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JUSTICE ON THE CHEAP: HIERARCHY AND POWER IN THE SACCO-VANZETTI CASE

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1. THE SACCO-VANZETTI CASE

Arrested in May, 1920, and charged with robbery and murder, Sacco and Vanzetti, two Italian immigrants, were convicted in a Massachusetts court of law a year later. After seven years in captivity, the men were condemned to death in April, 1927, sentence being carried out, in the midst of national and international protest, on 23 August.

In the years leading up to their execution, several requests for a retrial were rejected by Webster Thayer, the same judge who had presided over their trial, and who was on record as having made disparaging remarks about the defendants in public. Judge Thayer claimed that his adverse decision was based on what he called the defendants' "consciousness of guilt". This stemmed from the inconsistencies in their testimonies soon after being arrested; however, if we consider the events taking place in the United States at the time, the defendants' behaviour seems quite consistent with the circumstances.

To a great many people in the United States and the world over, what took place in the courtroom during the trial was immoral. Notwithstanding the widely commented upon bias of the trial judge, Sacco and Vanzetti, anarchists both, were confronted by the partiality of public opinion exacerbated by a government lead effort to counter the accruing leftist trend in the country that followed the triumph of the Russian Revolution.

Owing to the press coverage of the crime and the subsequent arrest of the two immigrant suspects, Sacco and Vanzetti were already famous by the time their trial commenced on 31 May 1921. Media coverage saw to it that the public at large was informed that the defendants were not only Reds, but they were also traitorous draft dodgers, who had fled to Mexico to avoid serving their adopted country in First World War. And to top it all, their chief counsel, Fred Moore, was known to have previously defended anarcho-syndicalist cases with success.

It is not unreasonable to suspect that the Red Scare of the 1920s had an impact on the jurors. Less than a year before Sacco and Vanzetti were arrested, more than a dozen bombs had been set off in several cities in the United States. Anarchists were blamed and a nationwide crackdown on leftists was launched. US Attorney General A. Mitchel Palmer was the object of a terrorist bomb attack himself in 1919. In January, 1920, Palmer had 2,500 hundred suspects rounded up during the so-called *Red Raids*. According to Joughlin and Morgan (1978: 213), six thousand warrants were eventually issued and four thousand arrests made across the country. In Boston, not far from where four months later Sacco and Vanzetti would be escorted by armed guards to trial on trumped up charges, leftist detainees were paraded through the streets in chains. Shortly before Sacco and Vanzetti were detained, Andrea Salsedo, an Italian immigrant and anarchist, fell to his death in New York City while in the custody of Department of Justice detectives. Understandably, fearing the worst, many leftists went into hiding or at the very least tempered their choice of words in public.

This, then, was the emotionally charged background of the trial that commenced on May 5th, 1920. The inconsistencies observed in Sacco and Vanzetti's early testimonies, which had so convinced Judge Thayer of their guilt, were in direct response to the emotional intensity of the times. Lying to avoid revealing their political persuasion at the time of their arrest makes perfect sense, especially in light of what had befallen their Anarchist comrade Salsedo shortly before their own detention.

Judge Thayer's own inconsistencies were patent when it came to giving credence to the contradictory testimonies of several of the prosecution's witnesses. On the witness stand, Louis Pelser identified Sacco as one of the bandits. Pelser would later retract his testimony in an affidavit, only to recant it once again after meeting privately with the prosecuting attorney, Frederick G. Katzman. Another witness who reversed his testimony was Carlos E. Goodridge, who at the time was facing criminal charges himself, making his testimony on behalf of the state highly suspect. Also inconsistent was the testimony given by Mary E. Splaine, who would later confess that she had been pressured into doing so by the District Attorney.

Reason would naturally dictate that these inconsistencies should have sufficed for a retrial. If we add to the argument that one of the jury members was on record for having voiced his prejudice in public against the defendants, and that the testimony of one of the prosecution's firearms experts, a police officer, was later retracted in an affidavit claiming that the prosecuting attorney had coerced him, then it would seem that legal sanction had been provided for a lynching.

A little over a year before Sacco and Vanzetti were put to death, the Supreme Judicial Court of the State of Massachusetts denied a last ditch appeal on the grounds that legally it was not authorised to review evidence presented in a lower court. The lives of the two men were, thus, left in the hands of Judge Webster Taylor.

In a document entitled *Some Questions and an Appeal*, which was published by the Independent Sacco-Vanzetti Committee, Michael A. Cohn (1927) presented thirty-two elaborate queries to those individuals who thought that Sacco and Vanzetti had had a fair trial in the courts of Massachusetts, and that the prosecuting attorney, the Judge and the jury were not biased by passion and prejudice.

Question number one refers to the unknown whereabouts of the other three participants in the Slater and Morrill shoe factory hold-up and the subsequent murder of payroll guards, Frederick A. Parmenter and Alexander Berardelli. The second question points to the fact that the hold-up money had neither ever been located nor traced to the defendants. Third, the author questions the trustworthiness of the witnesses for the prosecution, who were “recruited from among the lowest moral and criminal types” (Cohn, 1927: 2). He further indicts even the official court interpreter who soon after the trial was imprisoned for larceny, while in his next question he notes that all of the witnesses for the defence had been disregarded.

In question number five Cohn addresses the ridiculousness of supposing that Sacco would have carried a murder weapon on his person three weeks after committing a capital crime. In his next query Cohn notes the preposterousness of the supposition that Vanzetti would have hung on to murder victim Barardelli’s pistol all that time. Then he goes on to question the likelihood that, after having committed murder in broad daylight in a nearby municipality, the two men would have continued showing themselves in public to distribute circulars announcing a meeting, at which Vanzetti would speak, to protest the recent death of their colleague Salsedo while in the custody of Federal agents in New York City.

The eighth question finds it inconceivable that a skilful and highly respected factory worker like Sacco, with no police record, should fall in with a gang of professional bandits and killers. He notes that Vanzetti’s record was also clean, bringing attention to the fact that the “eminent jurists” held that Vanzetti’s conviction for the Bridgewater hold-up of 24 December 1919 “was a frame-up” (Cohn, 1927: 3), which was attested by the fact that twenty witnesses had testified that Vanzetti had been at his work post at the time the crime was committed. Cohn also points out that Vanzetti’s lawyer, John Vahey, who had advised Vanzetti not to take the stand in his own defence, had since become a law firm partner of the Sacco-Vanzetti trial prosecution

lawyer, Frederick G. Katzmann, suggesting that collusion could have been involved in that case.

The ninth question addresses the scandalous identification method that was used when Sacco and Vanzetti were initially detained. Whereas in a police line-up, suspects are typically presented in the midst of other people of similar physical characteristics, Sacco and Vanzetti were displayed singly and even made to simulate the behaviour of the Braintree outlaws.

The next question is devoted to the consciousness of guilt factor, which, as I have already mentioned, was a key to Judge Webster Thayer's insistence upon the culpability of both men. Judge Thayer held that if they had had nothing to hide, then they would not have lied about their doings on the night they were arrested. The defence argued that Sacco and Vanzetti had been afraid to reveal their radicalism at that time, especially in light of the macabre events that had occurred during the Red Scare era, not the least of which being the recent death under suspicious circumstances of their colleague Salsedo. Cohn (1927: 3) asks, "Is the consciousness of radicalism synonymous with the consciousness of guilt of murder?"

In question 11, the author underscores the bias and base jingoism that District Attorney Katzman and Judge Thayer had resorted to in order to win the jury members over to their view that Sacco and Vanzetti were representative of the numerous immigrant radicals and slackers who were bent on undermining the nation. He further indicates that branding the two men as traitors for having fled the country to Mexico to avoid the draft was misleading, since it did not take into account the fact that Attorney General Palmer had imposed a reign of terror, in which those whose political convictions strayed from a strictly patriotic and thoroughly complacent mindset were hounded –if not arrested– and forced to dissemble their views.

The case spurred demonstrations on behalf of the defendants in major cities all around the world. This, in turn, spawned resentment among large sectors of American public opinion, which in turn had a negative impact on the average American's attitude toward Sacco and Vanzetti and the many people who were defending their cause.

Playing to the prejudice of public opinion against Italian immigrants in general, Reds, slackers, and pacifists, District Attorney Katzmann's tendentious cross-examination of Sacco is a testimony of flagrant uncurtailed bias. During the process, the DA scandalously ridiculed Sacco's political beliefs and distorted his testimony in such a way as to rouse bigotry, racial discrimination and chauvinism among the jury members. This insidious line of questioning in particular, a blatant misuse of judicial power, was admitted by Judge Thayer.

The standards of Massachusetts law stipulate, “Language ought not to be permitted which is calculated by (...) appeals to prejudice, to sweep jurors beyond a fair and calm consideration of the evidence” (Jackson, 1981: 191). Unfortunately for the defendants, this law did not come into effect until 1926; that is to say, after Sacco and Vanzetti were convicted.

The courtroom setting admits a hierarchy at the top of which is the presiding judge, whose point of view will have an impact on interactive dynamics. Judges determine what is admitted in the record, influence discussion topics, control question and answer exchanges, limit speaker turns and rule on objections. Second in power are the trial lawyers, who share equal status.

However, in the Sacco-Vanzetti trial, the balance of power between the lawyers for the prosecution and the defence was unequal. Katzmann was a highly regarded member of the Bostonian establishment, while counsel for the defence was undertaken by radical labour lawyers. This power asymmetric was strengthened by the predisposition of Judge Thayer to make allowances for the DA’s rhetorical excesses during his cross-examination of Sacco.

The dialogic interaction between a trial lawyer and a witness being asymmetrical, politeness, face and co-operation are significantly diminished. However, Katzmann’s cross-examination was particularly abusive. Following is an example:

Q. (...) is your love for the United States of America commensurate with the amount of money you can get in this country per week. *A.* Better conditions, yes.
Q. Better country to make money, isn’t it? *A.* Yes.
Q. Mr. Sacco, that is the extent of your love for this country, isn’t it, measured in dollars and cents? (Joughlin & Morgan, 1978: 525).

As is expected in dialogic lawyer-witness interaction, where the problem of power asymmetry is resolved by the opposing lawyer, counsel for the defence McAnarney objects to this question, which hardly resembles an enquiry at all but rather a statement. The decision to admit the objection depends on the discretion of the trial judge. In this case, Judge Thayer (Joughlin & Morgan, 1978: 525) asks whether the objection is in reference to the way the question was put –“The form of it?”. Counsel for the Defence replies, “to the substance and the form”. Thayer advises the DA, “Better change that”.

The judge’s choice of words here is worth considering. The English expression *had better* is used to emphasise immediateness. It may be spoken as a warning by one who is in a superior position to someone who is not.

While ellipsis of the word *had* maintains the functional meaning, it nonetheless implies familiarity and is often used collusively. This line of discourse between a presiding judge and a district attorney is inappropriate in a court of law. Furthermore, although Judge Thayer addresses McAnarney's objection to the format of the question, the judge egregiously ignores Counsel's objection to its substance. When Counsel once again objects to this, Thayer, brushing the protest aside, directly addresses Sacco, telling him, "Now you may answer" (Joughlin & Morgan, 1978: 525), thereby allowing this fatal line of questioning to take its destructive course.

It is important to bear in mind that the dyadic talk between a lawyer and a witness is performed principally for the jury, though a silent audience may also be present. This includes the public gallery of observers and members of the press. However, determination as to the guilt or innocence of a defendant rests exclusively with the jury. Hence its status as ratified recipient is maintained throughout the trial. But, though it is directly acknowledged as the addressee in the jury instructions stages at the beginning and the end of the trial, it is much less explicitly signalled during lawyer-witness interaction. At this point the jury as ratified recipient is addressed by way of signals such as eye-contact, gestures, body posture, voice pitch and intonation. These signals, however, are not recorded in the trial transcript, though they are an important part of the direct-examination and cross-examination processes.

Cotterill (2003: 127) maintains that the yes/no question is the preferred strategy for criminal lawyers during the cross-examination phase. She further points out that lawyers often "stretch the boundaries of the concept of 'question' to its limits, exploiting the discursive properties of both question forms and functions in their attempts to construct persuasive testimony". The following line of questioning during the cross-examination of Sacco is an example. Katzmann (Joughlin & Morgan, 1978: 523) starts off by asking, "Did you say yesterday you love a free country?", and Sacco replies affirmatively. However, his compliant response quickly proves to be harmful. For Sacco's acknowledged love for the United States becomes potentially damaging when Katzmann asks him whether he loved the US in May of 1917. Realising that the DA has set a trap for him, Sacco attempts to elude the question. But the DA will only accept a yes or no response. When Sacco insists that he cannot answer "in one word", Katzmann says derisively, "Don't you know whether you did or not?"

After Counsel for the Defence's subsequent objection is overruled by Judge Thayer, the DA repeats his question for the seventh time. Wishing to avoid a constrained response, Sacco insists, "That is pretty hard for me to say in one word, Mr. Katzmann". Exercising his prerogative, though, the prosecutor tells the defendant, "There are two words you can use, Mr. Sacco,

yes or no. Which is it to be?” (Joughlin & Morgan, 1978: 523). Sacco is left with no alternative but to respond with a compliant yes: a damaging admission.

In contrast to direct examination, the cross-examining process is essentially confrontational and destructive. Characteristically, the questions contain interdependent interrogative layers. These multiple embeddings compel witnesses to agree to propositions they might otherwise not accept. As one would expect a seasoned trial lawyer to be, District Attorney Katzmann was dextrous at doing just that. What strikes the reader of the trial transcripts, however, is not so much the DA’s skill at posing multiple questions, but his undisguised scorn for the defendants and the derision that was allowed by the presiding judge to be openly expressed in the prosecutor’s line of questioning. The post of district attorney is certainly no job for the fainthearted. But Katzmann’s derogation of the defendants’ character and beliefs, which the trial judge consistently admitted, went beyond the call of professional duty. The embeddings of many of the DA’s questions were obvious traduccements of the defendants.

To take but one example, Katzmann wants to underscore the fact that Sacco travelled to Mexico in 1917, and that in doing so the defendant was a coward. The DA accuses Sacco of “running away” (Joughlin & Morgan, 1978: 524) not only from the country but from his own wife and child as well.

Q. Don’t you think going away from your country is a vulgar thing to do when she needs you? *A.* I don’t believe in war.

Q. You don’t believe in war? *A.* No, sir.

Q. Do you think it is a cowardly thing to do what you did? *A.* No, sir.

Q. Do you think it was a brave thing to do what you did? *A.* Yes, sir.

Q. Do you think it would be a brave thing to go away from your own wife? *A.* No.

Q. When she needed you? *A.* No (Joughlin & Morgan, 1978: 525).

Katzmann’s urge to disparage the witness borders on the absurd when his censorious attention turns to the subject of food. A sinister cast is placed on Sacco’s return from Mexico when the DA poses the following statement/question: “Then, I take it, you came back to the United States first to get something to eat. Is that right?” (Joughlin & Morgan, 1978: 526). The multiple implication here not only discredits the defendant, whose antimilitarism the DA has already publicly scorned, but also suggests that, somewhat like a roaming hungry beast, Sacco made his way back to the US in search of prey. Presumably, the implication is that Sacco eventually found

what he was looking for on the day of the hold-up and murder in South Braintree.

Katzmann further manages to insert another damaging assertion to the effect that Sacco's earlier admitted love for the United States of America is largely monetary. Greatly offended, Sacco tries to set the record straight. "No, no, money, never loved money" (Joughlin & Morgan, 1978: 527), only to encounter once again the DA's scorn: "Never loved money?". Once more, Katzmann has adroitly posed a question with multiple embedded meanings. Not only does the question serve to demonstrate the prosecutor's surprise, it also suggests that Sacco is a liar and a person who hides behind false ideals. When Sacco desperately tries to undo the nefarious implications by insisting, "No, money never satisfaction to me", Katzmann once again responds by making a mockery of the defendant's statement of a deeply felt principle.

The predominating modality used by Katzmann is that of someone who is in an authoritative position. He uses the imperative form transformed into closed and declarative questions. Katzmann does not include in his cross-examination modals of permission or volition, thereby eliminating the defendant's authority in answering the questions put to him. This is consistent with the view that Katzmann is not asking questions at all but is rather forcing the defendant to countenance what are in fact statements the DA is making about Sacco to the jury.

Katzmann uses negative assertions to counteract and subvert positive assertions made by the defendant. We have already seen how the DA began a destructive line of questioning with the simple question "Did you say yesterday you love a free country?" (Joughlin & Morgan, 1978: 523), in reference to a positive assertion which Sacco had made the previous day. In response to Sacco's affirmative reply, Katzmann subverts the assertion with a negative assertion that is embedded in the form of a positive closed question: "Did you love this country in the month of May, 1917?". The embedded negative assertion is immediately understood by the defendant and –one may assume– by the jury. The implication, of course, is that Sacco could not possibly love the United States if he abandoned the country in its hour of need during the war.

In this context, a relational value of a vocabulary item (Fairclough, 1989: 178) is adroitly engaged by Katzmann in his use of the term *this country*. Katzmann's "this country" presents a relational value embedded in the implication it makes. The underlying meaning is what Fairclough (1989: 127) refers to as the *inclusive we*. The *this* in Katzmann's *this country* is in fact a transformation of *our*, where what is implied is that this is our country, a place where we were born and live –we being Katzmann, the Court and the jury but not the defendants. The DA draws attention to the fact that Sacco

claims to love *this country*. But the destructive implication is that We do not show our love for this country by running away from her in her hour of need.

Naturally, the implied We inferred by *this country* is totally mysticatory. The ambivalence, however, allows the DA to present *this country* in the light of a betrayed love, as when the DA asks, “And in order to show your love for this United States of America when she was about to call on you to become a soldier you ran away to Mexico?” (Joughlin & Morgan, 1978: 524). A moment later the DA asks, “Is that your idea of showing your love for this country?”. When Sacco hesitates, Katzmann repeats the question, replacing *this country* with the far more emotionally charged word, *America*. To Sacco’s affirmative reply, Katzmann belittles the defendant even further by asking him, “And would it be your idea of showing your love for your wife that when she needed you ran away from her?”.

Court language is not merely an example of an expression of social practice but rather it reveals how discourse serves in certain contexts to exercise power. The discourse exhibited in the Sacco-Vanzetti trial was institutionalised and regulated. Considering discourse as a *regulative body* (Jäger, 2001: 35), it is plain to see that the spectrum was restricted by a process of conscious regulation. District Attorney Katzmann, Judge Thayer, the jury, the Supreme Court of Massachusetts and the Federal Courts, as well as Governor Fuller and his Advisory Committee, represented a unified social, ethnic, national, and racial grouping whose thought patterns were constrained by a system of classification that disallowed alternative systems.

The issues inherent in the Sacco-Vanzetti case, which were explored in great depth by, among others, Ehrmann (1969), Joughlin & Morgan (1978), Young & Kaiser (1985), and Avrich (1991), were not officially addressed until fifty years after sentence was carried out. On August 23, 1977, Michael Dukakis (1978: 799), Governor of the Commonwealth of Massachusetts, issued a *Proclamation*, in which he declared that “any stigma and disgrace should be forever removed from the names of Nicola Sacco and Bartolomeo Vanzetti, from the names of their families and descendants, and so, from the name of the Commonwealth of Massachusetts”.

As will be shown further on, the family of Niccola Sacco subsequently protested that this was not enough, and demanded a full pardon. Nevertheless, it was, and still remains, the first and only official attempt –if symbolically– to acknowledge, in Governor Dukakis’s (1978: 799) words, “these tragic events” and to “draw from their historic lessons the resolve to prevent the forces of intolerance, fear, and hatred from ever again uniting to overcome the rationality, wisdom, and fairness to which our legal system aspires”.

In his *Proclamation*, delivered on 23 August 1977, on the fiftieth anniversary of the execution of Sacco and Vanzetti by the Commonwealth of Massachusetts, Dukakis (1978: 799) pointed out that the “atmosphere of their trial and appeals was permeated by prejudice against foreigners and hostility toward unorthodox political views”, and he added, “The conduct of many of the officials involved in the case shed serious doubt on their willingness and ability to conduct the prosecution and trial of Sacco and Vanzetti fairly and impartially”. Furthermore, the Governor noted that the “limited scope of appellate review then in effect did not allow a new trial to be ordered based on the prejudicial effect of the proceedings as a whole”.

Dukakis’ proclamation was the culmination of process which he begun when the then Governor of the State of Massachusetts asked his Chief Legal Counsel, Daniel A. Taylor, “whether there are substantial grounds for believing (...) that Sacco and Vanzetti were unfairly convicted and executed, and (...) if so what action can now be appropriately taken” (Taylor, 1978: 797). Taylor’s subsequent research led him to conclude in his *Report to the Governor in the Matter of Sacco and Vanzetti* that “there are substantial, indeed compelling, grounds for believing that the Sacco and Vanzetti legal proceedings were permeated with unfairness”, and he advises Governor Dukakis “that a proclamation issued by you would be appropriate”.

In his report, Taylor (1978: 759) address in detail both of the questions the Governor put to him. In responding to the first question, “Were Sacco and Vanzetti convicted and executed after a fair trial demonstrating their guilt of murder beyond a reasonable doubt, and after an adequate review of that trial?”, Taylor describes the basic chronology of events, presents the grounds for continuing doubt, and discusses the review of the case by the Supreme Judicial Court.

According to Taylor (1978: 761), the grounds for continuing doubt “encompass both the conduct of the trial itself, with the consequence that there is doubt whether (...) a jury in possession of all the facts would have returned a guilty verdict”. He further mentions that “the mere fact that for the last fifty years countless authors have debated the merits of the case, without a clear victory either for the proponents of innocence or for the proponents of guilt, is in itself a reason to think that a miscarriage of justice may have occurred”.

Taylor (1978: 762) cites British historian Samuel Eliot Morison’s *The Oxford History of the American People* to suggest that the Sacco-Vanzetti case “was the offshoot of the ... whipped-up anti-red hysteria” of the period just after the First World War. Taylor then observes that the defendants “were aliens, poor and espoused a political ideology –anarchism–, which struck fear in the hearts of many Americans”. He concedes that though the

extent to which this may have influenced the jury's verdict and Judge Thayer's subsequent denial of the new trial motions is susceptible to debate, it is nonetheless "irrefutable" that there existed at the very least a "a strong possibility" for that to happen.

After expounding on the ground for continuing doubt, the report then focuses on the review of the case by the Supreme Judicial Court. The Supreme Judicial Court reviewed and subsequently overruled each of the thirty-three exceptions raised by the defendants, as well as the exceptions to the denial for new trials because of newly uncovered evidence. It based each of its decisions on standard Massachusetts legal procedure, which at that time held that standard review "rested within the discretion of the trial judge" (Taylor, 1978: 769). Taylor further explains that the standard review used was grounded on a civil case decision handed down in 1920, shortly before Sacco and Vanzetti were arrested. As a result, the fate of Sacco and Vanzetti depended completely on Judge Thayer, in spite of the new evidence and indications presented showing that the prosecution had used prejudice to sway the jury.

The irony of this, as the report indicates, is that "at almost all other times in the history of the Commonwealth greater protection for defendants in capital cases has been required" (Taylor, 1978: 770). Tragically, in November, 1927, just three months after Sacco and Vanzetti had been executed the Judicial Council recommended the enactment of new provisions for reviewing capital offence cases. The legislation was subsequently enacted by the General Court twelve years later. As Governor Dukakis (1978: 798) explained in his *Proclamation of 1977*, Chapter 341 of the Acts of 1939 was the "direct result of their case". The Governor concludes,

In light of the foregoing, a serious question exists and will continue to exist whether the guilt of Sacco and Vanzetti was properly determined. The jury was invited to decide the case on the basis of appeals to prejudice; the eyewitness testimony was conflicting...; many of the facts which might have altered the jury's conclusion were not presented at trial, including further eyewitnesses evidence and other important pieces of evidence concerning identification; and the evidence concerning the defendants' 'consciousness of guilt' at the time of arrest was overblown, and may well have been viewed through the perspective of a cross-examination as much calculated to damn the defendants as to advance the cause of truth.

Taylor (1978: 768) notes that a "review by a different and superior tribunal" would indeed have been warranted, but, he states, "Unfortunately, the system for reviewing murder cases at the time of Sacco's and Vanzetti's

convictions and executions failed to provide the safeguards now present, safeguards which might well have prevented a miscarriage of justice". He suggests that to "acknowledge that mistakes occur is not to challenge the importance of the criminal law in the protection of society, nor to denigrate in any fashion the criminal justice system of the Commonwealth". Furthermore, Taylor (1978: 769) reminds his readers that it was "the possibility that a mistake was committed in the executions of Sacco and Vanzetti that led to a strengthening in the system of appellate review of capital cases in this Commonwealth".

Finally, Taylor's (1978: 773) Report addresses the second question, which Governor Dukakis had originally put to his Chief Legal Counsel with regard to the Sacco-Vanzetti case, as to whether, "in the light of the criminal justice standards of today", Sacco and Vanzetti were indeed "unfairly convicted and executed (...) what action can now appropriately be taken". Taylor responds by explaining that "the normal way in which relief is granted after conviction of a crime is by exercise of the pardoning power". In his capacity as Chief Legal Counsel, Taylor (1978: 774) informs Governor Dukakis,

Assuming that by *petitioner* the Legislature meant to denominate the convicted person, the statute would seem to indicate that posthumous pardons cannot be granted; or, at the least, that the pardoning power in its ordinary course is not the appropriate vehicle for addressing a matter such as this.

Additionally, Taylor (1978: 774) reports that "in present day circumstances there are no legal consequences to conviction for a felony that last beyond the death of the felon". Moreover, he indicates that the law states that a "grant of pardon carries 'an imputation of guilt' ". Taylor (1978: 776), therefore, suggests that "the granting of a pardon to Sacco and Vanzetti after their deaths would be a null act, because pardon is void without an acceptance, and no power of acceptance exists". While he further underscores "the very real possibility that a grievous miscarriage of justice occurred with their deaths", Taylor (1978: 777) nonetheless sustains, "A pardon, carrying the connotation that they were in fact guilty, and appearing as but a merciful act, with the implication that they would have, even now, welcomed it, would serve not to dignify, but rather to denigrate, their own claims to innocence". He concludes, "In short, a pardon, or any of the forms of clemency bespeaking of a pardon, is not the proper remedy".

Taylor (1978: 777) further declares that because "no relief with substantial legal effect is possible", the only way to remedy the situation is by removing "the stigma placed on them by their conviction and execution". He,

therefore, recommends that a statement be made: "The necessary statement should take the form of a proclamation issued by the Governor".

Governor Dukakis's subsequent *Proclamation* did not satisfy the families of Sacco and Vanzetti in Italy. In a visit that he made to Madrid on the occasion of the premier of Luis Araujo's (1996) play, *Vanzetti*, in October, 1993, Ermette Sacco, the son of Niccola Sacco's older brother, declared that he and Vicenzina Vanzetti, Bartolomeo's sister, who is said to have absconded with the ashes of both men back to Italy hidden and mixed together in a bombshell, wanted nothing less than the "total rehabilitation" (Torres, 1993: 31) of their relatives.

The occasion of Ermette Sacco's visit to Spain received considerable attention in the national press. The details of the Sacco family's efforts to clear the names of both Niccola Sacco and Bartolomeo Vanzetti were narrated. For example, it was reported that when in 1966 the families were informed by Michele Catalano, a lawyer friend of theirs, that a book had been published in Germany depicting the men as "murderers who robbed and killed people in order to finance their political party" (Pascual, 1993: 82), the families decided to actively pursue a campaign to have their relatives officially absolved of guilt. In February, 1993, Ermette Sacco and Vicenzina Vanzetti asked President Bill Clinton to intercede on their behalf (Cantalapiedra, 1993: 54). In an interview Ermette Sacco gave in Madrid, he stated, "We wanted all of America, with Clinton taking the lead, to acknowledge their innocence" (Pascual, 1993: 82). Ermette Sacco further explained that the families had petitioned Oscar Luigi Scalfaro, President of the Republic of Italy, who is said to have taken the matter up with President Clinton. Eleven years earlier, the family in Italy had already approached the then President of the Republic of Italy, Sandro Pertini, in an effort to have the names of their relatives cleared. Pertini is said to have brought the matter up with then President Reagan, needless to say to no avail (Aganzo, 1993: 26).

The worthy intent of Governor Michael Dukakis to address the issue was a courageous act for a major political figure to undertake, all the more so in view of the fact that he would later become the Democratic Party's candidate in the Presidential elections of 1988. The details of the Sacco-Vanzetti case obviate the fact that Niccola Sacco and Bartolomeo Vanzetti at least deserved a retrial. But those who then wielded their power abusively in the name of national security and ideology were allowed to undermine justice, thanks in no small measure to the clamour of the ideological noise-machine and intellectual shirking, which in turn discredited the United States in the eyes of the world and provided its enemies with a powerful propagandistic tool. Sadly, almost seventy years on, America's moral integrity is once again being jeopardized by the flawed rational of some of its leaders, who with

security once again as their standard, cede ground to dictators and warlords by ignoring Article 3 of the Geneva Conventions. As the execution of Sacco and Vanzetti did in 1927, today the kidnapping of terror suspects and shipping them off to covert prisons abroad, or the detention of suspected “unlawful combatants” in Guantánamo where they are denied due process, disgraces a great nation and serves only to undermine its security, since by eroding moral standing criminal acts of injustice by others is potentially justified.

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