

FUNDING JUSTICE—AN INTRODUCTION

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Americans expect their legal system to mete out justice objectively, without regard for identity, money, power, or weakness. The blindfolded Lady Justice, who frequently adorns courthouses and public buildings, is commonly thought to represent this ideal notion of judgment free from bias. For centuries, the image of Lady Justice has been powerfully evoked to reveal the tension between the ideal and the reality of justice.¹ Equality before the law becomes an apparently elusive dream as society is reminded that judges are all too human and that funds can lift the blindfold of justice. Justice's blindfold and sword create ambiguity fertile for sarcasm and perhaps distrust.² A blindfolded lady armed with a sword has raised concerns in the hearts of many.³

Many individuals have contributed to the notion that justice is not impartial. "Boss" Tweed perhaps did so more than any other person in modern history.⁴ From a young age, Tweed mobilized political capital to become a shrewd politician.⁵ From 1858 to 1871, Tweed headed Tammany Hall and his "Ring" controlled the government of New York City.⁶ Justice became a pawn of Boss Tweed: he sold legislation and judicial opinions to the highest bidder, his corruption touching every domain of life and law in New York City.⁷ Eventually, reform arrived to New York City and Boss Tweed was arrested in 1871.⁸ He was

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1. For a history of the imagery of Lady Justice, see generally Dennis E. Curtis & Judith Resnik, *Images of Justice*, 96 *YALE L.J.* 1727 (1987).

2. *Id.* at 1754–61.

3. *See generally id.*

4. Tweed inspired a good number of biographies, most notably, DENIS TILDEN LYNCH, "BOSS" TWEED: THE STORY OF A GRIM GENERATION (1927); KENNETH D. ACKERMAN, BOSS TWEED: THE RISE AND FALL OF THE CORRUPT POL WHO CONCEIVED THE SOUL OF MODERN NEW YORK (2005).

5. *See* OLIVER E. ALLEN, THE TIGER: THE RISE AND FALL OF TAMMANY HALL (1993).

6. *Id.*, at 80–117; LYNCH, *supra* note 4, at 296–320.

7. ALLEN, *supra* note 5, 80-117; LYNCH, *supra* note 4, at 296-320.

8. The press, headed by *The New York Times* and *Harper's Weekly* cartoonist

tried, convicted, and sentenced to twelve years in prison.⁹ Tweed tried to hoodwink justice once again by running off to Spain after his sentencing, but he was apprehended upon arrival and extradited back to New York where he spent the last years of his life in prison, dying in 1878.¹⁰



Boss Tweed reading a *New York Times* report about one of his losses in court after his escape from prison.

Harper's Weekly, April 1, 1876.

Boss Tweed exposed the influence money can have on justice and law, and his downfall revealed the importance of journalism and the study of corruption. In the one hundred and forty years since Tweed's downfall, there have been numerous controversies and scandals that have continued to call into question the impartiality of justice in America. Just in the last two years, the nation has witnessed judges in Pennsylvania plead guilty to sending children to detention centers in exchange for private gain,¹¹ discovered blemishes in the capital justice system in Alabama,¹² and followed a federal grand jury investigation of alleged abuses of power in Arizona that threatened "to impair the [state] court's ability to carry out its responsibilities and threaten the perception of impartial justice."¹³

Thomas Nast, exposed the corruption of Boss Tweed. At some point, Tweed said: "Let's stop them damned pictures. I don't care so much what the papers write about me—my constituents can't read; but damn it, they can see pictures." JOHN ADLER, *DOOMED BY CARTOON: HOW CARTOONIST THOMAS NAST AND THE NEW YORK TIMES BROUGHT DOWN BOSS TWEED AND HIS RING OF THIEVES* 3 (2008); see, e.g., WILLIAM MURRELL, *A HISTORY OF AMERICAN GRAPHIC HUMOR, 1865-1938*, at 42-63 (1938).

9. ACKERMAN, *supra* note 4, at 277.

10. *Id.* at 295-311, 344.

11. Ian Urbina & Sean D. Hamill, *Judges Plead Guilty in Scheme to Jail Youths for Profit*, N.Y. TIMES, Feb. 13, 2009, at A22.

12. Adam Liptak, *Death Penalty Case Reveals the Blemishes in Alabama's Courts*, N.Y. TIMES, June 9, 2009, at A14.

13. Terry Carter, *The Maricopa Courthouse War*, ABA JOURNAL, Apr. 2010, http://www.abajournal.com/magazine/article/the_maricopa_courthouse_war.

The recent controversies regarding funding and the impartiality of justice invite us to once again study our system of justice and offer solutions for reform. This issue of the *Arizona Law Review* includes articles that examine various aspects of the American justice system—from the election of judges to the provision of indigent defense—and explore the influence of funding on justice. Funding may create both personal and systemic biases that can lead to the impartial delivery of justice; it is upon these biases that the following articles reflect and respond. Bert Brandenburg, Executive Director of Justice at Stake Campaign, examines judicial campaign fundraising and the public's growing distrust of an elected judiciary's ability to engage in impartial decisionmaking.¹⁴ Lisa Pruitt and Beth Colgan study indigent defense and explore its systemic underfunding in Arizona.¹⁵ This underfunding has led to overburdened attorneys and financial conflicts of interest, raising concerns about the ability of the indigent defense system to serve the interests of justice.¹⁶ Keith Swisher considers the motivations and consequences of judicial vote pandering, arguing that judges boasting tough-on-crime slogans cannot impartially adjudicate criminal cases.¹⁷ Finally, Nancy Welsh questions the impartiality of dispute resolution forums as they turn into lucrative businesses, servicing companies that enforce boilerplate arbitration clauses against consumers who are bound to their terms.¹⁸

Funding Justice is not a new topic of discussion. It is essential, however, to continue the dialogue so that we may recognize the distinctions between the ideals and realities of justice. It is only from this recognition that we can fully appreciate the problems in our justice system and work to resolve them.

14. Bert Brandenburg, *Big Money and Impartial Justice: Can They Live Together?*, 52 ARIZ. L. REV. 203 (2010).

15. Lisa R. Pruitt & Beth A. Colgan, *Justice Deserts: Spatial Inequality and Local Funding of Indigent Defense*, 52 ARIZ. L. REV. 219 (2010).

16. *Id.* at 283–294.

17. Keith Swisher, *Pro-Prosecution Judges: “Tough on Crime,” Soft on Strategy, Ripe for Disqualification*, 52 ARIZ. L. REV. 317 (2010).

18. Nancy A. Welsh, *What is “(Im)Partial Enough” in a World of Embedded Neutrals?*, 52 ARIZ. L. REV. 395 (2010).