



UNIVERSITY OF CALIFORNIA PRESS  
Advancing Knowledge, Driving Change

---

Clarence Darrow: Crusader for Social Justice

Author(s): Walter Prichard Eaton

Source: *Current History (1916-1940)*, Vol. 35, No. 6 (MARCH 1932), pp. 786-791

Published by: University of California Press

Stable URL: <https://www.jstor.org/stable/45333966>

Accessed: 12-02-2022 20:41 UTC

---

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at <https://about.jstor.org/terms>



JSTOR

*University of California Press* is collaborating with JSTOR to digitize, preserve and extend access to *Current History (1916-1940)*

# Clarence Darrow: Crusader for Social Justice

By WALTER PRICHARD EATON

IT was hot in Dayton, Tenn., so hot that the judge had consented to move out of the packed court room to a platform on the court house lawn. The platform was surrounded by a milling and motley throng—reporters, camera men, hillbillies, college professors, Holy Rollers, peddlers, children, dogs. John T. Scopes, the young man on trial, was almost forgotten. In the witness chair, as an expert on religion, sat William Jennings Bryan, the leader of the prosecution, his coat off, his sleeves rolled up, his shirt open at the breast, his bald head glittering with perspiration, his hand ceaselessly waving a palm leaf fan. And facing him, also in shirt sleeves, stood Clarence Darrow, the leader of the defense, aggressive as a bulldog leaping for an opponent's throat, tireless and merciless, all suavity gone, his seamed, wrinkled, homely face, so often mirthful and kindly, now set with the frown of the killer. The man in the witness chair had three times been a candidate for the Presidency of the United States, had been Secretary of State under Woodrow Wilson, and for a generation the leader of American Democracy. The man who faced him, and hounded him, was perhaps the most noted jury pleader at the American bar. And all the excitement was over a young high school teacher's having told his pupils that man is a mammal and has evolved from more primitive forms of life, contrary to the laws of Tennessee.

DARROW—You believe the story of the flood to be a literal interpretation?

BRYAN—Yes, sir.

DARROW—When was the flood?

BRYAN—I would not attempt to fix the date. The date is fixed, as suggested this morning.

DARROW—About 4004 B. C.?

BRYAN—I never made a calculation.

DARROW—What do you think?

BRYAN—I do not think about things I don't think about.

DARROW—Do you think about things you do think about?

And so it went, till both men were so excited that they often shook their fists in each other's perspiring faces, Darrow ripped his shirt sleeve pounding the table, Bryan stumbled into an "admission" that maybe the six days of Genesis might have been a somewhat longer period, the reporters' pencils tore over their pads, and the next day an astonished world wondered that such things could be as the twentieth century was entering its second quarter. Most people, probably, considered that Bryan was sincere in his stumbling defense of fundamentalism, and while they were not exactly sorry to see him made ridiculous, Darrow was no hero in their eyes for invading this obscure little Tennessee town and becoming ringmaster of an intellectual circus. It was freely enough said at the time that he was a "show-off," embracing this opportunity for an enormous publicity. A wide public, which had just come to know Darrow in the Leopold-Loeb case in Chicago a year before, and sided quite generally against him there, now again saw him in an unfavorable light.

If we turn to Darrow's autobiography for understanding, we read: "I cannot say that in this case I had

nothing to do with the immediate cause of all this publicity. For the first, the last, the only time in my life, I volunteered my services in a case \* \* \* because I really wanted to take part in it." But his reasons for so doing had nothing to do with personal publicity. Although he had supported Bryan in 1896 and 1900, he had long resented Bryan's Fundamentalist attacks on liberal teachers and professors, and especially his espousal of the anti-evolution laws which finally passed the Mississippi and Tennessee Legislatures with his personal assistance. The laws themselves Darrow regarded, of course, as intellectual tyranny, and un-American because imposing a State religion.

I was in New York not long after the arrest of Mr. Scopes, and saw that Mr. Bryan had volunteered to go to Dayton to assist in the prosecution. At once I wanted to go. My object, and my only object, was to focus the attention of the country on the program of Mr. Bryan and the other Fundamentalists in America. I knew that education was in danger from the source that has always hampered it—religious fanaticism. To me it was perfectly clear that the proceedings bore little semblance to a court case, but I realized that there was no limit to the mischief that might be accomplished unless the country was roused to the evil at hand. So I volunteered to go.

It is fairly obvious that Darrow welcomed the chance to face Bryan, and hoped to reduce his public influence. But his chief motive in this case was to turn the light of publicity quite mercilessly upon the anti-evolution laws and the whole state of mind which engenders them, as a public service, as his contribution to intellectual freedom and a more rational civilization. His technique being that of a trial lawyer, the bull dog snapped and snarled and worried the Peerless Leader to make a reporters' holiday. As a result, he complains a little bitterly in his book that "during the trial of this bizarre case I felt that the attorneys for the defense were sadly misunderstood." And he adds that

none of them asked for or received compensation, and he himself was out \$2,000, "but I believed that the cause was worth while, and was always glad that I helped."

"I believed that the cause was worth while—." In those quiet and almost casual words Darrow states what seems to have been the motto of his life. Whether reading his autobiography\* or Charles Yale Harrison's recent study† of him, you are immediately impressed by the apparent absence of financial calculation in all his famous cases, by the crusader spirit in which he entered them and, above all, perhaps, by the way in which he emotionally dramatized them to give them a general significance and make them focus a cause.

Best remembered, probably, of all his cases save that at Dayton, was his defense of Leopold and Loeb in 1924. The murder these two youths committed was so atrocious that, as he points out in his autobiography, the whole country howled for their blood. When he was retained by their families, the public cried that the rich could hire the best legal talent and dodge the penalties the poor would have to pay, and Darrow was looked upon as one who tried to thwart justice for a fat fee. What actually he did was to enter a plea of guilty, thus avoiding a jury trial, and then, taking advantage of the Illinois law which permits the introduction of evidence before the judge to determine sentence, to establish—he says for the first time in American courts—consideration of degrees of culpability due to mental make-up. Being opposed to capital punishment, and also firmly convinced from his study of criminology that there are various degrees of guilt for the same crime, Darrow in this case not only saved two boys, 17 and 18, from the gallows (of course they went to prison for life), but brought into

\**The Story of My Life*. By Clarence Darrow. New York: Charles Scribner's Sons, 1932. \$3.50.

†*Clarence Darrow*. By Charles Yale Harrison. New York: Jonathan Cape & Harrison Smith, 1931. \$4.

court, and thence to public attention, a mass of expert psychological evidence which has certainly furthered the study of crime, and perhaps already helped in devising preventive measures in the case of juveniles.

"I endeavored in my address," Darrow writes, "to make a plain, straightforward statement of the facts in the case, and I meant to apply such knowledge as we now have of the motives that move men. The argument took the largest part of two court days. \* \* \* When I closed I had exhausted all the strength I could summon. From that day I have never gone through so protracted a strain, and could never do it again, even if I should try." Part of this strain, no doubt, was due to the bloodthirsty mob waiting outside the court room; he was fighting mob hysteria. Part was due to his own strongly emotional nature. His plea, though to a judge, not a jury, was charged with emotion, and he ended weeping. Mr. Harrison says Judge Caverly "partly hid his face." The court room was still as death. Darrow had again dramatized his plea.

For this case Darrow, according to Mr. Harrison, sent in a bill of \$200,000, with the understanding that the parents would, if they objected to it, submit it to the arbitration of the Bar Association. They refused to do so, and ultimately sent him \$70,000, which he had to split with his firm. His satisfaction for this case was in the triumph of a cause.

In 1894 Darrow was practicing law in Chicago and taking part in debates on the single tax or delivering lectures to obscure organizations on the philosophy of Tolstoy. In some ways, his preparation for a career was not unlike that of Bernard Shaw. He was 37 years old, and though he had been in Chicago several years, and won the friendship of Governor Altgeld and served the city in various legal capacities, he had only begun to have a really lucrative practice. This had come about when he had been made coun-

sel for the North Western Railroad.

Older people will remember that we were going through a "depression" in 1894, and one which brought to some parts of the country, especially the Middle West, scarcely less suffering than the present slump. At the great Pullman works hundreds of men were laid off and the pay of the rest was reduced 40 per cent. A strike resulted. The American Railway Union, of which Eugene Debs was president, refused to haul any Pullman cars. There was much violence, particularly in the Chicago yards. Over the protest of Governor Altgeld, President Cleveland sent Federal troops to Chicago. As a result of the destruction of property, Eugene Debs and his labor associates were indicted, charged with conspiracy against the laws of the United States. At the plea of the union, Darrow undertook their defense. He resigned his position of counsel for the North Western and apparently turned his back on what gave promise of a profitable career as a corporation lawyer. His business and legal associates, of course, considered such a step little short of madness, the more so because Debs and his union were looked upon as dangerous radicals by the public and no general popularity could result from defending them—indeed, quite the opposite.

Why did Darrow do it? His friend, Governor Altgeld, asked him at the time, and he replied that his motive was purely selfish—to escape pain. "If it were easier for me to go on being counsel for the North Western and my other clients, don't be afraid, I'd do so. But, Governor, you understand, the price is too high. It hurts me too much to see Debs and men like him faced with the possibility of spending years in prison, and so, like the man who buys 10 cents' worth of relief from the beggar on the street, I am buying relief, too. No, it isn't idealism at all, you see, it's just plain downright selfishness."

This, of course, was his way of try-

ing to rationalize his emotional reactions. He took the case, quite evidently, because he felt the conspiracy laws could be, and were, used as a tool of "privilege" to suppress labor. He keenly felt inequality, injustice and tyranny in the whole situation, and appears never to have doubted that Debs and his fellow-officers at no time counseled violence. It was a great grief to Darrow when Pullman fled from Chicago before he could get him on the stand. That would, indeed, have been a dramatic contest, more worth recording than the cross-examination of Bryan.

From the Debs case, Darrow went back to his office without his previous remunerative connections, and had to start anew building up a practice. More and more this practice resolved itself into the defense of labor, of the underdog, of the poor and oppressed. So far as organized labor was concerned, his two most famous cases following the Debs case were the defense of Moyer, Haywood and Pettibone in Boise, Idaho, and the defense of the McNamaras in Los Angeles. Both were cases in which conspiracy was charged, and thus fell into line with Darrow's crusade. The former case made three men famous — Darrow; the prosecuting attorney, William E. Borah; and one of the prisoners, Big Bill Haywood, who was tried first, and whose acquittal released the others. For Borah, Darrow expresses admiration and respect as a man and a lawyer. He does not say much about Haywood. Certainly he does not share his political — or anti-political — beliefs, and never did. But, as he puts it, "this trial developed into a history of the strike, covering most of the mountainous sections of the West. \* \* \* In this period nearly every person had the psychology toward his friends and his enemies that prevails in all other wars."

Moyer, Haywood and Pettibone were being tried in connection with the murder of Governor Steunenberg by

Harry Orchard, but actually, as Darrow dramatized the case, labor was on trial for its very life. His final appeal, as was generally true of his jury appeals, was highly emotional.

There was a marked contrast between the audiences during Mr. Borah's argument and mine. While I was speaking the court room was packed and the lawn swarming with working men, Socialists and radicals, with idealists and dreamers, from every section of America. They devoured every word spoken. Each felt that in this case his personal cause had its day in court, and a spokesman who understood his life and sympathized with his needs.

Mr. Borah finished his argument in an evening session on a Saturday night. The court room was packed with the élite of Boise and all the State. All of them were dressed as though attending a social event, which indeed it was. The common people had been given their opportunity in the afternoon. The court room had been thoroughly aired, if not fumigated, during the recess. The elect now had their turn.

Haywood — the first man tried — was acquitted by the jury, and, as Darrow truly says, "the verdict made a profound impression through the country. On the one hand, it was met with bitter disappointment; on the other, there was unrestrained joy." Darrow was satisfied. He had succeeded not so much in freeing his man as in dramatizing for the country the underlying forces in conflict.

Darrow was drawn into the McNamara case, in 1911, by the solicitations of Samuel Gompers. He says he felt he had "done his share of the fighting," and he tried to beg off. "I was now weary of battling against public opinion. I believed in trades unionism, and knew the needs of labor organizations. \* \* \* This question seems better understood today, but it took centuries of hardship and sacrifice and industrial war to bring this about." At last he yielded, and went back into the "war." He says that when he left Chicago for Los Angeles he "knew nothing about the facts." In this case, they turned out to be pretty damaging, and he came to see no way to

save his clients but through a plea of guilty and a promise of life imprisonment for one, and ten years for the other. Lincoln Steffens, Fremont Older and E. W. Scripps aided him in developing the plan, and presenting it to the judge and the prisoners. It no doubt saved the lives of the McNamaras, but it brought on Darrow the hostility of many of his friends in the labor movement.

Later he was charged with jury fixing and had to remain in Los Angeles and be tried separately, on two counts. The first case he won with the utmost ease. In the second the jury disagreed, which greatly distressed him. He finally left Los Angeles a full two years after he had arrived, and \$20,000 in debt. Under the circumstances, it would seem that he had not chosen the easier road when he turned his back on the North Western, and held out a helping hand to organized labor.

For a man whom Bryan characterized as "the greatest infidel in America," who was not by inheritance or by training a member of the laboring classes nor of the "privileged" classes either, who was a lawyer with a pronounced gift for striking to the emotional heart of a case and winning a jury to his side, who rejoiced like any good artist in the successful practice of this peculiar art, and who could certainly have won fortune by its conventional exercise, to give the best years and efforts of his life to unpopular causes, fighting the battles of labor in the courts and crusading for his convictions regarding freedom and justice, is an unusual and heartening phenomenon. In Clarence Darrow the breed of the Puritan reformers still lives, though at first glance he seems far removed from Puritanism.

His ancestors on both sides, however, were Connecticut Puritans, who moved into the Western Reserve like so many others. His father, Amirus Darrow, had planned to be a minister

and had studied at Meadville, Pa., but even the Unitarianism taught there was not rational enough to suit him, and he never preached. Instead, he settled down in the village of Kinsman, Ohio, earned a precarious living as a cabinetmaker, and raised a large family in the love of learning. His own evenings were spent with his books—the Greek and Latin classics, Channing, Emerson and, as they came along, the works of Darwin and Huxley, and the pamphlets and books of the Abolitionists before the war and of the numerous reformers thereafter. The elder Darrow was known in Kinsman as an "infidel," but he was quite evidently respected. He had, it would seem, a skeptical, free mind, ethical seriousness, a genuine love of learning—all a characteristic flower of Puritanism in the nineteenth century.

From Clarence Darrow's autobiography it is quite evident that his father was a profound influence in his life. He was more emotional than his father and more humorous, but he absorbed the rationalistic attitude toward human laws and customs, the ethical seriousness, and the love of books. His father sent him to study law at the University of Michigan. He began his legal career in Ashtabula, Ohio, where he married and settled down, to all appearances reconciled to a small-town practice and a restricted life. After a few years he proposed to buy a house, but the woman who owned it refused to take a mortgage because she did not believe he could ever pay it off. That, he says, stung him into going to Chicago, where he settled in 1888.

It was not till six years later that he came into prominence. The intervening years, if we are to judge by his own statements, were quite as much filled by extra-legal intellectual pursuits as by the study and practice of his profession. He had come, somewhat earlier, under the spell of Robert Ingersoll, and had tried for a time to

model his speeches on the rhythmic style of that orator. Ingersoll's agnosticism, of course, struck a responsive chord. But, he says, he soon determined that he must go his own way oratorically, and he evidently worked hard to develop a straightforward, simple style of speech, charged with emotion and taking easily any humor that came bubbling up. For a time he was a follower of Henry George; he admired Tolstoy and lectured about him; he admired Altgeld—who was for a brief time his law partner—and supported him on the platform. He was living half his life, at least, in the realm of general ideas, meeting all sorts of men, radicals and laborites as well as industrialists and politicians. Again we say that his preparation for his career, slowly accumulated, was much like that of Bernard Shaw; and as Shaw's plays have gained their appeal to no small extent from their author's familiarity with the ideas of his age, so Darrow's famous cases, which began with the Debs defense in 1894-1895, were fought and often won not alone, or even chiefly, by legal brilliance but rather by his understanding of their extra-legal aspects, their relation to the ideas or even the nascent ideals of his time.

There have been great pleaders before. Not infrequently the man who takes off his coat and weeps and thunders before a jury is no very inspiring spectacle to the judicious. That Darrow was enormously clever in tying up a case with the emotions there is no denying. He himself declares that cases are decided not by reason, but by emotion. But his emotional appeals

were, none the less, rationalized and connected the case with larger issues and social principles. And these were issues and principles which, to him, stood for freedom and right.

This is the real measure of Darrow.

There is, of course, more of Ingersoll than of Huxley in his agnosticism. Some of his scornful gibes at faith seem in this age perilously like blows at a man of straw, and his pessimistic philosophy of life is oddly belied by the gusto with which he has lived and fought. As Mr. Harrison records, when somebody pointed this paradox out to him, he replied, "My emotions haven't caught up to my intelligence." Fortunately for him, he has been a pragmatist in practice and recognized the working value of the emotions. He has retired from the bar, at the age of 75, battle-scarred and not too well equipped with this world's goods. In recent years he has debated whether life is worth while, whether prohibition is worth while, whether capital punishment is worth while, whether there is free will, whether man is a machine, whether "the human race is getting anywhere," with all sorts of opponents all across the land. Thousands have listened to him, smiled at his drawling wit, admired his easy, apparently casual flow of ideas, taken home the picture of his wrinkled, shrewd, but kindly face—and doubtless gone on believing what their emotions dictated. This is not a rational world. But probably Clarence Darrow is not quite so sad about it as he pretends. His own life, at any rate, has been a shining example of a rich and serious emotional nature made the dynamo to drive a skeptical mind into paths of public service.