes

I am puzzled about direction—your envelope says Springfield—the postmark
is East S. Your former letter said West. I shall stick to the old address.

The College of the City of New York
Department of Philosophy
St. Nicholas Terrace and 139th Street

Nov. 29, 1920

My dear Justice Holmes:

I have received a copy of your book from the publishers and wish to

\footnote{The writer was visiting professor of philosophy at Johns Hopkins University
in the spring semester of 1921.}

\footnote{Collected Legal Papers (1920).}
thank you heartily. I expect to write a review of it for the New Republic, and if you don’t object I’ll send it to you before printing.

I hope that both Mrs. Holmes and yourself are enjoying good health.

With kind regards,

Sincerely yours,

MORRIS R. COHEN

Jan. 5, 1921

Dear Cohen:

It gives me very great joy to know that you have received this item of recognition50 small in comparison with what you deserve. I send every good wish for you and yours for the New Year.

I don’t know whether you adhere to your notion of reviewing my book—which I hardly need say I sh’d be proud if you did. I shouldn’t want to see it before it came out and should wish you to be perfectly free. I do feel at liberty to mention what you wouldn’t be likely to know, that Maitland called the Early English Equity epoch making and that among the researches that it started Barbour on the History of Contract in Early English Equity in 4 Oxford Studies in Social & Legal History seems to me to confirm what I ventured to reconstruct from a bone and a scale—He doesn’t say much about my essay in his book, but an article before his lamented death gave me full credit for starting the whole business.

The articles on agency have been most criticized—but they were honest work and I think at least followed one strand of the development. I don’t at all assume that you will stick to your intention, or press it in any way or mean to do more than state facts that are a little out of your line.

Sincerely yours,

O. W. HOLMES

Jan. 30, 1921

My Dear Cohen:

Your generous notice of my book51 touches and moves me deeply. There is no-one whom I was more anxious about—for there are very few for whose judgment I care so much. But I wanted you to feel free to ‘pass with your best violence’ and so did not want you to show me what you wrote before it

50 In January, 1921, Cohen was appointed full professor, after eight years of teaching in the Philosophy Department of the City College.

51 Cohen’s review of Holmes’ Collected Legal Papers appeared in the New Republic 25 (Feb. 2, 1921), 294, and was later reprinted in Law and the Social Order, 363.
appeared. I will not expatiate on the happiness it gives me to read what you say. It makes life easier. An odd phrase for a man who will be 80 in March. It seems as if at that date one might tie up the past into a neat package, insure it with Cohen as valuable, and take an irresponsible rest. But as soon as a corner is turned the road stretches away again and ambition to go farther returns—if only to be carried in a civic procession as a survivor, which, when I was a small boy and saw the veterans of the past carried in a barge, seemed to me a wonderful thing. With regard to your criticisms I may not have expressed in writing the reserve that I often have expressed in talk—that I was speaking only of the economic aspects of the regime of private property. I always have recognized that there might be an emotional issue and that people might say I don’t like it and I want a change even if it costs me more—What I think a mistake is the giving of an emotional attitude the aspect of an economic one. That I believe to be a humbug and while I fully agree that it involves an issue of fact I have not failed to talk with some economists who could give me light and for thirty years have expressed to more than one of them the wish that we might be furnished diagrams—expressed in money, labor hours or by whatever unit was best of the different consumptions

R R Travel       Meat
Cereals          Luxuries of the few as I believe

it would turn out, &c. &c.

As to the purposes of the cosmos—on the last page but one (bottom) I leave open whether there is a plan of campaign—But as I dont believe that I am a little god, I do in a sense worship the inevitable—although in an unpublished speech at the Tavern Club (for Paul Bourget)52 I spoke of ‘man’s most peculiar power—the power to deny the actual and to perish’—

Of course you are right in taking me up on everything being connected with everything else—I know that you have your reserves on that and are far more competent to speak than I am—I know that the hypothesis is not proved—but it seems to me that it is almost the postulate in thinking about the universe and that the great advances in thought have come from betting that there is more connection than has been established up to that moment—

But I bow to you on that. Also I think it likely that early associations affect my emotional attitude toward the mystery of the world. Well—I expect a fall soon—for I begin today proud—I hope to avert the irony of fate by recognizing that self feelings are a bait by which nature gets our work out of us, but still I am very proud of such words from a philosopher whom I so deeply respect.

Ever sincerely yours,
O. W. Holmes

52 Dec. 4, 1893.
854 W 181st St., New York
Feb. 14, 1921

My dear Justice Holmes:

Your very good letter expressing your appreciation of my review reached me some time ago, but this is the first chance I have to acknowledge it. The ill-health of my wife and youngest boy left me little freedom.

Your kind words are a great source of pride and joy to me. It would be difficult for me to say more, because in the whole of my career I have not received any recognition which has meant more to me than your generous estimate as to the value of my intellectual efforts.

When you say that the unity and connectedness of things is a postulate of thought and that all progress results from betting that it will be found in hitherto unknown regions, I thoroughly subscribe. Only I add that we can also safely bet that all unity and connectedness of things will be found on closer scrutiny to be full of unbridgeable gaps. Newton may find a law of gravitation to connect hitherto disconnected portions of the universe (the stars and terrestrial objects) but the progress of science is bound to show lacunae in his formula, and discrepancies between it and facts. Unity and diversity are the two blades of the shears with which we try to cut out a pattern of the universe, and it is only our human weakness that makes us emphasize one of these blades at a time.

I expect to be in Washington next Saturday and Sunday and shall be delighted to call on you and Mrs. Holmes if you are free.

With kindest regards,

Sincerely yours,

Morris R. Cohen

March 2, 1921

My dear Cohen:

In answer to your inquiry let me say that recently I read Mr. Lowie’s book on Primitive Society and read it with unqualified admiration. It seemed to me to unite in an extraordinary way practical experience, learning and insight, and, so far as one not a specialist on the subject could judge, to represent a most characteristically modern and real advance upon the earlier and too easy generalizations that stimulated this next step. The book convinced me at once that Mr. Lowie is a real force in the present world of thought.

Sincerely yours,

O. W. Holmes

854 W. 181st, N. Y.
March 7, 1921

My dear Justice Holmes:

Please accept my heartiest congratulations on your eightieth birthday.
On this occasion you must permit me also to say what I have perhaps said before, viz. that you have taught me how little do courage and serenity depend on the years and how much they are rather the result of heroic devotion. You have made me realize that the heroic spirit is a real divine element in the cosmos.

I hope also that at least for the next four years you will not be induced by anyone to abandon the bench—not even for the sake of philosophic writing. When I was younger I thought you might do well to leave to others the decision of mundane cases and devote more of your time to settling or unsettling the universe. But I see more clearly now that the universe can be dealt with in legal decisions also.

With best wishes for many happy returns of the day,

Sincerely yours,

MORRIS R. COHEN

March 9, 1921

My dear Cohen:

For the books I thank you and for the letter I love you—As I have told you before you pump new courage into me—I delight to think—oh what a descent—that I have my mathematical friend. You say 80th birthday birthdays 1st 21st year 10th years 80th years 81st years Hein? Shall I parody Rousseau’s lady and say learn mathematics and study Philosophy? Whatever you do if I can understand it I shall profit by it and always shall be your obliged and sincere friend.

O. W. HOLMES

Salmon Lake House and Camps
North Belgrade, Maine

August 12, 1921

My dear Justice Holmes:

It is many weeks since I received your very kind letter of congratulation on the occasion of my fifteenth anniversary. All sorts of domestic cares, and the nursing of my daughter back to strength after a tonsils operation prevented me from writing to you at the time. I want to express to you my deep appreciation of your very beautiful letter to me and also my appreciation of what your friendship has meant to my husband. Owing to his conscientiousness in not publishing anything which does not conform to his own high standard, he has not received the general recognition which I think his attainments merit. This makes him care all the more for the interest and appreciation which a few discerning minds express in regard to

53 President Harding had taken office three days earlier.
54 June 13, 1921, was the fifteenth wedding anniversary of Mary Ryshpan and Morris Raphael Cohen.
his work. Nothing, in recent years, has given him so much joy and courage as the expression of regard from you and from Prof. Einstein.

Your photograph, with its inscription, is one of our dearest possessions, and I may add that your friendship for my husband has been inspiring not only to him but also to me and our children.

With sincere regards to you and to Mrs. Holmes, from Mr. Cohen and myself, I am,

Yours gratefully,

MARY R. COHEN

Beverly Farms
Aug. 31, 1921

My dear Cohen:

Your Later Philosophy\(^55\) was read from cover to cover by me today on my way to town—and delightfully lifted me out of the cares and annoyances of business. I think it admirable—as well as most interesting and instructive—I don’t wonder Santayana was pleased at your handling of him—though I think he deserves it. But to all you are equally just and appreciative. I was much touched by a letter from your wife some time ago in answer to mine—My compliments to her. I have had a little excursus into philosophy this summer.

Haldane—Relativity (not very well understood as the words bother me) Hegel—Logic—Wallace trans. I still don’t see how he gets out of logic into time—as I used to put it. H. can’t persuade me that a syllogism can wag its tail. Aristotle—Metaphysics—divided between eternal truth and laboriously discussing quibbles to which the sufficient answer was oh pooh—(as it seemed to me). Bergson Creative Evolution—\(^3\) time as easy seeming now as once it appeared difficult—but I don’t believe him any more and suspect he is less original than he seems to an outsider at first reading. Plato—Timaeus—with a remarkable introduction by Archer Hind—& with him adieu to the theme. I have read a lot of other stuff of course but don’t go into that—as the vacation seems beginning and is nearly over.

Sincerely yours,

O. W. HOLMES

854 W. 181\(^{st}\)
March 7, 1922

My dear Justice Holmes:

On the occasion of your eighty-first birthday anniversary I wish to express my heartiest congratulations and best wishes, and my trust that you

\(^55\) "Later Philosophy" constitutes chapter 17 in the *Cambridge History of American Literature* (1921), III, 226–265.
will long continue to regard the Cosmos with that resolute youthfulness which time can only confirm.

With kindest remembrances to Mrs. Holmes,

Sincerely yours,

MORRIS R. COHEN

Hinsdale, Mass.
August 8, 1922

My dear Justice Holmes:

I was sorry to learn that you chose a hospital to spend part of your summer in, but I am gratified to learn from Felix that you expect to be back on the bench in Washington when the parade of cases begins in October. I hope that, with soldierly courage and judicial discretion, you will long continue to defy Time as that ancient bully ought to be defied by wise men.

Two books have lately stirred me very much. One of them is by your old friend John Chipman Gray, On the Nature and Sources of the Law. I am reviewing the second edition of it for the New Republic\(^{56}\) and the re-reading impresses me with the solid wisdom that is unostentatiously crammed away in almost every page. I am particularly impressed with the homely illustrations with which he confronts all the grand principles. I think Gray's view of the law is rather limited by his pre-occupation with the law of real property—and he does not deal adequately with the grand policies of the law as they actually operate. But his wisdom is mature, generated by long familiarity and grappling with problems, rather than by clever devices for ignoring difficulties.

The other book is by a still older writer by the name of Shakespeare. It is a play called Hamlet. I do not care much for the libretto, the action is rather melodramatic and the characters, outside of Hamlet, decidedly stereotyped. But the depth of human sympathy and the wonderful music of the language seems to me, after about seventy-five readings, one of the most marvellous achievements of the human genius.

With kindest remembrances to Mrs. Holmes,

Sincerely yours,

MORRIS R. COHEN

Aug. 10 [1922]

My dear Cohen:

Your letter came just as I had been thinking about you—and is most welcome of course. I can't write more than a bulletin—but that is a good one—the doctor came in in the last sentence and told me I might go out for

\(^{56}\) Published in New Republic, 33 (Nov. 29, 1922), Book Section, p. 4, and reprinted in Law and the Social Order, 352.
a little dinner—the first after confusion, oblivion and getting into a routine that has superseded life—

I have suspended intellectual functions during this, as I believe, rather big hospital job—but I have only partially realized what was going on and have come out smiling. I agree about Gray & won't fight today about Hamlet—The most heartbreaking pathos is in Antony & Cleopatra, I think—I am reading, sometimes too hastily to understand, Santayana's Soliloquies—(Soliquities, a nurse called it). His scepticisms seem all right, his dogmatisms comic—his total not quite charming and yet nearer to my way of thinking (I guess) than either of his former associates—But this is as far as I can swim with a lead pencil and on my back—wherefore adieu—with real thanks for your remembering me.

Sincerely yours,
O. W. HOLMES

The College of the City of New York
Department of Philosophy
St. Nicholas Terrace and 138th Street
January 2, 1923

My dear Justice Holmes:

I have been very deeply stirred recently by the re-reading of Spinoza’s works (in connection with a paper I have been writing on his Amor Dei Intellectualis) and I cannot better express my appreciation of the intellectual integrity which your work on the bench continues to exemplify than by sending you a copy of Santayana’s edition of Spinoza’s Ethics and Improvement of the Understanding. Please accept the same with the expression of the best wishes for the New Year to you and to Mrs. Holmes.

Ever faithfully yours,
MORRIS R. COHEN

Washington, D. C.
April 9, 1923

Dear Cohen:

A second time I have read one, a first the other of your two papers—with much pleasure and high appreciation.—They are mighty good and justify what I hear Bertrand Russell says (that you are the first living

57 William James and Josiah Royce were associates of George Santayana in the philosophy department of Harvard University from 1889 to 1910.


59 One of the papers was Cohen's review of Pound's The Spirit of the Common Law, in Jour. of Phil., 20 (Mar. 15, 1923), 155, reprinted in Law and the Social Order, 327.
philosopher of America). They came this morning and your reference (Journ. of Philos. 164) to 'essentially vague terms like due process' tickled me as I was about to deliver a dissent in the minimum wage case—in which I spoke of 'the vague contours of the Fifth Amendment' and made a few remarks on Liberty of Contract. The other dissenters thought I went too far and I flocked alone—

Perhaps I shall venture to send you the case when I get it.

Meantime I am

Ever sincerely yours,

O. W. Holmes

Blue Mountain Lake, N. Y.
July 31, 1923

My dear Justice Holmes:

After a rather strenuous time at Chicago—teaching philosophy to eager and too unsophisticated westerners—I come here for a little vacation and am regaled by your introduction to the last volume of the Legal Philosophy Series. I am very glad, indeed, that you took the trouble to write it, not only for the weighty words of wisdom which it contains, but also because it seems to me especially calculated to make our over-hasty brethren on the right and on the left pause for a little reflection.

While I thoroughly agree with you that our reformers need above all to think of the cost which their pet schemes will involve, I should (as a resolute, unabashed theorist) insist on the absolute necessity for questioning first principles—as, indeed, you yourself have elsewhere insisted. I say this because the fear of passing judgment on the work of the gods (and goddesses) ought not, it seems to me, frighten us; though, in practice it is well to calculate our limited strength before trying to resist the tides of destiny.

I hope soon to gather together some papers of mine—old and new—into a volume on Reason and Nature to be published next fall, and I hope you will allow me to dedicate the volume to you. For I am sure that without the

60 "... essentially vague terms like 'due process,' 'equal protection of law,' 'liberty,' 'direct taxation,' 'republican form of government,' etc.—terms whose essential vagueness gives the courts as much power as they wish to take over all political issues." Law and the Social Order, 338.

61 Adkins v. Children's Hospital, 261 U. S. 525 (1923).

62 Chief Justice Taft also wrote a dissenting opinion, in which Sanford, J., concurred. Brandeis, J., took no part in the decision.

63 Holmes's introduction to Rational Basis of Legal Institutions, vol. 11 of the Modern Legal Philosophy Series (1923) was entitled Law and the Social Factor.

64 The volume, dedicated "To Mr. Justice Oliver Wendell Holmes, the Courageous Thinker and Loyal Friend," was actually published in 1931, and a copy was presented to Justice Holmes on his 90th birthday. See Holmes' letter of March 14, 1931, infra, p. 50.
encouraging words which you passed on some of the papers already printed, I should not have ventured to publish them at this stage.

With kindest regards to Mrs. Holmes as well as yourself,

Sincerely yours,

MORRIS R. COHEN

Aug. 3, 1923

My dear Cohen:

The suggestion that you dedicate your book to me gives me the greatest pride and pleasure. There are few things that could please me so much. I thank you for the rest of your letter—Of course I agree with you as to questioning first principles—They are like what an old Frenchman in a forgotten novel by F. Soulié says as to courage—It is never proved but always to be proved. But alas fools who are incompetent to question anything take advantage of the fact. I haven’t seen the book yet to which I wrote the introduction except the galley proofs in which there were frightful typographical &c errors—I trust corrected. Rather dull stuff I thought most of it. If I had not been asked to do it before I was ill last summer I should have backed out. I still avoid all extra taxes on my strength, keep as quiet as possible, see almost no one—and don’t bother even about improving my mind. My only reading is Sainte Beuve’s Causeries, an occasional detective story and just now because of burning words from Laski Jane Austen’s Pride and Prejudice—I confess in a whisper to having found her rather a bore heretofore. I hope you are accumulating strength and not over working.

Ever sincerely yours,

O. W. HOLMES

Sept. 14, 1923

My dear Cohen:

Peirce’s Chance, Love, & Logic65 came here three or four nights ago, I assume from you and I send you very hearty thanks. I have just finished reading it—just running my eye over the mathematical parts without understanding them and doubting if I understood some other of his arguments—I feel Peirce’s originality and depth—but he does not move me greatly—I do not sympathize with his pontifical self satisfaction. He believes that he can, or could if you gave him time, explain the universe. He sees cosmic principles when I should not dare to see more than the limit of our capacities, and his reasoning in the direction of religion &c seems to me to reflect what he wants to believe—in spite of his devotion to logic. That we could not

assert necessity of the order of the universe I learned to believe from Chauncey Wright long ago. I suspect C. S. P. got it from the same source.

I don’t know that I understand Peirce’s views of space and time—for having resolved that I would devote this vacation to leisure and the vacation having but one week more, I gave but a limited time to my readings—but I can’t help doubting whether they are anything more than human ultimates—and whether speculations as to how the universe was, before the monuments that we can see, are not futile—Somehow I cannot believe that time is to be applied to it except for our limited purposes.

Your introduction is an admirable bit of work, as usual—I thank you once again—shall read Sainte Beuve’s Causeries for one week more—and then with a wild shriek plunge into the gulf of work that I expect to find waiting for me in Washington.

Ever sincerely yours,
O. W. Holmes

I hope you have got rested and into good shape—.

Nov. 29, 1923

Dear Cohen:

Your article was duly received and read—somewhat hurriedly of necessity—but with profit and appreciation—I have more respect for the universe now that I know that there is a place in it for $\sqrt{-1}$. You are illuminating as always—and I shall try not to forget the lesson.

Ever sincerely yours,
O. W. Holmes

June 11, 1924

Dear Cohen:

Your letter comes just as I am leaving—so I must send you only hurried thanks. You bring a sinister grin to my mug. The book came too and without opening it I told my messenger to send it on by book post to Beverly Farms where I shall find it awaiting me and laboriously extract improvement from it. But I am trying to realize that it is too late to bother longer about my immortal soul and that it is lawful to seek amusement. But again I am glad to have a pièce de résistance. A dame has just sent me Ouspensky Tertium Organum—with demand for an appreciation. I am suspicious—and should be glad of a hint from you as I gather from a glance

67 Letter missing from Cohen to Holmes between Nov. 29, 1923, and June 11, 1924.
68 Oswald Spengler, Der Untergang des Abendlandes (1919–1922), later translated (1926–28) as The Decline of the West.
that salvation lies in the fourth dimension—which is a hard look out for me. Well—I must stop. I am thankful for your friendship—My compliments to your wife whom we were very glad to meet at last.

Yours ever,

O. W. HOLMES

The College of the City of New York
Department of Philosophy
St. Nicholas Terrace and 139th Street

June 13, 1924

Dear Justice Holmes:

Teachers and judges have this in common: they must learn to read or listen to a great deal of inexcusable foolishness. I flatter myself that while my flesh is weak I have developed great patience in listening to foolish argument of students and in wading through numerous pages of nonsense to get at a possible idea or aperçu on which confused minds sometimes stumble. Ouspensky's book, however, has tried my patience beyond the three (or is it eight?) mile limit. The man has some sort of intelligence; and if he had only taken the ordinary trouble of informing himself about modern mathematics he might readily have learned how nonsensical are the things which he has put down in this Tertium Organum. But, alas! The charm of speculating about the incomprehensible is one of the inescapable allurements of human life.

Spengler's Untergang des Abendlandes is not a book for the improvement of the mind, but for lawful amusement. He has a great trick of generalizing in a way to make the facts irrelevant. But I found it very stimulating; for he opens vistas of possibility to a thinking reader who is ready to play with the author and, independently, with the subject matter.

I trust that you have now got rid of the cold and cough which you had in Washington and that you are facing the gods as erect as usual.

With kindest regards in which my wife joins,

Sincerely yours,

MORRIS R. COHEN

Beverly Farms
June 15, 1924

Dear Cohen:

Your letter greets my first morning here just as I was regretting my stupidity in leaving your last in Washington. Spengler met me on my arrival last night. You relieve my mind by what you say about him and confirm an impression from my first glance. I have read far enough in Ouspensky to believe that I shall not get much from him. He has all the earmarks of what I don't believe. He interests me mainly by recalling a
talk I had with Count Schonvaloff when the Grand Duke came to Boston
almost or quite before you were born—He worked off on me things that I
had not heard before—the notion of a being living only on a plane—(is that
from Helmholtz?) and the suggestion that a point × infinity took us into a
new and from the point’s outlook unimaginable novelty; the line—and so the
line to the plane—and the plane to the solid—whether the solid × ∞ led to the
4th dimension or what, I don’t remember. Of course you have got to multi-
ply in a particular way to get the result—but it tickled me. I am hardly
oriented here yet, but I had to let off a line to you and not wait to send a
solid.

Yours ever,

O. W. Holmes

Beverly Farms
June 19, 1924

Dear Cohen:

One additional word as to Spengler, to thank you and tell you how he
tickles me. I read slowly as I can give only a limited time to the book and
have to use the dictionary—though N.B. it is wise not to bother too much or
one loses the general thought in the detail. I have read only 60 pages—but
you may imagine that I chuckled at es gibt keine ewigen Wahrheiten. He
gets nearer to being able to smile at himself than most Germans, though I
doubt if he can—well, this is only a grunt after an hour, a happy hour, with
this book—and now I must take my very modest constitutional walk—

Yours ever,

O. W. Holmes

Beverly Farms, Massachusetts
July 14, 1924

My dear Cohen:

This moment sees the finishing of Spengler—Damn him—he has been
my task and duty since I have been here—a duty not too assiduously pur-
sued, you can see from the time taken, even though I had constantly to turn
to the dictionary. The swine has given me my money’s worth—for I haven’t
read anything so suggestive and stimulating for a long time, from its abun-
dant aperçus in spite of excessive repetition—I don’t believe his most funda-
mental propositions, but I feel a lot of new light on the different Kults that
he discusses. I infer that he is not so strong on the natural sciences as he
is on mathematics, music and art—Were he not a German I should be sur-
priised at his dogmatism in statement, when his general view is so sceptical.
In spite of his scepticism he seems to feel an inward demand for absolute
truth and to be disappointed at the conclusion that he can’t scoop up the
universe. As I read I often wished that I could consult you. I don’t
understand his distinction between the realms of space & cause and effect and of time and Schicksal. What is cause and effect outside of time—and what is Schicksal if not the working of cause and effect? I don’t doubt that you could explain—I am perfectly willing to believe that he can’t say experimentally that cause and effect are exactly equivalent—For the matter of that I have often said that if causes suddenly ceased to produce effects—or phenomena appeared without cause—and I was not too scared to think—I should simply say—Tired so soon? I thought you would last my time—But I make more modest demands of the cosmos than those who are disposed to think that it wears a beard—I might ramble on—but I just want to tell you that I have read the book—with a good deal of intellectual emotion and am deeply obliged to you for sending it to me—while my feeling toward the writer is not unmixed with malevolence—Following your intimation, which accorded with my impression from 80 pages, I have felt warranted in letting Tertium Organum wait for better days. Now that I have finished Spengler and sent off some accounts that are the bore of July 1, I feel the man of leisure unless you set me another task—which I shouldn’t promise to perform. I hope all is well with you—my compliments to your wife whom I was so glad to meet—

Sincerely yours,

O. W. Holmes

Colony Hall
Peterboro, New Hampshire

August 13, 1924

Dear Justice Holmes:

Your very good letter of the 14th of July has just reached me—the mail clerk at the City College kept it there four weeks.—I am naturally delighted that you liked the book and differed as much from Spengler’s fundamental dogmas as I did. Spengler is a good deal of a journalist,—he is weak on the facts, in mathematics as well as in the natural sciences and also—I am informed by specialists—in art. But he has a very suggestive way of bringing together things which are not generally thought of together. He thus helps to build up new vistas or at least perspectives in which we see things in new lights. Would you like to have me send you the second volume which deals with the perspectives of world history?

Your question about the difference between the realm of causality and the realm of Schicksal is to be answered by reference to the German (Kant & Schopenhauer) distinction between the phenomenal and the real or noumenal realm. Causality applies only to phenomena, the noumenal realm is governed, or more accurately is Schicksal. I am not myself in sympathy with this. The world behind the veil of phenomena is too much like a world where you can have your cake and eat it too. But there is something in it of the old Heracleitean identification of Fate and Character.
I fear I am even more heterodox as to causes than you are. I would not be in the least surprised if things happened without any causes. Indeed I frequently do see things happen the causes of which I know nothing about, and it is only a maxim of prudence that makes me believe that a cause is there and worth while seeking for. I have touched upon that in my book on Nature and Reason\(^{69}\) which I hope will be actually published within a few months.

If you find yourself still curious as to whether there are some new or old books worth looking into I think I can venture to send you something.

With kindest regards to Mrs. Holmes and yourself.

Sincerely yours,

Morris R. Cohen

Beverly Farms
Aug. 15, 1924

My dear Cohen:

Your letter gives me pleasure and comfort—The further I get away from Spengler the freer I feel to decline his dogmas—but the stimulus was worth the trouble of reading him. I doubt as to Vol. 2. I very much should like to look it over—but I doubt if I should work through it—and if you meant me to keep Vol. 1 I don’t want you to make another gift—and on the other hand I always am worried by books to be returned until I have seen them dispatched by mail. I should be grateful for any suggestions such as you intimate that you have up your sleeve. If Schicksal is in the realm of the ding an sich—much as I believe in it—I leave speculation about it to other hands. As to causality I think I have said before that if phenomena appeared without causes and I wasn’t too scared to think, I simply should smile and say: Tired so soon? I thought you would last my time—I always surmise that just as objects of sight or hearing can be expressed in other terms which make them finite, it well may be that Time is a mode of the finite—and that if the cosmos wears a beard its mode of consciousness may be in some other unimaginable form. I find it hard to believe that infinite time is an ultimate, although it is so for me—After Spengler I read Thucydides the most important books 1, 2 & 7 in Greek the rest mainly in translation—It was my last Day of Judgment book and I can die more easily. I think the English make too much row about him, although of course he was the first in his line. I can get more eternal truths for less money elsewhere. I was moved but it gave me pleasure to think that Socrates was jawing away while the empire fell—and that after it fell it became the leader of the world in philosophy—I noted with interest what always strikes me in the Greek Choruses—the absence of politeness as we understand it—and the kindred absence of the hypocritic Christian sanction in political communications.

\(^{69}\) *Reason and Nature*, 151-152.
They come down to hard facts without veils. Since then I have read Marius the Epicurean—curious product of the old Oxford exquisiteness—from a scholar and a gentleman who never has come in contact with the grind of affairs—and to my mind a futile importation of Pater’s spiritual experiences into a time and mind to which they were impossible—Now I am reading La Guerre et la Paix—A long novel ought to be thin, like Dumas—It is an imposition to take so much of a reader’s time with thick fiction—when every sentence requires notice, but Tolstoy was a giant—little as I care for what he thought. Please remember me to your wife.

Sincerely yours,

O. W. HOLMES

Keene, New York
August 18, 1924

Dear Justice Holmes:

I have sent you some books on which you will (in all human probability) not be examined at any day of judgment, but which you may be interested to page through and perhaps taste here and there. Simmel has some interesting comments on Art and on Rodin which may provoke some reaction from you. The book on Nietzsche by Salter is an uncommonly conscientious one, and does more justice to Nietzsche than most enthusiastic disciples or opponents manage to do. The pamphlet on The Unknowable by Santayana contains more than his book on Scepticism.

You need be under no compulsion or hurry to return these books. The two belonging to the N. Y. City College library you may return at your leisure. The others, you may keep with my high regards. The second volume of Spengler I have not with me but I think I can have it sent up from New York. I happen to have an extra copy of it at the College.

Your judgment about Socrates seems to me a little harsh. Socrates was by all accounts a brave soldier, and his refusal to obey the mob’s demand to violate the law in the case of the five generals (or admirals) ought to make him an honorary member of all those associations which really believe that law should be enforced while it is on the books.

Tolstoi’s War and Peace and his Sebastopol are more than fiction. They seem to me classics (especially the latter) of human endurance under hardship.

With kindest regards to Mrs. Holmes,

Sincerely yours,

MORRIS R. COHEN

Beverly Farms
Aug. 24, 1924

Dear Cohen:

You seemed to be in transitu when you wrote—so this to the College.
I write only to say two things. You misapprehended the emphasis of my remark that as Athens was losing her Empire Socrates was jawing in the streets. I didn’t dream of implying a criticism on the old soldier—I meant only that it comforted me to think that just when Athens seemed to be going to ruin she was opening what perhaps was her fairest flower and beginning her rule in the kingdom of philosophy. After War & Peace I read Butler’s Way of All Flesh—He has many keen insights—I have suspected that he had not such a central one as coordinated them into a philosophy.—Now I am in Salter’s Nietzsche—When years ago I read translations of N. he seemed to me to be writing in a less emancip[at]ed atmosphere and to think and ask us to think that he was a Hell of a Fellow because he didn’t believe what his neighbors did—but I shall read Salter with a reasonably docile mind—I think I have read Santayana’s book—but have not yet examined it.

They shall be returned within a reasonable time—if I live so long.

Yours ever,
O. W. HOLMES

Beverly Farms
Aug. 28, 1924

Dear Cohen:

By this mail the Nietzsche is returned to you—the others will follow later. You always enrich me by your sendings and this book is no exception. I am very glad to have read it. There is much that I long have believed, after or independently of him—much that I don’t care for. He never, it seems to me, got away from his theological start—and must see man as a little god to be happy—and, perhaps because of his nerves, he is in such a touse about his beliefs—I prefer more serenity. But he had real insights and it is pleasant and instructive to read so conscientious a study of him.

Sincerely yours,
O. W. HOLMES

Beverly Farms
Sept. 8, 1924

My dear Cohen:

By this post the remaining three books: Santayana, Scepticism & Animal Faith and The Unknowable and Simmel, Mélanges de Phil. Relativiste are sent to you, to the same address as this letter. Salter’s Nietzsche was sent some days ago. Santayana improved somewhat on rereading—as a careful stopping of rat holes though it hardly seems to me novel and seems to me verbose through his desire to make literature. Perhaps his Catholic antecedents make him like to use words that trail rainbows but disguise his meaning, esp. spirit and essence—His literary turn often has a similar effect upon me—Simmel seems to me rather a dull maker of superfluous categories—
some of the later pieces seemed to me the best. I was pleased however to see him emphasize experiences that fill the field of consciousness to the exclusion of the antithesis of ego and nonego. I used to dwell on that as a partial explanation of sympathy, e.g. pain—the suggestion of it tends to fill the field and it is a second thought that the pain is that of the other fellow not of you—but the suggestion never seems to have impressed anyone. I should be glad if you would acknowledge receipt of the books—as I worry over such things. They were a benefaction to me—A letter I wrote to you at Peterboro was returned—I suppose you had flitted. I said then that I was glad to see Santayana say a good word for Spencer in the pamphlet. There also were his arabesques of words that hardly pay to unravel.

Sincerely yours,
O. W. Holmes

The College of The City of New York
Department of Philosophy
St. Nicholas Terrace and 139th Street
Sept. 12, 1924

My dear Justice Holmes:

Your letters of August 24, 28 and Sept. 8 and the book-parcels all duly reached the City College. But this is the first opportunity I have of acknowledging the receipt, as they were not forwarded to Keene, N. Y., whither I vainly fled from New Hampshire to escape the hay-fever.

I am glad to find that your judgment of Socrates is not what I had misunderstood it to be, and also that you think that Butler had not such control of his insights as to make a coordinated philosophy of them. Butler (and in a measure his imitator Shaw) always seemed to me like a clever and skillful boxer, able to make many telling points, but, withal, devoid of real vitality and strength. With your judgments on the other books I am also in agreement. I am especially delighted with your appreciation of Salter's book on Nietzsche. That book caused me to revise my estimate of Nietzsche in several regards and it is a pleasure to find that you also found it seriously worth while.

As soon as the hay-fever season ends, I hope to finish the book on Reason and Nature about which I wrote to you last summer, and I hope you will not regret to have your name associated with it.

With kind remembrances to Mrs. Holmes,

Sincerely yours,

Morris R. Cohen

Feb. 16, 1925

Dear Cohen:

Your discourse on Spinoza71 has come today and I have read it with

70 Letter missing from Cohen to Holmes between Sept. 12, 1924, and Feb. 16, 1925.

71 See note 58 supra.
delight. I am grateful for everything that gives me new reason to love and admire that great man, and also I take in with predetermined assent the collateral criticisms. I think what you say about James is wholly correct. It was an early and abiding difference between us. I remember writing to him that one of his Essays would please the Unitarian parsons and the ladies. I never supposed him to be sacrificing to a desire for popularity—but I rather thought I saw the Irishman—so visible in his father’s work—coming out—great keenness in seeing into the corners of the human heart but impatience of and incapacity for the sustained continuous thinking that makes a philosopher—a great psychologist—not a great philosopher, I always have thought him.

Also I warm up with your tribute to Bradley. I followed your advice and got the Essays on Truth & Reality and read them. There were passages that I didn’t understand that I didn’t bother about because I thought that like others who have got into the Hegelian system he continued to swing round in circles as it seems to me all Hegelians do. But I was deeply moved by the intensity and persistence of his thought—It makes most other things seem common—and I was delighted by his insistence (I suppose Hegelian in his case) on the inseparability of man and the universe. I think the failure to see this—and the setting up of man as a little God over against the big one, or the cosmos from which the big one has disappeared, is the sin against the Holy Ghost.

Yours ever,
O. W. HOLMES

The College of the City of New York
Department of Philosophy
St. Nicholas Terrace and 139th Street
March 7, 1925

My dear Justice Holmes:

I had hoped that my book on Reason and Nature would be finished in time to enable me to present it to you, with its dedication, on your eighty-fourth birthday. But the fates have delayed me, and I herewith offer you the first installment of it. Being an introductory chapter it is rather thin, and in the endeavor to sound the dominant note of the book it is rather one-sided. But you have always been generous in seeking for my ideas behind the utterances; and if the high regard and affection which makes me send this to you will make your birthday happier, I shall feel rewarded to an unusually high degree.

72 See Faith of a Liberal, 310.
73 Ibid., 319.
74 “The Insurgence against Reason,” Jour. of Phil., 22 (Feb. 26, 1925), 113, the substance of which constitutes chapter 1 of Reason and Nature.
With heartiest congratulations and best wishes to Mrs. Holmes and yourself,

Sincerely yours,

MORRIS R. COHEN

March 13, 1925

Dear Cohen:

Now I have read your article\(^{75}\) and am as much pleased by it as I expected to be—I think it admirable for truth and timeliness—As you know, I reserve a theoretic doubt as to the cosmic ultimateness of our can’t helps—but I have no doubt that they are our can’t helps and govern our world. I regard the will to believe as of a piece with the insistence on the discontinuity of the universe which Bill James shares with Cardinal Newman, and which I suspect as induced by the wish to leave room for the interstitial miracle. When we were in our 20\(^{\text{th}}\) W. James said to me (in substance) that spiritualism was the last chance to spiritualize or idealize the world. I then and ever since have regarded that as a carnal and superficial view. As to the will to believe why may we not ask on what ground it is recommended except some assumed can’t help to which we all must yield—Otherwise why would it not be a sufficient answer to say I don’t want to? This whole business that you attack seems to me like modernism in art or skirt dancing—devices of those who don’t want to take the trouble and to go through the long labor necessary to do the regular thing to substitute a high kick and a suggestion that you are going to see something that you aint—with which indecency I leave you and hope that the book will come out soon. I think you are a rational man in the best sense of the word and I rejoice in you.

Sincerely yours,

O. W. HOLMES

Supreme Court of the United States
Washington, D. C.

May 25, 1925

Dear Cohen:

Again my thanks for a new pleasure, a pleasure that I mean to renew in a few days as soon as leisure comes again. I have had and have some work on hand and so have read the two articles\(^{75a}\) only once and they need a second squeezing for me to get all their juice. They seem to me full of

\(^{75}\) See footnote 74, supra.

\(^{75a}\) "The Rivals and Substitutes for Reason," Jour. of Phil., 22 (March 12, 1925), 141; (March 26, 1925), 180, subsequently reprinted as Chapter 2 of Reason and Nature.
wisdom and sound views. I will not attempt to expatiate now as I have to go to Court presently and fire off some opinions.

Ever sincerely yours,
O. W. Holmes

Oct. 3, 1925

My Dear Cohen:

Many thanks for your line—We have just got here and I am in work up to my eyes but expect that order and breathing time will come out of the chaos. We had a delightful quiet vacation and I acquired some chunks of culture almost forgotten already. We both are well—and we shall hope to see you. At present we go to taverns for our victuals as the servants don’t come till Oct. twenty somethingth—but later we furnish them and almost always are at home in the evenings.

Sincerely yours,
O. W. Holmes

We will twist the tail of the cosmos till it squeaks.

Jan. 24, 1926

My dear Cohen:

Your letter,76 as always, gives me a glow. I thank you and wish you and yours a happy New Year. I had a letter from Laski the other day in which he said that Bertrand Russell again expressed the opinion that you were the most significant philosopher that we had in the U.S.—I turn back to the words—beginning with Sir Maurice Amos “I was interested to find that he, like I, was more impressed by Morris Cohen than by any other of the academic people he met, for sanity of judgment not less than width of learning. Ben Huebsch, the publisher, who was in here on Tuesday, said practically the same thing—that he felt there was no wiser counsellor in life than Morris Cohen—and on Friday B. Russell was discussing with me the significant American philosophers. Someone there said he supposed Dewey was the outstanding figure. Russell at once said with great emphasis that he thought Morris infinitely more important than Dewey. It is good to think that he is getting this recognition from men of such varied types and opinions’’—I thought to write this to you before but the preoccupation of the moment put it off until now. The letter made me rejoice.

Now I have taken a dry dive into a month’s sitting and shall breathe only law for a time—but not deeply enough to prevent my delight when I hear good words of you.

Ever sincerely yours,
O. W. Holmes

76 Correspondence missing from Cohen to Holmes between Oct. 3, 1925, and Jan. 24, 1926.
My dear Cohen:

Many thanks for your article on Bacon—It says what I long have believed, but says it with a learning and authority that gives me much pleasure. I was tickled too by what you said about the effect of his writing—It so happens that I just have reread his essays and they led me to repeat that the first cause of the survival of a great work is its sound—Without the song of his words Shakespeare would not be read as he is—Bacon’s Essays with necessary dross have many shrewd remarks—but they are ABC to us and we shouldn’t read them if they didn’t sound so well—we should get more mental stimulus from a number of the New Republic.

I hope all is well with you—It is with me. I am very busy and therefore write short—I have had some cases that in minor ways opened speculative vistas—which is a joy.

Ever sincerely yours,
O. W. Holmes

Beverly Farms
Sept. 21, 1927

My dear Cohen:

Many thanks for the volume of Robinson’s poems—How often have I been indebted to you for new impressions—This time I think rather less than on some previous occasions. I do not readily fall in with American adoption of Arthurian magic. R. has a poetic gift and his words leave an echo—but it seems to me the echo of an echo—His music on the mystery of life does not quite enchant me—and I suspect, though this should be said with trembling, that he is a little too serious about man for an ultimate. Still I am very much obliged to you for the introduction. I have not been wholly unmoved and I shall read more. We are just preparing for our migration and next week I hope to go to Washington. I have no magnum opus mastered as an achievement of vacation, but I have read some things and a little philosophy. The result has been to add to my bill of rights this: No man shall be held to master a system of philosophy that is 50 years old—The comment is that all that anyone, philosopher as well as others, has to contribute is a small number of aperçus—But he constructs a system (which never lasts) and a later generation, if it wants to read his insights at first hand, always probably familiar with them, has to wash two tons of sand for a tablespoon full of gold—The experienced, if they do it, know what they are about, but the young think that the system is the thing and that they must master that—which older fellows regard simply as a bore to be sifted. This was suggested by Spinoza’s Ethics, with memory of Kant & Hegel. I don’t

believe his postulate or yield to his logic—yet I immensely value his sense of the continuity of the universe and his superhuman view of good and evil.

The demands of life shut me up—I must stop—but I am

Ever sincerely yours,
O. W. Holmes

April 1, 1928

My dear Cohen:

The minute before this marks the closing of your MS. volume, \(^78\) read. It impresses me very greatly and I long to see the whole thing in print, though I fear that it would contain passages that I did not understand. The general bias of your thought commands my enthusiastic assent—as you have known before now. If when the book comes out it still bears my name in the dedication I shall think it one of the greatest honors I ever have received.

I have been very constantly and [and] pretty hard at work—and the crevices have been filled by what I curse you for! For did not one of the essays that you sent crack up Demogue Notions Fondamentales du Droit Privé so much that I felt bound to take it from the Cong. Library and begin it at once? And having begun it I had not the moral force to send it back unfinished—Well, yes—it is a good book—I think I see why you liked it—but I dont think it told me anything that I didnt know although no doubt it emphasized and directed more thought to some things than I had given to them before—I am glad that I have read it that I may not be bullied when some one sits up and says Demoge—but I could ill afford the times it took out of me—and the dislike of having in my house books that dont belong to me gave it a right of way that I greatly grudged—If you go blowing the horn of another law book please put in a footnote Holmes need not read this—unless it is essential to salvation.

With this I return to my labors—30 new applications for certiorari—that I must consider—

I took it that you meant me to keep the MS vol. you sent to me—but if you need it I have it safe in my shelves—And you have my grateful thanks.

Sincerely yours,
O. W. Holmes

Washington, D. C.
January 3, 1929

My dear Cohen:

Of course any honor to you delights me—I don’t know about the American Philosophical Association, \(^79\) (to my shame) but I assume that the election

\(^78\) This was a preliminary draft of *Reason and Nature*, which was not completed until the summer of 1930, and was published in the spring of 1931.

\(^79\) Professor Cohen was elected President at the Christmas convention in 1928.
sanctions the proposition that you are It, and I rejoice. With my advent to the place of Oldest Ever I also have had some things that pleased me—but they have made me think of Finis with some anxiety as to my duty—So, as I wrote to someone yesterday, I am happy, melancholy and gay—the happier for your letter.80 A happy New Year to you.

Ever yours,
O. W. HOLMES

Supreme Court of the United States
Washington, D. C.
Jan. 15, 1930

My dear Cohen:

This is only a line of thanks too long delayed by incessant occupation, for the Faith of a Logician.81 I can’t go into critical remarks just now. I have a surmise that you believe our ultimates to be the ultimates more strongly than I do but I don’t know. I always think of Caesar’s “Et superest ager?”81a after the divisions of which he speaks. As a bettabilitarian I bet the cosmos has in it a somewhat that would strike us as pretty queer if we were capable of being struck by it with our present faculties. But I am swamped in the law.

Affectionately yours,
O. W. HOLMES

Beverly Farms, Massachusetts
July 8, 1930

My dear Cohen:

By some fatality, I know not what, your article on Vision & Technique etc.82 escaped me until today. I have just read it with the usual pleasure that I expect from anything of yours. With hearty agreement also, bar a very few sentences which I did not know enough to understand. I suspect that I should stop, with avowed ignorance, a little earlier than you would—perhaps because you know more about the subject—perhaps merely by temperament—and perhaps it isn’t true.

I hope all is going well with you. I am in my vacation, in these days not unpursued by court work, but getting some time not only for drives and sleep, but even for reading. My see’y is reading Trotsky’s autobiography to me now. Laski imposed it on me and I shouldn’t be happy not to finish it,

80 Letter missing.
81a Cf. Tacitus, Germania, XXVI: “Arva per annos mutant, et superest ager.”
but I don't like the man, or see the evidence that he incarnated a great truth, and his life calls up all the ultimately critical judgments that I got from early association with the abolitionists.

Ever sincerely yours,

O. W. Holmes

Supreme Court of the United States
Washington, D. C.

Oct. 9, 1930

My dear Cohen:
Thank you for your letter and the good news that it gives. You don't tell about yourself but I infer that all is well with you. The first days of a term have a lot of confused work before we settle down to our Court—but everything is in good shape with me and I am well as far as heard from. The possibility of unforeseen accident looms larger than in youth but I hope to reach 90 and still to be able to call myself

Your affectionate friend,

O. W. Holmes

The College of the City of New York
The City College—Department of Philosophy and Psychology
Convent Avenue and 139th Street
February 28, 1931

My dear Justice Holmes:
May I visit you on Sunday March 8 and bring you the first copy of my book on Nature and Reason? I should also like to bring my son who as editor of the Columbia Law Review wants to present you a copy of the March number of that publication which is dedicated to you.

Trusting that the cosmos will continue to present twistable ends, when we meet again, I am

Affectionately yours,

Morris R. Cohen

Supreme Court of the United States
Washington, D. C.

March 2, 1931

My dear Cohen:
It will be a delight and pride to see you, your book and your son. My only regret is that I can't ask you to feed with me. Duties and preemptions have filled my table at luncheon and at supper I shall be so tired that I shall ask no one except Laski who will pass the night with me. If the day is fair I shall try to get a drive from 3 to 4 p.m. After that, and in the morning

83 Letter missing.
from 11 to 1 I shall be accessible and be looking forward to your visit. I suppose that between 4 and 5 there may be a number of people here.

Affectionately yours,

O. W. HOLMES

854 W. 181st
March 8, 1931

Dear Justice Holmes:

Knowing the multitude of letters that reach you on your birthday and your anxiety about answering them, I am loath to add to your burden. Yet I cannot forbear to express my profound gratification that you have been permitted by the fates to hold your post so long and so well. Recently some of my friends have argued before your court and they have reenforced the impression that your written opinions make on me, which makes me hope most ardently that you will continue on the bench for some years to come. One who thinks clearly and courageously must be prepared to be in advance of the main army which moves more slowly. But, within a few years, I am sure that many of your views which have not yet prevailed will become the dominating forces which they deserve to be.

With all best wishes,

Affectionately yours,

MORRIS R. COHEN

Supreme Court of the United States
Washington, D. C.

March 14, 1931

My dear Cohen:

There has been no time yet to thank you for your book and remembrances, but I rely upon your understanding and forgiving. It will be my first serious reading and I don’t doubt will fortify you in your great place in the philosophic world. Your place in friendship needs no fortification (nor does the other, for the matter of that). I look on the visit from you and your son as only deferred.

Affectionately yours,

O. W. HOLMES

Beverly Farms, Mass.

July 13, 1931

My dear Cohen:

Thank you from my heart for your picture. It is admirable—better than a photograph from life it gives the acumen of the subject and his good-

84 A photographic reproduction of the oil painting by Joseph Margolies which was presented to the City College in 1927, on the occasion of the 25th anniversary of Cohen’s appointment to the teaching staff of the College.
ness. Your work will outlive the canvas but while it or any reproduction of it remains it will be confirmatory evidence of what the books prove. Anyone who sees it will say There was a wonderful man.

Affectionately yours,
O. W. HOLMES

My best remembrances to Mrs. Cohen.

Colony Hall, Peterboro, N. H.
July 17, 1931

Dear Justice Holmes:

It is naturally difficult for me to agree entirely to your extraordinarily generous tribute to my character and achievements. But I am stirred to my depths by your extreme kindness, and I am quite proud to have drawn this tribute from you. That is itself an achievement that makes me feel that my life and struggles have been worth while. I shall treasure it for the rest of my life and I think that my children will do likewise.

Gratefully and affectionately yours,
MORRIS R. COHEN

854 W 181st
Jan. 13, 1932

Dear Justice Holmes:

As a citizen I regret to hear that your wise counsel will no longer be heard in the conferences of the justices of the Supreme Court and that our country will no longer have the benefit of your services as a judge, except to the extent that your past decisions and other writings may continue to point the true way. But as a friend I trust that you will find joy in your increased leisure and twist the tail of the cosmos with a freedom which your previous duties did not allow.

My wife joins in cordial regards and best wishes.
Ever affectionately yours,
MORRIS R. COHEN

Beverly Farms, Massachusetts
July 26, 1932

My dear Professor Cohen:

Mr. Justice Holmes has asked me to thank you for sending to him your paper on Hegel's Rationalism and to tell you that he very much enjoyed reading it. He finds it a little difficult to write himself, and he does not

85 Justice Holmes had resigned from the Court on January 12, 1932.
therefore undertake a critical discussion, but sends to you his very good wishes. I am

Very sincerely yours,
Horace Chapman Rose
Secretary to Mr. Justice Holmes

854 W. 181st
March 7, 1934

My dear Justice Holmes:

I am grateful to you for having a birthday at least once a year—for it gives me an opportunity to express my affectionate homage. As a token of it I have sent you a book on Logic and Scientific Method written by a former student and myself.\footnote{Morris R. Cohen and Ernest Nagel, \textit{An Introduction to Logic and Scientific Method} (1934).} It is a book primarily for college students, and its subject-matter is proverbially dry. But a good deal of the life-blood of one of your ardent friends has gone into the work of which this book is the outcome.

With best wishes for many happy returns of the day,

Affectionately yours,
Morris R. Cohen

P.S. The Italians have a pleasant and happy custom of saluting one who has a birthday by saying: "May you live one hundred years more." One (American?) lady who was permitted to congratulate Pope Leo XIII on his ninetieth birthday, thought that this meant: may you live to be one hundred years old, and by simple arithmetic concluded that she ought to say to the Pope: "May you live ten years more." Whereupon the Pope replied: "Madam, why do you limit the bounty of God." That is why I underscored the word \textit{many} above.