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The Legacy of Sacco and Vanzetti



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by Louis Joughin *and* Edmund M. Morgan

Introduction by ARTHUR M. SCHLESINGER

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P R E F A C E

THIS BOOK is a study of the impact of the Sacco-Vanzetti case upon American law, society, and literature.

The inquiry began in a recognition of the fact that much verse, drama, and fiction has drawn its substance from the Sacco-Vanzetti case. It seemed probable that a criticism of this literature would throw light on the manner in which artistic writing emerges from periods of social stress. As the study progressed it soon became obvious that the disturbance within the social framework was so complicated and far-reaching as to demand full-scale consideration. Finally it was apparent that the social history in its turn would have to be based upon an understanding of the legal issues.

In short, it was evident that a proper treatment of the Sacco-Vanzetti material could be accomplished only by a thorough review of all the elements in the case. A fresh start was made.

As the study neared completion a new significance became attached to both the substance and the method of the investigation. Important conclusions about the law, society, and literature had been arrived at separately; now, in addition, larger implications were suggested by a view of the whole situation. The total meaning was larger than the sum of the parts. This integrated consideration is presented, in the last chapter, as the beginnings of historical judgment.

The law section has been written from the point of view of legal scholarship, and with full awareness of the special difficulties which arise from the study of an exclusively written record. Here is the statement of the position taken by the author of the law chapters:

Chapters II through VI are by a lawyer, who spent some seven years in active trial practice and who has been teaching procedural subjects for a third of a century. It is written from the standpoint of a lawyer who accepts the rules of evidence as they existed at the time of the trials of these defendants. Chapters III and IV were first typed in 1929. At that time the writer had not read either Professor Frankfurter's book, *The Case of Sacco and Vanzetti*, or his article in the *Atlantic Monthly* of which the book is an expansion. Nor had he read the bill of exceptions or the record of either appeal to the Supreme Judicial Court of Massachusetts. He had seen that page of the bill of exceptions dealing with the offer of proof in connection with the attempted impeachment of the witness Goodridge on cross-examination, and had heard the arguments before the Supreme Judicial Court by Mr. Thompson for the defendants and Mr. Ranney for the Commonwealth on appeal from the

order of the trial judge denying the so-called Medeiros motion for a new trial. His subsequent reading has not caused him to change any part of the original text, which stands substantially as first written. It has, however, been checked and a few minor inaccuracies have been discovered and corrected. Not until recently did the writer carefully read the record of Vanzetti's trial at Plymouth or make any attempt to summarize or comment upon it.

Our system does not guarantee either the conviction of the guilty or the acquittal of the innocent. Certain safeguards are erected which make it much more difficult to convict the innocent than to acquit the guilty, but all that our system guarantees is a fair trial. It is a price which every member of a civilized community must pay for the erection and maintenance of machinery for administering justice, that he may become the victim of its imperfect functioning. Consequently if these defendants got a fair trial, neither they nor their friends have any complaint against the Commonwealth of Massachusetts. Whether they were actually guilty no one but the perpetrators of the crime can know. Whether they got a fair trial or not can be only a matter of opinion; and as to that, no one can have an intelligent opinion who has not read the record of these cases.

Part II of this volume presents the social history of the Sacco-Vanzetti case. The reader may be helped by knowing how these chapters were written. The procedure was to assemble all the pertinent data for each major chronological period, and then to allow the natural emphases of the material to determine the pattern for the chapter outline. This method resulted in differences in the organization of the several chapters and to minor deviations from a strictly logical development. On the other hand, the writer was freed from temptation to tailor or distort the historical substance with a view to maintaining a dominant hypothesis.

The chapters on the literary material of the case, which comprise Part III, offer two kinds of criticism: (1) a discussion of the several writings as pertinent elements of evidence in the social history, and (2) a detailed evaluation of those documents which have significant artistic worth.

The spirit which has dominated the writing of this book has been that of scientific inquiry. At times we have perhaps fallen short of our ideal sense of detachment, because we are dealing with human values in a situation of intense conflict. Nevertheless our aim has been to write objectively, with a dispassionate view of our material and a keenly critical attitude toward our procedure. This does not mean that we deny the necessity or value of the partisan spirit in a controversy like the Sacco-Vanzetti case; we merely say that it is not our intent—and perhaps not our aptitude—to engage in dispute in this study. Here are facts and judgments; other persons may use them as they see fit.

On the other hand, we have not been blind to the part which

personal feelings necessarily have in every judgment of human action—and all the more so in a bitterly fought issue of this kind. We have, we believe, been generally successful in gathering our material by accepted scientific methods. In arriving at opinions about that material, we have of course sensed a higher degree of involvement with antecedent biases derived from our cultural heritage; but at the very least we have tried to be reasonable in our judgments. Finally, in the expression of those judgments, we have spoken frankly; we have praised some men and condemned others. The standard by which we have judged conduct has been a simple one, essentially moral in nature. We believe that a man's social worth is directly related to his capacity for effective social life and to his realization of that capacity. If he is stupid it will suffice to enumerate him as one among other human animals. If he is of sound body and mind and has had some education he is under a moral obligation to live intelligently with his fellow creatures. To the degree that he uses his powers, he is worthy of praise; and to the degree that he fails, he should be condemned.

Were Sacco and Vanzetti guilty of murder? Since our purpose is to lead the reader through the whole complicated history of the case, and since in doing so we have deliberately avoided easy simplifications and colorful summaries, it will be wise to dispose at once of this too simple question. We do not know—and we do not believe that human judgment will ever be in a position to arrive at absolute certainty in this case. The social order angrily swept the men from the board without establishing a valid checkmate. Nor do we believe that the question should be pressed; insistence upon a final answer will only serve to obscure the chief significance of the case. In the Sacco-Vanzetti affair American justice was tragically inept. And since justice failed we consider it inevitable that both literary tradition and historical judgment will continue to support the presumption that Sacco and Vanzetti were innocent of the crime for which they were executed.

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CHIEF PERIODS OF THE SACCO-VANZETTI CASE

First Period

November 23, 1919, to May 5, 1920 (5 months, 13 days). Preparations for the crimes; the Bridgewater assault; the South Braintree holdup and murders; the arrest of Sacco and Vanzetti.

Second Period

May 6, 1920, to July 14, 1921 (1 year, 2 months, 8 days). Preliminary hearings; the indictment, trial, and conviction of Vanzetti for the Bridgewater assault; the indictment, trial, and conviction of Sacco and Vanzetti for the South Braintree holdup and murders.

Third Period

July 15, 1921, to October 1, 1924 (3 years, 2 months, 16 days). Motion for a new trial on the ground that the verdict was against the weight of the evidence, argued and denied; five supplementary motions, based chiefly upon new evidence, argued and denied.

Fourth Period

October 2, 1924, to April 8, 1927 (2 years, 6 months, 6 days). The preparation, argument, and denial of appeals based on the conviction and on three of the supplementary motions; the motion for a new trial based on a confession by Medeiros, argued before and denied by the trial judge and the supreme court; the significance of the records of the Department of Justice.

Fifth Period

April 9, 1927, to August 23, 1927 (4 months, 14 days). Sentence imposed by the trial judge; the petition for executive clemency, the hearings and decision of the Advisory Committee, and the denial of clemency; the motion based on the trial judge's prejudice, argued before the trial judge and denied; unsuccessful attempt to bring the question of the trial judge's prejudice before the supreme court; unsuccessful attempts to enter the federal courts; the executions.

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INTRODUCTION

THE POSTWAR twenties afford the time setting of the drama. A triangular bit of Massachusetts soil, with its corners at Plymouth, Bridgewater, and Boston, provides the stage. Two obscure aliens are the central figures, though the whole cast includes many others of both high and low degree. The general public compose the audience and, in a sense, the jury. History stands silently by in the wings.

This combination of circumstances created an atmosphere of popular tension, dread and crisis without parallel in Massachusetts annals since the exiling of Roger Williams and Anne Hutchinson and the witch persecutions of the seventeenth century. To duplicate its national repercussions one would have to go back to the trial of the Chicago anarchists for the Haymarket bombing in the 1880's, and for its world effects to the Dreyfus case in France near the turn of the century. How this situation arose the present volume graphically sets forth, as well as the reasons interest in the case has persisted to the present day, exciting a continuing stream of books and articles by both lawyers and laymen.

Probably most Americans following the case at the time can remember where they were and just what they were doing when the word first reached them that Sacco and Vanzetti had lost their last chance of escaping death. So indelible was the impression that it is common testimony that only two other occurrences in recent years have made a comparable impact on the public mind: the assault on Pearl Harbor and the sudden death of President Franklin Roosevelt. Yet the latter two incidents directly involved the fortunes of the country as a whole, while the fate of the two lowly Italians might seem to have been unrelated to the national welfare, and, in any event, the questions at issue had divided the public into bitterly contending camps. This book, an arresting and cogent evaluation of the legal, social, and literary aspects of the case, will make clear to a generation fresh to the facts why the interest was so intense, as well as why historical scholars and textbook writers have deemed the affair sufficiently important to include it in general works on American history.

Professor Morgan, one of America's foremost authorities on the law of evidence, carefully examines the legal record, including the repeated attempts through six years to secure a retrial or executive clemency. With all the relevant matter presented to the reader in language which

laymen can easily grasp, it is difficult to resist Professor Morgan's conclusion that Sacco and Vanzetti were "the victims of a tragic miscarriage of justice." The action of the Massachusetts legislature in 1939 in reforming the state's appellate procedure in such a way as would have enabled the two men to get their case reheard in the light of new evidence, constitutes at least an implied admission at an official level that they did not receive full justice.

Professor Joughin, a student of literature and its social implications, then shows how society—in Massachusetts, in the country at large, in other lands—rendered its own verdict on the case. This rich and revealing record he finds in documentary sources, in newspapers, pamphlets, and magazines, in poems, plays, and novels. He shows, moreover, how "Throughout the world men and groups of men were forced to define their position on a large variety of ethical, economic, and political problems." Finally, he assesses Sacco and Vanzetti as human beings and as thinkers. Twenty years after the electrocution, in 1947, a group of distinguished citizens, including Mrs. Franklin D. Roosevelt, Albert Einstein, Herbert H. Lehman, Dean Wesley A. Sturges of the Yale Law School, and Provost Paul H. Buck of Harvard University, offered to the Commonwealth of Massachusetts a bas-relief plaque of the two Italians—the work of Gutzon Borglum—for erection on Boston Common, but the Governor to whom fell the decision considered that public opinion in the state was still too divided to justify acceptance. *Meanwhile, the statue of Anne Hutchinson in the State House grounds seems an assurance that some later Governor will decide differently.*

This book is based upon a recognition, myths to the contrary notwithstanding, that judicial processes do not take place in a social void; that judges are men, not gods; that strict observance of legal forms does not necessarily assure the accused of a fair trial; and that judges and court systems are themselves judged by the society they are designed to serve. To treat the Sacco-Vanzetti affair from this all-encompassing point of view, two scholars, representing branches of learning commonly regarded as remote from each other, have joined forces in a collaboration of a most unusual kind. Specialization, the revered instrument of modern scholarship, entails the ever-present danger of concealing the whole truth by disclosing only a part. Even specialists working together may not do better than a patchwork job. Fruitful collaboration involves a genuine meeting of minds, a constant awareness of the interrelationship of each part to the whole. That Professors Morgan and Joughin have achieved notably in this respect no reader can have any doubt. Quite apart from the conclusions they reach, their method has significance. The success they have attained should light the way for all future ventures in co-operative scholarship.

ARTHUR M. SCHLESINGER

PART I

THE LEGACY TO THE LAW: DOUBT

