

H-Net Reviews

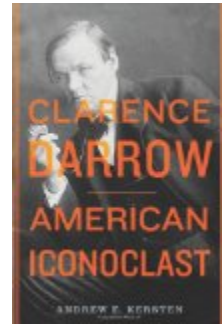
in the Humanities & Social Sciences

Andrew Edmund Kersten. *Clarence Darrow: American Iconoclast*. New York: Hill and Wang, 2011. 320 pp. \$30.00 (cloth), ISBN 978-0-8090-9486-8.

Reviewed by Brian Greenberg

Published on H-SHGAPE (September, 2012)

Commissioned by Julia Irwin



Darrow for the Defense

I assigned Andrew Kersten's *Clarence Darrow: American Iconoclast* in my fall 2011 Law and Society graduate class. As Kersten appropriately observes, Darrow was a complex man, who merited the sobriquet given him by the muckraker Lincoln Steffens, "Attorney for the Damned." Yet while justifiably celebrated as a forthright defender of individual freedom and liberty, Darrow frequently disappointed his allies. Certainly, his belief in equality did not extend to women, and in his personal life, Darrow treated his two wives with patronizing disdain. Kersten provides ample evidence that the crusading lawyer was capable of compromising his core values and was very much a believer that the end justifies the means. As I read about Darrow's legal career and personal life in Kersten's persuasive biography, what came to mind was Groucho Marx's famous telegram to the Friar's Club, "PLEASE ACCEPT MY RESIGNATION, I DON'T WANT TO BELONG TO ANY CLUB THAT WILL ACCEPT PEOPLE LIKE ME AS A MEMBER."^[1]

The child of free thinkers, Darrow eventually turned to the law as a means of escaping his small-town Ohio roots. His rural background, according to Kersten, provided Darrow with his lifelong pessimism, fatalism, and skepticism. But it also inspired his commitment to tolerance and to the common man. Returning home to Kinsman, Ohio, in 1873 after a year of college, Darrow became a teacher. Yet teaching farmers' children did not satisfy his ambition, and he became a lawyer, as Kersten notes, to make money, have some fun, and make his mark. Even though Darrow had not entered the legal profession in-

tending to save the world, he came to consider the courtroom as a stage on which to challenge the powers that curbed democracy and freedom.

Arriving in Chicago in 1888, Darrow became a political radical and an active participant in the city's bohemian culture. The young lawyer also formed an alliance with John Peter Altgeld, who in 1892 was elected governor of Illinois. Altgeld's influence helped Darrow land his first major job; ironically, it was as a staff attorney for the Chicago Northwestern Railroad. He left corporate law less than a year later to defend Eugene V. Debs, whom Darrow in his autobiography claimed as one of his heroes. Debs, a leader in the American Railway Union's nationwide strike against the Pullman Car Company in 1894, had been arrested for contempt of court and criminal conspiracy. Darrow would eventually lose the appeals in both cases, and Debs went to prison. The case, Kersten observes, lit an "unquenchable fire in [Darrow's] stomach" (p. 77). Darrow took on the mantle of Labor's Great Defender, which he wore for the next fifteen years.

Darrow's notable labor cases included his largely successful representation of the United Mine Workers Union in Pennsylvania in a federally mandated arbitration hearing in 1902; his victorious defense of William "Big Bill" Haywood, the secretary-treasurer of the Western Federation of Miners (WFM), who was tried in 1907 for ordering the murder of Frank Steunenberg, a former governor of Idaho who had called for the use of federal troops during a WFM strike; and his negotiated plea agreement in 1910

that saved the lives of the McNamara brothers, who had been convicted of conspiracy to blow up the Los Angeles *Times* building. In the McNamara brothers' case, unlike in his defense of Haywood, Darrow was unable to manipulate the public to win sympathy for his clients. Not only was Darrow badly defeated in the courtroom, but he also found himself on trial for taking part in an attempt to bribe one of the jurors. Although Darrow was acquitted, Kersten's brief for Darrow in this instance does not rest on the lawyer's possible innocence. Rather, Kersten views the case as an example of Darrow's assumption that the courtroom was not a level playing field, that prosecutors and judges often colluded to obtain convictions, and that in the "winner-take-all death match between labor and capital ... ethical codes sometimes had to be bent or broken" (pp. 146-147).

Darrow returned to Chicago from Los Angeles in 1911 a broken man. The labor movement, which blamed Darrow for losing the McNamara case even though he had saved the brothers' lives, severed its ties to him. Consequently, Darrow transferred his passion from defending labor to defending the civil rights and liberties of individuals caught in the undertow of the waves of social and cultural change that Americans experienced during the first three decades of the twentieth century.

Two of Darrow's "trials of the century," both of which occurred in the 1920s, were later made into popular Hollywood films. In his defense of two sons of privilege, Nathan Leopold and Richard Loeb, accused of a horrific murder, Darrow fused his need for a big paycheck with his lifelong animus against capital punishment. Today, watching Orson Welles in the 1959 film *Compulsion* deliver Darrow's summation (taken verbatim from the trial transcript) in the Leopold and Loeb trial, one appreciates Darrow's showmanship and his willingness to play on every emotion of the jury members to gain sympathy for his clients. In the second trial (the 1960 movie *Inherit the Wind* was based on this case), a young teacher in Tennessee, John T. Scopes, stood accused of violating a state law against the teaching of evolution. In the Scopes "monkey trial," Darrow battled what he believed to be modern life's most dangerous enemy, religious fundamentalism. In an intensely dramatic confrontation, Darrow embarrassed William Jennings Bryan, a prosecutor in the case and a three-time presidential candi-

date, during his testimony on behalf of a literal interpretation of the Bible. Because Tennessee's Supreme Court overturned Scopes's conviction on a technicality rather than on constitutional grounds, the case never became the bully pulpit for the campaign that Darrow had hoped to mount against the anti-evolutionists. For Kersten, the Leopold and Loeb and Scopes cases, along with the 1925 acquittal won by Darrow for Ossian Sweet, an African American who had forcibly defended his Detroit home from a mob assault intended to force him to move, demonstrate that Darrow's "commitment to liberty, freedom, and justice for the oppressed and for those caught in the terrible snares of the state justice system remained as strong as ever" (p. 216).

What makes Darrow an iconoclast for Kersten was the lawyer's relentless championing of the underdog. Fair enough, but Kersten is sometimes too willing to accept Darrow at face value. For example, during World War I Darrow approved of the American government's taking any action, including the suppression of civil liberties, to defeat what he saw as the greater threat to liberty and freedom represented by German militarism. Although Kersten notes that Darrow "never offered a satisfying answer to why ... he had shifted his views on war and patriotism," the biographer nonetheless goes to some pains to absolve Darrow of any charges of hypocrisy (p. 177). Essentially, Kersten explains Darrow's attitude toward this example of the government's violation of a citizen's rights of free speech and assembly as just another instance of the crusader's "intellectual sifting and shifting of causes" (p. 177). To Darrow's credit, a tour of the battlefields in 1918 convinced him that the tales of German atrocities had mainly been propaganda and, after the war, he returned to form and defended radicals threatened by deportation or jail under espionage and sedition laws passed during the conflict. Much like Groucho said of himself, Darrow is once again the great skeptic, most content when going his own way. My students very much enjoyed Kersten's readable and insightful biography of Darrow.

Note

[1]. Julius Henry Marx, *Groucho and Me* (New York: n.p., 1959), 321, as quoted in "Groucho Marx," Wikiquote, last modified August 21, 2012, http://en.wikiquote.org/wiki/Groucho_Marx.

If there is additional discussion of this review, you may access it through the network, at:

<https://networks.h-net.org/h-shgape>

Citation: Brian Greenberg. Review of Kersten, Andrew Edmund, *Clarence Darrow: American Iconoclast*. H-SHGAPE, H-Net Reviews. September, 2012.

URL: <http://www.h-net.org/reviews/showrev.php?id=33134>



This work is licensed under a Creative Commons Attribution-Noncommercial-No Derivative Works 3.0 United States License.