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## Thomas Nast's Crusading Legal Cartoons

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*Under the Thumb*  
Harper's Weekly, Aug. 19, 1871

William Tweed's thumb crushes New York City while New Jersey, in the foreground, prospers with industry, trade, homes, and a flourishing public school.

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## THOMAS NAST'S CRUSADING LEGAL CARTOONS

*Renee Lettow Lerner*<sup>†</sup>

The cartoonist Thomas Nast (1840-1902) was in his heyday a political institution, with each of his pictures helping to form public opinion. His influence reached its height with his relentless caricatures of Boss Tweed and the Tammany Hall Ring in New York City. In 1871, the *Nation*, edited by E.L. Godkin, proclaimed: "Mr. Nast has carried political illustrations during the last six months to a pitch of excellence never before attained in this country, and has secured for them an influence on opinion such as they never came near having in any country."<sup>1</sup>

Nast contributed to American political and cultural iconography in many ways. He created classic images of the rotund, bearded and fur-trimmed modern Santa Claus, influenced by Clement Moore's "A Visit From St. Nicholas" and the Pelze-Nicol of his native Germany. He enlivened political life with the Republican elephant and the Democratic don-

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<sup>†</sup> Associate Professor of Law, George Washington University Law School. Copyright © 2010 by Renee Lettow Lerner.

<sup>1</sup> Quoted in Albert B. Paine, *Th. Nast: His Period and His Pictures* 203 (1904).



*The Tammany Tiger Loose.* — “What Are You Going To Do About It?”  
Harper’s Weekly, Nov. 11, 1871

The Tammany tiger ravages the Republic, her broken sword of Power and helmet of the Ballot lying nearby. Beneath her are a shredded American flag and the torn banner of Law. The tiger wears a collar marked “Americus,” the name Tweed bestowed on his firemen’s company, also known as the “Big Six.” Tweed decided on the snarling tiger for the company’s symbol. The female figure lying face up in the arena is Justice, with her broken scales and sword. The male figure lying beyond Justice is Mercury, god of commerce. Tweed, dressed as Emperor, and his Tammany cronies look on with satisfaction from their place of honor in the arena; Tweed holds an “Iron Rod.” The standards behind them are marked “Spoils.” The scene is reminiscent of wild beasts attacking Christians in Roman arenas. For an explanation of the artistic sources Nast drew on in creating this cartoon, see Kerry A. Morgan, *From the Courtroom to the Gallows: Picturing Justice in American Visual Culture, 1850-1880*, 221-22 (2002) (Ph.D. dissertation).

key, as well as the ferocious Tammany tiger. His exploits with the pencil, and later the pen, are the subject of several books, dissertations, and articles. His dedicated following founded the Thomas Nast Society, and until 2002 it published a quarterly journal, filled with articles of interest to Nast enthusiasts, and a newsletter called the *Nasthead*.

One part of Nast’s work not often highlighted but as brilliant as the rest is his legal cartoons. Nast’s best work was done with high moral zeal, and his satire of lawyers and the legal system was no exception. His attacks grew out of frustration with the ineffectiveness of legal remedies against the Ring. He was especially incensed that prominent lawyers such as David Dudley Field not only were willing to represent members of the Ring, but could cleverly exploit legal technicalities of their own making to win advantage. Nast excoriated both the corruption and bribery of the bench by the Ring, and also, more generally, the adversarial system as it was developing in America. Before turning to this work, however, a look at Nast’s background helps to explain his reforming fervor, its targets, and his methods.

## A REFORMER STARTS WORK

Political crusading was in Nast's blood. Nast was born in a military barracks in Landau, a fortified town in the Palatinate near Alsace. His father, a trombone player in a military band, was an open supporter of the strivings for reform that culminated in the revolutions of 1848. So outspoken was the elder Nast that his commanding officer suggested the United States was the place for someone inclined to voice his opinions so freely.<sup>2</sup> Nast took the hint, and in 1846 sailed to New York City with his family, including six-year-old Thomas.

Young Nast thus grew up with the tenets of mid-nineteenth-century German liberalism: nationalism, separation of church and state, and belief in progress.<sup>3</sup> Those beliefs resonated with movements in American politics in Nast's youth, especially the founding of the Republican party. Throughout his life, Nast's political beliefs were the subject of his best art. Nast's parents despaired of making Thomas into a musician like his father, as all he did was draw. They sent him to study art with a local German-American painter.

Fortunately for Nast, just as his artistic career was starting, technical innovations in publishing made possible a new vehicle for his talents: the illustrated weekly newspaper. In 1855, when Nast was fifteen, Frank Leslie launched the weekly *Frank Leslie's Illustrated Newspaper* in New York City. At ten cents a copy, the new weekly could reach a large audience.<sup>4</sup> Leslie, whose real name was Henry Carter, was a wood engraver from England. Wood engraving was a laborious process, often too slow to illustrate current news; a single engraving could take a skilled worker weeks to complete.<sup>5</sup> In the early 1850s, after coming to the United States, Leslie realized he could divide a drawing into a number of small blocks and give each to a separate engraver.<sup>6</sup> Leslie used his new technique to produce quickly illustrations of current events for his new paper. He soon hired fifteen-year-old Nast to draw illustrations at \$4 per week.<sup>7</sup>

At *Leslie's*, Nast began to study the work of the English cartoonists of *Punch*, an illustrated weekly founded in 1841.<sup>8</sup> The *Punch* cartoonists abandoned the exaggerations of earlier cartoonists such as James Gillray in favor of more realistic portrayals of subjects. *Punch* made the new style of political caricature an English institution, popular and long-lived. Nast took from these illustrators the use of portraits, animals, and symbols.<sup>9</sup>

<sup>2</sup> Id. at 7.

<sup>3</sup> Morton Keller, *The Art and Politics of Thomas Nast* 7 (1968).

<sup>4</sup> J. Chal Vinson, *Thomas Nast: Political Cartoonist* 2 (1967).

<sup>5</sup> Steel engraving was even slower at the time. The great nineteenth-century French cartoonists such as Honoré Daumier used lithography, or drawing in wax or oil on stone, but wood engraving remained popular in England and America.

<sup>6</sup> Charles F. Deems, *Frank Leslie*, 7 *Frank Leslie's Sunday Magazine* 369, 370 (1880). See also Budd Leslie Gambee, *Frank Leslie and His Illustrated Newspaper, 1855-1860* (1964).

<sup>7</sup> Vinson, *supra* note 4, at 2.

<sup>8</sup> The three main *Punch* illustrators were John Leech, John Gilbert, and John Tenniel, who followed the style of *Punch* founder John Doyle and his son Richard. Id. at 2.

<sup>9</sup> Id. at 2.

Like the *Punch* cartoonists, Nast used the British lion, John Bull, and Brother Jonathan, a forerunner of Uncle Sam, and he added many more — including the Republican elephant and Democratic donkey.

The early illustrated weeklies had a reforming streak that suited Nast well. Nast's most important assignment at *Leslie's* was to draw illustrations for the paper's successful attack on "swill milk," polluted milk sold with the complicity of corrupt city officials.<sup>10</sup> Other illustrated weeklies sprang up after *Leslie's*. Nast's first set of drawings for *Harper's Weekly*, founded in 1857, ridiculed scandals in the police department.<sup>11</sup> Nast continued his reforming work as a staff illustrator at the *New York Illustrated News*. That paper also sent him to England to cover a celebrated boxing match between John Heenan of Benicia, California and Thomas Sayers, the English champion. After the match, officially a draw, Nast had run out of money, and Heenan loaned him enough to get to Italy to follow Giuseppe Garibaldi's campaign for four heady months in 1860.<sup>12</sup> Garibaldi's drive for national unity inspired Nast, brought up on his father's liberalism.

Back home, fighting for national unity soon began. Nast found himself in a situation perfect for his talent and temperament. He came into his own when waging moral crusades against those he deemed scoundrels: Confederates, slave owners, and Democrats. Furthermore, the war increased the demand for illustrators generally. In 1862, Nast achieved his goal of becoming a staff artist for the best known of the illustrated weeklies, *Harper's*. With a circulation over 100,000, *Harper's* gave Nast a huge audience and national fame.<sup>13</sup> The Northern public reveled in Nast's portrayals of the wickedness of the South, the righteousness of emancipation, and the sufferings of war. In 1864, Nast threw himself into the defeat of the Copperhead (peace movement) Democrats and the reelection of Lincoln. His work brought tributes from high places. General Ulysses Grant said of Nast: "He did as much as any man to preserve the Union and bring the war to an end."<sup>14</sup> Lincoln was said to have declared, "Thomas Nast has been our best recruiting sergeant. His emblematic cartoons have never failed to arouse enthusiasm and patriotism, and have always seemed to come just when these articles were getting scarce."<sup>15</sup>

It was only after the war, however, that Nast developed his mature style of caricature and did his greatest work. In the mid-1860s, Nast fully adopted the style of portrait caricature that he had learned from the *Punch* cartoonists. To this style he brought a clarity of line new in his work. In the late 1860s, with the support of the reforming owner of *Harper's*, Fletcher Harper, Nast launched a campaign for civic reform in New York City.

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<sup>10</sup> Paine, *supra* note 1, at 24.

<sup>11</sup> Thomas Nast, "The New York Metropolitan Police: A Pictorial Analysis of the Report to the Legislature," wood engraving, *Harper's Weekly*, 19 Mar. 1859.

<sup>12</sup> Paine, *supra* note 1, at 43-44.

<sup>13</sup> Vinson, *supra* note 4, at 5.

<sup>14</sup> Keller, *supra* note 3, at 13.

<sup>15</sup> Paine, *supra* note 1, at 69.

## THE TWEED RING AND ITS ALLIES OF THE BENCH AND BAR

The Tweed Ring embodied everything Nast found vile in municipal government. Nast was a committed Republican, and the Democratic affiliation of the Ring offended him. He was also raised in an atmosphere of German liberalism, committed to strict separation of church and state, and the Ring's base of Irish Catholics and its transfer of state money to Catholic charities disturbed him. Most of all, Nast believed that government should have firm moral purpose, and the Ring existed only for graft.<sup>16</sup> The Ring therefore provoked Nast's most indignant cartoons. One theme to which Nast returned again and again was the Ring's corruption of justice. He depicted Justice as a beautiful, pure young woman draped in classical white, contrasted with corruptionists in dark contemporary garb.

When Nast started his campaign against Tweed and the Ring, Tweed's power seemed unbreakable. Tweed, whose Scottish ancestors had come to New York in the eighteenth century, built his power by gaining control of the existing Tammany Hall faction of the Democratic party in New York and by appealing to new Irish Catholic immigrants. Earlier Tweed had held a variety of jobs, including chair maker, bookkeeper, fireman, and chief of the Big Six Fire Company, the very one whose fire trucks Nast loved to follow as a boy.<sup>17</sup> Tweed became a city alderman in 1852, and a Grand Sachem of Tammany Hall in 1863. By 1865 he controlled the organization.<sup>18</sup> The other main members of the Ring were City Chamberlain Peter Sweeny, known as the "brains," Comptroller Richard Connolly, and Mayor A. Oakey Hall, more socially respectable than the rest but fully compliant.<sup>19</sup> Many of Nast's cartoons assaulting the Ring showed these four together.

Nast's and Harper's steadfastness was all the more remarkable because the Ring had famed much of the press with a combination of bribes and threats. The Ring's most potent form of control was the city's advertising budget. Eighty-nine papers in the New York area took in significant city advertising, of which a third were virtually dependent on this money.<sup>20</sup> Desperate to end Nast's cartoons, members of the Ring tried to bribe and then threaten Harper's with rejecting the company's textbooks from New York City classrooms. Harper's board almost caved at this, but Fletcher Harper kept them firm and Nast's cartoons continued. In 1871, a Ring supporter offered Nast himself \$500,000 to go to Europe to "study art," but Nast declared he would first see the Ring leaders in prison. Physical threats followed, and Nast moved his family to Morristown, New Jersey for their safety.<sup>21</sup>

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<sup>16</sup> Keller, *supra* note 3, at 179.

<sup>17</sup> Leo Hershkowitz, *Tweed's New York: Another Look* 5-14 (1978).

<sup>18</sup> Alexander B. Callow, Jr., *The Tweed Ring* 14, 28-29 (1965); Denis T. Lynch, "Boss" Tweed: The Story of a Grim Generation 66 (1927); Oliver E. Allen, *The Tiger: The Rise and Fall of Tammany Hall* 86-93 (1993).

<sup>19</sup> Vinson, *supra* note 4, at 15-16; Seymour J. Mandelbaum, *Boss Tweed's New York* 66-67 (1965).

<sup>20</sup> *Id.* at 16. See also Kenneth D. Ackerman, *Boss Tweed: The Rise and Fall of the Corrupt Pol Who Conceived the Soul of Modern New York* 97-98 (2005).

<sup>21</sup> Thomas N. St. Hill, *Cartoons and Illustrations* 18 (1974); Vinson, *supra* note 4, at 19-20.



*Corrupt Judiciary on the Bench*  
 Harper's Weekly, Jan. 27, 1872

Justice upends a bench full of Ring judges, beneath a sign reading, "Security of the Rights of Person and Property." (This caption draws on John H. Langbein, Renée Lettow Lerner, & Bruce P. Smith, *History of the Common Law: The Development of Anglo-American Institutions* 508 (2009) (caption for illustration 8.5).)

The Ring made most of its money from overcharging on construction work. To facilitate this process, Tweed, who was a state senator, persuaded the New York legislature to pass in 1869 an act creating a new four-man Commission of Public Works for the City.<sup>22</sup> The members of the Commission happened to be Tweed, Sweeny, Connolly, and Hall. With this new regime, the potential for graft grew exponentially. Nast's cartoons assailed the new commission; in one drawing, he showed the four Ring leaders as statues on Tammany Circle in Central Park.<sup>23</sup> The members of the Ring reaped lavish gains. Tweed moved his family to a large house on Fifth Avenue, and in May 1871 put on a lavish wedding for his eldest daughter, who was estimated to have been given over \$700,000 in wedding presents.<sup>24</sup> Eventually, treachery revealed the Ring's methods. In June 1871, former Sheriff James O'Brien, upset at what he viewed as his

<sup>22</sup> Ackerman, *supra* note 20, at 72-73, 80-87.

<sup>23</sup> Thomas Nast, "Shadows of Forthcoming Events," wood engraving, *Harper's Weekly*, 4 Jun. 1870.

<sup>24</sup> Ackerman, *supra* note 20, at 146.

paltry share of the spoils, turned over to reforming editor George Jones of the *New York Times* copies from the books of the city comptroller, Richard Connolly.<sup>25</sup> The *Times* began to print the records in July. The revelations were astonishing. Most dramatic were the contracts for construction on the New York County Court House, known as the Tweed Courthouse. Andrew Garvey, the plasterer, was paid \$2,870,464 for work worth \$70,000. The press dubbed Garvey "the prince of plasterers" and estimated that for the amount he was paid he could have covered the walls to a depth of six feet, with gold mesh for reinforcement.<sup>26</sup>

To maintain its dominance, the Ring handed out municipal jobs and favors in exchange for votes, especially the votes of new Irish immigrants. Naturalizing these immigrants quickly and covering up the Ring's frauds required control of the courts. Judicial elections kept enough city judges dependent on the Ring for their all-important Democratic renominations. When a well-respected judge — a Democrat — began to interfere with fraud by city officials, Tammany in 1863 arranged for the nomination for his seat to go instead to a trustworthy supporter, the Irish-born John McCunn.<sup>27</sup> McCunn, whom the state senate removed from office for corruption in 1872, was a model Tammany judge. Just before elections, McCunn fraudulently naturalized dozens of immigrants at a time. In 1869, the *New York Tribune* commented: "It is rumored that Judge McCunn has issued an order naturalizing all the lower counties of Ireland, beginning at Tipperary and running down to Cork. Judge Barnard [another Ring judge] will arrange for the northern counties at the next sitting of Chambers."<sup>28</sup>

Ring judges were infamous for their own graft, not just facilitating that of others. Judges used their powers to refer cases to a referee to get kick-backs.<sup>29</sup> Even more feared than costly referrals were the abuse of judges' equitable powers of injunction and receivership. The Field Code of Civil Procedure of 1848, drafted by reformer David Dudley Field, had merged

<sup>25</sup> Id. at 160-62.

<sup>26</sup> Martin, *Causes and Conflicts: The Centennial History of the Association of the Bar of the City of New York 1870-1970*, at 63 (1970); Lynch, *supra* note 18, at 338-39.

<sup>27</sup> This episode is recounted in Renée L. Lerner, *From Popular Control to Independence: Reform of the Elected Judiciary in Boss Tweed's New York*, 15 *Geo. Mason L. Rev.* 109, 119 (2007).

<sup>28</sup> *Irish Citizenship*, *N.Y. Tribune* (May 23, 1869), quoted in Martin, *supra* note 26, at 77.

<sup>29</sup> The two masters of this practice were Ring judges Albert Cardozo, the father of Benjamin, and George Barnard. Judge Cardozo gave his valuable referrals to Gratz Nathan, his nephew. Barnard gave his to his former law partner, James Coleman. On one occasion two lawyers, one representing the plaintiff and the other the defendant in an action, agreed in writing to refer the case to Gratz Nathan, and handed up an order of reference to Judge Barnard. Barnard exclaimed: "Gratz Nathan! No, gentlemen; "Jimmy" Coleman is my Gratz." Matthew P. Breen, *Thirty Years of New York Politics, Up-to-Date 390* (1899). See Lerner, *supra* note 27, at 125. Cardozo's gift of business to his nephew was not limited to referrals and receiverships. The lawyer George Templeton Strong, for instance, described an encounter with Judge Albert Cardozo in which Cardozo tried to force parties to a suit for partition of real estate to accept Gratz Nathan as a "real estate expert," to be paid \$10,000 for doing no work. 4 *The Diary of George Templeton Strong* 273 (2 Feb. 1870) (Allan Nevins & Milton H. Thomas eds. 1974). See also Andrew L. Kaufman, *Cardozo* 295 (1998).





*Justice on the Rail — Erie Railroad (Ring) Smash Up*  
 Harper's Weekly, Mar. 30, 1872

Justice, standing at the switch, has derailed several cars marked "Erie R.R. Ring," which plunge over a cliff. The center figure is David Dudley Field, who represented the Erie Board. Field clutches Judge George Barnard, who was later impeached for his decisions in the Erie litigation, including granting numerous *ex parte* injunctions. The figure upside down at the bottom is Jay Gould, president of the Erie Railroad, out of whose hat fall documents labeled "Stolen Stocks (English)" and "Stolen Stocks (American)." Into the cloud of smoke at left disappears Thomas Shearman, who was Field's partner and also active in the Erie litigation. (This caption draws on Langbein, Lerner, & Smith, *History of the Common Law* 1065 (caption for illustration 15.11).)

law and equity. The Field Code therefore gave every Supreme Court (the trial court of general jurisdiction) judge in New York powers to enjoin litigants and to put property into receivership. The Ring judges took advantage of these powers to gain political and financial rewards. New York lawyers and businessmen complained that corrupt judges put property into the hands of receivers on frivolous grounds, to be disposed of as they wished. Lawyer George Templeton Strong complained in his diary about abuse of receivership: "Law does not protect property. The abused machinery of Law is a terror to property owners. . . . No city can long continue rich and prosperous that tolerates abuses like these. Capital will flee to safer quarters."<sup>30</sup> Injunctive power was also a major source of political and financial corruption. Lawyers and clients used bribes or political influence to get injunctions, often *ex parte*. Thomas Shearman, David Dudley Field's partner and founder of the firm that became Shearman & Sterling, charged in an anonymous article about the New York judiciary in 1867: "It is certain that some lawyers can always get an injunction or an attachment, and keep it in force for weeks, without a respectable ground for it."<sup>31</sup>

Some of the worst abuses of injunctions occurred in litigation over control of the Erie Railroad in 1868-1870. Ring judges and many members of the elite New York bar were implicated, especially David Dudley Field. Parties to the litigation — who included Cornelius Vanderbilt, Daniel Drew, Jay Gould, and James Fisk — hired dozens of top New York lawyers, including Field.<sup>32</sup> In the course of the lawsuits, elite bar members sought and New York judges granted many *ex parte* injunctions, some of which explicitly enjoined previous injunctions.<sup>33</sup> Bribes or political patronage seemed to have influenced judges; Ring judges were in the thick of the action.<sup>34</sup> The "Erie clique" of Drew, Gould, and Fisk took the precaution of putting Tweed and Sweeny on the Erie board. Parties to the Erie litigation handed out thousands of dollars in bribes to state legislators.<sup>35</sup> In the midst of the scandal, Strong wrote in his diary: "Bench and bar settle deeper in the mud every year and every month. They must be

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<sup>30</sup> 4 Strong Diaries, *supra* note 29, at 264 (Dec. 18, 1869). Strong described the problems with receivers: "No banker or merchant is sure that some person, calling himself a 'receiver,' appointed *ex parte* as the first step in some frivolous suit he never heard of, may not march into his counting room at any moment, demand possession of all his assets and the ruinous suspension of his whole business, and when the order for a receiver is vacated a week afterwards, claim \$100,000 or so as 'an allowance' for his services, by virtue of another order, to be enforced by attachment." *Id.*

<sup>31</sup> On Shearman's reputation and his relationship to Field, see Daun van Ee, David Dudley Field and the Reconstruction of the Law 226-27 (1986).

<sup>32</sup> Martin, *supra* note 26, at 4-5. This paragraph is adapted from John H. Langbein, Renée Lettow Lerner, & Bruce P. Smith, *History of the Common Law: The Development of Anglo-American Institutions* 1064 (2009).

<sup>33</sup> Charles F. Adams, Jr., A Chapter of Erie and an Erie Raid, in *High Finance in the Sixties: Chapters From the Early History of the Erie Railway* 41-42, 47, 52-53 (Frederick C. Hicks ed. 1929); John S. Gordon, *The Scarlet Woman of Wall Street: Jay Gould, Jim Fisk, Cornelius Vanderbilt, the Erie Railroad Wars, and the Birth of Wall Street* 217 (1988).

<sup>34</sup> Adams, *supra* note 33, at 37-41.

<sup>35</sup> *Id.* at 63-67, 70-72, 74.



*David Dudley Field (1805-1894)*

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near bottom now.”<sup>36</sup> The case attracted many newspaper editorials and the dogged investigation of Charles and Henry Adams. Nast relished the opportunity to attack Ring judges and what he viewed as corrupt elite lawyers.

The Ring’s fall was swift. Nast’s onslaught increased in the fall of 1871, as state and municipal elections drew near. Thanks to Nast’s cartoons, the revelations of the *Times*, and treachery among members of the Ring, public opinion turned against Tammany. In October 1871, less than two weeks before the election, the New York Attorney General authorized elite lawyer Charles O’Conor to bring legal actions against the Ring in his name. Within a week, O’Conor and his team of prosecutors obtained from a judge in Albany an arrest warrant for Tweed, charged with defrauding New York City of \$6.3 million.<sup>37</sup> Erie Railway president Jay Gould posted a \$1 million bond, and Tweed avoided jail. The election was a disaster for

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<sup>36</sup> 4 Strong Diaries, *supra* note 29, at 202 (Apr. 9, 1868).

<sup>37</sup> Ackerman, *supra* note 20, at 239, 247.

LERNER, NAST'S CRUSADING LEGAL CARTOONS



*The Game of Fox and Geese; Or, Legal Trials of the Period*  
Harper's Weekly, Mar. 29, 1873

The fox-lawyer dominates the courtroom; he throws dust, from a box marked "Dust. Alias Eloquence" in the eyes of the geese-jurors, who are blinded by it. The fox rests his left hand on a document labeled "The Art of Mystifying by Mr. Pettifogger." In the waste-paper basket are two documents labeled "Justice" and "Right." A large dog, behind the fox, is the court clerk. In the upper left corner a small dog, the judge, looks on timidly. Behind the judge is a shield with the scales of justice and the words "Justice gone to the dogs." Next to the shield a sign on the wall says "Murder is committed accidentally on purpose" and "Bribery and corruption practiced by those of the purest motives." (This caption draws on Langbein, Lerner, & Smith, *History of the Common Law* 521 (caption for illustration 8.13).)

the Ring. Although Tweed himself kept his state senate seat, in every other important contest — state assemblymen, state senators, and aldermen — reform Democrats swept Ring supporters out of office.<sup>38</sup> Peter Sweeny and Richard Connolly fled to Europe. Tweed resigned from his positions as Commissioner of Public Works, director of the Erie Railway Company, and Grand Sachem of Tammany Hall, and settled in to wait for legal action. Even his former base of Irish workers had deserted him. "What the devil's the use o' stickin' to 'm, whin there's nothin' to stick to," one was heard saying.<sup>39</sup>

<sup>38</sup> *Id.* at 254-255.

<sup>39</sup> *Id.* at 258.

Legal proceedings against the Ring proved drawn-out and frustrating for a fiery reformer like Nast. Grand juries approved eight separate indictments against Tweed. Finally, over a year after his political downfall, Tweed was brought to trial on a package of 220 counts of failure to audit and abuse of his public position. The trial featured elite lawyers on both sides. Tweed ensured he would be ably defended by hiring David Dudley Field to represent him. The trial went on for seventeen days, with dozens of witnesses.<sup>40</sup> The two star witnesses for the prosecution were Samuel Tilden, a rising figure in state and national politics who had traced money from city taxes to Tweed's personal bank accounts, and Andrew Garvey, the "prince of plasterers." Garvey, who revealed the Ring's methods of graft in chilling detail, was the only witness who visibly rattled Tweed.<sup>41</sup> The defense called only a few witnesses, and Field skillfully argued there was no evidence that Tweed had intentionally stolen money. The jury began deliberating in the afternoon of January 30, 1873 and remained locked up overnight, having taken over 40 ballots. The next morning, the jurors declared they could not reach a verdict, and the judge discharged them.<sup>42</sup> Prosecutors speculated that several of the jurors must have been bribed. Tweed declared confidently that a jury would never convict him.

The trial, culminating in the hung jury, aroused Nast against both the legal system and the legal profession. "The Game of Fox and Geese," perhaps his best and most biting legal cartoon, was a commentary on Tweed's trial and a critique of the adversarial system in general.

Nast was not alone in this period in criticizing the jury as too easily led astray by lawyers' rhetoric. The late nineteenth century saw a turn away from the optimism about democracy and juries — the trust in the common man — that had prevailed in the first half of the century. Although Nast himself retained hope in the good political sense of the majority of the people, he clearly thought jurors were sitting geese in need of protection from wily lawyers — protection which weak American trial judges could not provide. Others, concerned about lack of property qualifications and waves of immigrants and new voters, despaired of both the electorate and jurors.<sup>43</sup>

The legal system seemed impotent to punish members of the Ring. Despite a number of indictments against them, Sweeny and Connolly had put themselves beyond the reach of New York law in Europe. Mayor A. Oakey Hall survived two criminal trials by the time Tweed's first trial occurred. After his hung jury in January 1873, Tweed faced a civil suit for the recovery of \$6.3 million stolen from the city, but his lawyers had managed to tie up the action in appeals over jurisdiction. In April, Tweed left New York for leisurely travel to Boston and California, and enjoyed himself at his house in Greenwich, Connecticut.<sup>44</sup> The spectacle was infuriating to Nast, who portrayed Tweed and other Ring members making a

<sup>40</sup> *Id.* at 261-265.

<sup>41</sup> Martin, *supra* note 26, at 105.

<sup>42</sup> Ackerman, *supra* note 20, at 261-262.

<sup>43</sup> See *Limited Sovereignty in the United States*, 43 *Atlantic Monthly* 185 (Feb. 1879); Francis Parkman, *The Failure of Universal Suffrage*, 263 *North American Review* 7 (July-August 1878); Charles F. Adams, Jr., *The Protection of the Ballot in National Elections*, 1 *J. of Social Science* 108-09 (June 1869).

<sup>44</sup> Ackerman, *supra* note 20, at 271.



*Blindman's-Bluff. How Long Will This Game Last?*  
Harper's Weekly, Apr. 12, 1873

Blindfolded Justice gropes for members of the Ring. The sign above her reads: "Court of Justice (?): Bribery and Corruption Trials, Murder Trials, Every Day in the Week." Tweed, smiling, presses against the wall on the right; Peter Sweeney, sitting next to Tweed, dodges Justice's outstretched arm. Former Mayor A. Oakey Hall peaks from behind the wall, while Richard Connolly hides behind Justice. Another figure, with a paper marked "Verdict of the Jury" in his pocket, seems ready to give Justice a shove from behind. Lying on the floor ready to trip Justice is the lawyer David Dudley Field, with a paper marked "Tricks of Law" tucked under his arm.

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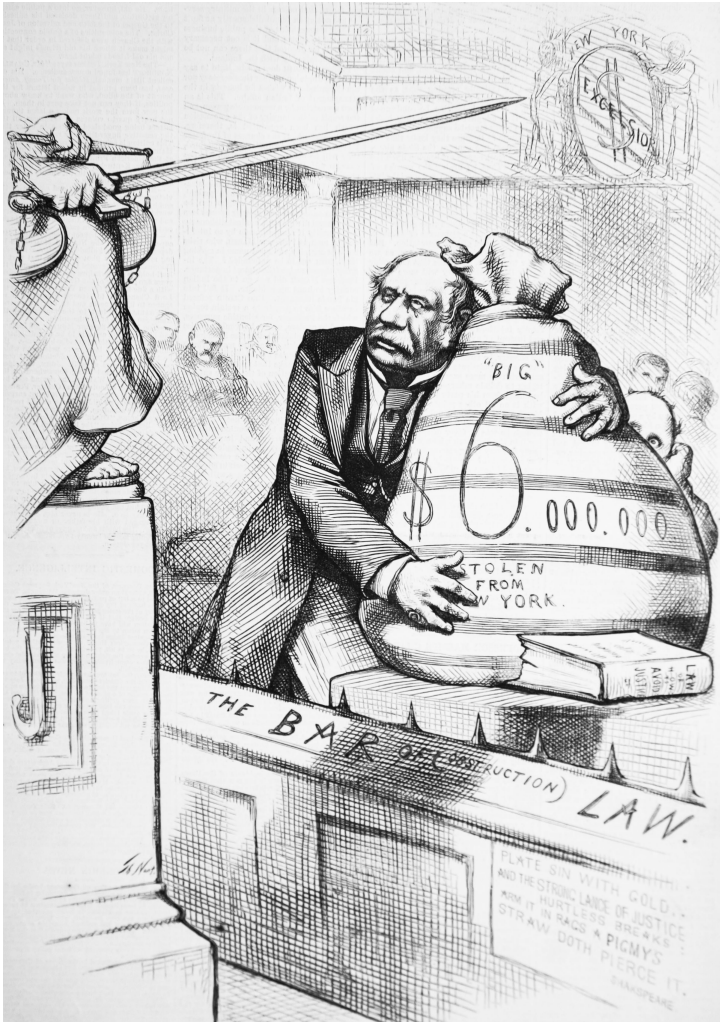
mockery of justice in the cartoon "Blindman's Bluff."

Tweed's second trial, conducted in November 1873, when Field was in Brussels working on international law reform,<sup>45</sup> featured extraordinary measures to prevent tampering with the jury and ended with convictions on a number of counts and a twelve-year prison sentence.<sup>46</sup> When Field returned from Europe, he worked on appealing Tweed's sentence, and in June 1875, the New York Court of Appeals reduced his sentence to one

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<sup>45</sup> While in Brussels, Field was elected president of the Association for the Reform and Codification of the Law of Nations. 2 Legal Masterpieces: Specimens of Argument and Exposition by Eminent Lawyers 964 (Van Vechten Veeder, ed. 1903).

<sup>46</sup> Martin, *supra* note 26, at 110-12; Ackerman, *supra* note 20, at 273-75, 277.



*Princip-als, Not Men — A Lawyer Pleading for His “Client”*  
 Harper’s Weekly, Aug. 7, 1875

Field, standing before Justice at “The Bar of (Obstruction) Law,” pleads for his client with tears streaming down his face. He clutches a massive bag, striped like prison clothes, marked “Big’ 6,000,000 Stolen from New York.” Tweed’s face peers from behind the bag. On counsel’s table next to the bag lies a book titled, “Law of How to Avoid Justice.” Justice’s sword, hanging over Field’s head, points at a coat of arms showing a dollar sign and the word “excelsior,” “ever higher.” On the bar is a sign with a quotation from Shakespeare: “Plate sin with gold, / And the strong lance of justice hurtless breaks; / Arm it in rags, a pigmy’s straw doth pierce it.” The passage is from King Lear, act IV, scene 6. Nast’s cultured wife, the former Sarah Edwards, often helped her husband with captions and Shakespearian references.

year and ordered him to be released.<sup>47</sup> Meanwhile, a new civil suit had begun against Tweed for return of the \$6.3 million, and Charles O'Connor arranged for an arrest warrant for Tweed based on the civil suit. Tweed was promptly rearrested, and unable this time to post bail set at \$3 million.<sup>48</sup> Field once again was the lead lawyer for Tweed, and Nast made Field the central figure in a cartoon about the suit, "Princip-als, Not Men."

Field and Tweed's other lawyers busied themselves filing motions and appeals. They filed motions to reduce bail from the impossible \$3 million, and to quash a large number of criminal indictments still pending against him. They also appealed to the Court of Appeals, challenging the \$6.3 million civil suit as lacking a bill of particulars.<sup>49</sup> Although these motions and the appeal eventually failed, Nast again grew impatient with the pace of legal retribution, and portrayed Justice as tied up in red tape in "Our Modern Mummy."

Tweed was allowed out of jail to visit his family briefly on several occasions in 1875, accompanied by guards, and on the night of December 4, during one of these visits, he disappeared. Police desperately searched for him, and New Yorkers devoured and debated information about his escape in the newspapers. As it turned out, Tweed was hiding on the Palisades, the New Jersey cliffs just across the Hudson River, then thickly covered with woods.<sup>50</sup> From there, he followed news about his escape and his civil trial for \$6.3 million, which the trial judge insisted should proceed.

Undaunted by his missing client and lack of instructions, Field in February and early March 1876 put on an aggressive defense. Nast satirized Field's determined attitude in "The D.D. Field of Gold." Field mocked the lawyers for the state, prominent members of the private New York bar, for failing to bring the other Ring leaders to justice and for groveling to Tweed when he was in power. These lawyers, Field argued, had "once bowed before [Tweed], and there wasn't one of them, so hasty now to prosecute, that did not almost cringe at his feet."<sup>51</sup> Field seemed to be carrying the day. One observer at the trial commented: "[O]ne could see buoyancy and triumph in the whole attitude of David Dudley Field."<sup>52</sup> Reading accounts of the trial in his New Jersey hideout, Tweed began to have hope Field would prevail in the end.

Suddenly in early March, the trial changed dramatically. The seventy-one-year-old Charles O'Connor, originally the main lawyer for the state, had been too sick to attend court for most of trial. Alarmed at how badly the case had been going, he hauled himself out of bed and appeared in court unannounced, "pale, emaciated, and feeble-looking."<sup>53</sup> O'Connor immediately objected to much of Field's evidence, arguing that the lawyers for the state were not on trial and that the focus should remain on Tweed. The judge sustained these objections and the trial turned against

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<sup>47</sup> Martin, *supra* note 26, at 115.

<sup>48</sup> Ackerman, *supra* note 20, at 290.

<sup>49</sup> *Id.* at 290-91.

<sup>50</sup> *Id.* at 295.

<sup>51</sup> Quoted in *id.* at 297.

<sup>52</sup> Breen, *supra* note 29, at 546.

<sup>53</sup> *Id.* at 546.





*Our Modern Mummy*  
Harper's Weekly, Oct. 16, 1875

Justice sits tied up in red tape, her sword immobilized, on a seat labeled "Political Bench." The base on which she sits is labeled "The Supreme Court," the trial court of general jurisdiction in New York, with a massive dollar sign. Both figures beneath her wear prison stripes. The figure on the left is Tweed, labeled "Tammany Ring"; on the right is a figure labeled "Canal Ring." The Canal Ring was a group of contractors and politicians in the counties bordering the Erie Canal that stole public money through fraudulent canal contracts. Governor Samuel Tilden ordered an investigation and sued members of the Canal Ring to recover public money in 1875. (See William C. Hudson, *Random Recollections of an Old Political Reporter* 48-52 (1911).) The caption at the bottom states: "Tammany Tweedledee — 'She is going to punish us.' Canal Tweedledum—'That's the best joke yet.'"

Tweed. On March 9, 1876, the jury found Tweed liable for the entire \$6.3 million.<sup>54</sup>

It seems that Tweed, as soon as he heard of O'Connor's appearance and successful motions, began a flight abroad. He traveled through Florida, Cuba, and eventually to Spain. He was recognized in Cuba, however, and the U.S. government alerted Spanish authorities that he was sailing there. The difficulty was identification; the American chargé d'affaires in Spain had no photograph of Tweed to give Spanish officials who were to make the arrest. The American official, however, had seen Nast's cartoons of Tweed in *Harper's Weekly*. He asked a Spanish friend who subscribed to *Harper's Weekly* if he could borrow a recent copy, and he picked out a Nast cartoon to give to Spanish officials.<sup>55</sup> With Nast's cartoon in hand, Spanish

<sup>54</sup> Martin, *supra* note 26, at 118.

<sup>55</sup> Ackerman, *supra* note 20, at 306-09.



*The (D.D.) Field of Gold, or the Lion's Legal (?) Share*  
Harper's Weekly, Jan. 15, 1876

A snarling Field, as a lion, stands defiantly atop a prison-striped bag labeled "6,000,000 stolen from the City of New York." Under his left front paw is a smaller bag labeled "Bondsmen. Money that belongs to the City of N.Y." Behind him is a cave marked "The Lawyer's Den," whose entrance is strewn with human skulls and bones. Field is alone, without Tweed, who had escaped from jail and was hiding in New Jersey.

authorities were waiting to arrest Tweed when his ship put in. Nast must have savored that detail. The Spanish sent Tweed back to New York, where he arrived in November 1876 and went to jail.

Tweed, rapidly running out of money to pay his lawyers' bills, hired a new lawyer to represent him in criminal matters. In early 1877, Tweed refused to provide Field money to appeal the judgment in the \$6.3 million civil case.<sup>56</sup> Tweed tried to cut a deal to get immunity from prosecution in exchange for testimony, but the effort failed. In April 1878, he died of pneumonia in prison at the age of fifty-five.

<sup>56</sup> Id. at 323.

## DAVID DUDLEY FIELD AND THE HAYES-TILDEN ELECTION

Early in 1877, however, Nast, Tilden, and Field all had other things to think about than Tweed. The Hayes-Tilden presidential election of 1876 produced a fierce controversy, and David Dudley Field was deeply involved. Democratic candidate Samuel Tilden received a majority of the popular vote and 184 electoral votes to Republican Rutherford Hayes's 165, with 20 electoral votes in dispute. Democrats and Republicans accused each other of fraud. In late January, Congress enacted a law establishing a special fifteen-member Electoral Commission to resolve the election dispute. In early February, Field presented the Democratic arguments to the Commission with considerable skill. The Commission, however, in a party-line vote awarded all the disputed electors to Hayes, who then won the election by one electoral vote.<sup>57</sup> Congress approved the Commission's decision in a joint session early in the morning on March 2, and Hayes was inaugurated as President on March 5.

Field's representation of the Democrats before the Electoral Commission provoked Nast into action. For Nast, so committed to the radical Republican cause, Field's actions were further proof of his moral depravity, already well-established through a long line of iniquitous clients. Nast showed his disgust in the cartoon "They Do Each Other Honor."

Nast was not the only person disgusted with Field's professional ethics and unsavory clients. Field's conduct led to an extended debate in the press and among members of the bar. As a result of his actions in the Erie Railroad scandal, Field faced harsh criticism in the press. He began a lengthy correspondence with a particularly sharp critic, editor Samuel Bowles of the *Springfield Republican* newspaper.<sup>58</sup> The correspondence was published in pamphlets, printed in the *New York Times* in 1871, and widely noticed.<sup>59</sup> Bowles attacked Field and other such lawyers for using legal technicalities to further "gross schemes of speculation, corruption, and robbery," to the lawyers' profit.<sup>60</sup> Field responded, "I have done not only what I had a right, but what I was bound to do."<sup>61</sup> Field faced disciplinary charges before the Association of the Bar of the City of New York; after several rancorous debates, the Association voted to exonerate Field.<sup>62</sup> The episode illustrates a shift in lawyers' thinking about their professional role: "[B]y the 1870s leading American lawyers were coming to espouse a responsibility to their clients as their primary and even exclusive moral

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<sup>57</sup> There was and remains speculation that a "Corrupt Bargain," in which Republicans agreed to withdraw federal troops from the South, induced Southern Democrats not to filibuster the result. Negotiations took place between Republicans and Southern Democrats, but they may have served more to reassure each side of outcomes that were already developing.

<sup>58</sup> Michael Schudson, *Public, Private, and Professional Lives: The Correspondence of David Dudley Field and Samuel Bowles*, 21 *Am. J. Legal Hist.* 191, 193 (1977). This paragraph is adapted from Langbein, Lerner, & Smith, *History of the Common Law*, supra note 32, at 1070.

<sup>59</sup> Schudson, supra note 58, at 197 n. 10.

<sup>60</sup> Samuel Bowles, quoted in id. at 197. Respected New York lawyer Francis Barlow wrote long letters published in the *New York Tribune* detailing the legal problems with Field's conduct. Martin, supra note 26, at 57.

<sup>61</sup> David Dudley Field, quoted in Schudson, supra note 58, at 198.

<sup>62</sup> Martin, supra note 26, at 91-103.



*They Do Each Other Honor*  
Harper's Weekly, Feb. 24, 1877

The devil bows to David Dudley Field in his law office, as Field smiles ingratiatingly. The caption reads: "Mr. \*\*\*\*\* (*the Most Ancient Fraud*). 'Your fame has reached beyond this cold world, and I have come to ask you to defend Me.'" The coat of arms behind Field shows the scales of justice behind a large dollar sign above the motto "Ich dien," "I serve." ("Ich dien" is the motto of the Prince of Wales.) Under the motto is a list of some of Field's prominent and notorious clients: (Jim) Fisk, (Jay) Gould, Tweed, and Tilden. The thermometer at right reads a warm 85 degrees.

obligation as lawyers . . . [P]rofessional loyalties of lawyers after the Civil War moved from ‘parties and their principles’ to ‘clients and their interests.’<sup>63</sup>

The perceived decline of professional ethics among lawyers corresponded with a decline of moral fervor in politics. In the late 1870s and especially after the Hayes-Tilden election, as radical Republicanism faded and members of both parties put the controversies of the Civil War era behind them, Nast’s moral commitment to politics and hence his art faded. Nast had difficulty maintaining the vision of sinful Democrats and virtuous Republicans that had driven his work for so long.<sup>64</sup> He began to believe that both parties found meaning mainly in distributing patronage, that politicians were increasingly at odds with productive citizens. Adding to his professional discomfort, his old supporter and publisher, Fletcher Harper, died in May 1877 and the new publisher was less interested in political issues. A new style of political cartoon grew in popularity, associated with the humor magazine *Puck*, which first appeared in New York in English in March 1877. *Puck*’s political cartoons were more amused than inspired by politics. Photochemical reproduction had replaced wood engraving about 1880, requiring the use of a pen instead of a pencil, and the thinner line revealed deficiencies in technique.<sup>65</sup> In 1885, Nast mourned Grant’s death with a drawing for “The Hero of Our Age,” which seemed to mark the death of his own career. In 1886, Nast finally left *Harper’s*. Even Nast’s financial position deteriorated, as he made a series of poor investments. In an effort to stabilize his finances, in 1902 Nast accepted a position as American consul in Guayaquil, Ecuador from President Theodore Roosevelt,<sup>66</sup> part of the patronage that had so dispirited him. In December 1902, he died in Ecuador of yellow fever.

### NAST AND THE ADVERSARIAL SYSTEM

Nast’s frustration with the delays and contrivances of the legal system in the Tweed era in part reflects the problems any legal system has in dealing with political cases. The tight intertwining of business and politics in New York after the Civil War, as in the Erie Railroad litigation, deepened these problems. Nast’s attacks on the legal system and lawyers, however, and especially his disgust with Field, reveal a mistrust of the adversarial system generally. To a person of strong moral convictions like Nast, the adversarial system was repugnant. It magnified the effect of wealth, allowing a rich defendant like Tweed to hire one of the greatest lawyers of the age to shield his wrongdoing. It encouraged procedural gamesmanship and obfuscation rather than truth-seeking. It corrupted the lawyers themselves, leading them to put the interests of the client above every other consideration, regardless of who the client was as long as he could pay. The wealth effect, procedural gamesmanship, and fraught ethics of the adversarial system are still with us, which is why Nast’s legal cartoons even today have such power.

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<sup>63</sup> Schudson, *supra* note 58, at 193 (quoting Mark D. Howe, Review of Robert T. Swaine, *The Cravath Firm and Its Predecessors*, 60 *Harvard L. Rev.* 839 (1947)).

<sup>64</sup> Keller, *supra* note 3, at 324.

<sup>65</sup> *Id.* at 326-7.

<sup>66</sup> Paine, *supra* note 1, at 556-58.