

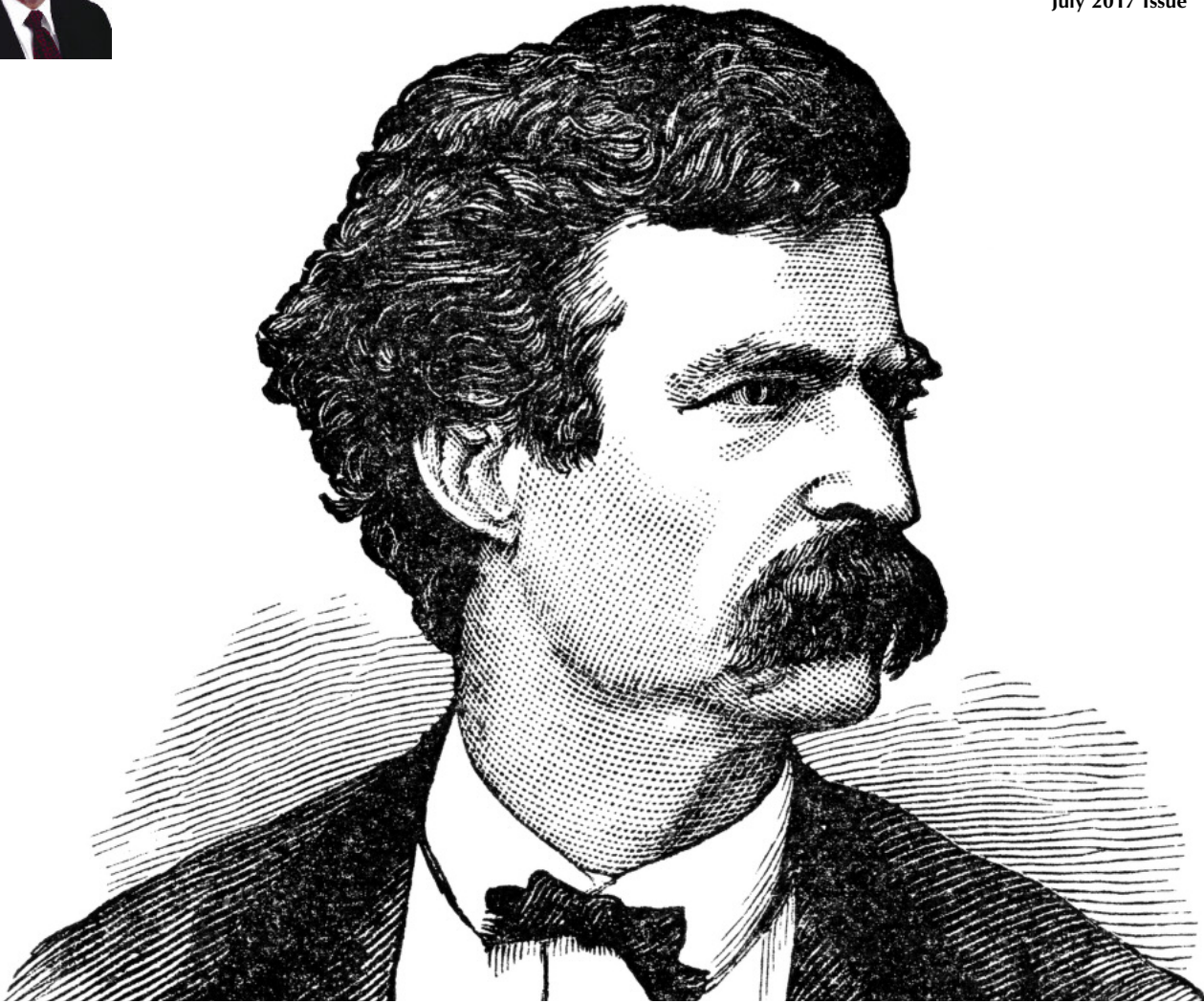


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Mark Twain tickles the legal funny bone

THE LEGENDARY AUTHOR AND HUMORIST SATIRIZED THE LAW
TO PROMOTE HIS IDEAL OF JUSTICE

Practically everyone is familiar with Tom Sawyer, Huckleberry Finn and Mark Twain's other fictional characters who redefined American literature through their exploits on the Mississippi River a century and a half ago. Less well-remembered today are the many humorous stories and remarks crafted by Twain that lampooned lawyers, judges and the legal process. The author used satire and sarcasm in his tales to advocate that legal systems are a means to achieve justice and enforce moral standards in civil society.

With a keen insight into human nature, Mark Twain enjoyed poking fun at courts and lawyers. His writings exploited the foibles of the legal system

to produce some of the most witty lawyer humor ever conceived. But this jesting critic of the legal system had purposes: promoting higher moral standards for civil society, advancing fairer justice and fostering better lawyering.

Son of a judge

Mark Twain began life as Samuel Clemens, the son of Judge John Marshall Clemens (named after the great Supreme Court Chief Justice). His Honor was a minor magistrate in bucolic Hannibal, Missouri, who had trouble making financial ends meet. Perhaps it was his father's example of barely scratching out a living as a "sometime lawyer and judge"¹ that convinced Sam to avoid a legal career.

One of Twain's characters in *Life on the Mississippi* remarked, "My father was a justice of the peace, and I supposed he possessed the power of life and death over all men and could hang anybody that offended him."²

Judge Clemens aspired to elevate his lowly judicial position to County Circuit Court Clerk, but caught pneumonia on a stormy night while campaigning for office and died suddenly in 1847.³ His eleven-year-old son Samuel stood over his father's casket and promised his mother that he would be faithful and industrious if she allowed him to drop out of school. She agreed and he went to work as a printer's apprentice at his

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older brother Orion's newspaper, where he learned about journalism and writing.⁴

Studying law ain't for me

Notwithstanding the awe that he held for his father the judge, lawyering would not be in the cards for Samuel Clemens. His later writings about his lack of a disposition to be a lawyer underscore his doubts about how the profession benefits society in general. In an 1861 letter to his mother and sister, he said, "I never intend to be a lawyer. I have been a slave several times in my life, but I'll never be one again."⁵ He claims to have given the law a try, but "I had studied law an entire week, and then given it up because it was so prosy and tiresome."⁶ He removed all doubt about his disdain for a legal career in another letter to his mother: "Tell aunt Mary that I am sorry she thought I intended to study law, because . . . I do not love the law."⁷

Samuel Clemens becomes "Mark Twain"

Young Sam worked at various jobs until he turned twenty-one, when he decided to try his hand as a coca hunter in the Amazon. On his way to South America, he stopped in New Orleans and got the notion that he could become a riverboat pilot. He borrowed some money to sign aboard as an apprentice cub pilot and began plying the muddy waters of the Mississippi, where safe water passage on the river was marked at a depth of two fathoms with the cry "Mark Twain."⁸ In New Orleans, he visited an astrologer who foretold to him, "You should have been a lawyer – there is where your talents lie . . . try the law – you will certainly succeed."⁹ Fortunately for posterity, he did not take this advice.

Samuel Clemens's footloose life as a cub pilot took a new turn when the Civil War broke out in 1861, and he joined the Confederate Army. His military stint lasted only two weeks. He resigned due to being "incapacitated by fatigue through persistent retreating."¹⁰ In that year, his brother Orion, now an attorney, was appointed as Secretary of the Nevada Territory.

The always adventurous younger brother decided to join him out west.

As a member of the bar, Orion was no more immune from criticism by his sibling than any other attorney. Not impressed with Orion's ascension to the bar, Twain said that the hapless Orion was always "waiting for clients who never came."¹¹ Characteristic of his lifelong low esteem for attorneys, he commented: "I laid one of the plainest and simplest of legal questions before Orion once, and the helpless and hopeless mess he made of it was absolutely astonishing."¹² Nor was he impressed with Orion's powers of persuasion and legal reasoning: "He would examine both sides of a case so diligently and so conscientiously that when he got through with his arguments neither he nor a jury would know which side he was on."¹³

Clemens fell back on journalism after an attempt at prospecting in Nevada did not pan out.¹⁴ He chose the immortal *nom de plume* Mark Twain from his riverboat days and began writing for the *Virginia City Enterprise*. During his brief Nevada sojourn, he began writing a steady stream of biting zingers about the law and the legal profession that continued until his death in 1910.¹⁵

But there were not that many newsworthy events in the territory. So, among other things, the inventive writer pointed his creative pen at the world of lawyers and the law. In *Roughing It*, he said, "In Nevada, for a time, the lawyer, the editor, the banker, the chief desperado, the chief gambler, and the saloon-keeper, occupied the same level in society, and it was the highest."¹⁶ Surveying the crop of lawyers, it was his opinion, "If we had as many preachers as lawyers, you would find it mixed as to which occupation could muster the most rascals."¹⁷

One fictional tall tale contrived for publication by Twain was about a practical joke played on a pretentious Eastern lawyer who came out to serve as the territorial United States Attorney. In order to give the greenhorn dude something to do, the locals fabricated a story about how one man's land had slid downhill and stacked on top of the tract of his neighbor. He wanted the trespassing

property removed and complained. Eager to please, the prosecuting attorney took on the case without inspecting the scene or checking the facts. He filed a lawsuit to right the grievous wrong and presented the case in court. Rising to deliver his closing argument:

[He] pounded on the table, he banged the law books, he shouted, and roared, and howled, he quoted from everything and everybody, poetry, sarcasm, statistics, history, pathos, bathos, blasphemy, and wound up with a grand war whoop for free speech, freedom of the press, free schools, the Glorious Bird of America, and the principles of eternal justice! [Applause]¹⁸

Only a Mark Twain could capture the farcical hilarity of this summation by this buffoon of an attorney ranting about a phony claim. It was a ridiculous concoction, but it sold newspapers and widened Twain's reputation. He advised his readers that this pompous fool of an advocate was to learn some two months later that the whole thing had been a hoax.

He related to his territorial readers that "Ranches in Nevada are very scattered – a scattering, perhaps, as lawyers in heaven."¹⁹ Doubling-down on this assessment, he wrote: "Carson City, the capital of Nevada, had a wild harum-scarum population of editors, thieves, lawyers, in fact all kinds of blacklegs."²⁰ Little wonder that Twain hightailed it out of town in 1863 with particular haste after facing possible felony charges for having issued a challenge to a duel.²¹

Crime reporter on the bawdy Barbary Coast

Twain continued his budding career as a journalist in rough and tumble early San Francisco. As a novice reporter on the prowl for stories, he built a reputation for insightful reporting of court proceedings, police calls and nefarious deeds committed in the sordid back alleys of the "City That Knows How."²²

No writer has better captured the flavor of gritty justice in the cesspool of San Francisco's early criminal courts than Twain:

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“You cannot imagine what a horrible hole that Police Court is. The cholera itself couldn’t stand it there . . . it has but one window, and now that is blocked up . . . there is not a solitary air-hole as big as your nostril about the whole place . . . down two sides of the room, drunken filthy loafers, thieves, prostitutes, chicken-stealers, witnesses, and slimy guttersnipes who come to see, and belch and issue deadly smells, are banked and packed, four ranks deep – a solid mass of rotting, steaming corruption. In the center of the room are [the attorneys who] would do for a censor to swing before the high alter of hell . . . and not a single crack or crevice in the walls to let in one poor breadth of God’s pure air! . . . [The] Judge will die shortly if this thing goes on.”²³

Such colorful reporting gained Twain the recognition that catapulted him into the national limelight as an insightful social commentator. In a parting shot at the quality of justice in the Golden State after leaving San Francisco in 1865, he later reflected, “California had a population that ‘inflicted’ justice after a fashion that was simplicity and primitiveness itself.”²⁴

A love-hate relationship with lawyers

Mark Twain had a love-hate relationship with the legal profession that he developed over a lifetime from watching his father and brother, studying attorneys at close hand, researching law for his stories and retaining counsel in numerous lawsuits about his copyrights.²⁵ He urged that good judges and lawyers can advance just results and that the corrupt or inefficient ones defeat society’s interest in maintaining order. Always aiming to bring truth to light, he liberally wielded his quill to promote laws and practices that emphasized moral duties and justice.

A trial vignette in *The Adventures of Tom Sawyer* presents a good vs. evil scenario often repeated in Twain’s writings. The town drunk Muff Potter is charged with a graveyard murder that he did not commit. He is placed on trial and

ultimately vindicated. The real culprit is identified through the honest actions of the trial judge, a dogged defense attorney and Tom Sawyer serving as a surprise witness who reluctantly comes forth to tell the true facts in court at the trial about what he saw at midnight at the graveyard site of the murder. As a reward for his honesty, the trial judge commends Tom and hopes “to see Tom a great lawyer or great solider someday . . . trained in the best law school in the country.”²⁶ In *Tom Sawyer*, Twain portrays the legal system at its finest hour: moral righteousness is achieved when courts are properly administered and the legal process gets it right by unmasking the truth.

In contrast, where Twain’s courts are run by corrupt or incompetent judges or incapable attorneys, the ideal of justice fails. In *Tom Sawyer, Detective*, a falsely charged innocent man is represented by a bumbling defense attorney assisted by Tom Sawyer. Huck Finn describes the ineffectual lawyer as “a mud-turtle of a back-settlement lawyer [who] didn’t know enough to come in when it rains, as the saying is.”²⁷ The hapless defense lawyer cannot cross-examine his way out of a bound appellate brief: “he tackled the witness, but it didn’t amount to nothing; and he made a mess of it . . . The lawyer for the prostitution (sic) looked very comfortable, but the judge looked disgusted.”²⁸ This mockery of justice gets no better when the incapable judge resorts to “pulling his bowie [knife] and laying it on his pulpit” and is “so astonished and mixed up he didn’t know what he was about hardly.”²⁹ An innocent man is convicted. It was a mighty sad day for justice in this fictional court.

Twain delights in cynically describing the many ways lawyers can impede the search for ideal justice. In *The Gilded Age*, a damsel in distress criminal defendant is assured by counsel, “We’ll do everything for you. You couldn’t have meant [to commit murder], it must have been insanity, you know, or something of that sort. We’ll get you off – the best counsel, the lawyers in New York can do anything!”³⁰ Of course, the defense attorney’s strategy is delay, delay and delay: “Bless my life, what lawyers they have in New York! Give them

money to fight with, and the ghost of an excuse, and they would manage to postpone anything in the world, unless it might be the millennium or something like that.”³¹

Annoyed by such attorney shenanigans, Twain observes, “The lawyers’ opinions do not disturb me, because I know that those same gentlemen could make as able an argument in favor of Judas Iscariot.”³² His sardonic take on a New York law firm that opposed him in litigation was that it “had a great and lucrative business and not enough conscience to damage it.”³³

Twain vs. the jury system

Twain did not care much for our jury system. He believed that lawyers too often manipulate jurors for their own personal advantage, not for the public good in the search for the truth. Throughout his life, he railed against inequities of a process in which twelve randomly selected jurors, then all white males, are summoned to make life and death decisions.

In his typical tongue-in-cheek manner, Twain stated, “Trial by jury is the palladium of our liberties. I do not know what a ‘palladium’ is, having never seen a ‘palladium,’ but it is a good thing no doubt at any rate.”³⁴ He pronounced that trial juries were “the most ingenious and infallible agency for defeating justice that human wisdom could contrive.”³⁵ An avowed elitist, he commented that the law “compels us to swear in juries composed of fools and rascals because the system rigidly excludes honest men and men of brains.”³⁶

Stressing his opinion how poorly constituted juries can get it wrong, he provided readers with a fictional account how a jury miscarried justice by rendering a not guilty verdict in a slam-dunk case against a plainly guilty defendant:

It was a jury composed of two desperadoes, two low beer-house politicians, three barkeepers, two ranchmen who could not read, and three dull, stupid, human donkeys. . . . What else

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could one expect? The jury system puts a ban upon intelligence and honesty, and a premium upon ignorance, stupidity and perjury.”³⁷

If it had been up to law reformer Twain, he would have swept away the jury system: “It is a shame that we must continue to use a worthless system because it *was* good a thousand years ago . . . I desire to tamper with the jury law. I wish to so alter it as to put a premium on intelligence and character, and close the jury box against idiots, blacklegs, and people who do not read newspapers.”³⁸ Emphasizing this view, he asked,

“Why could not the jury law be so altered as to give men of brains and honesty an *equal chance* with fools and miscreants?”³⁹ It is little wonder that he wryly concluded that “The humorist who invented trial by jury played a colossal practical joke on the world.”⁴⁰

Towards a more perfect legal system

We have come a long way in improving the justice system and raising attorney standards since Mark Twain’s day. Given the many changes to court procedures and better oversight of attorneys, he might hardly recognize the present-

day judicial system. But Twain probably could find much to parody. If he were with us, he would be still satirizing lawyers and judges as a means to promote the moral and ethical principles on which law is grounded.

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³ MARK TWAIN, MARK TWAIN’S AUTOBIOGRAPHY 274-75 (1924).

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⁶ MARK TWAIN, ROUGHING IT II, 1 (1872). [ROUGHING IT].

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⁸ PAINE, *supra* note 4, at 221-22.

⁹ D.M. McKEITHAN, COURT TRIALS IN MARK TWAIN AND OTHER ESSAYS 3 (1958).

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¹¹ JOHN LAUBER, THE INVENTIONS OF MARK TWAIN 130 (1990).

¹² Letter by Mark Twain in 1874, quoted in THE SELECTED LETTERS OF MARK TWAIN 85 (Charles Neider ed. 1982).

¹³ MARK TWAIN, THE AUTOBIOGRAPHY OF MARK TWAIN 107 (Charles Neider ed. 1959). [TWIN AUTOBIOGRAPHY].

¹⁴ PAINE, *supra* note 4, at 193-204.

¹⁵ PAINE, *supra* note 4, at 201-07.

¹⁶ ROUGHING IT, *supra* note 6, at II, 53.

¹⁷ Letter by Mark Twain to *Territorial Enterprise*, February 6, 1863, in MARK TWAIN OF THE ENTERPRISE 57 (Henry Nash Smith, ed. 1957).

¹⁸ ROUGHING IT, *supra* note 6, at I, 238.

¹⁹ “Washoe — ‘Information Wanted,’” reported by Mark Twain in May 1864 in the *Territorial Enterprise*, in BRESLER, *supra* note 5, at 89.

²⁰ MARK TWAIN, “Roughing It Lecture, in MARK TWAIN SPEAKING 48 (Paul Fatout ed. 1976).

²¹ PAINE, *supra* note 4, at 249-52.

²² *Id.* at 253-56.

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²⁴ ROUGHING IT, *supra* note 6, at II, 75.

²⁵ See, e.g., *Clemens v. Belford, Clark & Co.*, (C.C.N.D. III. 1883).

²⁶ MARK TWAIN, TOM SAWYER 251 (1876).

²⁷ MARK TWAIN, TOM SAWYER, DETECTIVE 159 (1896).

²⁸ *Id.* at 162.

²⁹ *Id.* at 163, 168.

³⁰ MARK TWAIN & CHARLES DUDLEY WARNER, THE GILDED AGE: A TALE OF TODAY 329 (1896). [GILDED AGE].

³¹ *Id.* at 359-60.

³² Letter by Mark Twain to the *New York Tribune* in 1874, in MARK TWAIN: COLLECTED TALES, SKETCHES, SPEECHES, & ESSAYS 1852-1890 549 (Louis Budd ed., 1992), in BRESLER, *supra* note 5, at 91.

³³ TWAIN AUTOBIOGRAPHY, *supra* note 13, at 235.

³⁴ ROUGHING IT, *supra* note 6, at II, 58. (note: a “palladium” is anything believed to provide protection or safety).

³⁵ *Id.* at II, 55-56.

³⁶ *Id.* at II, 56.

³⁷ *Id.* at II, 57.

³⁸ *Id.* at II, 58.

³⁹ *Id.*

⁴⁰ Letter by Mark Twain to *The New York Tribune*, March 10, 1875, quoted in BRESLER, *supra* note 5, at 95.