

# A landmark in the fight against capital punishment in the US

## Lessons of the 1924 Leopold and Loeb murder case

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*The United States remains one of the few advanced industrialized countries in the world that still practices capital punishment. Since the US Supreme Court reinstated the death penalty in 1976, 731 individuals have been executed. These condemned inmates have included women, the mentally ill, foreign nationals and those sentenced to death for crimes committed when they were juveniles.*

*Despite condemnation from international human rights organizations and foreign governments to America's use of the death penalty, it continues. Within the US, there is growing opposition to the practice, due in part to revelations of wrongfully convicted death row inmates, inadequate and corrupt counsel for capital defendants, as well as the preponderance of minorities, workers and the poor on death row. The current debate surrounding capital punishment makes all the more relevant an examination of the history of the death penalty in America, such as the case of Leopold and Loeb reviewed in the article below.*

The attitude of enlightened thought to the death penalty was highlighted by the 1924 case of Nathan Leopold Jr. and Richard Loeb. The two teenagers, who came from wealthy Chicago families, abducted and murdered a 14-year-old boy. The killing, and subsequent confession of the two youth, led to a frenzied outcry from the press, which demanded their speedy execution.

The case aroused enormous passion and controversy, in some ways comparable to the Oklahoma City bombing trial of Timothy McVeigh. The murder was brutal and seemingly incomprehensible. The defendants showed no remorse; in fact the boys appeared to enjoy the publicity their capture and arraignment evoked.

The Loeb family retained the services of Clarence Darrow, the famous defense attorney and civil libertarian. In the face of the press hysteria, Darrow courageously decided to use the case to open the eyes of the public to the reactionary and barbaric nature of capital punishment.

A number of features served to fixate public opinion on the case. Nathan Leopold Jr. was the son of a wealthy retired box manufacturer. Richard Loeb's father was a retired vice president of Sears & Roebuck and a multimillionaire. Both youth were highly intelligent. Leopold, 19, was the youngest to graduate from the University of Chicago and was a noted ornithologist. Loeb, 18, was the youngest to graduate from the University of Michigan. The defendants both came from Jewish families and shared a homosexual relationship.

Progressive thinkers of the time generally recognized that crime had its roots in the contradictions of society, in the first place poverty and social inequality. Darrow, while not a socialist, had been deeply influenced by the growth of the working class movement. He defended socialist leaders Eugene V. Debs and Big Bill Haywood against frame-up charges. He had seen firsthand how the death penalty had been used as a weapon by the magnates of capital to terrorize the working class.

Haywood, a founder of the revolutionary syndicalist Industrial Workers of the World, had only narrowly escaped the hangman's rope, due in large part to Darrow's energetic defense. Other working class leaders were not so fortunate. Five anarchists had been executed in 1886 for allegedly inciting the Chicago Haymarket bombing. Industrial Workers of the World organizer Joe Hill was shot by the state of Utah in 1915 on the flimsiest of evidence. Not long after the Leopold and Loeb case, Sacco and Vanzetti, the two Italian anarchists, were executed by the state of Massachusetts after a judicial frame-up.

Out of his experiences Darrow had developed a deep aversion to the capitalist treatment of crime, which he believed was guided by little more than a thirst for vengeance. He authored a book, *Crime, Its Causes and Treatment*, in which he argued for a more humane and enlightened approach. He wrote, "Before any progress can be made in dealing with crime the world must fully realize that crime is only a part of conduct, that each act, criminal or otherwise, follows a cause; that given the same conditions the same result will follow forever and ever; that all punishment for the purpose of causing suffering or growing out of hatred is cruel and antisocial."

Darrow had opposed capital punishment throughout his career. As he once declared, "Everyone who advocates capital punishment is really ashamed of the practice for which he is responsible. Instead of urging public executions, the most advanced and sensitive who believe in killing by the state are now advocating that even the newspapers should not publish the details and that the killing should be done in darkness and silence."

In its eagerness to send Leopold and Loeb to the hangman, the press was not the least interested in uncovering the conditions that had led two extremely promising scholars to commit murder. To do so would have pointed to some rather unpleasant truths about American society. In addition, a show of mercy toward Leopold and Loeb risked the danger of encouraging demands by less privileged defendants for similar consideration.

Darrow quickly arrived at the decision to plead Leopold and Loeb guilty to murder. Though deeply disturbed, Leopold and Loeb were not "insane" by legal standards. Further, he decided that the current state of public opinion, inflamed by hysterical articles in the press, made it too risky to leave the boys' fate in the hands of a jury. As he explained, "I know perfectly well that where responsibility is divided by twelve it is easy to say: 'away with them.'" Instead, he decided to place the question of sentencing in the hands of a judge.

The defense sought to bring before the court, as mitigating circumstances, the boys' social maladjustment and mental illness. The privileged upbringing of Leopold and Loeb had warped their personalities. Their parents taught them that anything they wanted could

be bought. They grew up believing that they were beyond any responsibility.

Leopold's parents had sent him to an all-female school as a child, in a misguided attempt to overcome his shyness around girls. This had the opposite effect. Adding to his troubles, he suffered from an overactive thyroid and had an awkward physical appearance. At college he had a hard time relating to his classmates, who were much older.

Thus, while Leopold had great intelligence, he had few friends. The death of his mother increased his feelings of isolation. Leopold became obsessed with the writings of the German reactionary philosopher Friedrich Nietzsche. In particular, Leopold took hold of Nietzsche's belief that there were "supermen" who were more gifted than the herd and were not bound by ordinary conceptions of human sympathy or morality.

When Leopold met Richard Loeb, he saw in the latter his idealized vision of the superman. Leopold later wrote, "Loeb's friendship was necessary to me—terribly necessary." He claimed that his motive in participating in the crime was to "please Dick."

Loeb, like Leopold, was a precocious but emotionally unstable youth. He was handsome, articulate and highly intelligent. However, his main interest was reading cowboy and detective stories, perhaps as a form of rebellion against the strict governess who was charged with his upbringing. As time went on he became obsessed with the fantasy that he could carry out a perfect crime.

When the pair met, Leopold was 14 and Loeb, 13. A bizarre and stormy relationship ensued. While Leopold had no interest in crime, he was apparently dominated by the need to please Loeb. Together they planned and carried out petty crimes, such as the theft of a typewriter from Loeb's fraternity. In the spring of 1924 Leopold passed the entrance exam to enter the law school at Harvard University in the fall. Loeb was also planning to attend law school. Sensing that a turning point was approaching in their lives, Loeb decided it was time to put into practice the plan for a perfect crime the pair had been discussing.

The victim, Bobby Franks, was more or less chosen at random. Their idea was to kidnap the child of a wealthy family and demand a ransom. The money was to be thrown off a moving train at a designated point. The boys reluctantly concluded that the only way to avoid detection was to kill their victim, so he could provide no clues to the authorities.

Despite their careful plans the scheme quickly went awry. A work crew discovered Frank's body hidden in a culvert and authorities were able to alert the victim's parents before any ransom could be paid. Leopold had accidentally dropped his glasses while hiding the body and investigators traced them to the optometrist who wrote the prescription. The police were soon knocking on Leopold's door. The case was sealed when the Leopold family chauffeur told police he had seen the two boys trying to wash red stains off the floorboard of a strange car, the vehicle Leopold and Loeb had rented to kidnap and murder Franks.

Loeb confessed to the crime first, followed by Leopold. Their stories differed only as to who had actually killed the Franks child. Loeb said Leopold did it and Leopold blamed Loeb.

Darrow brought four leading psychiatrists, or "alienists" as they were called at the time, to Chicago to examine Leopold and Loeb. Their testimony at the sentencing hearing was the cornerstone of the defense's case that the boys were mentally ill. The prosecution strenuously objected to admitting the testimony of the psychiatrists, claiming such evidence was only admissible in the case of an insanity plea. Judge John R. Caverly, who presided over the sentencing, eventually ruled in favor of admitting the psychiatrists' testimony.

On the opening day of the sentencing hearing the halls of the Chicago courthouse were jammed. The case generated more publicity than any other in the city for decades to come. The proceedings lasted over one month. The prosecution called over 100 witnesses in an attempt to overwhelm the court with a needless repetition of the bloody details of the

crime. The defense, for its part, patiently sought to educate the judge and the public at large.

One witness called by Darrow, Dr. Benjamin Glueck, described his examination of Loeb: "I was amazed at the absolute absence of any signs of normal feeling. Loeb is suffering from a disordered personality; the nature of this disorder is primarily in a profound pathological discord between his intellectual and emotional life. We might designate it as a split personality. This boy, while capable of orienting himself intellectually, is quite incapable of endowing these surroundings with an adequate emotion."

Another psychiatrist, Dr. William Healy, said of Leopold, "To my mind this crime is the result of diseased motivation—that is, in its planning and commission. It was possible only because Leopold had these abnormal mental trends with the typical feelings and ideas of a paranoid personality. He needed these feelings and ideas supplemented by what Loeb could give him. There is no reason why he should not have committed the crime with his diseased notion. There was no place for sympathy or feeling to play any normal part. He had an established pathological personality before he met Loeb, but probably his activities would have taken other directions except for this chance association. He is right; the world is wrong..."

State's Attorney Robert Crowe, repeating the popular prejudice of the day, mocked Darrow's claim that the boys could be mentally ill, but not insane. The prosecution called its own psychiatrists as rebuttal witnesses to testify that the boys were normal. Crowe advanced the absurd claim that Leopold and Loeb, who had ready access to thousands of dollars, carried out the kidnapping to pay off a \$90 gambling debt.

Bitter recriminations flew back and forth between Darrow and State's Attorney Crowe. At one point Crowe accused Darrow of preaching the doctrine of "anarchy." If the judge indicated agreement with Darrow's line of argument, Crowe claimed, "a greater blow has been struck to our institutions than by a hundred, aye, a thousand murders."

Darrow retorted that Crowe was a "hanging" state's attorney. "I think maybe you would laugh at the hanging of these two boys," he added.

In his closing argument, Crowe attempted to rebut Darrow's claim that the death penalty did not deter crime. He belittled the testimony of the psychiatrists who had examined Leopold and Loeb and reiterated his claim that there was nothing abnormal about the boys. He argued that the age of the defendants should not deter their killing by the state. "Mr. Darrow is a student of criminology;" Crowe said, "he has written a book on it and he says the age, the time when crimes are committed, is between the ages of 16 and 24. Your Honor and I know that the average age is 22. If we are going to punish crime and by the punishment stop it, and the criminal age is between 17 and 24, how can we punish if the age is a defense."

"Indeed," interjected Darrow, "how can you?"

Crowe concluded by denouncing the view that crime was largely the product of objective forces and conditions and not the fault of criminals as such. Such ideas, the state's attorney asserted, were responsible for promoting crime.

Darrow's closing statement spanned three days. His speech still stands as one of the most eloquent arguments against capital punishment advanced in a US courtroom:

"Your Honor, if in this court a boy of 18 and a boy of 19 should be hanged on a plea of guilty, in violation of every precedent of the past, in violation of the policy of the law to take care of the young, in violation of all the progress that has been made and of the humanity that has been shown in the case of the young; in violation of the law that places boys in reformatories instead of prisons,—if your Honor in violation of all that and in the face of all the past should stand here in Chicago alone to hang a boy on a plea of guilty, then we are turning our faces backward toward the barbarism which once possessed the world. If your Honor can hang a boy

of 18, some other judge can hang him at 17, or 16, or 14. Some day, if there is any such thing as progress in the world, if there is any spirit of humanity that is working in the hearts of men, some day men would look back upon this as a barbarous age which deliberately set itself in the way of progress, humanity and sympathy, and committed an unforgivable act.”

“I have heard in the last six weeks nothing but the cry for blood. I have heard from the office of the state’s attorney only ugly hate. I have seen a court urged almost to the point of threats to hang two boys, in the face of science, in the face of experience and all the better and more humane thought of our age...

“They say we come here with a preposterous plea for mercy. When did any plea for mercy become preposterous in any tribunal in all the universe? Mr. Savage [assistant state’s attorney] tells the court that if these boys are hanged there will be no more boys like these. Mr. Savage is an optimist. If these two boys die on the scaffold, which I can never bring myself to imagine, if they die on the scaffold the details of this will be spread over the world. Every newspaper in the United States will carry a full account. Every newspaper of Chicago will be filled with the gruesome details. It will enter every home and every family. Will it make men better or make men worse? How many will be colder and crueler for it? How many will enjoy the details? And you cannot enjoy human suffering without being affected for the worse. What influence will it have on the millions of men who will read it? What influence will it have on the millions of women who will read it, more sensitive, more impressionable than men? What influence will it have upon the infinite number of children who will devour its details as Dickie Loeb has enjoyed reading detective stories?

“Do I need to argue to your Honor that cruelty only breeds cruelty; that hatred only causes hatred...”

It is noteworthy, especially in light of the reported impact of the Gulf War on the thinking of Timothy McVeigh, that Darrow pinpointed war and militarism as a major stimulant to violent, anti-social behavior. Referring to the impact on popular consciousness of World War I, which had ended just six years earlier, he declared, “We read of killing one hundred thousand men in a day. We read about it and rejoiced in it—if it was the other fellows who were killed. We were fed on flesh and drank blood. Even down to the prattling babe. I need not tell your Honor this, because you know; I need not tell you how many upright, honorable young boys have come into this court charged with murder, some saved and some sent to their death, boys who fought in this war and learned to place a cheap value on human life. You know it and I know it. These boys were brought up in it. The tales of death were in their homes, their playgrounds, their schools; they were in the newspapers that they read; it was a part of the common frenzy—what was a life? It was nothing. It was the least sacred thing in existence and these boys were trained to this cruelty.”

He went on, “Crime has its cause. Perhaps all crimes do not have the same cause, but they all have some cause. And people today are seeking to find out the cause...”

“If a doctor were called on to treat typhoid fever he would probably try to find out what kind of milk or water the patient drank and perhaps clean out the well so that no one else could get typhoid from the same source. But if a lawyer were called on to treat a typhoid patient he would give him thirty days in jail, and then he would think that nobody else would ever dare to take typhoid again.”

In conclusion, Darrow expressed optimism that the tide of history was running against the death penalty and other barbaric relics: “I know the future is on my side. Your Honor stands between the past and the future. You may hang these boys, you may hang them by the neck until they are dead. But in doing it you will turn your face toward the past. In doing it you are making it harder for every other boy who in ignorance and darkness must grope his way through the mazes which only childhood

knows. In doing it you will make it harder for unborn children. You may save them and make it easier for every human being with an aspiration and a vision and a hope and a fate. I am pleading for the future, I am pleading for a time when hatred and cruelty will not control the hearts of men; when we can learn by reason and judgment and understanding and faith that all life is worth saving, and that mercy is the highest attribute of man.”

Darrow’s speech made a tremendous public impression. Even the big business press, which had taken a generally hostile attitude toward Darrow’s defense of Leopold and Loeb, treated Darrow’s arguments with a certain amount of respect. Some newspapers began referring to the then 67-year-old Darrow as the “Old Lion.”

Judge Caverly took two weeks to prepare his decision. He was finally ready on September 10, 1924. In front of a packed courtroom he announced that he had decided against execution and sentenced the defendants instead to life imprisonment. His ruling showed that he had been at least in part swayed by Darrow’s arguments. While Caverly said he was intrigued by the testimony concerning Leopold and Loeb’s psychological state of mind, he asserted that he had been primarily moved by consideration of the defendants’ youth. He declared, “This determination appears to be in accordance with the progress of criminal law all over the world and with the dictates of enlightened humanity. 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.”

As for the subsequent fate of the defendants, Loeb was murdered in prison a few years later. Leopold, however, went on to master 27 languages and develop a new system of education for prisoners. Paroled in 1958, he moved to Puerto Rico where he married, taught mathematics and wrote a book on birds.

Needless to say, the issues raised by Darrow in this case are hardly ever broached today, either in the courtroom, the legislative halls or by the press. The US ruling class has shifted sharply to the right, abandoning any pretense of an enlightened or egalitarian approach to social questions. In its place, public discourse is saturated with the ignorant and discredited nostrums of the past based on fear, religious bigotry and cruelty.

Take the editorial response of the *New York Times* to the execution of Timothy McVeigh. In a piece titled “History and Timothy McVeigh” the *Times* argued that there were no broader historical or social causes behind the Oklahoma City bombing. It insisted that McVeigh’s actions flowed entirely from his own diseased personality. The paper chose not to seriously examine the path that led McVeigh to become a right-wing terrorist. It ignored the undoubted impact of fascistic ideology on McVeigh, who was particularly susceptible to such influences given the generally reactionary political climate and his feelings of alienation and bitterness resulting from his experiences in the Gulf War and subsequent joblessness.

There are objective reasons for this retrogression in the attitude of the liberal establishment toward the death penalty and social questions in general. The collapse of the Soviet Union and the crisis and decay of all the traditional organizations of the working class have given big business the illusion that it has a free hand. US capitalism sees nothing to stop its drive to world domination and the removal of all barriers to the accumulation of personal wealth. Meanwhile, the contradictions within capitalism—the gap between rich and poor, the conflict between the nation-state system and globalized production, the oppression of the former colonial countries—have intensified.

Capitalist democracy is breaking down in the United States under the weight of enormous social tensions. Traditionally liberal organs of big business such as the *New York Times* adapt to this reactionary climate. They are unable to seriously oppose injustices such as the death penalty because to do so would raise disturbing questions about society. After all,

don't the tragedies cited by law-and-order demagogues—the Oklahoma City bombing and the wave of shootings in the workplace and schools—point to a broader social sickness? If there are deep-going antagonisms in society, can they be overcome by more and more brutal punishment? Apparently the *Times*, and much of the capitalist establishment, are under the illusion that they can.



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