

CLARENCE DARROW, "PLEA FOR LEOPOLD AND LOEB,"  
COOK COUNTY CRIMINAL COURT, CHICAGO, ILLINOIS (22, 23, and 25 August, 1924)

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**Abstract:** When teenagers Nathan Leopold and Richard Loeb went to trial after killing an acquaintance "for the thrill of it," their lawyer, Clarence Darrow, delivered a twelve hour summation over three days to save his clients from the hangman's noose. Darrow used three strategies of transformation to invert prevailing concepts of justice and crime. Through such reversals, he deflected criminal culpability from his clients to their upbringing, the prosecutors, and the legal system itself.

**Keywords:** Clarence Darrow, Leopold-Loeb trial, death penalty, homophobia, anti-Semitism, justice.

Clarence Darrow did not choose the easy route in life. At the age of sixty-seven, Chicago's most prominent defense attorney took on a case that was to become synonymous with his name and emblematic of a career spent defending the seemingly indefensible. In the summer of 1924, Darrow agreed to defend Nathan Leopold, Jr. and Richard Loeb, teenage boys who had bludgeoned fourteen-year-old Robert Franks to death in the back of a rental car. Not only was there a mountain of evidence pointing to them, but the boys confessed to the crime after their alibis unraveled under questioning. Even more troubling, they showed little contrition despite the age of their victim, the callousness of his execution, and the fact that newspapers and the State's Attorney were clamoring for the death penalty. Amid these constraints, Darrow rose to the occasion with a closing statement delivered over three days in which he sought to save his clients from the hangman's noose.

This essay examines Darrow's role in the Leopold-Loeb case, situating it within the broader social milieu of Chicago in the 1920s. I begin by historicizing the case study and recounting highlights of Darrow's professional and rhetorical career. I then turn to an analysis of his closing address at the Leopold-Loeb trial in the Cook County Court of Chicago. I argue that Darrow strove to avoid a death penalty ruling by deflecting criminal culpability away from his clients, blaming instead their upbringing, their prosecutors, and the legal system. Specifically, I show how Darrow used three kinds of strategic transformations that inverted prevailing conceptions of justice and crime to defend his clients. The essay concludes with an assessment of Darrow's strategies and traces the echoes of his speech in public controversies over justice and individual responsibility in twenty-first century America.

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### Clarence Darrow and the Progressive Era

Clarence Darrow's oratorical skills placed him at the center of nearly every major political, economic, and social controversy in America at the turn of the twentieth century. At a time when labor unions were gathering power across the nation, Darrow represented both sides, working first for corporations like the Chicago and Northwestern Railway and then defending striking railroad workers in Chicago, woodworkers in Wisconsin, and coal miners in Pennsylvania. At the height of the muckraking era in American journalism, Darrow worked for a newspaper so sensationalistic that it was once described by its staff as "a screaming woman running down the street with her throat cut."<sup>1</sup> At the same time, he worked for a company under investigation by that same newspaper. Darrow's arguments defending Leopold and Loeb from the death penalty and attacking William Jennings Bryan on creationism represent some of the most important early statements on public controversies that continue to this day. Darrow, with his prominent role in disputes over labor-management relations, capital punishment, and the role of science in society, offers a window into the origins of what appeared as intractable political and social tensions rooted in America's Progressive Era.

Not surprisingly, this complex and charismatic son of Ohio is well-represented in both popular culture and academic literature. His cases have inspired Hitchcock films. He has been played by Spencer Tracy, Orson Welles, and Kevin Spacey.<sup>2</sup> A bridge in Chicago is named after him, and scholars still pore through library collections preserving his letters and legal documents. More than seventy years after his death, his life continues to inspire new biographies, including *Clarence Darrow: American Iconoclast* and *Clarence Darrow: Attorney for the Damned*.<sup>3</sup> Academic studies of Darrow's work in the courtroom focus on the legal ramifications of his arguments and the public notoriety of his cases. Scholarly works, such as Scott Howe's *Reassessing the Individualization Mandate in Capital Sentencing*, situate Darrow's summation for Leopold and Loeb within the larger context of debates over the propriety of capital punishment.<sup>4</sup> And judicial opinions credit Darrow's strategy of having his clients plead guilty from the outset,<sup>5</sup> his arguments against the death penalty,<sup>6</sup> and his views on the influence of public opinion to swaying the court's decision.<sup>7</sup>

Darrow's plea for the young Chicago killers offers the clearest insight into fundamental questions animating public life in that era. His defense of Leopold and Loeb brought together Darrow's firmly held beliefs about criminal culpability, the role of biological and environmental factors in determining human behavior, and the right of an individual to resist institutional decrees. Rhetorical scholars over the past decades have recognized the importance of Darrow's public arguments in the defense of Leopold and Loeb. The trial of Leopold and Loeb is mentioned in both entries on Darrow in two of the most well-known volumes profiling the lives and speaking careers of prominent American orators, *A History and Criticism of American Public Address*<sup>8</sup> and *American Public Address*.<sup>9</sup> A survey of public address scholars ranked Darrow's summation in the Leopold-Loeb case 23<sup>rd</sup> out of the top 100 American speeches delivered between 1900 and 1999, placing it between John F. Kennedy's "Ich Bin ein Berliner" and Russell Conwell's "Acres of Diamonds."<sup>10</sup> Charles E. Morris III has also examined the speech in his study of "collusive and convulsive silence" in the *Quarterly Journal of Speech*.<sup>11</sup>

Martin Maloney's 1947 essay in *Speech Monographs* represented one of the earliest studies of Darrow's forensic address. In this piece, Maloney showed how Darrow's speeches were

characterized by arguments from sign—arguments directed at existing evidence or individuals in court—alternating with arguments from cause—arguments that look beyond individuals to the source of their motives.<sup>12</sup> Randall Majors makes a related point in his 1978 dissertation on the Leopold-Loeb case as a "case study in forensic argumentation."<sup>13</sup> Majors argues that Darrow framed the proceedings as a "contest . . . between himself and Crowe, rather than one between the State and the defendants." Darrow drew on an argument from sign by "emphasizing the manner of the prosecution rather than the content,"<sup>14</sup> relying on arguments from cause to justify his clients' behavior. Thus, scholarship on Darrow highlights his strategy of turning an audience's gaze from the accused to their accusers.

I show the specific ways in which Darrow carried out this strategy of refutation through redirection in his 1924 summation for Leopold and Loeb. In doing so, I build on work by Maloney, who identifies Darrow's general argumentative strategies across the broad swath of his career, and Majors, who evaluates the legal and logical premises of Darrow's arguments in the Leopold-Loeb case. Majors argues that Darrow hid his key arguments in "digressions" on the barbarity of the death penalty and on the parallels between the prosecutors and his clients.<sup>15</sup> I show how these topics were central to his strategy of reversal and inversion. By examining Darrow's rhetorical strategies, I hope to show how his characteristic forms of refutation helped to crystallize some of the major issues of the 1920s and the argumentative features of one of the best-known speeches in U.S. public address. Through Darrow's rhetoric, the kidnapping and murder of a teenage boy assumed much greater social and political significance because he questioned the morality of the death penalty even for cases of inexplicable violence.

### **The Leopold-Loeb Case**

On May 31, 1924, nineteen-year-old Nathan Leopold, Jr. and eighteen-year-old Richard Loeb confessed their murder of Robert Franks to the Assistant State's Attorneys and the Chief of Detectives. Sitting in the office of the State's Attorney in Chicago's Criminal Court Building, the defendants recounted how they lured Franks to their car, beat his head with a chisel, and then "stopped at a little sandwich shop on the road" for "a couple of red hot sandwiches and two bottles of root beer" as he lay dead in their car.<sup>16</sup> In a disconcertingly detached manner, Loeb reportedly described how, once Franks was dead, they removed his shoes, hid them in some bushes, and removed his pants and socks, explaining that they did this "in order that we might be saved the trouble of too much undressing him later on."<sup>17</sup> What compounded the situation was that they appeared startlingly unmoved by the murder, noting with clinical detachment that "the boy did not succumb as readily as we had believed."<sup>18</sup> Yet, they also were bold enough to seek a ransom from their victim's family. With brazen mendacity, they sent a typewritten note to a frantic Jacob Franks, assuring him that his son Bobby was "well and safe" and would be returned "within six hours" if Mr. Franks sent them \$10,000.<sup>19</sup> Cruelly, they extended the lie that Bobby was alive by emphasizing that the kidnapping was a "strictly commercial proposition" and that they would kill the boy only if they had reason to believe Mr. Franks was not complying with the terms of the ransom.<sup>20</sup> The boys were apprehended later only because Leopold failed to realize that he had dropped his eyeglasses beside the body when disposing of it. The boys' plans ultimately came undone because of the unusual design of the hinges on his glasses that allowed the authorities to trace them to Leopold.

The fact that Leopold and Loeb had made separate confessions posed a major challenge for their defense team. Yet, this was neither the only challenge, nor the greatest one. The brutality of their crime and their open admission of guilt were made worse by Leopold and Loeb's attitude, their privileged family backgrounds, and the frenzied media attention to the case. Darrow found himself defending two people who expressed no remorse for their crime. Indeed, their officially recorded confessions suggested that while they were aware of the illegality of their actions, they had no discernible feelings of guilt over killing another human being. Loeb's comment about the steps they took to avoid inconveniences and to "be saved the trouble" of dealing with the body paralleled Leopold's account. Both treated the murder as little more than an exercise in problem-solving. In matter-of-fact language, Leopold framed the murder as a sequence of pragmatic considerations to be dealt with methodically. He detailed how "we started on the process of how to get the money, which was the most difficult problem. . . . the next problem was the system of notification to the father. . . . the next problem was getting the victim to kill."<sup>21</sup> Leopold's emphasis on *process* and *system*, and the way he referred dispassionately to Franks as "the victim," affirmed the boys' image as calculating and inhumane murderers.

The public antipathy toward Darrow's remorseless clients was heightened by their families' wealth and privileged social standing. Loeb's father was a vice-president at Sears, Roebuck & Co., while Leopold, Sr. was a wealthy manufacturer. Each family commanded power and money that worked against them by raising suspicions that they would evade justice by buying their way out of it. Early on, the boys were described as having "wanted for no inconveniences or luxuries while in jail" because their fathers were "each many times millionaires."<sup>22</sup> Leopold confirmed this perception by telling the *Chicago Daily Tribune* that their families had "a lot of dough." He also reportedly inquired: "how about fixing this thing up by getting to a few of the jurors?"<sup>23</sup> Unsurprisingly, the headline for that article read: "Millions to Defend Killers."<sup>24</sup> The specter of the defendants' wealth loomed so large over the trial that Darrow commented in his summation that "there are times when poverty is fortunate, and this is one of those times" (9).<sup>25</sup> In a way, then, the wealth of the boys' families contributed to the perception of the callous nature of the crime. According to Loeb, Leopold had proposed the murder as "a means of having a great deal of excitement," and only secondarily as a means for "quite a sum of money."<sup>26</sup> Their families' wealth made it implausible that money could have been the motive. In the end, their wealth only contributed to the perception that they had killed Franks merely "for the sake of a thrill."<sup>27</sup>

The notion that two young people with every advantage would stamp out the life of another as an "adventure"<sup>28</sup> did not sit well with the American public. Such disregard for human life couldn't be normal; surely they had to be mentally ill. In pursuit of that angle, the prosecution and defense teams both hired experts to examine the boys and testify as to their psychiatric health. The defense hoped enough evidence might be presented to suggest that the boys suffered from some mental defect that might absolve them of responsibility; the prosecution in turn hoped to establish that they knew exactly what they were doing. Paula S. Fass notes that the defense's strategy "laid the ground work for the media's active role in translating and interpreting the case for the public."<sup>29</sup> As part of a "new circulation war" revolving around the case,<sup>30</sup> the papers engaged in spirited examinations of Leopold and Loeb's physiological and mental states. And reporters offered up-to-date evaluations of the boys by the raft of "alienists," or psychiatrists, hired by each side. "Alienist Squad tests minds of Leopold, Loeb; another expert

on way from the East," blared one headline in the *Chicago Daily Tribune*,<sup>31</sup> while the *New York Times* reported that two of the "alienists" had found that "abnormal traits were especially displayed by Leopold."<sup>32</sup> The *Atlanta Constitution* also pursued the psychological angle by explaining that "part of the defense's plea for penitentiary sentences instead of hanging for Leopold and Loeb, is based upon the theory that functional disorders of the endocrines have helped to make them mentally sick."<sup>33</sup>

Beyond reporting on the examinations and explaining their findings to the public, the newspapers sought out their own sources of medical expertise, seeking to insert themselves into the diagnostic process and, by extension, the trial. The *New York Times* correspondingly interviewed local psychiatrists ranging from private practitioners to "the alienist in charge of the insane patients on Ward's Island."<sup>34</sup> William Randolph Hearst, owner of the *Chicago Herald and Examiner*, invited Sigmund Freud to America to evaluate the boys' mental states.<sup>35</sup> Indeed, Hearst reportedly offered Freud half a million dollars and a chartered ship to transport him across the Atlantic.<sup>36</sup> However, the famous psychologist declined the offer, citing his poor health<sup>37</sup> and arguing that, "I cannot be supposed to be prepared to provide an expert opinion about persons and a deed when I have only newspaper reports to go on and have no opportunity to make a personal examination."<sup>38</sup> In this way, journalists involved themselves in the courtroom debates over mental illness as a mitigating factor in criminal cases. By reporting on the testimony of medical experts in this 1920s case, the news media also tapped into the growing interest of the American public in issues surrounding mental health. The mental trauma experienced by soldiers in World War I had expanded public awareness of "the bleaker mysteries of the mind,"<sup>39</sup> and the press tapped into that new fascination in its coverage of the case.

The explorations of these "bleaker mysteries" in the press included sensational speculation about their close relationship and questioned their heterosexuality. Based on a phrenologist's assessment of the boys' personalities, for example, the *Chicago Daily Tribune* published a story about how the boys' "sensuous lips" betrayed their "feminine type of mind" and "destructive instincts."<sup>40</sup> Morris and Paul B. Franklin argue separately that these sorts of indirect references to their sexuality served to reinforce rumors that the boys had, in fact, been lovers.<sup>41</sup> The nation's newspapers specialized in innuendos and euphemisms with case. What had Leopold in mind when he asked his professor what the punishment might be if Franks' murderers kidnapped him intending "to commit an indecent act"?<sup>42</sup> What was the nature of the "absurd childish compact" between the boys, a compact deemed by Judge Caverly to be "unfit for publication" or discussion in the presence of women?<sup>43</sup> Did Leopold, asked the *Chicago Daily Tribune*, harbor some sort of "king-slave" fantasy, with Loeb as Adonis and Leopold as his slave?<sup>44</sup> Since "both were investigators into medieval sexual perversion," the *Washington Post* asked, could they have been motivated by a desire to perform "weird experiments" on Franks?<sup>45</sup> Given the "filthy nature" of their "revolting pact,"<sup>46</sup> the *Atlanta Constitution* concluded, it should come as no surprise that they had "an unusual interest in sexual perversion."<sup>47</sup>

The homophobic undertones in the trial coverage were complemented by anti-Semitism, which was widespread in the day. In the years leading up to the trial, Henry Ford bought the struggling *Dearborn Independent* and turned the paper into a platform for a series of articles titled, "The International Jew: The World's Foremost Problem." The articles asserted that Jewish businessmen planned to take over the world through an international conspiracy so widespread that "the Jew" would become "a nation scattered among the nations, a corporation with agents

everywhere."<sup>48</sup> Other newspapers, as well as former President William Howard Taft, disputed Ford's allegations.<sup>49</sup> But Ford's campaign nevertheless contributed to "the renewed racial tribalism that characterized post-World War I American society."<sup>50</sup>

Like other minorities and native Indians, Jewish immigrants were cast as an effete and a "lesser breed."<sup>51</sup> Their intellectual and business achievements were attributed to their incapacity for more "manly" labor.<sup>52</sup> As Franklin explains, "the contrast between the virile male laborer, who works with his hands rather than with his mind and eyes, and the intellectual, a puzzlingly genderless 'person,' dovetail[ed] with anti-Semitic characterizations of Jewish men as effeminate."<sup>53</sup> So when the clue that led to the arrest of Loeb and Leopold turned out to be a pair of eyeglasses found beside a young naked male body, it provided "the most bountiful fodder to draw together homosexuality, Jewishness, degeneracy, and perversions."<sup>54</sup> In combining homophobia with the anti-Semitism of the time period, many were quick to believe that a Jewish murderer—someone who wore eyeglasses "too short for the average masculine head"<sup>55</sup>—would target a younger victim and strip him naked. The evidence pointed to a perpetrator who was both homosexual and Jewish, thus making a case that collapsed "homophobia into anti-Semitism and vice versa."<sup>56</sup>

In the eyes of many, then, Darrow's clients were already guilty not just of murder but of arrogance and perversion. A number of interrelated factors weighed against the defense: the remorseless admission of guilt by his clients; their apparent expectation that their families' wealth would save them; the anti-Semitism of the time; and their bookish and physically meek appearance, which gave rise to speculation about their "abnormal" sexual relationship. As their attorney, Darrow had to counter the public image of the boys by assuming the role not only of lawyer, but also psychiatric expert and social critic. With so much working against him, he perhaps had only one choice: redirect attention to the case in a wholly different direction.

### Darrow as a Legal Advocate

By the time of this trial, Darrow had already built a successful career on his skills as an orator and his reputation for taking on corrupt clients. This career spanned several stages, including one where he championed laborers and union workers. In another stage, he made a rather dramatic career shift, defending the gangsters and shady politicians of Chicago in the 1920s. Nevertheless, a pattern to his arguments unfolded across his career: institutions and the will of the majority can be unjust, and individuals have a right to resist these injustices.

Even before Darrow codified this argument in his 1922 monograph, *Crime: Its Causes and Punishment*, his distrust of institutions and his sympathy for those wronged by them emerged in his criticisms of the educational system. Later, he expressed his disillusionment with the maneuvering and back-door dealings he witnessed while assisting with mayoral and gubernatorial campaigns in Illinois. Charting Darrow's early years as a schoolboy, Kevin Tierney depicts Darrow's deep suspicion "that schools pandered to orthodoxy by destroying independence of mind." According to Tierney, Darrow "recognized on whose side the schools were in the continuing warfare between parents and children."<sup>57</sup> As a campaign manager and city employee in the early 1890s,<sup>58</sup> he grew to believe that "his profession was almost inevitably the servant of wealth—not justice."<sup>59</sup> This view was confirmed when Darrow read *Our Penal Machinery and Its Victims*, written in 1886 by his mentor, superior court judge and eventual

governor of Illinois, John Peter Altgeld. In it, Altgeld argued that the penal system was skewed unfairly against people subjected to "crime-producing conditions,"<sup>60</sup> such as poverty and broken families. "Our penal machinery," wrote Altgeld, "seems to recruit its victims from among those who are fighting an unequal fight in the struggle for existence."<sup>61</sup> The disproportionate number of incarcerated people from low-income families who were in jail for being unable to pay small debts led Altgeld to conclude that the penal system had created a vicious cycle that punished those least able to defend themselves. Altgeld compared the system to "a great mill which, somehow or other, supplies its own grist."<sup>62</sup> The book led Darrow to the counterintuitive conclusion that "the legal system promoted injustice."<sup>63</sup> It was for this reason that Darrow refused to prosecute cases, preferring instead to defend people against the law. "In consequence," notes Tierney, Darrow "began to fight the system through his clients' causes,"<sup>64</sup> whether they were railroad workers or rich teenagers.

Darrow's crusade often led him to dissociate the legality of an act from its morality. In his rendering, certain behavior was criminal only because the legal system had deemed it so, not because it was necessarily reprehensible. As he put it in 1922:

. . . the punishment follows for the violation of the law and not necessarily for a moral transgression . . . It is apparent that a thing is not necessarily bad because it is forbidden by the law . . . Judging from the kind of men sent to the State legislatures and to Congress, the fact that certain things are forbidden does not mean that these things are necessarily evil; but rather, that politicians believe there is a demand for such legislation from the class of society that is most powerful in political action . . .<sup>65</sup>

His lack of faith in "the kind of men sent to the State legislatures" and the integrity of the laws they passed meant that the authority of legal precepts held little sway for Darrow. Indeed, as the analysis of his closing summation will show, Darrow saw all definitions of crime as being open to debate. His distinction between legality and morality meant that an illegal act could still be a moral one. In fact, Darrow reasoned, if an illegal act breached unfair norms set by untrustworthy politicians or a tyrannical majority, an illegal act might *necessarily* be a moral one.<sup>66</sup>

Splitting legality from morality was useful when Darrow fought on behalf of those wronged by powerful interests. It was the strategy he used to defend hungry and underpaid workers who went on strike against selfish corporate interests in the very first major case of his career. However, the strategy proved problematic in other circumstances, as it seemed to remove all responsibility for crime from the individual. By arguing that crimes were symptomatic of broader social problems, Tierney claims that he often "ask[ed] for an acquittal as a vindication of general principle rather than justice in the individual case."<sup>67</sup> Darrow's "all-purpose defense," said Tierney, soon "came to be divorced from the client's actual position" and gradually lost credibility "as judges, journalists, and even juries came to see it what for what it was—a device for excusing anything and everything."<sup>68</sup>

By the time Darrow defended Leopold and Loeb, he was already well-known for his "go-to" strategy of absolving individuals from blame by invoking broader social injustices. Thus, it came as no surprise when he argued about general principles—in this case, the larger moral implications of the death penalty—while also presenting other explanations of his clients' actions

and reiterating his belief that the causes of criminal behavior were sometimes beyond individual control. Darrow had "an especial hatred of the death penalty as a barbaric anachronism that had no place in American society,"<sup>69</sup> and that special hatred was clearly evident at the trial. As he stood in the oppressive August heat, "holding a pair of eyeglasses in one hand and a handkerchief in the other mopping the perspiration from his forehead,"<sup>70</sup> his primary purpose was clear: to persuade the court of the death penalty's injustices.

In pursuit of this goal, Darrow undertook three acts of strategic transformation to redirect responsibility from Leopold and Loeb to their families, the prosecutors, and the legal system. In his first transformation, Darrow restructured the rhetorical situation by turning the trial into a sentencing hearing. This reconfiguration invited a new focus on the behavior of the court in sentencing his clients and allowed Darrow to advance arguments about the weight of precedent and the impact of the court's decision on future cases. His second transformation saw him construct a new persona for the prosecution that inverted their identity as protectors of the law and cast them instead as criminals. For his final act, Darrow transformed his criminal clients into victims of fate by pointing to influences in their lives which he argued were the real causes of their actions.<sup>71</sup>

### **Strategic Transformation: From Trial to Hearing**

Leopold and Loeb's lawyers realized their situation was bleak. Darrow had been hired to save the boys' lives, but murder and kidnapping in Illinois were punishable by death and his clients had confessed to both crimes. This appeared to limit Darrow's options to two: plead insanity, which might spare his clients from hanging, or take his chances at trial and hope that even if the boys were found guilty, the jury would not impose the maximum penalty of death. However, given that public opinion already had turned against his clients, he doubted a jury would accept an insanity plea or agree to a lesser sentence. As he noted unhappily in his summation, once the public turns against a defendant, "no matter what the offense is, great or small, they only think of one punishment, and that is death" (4). His anxieties about majority opinion warping the course of justice were on full display in his gloomy assessment that "when the public speaks as one man, they only think of killing someone" (5). Faced with a situation where his arguments were bound to fall on deaf ears, Darrow's answer was to have his clients plead guilty on the very first day, then put the death penalty itself on trial.

This move effected a crucial modification to Darrow's rhetorical situation by turning the court proceedings from a trial determining culpability into a sentencing hearing. Darrow also narrowed his audience from a group of twelve jurors to one judge, because there was no longer a need to convene a jury to decide on the question of guilt. A single judge could determine the sentence, and Darrow was fortunate to face a judge sympathetic to his cause: John Caverly, Chief Justice of the criminal court of Cook County, who was known for his views against the death penalty.<sup>72</sup> Thus, Darrow fashioned a situation in which he could dilute the effect of the public prejudice against his clients by focusing on legal precedents and the institutional implications of the death penalty before a judge who would be receptive to such arguments.

By changing the character of the proceedings, Darrow also made it possible to enlarge the discussion from an evaluation of his clients' behavior to a judgment of the court's role in deciding their fate. In this sense, his summation evoked John Waite Bowers's notion of a "deliberative



speech in a forensic context," where an "argument from definition"—involving factual questions about whether a person's behavior fit the definition of a crime—is melded with an "argument from consequences," involving deliberation over the impact of a particular decision. A forensic speech draws on arguments from definition to establish the guilt of those accused of a crime. In contrast, a deliberative speech looks to arguments from consequence to weigh how best to act in light of future advantages or drawbacks.<sup>73</sup> The past, and with it, the guilt of Darrow's clients was no longer the central point in this setting: Leopold and Loeb had already pleaded guilty. Hence, while Darrow still presented arguments that questioned his clients' guilt and sought to lessen their responsibility for their crimes, he redefined the situation in a way that allowed him to scrutinize the court and *its* actions in sentencing the boys.

Crucially, this meant that Darrow was able to bring the passage of time to bear on the proceedings by urging Caverly to consider the legal precedents that would be broken and set by levying the death penalty in this case. Across all three days, Darrow reminded Caverly that not only was the death penalty used rarely in the state of Illinois, but that in Chicago specifically there had never been a case "where on a plea of guilty a boy under 21 had been sentenced to death" (13). "And yet," thundered Darrow, this court was "being urged, aye, threatened, that he must hang two boys contrary to the precedents, contrary to the acts of every judge who ever held court in this state" (14). Going as far back as the record would show, Darrow claimed one could find few precedents for sentencing the boys to death, and in the few cases where the death penalty had been applied, the judge had been either "a man of moods" (447) or someone "never noted in Chicago for his kindness and his mercy" (449). If he decided on the death penalty, Darrow suggested, Caverly would not only be associated with those judges, but would "run against every precedent that had been set in Illinois for almost a century" (445). In addition, he would clear the way for other judges to lower the age at which a person could be hanged. "If [Caverly] could hang a boy of eighteen," he concluded, then "some other judge [could] hang him at seventeen, or sixteen, or fourteen" (466).

In declaring that he was pleading not so much for the boys in the courtroom as for "the infinite number of others to follow" (204), Darrow tapped into the powerful persuasive force of legal precedent. Journals of law speak of precedent as a source of authority, as well as an inflexion point connecting the decisions of those who came before with those who come later. William M. Landes and Richard A. Posner depict legal precedent as a capital formation which grows in authority every time a ruling builds on, or cites, a previous ruling, thus adding to the "stock value" of the precedent as it grows.<sup>74</sup> This "string of holdings" represents "the accumulated wisdom of many judges responding to the arguments and evidence of many lawyers,"<sup>75</sup> giving the past the force of momentum as a precedent builds on itself with each case that cites it. At the same time, the future exerts pressure on judges as they consider whether to extend or break with precedent, being aware that they are "in some sense responsible to those to whom the law will be applied."<sup>76</sup> Thus, legal precedent functions as a "locus of the irreparable"<sup>77</sup>—an argumentative feature of such significance that the future hinges on making the correct decision.

Although he cautioned Caverly against breaking with the past, Darrow's arguments about adhering to precedent were not meant simply as a call to preserve the status quo. Rather, Darrow constructed the law as a record of advancements made by human civilization. In an argument that he would bring up repeatedly, Darrow spoke of the death penalty as a relic from an earlier epoch of human history and the courts as a corrective damper to the "breath of hate" spewed by

past generations (17). Tracking the "slow, painful efforts through all the ages for more humanity of man to his fellow man" (189), Darrow showed how, when adjudicating crimes punishable by death, judges as far back as the fourteenth century had refused to convict, being "too humane to obey the law" (190). Over time, Darrow continued, "the laws [had] been changed and modified" to reflect "the progress of the world in reference to crime" (192), rendering the law an index of human progress. In one of the final paragraphs of his summation, Darrow placed Caverly at the doorway between the past and the future, declaring that he was "pleading for the future" (496) and offering Caverly the chance to either join Darrow or "turn [his] face toward the past" (495). Aware that the concept of precedent was vital in deciding a sentence, Darrow used the reconfigured rhetorical situation to put Caverly on trial. History became judge and jury, and humanity the (potential) victim. Caverly was thus given the choice of being found guilty of slaying human progress, or he could be an agent of the law who upheld it.

Darrow's redefinition of the rhetorical situation allowed him to advance arguments based on an inverse "structure of reality"<sup>78</sup> in which the central issue was not so much the responsibility of his clients but their judge. As James Jasinski has argued, the potency of language lies in its ability to define concepts as well as entire situations where "we establish the *perspective* through which we, and others, will look at something."<sup>79</sup> Similarly, David Zarefsky has described the definitional power of rhetoric as a kind of "frame-shifting" in which "a different frame of reference" can help audiences see an issue "in a different light," and thus change their whole attitude toward that issue.<sup>80</sup> Darrow's first act of "frame-setting" was contextual in that he altered the basic definition of the proceedings from a determination of guilt to a sentencing hearing. In the process he replaced impressionable jurors with a legally-trained judge. This allowed him to urge Judge Caverly to consider his duty to history and the future of humanity as he deliberated over his decision. As the next section will show, Darrow also worked to present the judge with a different "frame of reference" by inverting arguments about the guilt of his clients to point instead to the "guilt" of their accusers.

### **Strategic Transformation: From Prosecutors to Defendants**

In Darrow's next transformation, he put the prosecutors on trial along with their strident calls for the death penalty. His transformation of the prosecutors' persona proceeded in three steps. First, he cast the prosecutors and their medical experts as barbarians whose actions threatened to reverse the progress made by human society in turning away from capital punishment. He then characterized their pursuit of the death penalty as a mark of their youth and inexperience, reflected in their inability to recognize that the punishment was neither reasonable nor humane. In doing so, he drew stark lines of separation between himself and Judge Caverly—the older and wiser people in the courthouse—and the State's Attorney and his team. Finally, he likened the prosecutors to the two people in the room who had already confessed to their ruthless, immature actions, Leopold and Loeb, suggesting that the prosecution was no less guilty of a criminal act.

#### *The Prosecution as Barbaric*

The element of time again played a role in Darrow's argument as he redefined the prosecutors not as people who represented a progressive, law-abiding society, but as savages intent on returning to the crude and brutal past. Going a step further, he even dehumanized his opponents, casting them as both savage and animalistic. He began by marshaling powerful imagery to depict the death penalty as an anachronism reflecting society's bloodthirsty and primitive heritage. He argued that the death penalty "roots back to the hyena; it roots back to the hissing serpent; it roots back to the beast from whence we came. It is not a part of man" (155). His use of animalistic imagery undergirded his argument that the death penalty constituted a dehumanizing "cry for blood" (17) that arrested the progress of civilization and took humanity on a "long, slow journey back to the jungle that was formerly [its] home" (174). In a particularly vivid passage, Darrow compared the testimony of one of the prosecution's witnesses, Dr. Krohn, to young boys eagerly eating a watermelon, suggesting that the prosecution had bloodthirsty motives:

When he [*Dr Krohn--one of the prosecution's medical experts*] testified, my mind carried me back to the time when I was a kid . . . and we used to eat watermelons. And I have seen little boys take a rind of watermelon and cover their whole face with water, eat it, munch it, and have the best time of their lives. . . . And when I heard Dr Krohn testify in this case to take the blood of the lives of these two boys, I could see his mouth water with the joy it gave him, and he evinced all the delight and pleasure of myself and my young companions when we ate watermelon (248).

With this and other imagery, Darrow cast the prosecution as officers not of justice and civilization but of vengeance and cruelty, as well as enemies of human evolution and progress.

Darrow did not argue that the State's Attorneys had merely slowed down or impeded the progress of civilization. Rather, the prosecution was depicted as moving *backwards* on the evolutionary path, supported by a sequence of metaphors in which the prosecution was first equated with a hyena—animalistic but still at least a mammal—but then reduced to a serpent and finally a beast. The biblical allusions to the "hissing serpent" and "roots" moved the prosecutors *down* the Tree of Knowledge in direct opposition to its natural upward growth. Hence, Darrow's redefinition went further than resetting the frame of his rhetorical situation and altering the perspectives of his audience: it inverted these perspectives completely.

#### *The Prosecution as Young and Inexperienced*

Darrow's dehumanization of his opposition allowed him to define himself and Judge Caverly as the voices of humanity and wisdom in the courtroom. He attempted to forge a special relationship with Caverly, establishing common ground with the judge and asking him to sympathize with his clients: "Now Your Honor, you have been a boy. I have been a boy . . . and we have known of other boys" (99). But they had both learned that "years of experience with life tempers one's emotions and makes him more understanding of his fellow men" (25). Dissociating the two older men from the prosecutors, Darrow highlighted the age difference between Assistant State's Attorney John Savage—one of the prosecution team whose name Darrow apparently could not resist mentioning—and predicted that "when my friend Savage" reached "my age or even of yours [*referring to Caverly*], he will read his address to this court with horror"

(25). In Darrow's framing, State's Attorney Robert Crowe and his team were inexperienced amateurs in comparison to Darrow, who had been practicing law "for forty-five or forty-six years" (39).<sup>81</sup> Skillfully combining anaphora, hyperbole, and parallel construction, he mocked Crowe's prosecution of the crime by saying:

I have never yet tried a case where the state's attorney did not say it was the most cold-blooded, inexcusable, premeditated case that ever occurred. If it was murder, there never was such a murder. If it was robbery, there never was such a robbery. If it was a conspiracy, it was the most terrible conspiracy that ever happened. . . . If it was larceny, there never was such a larceny (40-41).

Here Darrow suggested that the prosecution, due to its youth and inexperience, was simply too excitable—a group of "young men [who] talk glibly of justice" (151)—while Darrow and Caverly, with their years of experience, knew better.

### *The Prosecution as Guilty of Murder*

Darrow's framing of the prosecutors as "young men" forced them into the same definitional space occupied by the two young men on trial. Referring to his clients as "a boy of eighteen and a boy of nineteen" (465), he emphasized their youth while also highlighting the prosecutors' youth in comparison to Darrow and the judge. More importantly, he contended that both his clients and the State's Attorneys were guilty of crimes, the former "cold-blooded murder" and the latter cruel insensitivity. When the State's Attorneys beseeched the court to levy the death penalty in light of the pain felt by the victim's mother, Darrow accused them of exploiting the family's grief as a justification for the state's vengeance: "I know how easy it is to talk about mothers when you want to do something cruel" (107). He went on to say that he was "always suspicious of righteous indication," because "nothing is more cruel than righteous indignation" (151). Thus, Darrow cast himself as stripping away the prosecution's veneer to reveal *their* cold-bloodedness and *their* crime. In one of his most pointed remarks, he responded to the prosecution's objection to calling Leopold by his nickname, Babe, by suggesting that defense team understood that it would be criminal to execute a child: "Mr Crowe thinks it is easier to hang a man than a boy" (316). The prosecution had been rhetorically transformed from accuser to accused.

### **Strategic Transformation: From Criminal to Victim**

In Darrow's final rhetorical maneuver, he transformed his clients from criminals to victims by describing other factors that influenced their behavior and absolved them of culpability. Darrow was well-known for invoking theories that eschewed individual culpability by locating the causes of crime in institutional injustices or socioeconomic circumstances. In Leopold and Loeb's case, of course, neither faced economic hardship or the sort of difficult living conditions that

might absolve them of blame. Nevertheless, Darrow was able to make the case that their criminal behavior was beyond their personal control.

In his 1922 monograph, *Crime: Its Causes and Treatment*, Darrow had argued two years before the Leopold-Loeb case that criminal behavior could often be attributed to physical attributes. The body, he suggested, was sometimes like a machine beyond our control, processing and storing external impressions. It was not anyone's fault if their machine-like body received and processed the wrong impressions, for as Darrow put it, the baby had "nothing to do with his equipment."<sup>82</sup> Foreshadowing what would become a favorite topic of the press during the trial, Darrow argued in his book that behavior was sometimes the result of secretions "emptied from the ductless glands into the blood, which, acting like fuel in an engine,"<sup>83</sup> generated responses to external stimuli. It was clear to Darrow, at least, that people were "the product of heredity and environment" and that they acted as a "machine responds to outside stimuli and nothing else."<sup>84</sup> By this logic, it was unjust to punish someone for a criminal act without recognizing that "the act had an all-sufficient cause for which the individual was in no way responsible."<sup>85</sup>

Drawing on this theory, Darrow attributed his clients' behavior in the Leopold-Loeb case to "infinite forces that conspired" to force them into a life of crime (221) as they wandered through "a dangerous maze in the darkness from the cradle to the grave" (119). He cited Leopold's misguided understanding of Friedrich Nietzsche's concept of the *Übermensch*, or superbeing, which led him to think of himself as above the law (317-325). He also blamed Loeb's governess for her domineering approach and for encouraging him to read unsuitable material. "[N]ow I am not criticizing the nurse," he said. "I suggest someday your Honor look at her picture. It explains her fully—forceful, brooking no interference" (263).<sup>86</sup> Even the boys' families did not escape blame; Darrow mused aloud about whether his clients' "immature and diseased brains" (436) were the result of some "remote ancestor" who "may have sent down the seed that corrupted [them]" (304). Echoing his earlier writings about the making of one's "equipment," Darrow asked his audience to recognize that each of the boys "did not make himself" (299). And, yet, each was being held responsible for the actions (and genes) of others.

Nietzsche, Loeb's governess, and the boys' parents and ancestors were not the only parties at fault. Having exhausted his clients' home lives, Darrow looked further afield to historic events and institutional structures that might account for what the boys did. He castigated universities, "the scholars of the world," and the "publishers of the world" (348) for exposing Leopold and Loeb to Nietzsche, arguing that "it is hardly fair to hang a nineteen-year-old boy for the philosophy that was taught to him at university" (349). Indeed, history itself was partly to blame. World War I had desensitized people to violence and bloodshed. The war had influenced the boys, said Darrow in a painfully convoluted statement, "so that blood was not the same blood to them that it would have been if the world had not been bathed in blood" (479).

Despite the evidence he had compiled of all the "crimes and mistakes of society being visited upon them" (480), one of Darrow's most lengthy arguments located the source of his clients' "diseased minds" (254) in their relationship with each other. Here Darrow argued that his clients had fallen prey to a "weird, almost impossible . . . strange and fatal relationship" (371) in which Leopold's attitude toward Loeb was one that "a man has to a lover" (370). Not openly outing his clients in a society unready to accept public discussions of homosexuality, Darrow nevertheless hinted that homosexuality was one of those insidious external forces that led the boys to crime. Charles Morris describes this construction of the boys' passivity as an act of "sexual

passing" characterized by "repressive silencing" and "resistant silences"; the relationship between the boys, Morris concludes, was a sinister and lurking force to be feared but never named.<sup>87</sup> In Darrow's terms, this repressed sexuality became "some sort of chemical alchemy" (362) that led them to come together, plan and connive, while "believing in each other" (361). This "coming together" was what led to "their undoing" (369), Darrow insisted. It was as if the boys had no say in the whole affair; Darrow cast them in a passive role that separated them from their actions. The boys did not decide their own fate; *chemical alchemy* instead decided it. They were undone by *their coming together* rather than by any intentional and consciously motivated desire.

Thus, Darrow traced every possible influence on the boys—from their parents to their education, the books they read, the governesses they had, and their personal relationship—to their deviant compulsion beyond their personal agency. Indeed, observers would have been hard-pressed to find someone—or something—*not* to blame in Darrow's rendering of the situation. Like a magician misdirecting his audience, Darrow presented numerous alternative explanations for Bobby Franks's murder. The only explanation he refused to allow was that Leopold and Loeb were cold and calculating murderers.

In pointing to all the other "guilty" parties, Darrow drew upon what Maloney terms an "argument from cause," defending his clients by examining possible causative factors behind their actions.<sup>88</sup> As Maloney argues, this approach invites judges or juries to "see the entire case in a long perspective of events," thus "recoloring and reshaping the whole case."<sup>89</sup> In a similar vein, Abe Ravitz observes that Darrow reconceptualized notions of guilt and accountability such that his clients were no longer individuals bearing criminal culpability. Instead, they became "universal symbol[s] whereby not the individual but rather a series of moral and ethical considerations was paraded before a tribunal."<sup>90</sup> Hence, Darrow turned the finger of guilt from the boys to their surroundings and ultimately to the court itself, saying that the court's decision to "visit the wrath of fate and chance and life and eternity upon a nineteen year old boy" would mean "justice would be a misnomer and mercy would be a fraud" (345). Bowers argues that this strategy made it possible for speakers like Darrow to achieve "phenomenal success" due to their "ability to adopt new frames of reference from which to interpret the law."<sup>91</sup>

By altering the rhetorical situation, Darrow reconceptualized the terms of the court proceedings and constructed a case that pivoted on a series of strategic transformations and inversions: the death penalty would not punish his clients as much as it would stall the progress of humanity and the evolution of legal doctrine. Leopold and Loeb's execution did not brand *them* murderers so much as it did the state. His clients were not criminals, but victims. Thus, Darrow turned the tables by deflecting blame from his clients and transferring accountability to the sentencing judge, the prosecution, their upbringing, the war, their education, their governess, and their "weird" relationship. In the short term, the strategy failed; Leopold and Loeb were sentenced to life in prison. In the long run, however, it raised questions about the death penalty and the criminal justice system that would echo from the twentieth century into the twenty-first.

### Conclusion

On 10 September 1924, Judge Caverly sentenced Leopold and Loeb to life imprisonment in the Joliet prison in Illinois. Although this outcome heightened Darrow's reputation as a

formidable lawyer, it also provoked strident criticism. New York Judge Alfred J. Talley would consequently challenge Darrow to a public debate on the death penalty. Darrow accepted the challenge, and the debate over whether capital punishment was a "wise policy" took place in the Manhattan Opera House on September 23, 1924. The two debated the issue before a house filled with members of the public paying between \$1.65 and \$4.40 to attend.<sup>92</sup> Although Darrow's statements inspired multiple outbursts of applause,<sup>93</sup> Talley's challenge reflected the widespread view that Darrow's clients should have been put to death.

Nevertheless, Darrow's closing address at the trial resonated down the halls of legal history. His arguments about the inhumanity of the death penalty continue to be referenced in court statements and rulings. In the 1990 U.S. Court of Appeals case, *McDougall v Dixon*, for example, one counsel member argued against the death penalty by quoting Clarence Darrow's statement that the death penalty was "a cold blooded, premeditated killing by the state."<sup>94</sup> In November 2010, the *New York Times* published a column by Bob Herbert criticizing the death penalty and citing the opposition of former Supreme Court Justices John Paul Stevens, Harry Blackmun, and Thurgood Marshall to capital punishment.<sup>95</sup> In an echo of Darrow's argument that the death penalty dehumanized society, Herbert argued that "the death penalty in the United States has never been anything but an abomination—a grotesque, uncivilized, overwhelmingly racist affront to the very idea of justice."<sup>96</sup>

In reflecting on Darrow's legacy, it is worth considering the contradiction in his philosophy of human behavior: while he believed ardently in the *right* of people to be free from the edicts of society and its institutions, he did not believe in their *ability* to do so. His championing of the freedom of the individual from institutional strictures, conventions of society, or the "hoarse voice of the mob" (79) was undermined by his fatalistic belief that people had no free will, having been either pre-programmed by their genes and "equipment," or misled by institutions, philosophers, or caretakers. Put another way, Darrow argued for the freedom of humankind while denying the human's ability to act freely.

This tension highlights the problems with Darrow's logic. His arguments about individual criminal culpability—or the lack of it—created a false separation between a person and his or her behavior through a "dissociation of act and person [that] is never more than partial and precarious."<sup>97</sup> If Darrow were to have had his way, society might have gone the way of Samuel Butler's dystopic *Erewhon*, where crime was treated as an illness to which people unwittingly fell victim, and therefore were to be cured rather than punished.<sup>98</sup> Darrow's attempts to circumvent individual criminal responsibility removed accountability from the person and implied that nobody should have to consider the consequences of their actions because criminal behavior could always be blamed on other influences. As the *Washington Post* commented in its review of Simon Baatz's 2008 book, *For The Thrill of It: Leopold, Loeb, and the Murder that Shocked Chicago*, "though Darrow won in the immediate sense . . . he failed to win the broader legal and philosophical argument."<sup>99</sup>

Darrow's arguments about Leopold and Loeb's lack of culpability actually did not hold water for Caverly, who cited none of those reasons when explaining why he spared the boys from the death penalty. In fact, he explicitly rejected the idea of mitigating circumstances, saying they were to be found "neither in the act itself, nor in its motive or lack of motive, nor in the antecedents of the offenders."<sup>100</sup> Instead, what resonated with Caverly were Darrow's arguments about the youth of his clients and Illinois's legal precedent on capital punishment for minors.

Here, Caverly explained that his decision to choose imprisonment over the death penalty was "moved chiefly by consideration of the age of the defendants" and the fact that "the records of Illinois show only two cases of minors who were put to death by legal process—to which number the court does not feel inclined to make an addition."<sup>101</sup> Ironically, this meant that Darrow's most powerful argument was the one that emphasized Caverly's personal responsibility for sentencing "children" to death. As he reminded Caverly, "Your Honor, if these boys hang, you must do it. There can be no division of responsibility here. You must do it. You can never explain that the rest overpowered you. It must be your deliberate, cool, premeditated act, without a chance to shift responsibility" (27).

Although Darrow's arguments about mitigating factors were dismissed in 1924, his efforts to identify the causes of human conduct remain central to contemporary debates about where to draw the line between individual motivation and external influence. When two twelve year old girls recently stabbed another because they believed a fictional character on the Internet demanded it,<sup>102</sup> they brought forth anew the sorts of issues raised by Darrow. When can a criminal act be blamed on something the perpetrator read or was told? When can ignorance or youth be used as a defense of perpetrators accused of a heinous crime? As citizens mourn together in response to mass shootings at schools and elsewhere, we try to understand, as Darrow did, what went into shaping the personalities and actions of those involved and how responsible they really were for those actions. As we ponder such questions, perhaps Darrow's greatest contribution was to highlight a tension we continue to negotiate: how society should balance individual responsibility for criminal actions with influences outside the individual's control.

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### Notes

<sup>1</sup> Kevin Tierney, *Darrow: A Biography* (New York: Thomas Y. Crowell Publishers, 1979), 198.

<sup>2</sup> *Inherit the Wind* (1960), dir. Stanley Kramer, starred Spencer Tracy as Henry Drummond, a character based on Clarence Darrow in the Scopes Monkey Trial of 1925, in which Darrow defended a science teacher for teaching Darwinian evolution; In *Compulsion* (1959), dir. Richard Fleischer, Orson Welles played Jonathan Wilk in a screen adaptation of Meyer Levin's 1956 book, *Compulsion*, which was based on the Leopold and Loeb case. Finally, in 1991, Kevin Spacey played Darrow in a TV biography of Darrow's life, titled *Darrow* and directed by John David Coles.

<sup>3</sup> See: Andrew E. Kersten, *Clarence Darrow: American Iconoclast* (New York: Hill and Wang, 2011); and John A. Farrell, *Clarence Darrow: Attorney for the Damned* (New York: Vintage Books, 2011).

<sup>4</sup> Scott W. Howe, "Reassessing the Individualization Mandate in Capital Sentencing: Darrow's Defense of Leopold and Loeb," *Iowa Law Review* 79 (1994): 989.

<sup>5</sup> *Resnover v. Pearson*, 754 F. Supp. 1374, 1386 (N.D. Ind. 1991), *aff'd* 965 F.2d 1453 (7th Cir. 1992) cert. denied 113 S. Ct. 2935 (1993) ; *State v. Joubert*, 455 N.W.2d 117, 129 (Neb. 1990) *cert. denied* 499 U.S. 931 (1991).

<sup>6</sup> *State v. Battle*, 661 S.W.2d 487, 496 (Mo. 1983) (en banc), *em. denied* 466 U.S. 933 (1984) (Blackmar, concurring in part and dissenting in part).

<sup>7</sup> *United States v. Perez-Casillas*, 593 F. Supp. 794, 807 (D.P.R. 1984).

<sup>8</sup> Martin Maloney, "Clarence Darrow," in *A History and Criticism of American Public Address*, Vol. 3, ed. Marie Kathryn Hochmuth (New York: Russell & Russell, 1965), 262-312 .

<sup>9</sup> Horace G. Rashkopf, "The Speaking of Clarence Darrow," in *American Public Address*, ed. Loren Reid (Columbia: University of Missouri Press, 1961), 27-53.

<sup>10</sup> Stephen E. Lucas and Martin J. Medhurst, eds., *Words of a Century: The Top 100 American Speeches, 1900-1999* (Oxford University Press, 2009).

<sup>11</sup> Charles E. Morris III, "Passing by Proxy: Collusive and Convulsive Silence in the Trial of Leopold and Loeb," *Quarterly Journal of Speech* 91 (August 2005): 264-290.

<sup>12</sup> Martin Maloney, "The Forensic Speaking of Clarence Darrow," *Speech Monographs* 14 (1947): 111-126.

<sup>13</sup> Randall E. Majors, "Clarence Darrow in Defense of Leopold and Loeb: A Case Study in Forensic Argumentation," PhD diss., Indiana University, 1978.

<sup>14</sup> Majors, "Clarence Darrow in Defense," 81.

<sup>15</sup> Majors, "Clarence Darrow in Defense," 128, 129, 131, 137.

<sup>16</sup> Statement of Richard Albert Loeb, Cook County Criminal Court Building, Chicago, Illinois, Saturday May 31, 1924, 20, "Leopold and Loeb in the University Archives," Digital Collections and Exhibits, Northwestern University Library, [http://www.library.northwestern.edu/sites/www.library.northwestern.edu/files/pdfs/loeb\\_statement.pdf](http://www.library.northwestern.edu/sites/www.library.northwestern.edu/files/pdfs/loeb_statement.pdf) (accessed May 8, 2014).

<sup>17</sup> Statement of Richard Albert Loeb, 20.

<sup>18</sup> Statement of Nathan F. Leopold Jr., Cook County Criminal Court Building, Chicago, Illinois, Saturday May 31, 1924, 5, "Leopold and Loeb in the University Archives," Digital Collections and Exhibits, Northwestern University Library, [http://www.library.northwestern.edu/sites/www.library.northwestern.edu/files/pdfs/leopold\\_statement.pdf](http://www.library.northwestern.edu/sites/www.library.northwestern.edu/files/pdfs/leopold_statement.pdf) (accessed May 8, 2014).

<sup>19</sup> First ransom note to Jacob Franks, "Harold S. Hulbert Papers, 1920-1956," Series 55/23, Boxes 1-2 (Addition to the Series), Digital Collections and Exhibits, Northwestern University Library, <http://www.library.northwestern.edu/libraries-collections/evanston-campus/university-archives/digital-collections-and-exhibits/leopold> (accessed May 8, 2014).

<sup>20</sup> First ransom note.

<sup>21</sup> Statement of Nathan F. Leopold Jr, 2-6.

<sup>22</sup> "Calm Mother Faces Franks Boy Killers at Their Trial," *New York Herald Tribune*, July 24, 1924, n.p.

<sup>23</sup> James Doherty, "Millions to Defend Killers," *Chicago Tribune*, June 2, 1924, 1-2.

<sup>24</sup> Doherty, "Millions," 1. It didn't help that Darrow, who the Loeb family approached the day after the boys confessed, had been charged on two counts of jury bribery in 1913. He was acquitted of the first charge and the second was eventually dropped, but Leopold's offhanded remark risked evoking uncomfortable associations with the earlier case, which had also been a high profile case featuring two brothers accused of murder.

<sup>25</sup> All references to Darrow's August 22, 23, and 25, 1924 closing statement in the trial of Nathan Leopold and Richard Loeb before Judge John Caverly of the Cook County Criminal Court are cited with reference to paragraph numbers in the authenticated speech text accompanying this essay.

<sup>26</sup> Statement of Richard A. Loeb, 2.

<sup>27</sup> Arthur Weinberg, ed., *Attorney for the Damned* (New York: Simon and Schuster, 1957), 17.

<sup>28</sup> Statement of Richard A. Loeb.

<sup>29</sup> Paula S. Fass, *Children of a New World: Society, Culture, and Globalization* (New York University Press, 2007), 117.

<sup>30</sup> Hal Higdon, *Leopold and Loeb: The Crime of the Century* (Urbana and Chicago: University of Illinois Press, 1999), 139.

<sup>31</sup> "Alienist Squad Tests Minds of Leopold, Loeb; Another Expert on Way from the East," *Chicago Daily Tribune*, June 8, 1924.

<sup>32</sup> "Leopold and Loeb called Abnormal," *New York Times*, June 16, 1924, n.p.

<sup>33</sup> "Alienists Admit Rapid Inspection of Leopold, Loeb," *The Atlanta Constitution*, August 15, 1924, 1.

<sup>34</sup> "Loeb and Leopold Called Abnormal," *New York Times*, June 2, 1924, 3.

<sup>35</sup> Robert R. McCormick, owner of the *Chicago Tribune*, made similar overtures. McCormick reportedly offered Freud \$25,000 or more to come to Chicago. See Ernest Jones, *The Life and Work of Sigmund Freud, Vol. 3: The Last Phase 1919-1939* (New York: Basic Books, 1957), 103.

<sup>36</sup> Fass, *Children of a New World*, 138.

<sup>37</sup> Karl H. Von Wiegand, "Freud Under Knife for Cancer, Report: Noted Psychologist Too Ill to Come to America in the Franks Case," *Chicago Herald and Examiner*, June 18, 1924, 3.

<sup>38</sup>Jones, *The Life and Work of Sigmund Freud*, 103.

<sup>39</sup> Donald McRae, *The Last Trials of Clarence Darrow* (New York: Harper Collins, 2009), 75.

<sup>40</sup> "Another Study of Slayers," *Chicago Daily Tribune*, June 5, 1924, 2 (see Appendix A).

<sup>41</sup> See: Morris, "Passing by Proxy," and Paul B. Franklin, "Jew Boys, Queer Boys: Rhetorics of Antisemitism and Homophobia in the Trial of Nathan 'Babe' Leopold Jr. and Richard 'Dickie' Loeb," in *Queer Theory and the Jewish Question*, ed. Daniel Boyarin, Daniel Itzkovitz, and Ann Pellegrini (New York: Columbia University Press, 2003).

<sup>42</sup> H. H. Robertson, "Leopold Claims Crime was in Getting Caught; Loeb Bends Hypnotic Eye on Jacob Franks," *The Atlanta Constitution*, July 26, 1924, 2.

<sup>43</sup> "Franks Killers Branded Soulless," *Los Angeles Times*, August 5, 1924, n.p.

<sup>44</sup> "Loeb 'Master' Of Leopold Under Solemn Pact Made; Sex Inferiority is Factor," *Chicago Daily Tribune*, July 28, 1924, 1.

<sup>45</sup> "Franks Lad Stolen to Study His Death, Boy Slayers Admit," *Washington Post*, June 1, 1924, n.p.

<sup>46</sup> H. H. Robertson, "Sinister Compact of Boyhood Bound Slayers, Is Claim," *The Atlanta Constitution*, August 5, 1924, 1.

<sup>47</sup> H. H. Robertson, "Startling Chain Connects Youths to Franks Case," *The Atlanta Constitution*, May 31, 1924, 1.

<sup>48</sup> "The Jew in Character and Business," *Dearborn Independent*, May 22, 1920, 15.

<sup>49</sup> For Taft's rebuttal, see: "Jew Dominance Charges Denied," *Louisville Courier-Journal*, December 24, 1920, 3. For other newspapers' reactions, see: "The Anti-Jewish Wave," *Louisville Courier-Journal*, January 30, 1921, C4; and "The American Jew," *The Chicago Defender*, November 4, 1922, 12.

<sup>50</sup> V. S. Woeste, "Insecure Equality: Louis Marshall, Henry Ford, and the Problem of Defamatory Antisemitism, 1920-1929," *Journal Of American History* 91, no. 3 (2004): 877.

<sup>51</sup> Harold R. Isaacs, *Images of Asia: American Views of China and India* (New York: Harper and Row, 1958), 271.

<sup>52</sup> This image persisted even after Leopold and Loeb began their sentences: "The soft, manicured, effeminate looking hands of Richard Loeb and Nathan Leopold . . . were torn and bruised tonight as the result of the first day of real toil that the two wealthy young men have known . . . they told keepers that they would much prefer clerical tasks . . ." ("Franks Killers Bruise Hands in Prison Work," *New York Herald Tribune*, September 14, 1924, 21).

<sup>53</sup> Franklin, "Jew Boys, Queer Boys," 125.

<sup>54</sup> Franklin, "Jew Boys, Queer Boys," 124.

<sup>55</sup> "Glasses Near Body Not Such As Man Wears," *Chicago Daily Tribune*, May 24 1924, 2.

<sup>56</sup> Franklin, "Jew Boys, Queer Boys," 140.

<sup>57</sup> Tierney, *Darrow: A Biography*, 11.

<sup>58</sup> Darrow was, for a while, the special assessment attorney to the city of Chicago.

<sup>59</sup> Tierney, *Darrow: A Biography*, 54.

<sup>60</sup> John Peter Altgeld, *Our Penal Machinery and Its Victims* (Chicago, IL: A. C. McClurg & Company, 1886), 21.

<sup>61</sup> Altgeld, *Our Penal Machinery*, 21.

<sup>62</sup> Altgeld, *Our Penal Machinery*, 15.

<sup>63</sup> Tierney, *Darrow: A Biography*, 54.

<sup>64</sup> Tierney, *Darrow: A Biography*, 54.

<sup>65</sup> Clarence Darrow, *Crime: Its Cause and Treatment*, 1922. <http://www.gutenberg.org/files/12027/12027-h/12027-h.htm> (accessed August 8, 2014).

<sup>66</sup> In a telling passage of his monograph, Darrow came close to insinuating that criminals were iconoclasts punished for not following the diktats of a herd-like society where, "the man who kept the path did right" while "the criminal is the one who leaves the pack." He had an ill-concealed admiration for those who brooked authority, and argued that while "the beaten path, however formed or however unscientific, [had] some right to exist," it was nevertheless not the best, being "the way of least resistance for the human race." Instead, the way forward had been "made easier by those who have violated precepts and defied some of the concepts of the time." From: Clarence Darrow, *Crime: Its Cause and Treatment*, 1922.

<sup>67</sup> Tierney, *Darrow: A Biography*, 154.

<sup>68</sup> Tierney, *Darrow: A Biography*, 154.

<sup>69</sup> Simon Baatz, *For the Thrill Of It: Leopold, Loeb and the Murder that Shocked Chicago* (New York: Harper Collins Publishers, 2008), 169.

<sup>70</sup> Baatz, *For The Thrill Of It*, 370.

<sup>71</sup> These "transformations" did not unfold in a clear sequence. Rather, Darrow wound his way back and forth between these strategies across three days, delivering an address that ran to over 70 pages.

<sup>72</sup> "Caverly's Record Favors Life Terms," *Chicago Daily News*, August 30, 1924.

<sup>73</sup> John Waite Bowers, "Deliberative Speech in a Forensic Context: Andrew Hamilton at the Peter Zenger Trial," *Communication Studies* 16, (1965): 165.

<sup>74</sup> William M. Landes and Richard A. Posner, "Legal Precedent: A Theoretical and Empirical Analysis," *Journal of Law and Economics* 19, no. 2, Conference on the Economics of Politics and Regulation (Aug., 1976): 249-307.

<sup>75</sup> Landes and Posner, "Legal Precedent," 250.

<sup>76</sup> John Henry Merryman, "The Authority of Authority: What the California Supreme Court Cited in 1950," *Stanford Law Review* 6, no. 4 (Jul., 1954): 620.

<sup>77</sup> Chaim Perelman and L. Olbrechts-Tyteca, *The New Rhetoric: A Treatise on Argumentation*, trans. John Wilkinson and Purcell Weaver (Notre Dame, IN: University of Notre Dame Press, 1969), 91.

<sup>78</sup> Perelman and Olbrechts-Tyteca, *The New Rhetoric*, 261.

<sup>79</sup> James Jasinski, "Definition/Definition of the Situation," in *Sourcebook on Rhetoric: Key Concepts in Contemporary Rhetorical Studies* (Thousand Oaks, CA: Sage Publications, 2001), 155.

<sup>80</sup> David Zarefsky, "Definitions," in *Argument in a Time of Change: Definitions, Frameworks, and Critiques*, ed. James F. Klumpp (Annandale, VA: National Communication Association, 1997), 8.

<sup>81</sup> Darrow was 67 when he gave this statement; State's Attorney Robert Crowe was 44.

<sup>82</sup> Clarence Darrow, *Crime: Its Cause and Treatment*, 1922, Project Gutenberg, <http://www.gutenberg.org/files/12027/12027-h/12027-h.htm> (accessed August 8, 2014).

<sup>83</sup> Darrow, *Crime: Its Cause and Treatment*.

<sup>84</sup> Darrow, *Crime: Its Cause and Treatment*.

<sup>85</sup> Darrow, *Crime: Its Cause and Treatment*.

<sup>86</sup> Here, Darrow used the same phrenological approach of judging personality through facial features as did the *Chicago Tribune* in its June 1924 study of Leopold and Loeb's photographs.

<sup>87</sup> Morris, "Passing by Proxy," 266.

<sup>88</sup> Maloney, "The Forensic Speaking of Clarence Darrow," 119, 121.

<sup>89</sup> Maloney, "The Forensic Speaking of Clarence Darrow," 120.

<sup>90</sup> Abe Ravitz, *Clarence Darrow and the American Literary Tradition* (Cleveland, OH: Press of Case Western Reserve University, 1962), 144.

<sup>91</sup> Bowers, "Deliberative Speech in a Forensic Context," 164-165.

<sup>92</sup> Weinberg, *Attorney for the Damned*, 89.

<sup>93</sup> Weinberg states that Darrow was "interrupted by either applause or laughter about 45 times during his first presentation, and about 20 times during his rebuttal." Weinberg, *Attorney for the Damned*, 89.

<sup>94</sup> *McDougall v. Dixon*, 921 F.2d 518, 535-37 (4th Cir. 1990), cert. denied 501 U.S. 1223 (1991), 536.

<sup>95</sup> Bob Herbert, "Broken Beyond Repair," *New York Times*, November 29, 2010, 1.

<sup>96</sup> Herbert, "Broken Beyond Repair," 1.

<sup>97</sup> Perelman, *The New Rhetoric*, 296.

<sup>98</sup> Samuel Butler, *Erewhon* (London: Trübner & Co., 1872).

<sup>99</sup> Jonathan Yardley, Review of *For The Thrill of It: Leopold, Loeb, and the Murder that Shocked Chicago* by Simon Baatz, *The Washington Post*, August 24, 2008.

<sup>100</sup> Baatz, *For the Thrill of It*, 391.

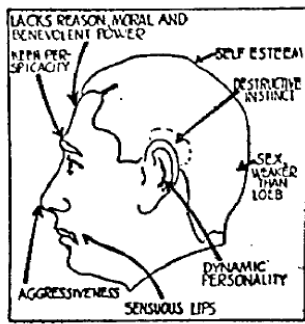
<sup>101</sup> Baatz, *For the Thrill of It*, 402-403.

<sup>102</sup> Justin Parkinson, "The Origins of Slender Man," *BBC News Magazine*, June 10, 2014, <http://www.bbc.com/news/magazine-27776894> (accessed August 15, 2014).

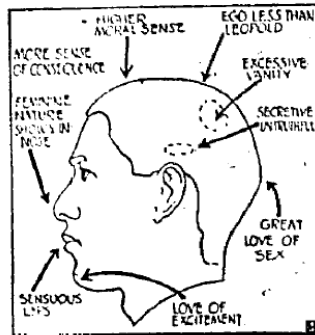
### Appendix A

ANOTHER STUDY OF SLAYERS  
*Chicago Daily Tribune (1923-1963); Jun 5, 1924;*  
ProQuest Historical Newspapers Chicago Tribune (1849 - 1987)  
pg. 2

## ANOTHER STUDY OF SLAYERS



**NATHAN F. LEOPOLD JR.**  
*This youth is declared by a phrenologist to be an intense believer in his own superiority over everybody.*



**RICHARD LOEB.**  
*A phrenologist pronounces this boy of a feminine type of mind, eager for applause and easily led.*