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## Tribute to Justice Homes

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*Tribute to Justice Holmes\**

(Remarks by REPRESENTATIVE PETTENGILL on the floor of the House of Representatives)

Mr. Speaker, Justice Oliver Wendell Holmes is dead. The great dissenter is gone. He dissented from old thought patterns in favor of new ones. It is my belief that if his dissents of 10, 20, 30 years ago had been accepted as the true guide posts to our development, much of the trouble to-day would have been spared us. "Holmes and Brandeis dissent." Historic words!

From my days in law school he has been a sort of spiritual godfather of mine. This is not the time to appraise his achievement, but it is certain, as he once said, "We will leave our spirit in those who follow, and they will not turn back. All is ready; bugler, blow the charge."

On the day that his death is announced to the world I would like to point out just one, perhaps the major part of his creed—his belief in experiment.

Justice Holmes knew that growth is the law of life; that only change is changeless; that "time makes ancient good uncouth"; that men must be free to pioneer new pathways to new El Dorados.

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\* Reprinted from the Congressional Record, March 6, 1935, pp. 3142-3.

Justice Holmes always believed in a new deal. He would, without doubt, have upheld the major purposes of the "new deal" of today. For 94 years he remained "invincibly young," as Justice Hughes once said. He brought to the Nation's altar the winnowed wisdom of years, but his heart was a boy's heart to the end. He never put life in a pigeon hold, nor the Constitution in a strait-jacket.

This is easily proved by his own words and I here set down "little fragments of my fleece that I have left upon the hedges of life."

In the first chapter of his first book, *The Common Law*, he said: "The life of the law has not been logic; it has been experience," and of course experience comes from experiment.

Again—

"The provisions of the Constitution are not mathematical formulas having their essence in their form; they are organic living institutions transplanted from English soil. Their significance is vital, not formal."

Again—

"The fourteenth amendment (and he would have said the same thing of any other part) is not a pedagogical requirement of the impracticable."

Again—

"The fact is that legislation in this country, as well as elsewhere, is empirical."

Again—

"There is nothing I more deprecate than the use of the fourteenth amendment beyond the absolute compulsion of its words to prevent the making of social experiments that an important part of the community desires, in the insulated chambers afforded by several States, even though the experiments may seem futile or even noxious to me and to those whose judgment I most respect."

Again—

"If there is any principle of the Constitution that more imperatively calls for attachment than any other, it is the principle of free thought—not free thought for those who agree with us, but freedom for the thought that we hate.

"We see nothing in the Constitution that compels the Government to sit by while a food supply is cut off and the protectors of our forests and our crops are destroyed.

"As any line of adjustment between conflicting rights must be drawn on practical grounds, there is no doubt that it may vary under different circumstances. For instance, in England, in view of the national importance of their great manufacturers, juries are instructed that, in counties where great works are carried on, parties must not stand on extreme rights.

"When 20 years ago a vague terror went over the earth and the word 'socialism' began to be heard, I thought, and still think that fear was translated into doctrines that had no proper place in the Constitution or the common law. Judges are apt to be naïf, simple-minded men, and they need something of Mephistopheles. We, too, need education in the obvious—to learn to transcend our own convictions and to leave room for much that we hold dear to be done away with, short of revolution, by orderly change of the law.

"We know too much to sacrifice good sense to syllogism.

"The law is the witness and external deposits of our moral life. Its history is the moral development of the race."

He believed in the "oughtness" of the law.

Many more like these few excerpts from his wisdom might be given, but these are here set down "in order that we may remember all that buffoons forget." He did not believe in wild swings of the pendulum because he once said, "Historic continuity with the past is not a duty, it is only a necessity." But he did believe that the past is not the present nor the present the future.

He once wrote to a Hoosier friend of mine, Oswald Ryan, of the Federal Power Commission:

"Life is a romantic business. It is painting a picture, not doing a sum; but you have to make the romance. And it will come to the question, How much fire have you in your belly?"

As he once said of an associate who had passed on, so we may say of him:

"Sooner or later the race of men will die, but we demand an external record. We have it. What we have done is woven forever in the great vibrating web of the world. The eye that can read the import of its motion can decipher the story of all our deeds, of all our thoughts. To that eye I am content to leave the recognition and memory of this great head and heart."

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