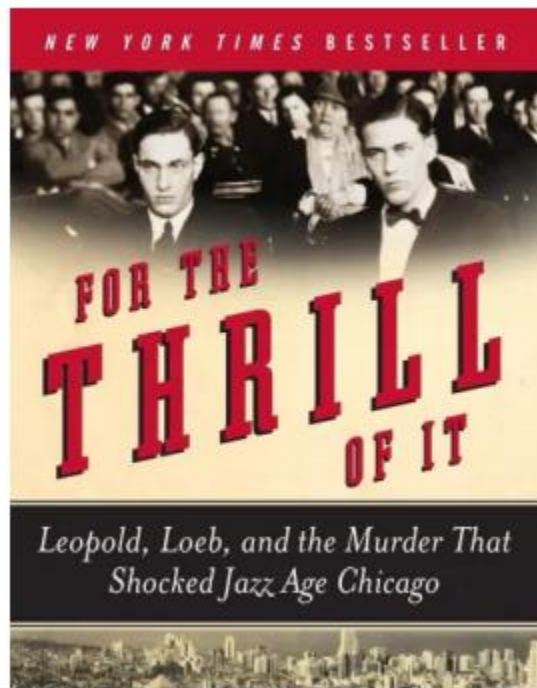


## The insanity defense: is it sane? Thoughts from the Leopold and Loeb case.

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By Jerry Coyne in whyevolutionistrue blog  
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I'm reading the book below, which I found in a free book box, about the famous **Leopold and Loeb murders of 1924**. The murders took place in Hyde Park/Kenwood, just a few blocks from where I sit. Nathan Leopold (left on the cover below) and Richard Loeb, once University of Chicago students, 19 and 18 respectively, decided to commit the perfect crime—a murder. There was no obvious reason for it except for their hubris, especially Leopold's, for he was a fan of Nietzsche and thought he was exempt from ordinary moral strictures. That gave rise to the book's title. (Click on the screenshot to go to the Amazon site, and I do recommend the book as a historical page-turner.) They planned the murder for six months, confident that they could kill someone (they planned to abduct a random child from a nearby school) and never get caught.



In May of that year, the pair abducted and brutally murdered 14 year old Bobby Franks, Leopold's second cousin. They drove his body to Indiana and sequestered it in a railroad culvert. The pair then sent a ransom note to Franks's family, though the child was already dead. They probably would have pulled off the crime, too, except that Leopold dropped his glasses near the body, and they had a special frame that had been sold to only three people in Chicago. The cops quickly traced the glasses and zeroed in on the pair, who promptly confessed everything in great detail. And they confessed without ever having talked to a lawyer, which of course is a serious mistake.

Leopold and Loeb's families were wealthy, and engaged three lawyers to defend them, including Clarence Darrow, the most famous lawyer in America. (The next year he was the major defense attorney in the Scopes "Monkey Trial".) Darrow, who also lived near me in Hyde Park, is a hero of mine: dedicated to fighting for the underdog, fiercely smart and eloquent, and an outspoken determinist and atheist.



Left to right: Loeb, Darrow, and Leopold. [Source.](#)

The boys changed their plea from "not guilty" to "guilty", therefore giving up a jury trial as well as the possibility of a verdict of "not guilty by reason of insanity". The only courtroom proceedings, then, were the lawyers' arguments before the judge to determine what sentence the boys got (hanging, life without parole, or 14 years or more in prison).

Even Darrow admitted that the boys should be in jail until they died, but argued fiercely before the judge that the boys had no choice but to commit the crime—they were conditioned by their genes and environment to murder Bobby Franks. Darrow considered this mitigation, and was arguing for a prison sentence rather than hanging. Much of the book is devoted to the testimony of neurologists and psychologists who argued whether or not the boys were mentally ill, even though they couldn't plead insanity. Darrow argued that both had mental disorders, and these played a major role in the crime.

In his summation and plea that the judge impose prison rather than the noose, Darrow made a famous twelve-hour argument, some of which you can read [here](#). It was heavily deterministic, to wit:

This terrible crime was inherent in his organism, and it came from some ancestor ... Is any blame attached because somebody took Nietzsche's philosophy seriously and fashioned his life upon it? ... It is hardly fair to hang a 19-year-old boy for the philosophy that was taught him at the university.

. . . Why did they kill little Bobby Franks? Not for money, not for spite; not for hate. They killed him as they might kill a

spider or a fly, for the experience. They killed him because they were made that way. Because somewhere in the infinite processes that go to the making up of the boy or the man something slipped, and those unfortunate lads sit here hated, despised, outcasts, with the community shouting for their blood. Mr. Savage, with the immaturity of youth and inexperience, says that if we hang them there will be no more killing. This world has been one long slaughterhouse from the beginning until today, and killing goes on and on and on, and will forever. Why not read something, why not study something, why not think instead of blindly shouting for death?

Darrow won. To everyone's surprise, the judge gave them both life sentences. In 1936, Loeb was murdered in prison with a razor by a fellow inmate who claimed that Loeb made homosexual advances (Leopold and Loeb had a homosexual relationship). Leopold was actually paroled in 1958, moved to Puerto Rico, and died in 1971 at the age of 66.

I've digressed, but the story is a fascinating one, seen at the time as the crime of the century, with worldwide interest and publicity. Thousands of onlookers tried to rush the Chicago courtroom to hear Darrow's summation, and finally had to be beaten back by the police.

When reading the book, I discovered that the standard for "insanity" at the time, which if proven by the defense would get you a "not guilty by reason of insanity" verdict (and likely a shortish stint in an asylum) was that the defendant did not understand that his conduct was criminal. That is, he didn't know the difference between right and wrong (in the law).

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Darrow argued that although Leopold and Loeb were not “insane” by these standards (he knew that such a plea wouldn’t fly), they were nevertheless suffering from mental illness, and it is on this issue that his speech centered.

While thinking it over, I realized, as I’ve said here before, that understanding that your crime was against the law is a lousy criterion for “insanity” mitigation in these cases. That’s because, as a determinist, I think that to some extent everyone who commits a crime is “insane” in the sense that they could not help themselves. As for Illinois’s insanity defense, there may be those, including some serial killers, who *know* that their deeds are criminal and illegal, but are under such delusions or compulsions that they cannot help themselves, even though they know about conventional and legal morality.

Is “a knowledge of criminality”, then, to be the line that divides a gentler, more rehabilitative punishment from one that throws you into jail with other criminals, a dreadful fate if you’ve committed a capital offense? I can’t see why. Why is “mental illness that blinds you to criminality” so different from “mental illness that compels you to do murder, even though you know it’s wrong?” In fact, as a determinist, I don’t think that the criminal, at the moment of the crime (and oftentimes before, as with Leopold and Loeb) could have chosen to behave differently. Regardless of your views on punishment, if you agree with me—and I think all science-minded people must)—then you have to take determinism into account when weighing punishments.

My own view, which I’ve expounded here over and over again, is that even “hard” determinism mandates punishment for three reasons: to keep a dangerous person out of society (sequestration), to rehabilitate them if possible (so that sequestration can end), and to deter others (deterrence). But none of this justifies any punishment, like the prosecutor in the

Leopold/Loeb case argued repeatedly, based on the fact that the criminal made *the wrong choice*. (The State's Attorney repeatedly argued for the death penalty because Leopold and Loeb, not being insane, could have realized the criminality of their act and refrained from it.)

And although both Darrow and I are determinists, he went even further than I, arguing that prisons were superfluous. But perhaps we do agree on this: "prison" shouldn't be an exercise in horror, but a removal from society (which is punishment itself and a deterrent), combined with whatever therapy necessary to ensure that the criminal can be returned to society. If there is no such therapy, then sequestration for life is mandated. In Norway, you're examined for rehabilitation every five years, and if you're judged un-rehabilitated, you stay in jail for another five years. But Norwegian prisons are far less brutal than American ones.

In other words, I don't like the insanity defense, which offers true rehabilitation only to those deemed "insane". My view of criminal trials is that there should be two phases:

- A. Was the criminal "responsible" for the deed? That is, did he do the act, period? That can be decided by a jury.
- B. What is the best way to treat a convicted criminal in light of the three rationales for punishment given above? What sequestration is an appropriate deterrent? (That is something that can be decided empirically.) Is there a form or rehabilitation that will allow the criminal to return to society and pose no more danger than that of an ordinary citizen? If there is, that therapy should be given. The sentence, then, should be imposed not by judges or juries, but by a panel of experts, legal, medical and psychiatric.

I know that this mandates an extensive reform of the American penal system, and will be costly and will involve trial and error for a long time to come. And many people who are libertarian free-willers, and who think that criminals could have decided otherwise, will oppose reforms that take determinism into account. But I can't see any good argument for keeping the present system, which is cruel, retributive, and yields a high rate of recidivism.

CODA:

Here are Leopold and Loeb's mugshots taken when they entered prison (Leopold is at the top)



(720 ILCS 5/6-2) (from Ch. 38, par. 6-2)

Sec. 6-2. Insanity.

(a) A person is not criminally responsible for conduct if at the time of such conduct, as a result of mental disease or mental defect, he lacks substantial capacity to appreciate the criminality of his conduct.

(b) The terms "mental disease or mental defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

(c) A person who, at the time of the commission of a criminal offense, was not insane but was suffering from a mental illness, is not relieved of criminal responsibility for his conduct and may be found guilty but mentally ill.

(d) For purposes of this Section, "mental illness" or "mentally ill" means a substantial disorder of thought, mood, or behavior which afflicted a person at the time of the commission of the offense and which impaired that person's judgment, but not to the extent that he is unable to appreciate the wrongfulness of his behavior.

(e) When the defense of insanity has been presented during the trial, the burden of proof is on the defendant to prove by clear and convincing evidence that the defendant is not guilty by reason of insanity. However, the burden of proof remains on the State to prove beyond a reasonable doubt each of the elements of each of the offenses charged, and, in a jury trial where the insanity defense has been presented, the jury must be instructed that it may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity until and unless it has first determined that the State has proven the defendant guilty beyond a reasonable doubt of the offense with which he is charged.

(Source: P.A. 89-404, eff. 8-20-95; 90-593, eff. 6-19-98.)