

Justice Holmes and Patents

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The writings and opinions of Oliver Wendell Holmes, Jr., inspire generations of legal scholars to explain topics like pragmatic skepticism, legal positivism, legal realism, legal moralism, and other legal -isms. Justice Holmes—celebrated and contemptible, beloved and beleaguered, emphatically entrenched in the common law—stumbled into patent cases on the Supreme Court, but his opinions in this area of law haven’t inspired very much scholarship at all. This Article takes a new look at Holmes’ work and contends that his cases and writings should continue to influence patent law today. This lasting effect might not derive from any of his long-debated philosophical beliefs (whatever those may have been), but from the universal appeal of applying straightforward principles to complex problems (which Holmes made look easy). Of course, complex patent cases increasingly challenge generalizations, resulting in an animated tug-of-war between those judges who would take Holmes’ minimalist approach and those who would embrace a messier cynicism of patent law. This Article places Holmes at the epicenter of this battle, and describes the ways in which Holmes’ work continues to resonate in contemporary debates about patent law and its limitations.