

## Introduction

CLARENCE DARROW (1857–1938), whose decades-long championing of the despised and powerless earned him the sobriquet of “The Great Defender,” was born four years before the beginning of the Civil War and died a year before the beginning of World War II. These eighty years could well be considered the most *transformative* in United States history—years that saw America expand from a fledgling and sparsely populated nation of farmers and small businessmen to an emerging superpower. Darrow witnessed and, in no insignificant way, participated in the multifaceted growing pains incident to this transformation: on such issues as the relations between capital and labor, the role of women in society, the place of religion in a diverse population, and, particularly, the theoretical and practical status of crime and punishment, Darrow made signal contributions that endured far beyond the span of his own life. A lawyer first and a writer second, he nonetheless left behind a succession of treatises whose provocative content still challenges us. Darrow, a self-proclaimed rebel who sided, both intellectually and emotionally, with the minority, remains a figure to contend with.

Throughout his writings, whether they be on crime, religion, or morals, Darrow expressed the conviction that our views of life are fundamentally and unalterably shaped by childhood experience. In this assertion he may well have been considering his own upbringing, for the kernels of many facets of his thought can be found in the events of his youth and adolescence. He was born on April 18, 1857, in the village of

Kinsman, in northeast Ohio, the fifth of eight children born to Amirus and Emily (Eddy) Darrow. Amirus had studied theology in his youth, but in the very process of doing so he lost his faith; his son Clarence inherited that religious unorthodoxy despite receiving a conventionally Presbyterian upbringing, with regular church attendance and Sunday school. Clarence's mother was an ardent advocate of women's rights, and he no doubt absorbed these views as well in spite of her early death in 1872.

Darrow's schooling was spotty. He had an undistinguished record at the local district school; in 1873 he was sent to the preparatory department of Allegheny College in Meadville, Pennsylvania, but the depression of that year dried up the family funds and forced him to leave after a year. While employed as a schoolteacher at Vernon, seven miles south of Kinsman, Darrow began studying law on the side. He entered the University of Michigan law school in 1877 but again left after a year, instead joining a law office in Youngstown and studying for the bar exam. After a few months he took the bar exam—and passed. Darrow was fortunate that the standards for entering the legal profession were at that time quite low: almost any bright and motivated young man could become a lawyer with minimal study. He married a young woman from Kinsman, Jessie Ohl, on April 15, 1880.

Finding no work in his tiny hometown, Darrow set up a law office in nearby Andover. But law as such appears to have interested him less than politics, and he began both a career in public speaking and an affiliation with the local Democratic Party. His only son, Paul, was born on December 10, 1883. The election of 1884, which saw Grover Cleveland elected as the first Democratic president since before the Civil War, raised Darrow's fortunes, and he moved to the larger city of Ashtabula, on Lake Erie, where he was elected city solicitor in 1885.

By this time Darrow had developed greater political ambitions. He felt he needed to test his skills on a national level, and the place to go was Chicago, an immensely vital city that many contemporaries predicted would become the prototypical American metropolis and eventually eclipse New York as the nation's cultural center. Darrow's move there in 1887 proved permanent, and transformed him both as a man and as a lawyer.

Coming under the influence of John Peter Altgeld, whose successful campaign for governor in 1892 he managed, Darrow plunged into the convoluted thickets of the Democratic Party machine. He was first made special assessment attorney to the city of Chicago, then its chief corporation counsel. Through Altgeld, he secured a job in the legal department of the Chicago & Northwestern Railway, an immensely powerful company that largely controlled freight and trolley traffic in and around Chicago.

Darrow's decision not to follow Altgeld to Springfield, while it lessened his direct influence on state government, proved to be a blessing in disguise: Altgeld's political career was destroyed in 1893 when he issued pardons for the Haymarket anarchists, who in 1887 had been convicted (on flimsy evidence) of setting off a bomb that had killed several spectators and policemen. By this time Darrow had thrust himself deeply into the central economic conflict of the time—the struggles between capital and labor. Many fledgling labor unions, in the face of vicious and illegal reprisals by capitalists, felt they had no choice but to resort to violence themselves. Darrow took their side in several notable legal cases. The first was the trial of socialist and labor leader Eugene V. Debs, which grew out of the American Railway Union's strike against the Pullman Palace Car Company in 1893. Darrow, in taking up the case, resigned his position with the Chicago & Northwestern Railway as an obvious conflict of interest. Debs had been accused of conspiracy in violating an injunction against the strikers issued (unprecedentedly) by the federal government, and Darrow was withering in his arguments against the legality of the proceedings. The case against Debs was quickly dropped so as to avoid the embarrassment of having George M. Pullman, president of the Pullman company, face Darrow's tongue-lashing in cross-examination; but Darrow was disappointed that the injunction itself was upheld by the Supreme Court in spite of his eloquent argument against it. It was one of several occasions when Darrow faced the nation's highest court.

The Debs case augmented Darrow's standing as a radical firebrand and ardent friend of labor. Several sensational cases in the coming years—his successful defense of Thomas I. Kidd of the Woodworkers' Union in

1898 in a strike in Oshkosh, Wisconsin; his involvement in the anthracite arbitration case of 1902 between the United Mine Workers and coal mine owners in Pennsylvania; and, most spectacularly, his successful defense of “Big Bill” Haywood of the Western Federation of Miners in a murder trial in Idaho in 1907—cemented that reputation. The stress of all this work proved too much for his marriage, however, and Darrow and Jessie divorced in 1897. Darrow also lost a bid for national office in 1896 when he failed to campaign vigorously for a supposedly “safe” Democratic Congressional district in Chicago and lost narrowly to a Republican. In 1902 he was elected to the Illinois House of Representatives, the only elected office he ever held. To many people’s surprise, he made a second venture into matrimony in 1903, marrying Ruby Hamerstrom, a journalist he had met four years before. They remained married for the duration of Darrow’s life.

It was also in 1903 that Darrow set up a private law practice in Chicago with lawyer-poet Edgar Lee Masters and Francis Wilson. The eight-year partnership was under continual stress, with Darrow and Masters both feeling that the other was not pulling his weight. Darrow, indeed, was unwittingly setting himself up for a fall by his vigorous defense of labor cases. He was persuaded to take on the case of James B. and John J. McNamara, two brothers who were accused of murder in the bombing of the *Los Angeles Times* building on October 1, 1910. The case against the McNamaras—one of whom was a union official then engaged in fierce disputes with *Times* owner Harrison Gray Otis—was virtually airtight, and Darrow reluctantly concluded that the only way for his clients to escape the death penalty was for them to plead guilty. The result was an uproar in the labor community, which had in defiance of all the evidence believed the McNamaras to be innocent and also believed Darrow to be a miracle worker who could have gotten them off. Worse was to follow: the prosecution, perhaps out of anger of being robbed of the death penalty, indicted Darrow himself of jury bribery. The two cases that followed took up the bulk of the years 1912 and 1913; although the first trial ended in an acquittal and the second in a hung jury, Darrow’s standing as a lawyer was seriously compromised. Darrow fell into

a deep depression, believing that, at the age of fifty-five, his career was over and his usefulness at an end. He could scarcely have realized that his greatest triumphs were still to come.

For the next decade Darrow attempted to pick up the pieces of his life and career. To raise money, he began lecturing more and more widely, engaging in a series of public debates on issues ranging from religion to Prohibition. Forming a new law firm, he sought to handle more criminal cases, doing much work for no charge for impoverished clients whose cases he believed worthy. At a very early stage of his career he had determined never to work for the prosecution, and all his work was as a defense attorney. He shocked his socialist colleagues by strongly advocating the Allied cause at the outbreak of World War I and urging American entry into the war from the beginning. It was, ironically, this seeming betrayal of his radical roots that caused Darrow's reputation to be resurrected among the public at large.

That reputation would, however, be put to a severe test by two notorious cases, occurring within a year of each other in 1924 and 1925, that permanently sealed Darrow's reputation as "America's greatest lawyer." The murder of little Robert Franks by two wealthy youths, Nathan Leopold and Richard Loeb (the latter the son of a vice president of Sears, Roebuck & Co.), shocked the nation with its brutality and seeming lack of motivation: was it possible that two such privileged youths could kill merely for sport? As in the McNamara case, there was no likelihood that the defendants were innocent; accordingly, Darrow—by this time a relentless opponent of the death penalty—concluded that the only way for his clients to escape the hangman was through a legal sleight-of-hand whereby a guilty plea was entered, thereby thrusting the case immediately into the sentencing phase. Darrow relied on the judge's leniency in sentencing, and in the event his reasoning proved correct: Judge John Caverly brought opprobrium upon himself by sentencing Leopold and Loeb to life imprisonment for murder and a concurrent sentence of ninety-nine years for kidnapping.

The circumstances surrounding Darrow's other noteworthy case of this period—the Scopes trial of 1925—were very different: instead of a

matter of life and death he confronted a scenario that came close to buffoonery.<sup>1</sup> The serious issue of the trial—the extent to which the Christian religion would be allowed to dictate the laws of a state or of the nation—was almost submerged in the atmosphere of personal rivalry between Darrow, the leading agnostic of his age, and William Jennings Bryan, the long-serving Democratic statesman (whose presidential campaign in 1896 Darrow had reluctantly supported, although he did little for Bryan’s campaigns of 1900 and 1908) who now came to represent the forces of small-town conservatism and religious orthodoxy. Bryan’s catastrophic decision to undergo merciless cross-examination by Darrow was the fitting capstone to a trial that riveted the nation. It is frequently overlooked that the defense—Darrow, Arthur Garfield Hays, and Dudley Field Malone, with journalist H. L. Mencken lending loud support in his pungently satirical reporting—deliberately sought a guilty verdict for the hapless teacher John Thomas Scopes, for it was only in this way that the anti-evolution statute passed by the Tennessee legislature could be challenged in federal court. But the Tennessee Supreme Court, keenly aware that the state was becoming the laughingstock of the nation, quietly overturned the conviction, and the statute was equally quietly rescinded a few years later.

It would have been difficult for any lawyer to have followed up the Leopold and Loeb and the Scopes trials with cases still more spectacular, and Darrow felt no inclination to do so. In 1925–26 he successfully defended two African Americans, Ossian Sweet and his brother Henry, on murder charges stemming from violence that arose after their move into a largely white neighborhood in Detroit. In 1932 he took up the case of Thomas Massie, a naval officer in Hawaii who was accused of kidnapping and killing a Hawaiian man whom he suspected (erroneously, it appears) of raping his wife. At the age of seventy-five, Darrow’s powers were finally on the wane, and even he could not secure Massie’s acquittal. The leftist firebrand made his final public appearance as the chairman of the National Recovery Review Board, which was to investigate the workings of one of the pillars of the New Deal, the National Recovery Administration. Darrow’s harshly critical assessments of the NRA in 1934–36 were

not well received in government circles, although they contributed to the Supreme Court's decision to decree the NRA unconstitutional.

Darrows final years were plagued by illness, and, given his views on immortality, he probably welcomed death when it came to him on March 13, 1938. Thousands came to pay their respects to a man who had rarely compromised his principles, however unpopular they may have been, over his half-century of public life.

Darrow longed for literary success, but he was continually disappointed in his quest for renown. Although, during the first two decades of the twentieth century, he could well have been considered the most popular and controversial public speaker in the United States (taking up the role of another great agnostic, Robert G. Ingersoll, who died in 1899), Darrow felt that his writings were not receiving the critical acclaim they deserved. Perhaps Darrow had an exaggerated belief in his literary powers, but, while he may have left no single monument like his erstwhile colleague Edgar Lee Masters's *Spoon River Anthology*, the totality of his literary work is far from insignificant. And what is more, it is motivated by a carefully conceived philosophy that, although rarely articulated in full, unites his writings on philosophy, religion, law, society, and politics.

The religious skepticism that Darrow initially derived from his father's influence was central to his outlook. It is a bit puzzling why he continually referred to himself merely as an agnostic: there seems little doubt that he was an atheist. A member of the audience at one of Darrows religious debates stated clearly that he "denie[d] the existence of the Deity."<sup>2</sup> Surely he of all people would not have worried about the general public's fear of and prejudice against the very word atheist. In a 1928 debate on whether there is a purpose in the universe, Darrow argued that the notion of a purpose necessarily implies a "purposer": is there such an entity? "On this question of a purposer, or a purpose, especially a purposer, I am simply an agnostic. I haven't yet had time or opportunity to explore the universe, and I don't know what I might run on to in some nook or corner. I simply say there is not a syllable of evidence in the world to sustain any such proposition, not a syllable." It is important to emphasize this point because it might otherwise seem that

Darrows screeds against religion were merely attacking the social and political failings of religion or of religious fundamentalism. Those failings are, indeed, extensive, but Darrow would not have been so vigorous in exposing them if he had not felt that the religious point of view—as regards the existence of a deity, the existence and immortality of the soul, and the place of human beings in a boundless and impersonal cosmos—was in itself erroneous.

The chief harm that religion causes, in Darrow's judgment, is in its restriction of civil liberties by infringements of the separation of church and state. This is the thrust of two essays—a review of Maynard Shipley's *The War on Modern Science* (1927) and "The Lord's Day Alliance" (1928)—written shortly after the Scopes trial. Incredibly, the latter was deemed so intemperate by H. L. Mencken that he rejected it for the *American Mercury*. The actions of present-day fundamentalists who continue to rail against the teaching of evolution or protest against the "desecration" of the Sabbath may suggest that Darrow was, here as elsewhere, uncannily prescient. Darrow knew that fundamentalists would press their case as far as it could be pressed, and that the only defense was an equally vigorous counterattack by scientists: "They should . . . organize to meet the campaign [of the fundamentalists]. They should do this, not only in defense of themselves, but in defense of learning; and, still more important, in defense of religious freedom. This fight must be made by the scientists and the teachers. It is, above all others, their job."

There is a currently fashionable view that the "conflict" of religion and science was merely a tendentious fantasy of certain nineteenth-century secularists; but the Scopes trial—and the actions of contemporary fundamentalists in attempting to prevent or limit the teaching of evolution or in promoting creationism or its spruced-up counterpart, "intelligent design"—embarrassingly and overwhelmingly refutes this naive view. It may well have been the case that the medieval church was one of the leading advocates of scientific inquiry—how could it not have been, since it was the sole haven of learning in European society for centuries?—but the parameters of that learning were strictly circumscribed: any advance of science that threatened religious orthodoxy was merci-

lessly condemned. Both Darrow and Mencken were well aware that the reconcilers of science and religion—notably the Nobel Prize-winning physicist Robert A. Millikan—were in large part attempting to cling to an increasingly attenuated and dogma-free religiosity in the wake of scientific advances that systematically cast doubt upon the fundamental tenets of religion. For Darrow, such pussyfooting was impossible: religion may have its comforts for the weak and feeble-minded, but it was only an intellectual obstacle to the person of education.

Darrow's metaphysical views are again of central importance in the subject he made his own: the punishment of criminals. Initially influenced by such treatises as John Peter Altgeld's *Our Penal Machinery and Its Victims* (1887), which proposed that the sources of criminal behavior be more carefully examined, Darrow eventually founded his views on his conceptions of the metaphysical and moral status of crime. In such debates as "Can the Individual Control His Conduct?" and other writings, Darrow made clear his disbelief in free will as ordinarily conceived. But his determinism is not (as his philosophically untutored biographer Kevin Tierney appears to believe) equivalent to fatalism. Darrow merely believed that every human action, like every other action by any entity throughout the universe, was strictly a result of cause and effect. Human beings did not stand outside the chain of causation. The effect of this theory on the treatment of crime is evident: it is not that criminals are somehow "blameless," but that an effort must be made to understand the nature and sources of their behavior. What Darrow was combating here was the naive and vindictive view that crime must be punished severely because the criminal was somehow different in kind from law-abiding human beings—a view not far different, as Darrow pointed out in the lecture "What to Do about Crime" (1927), from the medieval view that mental illness was caused by demonic possession.

Darrow's writings on crime and criminals may appear to suggest an excessive sympathy for the criminal and an insufficient awareness of the plight of the victim, but Darrow felt that the treatment of crime in his day was so counterproductive that radical steps must be taken to remedy it. Darrow's first full-length treatise, *Resist Not Evil* (1902), addresses

this matter forthrightly. It is a pungent irony that the agnostic Darrow unwaveringly repudiates the vengeance of the Christian or Islamic god in preference for the mercy and kindness of the god of Jesus. Is Darrow's concluding recommendation—"Hatred, bitterness, violence and force can bring only bad results—they leave an evil stain on everyone they touch. No human soul can be rightly reached except through charity, humanity and love"—merely the hopelessly naive pipe dream of a sentimentalist? A careful reading of this and other Darrow writings on crime—particularly *Crime: Its Cause and Treatment* (1922), his most exhaustive discussion of the subject—suggests that he is seeking to prevent crime at the source rather than merely treat its symptoms after it has already occurred. His emphasis is on the proper upbringing of children so that they do not enter a life of crime; once a crime has occurred, punishing the criminal vindictively accomplishes nothing except to ingrain that behavior in the criminal.

Darrow's longtime opposition to the death penalty was based on the belief that killing the perpetrator accomplishes nothing save to exacerbate vengeance. He states bluntly in the essay "Capital Punishment" (1928): "The real reason why so many people tenaciously cling to the idea of capital punishment is because they take pleasure in inflicting pain upon those they hate." Darrow relentlessly destroys the argument that the death penalty is in any way a deterrent to crime, specifically the crime of murder. Although he did not have access to statistics suggesting either that the death penalty has been inflicted erroneously upon the innocent or that race is a critical factor in capital cases—two of the chief reasons that many thoughtful persons today denounce the death penalty—Darrow knew that "[o]nly the poor are put to death." The wealthy, like Leopold and Loeb, can afford the best legal defense possible so as to escape the noose.

In his social and political theory, the notion of freedom is central. Whether Darrow was concerned about any possible conflict between his determinism in regard to criminal (or, in fact, all human) conduct and his advocacy of civil liberties is not apparent. It was, as we have already seen, his devotion to freedom that impelled his most vigorous attacks on the

encroachment of religion or religious-based statutes upon civil society. One of his earliest essays, "Woman Suffrage" (1893), emphasizes the role of freedom in advocating the extension of voting rights to women: "More and more as the spirit of liberty has penetrated the darkness of the world, have rulers of high degree and low, surrendered power and place and privilege at the demand of the common people of the earth, until to-day, in the constitutions of states and nations, full political privileges are guaranteed to those who once were chattel slaves." It was to be expected that Darrow would join his colleague H. L. Mencken in relentlessly opposing Prohibition as an unconscionable intrusion upon civil liberties, and it is no accident that his fiery screed "The Ordeal of Prohibition" appeared in Mencken's *American Mercury*. He makes an analogous argument in another *American Mercury* essay, "The Eugenics Cult," in which he tackles the increasing tendency of anthropologists and geneticists to suggest making improvements to society by banning a nebulously defined group of the "unfit" from procreating. Here it is not science but pseudoscience that Darrow is criticizing, and his arguments dissect the fallacies of the eugenicist creed while simultaneously protesting the curtailment of freedom that any legislation based on eugenic principles would entail. (It is unfortunate, however, that Darrow feels obliged to add a religious argument—"haven't the eugenists . . . forgotten that man, as he stands, is created in the image of God?"—in which he manifestly did not believe.)

Darrow's essays, written over the better part of four decades, reveal an interesting stylistic progression. His earliest writings, such as his essay on woman suffrage, use a florid and sentimental diction typical of the public speakers of the time; his own addresses of the day (such as that on woman suffrage) followed this orotund manner. By the early twentieth century, however, Darrow had come to realize that a plain style was more effective in conveying his message than any amount of flamboyant extravagance could be. In *The Story of My Life* (1932) he consciously enunciated this principle:

For years, before juries, on the platform, in conversation, I have first of all tried to know what I was talking about, and then to

make my statements clear and simple, and the sentences short. I am not at all sure that this is the best method for writing and speaking. The reader has time to consider, and go over the pages if he will; if he misses a word or does not understand one, or even an idea, he can look things up in the dictionary or encyclopædia. But the listener has but one chance, and that is as the information or opinion hastens along; so the words must not be too long, or too unfamiliar, nor spoken too rapidly for assimilation. Some grasp spoken matter quickly, and some need time to catch what they are not accustomed to hear. The speaker must aim to reach practically every person in his audience; therefore he must not speak too fast or use too many uncommon words.<sup>3</sup>

It is, moreover, abundantly clear that Darrow is at his best in those papers that are, in essence, the arguments of a defense attorney, whether they discuss religion or politics or law or society. The public debates in which Darrow engaged over a lifetime were the ideal venues for his chosen manner—a manner resting more upon the destruction of an opponent's arguments than the advocacy of his own, thereby allowing such weapons as sarcasm, repartee, and *reductio ad absurdum* to come into play. The wry, cynical, even misanthropic humor that suddenly and unexpectedly appears in Darrow's writings—in the sober lecture "What to Do about Crime," delivered before a society of lawyers, he can write blandly: "People are born without any ideas. Generally they die without any, too"—is not the least engaging feature of his style.

But if Darrow was only intermittently effective as an essayist or a philosopher, he was unfailingly on the mark when dealing with one vital subject—himself. Whether Darrow wrote one autobiography or two may be a vexed and unanswerable question: his bibliographer, Willard D. Hunsberger, refers to *Farmington* (1904) as a novel, but it is manifestly an unaffected and emotionally accurate account of Darrow's childhood and upbringing, for all that it is set in a fictitious town in western Pennsylvania and its first-person narrator disguises himself as John Smith.

*The Story of My Life* is a more straightforward autobiography, although it may perhaps have more to say on Darrow's beliefs and outlook than on either the outward facts of his crowded career or the intimate details of his private life.

But when we turn to such pieces as "Why I Have Found Life Worth Living" (1928) or "At Seventy-two" (1929), we see the real Darrow stripped of the pyrotechnics of the defense attorney or the self-conscious literariness of the essayist in search of fame. We see the quiet dignity of the man who can gain a kind of contentment even in the gaping absence of a loving God or the hope of life after death; who is temperamentally inclined to go against the opinions of the crowd; who finds that both the pleasures and the disappointments of life are less keen in old age than in youth. The real Clarence Darrow may not have been quite like the conflicted Spencer Tracy in *Inherit the Wind* or the unprincipled, radical, atheist bugaboo that the friends of capitalism and labor made him out to be; but he was, as the essays in this book reveal, far more interesting and engaging—as a man, as a writer, and as a thinker. He was a man who, while retaining his core beliefs over a lifetime, learned from his mistakes and gained an insight both into himself and into his society that only age, experience, and struggle can bring. And at the end, he could rightly say that he had made a difference, and a difference for the better.