

## Out of the Ashes

The lessons Holmes and friends extracted from the Civil War now instruct our post-Cold War era.

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THE METAPHYSICAL CLUB: A STORY OF IDEAS IN AMERICA BY LOUIS MENAND  
(Farrar, Straus & Giroux 439 pages, \$27)

OLIVER WENDELL HOLMES, JR., MAY BE the best-remembered U.S. Supreme Court justice of the nineteenth and early twentieth centuries, but even the best biographies of Holmes (such as G. Edward White's *Justice Oliver Wendell Holmes: Law and the Inner Self* [1993]) focus on Holmes alone rather than on the post-Civil War intellectual world out of which Holmes emerged.

That wider world is the subject of Louis Menand's *The Metaphysical Club*, a book that presents itself as an intellectual group biography of Holmes, psychologist William James, philosopher Charles Sanders Peirce, and educational theorist John Dewey. Insisting that "ideas are produced not by individuals, but by groups of individuals," Menand states that those four men "were more responsible than any other group for moving American thought into the modern world. They not only had an unparalleled influence on other writers and thinkers, they had an enormous influence on American life. Their ideas changed the way Americans thought--and continue to think--about education, democracy, liberty, justice, and tolerance."

Menand, a professor of English at the City University of New York who contributes regularly to both *The New York Review of Books* and *The New Yorker*, seeks to emphasize his quartet's relevance to present-day American life. "Holmes, James, Peirce, and Dewey were the first modern thinkers in the United States," and the "belief that ideas should never become ideologies ... was the essence of what they taught." A conviction that absolute moral certitude can lead to socially harmful and indeed deadly consequences lay at the center of their thought, and Menand believes that conviction has a new appeal in the post-Cold War era.

*The Metaphysical Club* begins with three beautifully written chapters focusing on Holmes and on the formative effect that his combat service in the Union army during the Civil War had upon his philosophical orientation and subsequent judicial decision making. "The lesson that Holmes took from the war can be put in a sentence. It is that certitude leads to violence," that "ideologues, dogmatists, and bullies--people who think that their rightness justifies them in imposing on anyone who does not happen to subscribe to their particular ideology, dogma, or notion of turf"--have to be prevented from ever taking charge of American society.

That skepticism was evident in the first sentence of the very first law review article Holmes published in 1870. "It is the merit of the common law that it decides the case first and determines the principle afterwards." This assertion directly prefigured Holmes's single most quoted statement, his declaration in *The Common Law* (1881): "The life of the law has not been logic; it has been experience." Menand explains that "understanding Holmes's conception of 'experience' is the key to understanding almost everything that is distinctive about his view of the law," for to Holmes "experience" was "not individual and internal but collective and consensual"; it was in other words profoundly and comprehensively social, or what nowadays we simply call "culture."

As a justice, Holmes is best known for his creation of the "dear and present danger" test in the area of free speech in cases such as *Schenck v. United States* (1918) and *Abrams v. United States* (1919). Holmes articulated his view of free speech, and of what indeed was most essential for the preservation of American democracy, in a memorably powerful segment of his dissenting opinion in *Abrams*:

Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or your power and want a certain result with all your heart you naturally express your wishes in law and sweep away all opposition.... But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas--that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment, as `all life is an experiment.... While that experiment is part of our system I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country.

Holmes thus believed, as Menand accurately reports, that "rights are created not for the good of individuals, but for the good of society," and Menand provocatively but plausibly contends that "the constitutional law of free speech is the most important benefit to come out of the way of thinking" that Holmes and his colleagues pioneered in the late nineteenth century. Holmes's message in *Abrams* was simply one famous example of how Menand's quartet of thinkers managed to shift "the totem of legitimacy from premises to procedures. We know an outcome is right not because it was derived from immutable principles, but because it was reached by following the correct procedures." Thus in the legal process, "justice is whatever result just procedures have led to."

If all of *The Metaphysical Club* was as engrossing and thought-provoking as Menand's treatment of Holmes, it would be a highly commendable book. But that is not the case, and when Menand moves on from Holmes to William James, who eventually coined the name "pragmatism" for this school of thought, Menand's attempt to paint a similarly compelling portrait of James veers badly off track. A more critical editor might have saved Menand from a two-chapter digression devoted to the pre--Civil War scientist Louis Agassiz (a representative of the absolutist, faith-driven world view against which Holmes and the others had reacted). But even the third, somewhat more accessible section of Menand's book, on Charles Sanders Peirce, fails to return to the quality of his initial chapters on Holmes.

Only at the end of his Peirce section does Menand fully and frontally explain his book's own title, for *The Metaphysical Club* was what Peirce in later years said had been the name of an informal discussion group that had met in Cambridge, Massachusetts, during the early 1870s and which on occasion had included both Holmes and James as well as Peirce. The fourth and youngest member of Menand's quartet, John Dewey, to whom Menand also devotes three chapters, had not been a member of the Cambridge circle, since Dewey was a Vermont teenager during the 1870s.

Menand's addition of Dewey to his account is thus something of a creative reach, but anyone who makes even modest inquiry into the history of American philosophy will quickly discover that much of the story Menand relates in this volume was already fully available more than a generation ago in such books as Philip Wiener's *Evolution and the Foundations of Pragmatism* (1949) (which Menand cites) and Edward Madden's *Chauncey Wright and the Foundations of Pragmatism* (1963) (which Menand does not cite). Indeed, Wright, who died in 1875 at age 45, appears to have been a significantly more important figure in early 1870s Cambridge, than some or all of his subsequently far better-known colleagues, and more than 50 years ago Wiener asserted that "the linkage of Holmes with The Metaphysical Club lies in the fact that Wright's arguments for the ethical neutrality of science and evolution appear in scarcely modified form in Hohnes's separation of ethical ideals from the science of law."

Menand's failure to devote more attention to Wright is especially frustrating once one realizes that Wright's closest friend was Harvard law professor James Bradley Thayer, whose intensely critical views concerning judicial review were shared by his friend Holmes and later deeply influenced two of the twentieth century's most important juristic advocates of judicial restraint, Felix Frankfurter and Learned Hand. A full plumbing of these linkages would be valuable and original, but Menand's disinterest in pursuing them may reflect a broader shortcoming. Elsewhere in *The Metaphysical Club* he incorrectly asserts that the Supreme Court's infamous substantive due process ruling in *Lochner v. New York* (1905) was based upon the "bakery owners' `fight to property'" rather than the "liberty of person and freedom of contract" assertedly enjoyed by both "employers and employees" alike.

Yet far more striking is the fact that even the actual existence of The Metaphysical Club itself remains at least somewhat uncertain on account of exceedingly skimpy contemporary documentation. Menand himself, in a 1997 introduction to *Pragmatism: A Reader*, observed that any simple assumption of the club's existence could be "misleading," as "there were many Metaphysical Clubs, since `metaphysical club' was simply a generic name in the nineteenth century for a philosophical discussion group." Yet Menand betrays less uncertainty here, a stance that appears to be fully supported by the most impressive review of the evidence, a 1964 essay by Max Fisch titled "Was There A Metaphysical Club in Cambridge?"

But Menand's overarching purpose in *The Metaphysical Club* is not historiographical; it is in the end to explain what he and others believe is a sudden, post-Cold War rebirth of interest in pragmatism after 40 years of all but complete eclipse. "The notion that the values of the free society for which the Cold War was waged were contingent, relative, fallible constructions ... was not a notion compatible with the moral imperatives of the era," he persuasively contends. Once the Cold War ended, "skepticism about the finality of any particular set of beliefs has begun to seem to some people an important value again." Menand emphasizes that "the value at the bottom of the thought of Holmes, James, Peirce, and Dewey is tolerance," and that "democracy is the value that validates all other values." For a pragmatist, "democratic participation isn't the means to an end ...; it is the end." Had Menand done a better job at the outset of explaining where he believed his analysis would lead, *The Metaphysical Club* could have been a far more accessible book than it is.