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The Outlawry of Law, 1923.

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LECTURE BY RABBI ABBA H. SILVER.

SUBJECT: "THE OUTLAWRY OF LAW."

AT THE TEMPLE - SUNDAY MORNING,

FEBRUARY 4, 1923, CLEVELAND, O.

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JOSEPH T. KRAUS  
Shorthand  
Reporter  
CLEVELAND



That lawlessness is rampant in our midst and that the authority of law is fast breaking down is apparent even to the casual observer. But when I speak of lawlessness I do not have in mind these sporadic crime waves that afflict a community from time to time; I have in mind the appalling increase in crime throughout the land, an increase which seems to be steady and general and ominous.

I read where the Federal criminal courts, in 1912, reported some 9,500 cases, and in 1921, 70,000 cases. Of these some 30,000 were for violations of the prohibition law. Deducting this number there is still an increase of over 400%, in less than ten years, in crime in the United States; and these are only crimes reported in the Federal criminal courts. We can only surmise the number of crimes reported in our county courts and police courts throughout the land.

In 1919, some three years ago, in the city of Chicago alone, there were committed 339 murders--almost one for every day of the year, including Sundays and half-holidays. Of these 339 only 44 were convicted. In comparison, Cleveland shows up rather well. Last year we had no more than 63 murders committed in our city; but we did have some 7,300 other crimes.

Now, the commission of acts of felony is not restricted to individuals. There has been in this land in the last few years a most staggering increase in the number of crimes committed by groups in the name of some high moral



pretense--acts of lawlessness and violence and destruction and killing committed by groups and organizations, with such cruelty and such medieval viciousness as only a mob spirit can incite and intensify.

You know the grewsome details of three of these, and I mention them because they are not isolated instances, but symptomatic of a frame of mind, of an attitude, in this land. The first instance I refer to is the Mer Rouge affair, where a fraternity, hiding its iniquity behind masks and behind patriotism, an organization of native white Protestants, took two men, who somehow had sinned against the organization, and whipped them, tortured them and mutilated them, using, so the evidence proved, a special mechanical contrivance wherewith they could break their bones one by one, sawed off their limbs and threw them into the lake--all in the name of a hundred percent Americanism!

The government of the state of Louisiana, where this crime was committed, was compelled, actually compelled, to go to the president of the United States and confess that civil law has broken down in the state of Louisiana, that this terror that stalks by night has the whole state in its grip; and he appealed for aid of the Federal authority.

The other instance of group violation of law is the Herrin massacre. During the miners' strike last June some mine owner near Herrin, in the southern part of Illinois, in the famous Bloody Williamson County, attempted to operate his mine with non-union labor. He imported strike breakers



and mine guards and proceeded to operate his mine. The townspeople, all of whom were striking miners, besieged this mine, and this is what happened--quoting from the Literary Digest, which summerizes the evidence presented at the trial:

This man Lester, this mine owner, is said to have brought in miners and armed guards from Chicago to protect the strike breakers. "The striking miners armed in turn, and fired at a truck filled with mine guards. There were cases of roughness or brutality on the part of the guards. The mine became practically a beleaguered fort. There was considerable sniping. On June 21st, three of the besieging force, now numbering several hundred, were killed. That night cool heads planned a truce; it was arranged that next morning the company's guards and strike-breakers were to surrender and would be allowed to leave the county. At daybreak, on the 22nd, the flag of truce went up. Forty-seven men surrendered to the miners. They were marched down the railroad track and along the road to Herrin, surrounded by their captors. At a cross-roads something happened. Some one made a bloodthirsty speech, the mine superintendent was brutally killed and the rest of the captives were marched to a place where, surrounded by their armed captors, and with a barbed-wire fence across the only open space, they were told to run for their lives. To quote the Kansas City Star, 'when the men started the mob poured volley after volley into them. The men didn't have a chance to escape. In front of them was the barbed-wire, in which man after man became entangled.'



Some escaped to the woods, others were caught; throats were cut, living and dead were mutilated; dying men were refused water. One small group of men were marched to the Herrin cemetery and there executed. In all, 19 of the 47 who surrendered were killed, and many others were badly hurt. Three of the wounded men have since died."

I withhold comment because I am not interested in this particular case. I am tempted only to say this: that anyone who regards this incident as a triumph of union labor, and anyone who regards the setting free of the five men who were recently tried for this crime as a triumph for union labor, is a fool and an enemy of union labor. These men killed in the name of a good cause--they were protecting their families and their children from starvation; they were protecting the right of their job and other good causes.

The third instance is the Harrison lynching that you have read about in the newspapers. In the state of Arkansas there has been a railroad strike on the Missouri & North Arkansas Railroad for about two years, and a great deal of sabotage has taken place; railroad property has been damaged, bridges were burned, and so a vigilance committee of a thousand law abiding citizens of Harrison took it upon themselves to enforce the law. They caught one man whom they accused of sabotage, and who, it was later discovered, was not at all implicated in the crime, and lynched him. They demolished the meeting place of the strikers; they took strike sympathizers and whipped them publicly, and then they



took scores of strikers and deported them--exactly as France is doing today in the Ruhr--exiled them from their homes and took them across the boundary and told them never to return. Now that, too, was done in the name of law and order.

I say I quote these three instances because they are symptomatic, and symptomatic of a breakdown in law and the authority of law and the respect for law in our land, which augurs ill, which bodes evil and disaster for our free institutions.

Now, why has law broken down? Not so very long ago I read a very interesting article written by the solicitor-general of the United States, James W. Beck, on "The Revolt Against Authority." This article was written in 1921. Solicitor-general Beck, one of the fine legal minds of America, makes this startling statement: that law has broken down not alone in the political life of the people, but actually in every department of our social life; the impatience with authority, the desire to remove every restraint, the craving for the anarchistic; letting loose of the pent-up free, rebellious emotions of men. That, he maintains, you see today in evidence in every department.

You see it in music--the jazz spirit of music is a symptom of this bolshevism that has crept into our souls; you see it in the esthetical bolshevism in art, the cravings of the new metaphysts and cubists and futurists, and others--all in revolt against the authority of the past, and all seeking complete abandon in our freedom.



You see it in literature; you see it in business-- the sham and the counterfeit in our merchandise, the fraud that is almost universal in our land; the cheapness of the things which we produce and sell under a fine, shimmering, attractive design and cover. You saw it a few years ago

when the period of deflation set in, and business men began to welch and go back on their contracts; you see in labor's craving to loaf on the job; you see it in the constant resort to force, which is but another expression of lawlessness.

And Mr. Beck maintains that the war is not entirely responsible for it. The war was perhaps an expression of that spirit, perhaps it accelerated it and aggravated it, but it did not cause it. He maintains that the cause for this emotional anarchism that is rampant in the world today, in other lands as in our own, is traceable to this fact--and it is a profound observation--that in the past one hundred years we have progressed so rapidly in scientific, mechanical, material improvements and discoveries, the things that facilitate and accelerate life, the things that produce quantity, the things that yield comforts and luxuries, that we are ten thousand years ahead of our ancestors a hundred years ago; and that our intellectual life, therefore, has not kept pace with our emotional life, or, rather, our emotional life has lagged behind our intellectual advancement.

There is this mal-adjustment, this disparity, between our feelings and our emotions and our sentiments and



our cravings, which are exactly what they were ten thousand years ago, and our scientific knowledge and information and machinery, which are ten thousand years ahead of our fathers a hundred years ago.

He quotes Nordau, that great Jew and that great lover of man, whom the friends of mankind are lamenting today because of his recent death--he quotes Nordau, who said in his great, challenging book, "Degeneration," that our complex civilization has placed too great a strain upon our nervous organization, and we cannot stand it. We made machines in the last one hundred years, and now we are the slaves of these machines. The workingman has become enslaved, victimized, by his machine. The machine narrows his life; the machine makes his life monotonous; the machine drives out all the glory and the beauty of craftsmanship, and the satisfaction of having done a complete job, where now he is compelled to do only a bit of a big job.

The machine drives the joy of the creative labor out of his life, and because of that narrowing, confining, dulling process of our machine civilization, our will has become enfeebled, our characters have deteriorated, and men are beginning to seek release for those pent-up emotions in their souls, which erstwhile were disciplined by tasks and jobs and labor which were attractive and desirable. Men are beginning to seek outland release from these emotions in acts of lawlessness, in revolt, in violation, in constant resort to force; and so our civilization is breaking down because of



its very greatness, and speed, and progress.

There is a great deal of truth in that. And added to this, the war has taught men to kill. The war has taught men to violate moral laws in the name of society. The moral law says, "Thou shalt not kill." The state says to young boys of eighteen or nineteen, "I will put you in a uniform, and I will train you for six months or a year in how to kill most effectively, and then I will send you to the front lines and I will tell you to kill; and I will glorify you if you will kill, and I will make you a hero if you will kill them all."

Now, when this young boy returns and says to himself, "If my state could sanctify murder then my klan can sanctify murder, and my labor union can sanctify murder, and my vigilance committee can sanctify murder," the very authority of the moral law has been enfeebled and endangered by this war, which cut to shreds the moral law of mankind.

Then there are two other reasons why law is held in disregard in our land. We do not administer law equitably, fairly and justly. I read to you this morning that marvelous chapter 19 of the Book of Leviticus, beginning, "Ye shall be holy: for I the Lord your God am holy." And you recall that sentence: "Ye shall not respect the person of the poor, nor favor the person of the mighty; but in righteousness shall ye judge thy neighbor."

The American Bar Association, two or three years ago, published a report in which they stated (and the American



Bar Association is not an organization of irresponsibles, radicals or disgruntled reformers) that the rich man in the United States need not fear the law. The rich man is exempt, because of his wealth, from the operations and the penalties of the law; the rich man can defeat and does defeat the law at every instance. Every child in the United States knows that during the war, when millions of our fine boys were fighting at the front, profiteers were victimizing this government to the extent of hundreds of millions of dollars. It is common information and true information; and yet not one of these profiteers who became fat on the misery and the suffering of mankind--not one of them is today in the penitentiary.

What respect can men have for law when such things are current? The laxity of the law, the inequality of the law, the delay in the law, the frustrating and the defeating of the law by cunning lawyers, by courts which are under the domination of interests, by legislatures and congresses which are controlled by small, highly organized, highly financed groups--these are the things that bring law into disrepute and mockery.

And perhaps also this fact: I believe that the ease with which we make laws is exactly in proportion to the ease with which we break them. We--the American people--are the speediest law makers and the speediest law breakers in the world. Last Friday evening an attorney, speaking in this pulpit, said that in the state of Ohio alone there are on its



statute books some twelve thousand laws, and many of these laws were hastily contrived, hastily enacted in response to some temporary emotional craving on the part of some people or all of the people; many of these laws are hastily contrived laws to correct the evils of other previously hastily contrived laws. And many attempts are being made today--and that is a most dangerous practice--to write into the fundamental law of our land these temporary emotional flare-ups of the American people.

Wherever there is a group, wherever there is a crank, wherever there is a group of fanatics that likes to make its moral convictions the convictions of the whole people, that endeavors to impose its predilections upon the body politic, at once there is a cry to amend the constitution of the United States; and that is a dangerous procedure. For by amendments, piled up one on top of another, you are slowly but surely limiting and restricting the fundamental civil liberties of the American people, and you are encouraging lawlessness.

We are trying to pass our responsibilities unto the state. We have not the will or the courage or the ability to do our own thinking, to correct our own evils, to take care of our own, and so we ask the state to do it for us. What is censorship? Censorship is nothing else but passing your responsibility, the responsibility of each father and each mother, unto the state. Instead of taking the trouble to see that the book which your child reads, or the picture which



your child sees, is one not subservient to morals--taking the trouble yourself--you call the state to do it for you; you want to relegate that power and that privilege and that responsibility to others. And so you are gradually making for a paternalistic form of government, a bureaucracy, which will deprive us of the last few shreds of liberty which we enjoy in this land.

I say that all these things make for lawlessness. You have the prohibition amendment. I am not going to discuss its merits or its demerits. What has happened? I said that in 1921 the Federal criminal courts reported thirty thousand cases of violation of the prohibition amendment, of the Volstead Act. Thirty thousand erstwhile, we may assume, law-abiding, respectable citizens, were made criminals by this constitutional amendment.

What has happened? Why, no law on our statute books has been so flagrantly flaunted, and with such gust and with such relish and with such delight, as this prohibition law. It has become a lark to violate it. Hasn't it? Every college boy has a flask; and every Babbitt has a bottle, or tries to get one. And official Washington--you have been reading the papers, haven't you?--that Congress and the Senate decry this violation of law and lament its abuse--and then take a drink themselves!

Now, Mr. Butler, the president of Columbia university, speaking before the Ohio State Bar Association a few days ago, uttered a profound sentence when he said: "I well know



that it is the opinion of lawyers that whatever enactments are duly made by legislature and upheld by a competent court are part of the law. But that is an illusion; they are only part of the law if general public opinion supports and upholds them. There is a silent referendum in the hearts and minds of men on every important enactment by a legislature, and on every important decision by a court, which involves a fundamental principle of civil liberty. Without a favorable issue of that referendum the statute and the decision alike are written in water."

It must not be forgotten that law is but one form or type of social control, and when society, the overwhelming number of society, wishes to control a situation, they express themselves in a law which would be truly effective and operative, because it would have the backing and the will, the good will of the overwhelming number of society; but when a law is enacted through the operations or the insistence or the propaganda of a small group, of a class, of a section of the country, that does not convey the overwhelming consent and endorsement of the vast majority of the people, that law will constantly and forever be disregarded and violated.

And it leads to this: that when people begin to violate one law they will soon violate another. I think it was our rabbis who said, "When a man violates a light injunction or a light commandment, he will soon come to violate a moral law or a more important commandment."

And so these enactments of law, this attempt to



read into the basic law of our land statutes, sumptuary laws, which should be legal because they are legal, and temporary because they are temporary, is menacing, actually menacing, our free institutions and the moral tone of the American people.

And lastly, and I shall be through, there is this one other fact which is conducive to lawlessness, and that is that the government itself oftentimes violates its own laws; and that is bad. Whenever the government, through its police force, endeavors to restrict the right of free assemblage and the right of free speech, the government is making for lawlessness on the part of its citizens. When the Cleveland council ejected one of its members, duly elected, because they did not agree with his political views, the Cleveland city council encouraged lawlessness. When the New York assembly refused to seat duly elected legislators, the New York assembly, which should be the citadel and the stronghold of the law and respect for law, actually fanned the flames of lawlessness. When the Congress of the United States refused to accept as one of its members a duly elected congressman, because they did not agree with his economic views, or his views about the war, the Congress of the United States encouraged lawlessness.

You cannot disregard a law in one instance and expect it to be held sacred in another instance. A basic law, such as the law of free speech, the right to express one's own opinions, provided that opinion does not lead



or inspire to crime or to lawlessness, provided it is not accompanied by an overt act of lawlessness, is fundamental to all law and must be held sacred by the government itself.

Perhaps the Jewish attitude is the sane and the sober and the practical one. The Jew maintains that law is sacred because it is divine. Every law, however minute it was, was a holy law because it derived its authority from the Bible and from God; and so a law was looked upon with reverence and was obeyed. But the rabbis constantly warned the law givers not to cumber the people with needless legislation, not to ensnare them in needless prohibitions and injunctions.

The laws, said the rabbis, were given so the people may live by them; that their lives may grow sweeter and freer because of them, and not that their lives may become confined and incarcerated and restricted because of them. Do not make laws too easily because they will be disregarded easily; do not make too many laws, and do not attempt to change the fundamental law because of a temporary distemper or a temporary craving on the part of some section of our people.

If you want your freedom saved and protected, protect the constitution of the United States, because that is your last stronghold and your last support. There are today in this land millions who are determined to deprive you and me of those sacred prerogatives which go with American citizenship; they are determined to impose a regime of Prussianism



upon the American people, and they are doing it, while you are unaware, through injecting, time and again, amendments into our constitution, which, in the name of some immediate good, ultimately defeat a still greater good; that is enchaining and enslaving us to the temporary needs of some people.

We are outlawing law; we are outlawing law in the United States, and it behooves the sane and practical minded citizens of America to see to it that this mad rush to enact legislation, to control the acting and the thinking and the speaking and the eating and the drinking of people--things which should be rightly left to their own conscience and to their own personal moral control--is stopped.

These laws are a danger and a menace, and it behooves us to be on our alert.

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