

With Malice Aforethought: The Execution of Nicola Sacco and Bartolomeo Vanzetti

by Theodore W. Grippo

Reviewed by Mel Massey

On April 15, 1920 in South Braintree, Massachusetts near Boston, two men were shot to death in the course of an armed robbery that saw five criminals escape with more than \$15,000. Two Italian immigrants, Nicola Sacco and Bartolomeo Vanzetti, were charged with the crime and Judge Webster Thayer of the Superior Court of Massachusetts eventually sentenced them to death by electrocution. More than seven years later, shortly after midnight on August 23, 1927, the grisly sentence was carried out. During the years between their apprehension and execution, the defendants underwent trial by jury in the Commonwealth of Massachusetts, at that time (and still) one of the most progressive jurisdictions in the world.

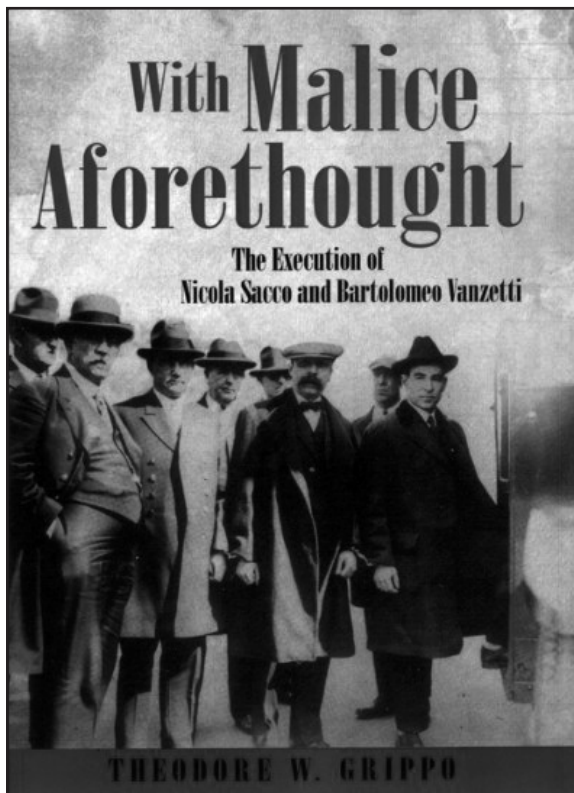
Eighty-five years after those events the names *Sacco and Vanzetti* continue to be watchwords for rank injustice and judicial and prosecutorial misconduct. They evoke the systemic failure of a criminal justice system founded on the principles of judicial rectitude, due process and innocence until proven guilty beyond a reasonable doubt. Our system of criminal justice (in my view, Canadian criminal law is virtually identical to that prevailing in the USA) and these standards are trumpeted as being essential and central to 'free world' values, fundamental rights and freedoms and most importantly, the Rule of Law. Nevertheless, the fiasco of the two Italian immigrants trial, their harsh imprisonment and eventual execution continue to mark

a shameful low point in the application of due process of law in "the land of the free and the home of the brave" (as purported by the *Star-Spangled Banner!*).

The proceeding raised a stench so overpowering (not to speak of the processions and bombings that followed) that shortly afterwards a fundamental correction was made to the laws governing the appeals of criminal convictions in Massachusetts. In a major recognition of the staying power of the affair, Michael S. Dukakis, governor of the State of Massachusetts, 50 years after their execution, declared August 23, 1977 to be Nicola Sacco and Bartolomeo Vanzetti Memorial Day, expunging any disgrace that attached to their names. He called upon the people of the State to 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." These were strong words from a candidate for President of the United States of America.

But can one justify the publication (or reading) of yet another book detailing this failure of justice when dozens have already been written and plays, films and even poetry have fed off the sad chronicle? Why should we read it so many years after the fact?

After reflection, and a close but quick read, I believe that there are two reasons why you should become familiar with this book, whether



**WITH MALICE AFORETHOUGHT:
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to dip into it selectively or possibly read it cover to cover.

The first is that this tragic morality play highlights the circumstances that can result in a perversion of justice in even the ‘best’ system. The trial occurred at a time when prejudice, fear and pathological hatred of foreign agitators/workers were pervasive. Normally, the forces of justice, embodied in police, prosecutor and judge are required to administer the law in a fair and dispassionate manner. In the Sacco and Vanzetti trial, the author seeks to show that the fear and hatred of ‘foreign radicals’ like the two humble defendants were so powerful that the administrators of justice saw themselves as forces of vengeance/justice and channels of the popular will. It was lynch law in Boston. This momentum carried over to the appeal of the sentence and seemingly blinded the Governor’s clemency committee.

A legal system is only as good as its administrators and they are subject to prejudice and can themselves engage in misconduct and even criminality. One might consider whether his assimilating what he considered the ‘popular will’ may have tainted Judge Gomery’s attitude in the Canadian sponsorship investigation. Conrad

Black’s writing contains much comment on the (mal)functioning of America’s legal system, much of it centering on this personal aspect of the system.

The second reason is that it is a whodunit featuring a motley collection of fascinating characters acting in politically charged and chaotic times. The robbery was a bloody crime in which two men were ruthlessly shot down and the mystery of who murdered them has never been solved despite the many ‘true accounts’ that have been published – including *With Malice Aforethought*.

The unfortunate tailor and fishmonger became cogs in a murder mystery and their fate in the electric chair sealed their destiny in the history of juridical dereliction. For the murder ‘buff’ there is sensationalism galore; gun battles in the streets, alibis and the unequal conflict between a monstrous overbearing prosecutor and an overwhelmingly partisan judge on one side and a well-funded yet curiously inept defence team on the other. Here are two samples from a myriad:

- The foreman of the jury replied to his friend who doubted the defendants’ guilt; “Damn them, they should hang them anyway,” and
- Judge Thayer, before the trial commenced, told reporters “You wait ’til I give my charge to the jury. I’ll show ’em!”

With *Malice Aforethought* attempts to make the case that the forces of law and order of the Commonwealth (State) of Massachusetts conspired to convict the men, disregarded all evidence contradicting their guilt, rode roughshod over witnesses, and ignored ‘confessions’ or any facts inconvenient to a finding of ‘guilty’ of murder in the first degree. The author effectively highlights that the period, immediately following WWI was a time of hyper patriotism, the Red Scare, rising class warfare exemplified by the Russian revolution and radically oriented gangs of socialist, Wobblies (world labour congress), communists, socialists, *et al.*

Poverty and labour conflict was rampant and the uncertain and often terrified populace considered that immigrants from Europe, particularly Italians such as these defendants, were stealing jobs from Americans. They saw them as the forces of radicalism – anarchists and Bolsheviks who would destroy America’s prosperity. The society needed scapegoats – targets for their dislike and mistrust of ‘foreigners’ and radicals, and Sacco and Vanzetti fit the bill as anarchists and draft dodgers. At trial, the prosecution was merciless in labelling the defendants as ‘foreigners’ and anti-patriots; incredibly, their patriotism was a major issue as one sees in the transcripts of the lamentable cross-examinations.

Once the police, the prosecution and (despicably!) Judge Thayer laid hands on Sacco and Vanzetti they were implacable in their pursuit. For them it was no-holds barred warfare. It was irrelevant to the partisan forces of ‘law and order’ that a properly functioning system of criminal justice would not have convicted the men. It was enough that when they were unlawfully arrested and searched they had lied about being armed while concealing loaded pistols (Sacco’s was concealed under his pants) their pockets full of ammunition.

The author of *With Malice Aforethought* is extremely close to his subject and his exposition is energetic and enthusiastic. The mixture of quotations, transcripts and lively descriptions is captivating. However, Grippo does not provide an orderly exposition of the facts. He charges

pell-mell through mounds of detailed evidence, transcripts, legal procedures and personalities, and his constant theorizing and editorializing clouds the presentation.

The book is essentially a legal ‘brief’, an extended argument advocating a single narrow view of the case. It reviews other theories only in passing. For example, we do not discover until halfway through the book that Sacco and Vanzetti were carrying firearms and ammunition when arrested, although the defence sought to provide explanations as to why at trial.

While I have no quarrel with the constantly outraged tone of the book (the subject matter is highly provocative and the ‘plot’ is tragic and difficult to stomach), a better ordering of the subject matter, starting with a factual account would have made the exposition more effective and highlighted the injustice. I eventually resorted to a Wikipedia account as a guide.

With Malice Aforethought is an ‘advanced reader’ for someone who is already conversant with the basic facts of the trial or who wishes dive into a notorious example of injustice.

For the initiate, Grippo’s work is a treat, highlighting the characters, the legal roller coaster and, most poignantly, the personalities and terrible tribulations that the accused and their families endured (both became mentally ill during their long incarceration). The author reviews new evidence that supports his theory that the police, with the acquiescence of the Judge and prosecutor, engaged in outright fraud to substitute a false weapon for Sacco’s pistol. For the activist, the matter is proof positive that the ‘law is the tool of authority’.

It is all high drama, and a terrible shame that the story should involve a wholesale subversion of justice and the execution of two possibly innocent men.

Mel Massey is a retired lawyer (International Corporate Law) living in Ottawa, Canada, with his artist wife, Joan. He engages in a medley of activities including writing short stories, volunteer work with charitable agencies, skiing and hiking. He is thinking of putting together a collection of short stories but wonders whether the fun stuff will get in the way.