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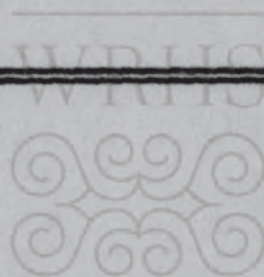
Blazing new trails, 1927.

"SHALL THE GREAT SOUL OF AMERICA BE JUST?"

RABBI ABBA HILLEL SILVER.

THE TEMPLE. SUNDAY MORNING.

MAY 29, 1927. CLEVELAND. O.



A long time ago one of the sages of our people declared upon three things does the world stand: "Upon justice, upon truth and upon peace." It seems that in the now famous case of two convicted men, Sacco and Vanzetti, in the state of Massachusetts, there is involved one of the three things upon which the security of the world is based--Justice. No case in recent American criminology has evoked so much comment, discussion and controversy as this case. Our press has largely discussed it. Even Europe has been aroused. Demonstrations in behalf of these doomed men have been held before every embassy, before every American embassy throughout the world. Appeals have been sent from all sections of the world by leading men to save the lives of these two people. Professors of jurisprudence in our own land and men of outstanding legal reputation have risen to the defense of these two people.

Evidently something more is involved here than the lives of two individuals. This case has been before the eyes of the American public for more than six years. The men, convicted of the crime in 1921, seem to have lost every skirmish in an effort to win a new trial. They are now under sentence of death, awaiting execution, and as the fateful day approaches the situation assumes greater and greater tension. Seemingly, the case will not down. Some of the most conservative men in the legal profession

in America have publicly declared that the execution of these two men, Sacco and Vanzetti, would be tantamount to a judicial murder.

Recently the entire case, the testimony, the procedure and the conduct of judge and prosecutor, has been reviewed in a book written by one of the keenest, ablest, most conscientious minds of America, a professor of law at Harvard, Professor Felix Frankfurter. And some of his conclusions are very startling and terribly disconcerting to one who believes in the absolute integrity of our American courts. Thus, for example, Professor Frankfurter, commenting upon the opinion which the judge rendered last year when a motion for a new trial was made, after new and significant evidence was discovered, which seemed to point to other men as being the perpetrators of this terrible crime, says of the opinion of the judge in denying the motion for a new trial:

"Speaking from a considerable experience as a prosecuting officer, whose special task for a time it was to sustain on appeal convictions for the Government, and whose scientific duties since have led to the examination of a great number of records and the opinions based thereon, I assert with deep regret, but without the slightest fear of disproof, that certainly in modern times Judge Thayer's opinion stands unmatched, happily, for discrepancies between

what the record discloses and what the opinion conveys. His 25,000-word document cannot accurately be described otherwise than as a farrago of misquotations, misrepresentations, suppressions, and mutilations. The opinion is literally honeycombed with demonstrable errors and infused by a spirit alien to judicial utterance."

And concerning the conduct of this same judge during the trial of these two men, the author says:

"The first words of Judge Thayer's charge revived their memories of the war (memories of the men of the jury) and sharpened their indignation against the two draft-dodgers whose fate lay in their hands. Judge Thayer's charge directs the emotions only too clearly."

And of the district attorney, who prosecuted these men, the author says:

"Outside the court room the Red hysteria was rampant. It was allowed to dominate within. The prosecutor systematically played on the feelings of the jury by exploiting the unpatriotic and confused beliefs of Sacco and Vanzetti, and the judge allowed him thus to divert the jury's mind by systematic exploitation of the defendants' alien blood, their imperfect knowledge of English, their unpopular social views, and their opposition to the war. The district attorney invoked against

them a riot of political passion and patriotic sentiment, and the trial judge connived at and almost cooperated in the process."

The author finds that there took place a deliberate suppression of evidence on the part of the prosecution which might have proved helpful to the defendants. The author finds an amazing prearrangement entered into between the district attorney and an expert in fire arms, who was one of the star witnesses for the prosecution,--an arrangement whereby this arm expert would testify in such a way as to convey the impression that the bullet which killed one of the two men came from the pistol of one of these convicted men, while in reality neither this arm expert nor the district attorney actually believed the fact.

The author finds that there took place an amazing collusion between the office of the district attorney and that of the agents of the United States Department of Justice, to convict these two men. Two former government officials swore that the Department of Justice was eager to deport these two men, Sacco and Vanzetti, who seemingly did not have enough to warrant their deportation. So that when these two men were arrested on the charge of murder, the arrest furnished the Department of Justice its opportunity, and it vigorously collaborated with the district attorney in the prosecution of these two men,--clearly against the law. It was an easy way to get rid of these men. A government spy was installed in a cell adjoining Sacco's.

and numerous other government spies and agents were employed; but the secret records of the department, of the part which it played in this trial, were consistently withheld from the defense or from the public.

Now, briefly, what are the facts in this trial? On a certain day, April 15, 1920, two men, a paymaster and his guard, carrying two boxes of money, payrolls from the office of a shoe company to the factory, were fired upon and killed by two men in the main street of South Braintree, Massachusetts. As the crime was being committed an automobile drew up into which the two murderers threw their loot, jumped in and made their escape. The machine was later on discovered abandoned in some distant woods, and from it ran the tracks of a smaller machine.

A similar crime had been perpetrated shortly before that time also by a gang in the neighboring town of Bridgewater, and the chief of police of Bridgewater was on the trail of an Italian by the name of Boda, whom he suspected of having committed, in company with other men, the Bridgewater crime. He traced Boda's car to a garage where it was being held for repair. The chief of police instructed the owner of the garage, a certain Mr. Johnson, that when the owner of the garage should come to claim it, he should telephone the police; and on the night of May 5th, three weeks after the crime in Braintree, Boda, together with three other Italians, called for the car. Two of these three were Sacco and Vanzetti. Mrs. Johnson went to a

neighboring house and notified the police. She told the men that they could not have the car because it was not ready. The men left. The police arrested Sacco and Vanzetti on a street car as they were making their way from this town. A third Italian was also arrested, but Boda disappeared and has not been heard of since. The third Italian, a man by the name of Orciani, was subsequently released when it was learned that he was employed throughout the day at his factory, both on the day when the Bridgewater crime was committed and on the day when the Braintree crime was committed.

Sacco and Vanzetti were indicted.

Now, a word about these two men. Neither had any criminal record; neither had ever been arrested before. Sacco was an industrious workman with a family and a savings bank deposit account, and Vanzetti was a fish monger. A clean record. But they were both radicals. Both had brought over with them from the Old World certain radical political and economic doctrines which they propagated aggressively in their communities and elsewhere. Both were pacifists; both were opposed to the war, and both dodged the draft. But it should be borne in mind that these men were not tried for their radicalism; they were tried for murder and banditry, and any effort made during the trial to drag in their unfavored political and economic views was unjustifiable and was calculated to do but one thing: to prejudice the minds and inflame the jury with this irrelevant

and highly damaging fact, and a supreme effort should have been made, both by the prosecution and by the judge, to exclude all this from the trial; but seemingly the very reverse was true.

The state brought forward certain witnesses who identified Sacco and Vanzetti as the men who were responsible for the crime. Sacco was the man who actually fired the shot, and Vanzetti was one of the men in the murder car. The defense brought forward witnesses to testify that the assailants were not Sacco and Vanzetti; that on the day of the murder Sacco was in Boston and Vanzetti was pursuing his customary trade of fish monger and peddler. Concerning the testimony of the star witness for the state, who identified Sacco and Vanzetti, Dr. Morton Prince, professor of abnormal psychology at Harvard University, states:

"I do not hesitate to say that the star witness for the government testified, honestly enough, no doubt, to what was psychologically impossible. Miss Splaine testified, though she had only seen Sacco at the time of the shooting from a distance of about 60 feet for from 1-1/2 to three seconds in a motor car going at an increasing rate of speed at about 15 to 18 miles an hour; that she saw and at the end of a year she remembered and described 16 different details of his person, even to the size of his hand, the

length of his hair as being between two and 2-1/2 inches long, and the shade of his eyebrows; Such perception and memory under such conditions can be easily proved to be psychologically impossible. Every psychologist knows that---so does Houdini. And what shall we think of the animus and honesty of the state that introduces such testimony to convict, knowing that the jury is too ignorant to disbelieve?"

In fact, the judge himself stated, after the conviction, that the evidence of identification was not sufficient to convict these two men. They were condemned, he maintains, on circumstantial evidence, on what is technically known as "a consciousness of guilt." Thus, for example, Mrs. Johnson testified that on the night of May 5th, when she left her home to go to a neighboring home to telephone the police, that Sacco and Vanzetti followed her to the neighboring house, and when she returned they followed her again. This action was suspicious and was an evidence of a consciousness of guilt.

Again, when the two men were arrested on the street car, the police officer who arrested them testified that the two men made movements as if they were about to draw their guns. That, too, was evidence of a consciousness of guilt. Again, that when arrested they told lies in an effort to conceal their movements from the day of the crime, April 15th, to the day of arrest, May 5th. And, lastly, as

an evidence of their consciousness of guilt, they were found carrying guns.

Now, as far as the carrying of guns is concerned, these men testified,--Sacco, for example, that he had acquired the habit of carrying a pistol when a night watchman. Vanzetti testified that he carried a gun with him as a protection because frequently he carried around with him large sums of money, especially when he went to the city of Boston to carry on his trade of fish monger. Again, that the carrying of firearms by Continentals in this country is not at all a rare thing.

As far as their consciousness of guilt is concerned, their suspicious conduct, of which Mrs. Johnson reported, and their telling of falsehoods to the police, these men stated that they were afraid not because they had committed the crime but because they were radicals. They had been very active in the radical movement. The government, you will recall, in 1920 and '21, had launched a tremendous campaign of mass arrests and deportation of all men accused or suspected of communism or radical leanings. Two of their friends had already been deported the day before May 5th. On May 4th one of their friends, Salsedo, who had been arrested and held incommunicado by the agents of the Department of Justice in their office on the 14th floor of the Park Row Building, in the city of New York, had been found, on May 4th, dead on the sidewalk in front of the Park Row Building. Sacco and Vanzetti suspected the worst.

Vanzetti had actually gone to New York prior to May 4th to consult the Italian Defense Committee as to what to do, in view of these mass arrests which had taken place, and he had been advised to return to his home and advise his co-radicals to gather in all radical literature which may serve as warrant for their arrest and deportation, and it is on this mission that Sacco and Vanzetti went to borrow the car of Boda, and naturally, when they were arrested on the street car and were held after the arrest, they thought that they were being held not for the murder of anyone but for their radical views and for possible deportation.

They were convicted on July 14, 1921, and since then all motions for a new trial have been denied. The defense, for example, moved for a new trial on the ground of this testimony of the arms expert, to which I referred a moment ago. During the trial this man Proctor was asked by the district attorney whether he had an opinion as to whether the bullet which was fired and which killed the guard was fired from the Colt automatic of Sacco, to which question this expert replied: "My opinion is that it is consistent with being fired from that pistol." That was interpreted by the judge to mean that the bullet which killed the guard had been fired by Sacco's pistol. And the jury was accordingly informed of the fact.

Proctor has since testified that that was furthest from his mind. He stated in his affidavit:

"At the trial, the District Attorney did

not ask me whether I had found any evidence that the so-called mortal bullet which I have referred to as number 3 passed through Sacco's pistol, nor was I asked that question on cross-examination. The District Attorney desired to ask me that question, but I had repeatedly told him that if he did I should be obliged to answer in the negative; consequently, he put to me this question: 'Q. Have you an opinion as to whether bullet number 3 was fired from the Colt automatic which is in evidence?' To which I answered, "My opinion is that it is consistent with being fired by that pistol. I do not intend by that answer to imply that I had found any evidence that the so-called mortal bullet had passed through this particular Colt automatic pistol, and the District Attorney well knew that I did not so intend and framed his question accordingly. Had I been asked the direct question: whether I had found any affirmative evidence whatever that this so-called mortal bullet had passed through this particular Sacco's pistol, I should have answered then, as I do now without hesitation, in the negative."

And yet by prearrangement a question had been framed and an answer was given to give the impression to the jury that Sacco's pistol killed the man, when in reality the witness and the District Attorney knew full well

that this was not the belief of the witness. But in spite of that the judge refused the motion for a new trial.

In 1925 a Portuguese by the name of Madeiros, who occupied the cell adjoining Sacco's, who was convicted of a murder charge and was awaiting the results of an appeal, confessed, wrote a note to Sacco in prison: "I hereby confess to being in the South Braintree shoe company crime, and Sacco and Vanzetti was not in said crime." He confessed all the details of the crime, which clearly pointed to that crime having been perpetrated by the famous or notorious Morelli gang of Providence. = Key

But it is clear to any right thinking man that there were factors involved in this trial which did not assure these men the kind of impartial justice of which the American people prides itself; it is clear to every right thinking man that since the trial new evidence has been presented at least to warrant a new trial for these condemned men; and it is clear, I believe, to those who love American institutions and are jealous of their absolute integrity, that now when all the avenues of hope are shut against these men, that the Governor of the State of Massachusetts ought to do one of two things: either to appoint an impartial commission to sift the entire evidence, or commute the sentence of these men so as to give truth a chance to make itself clear and manifest so that all may behold. stop

I said that ⁱⁿ there was more involved in this Key.

trial than the lives of two foreigners. There is involved here the question of the absolute, unimpeachable character and the integrity of American courts of law. If it is true, as seemingly impartial observers believe it to be true, that the red ^{heresy} ~~ogre~~ of bolshevism and communism was dragged across the trail of this trial, then it is clearly the supreme duty of the great commonwealth of Massachusetts to rectify the wrong before it is too late. If it is true that during a period of war hysteria the patriotic emotions of jurymen were stirred by appeal to things which did not belong to the issue, thereby beclouding their judgment and confusing their counsel, then it is the duty of the great commonwealth of Massachusetts to correct that wrong.

Upon three things the sage said the world stands: upon justice and upon truth and upon peace, and all three of them he said are one. When justice is done truth is achieved, and when truth is achieved peace is maintained. If there is the slightest doubt in the minds of thinking people that a wrong has been committed here in one detail or another, then it is imperative that the fair name of our courts be vindicated, and that no blot, no stain be cast upon the escutcheon of the fair name of American justice. The sword comes into the world, says our Rabbis, because of two things: because of justice delayed, and because of justice perverted. This was not the only case in the last seven years when patriotic emotionalism and war propaganda were employed by prosecutor or judge

to befuddle the issue in a criminal case, and there is a sad warning in all this as to what war and war propaganda achieved even in the freest of countries and even in the freest of institutions. Mr. Hughes found it necessary to warn his people against the increasing abuse on the part of judge and prosecutor of their privileges and prerogatives, for stooping to practices which savored of the worst practices of tyranny.

The time, to my mind, has definitely come when the American people ought to free itself from that psychology of the war; the time has definitely come when the American people ought to recover its sanity and its common sense and its traditional spirit of fairness and the square deal to all. We must no longer permit, even if we did permit six and seven years ago, we must no longer permit this bogie of bolshevism or communism or radicalism to confuse all of our thinking on politics or economics or law or justice. America is in no fear of turning bolshevik. It is the most preposterous, the most outlandish piece of propaganda, the most vicious piece of propaganda to attempt to persuade the American people that the greatest menace confronting it today is the menace of communism. As long as America remains what it is--a free land, a prosperous land, a just land; as long as a man is assured in this land of an opportunity to earn a living and to receive a square deal in our courts of justice, and be protected in his rights as a free man, so long are the foundations of our

government as secure as the rock of Gibraltar.

No American--and when I say "no" I make due allowance for a few fantastic fanatics--no American believes that his prosperity depends upon the expropriation of the property or the wealth of another; no American covets really what the other man has, but strives to have as much as the other has out of the social surplus which is still to be had--thank God--in this land. The prosperity of the one in this land does not at all imply, as it may imply in other lands, the poverty and the exploitation of the other; and in this gracious land, whose resources are practically untouched, with its wealth mounting by leaps and bounds, and with millions sharing in this wealth, with a population enjoying the comforts, and millions of them the luxuries of life, or the things which a generation ago would have regarded as luxuries, it is the height of folly to try to din into the minds of the American people that they are being immediately menaced by communism or bolshevism.

And it is particularly criminal to permit such propaganda to endanger the province of our courts of law, where only truth and fact are to be ascertained. Sacco and Vanzetti, whether they be the criminals or not, were clearly subjected to a prejudice and a discrimination on the basis of political and economic views which they may have entertained, and which views should never have been permitted into a trial for murder and banditry.

It is my hope that the great heart of America

will remain just, and it is my hope that the great
commonwealth of Massachusetts will exercise its spirit of
fairness either in summoning a commission of experts to
investigate anew the entire matter, or in commuting the
sentence so as to enable time to discover whether these
men are actually guilty or innocent.

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Sermon 245

SHALL THE GREAT HEART OF AMERICA BE JUST?

**Address delivered by Rabbi Abba Hillel Silver of The Temple
on Sunday, May 29th, of the Sacco-Vanzetti Case.**

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No case in the records of recent American criminology has attracted such widespread interest and has aroused so much feeling both here and abroad as that of the two condemned men, Sacco and Vanzetti. Appeals in their behalf have come from some of the leading men of the world, professors of jurisprudence and eminent legal authorities in our land have risen to the defense of these two men. Some of the most conservative men in the legal profession have publicly declared that the execution of these men would be tantamount to judicial murder.

Seemingly something else is involved here besides the destinies of two men accused of payroll robbery and murder. The integrity of the American Courts has been called into question. It is charged that during the trial both the Judge and the Prosecutor, consciously or unconsciously, exploited the men's disfavored political and economic views, to the prejudice of the defendants. It is charged that evidence which might have proved of value to the defendants was deliberately suppressed by the District Attorney. It was further charged that an amazing collusion existed between the District Attorney and the agents of the Department of Justice to get rid of these men because of their radical activities.

I do not pass judgment. I do not know whether these men are guilty or not. But clearly no fair-minded man can doubt that there were factors involved in the trial which did not give these men that full measure of impartial justice, which is the pride of the American people. No fair-minded man can doubt that later developments and the discovery of new evidence warranted the granting of a new trial. Now that all other avenues of hope for the doomed men have been closed, it is the hope of all men who are eager to protect the fair name of our American institutions, that the Governor of Massachusetts will either appoint an impartial

commission of experts to study the entire case, or will commute the sentence of these men so that the real truth may in the course of time stand forth clearly revealed.

If it be true that the "red herring" of radicalism was dragged across the trail of this state, then justice demands that this mistake be rectified before it is too late. The war hysteria is over, and that frame of mind which made possible the wholesale arrests and deportation of six years ago has yielded to the traditional sanity and fair-mindedness of the American people. Let these qualities now guide the great Commonwealth of Massachusetts.

Nothing so shakes the faith of a people in its government as justice delayed or justice denied.

