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LEOPOLD AND LOEB:
TEXTS AND CONTEXTS OF AN AMERICAN CAUSE CELEBRE

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A Thesis submitted to the Faculty of Graduate
Studies and Research in partial fulfillment of the
requirements of the degree of Master of Arts

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ABSTRACT

This thesis situates the famous Leopold and Loeb case within the context of social discourse about the criminal. I will argue that this case played an important role in mediating social attitudes towards criminality at two moments in American history: first, in the 1920s, when defense attorney Clarence Darrow used the Leopold and Loeb trial to challenge traditional assumptions about innate criminality and the existence of a criminal type; and later, in the post World War Two epoch, when concern with various forms of "deviant" behaviour intensified. This analysis of one particular criminal case and its manifold repercussions might also prove useful for opening similar inquiries into other causes célèbres.

RESUME

Cette thèse situe la cause célèbre Leopold et Loeb dans le contexte du discours social sur le criminel. Dans les recherches qui suivent, je souhaite démontrer que cette affaire joua un rôle important dans la médiation des attitudes sociales vis à vis la criminalité à deux moments dans l'histoire américaine: premièrement, en 1924 quand l'avocat Clarence Darrow se servit du procès Leopold et Loeb pour remettre en question les suppositions traditionnelles sur la criminalité; deuxièmement, après la deuxième guerre mondiale, quand les différents types de déviance suscitèrent un nouvel intérêt. L'analyse de ce cas criminel particulier et de ses diverses répercussions pourrait être utile à des enquêtes du même genre sur d'autres cause célèbres.

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INTRODUCTION

On 21 July 1924, defense attorney Clarence Darrow stunned the crowd assembled in an Illinois courtroom when he entered a plea of guilty on behalf of his two clients, Richard Loeb and Nathan Leopold. Both Leopold and Loeb had already admitted to the police and the press that in May of the same year they had first abducted and then murdered Robert Franks, the young son of a Chicago millionaire. Because of this admission, many observers presumed that Darrow would plead his clients not guilty by reason of insanity, a move that would have allowed him to deploy his celebrated rhetorical skills in a jury trial; a guilty plea, by contrast, meant that Leopold and Loeb would proceed to a sentencing hearing where there was no jury, only a judge. It was here, before a judge, that Darrow proposed to launch an entirely new kind of investigation into a murder that both the prosecution and contemporary newspapers repeatedly described as "the crime of the century."

Many of the details of the Franks murder were already common knowledge by the time the hearing was under way. When they were first arrested in May, Leopold and Loeb--both successful university students, and self-proclaimed geniuses--had been eager to describe the planning and forethought that had gone into their attempt to commit what they had thought would be the perfect crime. In the months before they lured Robert Franks into a car and bludgeoned

him to death with a hammer, they had prepared a set of ransom notes, practised throwing a package full of money from a moving train, and established a set of phoney references that enabled them to rent a car under false names. They had also worked out their alibis for the time of the murder, and discussed what they would do in the event either of them were arrested.

But in spite of all their preparations, Leopold and Loeb ultimately faced problems neither had anticipated. First, Robert Franks's father forgot the details of the instructions that Leopold had dictated to him over the telephone regarding the exact location of the ransom drop; then, only hours after the murder, a railway worker came across the victim's body in a remote Chicago drainage ditch; and finally, the coroner who examined the body also discovered that a pair of eyeglasses found at the scene of the crime did not fit Bobby Franks's head. This discovery sent the police on a painstaking search that ended one week later when an optometrist's records pointed them in the direction of Nathan Leopold. The police had made numerous false arrests before Leopold was called in for questioning about his glasses. Presented with this and other evidence against him, Leopold eventually confessed, and named Loeb as his accomplice; the Franks murder appeared to have been solved.

But rather than resolving questions about a murder that

had provoked widespread panic, Leopold and Loeb's confessions only fuelled public bewilderment about the case, largely because the motive for the crime remained unclear. Although they had demanded payment in exchange for the boy's safe return (an exchange they never intended to complete), they insisted that money had never been their primary goal since, as was well known, they both had access to their families' considerable fortunes. They claimed to have no personal grudge against the Franks family, insisting that they had selected their victim at random. In fact they had counted on the fact that their lack of motive for the crime would help them to elude discovery.

The question of motive would be left to the law courts, and to Leopold and Loeb's defense counsel in particular. Darrow set a legal precedent when he entered a guilty plea, and then argued that mental deficiency should be considered a mitigating circumstance that should enter into the judge's decision when he sentenced the murderers. When the court agreed to hear this evidence in mitigation, the defense introduced testimony from numerous psychoanalysts (or "alienists" as they were called at the time) who argued that while Leopold and Loeb could not be considered completely insane, they nevertheless were so psychologically unstable that they had been driven by complex forces beyond their control to commit murder. Darrow's success in having psychological factors considered a possible mitigating

circumstance--rather than trying to prove his clients insane--allowed him to make an argument for the court's need to recognize the variety of elements that might combine to shape an individual subject.

While Darrow convinced the court that his team of experts should be allowed to submit their reports, the presiding judge was ultimately not persuaded that Leopold and Loeb's psychological profiles should be taken into account in his decision. He sentenced them to "life plus 99 years," and stressed that the only mitigating circumstance he had taken into account in his decision not to enforce the death penalty, was the fact that the defendants were both only nineteen years old at the time of the hearing.

Darrow had nevertheless succeeded in using the legal forum as a place in which to articulate alternatives to the dominant discourse about the criminal in American society. Contemporary criminologists and sociologists were already moving away from the paradigms for dealing with crime and criminals that had become entrenched over the course of the nineteenth and into the twentieth century: Leopold and Loeb's apparently motiveless crime provided an ideal opportunity for a very public investigation into possible alternative approaches.

A number of studies have been written about the construction of criminality in the nineteenth century. Michel Foucault's Surveiller et punir: naissance de la

prison and his case study entitled Moi Pierre Rivière ayant égorgé ma mère, ma soeur, et mon frère . . . both document the emergence of scientific discourse about the criminal, and the rationalization of penal institutions that coincided with this emergence. Michael Ignatieff's A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850 traces this same process with specific reference to the history of British prisons. In The Apprehension of Criminal Man (1876-1913): An Intertextual Analysis of Knowledge Production, Marie-Christine Comtois-Leps integrates analyses of scientific, historical, and theoretical discourses, and argues that the intertextual production of the idea of a "criminal man" fostered acceptance and support for the integration and expansion of legal, penal, and police power, in England and France in the late nineteenth century. Comtois-Leps suggests that this epoch of criminal anthropology drew to a close when Charles Goring published his ground-breaking study, The English Convict: A Statistical Study, in 1913.

Analyses dealing with the criminal as an object of intertextual discourse have tended to focus on this period, when criminology first began to be established as a profession, and on the evolution of the discipline in Europe and England. Far less work of this kind has been carried out with regards to North American developments during this time, or in later years. The analysis of the Leopold-Loeb

case that follows will, among other things, explore the relationship between the idea of the criminal that developed in the United States over the course of the nineteenth century, and later formations. It is my contention that this case was neither a highly unusual nor an ordinary affair that was temporarily inflated by the press, but rather that it was an exemplary case in a newly emergent epoch in the nexus of crime, criminal, and society. Its significance was not lost on a later audience when, in the late 1940s and particularly the 1950s, interest in the case temporarily resurfaced, and it became the basis for a best-selling novel (Compulsion), and two major films (Rope and Compulsion).

The resurgence of interest in the case in 1950s prompted Leslie Fiedler to write a brief critical reflection on the cultural significance of the Leopold and Loeb case. Fiedler's essay "Final Thoughts on the Leopold Case" first appeared in the New Leader in 1958, and he pays particularly close attention to Compulsion, a novel published by Meyer Levin two years earlier. Fiedler argues that the publication of Nathan Leopold's autobiography in 1956, and his release from prison in 1957 did not so much stimulate as participate in this revival of interest in the case, as "middlebrow" Americans learned about their place in the contemporary postwar world by looking to their common cultural history.

This provocative--if brief--piece of cultural criticism seems to have been overlooked by later commentators, who

have concentrated on the events of 1924, rather than later interpretations of these events. Hal Higdon's The Crime of the Century: The Leopold and Loeb Case, which was published in 1975, provides a detailed account of the crime, investigation, and trial, and their consequences for Leopold and Loeb. Like many other writers who have written popular histories of particular crimes, Higdon projects himself into the role of the criminals themselves, and the narrative is organized around their progress through events; historical context is thus often subordinated to protracted accounts of relatively minor occurrences. Higdon conveys little sense of the relative significance of various events, the reasons for the case's notoriety, or its place in American culture. His lengthy documentation does, however, provide useful material for anybody else who might be interested in these questions.

Philip Kronk draws upon some of this material in his "A Reanalysis of the Leopold-Loeb Psychiatric Trial Testimony," a doctoral dissertation that was published in 1979. Kronk uses the extensive psychiatric testimony submitted by both the defense and prosecution teams during the trial to reveal the limits of traditional Freudian psychoanalytic models and to highlight, by contrast, the strengths of objects-relations theory. Kronk limits his discussion of the context of the trial testimony to a cursory retelling of the story of the crime. He devotes the bulk of his study to developing alternative psychoanalytic models, although he does

acknowledge that Darrow had succeeded in putting some important issues on the forensic agenda.

Darrow's defense strategies, and his innovative use of psychiatric testimony is the subject of a dissertation entitled "Clarence Darrow in Defense of Leopold and Loeb," written by Randall Majors in 1978. Majors situates Darrow's courtroom speeches within a long tradition of legal rhetoric, arguing that Darrow consciously manipulated many of the unspoken rules of this tradition. Majors suggests that this manipulation cannot be separated from the equally ground-breaking substance of Darrow's speeches. He argues that Darrow's skills were displayed most dramatically and effectively in the Leopold and Loeb case, where Darrow attempts to transform the ways in which his audience saw the world through his very mode of speaking. Majors's focus on Darrow's place in the tradition of legal rhetoric leaves aside some of the other historical factors bearing upon this case; nevertheless, he offers valuable insights into Darrow's rhetorical strategies, insights that will be explored at greater length in Chapter Two of this thesis.

Unlike either of these dissertations on the Leopold and Loeb case, the present study does not focus exclusively on the 1924 investigation and trial, but rather contextualizes discourse about the case at that time, and later. It thus expands upon Fiedler's approach to the case in his 1958 article. While Fiedler's article is particularly useful

because it deals specifically with the Leopold and Loeb case, there are also recent studies of other causes célèbres that have pursued similar lines of inquiry. Nancy Tyson's Eugene Aram: Literary History and Typology of the Scholar Criminal, for example, looks at various representations of the famous case of a British schoolmaster who murdered a local shoemaker in the eighteenth century. Tyson traces the progress of discourse about this case through newspapers, pamphlets, plays, and other literature over the course of sixty years, and examines the historical contexts for both the murder, and the literature about it.

Similarly, Jerry Powell's The Structure of Narrative: Facts and Fictions of the Rosenberg Case, provides an analysis of various texts about the arrest and execution of Julius and Ethel Rosenberg, who in the 1950s were accused of betraying American secrets to the Russians. Both Powell and Tyson are concerned with setting discursive formations in relation to one another, rather than simply compiling an inventory of references, or an evolutionary history of an idea; unlike Higdon, Kronk, or Majors, they are able to suggest why these particular cases generated so much public interest, both at the time they occurred, and later.

Like Fiedler, Tyson, and Powell, the current study begins by establishing a context for the early emergence of interest in the case under consideration. Chapter One provides a brief history of developments within American

criminology up to 1924, followed by a review of the place of crime stories within the American press, in order to make sense of the ways in which the hunt for the Franks' murderers was presented in the contemporary press. Chapter Two examines the ways in which the juridical field, and the place of the law and courtroom trials within American culture, provided a forum for a movement away from the traditional approach to criminality, an approach that had dominated thinking about the case up to that point. Finally, Chapter Three--which serves as something of a postscript to the other two sections--places the resurgence of interest in the Leopold and Loeb case within the context of social developments in the postwar epoch. Like most postscripts, it both supplements and changes the meaning of what precedes it, much as later mediations of the Leopold and Loeb case also changed its meaning within American culture.

CHAPTER ONE: IN PURSUIT OF THE CRIMINAL

i. The American Criminological Tradition

When Clarence Darrow asked the judge presiding over Leopold and Loeb's sentencing hearing to consider evidence as to mitigating circumstances based on expert testimony by a team of psychiatrists, he set out to challenge a well-established tradition within American thinking about criminality. This tradition was articulated most clearly within the academic and professional discipline that by the late nineteenth century was widely referred to as criminology (Bennett 7). Within criminology, the traditional view that criminals are "born and not made" was, by 1924, beginning to be seen as only one of many possible ways of understanding criminality. But this view had been intimately linked with the development of criminology within the United States since the earliest formations of the discipline, and while it was being challenged in occasional scientific articles, it continued to dominate social discourse about the criminal well into the early 1920s. The significance of Darrow's challenge to this discourse can thus best be understood within the larger context of the American criminological tradition, which informed the ways in which the case was first received in 1924, but which had its roots in early nineteenth-century formations.

Numerous studies dealing with the subject of crime and

criminals appeared in the United States in the early 1800s, at a time when the growing number of crimes in some of the new urban centres was beginning to become a major concern. As the rapidly growing population was remade into the new classes of a producing industrial society, urban-dwelling Americans watched crime and mob violence escalate to a level seldom seen before the turn of the century. The years 1830 to 1850 in particular were marked by sustained urban rioting and religious, ethnic, and political clashes. Those who had a vested interest in the continued success of early capitalist development were quick to realize that if such violence was not contained, they (or their investments) might easily become its target, and moved to create permanent police forces, as well as larger and more efficient penal institutions.

There were few prisons in North America before the end of the eighteenth century, largely because there were few British laws on the books that specified imprisonment as fit punishment--most crimes in England were punishable by public whipping, death or transportation to the colonies. But the newly-formed American government could not afford to lose any citizens through transportation schemes; furthermore, as Michael Ignatieff notes in A Just Measure of Pain, "the advent of democracy was characterized by an increasing intolerance towards 'deviant' minorities" combined with a desire to "mold and 'reform' the criminal conscience" (212).

Americans took the lead in the construction of new prisons, and by the time prison reform became an active issue in British politics in the late 1700s and early 1800s, delegates were being sent to investigate the new penitentiaries already operating in the former colonies.

The new American penitentiaries were designed to house inmates whose isolation from society at large was reproduced in their isolation from one another in prison. They slept in separate cells, and were either kept in total isolation during the day (the Philadelphia model) or worked together in total silence (the Sing Sing model). These conditions necessitated an expanded permanent prison support staff, who monitored, and increasingly reported on, the activities of their charges. Such reports attracted the attention of various people--clergy, government officials, and numerous medical professionals--concerned with rising crime rates, who began to turn their attention away from the kinds of crimes being committed, towards those committing the crimes.

Charles Caldwell, a Professor at the Institutes of Medicine and Clinical Practices in Lexington, Kentucky, was one of the many medical professionals who took advantage of easily accessible prison inmates to conduct his medical research (Fink 5). Caldwell was extremely prolific, and his work dominated much of the thinking that began to develop about the criminal at this time. In Elements of Phrenology (1824), he challenged the then dominant view--widely

promoted by the (largely Calvinist) American clergy--that every man was equally sinful, insisting that while individuals were born with the same basic faculties, relations between these faculties varied from person to person. He suggested that the various faculties were broken down into discrete functions which ideally coexisted in a delicate harmony: criminal activity indicated the presence of an imbalance among the faculties, an imbalance that could never be wholly eradicated, but might be monitored and controlled (Fink 6, 8).

Like other contemporary phrenologists, Caldwell believed that the shape and topography of the human skull reflected the state of relations between these faculties. His own work stressed the importance and value of the ability to recognize potentially dangerous individuals before they were able to commit a crime. He worked to perfect a system for reading exterior symptoms accurately, and developed charts and diagrams to assist with the interpretation of individuals' skulls. In some cases, prison officials made use of these charts as part of their medical reports on prisoners, or, occasionally, to provide a breakdown of the "types" of inmates under their care (Fink 15).

Such developments indicate the beginnings of a trend towards not only identifying criminality itself as innate--the "imbalance" that Caldwell wrote about might be controllable, but it was also considered to be a lifetime affliction.

tion--but towards identifying and isolating certain criminal types. While phrenologists and other theorists often disagreed amongst themselves about what particular physical signs indicated a particular kind of criminality, they were nevertheless largely in agreement that such signs could and should be read.

Although phrenologists' claims were denounced by scientists and theologians alike, phrenology was considered a legitimate research field well into the 1850s, after which it continued to flourish as a discursive topic in popular discourse; even as late as 1924, the New York Times included a phrenological interpretation of Leopold and Loeb's skulls in their coverage of the case. Phrenology was not the only avenue of inquiry open to early American criminologists, but in focusing attention on the study of the criminal, and particularly the search for specific criminal attributes, phrenologists helped to shape the institutional foundations for criminology as a discipline. They provided the groundwork for the rise of criminal anthropology, a school that dominated thinking about the criminal well into the 1920s, but which first emerged in the years following the Civil War.

After the war, public concern with unauthorized activity increased, and anxious citizens lobbied for better police protection, and stiffer penalties for crimes. This pressure grew not so much despite, but as a result of, an

actual decrease in the number of crimes, even the most serious crimes such as homicide. As historian Roger Lane observes, this decline only stimulated anxiety about less extreme transgressions:

A fall in the real crime rate allows officially accepted standards of conduct to rise. As standards rise the penal machinery is extended and refined; the result is that an increase in the total number of cases brought in accompanies a decrease in their relative severity. ("Crime and Crime Statistics" 160)

As the relative decrease in major offenses continued, concern turned to the problems of dealing with irregular or unseemly behaviour, behaviour which, as Lane observes, was not commensurate with the demands of the new forms of work integral to capitalism:

What had been tolerable in a casual, independent society was no longer acceptable in one whose members were living close together, whose habits were governed by the clock, and whose livelihood, controlled by a supervisor, was dependent upon cooperation and a delicate interdependence. (163)

Such intolerance of individual deviations from the status quo was both reinforced and articulated in new urban policies, increased bureaucratic intervention, expanded police forces, and reflected in the fact that the prison population continued to grow.

Public concern about criminal behaviour helped to legitimize research in the field, and police, prison, and government officials increasingly relied on reports from individuals engaged in research into crime, individuals who began to refer to themselves as professional criminologists.

These criminologists began to realize that not only did their profession depend upon ongoing access to prisoners and thus on the goodwill of colleagues working in penal institutions, but also that the United States had begun to establish a solid reputation in the field of penology, and that they would benefit from linking the future development of their own discipline with that of the institution. Thus developments in theoretical criminology at this time were intimately linked with practical programs calling for the expansion and development of the prison system, and with criminologists increasing involvement in the inmate's life after incarceration.

Institutional and professional growth depended not only on a steady supply of felons, but also on the idea that the subjects of both study and incarceration had something in common with one another, beyond the fact that they had broken the law. In the last two decades of the nineteenth century, American criminologists became much more explicit and self-conscious about their mission to isolate and understand the nature of the criminal disposition, and their work increasingly echoed that of the European schools of criminal anthropology. Numerous translations of the work of Cesare Lombroso and other major European criminologists appeared in American scholarly journals at the end of the nineteenth century, and it was common for apprentices to make their pilgrimage to Europe, where they learned the finer points of

recognizing the tell-tale signs of criminal atavism, the physical manifestations of an innate criminality that were read as traces of a much earlier evolutionary phase.

But, as Arthur Fink has observed in Causes of Crime, the notion that there actually existed individuals who were living examples of an earlier stage in the development of mankind, never had as much authority in the United States as it did in Europe and England at this time (Fink 101). American criminologists preferred to use the term "degeneracy" -- a term later used repeatedly with reference to Leopold and Loeb--when discussing the possibility of the existence of a distinct "criminal man." The emphasis here was on a decline (usually said to have occurred from one generation to the next) from a formerly acceptable state, rather than the reappearance of a bad strain. The idea of a decline allowed criminologists to combine their search for potential criminals, with research into criminal activity after incarceration, research that often expanded into detailed observation of the offender's entire family. Such investigations provided the substance for a whole generation of now classic criminological texts, texts such as The Jukes--a study of three generations of criminals, all within one family.

Degeneracy remained the term under which various discussions of hereditary criminality--eugenics, brain malformation and epilepsy, to name a few, continued and flourished until the search for a criminal man was itself discredited,

or at least convincingly challenged with the publication of Charles Goring's renowned study, The English Convict, in 1913. Goring conducted a number of tests, comparing the physical attributes of a group of prison inmates, with a group of university graduates. Goring's results led him to conclude that there were no physical differences between criminals and other members of society, a conclusion which directly challenged the notion of the existence of a physiologically specific criminal man. Fink (among others) has suggested that "the publication in 1913 of Goring's The English Convict . . . was more decisive perhaps than any other factor in undermining belief in a criminal anthropological type" (274). But, rather than instigating a dramatic rupture as Fink here seems to suggest, the reception of these results did not so much undermine as redirect the isolation of a criminal type.

While The English Convict dealt a crushing blow to criminal anthropology, and the identification of the criminal as a recognizable physical type, it did not completely invalidate the notion of innate criminality, or even a criminal type. Goring himself, despite the subject of his research, concluded that feeble-mindedness was the common and key attribute of any criminal. In the United States in 1912, Henry Goddard published his influence study of the Kallikak family--subtitled A Study in the Heredity of Feeble-Mindedness. Goddard argued that criminals were made

and not born, but that so-called feeble-minded individuals provided the best material for criminality, a fine but important distinction:

The hereditary criminal passes out with the advent of feeble-mindedness into the problem. The criminal is not born; he is made. The so-called criminal type is merely a type of feeble-mindedness, a type misunderstood and mistreated, driven into criminality for which he is well fitted by nature . . . every feeble-minded person is a potential criminal. (Goddard 18)

Goddard's observations mark the beginnings of a gradual move from a discourse of the exterior of the individual to one of the interior. Physiological brain disorders had long been linked to criminal activity and the notion of moral imbecility (intellectual impairment not necessarily resulting from somatic causes) had also been present in the literature for years; but it was only at this historical juncture that the keyword feeble-mindedness began to dominate both scientific and popular literature.

Various researchers, including Goddard, began conducting a variety of tests, case studies and surveys, in an effort to catalogue degrees of mental deficiency. Such inquiries helped to create their object of discourse by equating feeble-mindedness with low marks on intelligence tests, tests that Goddard helped to design and implement. Goddard debated endlessly with other criminologists about the nature of feeble-mindedness: was it social or biological, incurable or reversible? Finally, a sample of American soldiers and prison inmates were subjected to the same

intelligence test. In a reprise of Goring's investigation into the question of whether there were any physical differences between criminals and non-criminals, about one-third of both populations was declared officially feeble-minded. While Goring's subjects had perhaps seemed rather remote to American researchers, and while the initial shock of his results had been tempered by his own conclusions about the importance of feeble-mindedness, the results of the 1917 study sent a shockwave through the American criminological community, which at first responded by retreating into relative silence (particularly during the war), and then by plunging into a furor of activity.

The study of crime and criminals expanded significantly in the 1920s, partly in response to growing fear among the American public about what was perceived to be escalating criminal activity among unemployed veterans. New studies reflected not only the increasing diversification of the field, but also its increasing fragmentation. The decline of the various schools of criminal anthropology, which had dominated the field for so long, left a vacuum that many researchers, from diverse perspectives, hoped to fill. Some criminologists were involved with postwar trauma centres that were established mainly to deal with the long-term effects of shell shock. Many of these researchers became increasingly interested in tracking the effects of environment on individual behaviour, and in the possible

contributions of Freudian psychology to the field. They soon followed William Healy's example in The Individual Delinquent, and began to focus their attention on collecting and analyzing the "life histories" of individuals, usually "a delinquent's oral history . . . about a life in which acts considered delinquent by the individual's surrounding society have a place" (Bennett 5).

But despite these signs that the idea of innate criminality and an ultimately isolable criminal typology was being challenged in some quarters, discussions of criminality continued to be dominated by questions of innate qualities. Such discussions also drew upon psychiatric discourse, but emphasized "personality types" rather than trying to come to terms with the changing subject, as was the case with those working in the trauma centres. While criminologists worked to isolate the criminal "character" or "personality" and to distinguish it, of course, from that of apparently law-abiding citizens; contemporary newspapers, magazines, and other forms of popular literature also provided an eager public with guides to recognizing and analyzing character types.

Thus it is not surprising that when the Franks murder was first reported in newspapers in 1924, and as the hunt for the murderers got under way, investigators would speak of the "type" of criminal they were looking for, and newspaper stories focused on isolating the correct type.

While the Franks murder and the hunt for the murderers undoubtedly got discussed and debated in a variety of social settings, it was the daily newspapers that served as the focal point for these discussions, largely because the press had a long, and well-established tradition of paying close attention to crime stories, particularly when the crime in question was murder.

ii. Crime and the American Press

The abduction of Bobby Franks, interrogation of various suspects and Leopold and Loeb's subsequent trial for murder provided regular newspaper copy throughout the summer and fall of 1924. The fact that a detailed history of Nathan's glasses could take precedence over reports of political corruption or news about foreign affairs without sparking irate letters to the editor suggests that then, as now, giving priority to individual and isolated disruptions of the social fabric was accepted journalistic practice. But to assume such a situation as natural would be to obscure at least one hundred years of historical process. Over this time, social, economic, political, and technical developments combined to make the newspaper a central part of modern life, while at the same time stories about crimes and criminals became a central part of the modern newspaper.

The first North American mass dailies appeared in the early 1800s and were offered as cheaper, longer and more

frequent versions of their forerunners--short information sheets, which had served primarily as a vehicle for the promotion of commercial goods among the entrepreneurial and governing classes. As Michael Schudson, has argued in his Discovering the News: A Social History of American Journalism, industrial growth played a key role in the emergence of the new dailies. As the population moved into the cities, fewer people were consuming the goods they had themselves produced, and knowledge of where and when to buy consumer items became more essential to more people.

The first dailies continued to be dominated by various kinds of listings and advertisements, but as the reading audience for these publications grew, small news stories began to appear, usually buried between the front and back pages. Eventually, as they expanded their advertisement sections, new publishers also began to expand the information aspect of the newspaper--which began to include news about local and national affairs that might be of interest to the modern (usually middle-class) reader. Within a few years, these news stories displaced the front-page announcements which were then dispersed to strategic locations throughout the newspaper.

Stories about crimes and criminals dominated the non-advertising parts of the dailies. Journalists quickly discovered that if they made regular visits to local police stations or courthouses, they would not only be able to

write up a story outlining the basic facts of the cases (the nature of the crime, the name of the accused, the charges that were being laid) but that they could use easily accessible police reports to pursue their inquiries even further, perhaps writing a follow-up story on the victim's bereaved family. Newspaper publishers who wanted to establish a regular audience for their product quickly realized that they could rely on these reports to provide material for daily news items.

There is little question that public demand for these stories also fuelled publishers' ongoing investment in them. But in many histories on the subject, readers' desires for news about crime is simply assumed, and assumed to be used to attract readers to advertisements, the "real" information of the newspaper. In some cases--Helen MacGill Hughes News and the Human Interest Story, for instance--the desire for crime stories is traced to a long-established tradition within popular literature, in which the criminal and his crime have been represented in song, story and image. But while the form and content of newspaper stories about crime have been influenced by these popular traditions, and consciously refer to them through formal and textual signs, this explanation cannot entirely account for the unique status granted crime stories within the modern newspaper. Why, for instance, were equally popular forms of expression such as jokes or almanac predictions seldom incorporated

into the medium? Why were people who once might have shunned popular stories or ballads about crimes, unabashed to be reading about them in the newspaper?

As Schudson has argued, newspapers promised access to new forms of knowledge about the world, and crime stories proved to be a particularly successful form for mediating this knowledge. This mediation took the form of at least three different levels of knowledge about the social world. First, such stories promised knowledge about the world in the form of factual information, and in this they were increasingly identified by editors and readers as being consistent with the larger aims of the newspaper as a whole. The emerging middle-class individual of the early nineteenth century was acutely conscious of his need (it was mostly men at this point) to master the society in which he now played such a central role, primarily by acquiring information about it. The newspaper set itself up as a shortcut to such information-gathering, since it not only found but also organized material for the reader. The terse style and emphasis on disconnected facts as well as a semi-official, detached protocol carried over into these articles, other crime reports and the newspaper as a whole.

The emphasis on crimes perpetrated by one or two wrongdoers against other, law-abiding, citizens, suggests a second (less apparent) level of knowledge offered by the crime story. In contrast to news about foreign affairs,

national politics or trade, crime reports stressed the activities of individuals. The daily news favoured tales of exceptional behaviour among murderers or clever fraud artists and largely ignored the activities of the common criminal (usually impoverished thieves or drunkards). Such stories provided invaluable insights for the reader newly aware of his power as an individual. Most obviously, they demarcated the (always shifting) boundaries of acceptable and unacceptable behaviour.

Despite this emphasis on discrete facts and individual exploits, the crime story could also offer comforting knowledge about the reliability of the social structure and key institutions within it. As Comtois-Leps stresses throughout her study, one of the chief functions of the newspaper was to mediate potential conflicts in the social arena. Crime reports contributed to this common cause by making punishment for malefactions appear both inevitable and exhaustive. Rather than reflecting the dissatisfaction of a populace whose members could be driven to illegal activity, the regularity of such articles and the repetition of the formula of crime-pursuit-arrest-prosecution contributed to the feeling that no objection to the law was possible, and that the mechanisms of justice ran as smoothly and as regularly as the daily newspaper itself.

Thus in the early years of the development of the medium, newspaper publishers used stories about crime to

build up a regular reading audience, an audience who returned to the dailies to read the ongoing story of a particular offender's progress through the court system, or to learn the details of yet another robbery or murder. The appeal of crime stories only increased with the expansion and increasing diversification of the press in the later part of the nineteenth century. Established newspapers introduced new sections, and began to specialize; the Sunday papers introduced womens' pages, sports and comics; and a battery of special interest publications (mystery magazines, housewives' journals, and so on) flooded the market.

The subject of crime did not fall more naturally into one of these divisions than any other, but was rather the common ground where each newspaper could distinguish its particular style from that of the competition. Those newspapers which, for example, wished to emphasize their allegiance to information news, consciously restricted their crime reports to a summary of the known facts about the event. The Sunday papers took advantage of their reader's additional leisure time to fill out the story with background or tangential information such as reports on similar incidents elsewhere. In this way diversification and specialization also helped to fulfil the journalistic ideal of exhaustive coverage.

Crime stories both mirrored and drew upon the growing tendency within criminology, as well as in police, penal,

and legal networks, to assume not only the existence of a criminal type, but the presence of a criminal "degeneracy" that was passed down through generations of a family. By the end of the nineteenth century, most newspaper reports on noteworthy crimes included lengthy reports on the criminal's family, rather than the victim's relatives, as had often been the case in the past. These reports focused on any criminal activity that might have been connected to the family in the past, and often only hinted at unsavoury behaviour in the present.

Any identification with particular criminals that concerned citizens sometimes feared might build up through regular newspaper reading was consistently undercut by the equally regular and thus seemingly inevitable fact of social retribution, which was presented even more relentlessly than in previous years. The apparently radical methods of the muckrakers who uncovered evil among the respectable and made criminals of well-placed individuals (but rarely institutions and never social structures) continued this tendency at a different level: muckraking drew in readers who learned in lesson after lesson that if the law were only upheld, society would function successfully.

By 1914 the modern newspaper had fully emerged. As with the American economy in general, a period of expansion, growth and diversification grew to a close and one of consolidation and centralization took its place. The escalating

costs of services such as cable combined with new postal and zoning rates forced many of the smaller newspapers into mergers with their higher-priced competitors. The total number of semi-weeklies, tri-weeklies and dailies declined dramatically in the years from 1914-1919, while many weeklies were simply wiped out. Small towns with two or three alternatives to rival the major local daily became a thing of the past.

Such changes necessarily affected the substance of the newspaper itself. The exigencies of war have often been held accountable for the increasing uniformity of tone and substance that characterized the press at this time. But the necessity of relying on a limited number of correspondents and a handful of wire services cannot entirely explain the growing homogeneity of domestic reporting, a tendency that was well under way before the U.S. entered the fray. Clearly, the devolution of ownership into the hands of even fewer powerful men, the growing reliance on centralized press agencies and absorption of most newspapers into chains must be considered central to this trend.

The eventual entry of the United States into the war helped to focus and concentrate this uniformity even further and contributed to the tendency to reject competing discourses and difference in general. The Sedition Act became a powerful tool in the at-home war against the alternative socialist, anarchist and otherwise anti-establishment

presses. Their publishers, writers and readers were increasingly identified as criminals, a trend which continued long after the so-called "Red Scare" of the early 1920s.

This uniformity in war-time journalism did not fade with the end of the conflict. Schudson suggests that post-war scepticism about the advantages of democracy contributed to a waning of desire for opposing or critical voices. Whereas the "Progressive perception of American society [had been] critical and troubled but hopeful; the post-war view was less critical, more accommodating, because it was less hopeful" (158). Journalism was increasingly dominated by public relations agents who fed the same stories to various members of the press on behalf of the police department, company or politician they represented. Their goal of keeping the public happy and happily consuming was predicated on an ability to manipulate the reader:

Public relations developed in the early part of the twentieth century as a profession which responded to and helped shape the public, newly defined as irrational, not reasoning; spectatorial, not participant; consuming not productive. This had a far-reaching impact on the ideology and daily social relations of American journalism. (Schudson 134)

Police departments hired their own public relations specialists, who not only passed on only what the police considered relevant information to the press, but used this position to protect the department from journalistic criticism, and in some instances, to completely refuse so-called radical news-

papers access to information.

In short, as the pressures of centralization and competition within an increasingly circumscribed field built, newspapers during the 1920s fed the public's well-established hunger for news about crime with ever more sensational stories. As soon as the murder of Bobby Franks was announced, it was clear that this was going to become one of those stories. In fact, the search for the criminal "types" who had murdered Robert Franks was one of the biggest newspaper stories of 1924; it was rivalled only by the coverage of the Leopold and Loeb trial that followed this search.

iii. The Franks Murder in the News

By 1924 there were six major daily newspapers operating in the city of Chicago, an usually high number for any American city at that time. Four of these six dailies--the Herald and Examiner, the Evening American, the Daily Maroon (the University of Chicago's student newspaper), and the Daily Journal--lacked the manpower to become part of the core group of journalists working on the Franks murder. By contrast, the well-established Chicago Tribune could afford to offer intense coverage of the hunt for the murderers, and cornered the market on columns syndicated to other national (and international) publications, including the New York Times. The publishers at the Tribune's local competitors,

the Daily News, took advantage of the fact that one of their reporters had helped to identify the body of an unknown murder victim as that of Bobby Franks, and convinced the Tribune that both newspapers should share any important information about the ensuing manhunt. This rare agreement, as well as the effects that the rationalization of the industry as a whole was having upon individual newspapers, undoubtedly contributed to the striking uniformity of tone and content in coverage of the investigation.

This continuity among competing publications was so complete, that in their dissertations on the Leopold-Loeb case, both Philip Kronk and Randall Majors use descriptions culled from various sources to briefly illustrate the progression of events during the investigation, often only noting the source of these descriptions in the case of actual citations. They provide this overview of the investigation as background to the real focus of their inquiries: Darrow's performance in the courtroom. Because of this focus, Darrow's challenge to thinking about the criminal is presented primarily as a judicial phenomenon, involving debates and strategic manoeuvres between the defense and the prosecution teams. The manhunt that preceded the trial is seen only as the means by which the defendants were brought into custody. But in presenting his alternative ways of talking about criminality and criminals, Darrow not only took on traditional criminology, but the very discursive

systems which informed narratives about the hunt for the murderers of Bobby Franks. These narratives were grounded in traditional ways of thinking about the criminal, including assumptions about innate criminality, the existence of a criminal typology, and the viability of discovering a particular criminal by looking for a type.

Preliminary newspaper reports on the kidnapping and murder of Bobby Franks began in the tradition of early nineteenth century crime stories, providing readers with a brief outline of the details of the crime, and then moving to a more involved discussion of the victim's family. The first reports began on 24 May 1924, and were far less concerned with identifying the unknown perpetrators of the crime, than they were with revealing details about the Franks family. When one reporter invited an (unnamed) "expert coroner" to reveal his thoughts about the crime, the coroner remarked only that Bobby Franks "attended a fashionable private school" and that "Jacob Franks [was] worth four million dollars" (New York Times 24 May 1924). While both local newspapers and the Times ran columns deploring the murder of the young son of such a prominent member of the Chicago business community, they also included articles about Jacob Franks's "shady" past, and other pieces speculating on the vulnerabilities of such a wealthy family. But the numerous articles about the personal histories of members of the Franks family were soon rivalled, and finally

entirely displaced by what became the central issue in coverage of the Franks murder until the arrest of Leopold and Loeb one week later: the construction and pursuit of the unknown murderers.

While the initial focus on the victim's family prompted reporters, and the police investigators whose comments they chose to feature, to conclude that the murderer(s) must not have known their victim, particularly since they had demanded such a relatively small ransom from Jacob Franks, the shift of focus to the perpetrators was accomplished by the presentation of new "evidence" suggesting that there might have been a link after all. Reporters and police had already tried to link the murder to some event or association in Jacob Franks past, possibly through his former involvement with loaning money, but such reports had focused less on locating or identifying these individuals, than on identifying Jacob Franks as a less than reputable millionaire businessman. But after one, and in some cases two, days of articles devoted to the Franks family, journalists began to turn their attention to the murderers themselves, and made the transition to this topic by reporting new "evidence" suggesting that Bobby Franks must have known his assailant(s).

But closer examination of most of these reports reveals that in fact no new evidence had been mobilized at all, since the possibility that Bobby Franks had willingly en-

tered the kidnappers' car was something both the police and journalists had acknowledged from the beginning. This possibility only became an active issue, however, and then gradually developed into more of a presumption, as attention shifted to the criminals, away from the victim and his family. The fact that this shift was made to hinge on Bobby Franks' recognition of his assailants, and thus, implicitly, on a link between Jacob Franks and the murderers, also meant that some of the discourse that had been generated around the victim's family, was "naturally" transferred on to the criminals.

The criminological typology which began to be built up in the narrative at this point, and which established the basis of the hunt for the murderers, hinged on two key attributes: intellectualism, and a trait implicitly linked to it, homosexuality. As the subtitle and final chapter of Nancy Tyson's book--Eugene Aram: Typology of the Scholar Criminal--suggests, the tradition of linking scholarship with crime, and the fascination of crime (particularly murder) for so-called intellectuals, has a long history, despite the (apparently contradictory) association of innate criminality with feeble-mindedness. The search for the Franks murderers not only relied upon audience familiarity with this history, but when it was eventually discovered that Leopold and Loeb fit the typology that had been projected onto this crime, they became famous as the intellectual

criminals par excellence.

The hunt for an intellectual type was on long before Leopold and Loeb were considered possible suspects. Interestingly, so long as the ransom money was considered to be the motive for the crime, the question of whether or not the murderer was an educated man was not raised; but as soon as the police let it be known that they considered the ransom demand to be only incidental to the murder (why they decided to make this shift was never made clear), "evidence" that what they were looking for was an intellectual type first began to make its appearance. Newspapers seized upon the ransom letter as a clue to the character of the criminal, and published the letter, usually as close to page one as possible. Writers pointed out that the grammar and style of the note were such that it could only have been written by someone of the highest intelligence; yet, without ever noting the contradiction, other articles, printed in the same newspapers, at the same time, noted that the letter had been copied, almost verbatim, from a recently published detective story.

But the "clew" (sic) that seemed to clinch the argument for an intellectual type, was the discovery of the spectacles that had been left at the scene of the crime. They were reported to be a very common make, and size, although an unnamed "expert" was nevertheless able to conclude from this not only that their owner had a "small head and a

big nose" but also that he was " . . . nervous and high strung. He is intelligent yet of such a nature as would stop at nothing--cruelty, crime, anything" (New York Times 26 May 1924). Such conclusions helped to build support for the hunt for intellectuals, and probably contributed to the fact that, throughout the investigation, suspicion focused sometimes exclusively on the teachers at the Harvard School where Bobby Franks had attended classes, and had last been seen before he was killed.

The Harvard School teachers were subjected to particularly intense interrogations not only because of their scholarly connections, but also because some of them were rumoured to be homosexuals (Higdon suggests that Richard Loeb himself was the source of many of these rumours). In fact the word homosexual was seldom used in connection with the case, at either this stage, or during Leopold and Loeb's trial: the more common (normative) terms were "pervert," or "degenerate." The word pervert increasingly came to dominate the search as it progressed, and journalists repeatedly asked police if they suspected perverts, or if they had just questioned somebody--often a Harvard School teacher--if he was a "known pervert."

One indication of the power of this typology, and of the assumption that all "born perverts" were also "born criminals" was that on the sixth day of the investigation, the Tribune announced the police department's decision to

round up all "known perverts" in Chicago, and to place them in confinement. But it wasn't only the police that was bringing these potential murderers into custody: newspapers were full of stories of men and women turning in their friends and neighbours. One woman, aware that the police were looking for the typewriter on which the ransom note had been typed reportedly ". . . gave the name of a young man who she had heard had bought a portable typewriter recently. This young man, she said, read dime novels and detective stories." The Tribune adds that this man was almost definitely a pervert (25 May 1924).

The question of possible "sexual perversion" dominated discussions of the crime itself throughout the search for the murderers. Reporters repeatedly asked the police, the coroner, and other authorities whether or not there was any evidence that Bobby Franks had been sexually assaulted by his murderers. When the answer came back that there wasn't, apparently negative statements such as "no work of degenerates or perverts is in evidence," "the police say they are not considering the motive to be a perverse desire" (both of which appeared in various newspapers, at various times over the course of the week) contributed to the sense that it was only a matter of time before such activity would be discovered, at the same time as this was held forth as the ultimate horror. Even if the police had been able to provide any physical evidence to suggest that Bobby Franks had been

sexually abused by his assailants, the search for a particular class of individuals, rather than a particular individual, nevertheless indicated the ongoing influence of nineteenth-century criminological models, at a time when these models were being challenged by alternative discourses.

The fact that, when discovered, the criminals in this case were apparently involved in a sexual relationship with one another, and were clearly intellectuals of some kind, seemed, at least at first, only to confirm the validity of presuming a certain type of criminal had committed the crime. But if Leopold and Loeb fit the type, the isolation of this type had not played a significant role in their capture, since Leopold was only brought in for questioning because police eventually discovered that he owned the spectacles found at the scene of the crime. Furthermore, articles, editorials, and letters published in newspapers in the days that followed Leopold and Loeb's arrest, suggest that even if Leopold and Loeb fit the type, and thus exhibited some of the signs of inherent criminality, this alone did not serve as an adequate explanation for their crime.

The key to the problem lay in the question of the motive for the crime which, the murderers themselves insisted, was none at all. The idea that a crime had been committed precisely because it would set off a predictable

series of events, even shed an ironic light on these same events, enraged the public. In this case, discovering the criminal and even punishing him would not be enough: some sort of explanation was necessary, and Clarence Darrow took advantage of this perceived need, to make his case for an alternative way of talking about all criminals, and crime.

CHAPTER TWO: COURTROOM DRAMA

i. Leopold and Loeb in the Juridical Field

Why is it that so many contemporary newspaper reports and later reflections on this case (including the present study) presume that as soon as the district attorney charged Leopold and Loeb with the crime, the Franks murder case entered a new phase in its history? The Chicago Tribune, for example, began using its court reporters to cover the story soon after the arraignment on May 30th. Hal Higdon's book, Randall Majors's thesis, and even Meyer Levin's novel, Compulsion, each have a section or chapter that concludes with Leopold and Loeb's arrest, and then moves into a discussion of the courtroom events.

In part these breaks in various narratives about the case reflect a real change in the subjective experience of the participants; it was at this point that Leopold and Loeb began what would become their long-term prison confinement, the investigators gave up their search and turned their attention to gathering evidence for the trial, and the defense began its background work. But this demarcation also marks the larger sense in which the locus of the case had changed: it had moved from what might be called the "street" to the courtroom, even though the trial itself did not begin until some weeks later. It was at this point that Leopold and Loeb became the "accused", while other individuals

linked to them became "the defense" or "the prosecution," and psychiatrists become future "expert witnesses," as these various subjects began to be described in terms of the crucial event--the showdown in the courtroom.

The French social and cultural theorist Pierre Bourdieu has described this sense of a social space, and of a juridical field, in his article "The Force of Law" (805). Bourdieu's metaphor of the field conveys a sense of a powerful, but in many ways unseen force, and he intentionally uses this term rather than the more familiar metaphors of structure or even institution which Louis Althusser and his advocates have used to describe the law. The notion of an institution might take into account the fact that as soon as Leopold and Loeb have been arrested they must learn to play by a set of established rules; but the idea of a field suggests the more subtle ways in which they began to be redefined as legal subjects, and became the objects of a variety of interpretive and historical struggles.

What does entry into this juridical field entail? Although both its detractors and champions have tended to regard the legal realm as a monolithic force where explicit rules and customs determine what will occur within its boundaries, Bourdieu offers a more complex version of its actual, day to day functioning. He suggests that this field is defined by multilevel, and variously defined struggles

for power, which take place within and among both individuals and groups both inside and outside of the borders of the legal realm. The relation of legal professionals to individuals outside the field, for instance, is often one of intense resistance to the influence of competing forms of social practice or professional conduct, even those with which it is apparently aligned (the police, for example).

As well as being in constant struggle with forces outside its boundaries (boundaries which themselves are always in the process of being demarcated), Bourdieu argues that the legal field is also a site of much less visible internal struggles, and competition for control. Such struggles may not be made explicit, as they might be seen to undermine doctrines of professional collegiality and loyalty which apparently define the field, but they are nevertheless omnipresent. But Bourdieu suggests that it is not so much what practitioners agree on--as they themselves might maintain--but what they agree to struggle over--the "stakes" as he calls them, that determine how the field both maintains itself and develops.

In the legal field, what is at stake centres in and around texts and their interpretations. Here, the written formalization of legal texts and the codification of legal procedures are central activities. Thus forms of resistance and other struggles take place at the level of

linguistic, symbolic, and hermeneutic operations, where individuals and groups compete to establish their authorized or legitimized interpretation of the texts of the legal corpus, as well as the texts of legal practice. Such texts include not only the written record, but also the structured behaviours and customary procedures characteristic of the field, which have much the same regularity, and are the subjects of much the same interpretive competitions, as the written texts themselves.

Bourdieu's redefinition of the juridical field as the site of struggles over texts, presents a fundamental challenge to the idea of the law as a cohesive unity. Legal practitioners themselves have helped to contribute to this image of unity through their ongoing efforts to codify legal processes, particularly their attempts to reduce judicial decisions to a set of eternal rules, or to the lawmaker's original intentions. Such practices have dominated theoretical jurisprudence for most of its history. Students aspiring to be lawyers study the canonical works which lay out the foundations of the Law or offer the final word on the correct interpretation of various rulings; and normally only the most senior members of the bar are entrusted with actually writing such tomes.

The fact that the stakes are so high in this area of interpretation, suggests how important it is for legal practitioners to think of the law as an ahistorical,

timeless, institution, despite--or perhaps because of--the fact that their own daily practices constantly reaffirm the polysemous, changing nature of language. They must play down not only differences and disagreements over contemporary legal decisions, but also those between different historical periods, and nationalities.

In one of the rare discussions of such issues by a legal professional, lawyer and historian Julius Stone argues that theorists must abandon their obsession with questions of the "signified", that is with lawmakers, or ruling judges' intentions (The Province and Function of Law 67). He provides numerous, and detailed examples which demonstrate that it is really questions of referentiality--how individuals in a given historical context agree to refer to such abstract ideas as rationality, criminality, or justice, as well as how they look upon their legal institutions--which propel judicial activity. Thus the burden of the law rests with what might be described (in the language of contemporary literary theory) as an interpretive community: a community which includes not only lawyers and judges, but also their situation in a particular time and place.

Though himself an Australian, Stone draws many of his illustrations for his argument about the importance of polysemy from documented interpretive differences within American legal history. This in itself may suggest

something about the United States as a unique interpretive place. Perhaps because the United States is a relatively young country, and also because the law played such an important part in its early formation, there may be more of a willingness to acknowledge the role of interpretation and interpreters in making legal decisions. Not only have legal professionals played a central role in the political and social life of the country, but also the American public has learned to look to the courts as interpreters of the laws of the land, and as arbitrators in social conflicts.

The centrality of legal institutions in the country is intimately bound up with the coincidence of American independence and the rise of law as a profession. Of the twenty-six men who signed the Declaration of Independence, twenty-five were lawyers; thirty-one out of the fifty-five people at the Constitutional convention were also lawyers (Ferguson 13). Many of the men of letters who dominated the cultural and political life of the post-revolutionary society were also lawyers, and they quickly made their way into positions of power at various levels in the government. In the first half of the nineteenth century lawyers dominated the legislative and executive bodies: with the establishment of judicial review in 1870, they also began to evaluate and establish practical policy. The process of judicial review, and the consequent elevation of lawyers and judges to the position of supreme interpreters of the laws

of the land helped to ensure that legal professionals would always remain a central part of the operations of the government.

But the sense in which American society was and is a legalistic one, goes beyond the fact that lawyers and other legal professionals have always held positions of power in the country. Other American citizens also learned to become familiar with and accepted legalistic activity:

That this was a law-minded, law-using people, whose affairs were touched by legal processes at many points, is a basic fact that quickly enforces itself on one who examines legal elements in the life of the United States. (Hurst 23)

Americans who read the newspapers, or otherwise kept abreast of current affairs, quickly became accustomed to the idea of using the law for practical purposes, and became relatively well-versed in legal procedures. They learned to look towards decisions made by the Supreme Court for guidance in their political lives. This phenomenon was also reflected in an abiding interest in the representation of legal activity--particularly trials--in literature, theatre, and other cultural forms.

The courtroom trial itself stands at the centre of the American legal tradition. After the American revolution, new lawmakers refused to accept English common law as a basis for legal decisions in the new country. Thus it remained for appellate court judges in particular to make independent rulings based on their interpretation of legislative acts,

and to make these decisions known in the courtroom. This helps to explain why judges' speeches:

. . .quickly became. . . a point within a culture where leading ideas [came] together with leading institutions, and where a governing elite [used] the set of symbolic forms involved to express the fact that it [was] in truth governing. (Ferguson 23)

The power of these appellate court judges began to decline in the 1890s, as statute law based on decisions made in this earlier period in American legal history gradually became more established. Judges became the chief interpreters of the rules and precedents of the courts, rather than their creators.

This change in no way diminished the centrality of courtroom trials; in fact it meant that there were fewer out of court decisions, and that the adversarial process itself became more central to the procedure, as lawyers fought to determine which precedents would be called into play. This fundamental shift in relations amongst legal professionals undoubtedly formed a focal point for numerous 'internal and external struggles' as Bourdieu has defined them, that is struggles which centred around questions of interpretation. Combined with contemporaneous developments in journalism, and the public's heightened desire for domestic news in the post-war period, the courtroom trial quickly became one of the outstanding features of American cultural and social life in the 1920s.

ii. Trials in the Twenties

Contemporary observers frequently remarked that public trials acquired a new status in the 1920s, although they often disagreed about what exactly this change entailed. Joseph L. Holmes, for example, argued that as the average American citizen grew more prosperous, and was encouraged to participate in the fruits of modern society, she or he also displayed a new, healthy interest in the prosecution of justice ("Crime and the Press" 358). But others argued that as the press and the various new forms of popular culture increasingly pandered to the public's taste for cheap sensationalism, the legal realm's status would be diminished, and illegal activity increase.

Charles Merz belonged to this latter group of critics. In an article entitled "Bigger and Better Murders," which appeared in a 1927 issue of Harper's he lamented the extent to which public trials--and he includes the Leopold and Loeb hearing among those which initiated the trend--had come to occupy a place at the centre of the nation's cultural life:

[Media coverage of trials]. . . is the literature of the nation. It is the literature of the nation because it does not wait for its patrons on bookstore shelves or gather dust in libraries, but is sold out, read, . . . and debated within two hours after it comes smoking from the press.
(341)

Despite his earnest criticism of this trend and its deleterious affect on cultural standards, even Merz's description cannot entirely conceal his own sense of the

excitement generated around such events.

Later commentators have not only echoed Merz's account of the magnitude of the phenomenon, but have suggested that it was one which was specific to the decade. Ironically, Merz himself anticipated this trend in history-writing, when in the same Harper's article he remarked that:

A nationally famous trial for homicide is no longer a startling interruption of a more lethargic train of thought. It has become an institution, as periodic in its public appearances and reappearances as the cycle of the seasons. We could date much of our modern history by epochs; fourth month, second week of the Hall-Mills era; third month, third week of the Loeb-Leopold . . . and so on. (341)

Although he didn't attempt to "date modern history" in terms of these recent causes célèbres, the well-known historian Frederick Lewis Allen did see reason to remark in his popular 1931 history of the twenties entitled Only Yesterday that in "all 1930 there was not one first-class murder trial of nation-wide interest" (353). The fact that Allen thought it was important to make this observation suggests not only that the absence of murder trials or at least coverage of such trials was in itself unusual, but that Allen and others had become accustomed to looking to such events as historical reference points. John R. Brazil has also noted Allen's revealing comments in his 1983 article "Murder Trials and Murder in 1920s America." From his reading of Allen, Merz and other contemporary documents, Brazil

concludes that courtroom trials and their coverage were "the most prominent topographical feature of the preceding decade's [i.e. the twenties] cultural landscape" (162).

Whatever its causes or consequences, these commentators all agree that something had changed in the status and role of courtroom trials during the 1920s. What signalled this change, and where and how was this new status achieved? Without blaming the press for eroding community standards (as Merz suggests), it is nevertheless clear that they played a central role in the process. While courtroom proceedings had always occupied a central place in the news, and had in fact been instrumental in shaping journalistic practice, postwar journalists, and their employers, increasingly seemed to make or break their reputations on the basis of their coverage of major courtroom disputes.

Modern newspapers, and the people who worked on them, had to a large extent been formed by the experience of the American involvement in the war. With the end of the war, journalists turned to local scandals, crimes, and disasters, to fill the space which had once been occupied with similar events, but on an international scale. The ratio of crime and news to other stories maintained the image of what was to have been a temporary, emergency situation (war), a situation which distinguished the post-war newspaper altogether from its pre-war ancestor. But these newspapers which had once been dominated by news from the front, were

now filled not only with tales of local horrors (such as the discovery of and investigation into Bobby Frank's murder), but also with stories meant to reinforce the presence and stability of a system of law and order.

The extent to which the situation had changed can also be measured by the fact that it was not the tabloids alone which gave such sustained or sensational attention to the prosecution of justice. As Frederick Allen notes in The Big Change, even the New York Times:

gave front-page, right-hand column treatment, day after day, to the news from Somerville, New Jersey, where Mrs. Edward Wheeler Hall and her two brothers and her cousin were on trial for the murder of the Rev. Mrs. Hall and Mrs. Mills of his church choir. (133)

The Hall and Mills case was one of many notorious public trials which attracted the public's attention over the decade. Significantly, this case was, like many others that would follow, largely manufactured by the press itself. In 1926, in order to increase circulation against its closest competitor, the Mirror dug up an unresolved murder case from four years before. In New Brunswick, New Jersey, a minister, one Edward Hall, and a choir singer from his church, Eleanor Mills, had been found together dead. The Mirror claimed to have discovered new evidence in the case, and succeeded in having the minister's widow charged and brought to trial. Like most of the causes célèbres which stirred the country from end to end, Hall-Mills was quite unimportant from any traditional point of view. The future

destinies of few people were affected by the testimony of the 'pig woman' at this trial; yet this case was only one of many in which relatively small events were made to seem of national importance.

As the decade progressed, increasingly more newspaper space was given over to reporting trials, including the Fatty Arbuckle case, the Parker-Hickman case, and Snyder-Grey, to name just a few. Nor was it always murder trials that achieved such fame: in Dayton, Tennessee, John T. Scopes volunteered to teach Darwin at the local high school in order to challenge a Tennessee law which banned the teaching of scientific evolution. In fact it wasn't only Scopes who contrived to bring this issue before the courts: as James Weslowski notes in his article, "Before Canon 35" the town fathers in Dayton were full participants in the planning stage, inspired by watching other towns attract business during local events (Weslowski 77-78). Their efforts to "put Dayton on the map" were richly rewarded, and this trial (which also featured Clarence Darrow as defense counsel) held the public's attention for most of the summer of 1925. It was the first trial to be broadcast live on radio, although a Chicago radio station had tried and failed to broadcast the Leopold and Loeb hearing during the previous summer.

The fact that many of the most notorious trials did not necessarily involve violent crimes, suggests that the

phenomenon of an obsession with punishment needs to be distinguished from a contemporary interest in crime, particularly capital crimes such as murder and kidnapping. John Brazil's article focuses on murder trials, and this emphasis leads him to conclude that, "[j]ournalistic preoccupation with murder trials, important in itself, was also symptomatic of a preoccupation with murder in particular and crime in general" (165). Brazil suggests that this fascination characterizes all contemporary discourses--criminology, psychiatry, fiction, among others--to the point at which stock courtroom characters and situations involving the prosecution of murderers were so familiar to the book and newspaper-reading public, that it had virtually become a sub-literary genre (165).

Brazil's assumptions about the continuity between interest in crimes and fascination with punishment in the form of public court cases, echo those of the contemporary commentators he cites in his article. Many of these observers assumed that the increasing prevalence of crime as a subject of public discourse reflected the real increase in the number of crimes being committed. It usually went without saying during this time that the United States had been experiencing a crime wave since the end of the war. Those few heretics such as Clarence Darrow who dared to suggest that there were no reliable records to support such claims, were largely ignored. Thus contemporary

investigations into the nature of the public's interest in the legal realm frequently turned to the question of what accounted for the crime wave itself, or why the public displayed such prurient interest in criminal activity.

Brazil notes that the people who engaged in such debates usually fell into two large groups: those who believed that it was in the American character to be violent and that such tendencies had to be vigilantly held in check through legislative and other means; and those (by far the larger group) who believed that modernity and all that it entailed had introduced new pathologies into American society. Commentators in both groups were divided between those who argued that the public's morbid fascination with court cases was an unhealthy outgrowth of their taste for crime which fuelled further violence, and those (a minority) who felt that such interest reflected the public's natural desire that those elements of society be publicly held accountable (the newspaper's ostensible reasoning).

Whatever their conclusion, these critics' arguments ultimately hinge on questions of content. They suggest that audiences were absorbed by shocking behaviour, bizarre individuals, and violent acts. That is why such commentaries put particular emphasis on famous or infamous individuals, or unusual verdicts and murder trials. Even Brazil, who remains somewhat sceptical about the assumptions that crime was on the increase, observes that, " . . . most of the

'big' trials and virtually all of the lesser trials involved people who were depicted as average" and concludes that it was a preoccupation with crime that drove the public to consume these trials, just as it drove them to consume pulp murder mysteries (167).

But the fact that even the numerous more ordinary trials received extensive coverage, suggests that this public responded as much to the form of the trial, as to its content. Both Charles Merz and John Brazil remark on the fact that trials quickly generated their own repertoire of stock figures and phrases:

It has been weeks since the front pages really smoked and the same Bestial Deed, the same Positive Identification, the same Master Mind, the same Little Woman, the same Alleged Confession, and the same Grim Prosecution brightened the fireside of every home in this great throbbing country. (Merz 338)

A typical courtroom trial was above all something to watch, or to read about through the eyes of a journalist-spectator. One watched, or read about watching, not to see a case which affected one personally, or even to see a particular person get his or her deserved punishment; one watched in order to participate in the ritual, the thrill of the spectacle.

Beginning in the 1920s the American subject/citizen was encouraged to passively look and watch--both at work and during his or her expanding "leisure" time--as he or she never had been before. At work, hands-on jobs were replaced

by jobs where machines would be monitored or watched; managers were encouraged to devote increasingly more time to "surveying" their employees activities (examining their movements down to the last detail, and representing time spent in various tasks in visual terms such as flow charts); at home, women were confronted by an ever-expanding variety of visual advertisements and promotional material which encouraged them to look, and ultimately, to buy. Increasingly, in other words, the subject entered the realm of the spectacle.

As Stuart Ewen reminds his readers frequently throughout Captains of Consciousness, mass culture developed in response to a potential widespread critique of modern industrial life (196). Noting his debt to the work of Georg Lukács, Ewen emphasizes the extent to which the "captains of consciousness" penetrated the "theatre of daily life" (202), completely changing the ways in which people related to and saw their world, and their place in it. Such penetration was, as Ewen argues, universal: both the most intimate details of everyday life, and the most apparently "independent" elements of the social world would be subject to the spell of commodity culture.

As Ewen--and the champions of this new world including the advertisers, public relations men, and scientific managers he quotes throughout Captains of Consciousness--describe it, the subject of this new world

would be transformed into a consumer, and above all, a spectator:

All activity was envisioned as taking place within the corporate walls, the prospects for the consumer were no more than a passive (if "gratified") spectatorship. The human eye became merely a target for visual stimulation, the ear was but an "avenue of entry" for the blandishments of advertising. (Ewen 84)

In fact the word "spectacle" often appeared in 1920s promotional material, practical guides for successful advertising campaigns, and, not surprisingly, with specific reference to public trials themselves: one observer commented about the Leopold and Loeb hearing that "as a public spectacle it has provided innumerable thrills" (Kirchwey 7).

Fifty years later, the French theorist Guy Debord and his fellow "situationalists" used the same word to describe the kind of society which ultimately developed out of this post World War One culture. In Société du spectacle Debord insists that "spectacular culture" is not a mere supplement to, or even reflection of modern consumer society as is sometimes argued, but is its very essence. The development of this society, as Debord repeatedly stresses, is a historical phenomena, related to changes in the mode of production. Debord breaks down the historical penetration of the economy by the commodity form into two parts: phase one, when the citizen learns to think of him/herself primarily as a consumer; and phase two, when "everything that was directly lived has moved away into a

representation" (Debord I, i) Debord concentrates on his second phase, when, he argues, the social world has been transformed into an on-going spectacle, viewed but never lived; but it is clear that its roots lie in this earlier period.

Although perhaps less apparently "spectalist" than advertisements, or film (particularly since the majority of the spectators would be at home reading about courtroom proceedings) the legal realm could not, and did not remain isolated from this new culture of consumption. Indeed, it offered a primary site for a commercial culture that draped itself in social democratic ideals, while simultaneously favouring obedience over self-determination. The public turned to public trials to learn about this culture, just as they would to fashion, advertising, consumer goods, or film.

It is not that courtroom trials suddenly became self-conscious spectacles, or that judges, lawyers, juries, and other participants in the legal process decided to market themselves as a spectacle: rather, the always spectacular courtroom, increasingly came to attract those citizens/consumers, fascinated by such processes. Thus, although Darrow had always taken advantage of the fact that the courtroom played such a central role within American culture, contemporary conditions were such that the time was particularly right for him to use this forum to attempt to introduce a change in discourse about crime and criminals.

iii. Darrow's Spectacular Trial

Clarence Darrow stands at the centre of the spectacle of this trial, although he remains estranged from it on a number of levels. Reports from courtroom journalists and other observers remark on the extent to which Darrow's personality dominated the proceedings, but reveal only incidentally the ways in which his rhetoric, strategies, and aims opposed them. Although Darrow's immediate aim was to save Leopold and Loeb from the death penalty, his larger goal was to transform social discourse about the criminal by challenging the idea of an essential human subject.

Darrow had been developing his ideas about the criminal's relation to society throughout most of his life. In his autobiography, The Story of My Life, he stresses the extent to which certain key events in his own personal history contributed to his later theories about the importance of context in the formation of the individual subject. He was born in 1857, the son of a poor Ohio couple who devoted most of their time and energy to lobbying for a number of progressive causes such as womens' rights, and, significantly, against capital punishment. Although Darrow notes that people in the community usually left his parents alone to pursue their own interests, he also gives some sense of the singularity of such pursuits, and he credits his parents with teaching him to challenge established beliefs and practices.

He began his working life teaching at a small local high school, where he experimented with extending the recess break, and abolishing corporal punishment. These changes resulted in immediate improvements in the students' behaviour: years later Darrow remarked that this small incident greatly influenced his later thinking about crime and punishment. Despite his success, he decided not to pursue a teaching career, and instead returned to school to get his law degree, and then set up practice in the small farming community of Kinsman, Ohio.

During his stay in Kinsman, Darrow discovered two books which, considered together, not only challenged contemporary thinking about crime and punishment, but suggested some of the causes and cures for contemporary social problems. The first of these books, John P. Altgeld's Our Penal Code and its Victims, argued that prison created more criminals than it saved, and lamented the extent to which the poor had become the victims of the penal system; the second, Henry George's Progress and Poverty (a work advocated by the Fabian society in Britain) offered a blueprint for the relief of poverty through a single property tax. After reading these books (along with others) Darrow began to long for more contact with other people and ideas who would feed his growing political consciousness, and he decided to move to Chicago.

Shortly after his move in 1888, Darrow joined Chicago's

Henry George and Single Tax Clubs, both small, progressive, political clubs, and began to accept speaking engagements on their behalf. DeWitt Creiger, a candidate in the Chicago mayoralty election, noticed Darrow's abilities as a speaker, and invited him to join his campaign. When Creiger won, he invited Darrow to act as counsel for the city of Chicago. Four years later Darrow became the lawyer for the Chicago and North-Western Railroad Company, but when the American Railway Union strike began, Darrow resigned to become the attorney for Eugene Debs. Darrow took the Debs case to the Supreme Court, where he fought a bitter and in the end, losing, fight against what he saw as the arbitrary powers associated with the new conspiracy laws.

The Debs case helped Darrow to launch his career as a criminal lawyer, and as a spokesman for the underdog. He began to take on cases no one else would touch: many of the union activists he chose to defend were on death row, and he began to speak out against capital punishment, and at the same time to challenge dominant ideas about the causes and cures of crime. He created a stir when in 1902 he made a speech to Cook County jail inmates and told them that:

There is no such thing as a crime as the word is generally understood. I do not believe there is any sort of distinction between the real moral conditions of the people in and out of jail . . . I do not believe that people are in jail because they deserve to be. They are in jail simply because they cannot avoid it on account of circumstances which are entirely beyond their control and for which they are in no way responsible. (Attorney 15)

Such ideas were radically at odds with contemporary thinking about crime and punishment, which was then dominated by various ways of talking about and dealing with innate criminality and with devising ways of punishing individuals for allowing themselves to be dominated by their "innate" qualities.

Nevertheless Darrow continued to develop his views in his first publication, a collection of essays entitled The Persian Pearl, and in his fictional work called An Eye for an Eye. This novel depicts a man who--rather than having any inherent criminal nature--commits murder because a series of complex events combine to make him feel this is his only option. This idea became the cornerstone of Darrow's penal philosophy: both his writings and his cases for the defense reflect his ongoing conviction that every act is preceded by a cause or causes significant enough to prompt the act. His cases turned on his desire to discover and expose these causes to the court so that they--rather than the defendant--could be eliminated.

By the time of the Leopold and Loeb case, Clarence Darrow was perhaps the most famous defense lawyer in the country, and, judging from Prosecutor Crowe's frequent references to Darrow's "well-known anarchistic philosophy," he was considered a controversial and highly political figure. In addition to his ongoing legal battles, he had spent the preceding few years joined in battle against

"dogmatism in all its forms" alongside the renowned polemicist H. L. Mencken, whose name Crowe invoked as one of the "evil influences" in Leopold and Loeb's unsavoury reading material (Ravitz 30). But his audience might not have known that Darrow's achievements rested largely on his ability to use the legal structure itself as a testing ground for new ideas. Everyone (including Crowe, the chief prosecutor) expected Darrow to use the forum of the Leopold-Loeb case to decry capital punishment; but Darrow went far beyond this, to force his audience to question the nature of the whole process of determining culpability and punishment, and perhaps even to question the function of the courts and legal apparatus themselves.

Darrow began by redefining the central issues of the trial. He knew the prosecution expected him to plead Leopold and Loeb "not guilty by reason of insanity," and that they had built their case on this assumption. He had immediately dismissed any idea of entering a straightforward "not guilty" plea, because he surmised that his clients would lose before a jury which would necessarily have been affected by newspaper coverage of the case. In the end, Darrow studied the reports submitted by the psychiatrists he had engaged to examine Leopold and Loeb, and decided on a plea--"guilty, but with mitigating circumstances"-- which coincided with his own thinking on the subject of penology, as well as his desire for a novel legal strategy.

If the defense had entered the insanity plea which the prosecution expected to hear, the case would have gone to a jury, whose members would have had to determine whether or not Leopold and Loeb "knew the difference between right and wrong" (insanity as the law defined it) at the time they committed their crime. The case would have hinged on the prosecution's ability to prove to the jury that the defendants were fully cognizant of the crime they were committing. District Attorney Crowe's prosecution team had gathered a substantial amount of evidence--chiefly material which demonstrated that Leopold and Loeb had carefully planned their crime over a number of months--to support this case. Darrow's extraordinary and unprecedented plea not only forced Crowe to rethink his entire strategy, but placed the case itself on new grounds.

Because the prosecution no longer had to prove the defendants' guilt it only remained for a judge to determine a suitable punishment for the accused. Darrow spent the first few days of the hearing justifying his plea, and trying to convince the court that he had grounds for arguing for mitigating circumstances, which should be considered when determining punishment. Crowe insisted that the case for mitigation--something Darrow would only describe as psychological history--was really only another name for insanity, and that a "not guilty" plea should be entered on this basis. Darrow argued that the plea accurately

reflected the fact that Leopold and Loeb had committed a crime, and that they had done so in the full knowledge of what they were doing: but he hoped to show in the course of the hearing that various forces in Leopold and Loeb's personal histories had made it seem necessary to them to plan a murder. In short, he argued that it was time to replace a search for vengeance with a search for the causes of this crime.

Judge Caverly's decision to admit as evidence in mitigation of the crime the testimony of the defense relating to Leopold and Loeb's mental history was probably Darrow's greatest legal victory in this trial. Lawyers and other interested parties did not wait to learn the final results of the hearing before they began discussing the possibly far-reaching implications of this decision, and their opinions appeared in columns and editorials over the five months of the hearing, and beyond.

Because the judge agreed to at least consider Darrow's arguments, attention converged around the "expert witnesses" --two teams of psychiatrists--each mobilized by the defense and the prosecution. Darrow had tried to persuade Crowe to agree to combining their resources to form one set of experts, who would meet with one another, and hopefully come to some sort of agreement about Leopold and Loeb's psychological profiles. Crowe refused to accept this proposition, perhaps recognizing that any process which

involved explaining or examining the circumstances behind the crime would contribute to the defense's cause. Instead, he sought experts whose methods and theoretical biases ensured that they would focus on Leopold and Loeb's state of mind at the time they committed the crime.

Crowe recruited his three experts from penal institutions; Drs. William Krohn, Hugh Patrick and Archibald Church were very traditional psychiatrists, who stressed a "neurological, less psychodynamic [than the defense] orientation (Kronk 21). They presented evidence which they believed supported their claim that the defendants were perfectly sane, before, during, and after the time they committed the crime. Their reports consisted mostly of information gathered from a series of intelligence tests--which they claimed proved that Leopold and Loeb were in full possession of all their faculties. Crowe and his assistant prosecutors posed questions which they hoped would convince the court that Leopold and Loeb were not insane--and thus, legally speaking, that they must be considered sane, and punished accordingly.

The defense team experts--William White, William Healy, and Bernard Glueck--had been hand-picked by Darrow's assistant from the eightieth annual meeting of the American Psychiatric Association (Sigmund Freud himself had already declined the Chicago Tribune's offer of \$25,000 to psychoanalyse the murderers). Two local psychiatrists, H.S.

Hulbert, and Karl Bowman also examined Leopold and Loeb, and their findings were recorded for use by the outside experts, who would be the only ones of the group to actually appear in court. Philip Kronk, despite his criticism of the "naive" methods of the psychiatrists in the case, notes that the Hulbert-Bowman report was an "amazing" document, which "represents many hours of psychiatric examination and covers such aspects as the family history, the physical history, the academic and sexual history, the early development and fantasies, and the physical examination of each boy" (20). The three experts based their testimony on the Hulbert-Bowman report, and their clinical examinations of Leopold and Loeb: their own report was not entered as evidence.

Rather than directly challenging the prosecution psychiatrists, the defense experts did not argue with the results of their tests, nor did they dispute the fact that Leopold and Loeb were intelligent, rational individuals, who knew exactly what they were doing when they killed Bobby Franks. In fact Darrow posed cunning questions through which he hoped to show that his experts' position did not contradict, but rather could be seen to include and go beyond the opposition's conclusions, by showing that, "mental disorder could produce crime just as did passion or self-defense and still not render the criminal insane" (Majors 99).

Darrow believed that the key to the psychiatric

testimony lay in the presentation of a detailed account of Leopold and Loeb's life histories, much like those included in the work of William Healy and other contemporary criminologists, but which had never been presented outside of a few scholarly journals until this time. Unlike Crowe's witnesses, the defense experts had spent days with each of their subjects, and they gave detailed accounts of Leopold and Loeb's personal histories, the first time such extensive psychological testimonies had been presented in an American courtroom. They examined at length the boys' relationships with various family members, particularly Leopold's obsession with his dead mother, whom he thought of as a madonna figure; they traced Richard Loeb's increasing paranoia; and--much to the delight of the tabloid press--they detailed Leopold and Loeb's own extremely complex, and apparently sexual, relationship. Darrow structured his questions so that the experts could present their various narratives, hoping that his audience, including the judge and even the prosecution team, would be left with some sense of the complexity and non-reducibility of two individuals' lives.

As Leslie Fiedler notes in his essay "Leopold and Loeb: A Perspective in Time" the contemporary intellectuals whom Darrow might have hoped to attract with such arguments were not impressed by it (217). They interpreted his use of psychiatric testimony as an outdated attempt to reduce all

criminal activity to a curable disease. Fiedler argues that this group believed themselves to already be well-acquainted with the nuances of Freudian theory, and that they preferred to use it as a tool in fighting against middle-class (sexual) morality, and not to reform the state. Fiedler himself implicitly accepts the view that Darrow's argument could be reduced to nothing more than an attempt to dismiss all individual responsibility, and declare that "crime was only disease (Fiedler 217).

Contrary to what Fiedler concludes, Darrow's comments throughout the trial suggest that what he hoped to show was that the value of the "new psychology" lay in its ability to bring to light the relation of individual needs, desires, and actions to a variety of historical forces. His questions to the experts move from the history of Leopold and Loeb's relationship, to questions about affects of the war on the population, to the increasingly unclear role of intellectuals in the world, and back to each of these immigrant family's particular history.

In a typical passage from his closing speech, Darrow encourages the court to abandon its ties with punishment and retribution, and instead advance the cause of understanding the roots of criminal behaviour:

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. We lawyers never try to find out. Scientists are studying it; criminologists are investigating it; but we lawyers go on, and on,

and on, punishing and hanging and thinking that by general terror we can stamp out crime. . . .
Lawyers are not scientists . . . they act unmindful of history and science, and all the experience of the past. (qtd. in Higdon 239)

Here, as elsewhere in his writing and speeches, Darrow repeatedly stresses the fallacy of the discrete individual, the born criminal, or the unchanging psychopath. The case histories presented by the defense analysts were also meant to counter such outdated principles, since these narratives repeatedly stressed the importance of relationships, temporal development, and the necessity of reconstructing apparently discrete events in terms of hindsight. Darrow's speeches do suggest that he was beginning to temper his earlier theories of a rigid mechanistic universe (every effect has a cause which one only has to discover), with the more fluid metaphors of psychoanalysis. But he had not abandoned his conviction that all subjects are historically conditioned, and clearly did not want to show that Leopold and Loeb were merely unusually "sick" or bizarre individuals.

Some of the newspaper and magazine articles which appeared after the trial suggest that Darrow's ideas and aims did occasionally have the impact he intended, particularly among psychiatric or forensic professionals who were disenchanted with traditional attitudes towards the criminal. People such as William Kirchwey and Leonard Blumgart not only praised Darrow, and elaborated upon some

of the implications of the proceedings in this case, but did so in ways that stressed the value of looking at the accused as an historical subject:

The psychiatrist [in court] concerning himself with the whole man, will see in the crime for which the culprit is being tried only an episode in a life history, the latest of a long series of significant acts and experiences and one that cannot be properly assessed otherwise than in the light of all that has gone before. (Kirchwey 64)

But the infrequency and somewhat defensive tone of some of these analyses suggests that they represent a minority point of view. They reflect a conscious opposition to majority opinion as it was expressed in editorials, the letters' pages in the newspapers, and contemporary magazine articles, where writers generally agreed that Judge Caverly had failed in his duty when he spared Leopold and Loeb the death sentence.

Darrow's critique was implicitly aimed at the dominant discourse alongside or against which his own ideas had developed, although he was aware that, at least within "scientific" circles, this discourse had been in decline for some time. He hoped to be able to use the forum of the courtroom to convince the American public that it was time to look for new ways of talking about crime and criminals. But while a public nurtured on the daily spectacle of various courtroom dramas eagerly absorbed the idea of Leopold and Loeb the sexual psychopaths, they seemed unwilling to accept the more radical possibility that they

had been created that way. Despite Darrow's attempt to link psychological development to social history, the very nature of Leopold and Loeb's crime seemed to preclude this kind of analysis, and interest in the case only resurfaced in the postwar epoch, with the decline of sociological criminology.

CHAPTER THREE: THE RETURN OF LEOPOLD AND LOEB

i. In the Aftermath of the Trial

When in 1958 Leslie Fiedler spoke of a contemporary "renascence of interest" in the Leopold and Loeb case (210), he was probably understating the extent to which the public's sustained--though certainly not intense--interest had kept the subject alive within social discourse since the trial ended in 1924.

The news of Leopold and Loeb's hearing, and Judge Caverly's decision to sentence them to "life plus 99 years" continued to be the subject of newspaper editorials and feature articles well into the first months of 1925, after which stories of other crimes and trials began to take their place in the spotlight. But short articles, most of them detailing the hardships faced by the two sons of rich men while living in prison, continued to appear for at least another two years after the hearing, often in magazines such as Harper's or the Nation.

Leopold and Loeb were temporarily reunited in 1927 when, four years after the alleged incident had occurred, they were charged with the "assault and mutilation" of a taxi driver named Charles Ream. The prospect of another sensational courtroom spectacle prompted a new flurry of articles about the Franks murder, the ensuing court case, and Leopold and Loeb's life in prison; but when a "hung jury" forced the litigants to come to an out of court

settlement, interest in the original crime subsided, and the two perpetrators returned to prison.

But if Leopold and Loeb were gone, they were not entirely forgotten. In 1928, a play entitled Rope, written by the British playwright Patrick Hamilton, opened in New York. The play centred around two rich college students who murder a mutual friend, "just for the sake of danger and for the sake of killing" (Rope 15). They stash their victim's body in a trunk in the middle of their living room, and proceed to give a dinner party, serving food from dishes placed on top of this same trunk, to the murder victim's unwitting friends and families. The two hosts delight in their shared knowledge of the crime, and in their manipulation of events, but both their crime and conspiracy are eventually discovered. While the parallels with the Franks murder are not striking, the fact that in the published version of the play Hamilton found it necessary to disavow all conscious knowledge of the American cause célèbre (Rope ix) suggests that a significant number of his audience members had commented on the similarities. Rope had a very short run, but later resurfaced when it was adapted as the screenplay for the 1948 film of the same name.

In the years between the 1928 theatrical version of Rope to the 1948 film, occasional newspaper and magazine articles about Leopold and Loeb's prison activities ensured that the case remained in the news. When Richard Loeb was

stabbed to death in prison in 1936, reports on the incident focused on the question of whether or not he had been killed because he had made a sexual advance on a fellow prisoner. Few reporters---including Edwin Lahey of the Chicago Daily News, whose opening line, "Richard Loeb, the well-known student of English, yesterday ended a sentence with a proposition" became something of a journalistic legend--bothered to explain the origins of Loeb's imprisonment (qtd. in Carey 147). This suggests that even as late as 1936, these writers could presume their audience's familiarity with the case, and that this audience would, as James W. Carey observes, "remember Richard Loeb as an actor in a twelve-year-old drama; . . . would remember who Loeb was at the time of the 1924 crime. . ." (Carey 147).

But while the Leopold and Loeb case only ever received brief coverage in newspapers and magazines after the Charles Ream mistrial, it quickly became part of the canon of American twentieth-century causes célèbres that was being established in various histories of famous cases, and in series like the American Criminal Trials series. While such histories and series would often vary their list of cases--the Lindbergh kidnapping, for instance, did not always get included--Leopold and Loeb are seldom missing from these volumes.

The fact that it was crimes and cases, and not individual criminals that were the focus of most of these

texts is not surprising given that, throughout the 1930s and most of the 1940s, both criminological research and public interest was moving away from individual criminals, towards looking at crime as a functioning part of the social structure. While some researchers such as William Healy, continued to devote themselves to accumulating data about individual offenders, other criminologists such as Edwin H. Sutherland began to move away from looking at individual behaviour, towards examining criminal gangs, and other social groups.

William Healy had played a key role in the early movement away from attempts to isolate a criminal typology. By the late 1920s, and into the early 1930s, what Healy referred to as the "multiple factor" approach dominated research on crime and criminals. Although methods varied over the years, Healy's overall goal of recording as many facts as possible about as many offenders as possible, formed the basis of even the most apparently opposed research. Ultimately, Healy (among others) hoped to be able to isolate the particular set of factors which determined criminal behaviour. But as these researchers accumulated more data, and their methods of collection grew more sophisticated, they seemed increasingly less willing to speculate on ways of isolating these factors, and more interested in making sure they had taken as many factors as possible into account.

While Edwin Sutherland had organized his 1924 volume on criminology according to the multiple factors that might be taken in to account when talking about individual criminals, by 1934, the year that he completed the revised edition of this text, he had all but abandoned this earlier orientation. By the mid-1930s most criminologists had been absorbed into sociology departments in universities, and Sutherland's book was just one of many texts that reflected the new sociological orientation of contemporary criminology. Taking his lead from the earlier work of Clifford Shaw who had argued that there were certain "delinquent areas" in the city of Chicago (Bennett 167), Sutherland developed his theory of "differential association" around the premise that criminal activity was learned, and thus that individual differences between particular offenders was of little theoretical importance. Sutherland refined this thesis considerably in later editions of his book, but the basic assumption that it was group association and not individuals that mattered, remained a constant in his work.

Although Sutherland's theory of differential association dominated the field well into the 1950s, and continues to be well-represented in criminology textbooks today, Robert K. Merton's "opportunity" theory provided an important, and influential variation on many of the themes of Sutherland's work. Like Sutherland, Merton began with the

category of the "group" rather than individuals. But Merton, influenced in part by the analyses of Marxist sociologists in the 1930s, argued that the group in question was really American society as a whole. Merton maintained that criminal behaviour was the result of a disjunction between the cultural values promoted within American society, and the means of achieving these goals provided by this society.

Various theories of delinquency evolved from this premise, and debates raged among criminologists in the years following Merton's paper of 1938. Critics of what many saw as Merton's sweeping denunciation of American society asked why some individuals, while exposed to the same disadvantages as their peers, remained law-abiding, while others (like Leopold and Loeb) who seemed to enjoy the best that American society had to offer, got involved in criminal activity. But these criticisms usually resulted in a refinement of some aspect of Merton's or Sutherland's theories, rather than a return to a criminology based on the study of individuals.

While by the end of the 1930s, and throughout the war, empirical research criminologists continued to provide the public with statistics and other data, more and more of this information tended to be about patterns of crime, rather than profiles of typical offenders. During the same period, churches, schools, and social welfare agencies increasingly embraced the theories of sociological criminologists,

accepted their position that crime played a part in the functioning of any social structure, and worked to deal with this social "fact" as best they could. These institutions began to develop programs and policies designed to help criminals cope with their problems, and frequently lobbied lawmakers to stop punishing individuals for actions that many felt did not originate with individual volition.

Thus, despite the fact that Clarence Darrow had been fairly pessimistic about his efforts to change the way in which society thought about crime and about criminals, fifteen and twenty years later, many of his thoughts on this subject had become part of the dominant criminological discourse. A new generation of criminologists whose opinions were formed within the historical context of the Depression--a time when many normally law-abiding citizens were forced to engage in "criminal" activities--not only accepted that criminal activity was induced by a variety of social pressures, but began to question the very notion of criminalization itself. But this shift towards looking at crime by first looking at the social structure was relatively short-lived; by the end of the Second World War and particularly by the late 1940s, as the United States moved rapidly to disassociate itself from the problems and programs of the 1930s, interest returned to the problem of dealing with individual criminals, and others whose refusal to conform marked them as potential criminals.

ii. Conformity and Deviance in The Postwar Epoch

In 1948, the same year that Nathan Leopold first became eligible for parole, the screen version of Rope, directed by Alfred Hitchcock, was released in the United States. Leslie Fiedler makes only brief mention of Rope in his 1958 article, noting that when it first appeared, the film seemed less an indication of renewed interest in the case, than a "Technicolor tombstone on its grave" (221). And yet:

ten years after the release of Hitchcock's film, Leopold and Loeb had become once more a staple of mass culture . . . Signalled not only by new novels, a play, an autobiography, and the reprint of the McKernan book, but also by a series of articles in the Saturday Evening Post, an appeal for clemency by Meyer Levin in Coronet and a piece in Life itself, the revival . . . culminated in the freeing of Nathan Leopold--who had been consigned, presumably forever, to prison and oblivion. (221)

Fielder implicitly sets Rope outside of the cultural and social framework that made possible the production and enthusiastic reception of Meyer Levin's Compulsion (the novel was published in 1956, and the play one year later), the reprint of Maureen McKernan's The Amazing Crime and Trial of Leopold and Loeb (1956), various articles and, had he been writing one year later, he probably would have included the movie version of Compulsion in his list. But it is possible, from a much later perspective, to see Rope as appearing at the beginning of the same postwar epoch--roughly 1946 to 1961--that provided the larger context for these texts.

The use of a temporal category like "postwar epoch" presents certain problems, especially when, as Fredric Jameson has observed, "The very conception of historical periodization has come to seem most problematical indeed" (55). But not only do analyses by those cultural historians who attempt to position themselves beyond the linear historical narratives they seek to reveal usually involve, "a buried or repressed theory of historical periodization," it is possible to have some "conception of a dominant cultural logic" without necessarily "projecting the idea of the historical period as massive homogeneity" or implying that it has a definitive beginning or end (Jameson 55).

While the term "postwar epoch" perhaps implies too much reliance on the Second World War as a convenient "punctuation mark" (Jameson 56), this is not to deny the historical continuities between pre and postwar American society. Most of the economic developments which are often identified only with this period--high productivity, massive consumer spending, the rationalization and expansion of many American industries--would not have been possible without the development of more intricate and reliable mechanisms of distribution that took place in the 1930s. It was chiefly the fact that these mechanisms were already in place by the time the United States entered the war, that allowed the American government to become the major operator in the burgeoning world "defense" industry, and it was the demands

of wartime production that forced production rates to go even higher, and forced industries to streamline processes as they expanded. The rise of nationalist sentiment during the war played a crucial role in driving up production rates, and it continued to play a significant role in economic growth in the aftermath of the Allied victory.

American political negotiations with foreign powers after the war both reflected, and helped to reinforce the perception that the country would be a central player in the "new world order" that emerged in its wake. Historian David Horowitz has argued that "the early post-war power situation was such as to give the United States a new monopoly on the strategic decisions which would affect the basic structure of international relations in the post-war period" (Horowitz 19). This was made abundantly clear first at Yalta and then in Potsdam in 1945, when Truman promised to respond to Stalin's refusal to make concessions over Eastern Europe with a series of moves designed to contain communism and, at the same time, to protect American global economic expansionism. In 1947, the American Congress backed Truman in his pledge to support resistance to Russian incursions abroad, a move that was followed in 1948 by the European Recovery Program (otherwise known as the Marshall Plan), designed to assist economic recovery in Europe, and to bolster American markets abroad.

But while growing economic and political power ensured

the United States a unique position within the postwar world, power also engendered its own particular set of problems and anxieties. Truman's 1947 speech had hinted that the country would have to be ready to go on military alert at a moment's notice, given the instability of the situation in Eastern Europe. From this, and other contemporary warnings, many Americans concluded that the United States was in the process of losing ground to threatening foreign powers. As Gar Alperovitz has observed "Two events in particular contributed to this sense of alarm; the collapse of Nationalist China in 1949 . . . and the explosion of an atomic bomb by the Russians in the same year" (Alperovitz 8).

These constant reminders of the fragility of postwar alliances, contributed to what contemporary observers described as a growing "prewar atmosphere" as, for four or five years after Truman's speech, many Americans wondered not if, but where and when, the war would begin (qtd. in Guilbaut 168). The term "cold war" which has since taken on various and often quite divergent meanings, first emerged into wide usage at this time, and was mobilized partly in response to American conservatives' widespread criticism of liberal policies. Conservatives charged that it was the weakness of the Roosevelt administration during the war, and Truman's willingness to make concessions to foreign powers in its aftermath, which had spawned instabilities in Eastern

Europe, and elsewhere. Many of them warned that another military action in the region would soon become necessary, and that American citizens would again be called upon to fight overseas. But Truman's supporters such as Arthur Schlesinger, Jr. and Hubert Humphrey rallied to his defence, and advanced their own interpretation of recent history, an interpretation that focused on Stalin's failure to realize the potential for the harmonious coexistence of the postwar powers (Guilbaut 141). Rather than advocating an all out military strike to counteract the possible perception of past weaknesses, advocates of this position advised that Russian aggression could best be met by containment on multiple fronts.

The suggestion that the Soviet bloc was an awesome new power which needed to be contained, was first advanced by Truman supporters, hardened into doctrine during the Eisenhower administration, and has since come to be accepted as a political reality, despite revisionist historians' attempts to challenge what they have insisted was only ever an interpretation. In The Free World Colossus, for example, David Horowitz questions the presumption that the Soviet Union emerged as a formidable and threatening foe after the war, arguing that Russia's losses during the war had in fact crippled her economy and infrastructure for years to come. He suggests that the notion of containment was advanced primarily as a justification for legitimizing a powerful

American presence overseas, and for maintaining high levels of productivity at home. Finally, as most of the revisionist historians who followed Horowitz have argued, the notion of containment abroad also proved to be a powerful tool in curbing and curtailing unwanted behaviour on the domestic front.

Fears of imminent war, particularly a nuclear war, helped to fuel domestic self-scrutiny and stimulated the search for friends to foreign enemies within the country, a search which, as is well known, led to the execution of the Rosenbergs, and the terror of the House on Unamerican Activities Committee (HUAC) hearings. But alongside these overt attacks on supposed radicals, more subtle forms of self-censorship and self-imposed adjustments to what Schlesinger and others liked to call "the vital center" also prevailed. As Serge Guilbaut has noted, Schlesinger's book The Vital Center helped to articulate the new priority that would be placed on consensus politics, a policy that developed in response to the fact that Truman's power base lay in a "(not always very unified) coalition of liberals. . . ." who united in their opposition to communism (Guilbaut 190).

But by the late 1940s, and particularly in the early 1950s a new emphasis on finding a middle ground and reaching a consensus on issues was also being invoked outside of the immediate political arena. In business practices in

particular, there was a new emphasis on group decision-making. In his influential book The Organization Man William H. Whyte Jr. contrasted what he called the new "social ethic" with an older, more individualist, "protestant ethic." Whyte defined the social ethic as the belief that:

of himself, [man] is isolated, meaningless; only as he collaborates with others does he become worthwhile, for by sublimating himself in the group he helps to produce a whole that is greater than the sum of its parts (7-8)

Whyte also suggested that out-moded systems that rewarded individual creativity above all else, needed to be modified to recognize the abilities of employees who were popular with their co-workers, worked well in groups and, perhaps most importantly, were capable of articulating the centrist position on issues. It was not the idea of a group per se, but the ideal of a group working together to come to a middle-ground position which was advanced as the key to making a business run successfully, and to making it a constructive force within society.

If some of this discussion of group decision-making, consensual agreement, and finding a middle ground in business or politics occasionally mimicked the language of the left, its proponents usually stopped short of any valuation of collective action or communal power. The self-appointed spokesmen of the time such as Schlesinger made it clear that there were both "good" and "bad" groups. Good groups--such as those exemplified by well-run businesses--

were thought of as a collection of individuals--whereas bad groups, were identified as extreme, and were thought to encourage the obliteration of individuality (fundamentalist religious groups were a common target).

In distinguishing between different kinds of groups, and stressing the role good groups played in maintaining social order, these writers not only echoed but made explicit use of the work of sociological criminologists such as Sutherland and Merton. But increasingly throughout the postwar epoch, emphasis shifted away from determining what kinds of groups made up American society and where they might be found, towards looking at how these groups affected individual behaviour. Walter C. Reckless's 1950 text The Crime Problem, for instance, examined the ways in which potentially "bad" individuals might be brought into line through their contact with "good" groups. Significantly, his work echoed contemporary political rhetorical in advocating containment as the best way to deal with potential threats to the social order:

containment represents the structural buffer in the person's immediate social world which is able to hold him within bounds. It consists of such items as a presentation of a consistent moral front to the person, institutional reinforcement of his norms, goals and expectations, the existence of a reasonable set of social expectations, effective supervision and discipline (social controls) . . . (60)

Reckless, like most of his contemporaries, remained optimistic about the power of good groups to transform

individuals, and about the prevalence of such groups within American society. But there were other criminologists (and social theorists) who warned that there were always some individuals who, despite the fact that they appeared to be associated with good groups, nevertheless posed potential threats. Throughout the 1950s, various studies emerged on the subject of what was called "hidden delinquency" (Gibbons 78-79), and as the social pressures encouraging conformity and discouraging defiance of social norms built, anxiety about these invisible individuals also increased.

When Rope appeared in 1948 it spoke directly to these kinds of emergent anxieties, and by the time Compulsion was published in 1956, and then made into a movie in 1959, criminologists and the public were again focusing their attention on potentially dangerous individuals.

iii. From Rope to Compulsion

The appearance of Rope in 1948, at a relatively early moment in the developments outlined above, gave advance signal of the movement away from looking at the criminal within society, to rethinking how societies should respond to the potentially dangerous individuals in its midst, individuals who would not conform to the consensual will of the "group." Individual criminals had always been a favourite cinematic topic, but many of the so-called "social problem" films of the 1930s had tended to set these

criminals within the larger context of their relationship to society, or had tried to humanize the complex workings of the criminal underworld by following the story of one man's progress through it. But in Rope, Hitchcock narrowed the focus, and slowed down the action to look more closely at the events surrounding one particular crime, thus moving his audience away from the faster-paced stories of desperate men trying to make it on the streets of a difficult world.

As if to indicate that this shift is taking place, the film opens with the camera panning upwards away from these streets, and the people who move along them, into the private world of a well-appointed living room, in an equally luxurious apartment. But before the audience has a moment to examine this setting more closely, they must first witness the event that will propel the action in the scenes that follow: two young men are in the process of strangling a third to death. Together, Philip (played by Farley Granger) and Brandon (John Dall) place David Kentley's limp body in an empty trunk, which is positioned in the same room. Later, they will serve dinner (as in the play, neatly arranged on top of the trunk) to their victim's friends and family, who believe they have been assembled in order to bid farewell to Philip and Brandon, rather than, as Brandon explains to his distressed accomplice, "to make [their] work of art a masterpiece."

Among the guests attending the dinner party, is Rupert

Cadell (Jimmy Stewart), the boys' former prep school master and, as we learn, Brandon's mentor, a man who inspired his great love of Nietzsche. Cadell is curious about his hosts' strange behaviour throughout this party, and, to his horror, gradually realizes why David Kentley has failed to appear. The film ends when Cadell finally flings open the trunk to discover Kentley's body, and then fires a gunshot out the open window, alerting others to the danger within, and inviting them to do something about it. He promises Philip and Brandon that this "something" will almost certainly be their own deaths.

For those watching the film, the time between the murder and Jimmy Stewart's (unusually swift, for this movie) movement to the window is filled with the seemingly endless process of watching Rupert Cadell observe, contemplate, and silently interpret the events that unfold before him. Because the audience already knows what Brandon and Philip have done, the sense of anticipation, and then frustration at Cadell's apparent inability to come to the same realization, builds over the course of the movie. It is a frustration mirrored by Philip in the movie, who repeatedly indicates to Rupert that he would rather be accused outright, than have to suffer under the former's prolonged scrutiny. The sense of claustrophobia is only heightened by the fact that Hitchcock filmed Rope using continuous takes of varying lengths, rather than editing various shots and

splicing them together, a technique that forced actors to pace their dialogue very carefully and evenly and to limit the extent to which they moved out of range of the camera.

When Cadell finally opens the window and shoots a gun into the air, it is a signal that release from this claustrophobic atmosphere is imminent for all concerned, even if it means (as he insists it does) death for Philip and Brandon. But while Cadell succeeds in his efforts to correctly interpret the signs that alerted him to the danger within the apartment, there is also the sense--as he is presumably acutely aware--that this interpretation came too late. If Cadell had been able to read the warning signs that came much earlier in his relationship with the two murderers--Philip's fondness for strangling chickens, Brandon's tendency to invent stories about locking people in trunks, or his misinterpretation of Nietzsche's idea of the ubermensch--he might have been in a better position to prevent the murder. But we never really get a chance to see Cadell contemplating his failure to do something earlier; instead, there is only Rope, serving as a warning tale about the consequences of such failure.

It is not incidental that this particular warning tale might have stimulated memories of the 1924 Leopold and Loeb case for certain (older) members of the audience, or perhaps reminded other (younger) spectators of what they had heard or read about the crime in more recent years. Either of

these groups might have recalled the extent to which the crime was identified with a certain type of individual, and with certain intellectual and sexual "tendencies." In Rope too, the murder is explicitly linked to Philip and Brandon's commitment to abstract ideas, and it is particularly fitting that the victim's father leaves the apartment with a gift from his hosts of a set of valuable books, which, although Mr. Kentley is unaware of it, have been tied together with the rope that Philip and Brandon both held when they murdered his son. It is unclear whether or not the two murderers live alone together as lovers; but the actual act of murder seems to have an erotic overtone as Brandon orders Philip to close the curtains so they can "do it in the daytime," and when asked how he felt during the act responds, "his body went limp and I knew it was over . . . I felt tremendously exhilarated." While these "tendencies" are not explicitly condemned in the film, it is very clear that they are part of what distinguishes Brandon and Philip from the "group" gathered at the dinner party, and part of what makes them dangerous.

As if to further remind the public that the problem of individual criminals has still yet to be solved, one year after Rope appeared, Leopold's sentence was commuted from "life plus 99 years" to "life plus 85 years," making him eligible for parole in 1953. His lawyers began a campaign to convince the public that he had been reformed in prison, and

that he no longer posed a threat to society. They encouraged journalists to visit him in prison, and to write articles about his correspondence school for inmates, his work in the library, and his involvement in medical research. Despite numerous--largely positive--newspaper reports, the 1953 parole board voted to hold over the decision on Leopold's release until 1965. He soon discovered that this was the longest continuance in Illinois history, and launched another public opinion campaign, soliciting interviews during which he railed against the abuses of the parole board. He refused to discuss any details of the Robert Franks murder during these interviews, and journalists usually restricted their reference to the crime to a brief introductory paragraph.

Meyer Levin has acknowledged that Leopold's high profile and the public's interest in his case with the parole board played a part in his decision to write Compulsion when he did, prompting him to finally get to work on something which he "had for years carried in back of [his] mind, as something that would one day come ripe. . . . (qtd. in Higdon 314). Levin had worked part-time at the Chicago Daily News in 1924, while he, like Leopold and Loeb, attended classes at the University of Chicago. The story of Compulsion is told from the point of view of a middle-aged writer (Sid Silver), who, like Levin, reflects on events from the perspective of thirty years later. While the

central characters in Compulsion are named Artie Strauss and Judd Steiner, Levin leaves little doubt that their non-fictional counterparts are Richard Loeb and Nathan Leopold. Not only does Levin mention Darrow's name in the foreword to the book--which also explains that the names of "those directly involved in the case" have been changed to allow for "artistic license" but also Levin incorporated a great deal of the original trial testimony--as well as other documents--into his text.

Compulsion is divided into two "books" the first of which, "The Crime of the Century" deals with Strauss and Steiner's relationship, their deliberations in the months leading up to the murder, the murder itself, and the hunt for the murderers. Here, the sexual nature of Steiner and Strauss's relationship is made much more explicit than in Rope (the play or the movie), and Levin relied on the psychiatric reports on Leopold and Loeb to build his portrait of their complex relationship. While it is clear that their exceptional intelligence and unusual wealth sets them apart from their peers and undoubtedly contributes to their formation of a plan to commit the perfect crime, Levin suggests that it is the sexual relationship that provides the real motivation for the murder, particularly for Judd (Nathan), who only gets involved because of his great love for his mentor. The psychiatrist's explanation at the conclusion of the second part of Compulsion--that Strauss

had killed because he had to "kill the girl-part of himself, before he could become a man" only confirms what the first part of the book strongly suggested.

Book Two--which is entitled "The Trial of the Century"--deals with Steiner and Strauss's progress through the judicial system, including their confessions, pre-trial preparations, the hearing itself, and the sentencing. While Levin gives some space for the arguments given by the defense analysts, including texts which were not considered printable in 1924, it is Jonathan Wilk's (Clarence Darrow's) summation that dominates these pages. But while the narrator notes that Wilk's success in having psychoanalytic testimony heard in court was significant in 1924, his conclusion that this closing statement emphasized "not psychiatry so much, but youth and the precedent of consideration for youth" (476) leaves both Sid and by implication the reader, feeling that a "fuller explanation" is needed (x).

Eventually, in the 1930s Sid Silver approaches his psychoanalyst friend Willie Weiss, asking what he made of the case. Weiss offers an elaborate Freudian interpretation of the murder, arguing that Leopold's homosexual impulses culminated in a desire to rid himself of his "girlish" side, by murdering a boy and obliterating his sex organs, an interpretation that Sid initially dismisses as rather "bizarre," mere "intellectual play" and, finally, "hopeless" (491). But by the 1950s, he is not only ready to fully

accept Willie Weiss's account of the sexual roots of the crime, but is hopeful that "today an Artie or a Judd, while still in childhood, might more likely arrive at the desk of a therapist" where, presumably, their problems would be both detected and cured (491).

Compulsion, unlike Rope, takes the reader into the judicial process and beyond in an attempt to come to terms with the crime. Whereas Rope ends with Rupert Cadell calling upon his fellow citizens to come and help him punish the criminals he has discovered in their midst, Compulsion only ends when Sid Silver is ready to say how future Steiners and Strauss might be prevented from enacting their "destructive urges" (491). He concludes that by paying attention to the work of these psychiatrists, and being cognizant of the signs of potential danger--including homosexuality--society will not only "come to recognize the mechanism" of destructive urges, but also be able to "devise controls for it" (491).

Like Sid Silver, Compulsion's reviewers were less concerned with the details of the crime, than they were with the relationship between the two main characters. More than one reviewer criticized Levin for having used sexually explicit language. In the October issue of Library Journal, for example, H.C. Whitford advised librarians that the book was "not recommended for top priority purchase," because Levin had devoted "considerable space to sordid sexual

episodes and coarse dialogue" (81). But other reviewers seemed more likely to agree with the author of the famous Perry Mason series, Erle Stanley Gardner, who, in the New York Times, observed that, "the 'dirty' part . . . was placed there for a purpose," and whose only criticism of Compulsion was that "the last chapter has been omitted" (7).

What did Gardner have in mind when he said Compulsion was missing a final chapter? Perhaps he felt that Levin should have waited to see whether or not Leopold would be released on parole, and how he would fare in the world outside of prison; or, perhaps he believed that Levin should have explored in more detail the question of how dangerous "types" might be recognized as early as possible, and how psychology might be used to detect and "devise controls" for those individuals who might pose a threat to society.

But if Levin neglected to provide this codicil, contemporary criminologists and sociologists did not. By the late 1950s and early 1960s, articles such as Gibbons's "Definitions and Analysis of Certain Criminal Types" had begun to appear regularly in standard criminological journals, while psychotherapy had become a central part of prison (and non-institutional) life. But these developments, and even the frequent use of psychoanalytic testimony in court were, in many ways, far removed from the possibilities opened up by Clarence Darrow's use of such material in 1924; it seemed that the return to the Leopold and Loeb case had

also mediated a return to the criminal individual, and a renewed search for the signs of criminality.

CONCLUSION

Little was heard of the Leopold and Loeb case after Compulsion was released as a film in 1959. The film achieved moderate commercial success, but never stimulated or received the popular or critical attention that the novel had three years earlier. Brief accounts of the case continued to appear in anthologies of famous crimes and trials, such as Rupert Furneaux's volume in the Courtroom U.S.A. series. But when Hal Higdon published his detailed account of the Leopold and Loeb affair in 1975, few reviewers seemed interested in its appearance, and the fact that the book never went into a second printing suggests that interest in the case--beyond the scholarly investigations of Randall Majors or Philip Kronk--had waned.

The public's fascination with real-life crimes, and with the spectacle of courtroom drama has never faded, however, and today the cultural sphere seems to be saturated with images of judicial confrontation, and detailed examinations of the case histories of miscreant individuals. It would be interesting and valuable to situate these contemporary representations in relation to current developments in criminological theory, and other forms of social discourse about criminality; such analyses might also benefit from a genealogical account of notorious crimes and trials. The Leopold and Loeb case is just one of many causes célèbres that should be included in such a genealogy.

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