Roger Nash Baldwin and the American Civil Liberties Union

Mathias Alfred Jaren
Roger Nash Baldwin and the American Civil Liberties Union –
Legal Underpinnings of Constitutional Social Work.

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"The mass of men serve the state thus, not as men mainly, but as
machines, with their bodies. They are the standing army, and the
militia, jailers, constables, posse comitatus. In most cases there
is no free exercise whatever of judgment or of the moral senses,-
but they put themselves on a level with the wood and earth and
stones,- and wooden men can perhaps be manufactured that will serve
the purpose as well." Henry David Thoreau

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2002) examined Roscoe Pound’s Sociological Jurisprudence working at Harvard
Law School with Pound’s ”Red Collection” resulting in analytical studies of
legal paradigm construction. Also Dr. Jaren reworked the introduction to
Roscoe Pound’s book “The Spirit of the Common Law.” This paper was completed
at Princeton University, with many thanks to the kind and diligent library
staff. Likely best found at the Botanical Garden, Oxford, sitting on Charles
Dodgson’s old bench.

2 Harding, Walter, The Variorum Civil Disobedience, p.33 From the original essay
Civil Disobedience written by Thoreau while in jail for refusal to pay taxes,  c.
1967 Twayne Publishers NY
The thesis for this essay is that social work, acting for the benefit and welfare of others, can be accomplished effectively by non-lawyers employing an agenda of political and legal interventions. Legal interventions even as uncomplicated as filing an amicus curiae brief for some unknown defendant being prosecuted for an offense against his government can have significant and important long term implications. This thesis is examined in the context of a life devoted to civil liberties - The Life and times of Roger Nash Baldwin.

Roger Nash Baldwin passed away from the twentieth century, at the age of 97. From his origins in 1884 among the Boston Brahmins of the late 19th century until his demise, Baldwin lived at the nexus of social confrontation and change. Why look at law and American Civil Liberties through Baldwin? The answer lies in divergent areas.
Baldwin’s life serves as an exemplary demonstration of a life dedicated to civil liberties, a human catalyst uniquely capable of blending legal skills and expertise with political confrontation. Discovering the "engine" which ran this process is an enriching intellectual experience. The engine metaphor is used in this paper to discuss the component parts of a social change process.

This process encompasses two world wars, shifts in the legal and social philosophies of America, and the many variations of constituent participants whom Baldwin concerted into a force of social and legal change. We will discover that many "fronts" on which Baldwin operated were not definitively changed by Baldwin and his compatriots. Alternatively, it appears that Baldwin, the many people who acted in concert with Baldwin, and the litigation they pleaded compelled moderation in significant twentieth century social controversies where no other interveners would act.

Baldwin's successful life was one devoted to social balance, and change in a century of social crisis. He was uniquely American. Constantly at the center of controversy, criticism, and at times denigration, an inner strength, a light of inspiration, became a career.

In his biographical early years, there are people remembered and circumstances recalled, which stand as good evidence to define the foundations of a career in battle with legal and social forces contrived to deny individual civil liberties. Baldwin's early life in Boston was definitively upper class.
He was born January 21st 1884 into a family of "Mayflower" descendants, both the Nash and Baldwin families are recognized family lines which can be traced back to the Pilgrims.\(^3\)

The Baldwin family lived in Wellesley, Massachusetts, only a few miles from Concord, and the residuals of the Transcendentalists Emerson, and Thoreau. The family home atop a hill in Wellesley in the late 19th century had all the markings of a farm, - animals, livestock, and hand managed chores. From nearby Lexington, a man named Bradford Torrey, the Lexington City Clerk, often assisted the young Baldwin in his lifelong hobby of bird watching. Torrey was also the executor of Thoreau's literary journals, and Baldwin reports having discussed Thoreau with Torrey. These discussions were followed by Baldwin's trips to Walden Pond.\(^4\) Lamson makes the observation that "Thoreau made nature his vocation and civil liberties his hobby, Roger simply reversed the process."\(^5\)

Observing the freedom of birds was a likely inspiration for Baldwin to liberate the oppressed.

The Baldwin family had clear ties and lines to social reform. In his youth Baldwin was exposed to a wide range of social reform and management. These exposures were striking, in that the economic framework of the family wealth was in

\(^3\) Lamson, Peggy - "Roger Baldwin, Founder of the American Civil Liberties Union." P. 1

\(^4\) Id. at 4

\(^5\) Id. p. 4
Baldwin, writing in an unpublished autobiography dated 1971, reported that his paternal grandfather became the first President of the Young Men's Christian Union in Boston. This Grandfather would take Baldwin on walks through the Boston Streets, and introduce Roger to all the liberal reform individuals with whom the grandfather shared concerns in the business of the managing the Union. Roger Baldwin had another relative, an Uncle, who was the President of the Long Island Railroad. The Uncle was also an active Democrat, Director of the National Child Labor Committee, and a Trustee of the Negro Tuskegee Institute. While still a youth at home, the uncle brought to dinner Booker T. Washington, President of the Tuskegee Institute. Lamson reports the "...event made an indelible impression on Roger...".

In his autobiography of 1971 Baldwin recounted that his social reform outlook was a result of his early association with the Unitarian Church.

"I started my infantile social work at the age of ten, and read history out of school with a reformer's eye on the side of the underdogs, and the rebels."  

Harvard according to Baldwin, was "inescapable" after his

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7 Lamson, supra note 3, at pg. 8. In Lamson's interviews with Baldwin she observes that the dinners in the Baldwin home with Negroes and Jews were infrequent.
8 Baldwin, Supra note 6 n.p.
Wellesley public school years. Harvard life was uncomplicated. In the interviews with Lamson Baldwin revealed he was an activist at Harvard. Reservedly, an activist in 1903 was an individual who "worked in Phillip Brooks House, the religious Center. I took on adult education classes for working people. I had no social philosophy except for to be helpful, and enjoy it."9 Graduating from Harvard in 1905 Baldwin earned an A.B. and a master's degree in Anthropology.

Harvard would be instrumental to Baldwin's career on several occasions. The first of which was providing him the recommendations and association to secure a position in St. Louis as Director of a neighborhood settlement house, the Self Culture Hall, and an associated position to create a department and teach the first course in Sociology at Washington University in 1906. Interestingly, the St. Louis position was confirmed as being Baldwin's correct choice by Louis D. Brandeis. Brandeis, counsel to Baldwin's Father, met with Roger "...who advised me to take it (the St. Louis position) as against a business offer from my father's partners."

Brandeis advised the young Baldwin that "... you are already committed and St. Louis where I began my career will fit you better than Boston where you have too many ties to make your own way."

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9 Baldwin, Supra note 6 at pg. 2
And in his later years reflecting back on Brandeis he makes the following observations:

Brandeis was a household god from my youth. There was something different about him that most people seemed to feel, a bit Olympian, a sweet gentle apartness that made his words seem oracular, so thoughtful, so deliberate. I had seen and talked with him so often in different places. ¹⁰

In St. Louis Baldwin took up residence at the settlement House, and in the course of time began teaching at Washington University. The Settlement house was in the slums of St. Louis. As in any neighborhood there were conflicts, among the ethnic and the impoverished, these conflicts often followed lines of religious and national identities, still strong from recent immigrations and cultural differences. Fighting between Jewish and Irish kids resulted in the kids being picked up and hauled before a judge. Baldwin "following his brood into court would argue for their rights, pleading for probation instead of detention for them."¹¹

This was the first instance of Baldwin standing before a judge, with no legal training, practicing the art of advocacy. The mixture of his developing views about the influences of poverty and class, ideas perhaps developed in his teaching at Washington University, and the court sessions is meaningful and instructive.

¹¹ Lamson, Supra Note 3 p. 33
These early years advocating for youthful offenders incapable of advocating their own interests demonstrates a coalescence of law and social work/reform soon to become Baldwin's hallmark and career. His energies before the juvenile court were rewarded at the age of 23 with an appointment to the position of Chief Probation Officer.

"The labor unions and social workers were on one side, and the real estate men and reactionaries were on the other." Baldwin and others drafted a bill to abolish the outdoor open vaults for sewer in the yard commons of the district, the tenement practices of commercial baking and sweat shops, and to secure an appropriation for trash collection. The bill was presented to the House of Delegates in 1910, and the chambers were jammed with "...seven or eight hundred landlords, largely Jewish immigrants...who attempted to hoot down the bill." The article goes on to focus on the failures of the slums, and Baldwin makes an interesting assertion,

"Following the agitation for legislation came the National Conference of Charities and Correction and more publicity. One newspaper waged war in the cause of the bills."

This early article of Baldwin's is exciting. It is a subtle statement of Baldwin's career. Baldwin has by this time discovered how to rest in the eye of a storm. Amidst the calm around him spirals the fury of human conflict, compassion,

12 Id. at p. 826
13 Id. at p. 827
contempt, and political intrigue.

Baldwin had already perfected the ability to concert powers for social change. Baldwin before the courts, Baldwin before the legislatures, Baldwin as a civic administrator and civil leader.

Baldwin, the moderate radical. Baldwin's ties to Emma Goldman early in his career are reflected in papers he saved. An interesting early nexus between the Unitarian Church, Baldwin, Civil Liberties (free speech,) and Emma Goldman can be seen in a letter from Baldwin's papers at Princeton. After numerous attempts to locate a hall for Ms. Goldman, Baldwin succeeded in locating a forum for her in the Hibernian Hall. Baldwin stated his social work began with his childhood involvement with the Unitarian Church. Among Baldwin's early papers is a statement issued by an Indianapolis Unitarian Minister, dated December 4th 1910.

"I have been asked to express an opinion in regard to the refusal of the Police Department to allow Emma Goldman to speak in Indianapolis...Dangerous as Emma Goldman may be more dangerous is the man who attempts to suppress free speech....The more the suppression, the more the danger... If Emma Goldman be teaching error, the best refutation will be to let her speak, and trust that the American people will recognize her fallacies....There is not one man in America, from Chief Hyland to President Taft who should be given the power to decide who shall speak, and who shall not.... The Constitution of the U.S. reads:

Congress shall make no law abridging the freedom of speech, or the right of assemblage.... If I or the Chief of Police, or the President attempt to set aside the Constitution, except in ways provided by the
Constitution, are we not the real lawbreakers?\textsuperscript{14}

Emma Goldman's presentation - cancelled in Indiana was advertised in a handbill:

The Chance of your Life Time to Hear the Noted Anarchist Emma Goldman...who is one of the most talented, but most misunderstood woman (sic) in the world. Subject -Anarchism and What It Really Stands For. The Philosophy of a new social order based upon liberty unrestricted by man-made law, the theory that all forms of government are based on violence hence wrong and harmful as well as unnecessary\textsuperscript{15}

Emma Goldman may have been the "Red Queen of Anarchy" \textsuperscript{16} to many, yet a small pamphlet from the Baldwin Papers included the following subject areas:

- Minorities v. Majorities
- The Psychology of Political Violence
- Prisons - Social Crime and Failure
- The Traffic in Women
- Woman Suffrage
- The Tragedy of Woman's Emancipation
- Marriage and Love\textsuperscript{17}

Goldman traveled considerably. On a trip in about 1910

\begin{footnotes}
\footnote{14 Baldwin Papers, Statement of Frank S.C. Wicks, In “The Pulpit” All Souls Unitarian Church, Sunday December 4th 1910, Seeley Mudd Archives, Princeton University Library}
\footnote{15 Baldwin Papers, Handbill of Emma Goldman's Indianapolis meeting, cancelled by the Chief of Police 1910. Seeley Mudd Archives, Princeton University Library.}
\footnote{16 Lamson, Supra note 3 at p.58}
\footnote{17 Baldwin Papers A Book to Arouse Thought, approx 1910, Goldman, Emma Mother Earth Publishing Company N.Y. Seeley Mudd Archives, Princeton University Library}
\end{footnotes}
Goldman passed through Concord, Massachusetts. There she met with Frank Sanborn, biographer of Henry David Thoreau.

In her autobiography, Goldman recollects that it was Sanborn who introduced Thoreau to John Brown.\textsuperscript{18} It is quite likely Baldwin’s had an early exposure to Emma Goldman there at Concord in 1910. Goldman recollects that she attempted to persuade Sanborn that Thoreau was the precursor of anarchism in the United States, to which Sanborn replied: "No indeed! ... anarchism means violence and revolution. It means Czolgosz. Thoreau was an extreme non-resistant."\textsuperscript{19} It is reasonable to infer that Goldman and Baldwin discussed political issues and Thoreau. Thoreau's resistance, like Kropotkin's, could be readily ascertainable in Goldman by Baldwin.

In his autobiography of 1971 Baldwin mentions that "through a visit to St. Louis by Emma Goldman I found the anarchists - libertarians, they called themselves. I studied the literature of protest, the Utopias, the kind of non-conformist authors not taught at Harvard, particularly the Russian Peter Kropotkin, to whom I am most drawn."\textsuperscript{20}

Kropotkin wrote pamphlets from his exile in England. Born into nobility in Czarist Russia in the 1860s, as a young adult he was arrested in St. Petersburg, and held in prison without

\textsuperscript{18} Goldman, Emma, \textit{Living My Life} p. 585 c. 1931 Alfred Knopf, Inc, NY Goldman, by 1919 would be jailed at Ellis Island and subsequently deported to Russia

\textsuperscript{19} Id pg. 585

\textsuperscript{20} Baldwin, supra note 5 p. 3
trial. He literally escaped from prison and fled to England.\textsuperscript{21}

Baldwin himself collected the pamphlets, and in writing an introduction to the collection, refers to the Russian from whom he gained many of his insights:

Mutual aid, sympathy, solidarity, individual liberty through free cooperation as the basis of all social life - these are positive ideas at the root of Kropotkin's teachings.\textsuperscript{22}

A selection from the pamphlets collected by Baldwin into the book of 1927 reveals Kropotkin's view of the law, and legal rulemaking, and sounds strangely like the observations Thoreau made in Concord, over fifty years earlier, while in the Concord jail:

The law, which on its first appearance presented itself as a compendium of customs useful for the preservation of society, is now perceived to be nothing but an instrument for the maintenance of exploitation and domination of the toiling masses by rich idlers. At the present day its (the law's) civilizing mission is nil, it has but one object, - to bolster up exploitation.\textsuperscript{23}

Centering Baldwin's life among his own readings, it can be seen that Baldwin took seriously Kropotkin's notions, perhaps Thoreau's as well, in his own pursuits to ensure that the law

\textsuperscript{21} Baldwin, Roger N., Kropotkin's Revolutionary Pamphlets - A Collection of Writings By Peter Kropotkin. pp. 1-3 c. 1927 Blom, Inc. N.Y..

\textsuperscript{22} Id. at p. 3

\textsuperscript{23} Id. At p. 211
could have a civilizing effect. The law could serve the people, not just the "rich idlers."

Another social drama unfolding on the streets of St. Louis, and elsewhere was the plight of the I.W.W., the Industrial Workers of the World. According to Baldwin,

The I.W.W. came to St. Louis and claimed my attention by their demonstrations for unemployment aid. I found them kin, men with vision and courage, a simple working class resistance to capitalism.  

Baldwin's observations of the I.W.W. in St. Louis made a significant impression. At the end of World War One in 1920 when he assumed the position of Director for the American Civil Liberties Union, Baldwin had already spent several years in the labor market as a card carrying member, and traveled from job to job to learn the work culture of blue collar America. And, writing in 1917 Baldwin commented:

My own sympathies inclined me to the defense of men, a few of whom I had known in St. Louis, and who all had for ten years waged a spectacular fight in city after city for the right to free speech on the streets and to organize on the job.  

The task in St. Louis most influential in changing Baldwin's life was his affiliation with the American Union Against Militarism. The AUAM was organized to protest the first world war.

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24 Baldwin Papers, Unpublished recollections of St. Louis undated. Seeley Mudd Archives, Princeton University

In minutes of the committee of February 10, 1917, it is recorded that:

A letter for Mr. Kellogg from Roger Baldwin was read urging the American Union to undertake mass meetings all over the country...Mr. Kellogg suggested that Mr. Baldwin ought to be identified with the American Union as a member of the committee or a local cooperator. The advisability of having local cooperators or cooperating groups was favorably discussed, as well as having a national advisory council.26

Baldwin was ready for New York. The storms will change, but Roger Baldwin had discovered the secret to being in the eye, and not the storm. It is a secret still to be explored, experimented with, and further understood. Baldwin had left St. Louis in the early Spring of 1917 to take up a position with the AUAM as the Director of its Special Bureau for Conscientious Objectors. In June of 1917 Baldwin was busy lobbying in Washington against the Selective Service Act being considered by Congress. The Kellogg letter is informative also because it mentioned the role of "local cooperators." The lawyer network to become the American Civil Liberties Union backbone is based upon this principle of local cooperators.

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The NAACP would follow a similar model.

The AUAM Baldwin joined in New York was organized in 1914 by a woman named Crystal Eastman.

Eastman was one of several early women graduates from New York University Law School (1907). At the time of her law school graduation, she also held a Master's Degree in Sociology. In linking commonalities recall that Baldwin was originally hired in St. Louis to teach Sociology. Baldwin would be significantly influenced in his early New York years by Eastman, who, acting with Baldwin, and Norman Thomas, created a committee within the AUAM called the Civil Liberties Bureau. Eastman's credentials include some impressive skills, skills which would be replicated by Baldwin later when he became the Director of the National Civil Liberties Union in 1917. In 1916 Eastman was at the helm of the New York Women's Peace party, and in that capacity she:

.... signed up 50,000 members, ran a national press service, distributed 600,000 pieces of literature, organized many Congressional Hearings, and held mass meetings in several cities.

Baldwin's objective was to create a class of conscientious objectors, who for religious and other reasons, were to be recognized as non-combatants. Baldwin was vigorously opposed to the draft. The AUAM did not agree with Baldwin's aggressive

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posture on ending conscription.

In 1918 Baldwin's signature went out on a letter asking for lawyers to support individuals seeking conscientious objector status, and other individuals faced with prosecution for acts with violated existing alien and sedition laws. While a significant number of lawyers and law firms rejected Baldwin's requests for affiliation, a substantial number agreed. The letter campaign also closely resembles Eastman's 1916 work establishing the New York Women's Peace Party.\(^{29}\)

The next day the editorial page of the New York Times opened with these remarks:

> The Jails Are Waiting For Them
> .... Inevitably there must be restrictions on speech as on the exercise of religion.... these simple principles are ignored by a little group of malcontents....engaged in the same task of antagonizing the settled policies of our Government. The freedom of speech wanted by the troublesome folk is that of talking sedition and of lending aid and comfort to our enemies....but they are an unimportant and minute minority - noisy out of all proportion to their numbers.\(^ {30}\)

The following September in 1918 the offices of the National Civil Liberties Bureau were raided by federal officers, and service for production of all papers belonging to the Bureau was made upon

\(^{29}\) Supra Note 35

\(^{30}\) New York Times Wednesday July 4th 1917 page 8 col. 4
Walter Nelles, at that time of counsel to the Bureau. At the time of the raid Baldwin himself was called up for national service, and refused induction.

Writing for The Nation Baldwin reported on his court room testimony refusing to be inducted:

I am before you as a deliberate violator of the Draft Act...The compelling motive for refusing to comply with the Draft Act is my uncompromising opposition to the principle of conscription of life by the state for any purpose whatever, in time of war or peace. Though at the moment I am of a tiny minority, I feel myself part of a great revolt, surging up from among the people the struggle of the masses against the rule of the world by the few, profoundly intensified by the war...

Baldwin's fate to being imprisoned was sealed when the Supreme Court ruled in Avery v. United States that the Congress has constitutional authority to draft men to raise armies.

In her autobiography Emma Goldman reflects on Baldwin during this period:

Roger Baldwin proved to me to be a great surprise. In former years he had impressed me as rather confused in his social views, a person who tried to be all things to all men. His stand at the trial for evading the draft, his frank avowal of anarchism, and his unreserved

32 New York Times Sunday September 1, 1918 Page 4 Col. 3
33 Baldwin, Roger The Faith of a Heretic. The Nation Nov 9 1918 - an address by Baldwin to the Court being sentenced for violation of the Selective Service Act October 18th 1918.
34 245 U.S. 366 (1918) Unanimous decision. Plaintiff's theory was involuntary imprisonment under the thirteenth amendment
repudiation of the State to coerce the individual had made me conscientious of guilt toward him. 35

From the papers of Roger Baldwin comes his own handwritten recollections of the judge's remarks at this trial:

In all you have said I think you have lost sight of one very fundamental and essential thing, for the preservation of that American liberty which by tradition you fell you are a genuine upholder. A republic can last only so long as its laws are obeyed. ...you are entirely right, there can be no compromise....he who disobeys the laws knowing that he so does with the intelligence that you possess, must, as your are prepared to, take the consequences. You are sentenced to the penitentiary for eleven months and ten days.36

Baldwin's self report of his prison time is as follows:

I enjoyed the year in prison, with two months off for good behavior, because it was an adventure and I was doing what I believed.37

The views of the prison experience have different interpretations, and according to one report:

Baldwin's tenure at the Tombs (before the trial) was not unpleasant, largely because the Justice Department needed his services. The Department had promised to return the Bureau's files in good shape, but some of its agents had been examining the files had so completely disarranged them that a special

35 Goldman, Supra Note 18 at p. 665

36 Baldwin Papers Judge Meyer's Statement at the trial of Roger Baldwin. Handwritten excerpt, undated. Seeley Mudd Archives Princeton University Library

37 Baldwin Papers, unpublished note on his year in prison, 1971
guard accompanied Baldwin from the prison to the Department's Offices, where he continued to receive his friends, and where he spent time discussing philosophy and politics with federal agents as he worked on the Bureau's files. 38

While it is purely a matter of conjecture one may wish to recollect that Louis D. Brandeis, who had been appointed as Associate Justice of the U.S. Supreme Court in 1916, two years prior to Baldwin's imprisonment in 1918 was the man who counseled Baldwin in Boston in 1906 to take up the work of social reform in St. Louis. Could it have been that it was Baldwin's circle of influence, perhaps Brandeis himself, which intervened with Baldwin's imprisonment? There are contrasting views.

In a report publish by The Nation in 1919, a different view of the prison time emerges:

Typifying brute force, however necessary it seems to be, the prison fails with an ordinary man as with the noble spirit like Mr. Baldwin. He is now going to devote himself to the social revolution by joining forces with the radical labor movement, in order to help keep it within peaceful limits if he can, for he is an absolute non resistant, and wholly opposed to force. 39

What is particularly interesting in this recounting of Baldwin is the reference to Baldwin being wholly opposed to force. We recall that the "Red Queen of Anarchy" Emma Goldman reported in her autobiography that Thoreau's biographer viewed Thoreau as being "an extreme non-resistant." 40


39 Villard, Oswald Garrison On Being In Jail. The Nation, August 2 1919 pp 142-143

40 Goldman, Supra note 18
Ironically, the brute force and devotion to social revolutions accorded to Baldwin in this article conflict with later reports of the same period made by Baldwin himself:

When I left prison in 1918 I had only one major purpose, to marry the woman I had known in public work for some years, Madeline Doty, a well known journalist and author, a lawyer who did not practice law. After our honey moon I followed another plan to spend a few months in basic industries as a manual worker. I always found a job through the midwest, and even came home with a little money from the smelter, the steel mill, the railroad yard, the brick kiln.41

Baldwin was married, but two months later he was a member of the I.W.W. and out to the midwest for work as a laborer on construction sites to gain experience in the working classes. Yet from the Baldwin papers at Princeton a letter to the Board of St. Louis Police Commissioners appears:

In my absence yesterday (October 13th 1919) from the home of Miss Mary Bulkley (St. Louis, Mo.) where I am a guest, two city detectives entered without a search warrant, and the detectives falsely represented themselves as acting under orders of the federal government. I resent this unwarranted invasion of my constitutional privacy for the

41 Baldwin Papers, Unpublished reflections on life following release from prison, 1918 Seeley Mudd Archives Princeton University Library
lady whose guest I am, and whose home was ransacked so unceremoniously...".42

The raid in St. Louis on Ms. Bulkey's home where Baldwin was staying October 1919, was near in time to an unpublished article Baldwin wrote which he titled "Political Police". An extract from that article illustrates Baldwin's sensitivity and understanding to methods of government officials who carried out covert government police actions:

The methods of the political police everywhere are to familiarize themselves with the purposes and activities of the opposition, to spy upon the known leaders, to ferret out secret meeting places and printing presses, and to obtain the proof of illegal acts.

To do so many of them join the organizations they seek to destroy, playing not only the role of spy and stool pigeon, but also of provocateur. By inciting the very political offenses the are set to detect, they make easier their task, and at the same time demoralize the competition.43

Baldwin's year of events and surprises during 1919 also included his name being mentioned at the National Conference of Social Work at their annual conference in Atlantic City, New Jersey:

The delegates to the National Conference of Social Work today removed the name of Roger N. Baldwin from membership of the Executive

42 Baldwin Papers, letter dated October 13th 1919 to the St. Louis Board of Police Commissioners.

43 Baldwin Papers, Political Police, short unpublished draft Baldwin's opinions. It appears from the content regarding changes in Russian and the lack of World War Two information that the item was prepared in during the period 1919-1922
Committee because of his (1918) conviction upon the charge of violating the provisions of the selective service law. The vote on the proposal was 285 to 214.44

By December of 1919, with the war ended, and other events having subsided, Baldwin issued a letter to the Board of the National Civil Liberties Bureau:

The cause we now serve is labor. Three classes of individuals we seek in carrying out the new work: 1) those directly engaged in the labor struggle, 2) those who by their writing and speaking are close the labor problems, and 3) those who stand on general principles of freedom of expression45

Baldwin's busy schedule included work in the midwest I.W.W. subsequent to his release from prison, as well as the stop in St. Louis. It is mentioned in other correspondence that the marriage to Doty on August 8th 1919 was one where she "never took my name." Ms. Doty's vows included the following lines:

My primary interest and joy is the great revolutionary struggle for human freedom today, so intense, so full of promise. I regard our union only as contributing to that cause, making us both serve it the more passionately, the more devotedly46

Sixty-six years later Baldwin reflected on the nuptial vows when

44 New York Times, June 7th 1919 page 3 col. 4
45 Baldwin Papers, Memo to Board of National Civil Liberties Bureau dated December 19th 1919
46 Lamson, supra, note 3 at pg. 117
discussing the marriage agreement with his biographer, Peggy Lamson:

      Do you know what I think? I think these (the vows) are full of bullshit! 47

Madeline Doty graduated from New York Law School in 1902, and for a time was a roommate in Greenwich Village with Crystal Eastman. Baldwin's relationship with Madeline Doty, which ebbed as she moved away to Europe in 1925 to take up a position as Secretary of the Women's International League, never really ended until Madeline died at the age of 86. Baldwin and Doty were estranged as a couple when she returned in 1929 to New York.

Baldwin had become involved with Evelyn Preston, (an heiress to Standard Oil fortunes) Doty knew it, and they parted. In 1935 Baldwin and Doty were divorced in Geneva. When Evelyn Preston died, Baldwin again maintained correspondence with Madeline, who at the age of 50 had continued to live in Geneva. 49 Baldwin reported that he helped her financially until she died at 86. 50

Here, at the end of the First World War, and the end of the struggle for anti draft conscientious objection, the American Civil Liberties Union came into being on January 20th 1920. Of course much was happening outside the immediate realms of the life of Roger Baldwin and the American Civil Liberties Union.

47 Lamson, Supra note 3 at p. 117
48 Eckhaus, Supra note 27 at p. 1971
49 She studied at the University of Geneva, receiving a Ph.D in International Relations in 1934 at the age of 66
50 Baldwin Papers, unpublished memo entitled "love", 1974 Seeley Mudd Archives, Princeton University Libraries
Many events at this landmark year were of great importance to Constitutional law, and the individual rights of Americans. In 1919 the 19th Amendment was passed, and ratified August 26th of 1920, providing women's suffrage.

Warren G. Harding was elected President, and two men named Sacco and Vanzetti were arrested in Massachusetts.\footnote{Joughin, G. Louis and Morgan, Edmund M., \textit{The Legacy of Sacco and Vanzetti}. NY Harcourt 1948} A New York ex-assemblyman named Ben Gitlow was convicted for criminal anarchy. This conviction ultimately was heard and upheld in 1925 by the U.S. Supreme Court.\footnote{\textit{Gitlow v. New York}, 268 U.S. 652 In a vote of 7-2 Justice Sanford upheld Gitlow's conviction. "There is no absolute right to speak or publish without responsibility. A state may punish those who abuse the freedom by utterances inimical to the public welfare}  

Last, in this year of great change, America went dry, as Article 18 of the U.S. Constitution took effect.\footnote{Article XVIII Passed by Congress December 17th 1917 and was Ratified January 29th 1919.} Meanwhile, Baldwin was off late in 1921 to visit with a compatriot of anti war efforts in Terre Haute, Indiana - Eugene V. Debs. Debs had recently been released from prison for "encouraging dissatisfaction in the armed forces"\footnote{Baldwin Papers, Recollections dated 1964, of Eugene Debs. unpublished, n.p} by President Harding. Baldwin makes many interesting observations about Debs, but one stands out - "His stature transcended dogma." Two mirror reflections of Baldwin himself come to mind. Baldwin frequently emerges as peculiarly neutral in the years to follow world war one. But a second idea echoes in Baldwin's use of the
term “transcend”.

Looking back to the early years near Concord and Baldwin's boyhood exposures to neighbors who could still recollect the 19th century master of civil disobedience, Henry David Thoreau, we may have discovered an inadvertent clue.

The use of "transcends" by Baldwin when characterizing Debs indirectly tells us how Baldwin viewed men of a higher standard, a measure he was likely to apply to himself. Baldwin and Debs spoke of their prison years, in fact Debs was no stranger to prison and trials, having been convicted in 1895 of stopping the mails during the Pullman strike.55

Speaking to Baldwin, Baldwin recounts Debs description of his more recent release from prison:

He told me with some excitement of the secret trip he made to Washington from the prison, unguarded, on the invitation of Attorney General Palmer to discuss his release, a sort of trial balloon, I had gathered to see the reaction when the story broke. When I met the Attorney General Debs said, "My tongue was tipped with fire, and I told him exactly where I stood." The Attorney General, a Quaker, prided himself on his opposition to the war on principle - but not that war to end war.56

Debs was to become a member of the Board of the American Civil

55 In Re Debs. 158 U.S. 564 (1895) Unanimous, the Entire Strength of the Nation may be used to enforce in any part of the land the full and free exercise of all national powers.

56 Id. Baldwin's Recollections of Debs
Liberties Union, and remained thereon until his death. Ironically, Baldwin in this same memo stated that "I never had the chance to see Debs again."  

A clue here to the limited degree of Board involvement with Baldwin in his leadership is apparent. We may begin to think Baldwin was more individualized in his leadership than similarly situated Directors operating under the aegis of a board of directors. One has often heard that the 1920s were the "roaring twenties". A time of flag-pole sitting, bath tub gin, and human excess in many forms. In 1922 Baldwin, well situated financially, was to become a Director of yet another significant social change organization, The American Fund for Public Service.

The American Fund was created through the donation of two million dollars by an individual named Charles Garland. Baldwin described the creation of that fund:

It just so happened that in 1920 Charles Garland of Boston came into an inheritance at twenty one years of age, and because he had not earned it, refused to take it for his own use but chose to put it to public use. I had friends who knew Garland, so I went to see him with a proposal which shortly became the American Fund for Public Service, with two million dollars to be given away.  

Baldwin was now in charge of two million dollars, which he

57 Id. Baldwin's Recollections of Debs

58 Lamson, supra note 3, at 148
effectively distributed to causes and individuals which he deemed to be involved in socially significant controversies and difficulties.

It is interesting to note that perhaps the Garland Fund itself was created out of social controversy.

Reflecting on his work as in house counsel for the American Civil Liberties Union, Arthur Garfield Hays focused on the Garland contribution in an interesting conversation Hays reported in which he was asked where the American Civil Liberties Bureau got all its money. To which Hays responded:

A great deal of money used to come from George F. Baker at the First National Bank. Not directly of course, but in much the way the Wendel money helped the communists in the Reichstag case. You've heard of the Garland Fund? The man in the overalls beside the truck in that picture is Charles Garland. The snapshot was taken after his conviction in Pennsylvania. The charge was adultery or something like that. Garland said to me, - " I was living in Bettina (Pa) and the three children on my cooperative farm, but I don't feel I should plead guilty to any crime!"  

Baldwin doesn't mention in any of his correspondence or memoirs that Garland was prosecuted for pedophilia. There are curious references to homosexuality occurring in the memoirs of another in house counsel for the American Civil Liberties Union, Morris Ernst:

Law students, particularly those at Ivy League Schools, know that leaders of the bar refuse to represent homosexuals. The Greeks at the time of Pericles inhabited a rocky piece of soil and their population was greater than then science of farming could support. How to exercise population control? Homosexuality was the vogue; infanticide was condoned, and masturbation was scarcely worthy of note. Love between men was noble...

At the age of 23 in St. Louis Baldwin was to adopt two boys, both age 11, who were wards of the St. Louis Juvenile Court, whom he renamed Toto, and Oral. Together they lived in St. Louis at a pension with thirty others until Baldwin left St. Louis. Baldwin certainly was all thru his life unconventional, perhaps Toto and Oral, and the ruminations of Ernst, the reflections of Garland's conviction, and Baldwin's boys in St. Louis are all social habits and events within a picture as yet not well understood. Striking is the fact that J. Edgar Hoover began the Palmer raids in this period. It is possible that sexual orientations among Baldwin, Ernst, Garland, and J. Edgar Hoover served as an underpinning of cooperation and mutual interest. No less important, while taboo for the period, the fervor for civil liberties can easily include the right to one's sexual orientation. Alternatively, to promote such a cause during the period would have been poorly received by the public. It follows inferentially, one can estimate that Baldwin, and Hays along with Ernst were well positioned to facilitate Garland's post Pennsylvania trial decision to become a philanthropist.

The Garland Fund, as it was to become known, was closed in

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60 Ernst, Morris L., A Love Affair with the Law, p. 49, MacMillan, NY 1968

61 Lamson, supra, note 3 at pp. 37-39
1941. A news item from the period reports:

Heir's $2,000,000 gone, spent on causes; Garland said he didn't deserve the $900,000 his banker father bequeathed him, and he turned it over to a "...liberal red pink board of trustees," declining even to join the organization. Garland has been the ideal donor, commented Roger N. Baldwin...he 'scarcely ever attended a trustees meeting.'

The Board of Directors for the Garland Fund included Benjamin Gitlow, Morris Ernst and Norman Thomas. It is interesting to take notice of the final report from the fund, as it illustrates how the American Civil Liberties Union was able to operate using a front, creating significant publishing expenses, and often paying legal fees. Several notable expenses come from the final report:

For the Period 1922 through 1941:

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Periodicals and Publications</td>
<td>499,000</td>
</tr>
<tr>
<td>Workers Education</td>
<td>366,000</td>
</tr>
<tr>
<td>Legal Defense</td>
<td>143,000</td>
</tr>
<tr>
<td>Research</td>
<td>140,000</td>
</tr>
<tr>
<td>Strike Relief and Publicity</td>
<td>135,000</td>
</tr>
<tr>
<td>Negro Agencies</td>
<td>95,000</td>
</tr>
<tr>
<td>Educational Propaganda</td>
<td>84,000</td>
</tr>
</tbody>
</table>

The meaning and significance of the American fund, particularly with respect to periodicals and publications is readily apparent in a news item of 1923:

Civil Liberties Union Accused of Obstruction by Sending Circulars; .............O.L. Smith, Prosecutor said he had a copy of a circular bearing the letterhead of the American Civil Liberties Union, appealing to the people of Berrien County Michigan not to give their

62 Chicago Times, June 19 1941

63 Memo of closure and final accounting, The American Fund For Public Service, dated June 30th 1941. Baldwin Papers, Seeley Mudd Archives, Princeton University
support to the trial of Foster and his alleged fellow communists. Smith said that 15,000 of these circulars had been distributed through the county in the last week for the purposes of increasing the difficulty of obtaining a jury.  

The American Civil Liberties Union and Roger Baldwin had become a force to be reckoned with by judges and communities, corporations and government officials. During the remaining years of the 1920's and into World War Two, Baldwin would make an imprint on other significant trials and controversies of the time.

On the front page of the New York Times June 22nd 1925 was emblazoned the following news banner:

$ 10,000 Defense Fund Is Asked for Scopes; To be Spent on Case in Lower Courts. (The article, amazingly, was a solicitation for contributions)

It was through the sponsorship of the American Civil Liberties Union that the arrest of Scopes was brought about as a test of the Anti Evolution Law in Tennessee. But the response has been so great that we believe citizens all over the United States will want to have a part in this issue that will shape the future course of education in this country. Contributions should be addressed to Helen Phelps Stokes, ACLU, NY.  

The Scopes trial was a highly orchestrated event to establish a national forum for testing the anti-Darwin views of secular school teachers and districts in Tennessee.

As reported by Samuel Walker an ACLU Secretary was clipping

64 New York Times, March 13th 1923 pg. 3 col. 7

65 New York Times, Monday June 22nd 1925 Page 1

news items from papers and noticed the recent passage of a law in Tennessee which forbade the teaching of evolution. The ACLU wanted to test the law in the courts, and sought a straw man to stand trial for evolutionary teachings. Scopes was arrested for violating the Tennessee law, and the ACLU arranged for his defense. The story continues in a small town of Dayton, Tennessee.

Local officials wanted to have the publicity associated with a trial of such social significance to bolster the town economy. The town's promoter, George Rappelyea solicited William Jennings Bryan to enter the case and prosecute Scopes. Scopes, through the ACLU, arranged for Clarence Darrow to represent his right to teach evolutionism. From records it appears there was a dispute over Barrow's position as lead counsel, opposed by among others Felix Frankfurter, who was a Board Member of the ACLU. Frankfurter's objection was that Barrow's flamboyant style was not sufficiently respectable.67 Hays, in-house counsel for the ACLU, and Scopes himself, insisted on Barrow. Baldwin, in a memoir note from 1974 reflected:

   Barrow was a natural for the ACLU. When W. J. Bryan volunteered his services to the State of Tennessee, Barrow volunteered to the ACLU, which managed the defense. The Bible v. Science, the fundamentalist v. the agnostic ... it was a great show, the best publicized case the ACLU ever had.68

By the middle of 1926 with the Scopes trial behind him, Baldwin reflected in a memo stating that "With increasing prosperity, far fewer violations of civil liberties. Only 135 cases compared with 435 the previous year."

67 Id. At p. 73
68 Baldwin, Memo on Clarence Barrow and the ACLU, March 1974
Roger Baldwin papers, Seeley Mudd Archives, Princeton University
By 1927 the cases dropped even further, to 99. Cases are at the lowest point since World War One, and as Baldwin notes "Militancy of all minority movements has declined."[^69]

All was not well with Baldwin personally. His and Doty's marriage was on the rocks.

In October of 1926 Doty had left him for her position in Europe with the Women's International Peace League in Geneva. Baldwin reportedly was seeing a psychiatrist that year, who recommended he take a two year leave of absence.[^71] Baldwin went to Russia, and stayed with Kropotkin's widow, collecting Kropotkin's pamphlets. These were in 1927 to be published by Baldwin as "Kropotkin's Revolutionary Pamphlets."[^72]

The American Civil Liberties Union, for all the newsprint and controversy, is not reported during the period 1920 to 1930 as being extraordinarily active. The following table illustrates the focus and effort of the ACLU:

<table>
<thead>
<tr>
<th>Activities at ACLU 1920 to 1930[^73]</th>
<th>Defended</th>
<th>Declined</th>
</tr>
</thead>
<tbody>
<tr>
<td>Freedom of Expression</td>
<td>9</td>
<td>1</td>
</tr>
<tr>
<td>Freedom to Protect One’s self</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>Internal Threats to Social Order</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Freedom of Association</td>
<td>3</td>
<td>2</td>
</tr>
</tbody>
</table>

[^69]: Baldwin, Memo dated 1926, Baldwin Papers

[^70]: Baldwin, memo to files, 1927, reviewing 1926. Baldwin Papers - Seeley Mudd Archives, Princeton University Library


[^72]: Baldwin, Supra Note 68

[^73]: Donohue, William A Organizational Change Within The American Civil Liberties Union, p. 89 unpublished doctoral dissertation, NYU 1980 (Sociology)
The table indicates formal involvement with approximately two cases each year. The significance of the table lies in two areas. One focus, how the ACLU viewed different social issues. As a note to priorities and social issues, it is often difficult to see any distinction between Baldwin, and the viewpoints of the ACLU Board of Directors. The second observation one can assert using the table is that the ACLU was a curious hybrid of legal clearing house, yet also a personal socio-legal agency of Roger Baldwin.74

A very significant scholar and Dean of Harvard Law School, Roscoe Pound,75 had been working ponderously on his notion of Sociological Jurisprudence during the formative years of the ACLU and Roger Baldwin’s life and career. Socio-legal thinking would have been very well understood by Brandeis when he mentored Baldwin. By the late 1920’s the force Pound’s ideas evolved into

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74 Sociological Jurisprudence was the core of Roscoe Pound’s work during the same period. It is interesting and worthy of note to recognize the ACLU and Pound’s work to have unusual associations. See Paradigm constraints in crafting questions for the qualitative exploration of legal theory by scholars in legal education: Lessons from Dean Roscoe Pound Jaren, Mathias Alfred, Ph.D., University of Minnesota, 2002, 217 pages; AAT 3034449

a more powerful application, Legal Realism. A meaningful interface of this paradigmatic shift can be seen in the work of N.E.H. Hull’s book which examines the remarkable shift from Sociological Jurisprudence into new perceptions of legal realism.\textsuperscript{76} The ACLU is a practical application of these ideas.

Reflecting back to the decade in St. Louis, Baldwin recognized early in his career that there were places where his Harvard credentials needed more than good social work and advocacy, - the American legal system was where change would occur, the kind of change Baldwin sought and expected.

Many years later rethinking his career in notes to a file for 1964 Baldwin makes the following remarks about his attitudes:

\begin{quote}
Since I was always in an organization, I reacted through it usually, and outside when I could not. The merits or character of the persons affected or their importance or lack of it, or sympathy or lack of it, never consciously made any difference in my actions. Of course I had my preferences, but I hope I did not show them. It was rights I was defending, not persons. \textsuperscript{77}
\end{quote}

At the close of the 1920s Baldwin's organizational reflections make peculiar sense. While the Garland Fund was still operative, the stocks which were its foundation would become valueless in the market crash of 1929. Baldwin's admixture of roles and responsibilities was adjusted to meet the social


framework of the period. Morris Ernst was Chairman of the Garland Fund Committee on Negro Work. Ernst was also by 1929 in house co-counsel with Arthur Garfield Hayes. In a modern sense, these individuals were engaged in a form of issue management between organizations.

The early ACLU did not get directly involved in issues of race. Instead the race concerns were taken on by the same individuals in the operating context of the Garland Fund. In 1929 this changed with the issuance of a memo by Ernst and others from the Garland fund. Ernst, a journalist named Gannett, a Harvard law graduate named Margold, and NAACP Secretary James Weldon Johnson issued forth the following strategy memo describing their forthcoming anti segregation plan:  

...a dramatic large scaled campaign to win equal rights in public schools, in the voting booths, on the railroads, and on juries.

The next set of events is conflicting. The Garland fund reports in the 1941 document that the amount spent for negroes is $85,000.00. Walker reports that the NAACP was given a planning grant of $10,000 to develop Margold's political strategy for blacks. But then the balance pledged of $90,000 was never received by the NAACP due to the crash of the stock market.

78 It is important here to recall Thurgood Marshall graduated in 1930 from Lincoln University in Pennsylvania, moving on to Howard Law School.  
79 Walker, Samuel  In Defense of American Liberties p. 89  
80 Baldwin, supra note 75  
81 Walker, Supra note 66 at p. 90
However, a third conflicting report occurs in McNeil's work on Charles Hamilton Houston, wherein she reports that the Garland Fund Committee on Negro work eventually approved the release of $100,000 to the NAACP for taxpayer suits. 82

The NAACP, Garland Fund, and ACLU were to some extent in concert on the next project of their mutual interests, liberation of segregated Black Americans in the south. This enormous undertaking would culminate in the decision of the U.S. Supreme Court to integrate public schools 24 years later in 1954. 83 In 1930 the NAACP originally nominated Margold (a white lawyer) to be the champion of their course to litigate school desegregation. However Margold was to be appointed to a position of in house counsel for the Secretary of Interior, and he declined the offer from the NAACP. In his place, the NAACP selected Charles Hamilton Houston, a prominent Harvard educated black attorney. Houston first worked with Baldwin in 1933 when Baldwin formally supported Houston's meeting with Franklin Delano Roosevelt. Houston went to the President to protest the lynching of two blacks in Alabama.

82 McNeil, Genna Rae Groundwork. Charles Hamilton Houston and the Struggle for Civil Rights c. 1983 Univ. of Penn

Lynchings were becoming a more observed criminal conduct.\footnote{84}{See “Strange Fruit” a poem by Abel Meeropol, Published in 1936 in The New York Teacher, and see also Billy Holiday’s performance at \url{http://www.youtube.com/watch?v=h4ZyuULy9zs}}

Baldwin reports in his own notes the following data: 1930 25 lynchings, 1931, 10 lynchings, and 1932 28.\footnote{85}{Baldwin papers, review of 1930, 31, 32, 33, Seeley Mudd Archives, Princeton University} Perhaps the monumental event in the period influencing the attention of the group, (ACLU-Garland Fund) was the trial of the Scottsboro boys. Nine black males between the ages of 13 and 20 were arrested in March of 1931 and charged with raping two white women, and charged with death in the electric chair by July 10th of that year.\footnote{86}{McNeil, supra note 80 at p. 108-113} This socio-legal drama was to galvanize the NAACP, and compel a wide range of individuals to focus their energies on civil rights for Black Americans. There are interesting parallels between Houston and Baldwin. Both attended Harvard, both made journeys into the U.S. heartland and throughout Europe to study and evaluate social conditions. Both were organization builders, Baldwin at the ACLU, and Houston at the NAACP. Both organizations sustained their operations using branch affiliates in U.S. cities. But there the story ends, Baldwin was white, Houston was black. The distinct missions were never to coalesce into a united front.
William Donohue quoting an ACLU report from 1928:

We leave out of the account the violations of the rights of Negroes, who suffer more restrictions than any minority in the country, but with whose trouble we do not deal. The National Association for the Advancement of Colored People tackles them.  

The last event relating to the ACLU and blacks which involved Baldwin was the firing of Lewis Redding, a black attorney in Delaware, in 1942. In reflecting on the incident with Lamson, Baldwin is quoted as saying:

We took action with regard to him deliberately. We all agreed on it. Because we had a general policy of not getting involved with race relations. We would not have had a communist lawyer and we didn't have any negro lawyers. I think he was the only one.

This position taken by Baldwin, of a separate but equal civil liberties as late as 1942 remains unmitigated by other documentation which would explain Baldwin's position with respect to barring black attorneys from legal participation in ACLU controversies.

Baldwin's last major area of civil liberties engagements was his focus on the events leading up to and including the Second World War. In 1937 Baldwin was nominated to serve on Harvard's Board of Overseers, a petition rejected by the elections committee.

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87 Donohue, Supra note 73 at p. 65
88 Lamson, supra note 3 at p. 162
The following is a report of the event from the New York Times:

Liberals off Slate of Harvard Board
An anonymous attempt to nominate four liberals to the Harvard Board of Overseers failed today.
The proposed nominees were Roger Baldwin, Corliss Lamont, Professor Robert Levett of the University of Chicago, and Dean of Wisconsin Law School Lloyd Garrison. A petition required 200 signatures, the rejected petition had only 83 verifiable signatures. 89

Baldwin the previous year had written an article about the leadership of Harvard, perhaps thinking he could become a member of that board entitled "Harvard Heretics and Rebels". 96

...a considerable number of Harvard teachers see the need and advantage of both unionization and a close association with labor in the United States as a means toward their own protection and toward economic reform. Boston and Harvard long ago learned that the rebels and heretics of today are the leaders accepted by tomorrow. 90

Harvard was willing to graduate Roger Baldwin, but not take him back into the fold.

Associations with the ACLU were not just a source of tension  

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89 New York Times, March 27th 1937  pg. 30 col. 3
90 Baldwin, Roger Nash  Harvard Heretics and Rebels,  the Nation, June 10th 1936
for Roger Baldwin. A long time Board member of the ACLU was Felix Frankfurter.

At the time of his nomination to the U.S. Supreme Court by Roosevelt, Frankfurter was opposed before a Senate Committee by an assortment of peculiar opposition parties. An attorney from Washington, D.C., George Sullivan made the following statement:

Mr. Frankfurter suffers from alien-mindedness. His membership in the ACLU made him a collaborator with a number of notorious reds, including William Z. Foster. Responding to Sullivan and others, Chairman (of the Committee) McNeely remarked, - what you want is that this committee should find out how Professor Frankfurter would decide cases in advance. If it could that would be a prime disqualification of him for this office.91

The confirmation hearing was closed with a question made to Frankfurter by Senator McCarren who asked Frankfurter whether he believed in the doctrines of Karl Marx? To which Frankfurter replied:

Senator, you've never taken an oath to support the government of the United States with less reservation than I have, nor do I believe that you are more attached to the theories and policies of Americanism than I am."92

91 New York Times, January 11th 1939 p. 4 col . 4

92 New York Times p. 1 Jan 13 1939
Frankfurter's appointment was moved out of committee by unanimous vote.

Roger Baldwin was never short during his career of new controversies, and the looming of World War Two during the late thirties was to become a new theater of operations for both Baldwin as well as the ACLU. Other fronts included work by Arthur Hays on matters concerning the Jehovah's Witness Religious Sect. By August of 1940 cases and complaints against the Witness Sect involved 1,648 persons in 44 states. The typical response would be a cable from the law offices of Hays to Mayors in the cities where violence was occurring:

To the Mayors of 25 cities;

In view of mob violence which has been directed against members of Jehovah's Witness Religious Sect, we trust that every effort will be made by your law enforcement officers to prevent the slightest interference with the right to assemblage of the convention in your city. 93

The Witness Sect had entered a period of extremely provocative leafleting and broadcasting of anti catholic rhetoric and other extremely paranoid visions of the world being controlled by big business, and Catholics.

During the late 1930s Hayden Covington acting as attorney for the Sect had taken forty five cases to the Supreme Court,

93 Baldwin Papers, copy of telegram from hays to the Mayors on violence directed against Jehovah's Witness members dated July 1943, Princeton
As with many controversies, the ACLU was a supporter of the individuals being persecuted, but not always the principal representative of their interests in the courts. Instead the ACLU would file amicus briefs on behalf of the persecuted, or make political overtures to elected officials. This pattern of being friends to the court became highly emphasized in the A.C.L.U. agenda again when President Roosevelt signed the order to evacuate Japanese Americans from the west coast into the U.S. interior, and to detention camps. Baldwin decried the evacuation, calling the policies to be discriminatory:

> Discrimination goes far down into the roots of our whole policy and attitude to Orientals, and to the race prejudice stemming from the concept of superior whites. In a larger sense the evacuation of the Japanese rests on the domination of the world by a white minority, and is part of the long history of imperialist exploitation of backward peoples.  

Reviewing the cases of 1942 on the West Coast relating to violations of civil liberties, Baldwin asserted that "the obligation of the ACLU was clear, to raise unprecedented constitutional issues in the courts." The cases are detailed and complex. Baldwin's interest in these matters was intense. Yet

94 Walker, supra at note 66 p. 108

95 Baldwin, Private notes, July 1942, Baldwin papers, Seeley Mudd Archives, Princeton University Libraries

96 Baldwin, Jan 43 Memorandum on the Cases Contesting the Evacuation of Japanese Americans. Baldwin Papers, Seeley Mudd Archives, Princeton
they were at the same time reserved.

An early strategy by Al Wirin, ACLU attorney from their Los Angeles Branch, believed that the ACLU could stop the evacuation of Japanese Americans by filing an injunction against the evacuating officials. Responding to this strategy in a letter to Wirin on August 25, 1943 Baldwin advised:

Dear Al,

In reply to your letter of Aug 20 Frenkel and I have conferred about further test cases involving Japanese Americans and we both agree that it would be unwise to bring an injunction suit involving the exclusion orders on the coast. As a practical matter that issue ought not be raised at this time. The real question is the right of detention after the evacuation.97

From this letter it appears that Baldwin agreed with the evacuation of Japanese Americans to the interior, but not with the detention camps. The likely source of this conclusion was the perception of mob violence and danger to which Japanese remaining on the coast would be victims. On September 21st of 1943 Baldwin was to receive a letter from the Japanese American League which announced the following:

From the various communications received from our friends on the coast, the hate campaign is still under full sway. It may be best let things drift for a few months and await developments. As far as the injunction is concerned it is a matter of finances as well as a matter of timing. My feeling is that

97 Baldwin to Wirin, dated Aug 25 1943, Baldwin Papers, Seeley Mudd Archives, Princeton
very few will be able to go back to California at this time even if they are permitted to go.\textsuperscript{98}

In a second letter dated October 10 of 1943, Baldwin's view of the evacuation is reinforced:

On a suit to enjoin the military authorities from prohibiting the return of evacuees to the West Coast area, their judgment (federal attorneys) as well as that of the Assistant Secretary of War is that the opposition in California can better be overcome by direct military action than by a court decision. If a court should compel their return the decision would not be accepted as readily as a determination by the military authorities that military necessity no longer makes their presence dangerous. From a public relations angle this would appear to be a better approach than a court test. Keep this confidential.\textsuperscript{99}

Baldwin's direction to Wirin on the management of cases on the West Coast during the evacuation was not the same message he sent out in a radio address the same week:

...the wholesale removal from the Pacific coast of 110,000 Japanese and Japanese Americans whose presence was held dangerous to military security despite a total lack of sabotage, espionage or act of disloyalty and their internment on purely racial grounds constitutes the most serious departure from democratic rights in war.\textsuperscript{100}

Yet the posture taken by Baldwin may be explained by a letter found inside a file from the Japanese American Citizen's League

\textsuperscript{98} Letter to Baldwin's Assistant, Cliff Foster, from Saburo Kido, national President of the Japanese American Citizen's League dated September 21st 1943. Baldwin papers, Seeley Mudd Archives, Princeton University.

\textsuperscript{99} Baldwin to Wirin, Oct 5 1943 Baldwin Papers, Seeley Mudd Archives, Princeton University Library

\textsuperscript{100} Baldwin, Speech dated 10-11-43 American Civil Liberties in Wartime. Baldwin papers, Seeley Mudd Archives, Princeton.
sent to Senator Russell, Chair of the Senate Committee on Immigration.

In that letter is a copy of a letter the League received from Franklin Delano Roosevelt dated February 1st 1943:

The proposal of the War Department to organize a combat team consisting of loyal Japanese American citizens has my full approval. The new combat team will add to the nearly five thousand loyal Americans of Japanese Americans who are already serving in the armed forces of our country.

It becomes apparent that Baldwin was operating to ensure that federal policies relating to the prosecution of the war would not be contravened by actions taken at A.C.L.U. field offices. Of equal significance is the letter from Saburo Kido stating that the Japanese Citizens League did not want to have a court injunction be the basis for returning evacuees to California. Baldwin, behind closed doors, was orchestrating the welfare of the evacuees and the interests of the federal government. At this stage in his career, Baldwin had become master of a dual outcome, win win strategy.

The war years of the 1940's were years of domestic and international reshuffling of priorities. To prosecute a war, individuals and agencies made significant alterations to their interests and operations. All this done under the guise of winning the war - other agendas ran beneath the surface. Baldwin, the conscientious objector of the First World War, had actually become Baldwin, in effect, a double agent, a man with mixed

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101 Letter to Senator Russell from Mike M. Masaoka, National Secretary of the Japanese American League dated April 30th 1943. Baldwin Papers Seeley Mudd Archives, Princeton Library
agendas, serving agendas to groups which he felt they wished to hear. He also had become, as did some close associates, like Morris Ernst, a part time confidant of J. Edgar Hoover.

One interesting relationship Baldwin had was with the Department of Justice, and J. Edgar Hoover. It is unlikely that some of the causes Baldwin vigorously supported would have found Baldwin the same companion they perceived him to be, had they fully understood Baldwin's, and the ACLU's relationship with J. Edgar, former night law student and long time Director of the F.B.I. Hoover, like Baldwin, began his formal career in 1920. Hoover, became head of what was to become the F.B.I., and Baldwin, Executive Director of the A.C.L.U. It is a strange nexus. U.S. Attorney General A. Mitchell Palmer recruited John Edgar Hoover as his special assistant and worked under the authorities provided in the Espionage Act of 1917 and the Sedition Act of 1918, launching a campaign against radicals and left-wing organizations.

We can recall the curious event of Baldwin being released from jail with an escort to work in his office on the files the Department of Justice "messed up" in the raids of 1918.

One item, however, surfaces from the Baldwin papers of 1943 which sheds new light on Hoover, and Baldwin:

This uncompleted article on Civil Rights and the F.B.I., prepared by me at the request of the New Republic and approved in general outline by the A.C.L.U. Board when I presented the subject. I concluded later that it would be unwise to publish it during the war, or perhaps at any time for the following reasons: An interview with Mr. Hoover convinced me that he has largely changed his views on the dangers from labor and the left. He is violently anti-Dies and all the witch hunting for reds. The war record of the F.B.I, under Mr. Biddle shows a scrupulous adherence to
legal methods, and no trespass beyond the legitimate field of investigation.\textsuperscript{102}

At this intersect of facts it is noteworthy to recall the name Morris Ernst. Ernst was co-counsel beginning in 1929 for the ACLU with Arthur Hays. Ernst in his book \textsuperscript{103} makes no mention of any relationship he had with J. Edgar Hoover. However, in 1984 an article was released which established correspondence between Ernst and Hoover between the years 1939 and 1964.\textsuperscript{104} F.B.I. files on the A.C.L.U. had been petitioned by various academic and civic groups during the 1970's made this relationship clear.

These files indicate that one of Baldwin's in house attorneys, Morris Ernst, had maintained regular correspondence with J. Edgar Hoover regarding operations of the A.C.L.U. The author of the 1984 article about Hoover and Ernst reports:

\begin{quote}
Ernst and Hoover were thrown together in the course of F.D.R.'s maneuvering to get Texas Representative Martin Dies off his back before the 1940 elections.\textsuperscript{105}
\end{quote}

Ernst and Hoover thereafter were to exchange numerous memos and comments about the A.C.L.U. well into the mid fifties. These memos included minutes of A.C.L.U. meetings, memos, reports, as

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{102} Memo by Roger Baldwin to files signed and dated July 1943 Baldwin Papers, Seeley Mudd Archives, Princeton Library
\item \textsuperscript{103} Ernst, supra at note 60
\item \textsuperscript{104} Salisbury, Harrison E. The Strange Correspondence of Morris Ernst and John Edgar Hoover. 1939-1964. The Nation, Dec 1, 1984 pp. 575-589.
\item \textsuperscript{105} Id. at p. 578
\end{enumerate}
\end{footnotesize}
well as copies of letters to and from Baldwin. Perhaps a strange closure to a career dedicated to the civil liberties of others for Roger Baldwin. Degrees of separation between the ACLU and J. Edgar Hoover loom as frightening prospects of collaboration.

Baldwin’s last ten years at ACLU, as he long ago observed in his article on "Political Police" were under the watchful eyes of the F.B.I.

While this paper has only briefly sketched highlights of Baldwin’s complicated career, the thesis that social work using legal/constitutional interventions to promote individuals rights is illustrated to be functional and operative. The following list recollects Baldwin’s legal controversy activities, and the social theme which served as the area of concern:

1910-1912 St. Louis - Juvenile Advocacy and Tenant's Rights
   - The Right to be in loco parentis

   - The Right to Fair and Safe Housing

   - 1918 New York - Draft Refusal and Conscientious Objection
     - The Right to Refuse to bear arms

1920 MidWest - I.W.W. and the Dedication of the A.C.L.U. to Labor Representation
   - The Right to Work, Bargain

1922 Boston - The Arrest and Trial of Sacco and Vanzetti
The Right to be Free From Malicious Prosecution
1925 Tennessee - The Arrest and Trial of Scopes
- The Right to an education free from religious dogma

1931 Negro lynchings, the Scottsboro Boys and the Margold Report
- The Right to be free from mob violence, and racial contempt

1936 Oklahoma - Jehovah's Witness Persecutions in 45 cities
- The Right of Freedom to Express Religious Viewpoints

1942 California - Japanese Relocations and Internments
- The Civil Rights of Japanese Americans to be free from government persecution.

Roger Nash Baldwin was at the helm of the ship in these, and many related controversies as the broker of interests between lawyers, courts, politicians and people in serious trouble. The strength of Baldwin's representations came from a network of lawyers in cities throughout the United States, who were willing when called to go into courtrooms and file on behalf of defendants' social rights, their civil liberties.

And last, perhaps the words of Baldwin himself summarize his view of the importance of the law to civil liberties, best expressed in a poem Baldwin wrote shortly after leaving jail in 1920:

No more a prison here!
The grey enchanter has forever made for me
A castle of these walls
Towering up among the trees,
Center of a vast estate
And housing a great brotherhood of Errant Knights
Retainers of that spurious king -
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