embracing three counts. The first charged him with keeping liquor for sale, the second with possessing it unlawfully, and the third with selling it. The jury acquitted him on the second and third counts, but found him guilty on the first. His counsel thereupon appealed. The evidence as to all three offenses, it was shown, was precisely the same. If the prisoner was innocent of two of them, then how could he be guilty of the third? Mr. Justice Holmes, speaking for himself and all his fellow justices save one, swept away this question in the following words:

> Consistency in the verdict is not necessary. Each count in an indictment is regarded as if it was a separate offense. If separate indictments had been presented against the defendant for possession and for maintenance of a nuisance, and had been separately tried, the same evidence being offered in support of each, an acquittal on one could not be pleaded as *res judicata* of the other. Where the offenses are separately charged in the counts of a single indictment the same rule must hold.

I am not learned in the law, but the special gifts of a lawyer are surely not necessary to see that this judgment disposed completely of the prohibition of double jeopardy in Article I of the Bill of Rights. What it said, in plain English, is that a man may be tried over and over again for what is essentially the same offense, and that if one, two, three or *n* juries acquit him he may yet be kept in the dock, and so on *ad infinitum* until a jury is found that will convict him. And what such a series of juries may do may be done by one single jury — by the simple device of splitting his one offense into two, three, four or *n* offenses, and then trying him for all of them. In order to go free he must win verdicts of not guilty on every count. But in order to jail him all the prosecuting attorney needs is a verdict of guilty on one.

I commend this decision to Liberals who still cherish the delusion that Dr. Holmes belonged to their lodge. Let them paste it in their Sunday go-to-meeting hats. And I commend to them also the astounding but charming fact that the one judge who dissented was Mr. Justice Pierce Butler, for many years the chief demon in their menagerie. This is what he said:

> Excluding the possession negatived by the finding under the second count, there is nothing of substance left in the first count, for its specifications were limited to the keeping for sale of the identical drinks alleged in the second count to have been unlawfully possessed. . . . The evidence having been found insufficient to establish such possession, it cannot be held adequate to warrant conviction under the first count. The finding of not guilty is a final determination that possession, the gravamen of both counts, was not proved.

Professor Veblen

From PREJUDICES: FIRST SERIES, 1919, pp. 59–83. An expansion of Prof. Veblen and the Cow, which appeared in the *Smart Set* for May, 1919, pp. 138–44, and made a considerable pother. The events dealt with in this essay seem far away today, and perhaps a bit incredible, but they deserve to be recalled, for another and even more preposterous Veblen may be on us tomorrow. On the advent of the New Deal in 1933 some of the wizards at Washington tried to revive him, but this time he did not take and was soon forgotten again. I never met him, but years after 1919 I heard from some of his friends that my onslaught had greatly upset him, and, in fact, made him despair of the Republic. He died in 1929

BACK in the year 1909, being engaged in a bombastic discussion with what was then known as an intellectual Socialist (like the rest of the *intelligentsia*, he succumbed to the first fife-corps of World War I, pulled down the red flag, damned Marx as a German spy, and began whooping for Woodrow Wilson and Otto Kahn), I was greatly belabored and incommoded by his long quotations from a certain Prof. Thorstein Veblen, then quite unknown to me. My antagonist manifestly attached a great deal of importance to these borrowed sagacities, for he often heaved them at me in lengths of a column or two, and urged me to read every word of them. I tried hard enough, but found it impossible going. The more I read them, in fact, the less I could make of them, and so in the end, growing impatient and impolite, I denounced this Prof. Veblen as a geyser of pishposh, refused to waste any more time upon his incomprehensible syllogisms, and applied myself to the other Socialist witnesses in the case, seeking to set fire to their shirts.

That old debate, which took place by mail (for the Socialist lived in levantine luxury on his country estate and I was a wage-slave attached to a city newspaper), was afterward embalmed in a dull book, and got the mild notice of a day. The book, by name, "Men vs. the Man,"[1] is now as completely forgotten as Baxter's "Saint's Rest" or the Constitution of the United States. I myself am perhaps the only man who remembers it at all, and the only thing I can recall of my opponent's argument (beyond the fact that it not only failed to convert me to Marxism, but left me a bitter and incurable scoffer at democracy in all its forms) is his curious respect for the aforesaid Veblen, and his delight in the learned gentleman's long, tortuous and (to me, at least) intolerably flapdoodlish phrases.

There was, indeed, a time when I forgot even this — when my mind was empty of the professor's very name. That was, say, from 1909 or thereabout to the middle of 1917. During those years, having lost all my former interest in Socialism, even as a species of insanity, I ceased to read its literature, and thus lost track of its Great Thinkers. The periodicals that I then gave an eye to, setting aside newspapers, were chiefly the familiar American imitations of the English weeklies of opinion, and in these the dominant Great Thinker was, first, the late Dr. William James, and, after his decease in 1910, Dr. John Dewey. The reign of James, as the illuminated will recall, was long and glorious. For three or four years running he was mentioned in every one of those American *Spectators* and *Saturday Reviews* at least once a week, and often a dozen times. Among the less somber gazettes of the republic, to be sure, there were other heroes: Maeterlinck, Rabindranath Tagore, Judge Ben B. Lindsey, and so on, and still further down the literary and intellectual scale there were yet others: Hall Caine, Brieux and Jack Johnson among them, with paper-bag cookery and the twilight sleep to dispute their popularity. But on the majestic level of the pre-Villard *Nation*, among the white and lavender peaks of professorial ratiocination, there was scarcely a serious rival to James. Now and then, perhaps, Jane Addams had a month of vogue, and during one Winter there was a rage for Bergson, but taking one day with another James held his own against the field.

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[1] New York, 1910. The Socialist was Robert Rives La Monte.

His ideas, immediately they were stated, became the ideas of every pedagogue from Harvard to Leland Stanford, and the pedagogues rammed them into the skulls of the lesser *cerebelli*. When he died his ghost went marching on: it took three or four years to interpret and pigeon-hole his philosophical remains and to take down and redact his messages (via Sir Oliver Lodge, Little Brighteyes, Wah-Wah the Indian Chief, and other gifted psychics) from the spirit world. But then, gradually, he achieved the ultimate, stupendous and irrevocable act of death, and there was a vacancy. To it Prof. Dr. Dewey was elected by the acclamation of all right-thinking and forward-looking men. He was an expert in pedagogics, metaphysics, psychology, ethics, logic, politics, pedagogical metaphysics, metaphysical psychology, psychological ethics, ethical logic, logical politics and political pedagogics. He was *artium magister, philosophiæ doctor* and twice *legum doctor*. He had written a book called "How to Think." He sat in a professor's chair and caned sophomores for blowing spit-balls. *Ergo*, he was the ideal candidate, and so he was nominated, elected and inaugurated, and for three years, more or less, he enjoyed a glorious reign in the groves of sapience, and the inferior *umbilicarii* venerated him as they had once venerated James.

I myself greatly enjoyed and profited by the discourses of this Prof. Dewey and was in hopes that he would last. Born of indestructible Vermont stock and a man of the highest bearable sobriety, he seemed likely to peg along almost *ad infinitum*, a gentle and charming volcano of correct thought. But it was not, alas, to be. Under cover of pragmatism, the serpent's metaphysic that James had left behind him, there was unrest beneath the surface. Young professors in remote and obscure universities, apparently as harmless as so many convicts in the death-house, were secretly flirting with new and red-hot ideas. Whole squads of them yielded in stealthy privacy to rebellious and often incomprehensible yearnings. Now and then, as if to reveal what was brewing, a hellmouth blazed and a Dr. Scott Nearing went sky-hooting through its smoke. One heard whispers of strange heresies — economic, sociological, even political. Gossip had it that pedagogy was hatching vipers, nay, was already brought to bed. But not much of this got into the home-made *Saturday Reviews* and *Athenæums* — a hint or two maybe, but no more. In the main they kept to their old resolute demands for a pure civil-service, the budget system in Congress, the abolition of hazing at the Naval Academy, an honest primary, and justice to the Filipinos, with extermination of the Prussian monster added after August, 1914. And Dr. Dewey, on his remote Socratic Alp, pursued the calm reënforcement of the philosophical principles underlying these and all other lofty and indignant causes.

Then, of a sudden, Siss! Boom! Ah! Then, overnight, the upspringing of intellectual soviets, the headlong assault upon all the old axioms of pedagogical speculation, the nihilistic dethronement of Prof. Dewey — and rah, rah, rah for Prof. Dr. Thorstein Veblen! Veblen? Could it be — ? Aye, it was! My old acquaintance! The *doctor obscurus* of my half-forgotten bout with the so-called intellectual Socialist! The Great Thinker redivivus! Here, indeed, he was again, and in a few months — almost it seemed a few days — he was all over the *Nation*, the *Dial*, the *New Republic* and the rest of them, his books and pamphlets began to pour from the presses, the newspapers reported his every wink and whisper, and everybody who was anybody began gabbling about him. The spectacle, I do not hesitate to say, somewhat disconcerted me and even distressed me. On the one hand, I was sorry to see so learned and interesting a man as Dr. Dewey sent back to the insufferable dungeons of Columbia, there to lecture in imperfect Yiddish to classes of Grand Street Platos. And on the other hand, I shrunk supinely from the appalling job, newly rearing itself before me, of rereading the whole canon of the singularly laborious and muggy, the incomparably tangled and unintelligible works of Prof. Veblen.

But if a sense of duty tortures a man, it also enables him to achieve prodigies, and so I managed to get through the whole infernal job. I read "The Theory of the Leisure Class" (1899), I read "The Theory of Business Enterprise" (1904), and then I read "The Instinct of Workmanship" (1914). A hiatus followed; I was racked by a severe neuralgia, with delusions of persecution. On recovering I tackled "Imperial Germany and the Industrial Revolution" (1915). Marasmus for a month, and then "The Nature of Peace and the Terms of Its Perpetuation" (1917). What ensued was never diagnosed; probably it was some low infection of the mesentery or spleen. When it passed off, leaving only an asthmatic cough, I read "The Higher Learning in America" (1918), and then went to Mt. Clemens to drink the Glauber's salts. Eureka! the business was done! It had strained me, but now it was over. Alas, a good part of the agony had been needless. What I found myself aware of, coming to the end, was that practically the whole system of Prof. Veblen was in his first book and his last — that is, in "The Theory of the Leisure Class," and "The Higher Learning in America."[2] I pass on the news to literary archeologists. Read these two, and you won't have to read the others. And if even two daunt you, then read the first. Once through it, though you will have missed many a pearl and many a pain, you will have an excellent grasp of the gifted metaphysician's ideas.

For those ideas, in the main, were quite simple, and often anything but revolutionary in essence. What was genuinely remarkable about them was not their novelty, or their complexity, nor even the fact that a professor should harbor them; it was the astoundingly grandiose and rococo manner of their statement, the almost unbelievable tediousness and flatulence of the gifted headmaster's prose, his unprecedented talent for saying nothing in an august and heroic manner. There are tales of an actress of the last generation, probably Sarah Bernhardt, who could put pathos and even terror into a recitation of the multiplication table. Something of the same talent, raised to a high power, was in this Prof. Veblen. If one tunneled under his great moraines and stalagmites of words, dug down into his vast kitchen-midden of discordant and raucous polysyllables, blew up the hard, thick shell of his almost theological manner, what one found in his discourse was chiefly a mass of platitudes — the self-evident made horrifying, the obvious in terms of the staggering.

Marx, I daresay, had said a good deal of it long before him, and what Marx overlooked had been said over and over again by his heirs and assigns. But Marx, at this business, labored under a technical handicap; he wrote in German, a language he actually understood. Prof. Veblen submitted himself to no such disadvantage. Though born, I believe, in These States, and resident here all his life, he achieved the effect, perhaps without employing the means, of thinking in some unearthly foreign language — say Swahili, Sumerian or Old Bulgarian — and then painfully clawing his thoughts into a copious but uncertain and book-learned English. The result was a style that affected the higher cerebral centers like a constant roll of subway expresses. The second result was a sort of bewildered numbness of the senses, as before some fabulous and unearthly marvel. And the third result, if I make no mistake, was the celebrity of the professor as a Great Thinker. In brief, he stated his hollow nothings in such high, astounding terms that inevitably arrested and blistered the right-thinking mind. He made them mysterious. He made them shocking. He made them portentous. And so, flinging them at naïve and believing souls, he made them stick and burn.

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[2] He wrote four books between The Higher Learning and his death in 1929, but they were only reboilings of old bones, and attracted no notice.

Consider this specimen — the first paragraph of Chapter XIII of "The Theory of the Leisure Class":

> In an increasing proportion as time goes on, the anthropomorphic cult, with its code of devout observances, suffers a progressive disintegration through the stress of economic exigencies and the decay of the system of status. As this disintegration proceeds, there come to be associated and blended with the devout attitude certain other motives and impulses that are not always of an anthropomorphic origin, nor traceable to the habit of personal subservience. Not all of these subsidiary impulses that blend with the bait of devoutness in the later devotional life are altogether congruous with the devout attitude or with the anthropomorphic apprehension of sequence of phenomena. Their origin being not the same, their action upon the scheme of devout life is also not in the same direction. In many ways they traverse the underlying norm of subservience or vicarious life to which the code of devout observances and the ecclesiastical and sacerdotal institutions are to be traced as their substantial basis. Through the presence of these alien motives the social and industrial regime of status gradually disintegrates, and the canon of personal subservience loses the support derived from an unbroken tradition. Extraneous habits and proclivities encroach upon the field of action occupied by this canon, and it presently comes about that the ecclesiastical and sacerdotal structures are partially converted to other uses, in some measure alien to the purpose of the scheme of devout life as it stood in the days of the most vigorous and characteristic development of the priesthood.

Well, what have we here? What does this appalling salvo of rhetorical artillery signify? What was the sweating professor trying to say? Simply that in the course of time the worship of God is commonly corrupted by other enterprises, and that the church, ceasing to be a mere temple of adoration, becomes the headquarters of these other enterprises. More simply still, that men sometimes vary serving God by serving other men, which means, of course, serving themselves. This bald platitude, which must be obvious to any child who has ever been to a church bazaar, was here tortured, worried and run through rollers until it spread out to 241 words, of which fully 200 were unnecessary. The next paragraph was even worse. In it the master undertook to explain in his peculiar dialect the meaning of "that non-reverent sense of æsthetic congruity with the environment which is left as a residue of the latter-day act of worship after elimination of its anthropomorphic content." Just what did he mean by this "non-reverent sense of æsthetic congruity"? I studied the whole paragraph for three days, halting only for prayer and sleep, and I came to certain conclusions. What I concluded was this: he was trying to say that many people go to church, not because they are afraid of the devil but because they enjoy the music, and like to look at the stained glass, the potted lilies and the rev. pastor. To get this profound and highly original observation upon paper, he wasted, not merely 241, but more than 300 words. To say what might have been said on a postage stamp he took more than a page in his book.

And so it went, alas, alas, in all his other volumes — a cent's worth of information wrapped in a bale of polysyllables. In

"The Higher Learning in America" the thing perhaps reached its damndest and worst. It was as if the practise of that incredibly obscure and malodorous style were a relentless disease, a sort of progressive intellectual diabetes, a leprosy of the horse sense. Words were flung upon words until all recollection that there must be a meaning in them, a ground and excuse for them, were lost. One wandered in a labyrinth of nouns, adjectives, verbs, pronouns, adverbs, prepositions, conjunctions and participles, most of them swollen and nearly all of them unable to walk. It was, and is, impossible to imagine worse English, within the limits of intelligible grammar. It was clumsy, affected, opaque, bombastic, windy, empty. It was without grace or distinction and it was often without the most elementary order. The professor got himself enmeshed in his gnarled sentences like a bull trapped by barbed wire, and his efforts to extricate himself were quite as furious and quite as spectacular. He heaved, he leaped, he writhed; at times he seemed to be at the point of yelling for the police. It was a picture to bemuse the vulgar and to give the judicious grief.

Worse, there was nothing at the bottom of all this strident wind-music — the ideas it was designed to set forth were, in the overwhelming main, poor ideas, and often they were ideas that were almost idiotic. The concepts underlying, say, "The Theory of the Leisure Class" were simply Socialism and well water; the concepts underlying "The Higher Learning in America" were so childishly obvious that even the poor drudges who wrote editorials for newspapers often voiced them, and when, now and then, the professor tired of this emission of stale bosh and attempted flights of a more original character, he straightway came tumbling down into absurdity. What the reader then had to struggle with was not only intolerably bad writing, but also loose, flabby, cocksure and preposterous thinking. . . . Again I take refuge in an example. It is from Chapter IV of "The Theory of the Leisure Class." The problem before the author here had to do with the social convention which, in pre-Prohibition 1899, frowned upon the consumption of alcohol by women — at least to the extent to which men might consume it decorously. Well, then, what was his explanation of this convention? Here, in brief, was his process of reasoning:

1. The leisure class, which is the predatory class of feudal times, reserves all luxuries for itself, and disapproves their use by members of the lower classes, for this use takes away their charm by taking away their exclusive possession.
2. Women are chattels in the possession of the leisure class, and hence subject to the rules made for inferiors. "The patriarchal tradition . . . says that the woman, being a chattel, should consume only what is necessary to her sustenance, except so far as her further consumption contributes to the comfort or the good repute of her master."
3. The consumption of alcohol contributes nothing to the comfort or good repute of the woman's master, but "detracts sensibly from the comfort or pleasure" of her master. *Ergo*, she is forbidden to drink.

This, I believe, was a fair specimen of the Veblenian ratiocination. Observe it well, for it was typical. That is to say, it started off with a gratuitous and highly dubious assumption, proceeded to an equally dubious deduction, and then ended with a platitude which begged the whole question. What sound reason was there for believing that exclusive possession was the hall-mark of luxury? There was none that I could see. It might be true of a few luxuries, but it was certainly not true of the most familiar ones. Did I enjoy a decent bath because I knew that John Smith could not afford one — or because I delighted in being clean? Did I admire Beethoven's Fifth Symphony because it was incomprehensible to Congressmen and Methodists — or because I genuinely loved music? Did I prefer kissing a pretty girl to kissing a charwoman because even a janitor may kiss a charwoman — or because the pretty girl looked better, smelled better and kissed better?

Confronted by such considerations, it seemed to me that there was little truth left in Prof. Veblen's theory of conspicuous consumption and conspicuous waste — that what remained of it, after it was practically applied a few times, was no more than a wraith of balderdash. What could have been plainer than his failure in the case of the human female? Starting off with a platitude, he ended in absurdity. No one could deny, I was willing to grant, that in a clearly limited sense, women occupied a place in the world — or, more accurately, aspired to a place in the world — that had some resemblance to that of a chattel. Marriage, the goal of their only honest and permanent hopes, invaded their individuality; a married woman (I was thinking, remember, of 1899) became the function of another individuality. Thus the appearance she presented to the world was often the mirror of her husband's egoism. A rich man hung his wife with expensive clothes and jewels for the same reason, among others, that he drove an expensive car: to notify everybody that he could afford it — in brief, to excite the envy of Marxians. But he also did it, let us hope, for another and far more powerful reason, to wit, that he delighted in her, that he loved her — and so wanted to make her gaudy and happy. This reason, to be sure, was rejected by the Marxians of the time, as it is rejected by those of ours, but nevertheless, it continued to appeal very forcibly, and so continues in our own day, to the majority of normal husbands in the nations of the West. The American husband, in particular, dresses his wife like a circus horse, not primarily because he wants to display his wealth upon her person, but because he is a soft and moony fellow and ever ready to yield to her desires, however preposterous. If any conception of her as a chattel were actively in him, even unconsciously, he would be a good deal less her slave. As it is, her vicarious practise of conspicuous waste commonly reaches such a development that her master himself is forced into renunciations — which brought Prof. Dr. Veblen's theory to self-destruction.

His final conclusion was as unsound as his premisses. All it came to was a plain begging of the question. Why does a man forbid his wife to drink all the alcohol she can hold? Because, he said, it "detracts sensibly from his comfort or pleasure." In other words, it detracts from his comfort and pleasure because it detracts from his comfort and pleasure. Meanwhile, the real answer is so plain that even a professor should know it. A man forbids his wife to drink too much because, deep in his secret archives, he has records of the behavior of other women who drank too much, and is eager to safeguard his wife's connubial rectitude and his own dignity against what he knows to be certain invasion. In brief, it is a commonplace of observation, familiar to all males beyond the age of twenty-one, that once a woman is drunk the rest is a mere matter of time and place: the girl is already there. A husband, viewing this prospect, perhaps shrinks from having his chattel damaged. But let us be soft enough to think that he may also shrink from seeing humiliation and bitter regret inflicted upon one who is under his protection, and one whose dignity and happiness are precious to him, and one whom he regards with deep and (I surely hope) lasting affection. A man's grandfather is surely not his chattel, even by the terms of the Veblen theory, yet I am sure that no sane man would let the old gentleman go beyond a discreet cocktail or two if a bout of genuine bibbing were certain to be followed by the complete destruction of his dignity, his chastity and (if a Presbyterian) his immortal soul.

One more example of the Veblenian logic and I must pass on. On page 135 of "The Theory of the Leisure Class" he turned his garish and buzzing searchlight upon another problem of the domestic hearth, this time a double one. First, why do we have lawns around our country houses? Secondly, why don't we use cows to keep them clipped, instead of employing Italians, Croatians and blackamoors? The first question was answered by an appeal to ethnology: we delight in lawns because we are the descendants of "a pastoral people inhabiting a region with a humid climate" — because our dolicho-blond ancestors had flocks, and thus took a keen professional interest in grass. (The Marx *motif*! The economic interpretation of history in E flat.) But why don't *we* keep flocks? Why do we renounce cows and hire Jugo-Slavs? Because "to the average popular apprehension a herd of cattle so pointedly suggests thrift and usefulness that their presence . . . would be intolerably cheap." Plowing through a bad book from end to end, I could find nothing sillier than this. Here, indeed, the whole "theory of conspicuous waste" was exposed for precisely what it was: one per cent. platitude and ninety-nine per cent. nonsense. Had the genial professor, pondering his great problems, ever taken a walk in the country? And had he, in the course of that walk, ever crossed a pasture inhabited by a cow (*Bos taurus*)? And had he, making that crossing, ever passed astern of the cow herself? And had he, thus passing astern, ever stepped carelessly, and —