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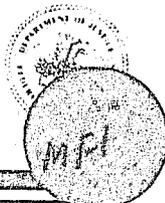
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ACQUISITIONS

FEDERAL PRISONS AND THE NATION'S REBELS

Introduction

Ask any Federal prison employee. What kind of prisoners come into the Federal system; how are they different from the typical State prison populations? Of course the Federal system gets all the usual types of criminal offenders—plus another group not usually seen in State prisons: individuals who are in conscientious rebellion against some national policy of the moment. If we stand back and examine this group as a whole, we realize that the stories of these particular prisoners chronicle the significant political stresses and strains of this Nation from one era to another.

No Nation can avoid the periodic adoption of policies that alienate and anger some segments of its public. Inevitably there will be individuals among the alienated groups who will resolutely follow their consciences, even if it leads them to prison. Regardless of whether the rest of the population admires or condemns them, this group makes an interesting lot and, as prisoners go, they are atypical. This paper focuses on several issues that have prompted people to disobey the law for reasons of principle and various individuals who followed their consciences accordingly.

Resistance During War Time

The country's wars always require enactment of sweeping national measures that inevitably produce conscientious resisters. One of the first Federal prisoners was of this type: William Franklin, former Governor of the colony of New Jersey and son of the beloved patriot, Benjamin Franklin. The Continental Congress imprisoned William Franklin indefinitely after George Washington found that his war with the British was being hampered in New Jersey by Franklin's royalist activities and aid to the British.

At the time, the Federal Government lacked prisons of its own; in fact, for the next century and a quarter, it was entirely dependent on State and local facilities to board Federal prisoners. Thus, William Franklin was confined to a tiny room in the primitive county jail at

September 1988

One characteristic that helps make the Bureau of Prisons unique among Government agencies is the sense of family and mutual responsibility shared by many of its staff members—particularly those who work in institutions. And, like a family, the Bureau has its own culture and history which further strengthens the bonds among Bureau staff.

This *Research Review* examines a special group of Federal offenders who have played an important role in the Bureau's history: individuals who are in conscientious rebellion against some national policy of the moment and who are imprisoned for disobeying the law for moral reasons. Groups of these generally well-behaved, educated individuals have influenced society as well as the Bureau, sometimes causing policy changes in both arenas.

Professor Keve, author of this report, highlights the cases of some of these conscientious objectors from the Revolutionary War days until the 1960's, noting that the current era of U.S. political history is marked by an absence of this type of Federal prisoner. However, as Professor Keve concludes, we can be confident that Federal institutions have not seen the last of conscientious objectors and that as new national stresses inspire new waves of activism, Federal prisons will once more feel the impact.

J. Michael Quinlan
Director

Litchfield, Connecticut, located on the second floor of a building that housed a noisy tavern on the first floor. Franklin remained in this miserable, cramped confinement for nearly a year until he was exchanged for a British prisoner of similar rank.

Franklin was not the only such Federal prisoner in the Litchfield jail. A fellow prisoner was David Matthews, former Mayor of New York City, who had been sent to Litchfield the previous year for similar royalist sympathies.

In a later era, some of the first prisoners ever housed on Alcatraz Island also were resisters to the Nation's military efforts. During the Civil War, the California area, while under Federal Government control, was home to a mixture of Union and Confederate sympathizers. Although the region lacked a regular prison for Federal offenders, it took very little in the way of outspoken support for the Confederacy to cause a person's arrest. When President Lincoln was assassinated,

39 people were arrested merely for their loud expressions of approval of that event. All were held at Alcatraz. At the time, the Island was primarily a fort, but in the absence of a Federal prison in the West, it was made to double as a lock-up. Other Federal prisoners held on Alcatraz during the Civil War years included Democratic State Central Committee Chairman Charles L. Weller, Assemblyman-elect E.J.C. Kewen of Los Angeles, Major W.R.I. McKay, former commissary officer of San Quentin State Prison, and Los Angeles Star Editor Henry Hamilton.² Their "crimes" had been simply to make various utterances construed as disrespectful toward the Federal Government.

In more recent wars, the Federal prison system has had to accommodate large numbers of objectors, many of whom were the most cooperative and constructive of prisoners. Some, of draft age, were convicted for refusing to serve. Others were not subject to the draft, but were convicted under the Sedition Act of 1917 after making public speeches in opposition to the war effort. One notable example was Roger Baldwin, a young lawyer who had previously been chief probation officer for the St. Louis juvenile court. In World War I, when ordered to report for his preinduction physical exam, he politely notified the draft board that as a matter of conscience he could not do so, and presented himself for prosecution to the U.S. Attorney. His sincerity was unquestioned when he said, "I regard the principle of conscription of life as a flat contradiction of all our cherished ideals of individual freedom, democratic liberty, and Christian teaching."³

After a lengthy trial, distinguished for its high moral tone and the polite conduct of all involved, Baldwin was committed to prison for 11 months and 10 days (a 1-year sentence minus credit for jail time). To serve his sentence, he was boarded at the county prison in Caldwell, New Jersey. Baldwin, whose concern for conscience and principle proved a lifelong commitment, eventually became the founder and director of the American Civil Liberties Union.

One of the better known opponents of World War I was persistent Socialist presidential candidate, Eugene V. Debs. Debs was arrested for a speech he made in 1918 in Canton, Ohio, criticizing Government wartime policy. Convicted for violating the Espionage Act of 1917, he was given a 10-year sentence. Debs spent several weeks at the West Virginia Penitentiary before being transferred to Atlanta where he often had prominent visitors. In 1920, when Clarence Darrow came to spend most of the day with Debs, Warden Zerbst joined in for several hours of discussion of political and national affairs.

In 1920, while still in the Atlanta Penitentiary, Debs was nominated for president by his party for the fifth

time. It was a new experience for Atlanta's warden, staff, and inmates to have a prisoner receiving this kind of media attention. Debs listened to the election returns over the radio in the warden's office from where he later sent his message conceding the election to Harding.

Throughout his imprisonment, Debs proved himself a gentle and refined individual who won respect and affection from those around him. Typically cooperative in the prison, his only rebellion was a refusal to obey the rule of compulsory chapel attendance. He told the warden that there was no proper religious spirit in chapel when guards, armed with clubs, glared at the inmates from all sides. His objection was tolerated and it helped to facilitate change of the rule.

Debs' sentence was commuted after he had spent nearly 4 years in Atlanta. His departure from the penitentiary at Christmas time in 1921 was marked by an emotional farewell of cheers from the assembled prisoners. He then travelled to the White House to meet President Harding who had requested a brief visit with Debs before he returned home.

A similar offense and conviction, but a very different prison experience characterized the case of a Socialist named Kate Richards O'Hare. When she was sentenced in 1917 for the same type of war opposition speech that Debs made soon afterward, there was no Federal prison for women. To serve her 5-year sentence, O'Hare was assigned to the women's section at the Missouri Penitentiary in Jefferson City where she found the living conditions shocking. A woman of intellect, education, and forceful personality, O'Hare was not the sort who would remain meekly quiet about the gross neglect and abuse in the Missouri prison. An articulate spokeswoman with a resourceful husband to ensure that her voice was heard, O'Hare dramatized the plight of female prisoners so effectively that it forced an improvement in the prison's sanitation, work conditions, and food services.

In Prison, O'Hare's book about her Missouri experience (New York, Alfred A. Knopf, 1923), is still popular among feminist groups for its eloquent expression of institutional injustices suffered by women. When it was published in 1923, the time was right for it to help in promoting a new Federal prison for women. The Assistant Attorney General with responsibility for prisons, Mabel Walker Willebrandt, had already noted the dismaying conditions to which female Federal prisoners were subjected. At the time, there were about 250 female Federal inmates boarded in State and local facilities, most no better than the Missouri Penitentiary. Willebrandt viewed the problem as a major priority and by June 1924, 1 year after publication of O'Hare's book, she received congressional authorization for a women's prison. A year later, the Alderson site had been

selected and money was appropriated to begin construction.

After her release from prison in 1920, O'Hare continued to support Socialism, labor unions, and similar causes as she had done before, but now she also pursued an interest in prison reform. In 1938, incoming California Governor Culbert L. Olson appointed a new director of the California Department of Penology in an effort to reform the correctional system there. Kate Cunningham (she had remarried) was selected as the assistant director. Thus Cunningham, a former Federal prisoner, played a key role in selecting new prison staffs and developing new management practices for the California system, particularly at San Quentin.⁴

The history of jailed conscientious objectors reveals an interesting difference between the two World Wars. Unlike World War II when most of the conscientious objectors were sent to civilian imprisonment in the Bureau's various prison camps, during World War I this type of prisoner was more likely to be held in a military prison. In 1918 and 1919, the commanding officer of the Disciplinary Barracks at Fort Leavenworth had his usual population of regular Army prisoners who had committed various offenses, while mixed in among them were hundreds of conscientious objectors. Of course the regular Army men, notwithstanding their offenses, saw themselves as patriotic soldiers who had, after all, joined up to fight for their country. Their contempt for the prisoners who had refused induction was immense, and to house them together in one prison was only to ask for certain trouble. And trouble it was. During 1919, strikes and disturbances were daily fare at the Disciplinary Barracks.⁵

Union Promoters in Federal Prisons

While Bureau of Prisons employees today take for granted their union membership, when the first Federal prisons began operating, they were commonly used to hold prisoners who were incarcerated for their militant promotion of labor unions. In fact, for several decades around the turn of the century, the industrial world was determined to resist unionization with every possible weapon and, generally, the Federal and State governments supported this effort.

For some years, the most effective group in organizing workers was the Industrial Workers of the World (IWW), organized and led by Bill Haywood. Haywood and many of his union members spent time as Federal prisoners. IWW members, nicknamed "Wobblies," drew a fierce sort of opposition from industrial management mainly because they were so effective. Their goal was to organize all categories of workers into one comprehensive union; industrialists were understandably alarmed at

the potential power of such a union. Both sides resorted to bare knuckle tactics in their desperate opposition to each other.

Undoubtedly, the Wobblies sometimes used tactics that would have qualified them for criminal prosecution, but their opponents were equally guilty of such measures. Hundreds of Wobblies were arrested simply because they were Wobblies. Their journals were barred from the mails; their offices were raided without authority and wrecked. When they held meetings they were attacked.⁶

The fact that IWW's policy also was anti-war exacerbated feelings against them during World War I, resulting in the arrest of hundreds who were charged with sedition. In 1917, this led to three major trials of Wobblies in Sacramento, Wichita, and Chicago—involving more than 160 defendants. Of these, 150 men and 1 woman were convicted. The largest trial, involving 93 defendants and lasting 5 months, was conducted in Chicago by U.S. District Court Judge Kenesaw Mountain Landis. Landis sentenced the convicted men to serve terms of from 1 to 38 years.

Most of the convicts were sent to Leavenworth and, at one point, the Leavenworth Penitentiary held nearly 100 IWW men. While the Wobblies were not custody risks, they posed a new type of aggravation for management. These inmates, including some who were educated, articulate, and idealistic, were passionate about their mission and unwilling to agree to any correctional procedure that, in their view, would imply that they were guilty of crimes. For this reason, most refused to make any application for pardon and did as little as possible to cooperate with the prison concerning work assignments. These mildly rebellious actions were useful in maintaining solidarity of their group. Warden A.V. Anderson had never dealt with this type of prisoner and was quite frustrated in his attempts to do so.⁷

One of the more colorful Wobblies of that time, Elizabeth Gurley Flynn, was a passionate, energetic speaker who seemed to appear wherever a union or organizing issue was brewing. Flynn, an early convert to Socialism, began making public speeches on the subject when she was 16.⁸ From the promotion of Socialism, it was an easy step for her to take up the IWW cause, although she was not caught up in the trials of that time. Her imprisonment occurred much later, for eventually she shifted her interest to Communism and during the anti-Communist fervor of the McCarthy era she was sentenced to serve 3 years in Federal prison. By then she was very different from the fractious, bouncy young woman who formerly had made such stirring speeches at union rallies. When she arrived at Alderson in 1955, she was 65 years old; she had become a quiet grandmotherly type, handicapped by excessive weight which limited her

movement and the kind of work she could do. She was not a problem as a prisoner and felt that she was privileged to be at Alderson—as compared to the Missouri Penitentiary as Kate Richards O'Hare experienced it. Nevertheless, she did not like it, writing "Like all other inmates I hated the place—prison is prison, as Alderson proves, even if there are no walls and few bars."⁹

At the same time the IWW organization was making its challenge for overall unionism, mainly in the West, another, quite different challenge of social conventions was developing in the East where feminist issues were bringing some militant women into Federal courts. Early in the century the women's suffrage issue was attracting young women determined to fight for their voting rights in the face of equally determined male authorities who were indignant at such a demand. Some years earlier, Susan B. Anthony narrowly escaped becoming a Federal prisoner when she led 13 women to the polls in 1871 to vote. She was arrested and convicted of voting without the legal right to do so. Some of the intimidated election officials who had allowed her to vote were sent by the Federal court to do some jail time, but Anthony was let off with a \$100 fine. When she indignantly refused to pay, the court, rather than contend with her further, did nothing about it.

But, in 1917 the suffragists were not so lucky. Seeking high visibility, a large number of suffragists organized picketing for the cause in Washington, D.C., particularly around the White House. President Wilson was not amused, nor did the U.S. District Court show any sympathy. The strategy the women used was to send out pickets in groups of four, and as soon as a group was arrested, replace it with another.¹⁰ Arrests were followed by convictions and prison terms of varying lengths. Fortunately, in view of the District of Columbia prison conditions, most sentences were short. The Occoquan Workhouse was depressing and treatment by staff was callous. Among various forms of harassment was the superintendent's refusal to let these prisoners have their mail. He was only echoing the popular attitudes when he said, "I consider the letters and telegrams these prisoners get are treasonable. They cannot have them."¹¹ During that year, the Workhouse held as many as 100 suffragists, a difficult group because, like the Wobblies in Leavenworth, their sense of mission led them to resist some of the prison routines. For instance, as "political prisoners" they sat motionless in the sewing room and refused to work.¹²

Just 3 years later, the 19th amendment was ratified—the suffragists had won.

Prisoners of Conscience in the 1980's

Although the Bureau of Prisons continues to receive white collar offenders, these individuals tend to be guilty of criminal actions, albeit of a sophisticated type such as transgression of statutory ethics. Objectors to national policies still exist, of course, but under current conditions, resistance tends to entail covert criminal action (bombing of abortion clinics, sabotage of military installations, etc.) rather than simple refusal to comply with a Government-mandated procedure (e.g., refusing to report for induction).

One of the most recent "prisoners of conscience" was Junius Scales, who was released from confinement in Lewisburg 25 years ago.¹² Scales was an active recruiter and organizer for the Communist party who committed no criminal act except that through his organizing activity, he violated the Smith Act, passed in 1940 to prohibit, in effect, advocacy of Communism.

The Government's pursuit and arrest of Scales in the early 1950's was in the midst of the McCarthy era when fear of Communists in Government was inflated to a near hysterical level. Prosecution proved difficult in his case; the trial was protracted and following conviction, the case proceeded slowly throughout the stages of appeal. In 1957, the U.S. Supreme Court ordered a new trial which resulted in a new conviction and again a 6-year sentence. It was not until 1961 that Scales finally entered Lewisburg. Ironically, by then he had become thoroughly disillusioned as a result of the Stalinist regime and had left the Communist party 4 years before his punishment began.

In his anticlimactic incarceration, Junius Scales was a quiet, easygoing prisoner who made the best of his time in prison until his Christmas time release in 1962. Since then, no one has been imprisoned simply for Communist affiliation and advocacy.

Sometime in the future, there will undoubtedly be other national stresses, inciting still other conscientious resisters to Government policy and, again, Federal prisons will feel the impact. For now, however, it is the absence of this type of prisoner that characterizes this particular era of U.S. political history.

Endnotes

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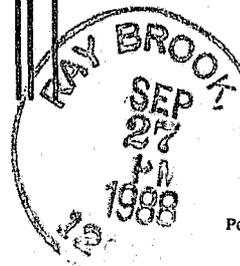
¹³The case is the subject of a new book by Junius Scales: *Cause at Heart: A Former Communist Remembers*, Athens, Georgia, University of Georgia Press, 1987.

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