The Law According to Mark Twain

The esteemed American writer was fed up with the jury process, didn’t care much for attorneys, and took nearly every opportunity to criticize the profession.

BY JOHN G. BROWNING

SAMUEL LANGLEHORNE CLEMENS, BETTER KNOWN TO ALL OF US BY HIS PEN NAME MARK TWAIN, has been called everything from the greatest humorist of his age to the father of American literature. One thing he could not be called, however, is a fan of lawyers, jury trials, or the law in general. Twain even had a brother, Orion Clemens, who became a lawyer but wasn’t spared from the writer’s scathing wit. Twain once observed that Orion “would examine both sides of a case so diligently and so conscientiously that when he got through with his argument neither he nor a jury would know which side he was on.”

Yes, Twain rarely missed a chance to deliver a biting criticism of lawyers and the legal profession. Discussing the sparse and widely spread-out nature of ranches in Nevada, he pronounced them as scattered as “lawyers in heaven.” Referring to one New York law firm, Alexander & Green, which represented him in a contract dispute, Twain said it “had a great and lucrative business and not enough conscience to damage it.” And consider the following harsh if not humorous indictments of lawyers:

- “Lawyers are like other people—fools on the average; but it is easier for an ass to succeed in that trade than any other.”

- “The more I see of lawyers, the more I despise them. They seem to be natural, born cowards, & on top of that they are God damned idiots. I suppose our law firm are above average; & yet it would be base flattery to say that their heads contain any thing more valuable than can be found in a new tripe.”

- “They all laid their heads together like as many lawyers when they are gettin [sic] ready to prove that a man’s heirs ain’t got any right to his property.”

- “If we had as many preachers as lawyers, you would find it mixed as to which occupation could muster the most rascals.”

Twain found much to criticize in the legal system of 19th-century America. He abhorred legalese, calling it “the infernal phraseology of the law.” He reserved particular venom for the byzantine wording of most contracts, saying, “I cannot get far in the reading of the commonest and simplest contract—with its ‘parties of the first part,’ and ‘parties of the second part,’ and ‘parties of the third part,’—before my temper is all gone.” And for someone who enjoyed the protections offered by copyright law, Twain was among its harshest detractors. He once wrote, “Whenever a copyright law is to be made or altered, then the idiots assemble.” On another occasion he called U.S. copyright laws “far and away the most idiotic that exist anywhere on the face of the earth.” In the realm of criminal law, Twain voiced frustration with the insanity defense in its infancy, once describing it as a plea “that would have saved Cain.”
None in the legal system escaped Twain’s poison pen. Those charged with interpreting the law, he once noted, “can always be depended on to take any reasonably good law and interpret the common sense all out of it. They can be depended on, every time, to defeat a good law, and make it inoperative—yes, and utterly grotesque, too, mere matter for laughter and derision.” And in his classic *The Innocents Abroad*, Twain describes a mock trial being held aboard a cruise ship (where a purser stood accused of stealing a coat) as a microcosm of everything that is wrong with the justice system:

The witnesses were stupid and unreliable and contradictory, as witnesses always are. The counsel were eloquent, argumentative, and vindictively abusive of each other, as was characteristic and proper. The case was at last submitted and duly finished by the judge with an absurd decision and a ridiculous sentence.

Twain’s strongest condemnations were directed at that most hallowed of institutions: the jury trial. He felt this concept, “admirably framed” by Alfred the Great “to secure the most hallowed of institutions: the jury trial. He felt this system rigidly excludes honest men and men of brains.”

As Twain said, “The jury system puts a ban upon intelligence and honesty, and a premium upon ignorance, stupidity, and perjury.” In an age of gossip, street talk, and questionable reporting on current events, Twain didn’t trust prospective jurors willing to swear that they knew nothing. Instead, he actively called for a more intelligent juror willing to treat testimony under oath with greater weight than “newspaper reports based upon mere hearsay.”

Twain was even willing to alter the laws governing jury service so “as to put a premium on intelligence and character, and close the jury box against idiots, blacklegs, and people who do not read newspapers.”

It’s easy to forget the enmity of Twain’s characterizations of the legal system, especially when most readers are only familiar with his more jocular observations, such as when he uses the amusing mispronunciations of narrator Huck Finn to describe adolescent Tom Sawyer’s service as *an impromptu defense lawyer getting ready “to cross-examine [a witness] to death” after “the lawyer for the prostitution” has finished.* Twain even occasionally had fun with trial by jury, once writing that it “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.”

Given his strong feelings about the law, perhaps the most surprising revelation about Twain is that he once studied it, ostensibly at the urging of his aunt. His legal education lasted “an entire week,” at which point Twain abandoned it “because it was so prosy and tiresome,” later writing his mother and sister, “I never intend to be a lawyer. I have been a slave several times in my life, but I’ll never be one again.” He even asked his mother to tell his hopeful Aunt Mary “that I am sorry she thought I intended to study law, because to my mind, that is proof positive that her excellent judgment has erred this time. I do not love the law.”

What would Twain think of our modern legal system? Hopefully, he wouldn’t find quite as much to criticize. For all of his vitriol, Twain was someone who depended on and profited from the help that lawyers routinely provided, from contracts and copyrights to protection from creditors and even patents for three inventions. But perhaps the most enduring assist has come from those lawyers over the years who have fought to protect Twain’s works, including *The Adventures of Huckleberry Finn*, from censorship. Mr. Twain, I guess you needed us after all.

**Notes**

3. Supra note 1, at 235 (Ch. 46).
10. *Mark Twain, Mark Twain’s Notebook* 382 (Ch. 33) (Albult Bigelow Fae ed., 1955). Twain wrote this in 1903.
11. Letter to H.C. Christianiacy, Dec. 18, 1887, in *The Selected Letters of Mark Twain* 173, 174 (Charles Neider ed., 1982). Book piracy was rampant at the time, which may have been the source of Twain’s frustrations.
13. Supra note 11.
15. *Mark Twain, Roughing It*, Ch. 48, in 2 *The Unabridged Mark Twain* 551 (Lawrence Teacher ed., 1979). Twain wrote this in 1872.
16. Id.
17. Id.
18. Id.
20. Supra note 15.
21. Supra note 15, 551 at 710.
22. Letter to Pamela A. Moffett (Twain’s sister) and Jane Lampton Clemens (Twain’s mother), Oct. 25, 1861, in 1 *Mark Twain’s Letters* 129, 132 (Edgar Marquess Branch, et al., eds. 1987).

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