

Caleb Foote Papers

Digital

1851-1995 (*Bulk:* 1939-1995)

3 boxes (4.5 linear foot)

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Read collection overview

A legal scholar and pacifist, Caleb Foote was born in Cambridge, Mass., on March 26, 1917, the son of a Unitarian minister and Quaker mother. Earning degrees in history from Harvard (AB 1939) and economics from Columbia (MA 1941), Foote was hired by the Fellowship of Reconciliation to organize their northern California office as the U.S. entered the Second World War. A committed conscientious objector, he refused assignment to a Civilian Public Service camp, arguing that the draft was undemocratic and "an integral part of the war effort," thus earning a sentence of six months in prison. When released, Foote resumed his work with the Fellowship, opposing the internment of Japanese Americans, but ran afoul of the Selective Service a second time in 1945, earning an additional eighteen months. After a presidential pardon in 1948, Foote became Executive Director of the Central Committee for Conscientious Objection, but left after two years to return to school, hoping a law degree might aid him in the cause of addressing racial and economic injustice. He held academic positions in law schools at the University of Nebraska (1954-1956), Penn (1956-1965), and Berkeley (1965-1987), becoming well known for his opposition to a bail system that unfairly burdened the poor and falsely accused, among other causes. Foote died in Santa Rosa, Calif., in 2006, shortly before his 89th birthday.

An extraordinary archive of principled resistance to war, the Foote collection contains a thorough record of one man's experience as a conscientious objector during the Second World War. Accompanying some of the legal proceedings associated with Foote's refusal of assignment to Civilian Public Service is an extensive correspondence with family while imprisoned and other associated content. Foote also retained important material from his wartime work with the Fellowship of Reconciliation and later work with the CCCO. His later correspondence provides an important perspective on his developing legal career, particularly the earlier years, and an extensive series of essays and autobiographical writings provides critical personal and intellectual context for Foote's pacifism and legal practice. The collection also includes some correspondence and writings by and about Foote's education, his father, Henry Wilder Foote, and mother.

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Background on Caleb Foote

An ardent pacifist, civil rights advocate, and legal scholar, Caleb Foote was born in Cambridge, Mass., on Mar. 26, 1917, the middle of five children from a union of two prominent families. Foote's father, Henry Wilder Foote, Jr., descended from a long line of New Englanders with a strong record of public service, creative talent, and a penchant for both Harvard College and the Unitarian church. A paternal great-grandfather (also named Caleb Foote) was a long-time editor of the *Salem Gazette*, as well as a state-level politician, and an associate of Nathaniel Hawthorne; while a great-uncle, Arthur Foote, was considered one of America's finest classical composers. Another great-grandfather, Samuel Atkins Eliot, served in succession as mayor of Boston, congressional representative, and treasurer of Harvard University, while a great uncle, Charles W. Eliot, was Harvard's president for more than forty years. The Harvard and Unitarian connections merged fully in the three generations of Henry Wilder Footes that bracketed Caleb's life. Grandfather Henry Wilder Foote Sr. occupied the pulpit at King's Chapel in Boston from 1861 to 1889; Caleb's father ministered to four congregations in his career and was Assistant Professor at Harvard Divinity School, and Wilder Foote, the brother, served for twenty-five years at Unity Church in St. Paul.

Foote's mother, Eleanor Tyson Cope, were members of the Quaker elite and came from one of the so-called First Families of Philadelphia. Eleanor's great-grandfather, Thomas Pym Cope, made a fortune in trans-Atlantic shipping, establishing the first commercial shipping line between Liverpool and Philadelphia, and he became a promoter of public works and philanthropist. A first cousin once removed, Edward Drinker Cope, was a noted paleontologist and one of the nation's leading experts on dinosaurs in the nineteenth century.

Although influenced by his father's liberal Unitarian tradition, it was his mother's Quaker beliefs as much as anything that led Foote into an early commitment to peace, social justice, and racial equality. By the time he prepped for college at the Belmont Hill School, he already considered himself a pacifist, and his beliefs deepened when he followed in the family footsteps to Harvard in the fall 1935. A stellar student and history major, he honed his writing skills as sports editor for the *Harvard Crimson* in his junior year, followed by a senior-year appointment as managing editor under Crimson president Cleveland Amory.

Foote's desire to use his talents to better the world continued to grow after graduating from Harvard 1939, leading him on a ten-month camping tour through the western states in his station wagon with the aim of seeing the nation, and the nation's problems, up close. Against the backdrop of Europe descending into war, he crossed the northern Plains into Montana, then drove to California and the Pacific Northwest, testing his political ideas and will. After witnessing firsthand the plight of migrant

families in California and both anti-labor and Communist strife consuming the labor movement after the Soviet invasion of Finland, he wrote to his college friend Calvin Stillman, trying to remain grounded about the fearful world that lay ahead for pacifists:

To take up the war first, I am still a pacifist and determined to be a C.O. I think this is wholly logical, because I think you've either got to be for the war system -- and be willing to go to war like Clippy [Cleveland Amory], or else against it, and be willing to oppose it to the limit... The only way [to avoid war] is if, in the distant future, the overwhelming majority of the people of the world not only don't want war, but are determined not to have was by refusing to have anything to do with it. I don't think this is idle idealism, although again I don't believe that we are likely to see any such day in the space of our lives. The point is that the more people who take this extreme position today, the sooner that position is likely to be generally accepted. Having gone on this high moral plane, I will admit that I have qualms: middle-of-the-roaders, who support the war taking care not to get killed in doing it, where as he soldier will be dead and the pacifist in prison, will be in a position to help 'rebuild his country.' But I frankly think that is less important if you take the long run viewpoint... The one thing all of us C.O.s must avoid is getting either Christlike or a martyr complex. I am frankly scared of the future, and of the decisions on war that I will have to make. I would be scared to go to war, even if I believed in it. I fervently hope, however, that I will not be scared out of pacifism. (June 7, 1940)

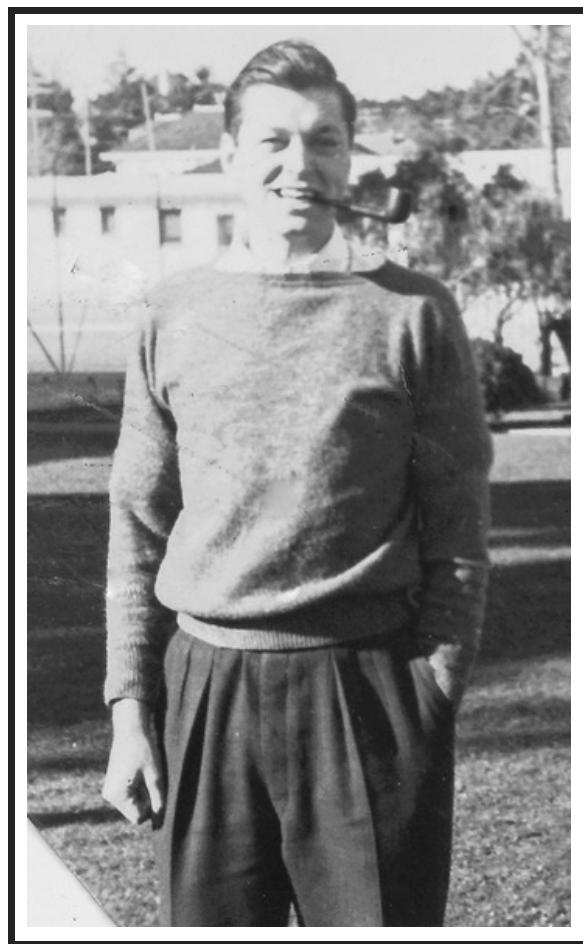
After his tour wound down, Foote entered Columbia University to study for a master's degree in economics, and when it came time to register for the draft in October 1940, he applied for a conscientious objector's IV-E classification. Meanwhile, he searched for a meaningful line of work where he could live his principles and contribute to a better society, finding his opportunity in the summer 1941 during a post-graduation month spent at Quaker Pendle Hill Center. There, America's best known pacifist organizer, A. J. Muste, recruited Foote to become Field Secretary for Northern California for the interfaith pacifist organization, the Fellowship of Reconciliation. Based in San Francisco, and later Berkeley, Foote dedicated himself to fighting the twin problems of racial discrimination and war.

Despite being raised in a household suffused with religion, Foote did not consider himself a religious pacifist. Writing to his college friend and fellow pacifist Russ Freeman, Foote commented that he was put off by the "mysticism" of some of their fellow travelers:

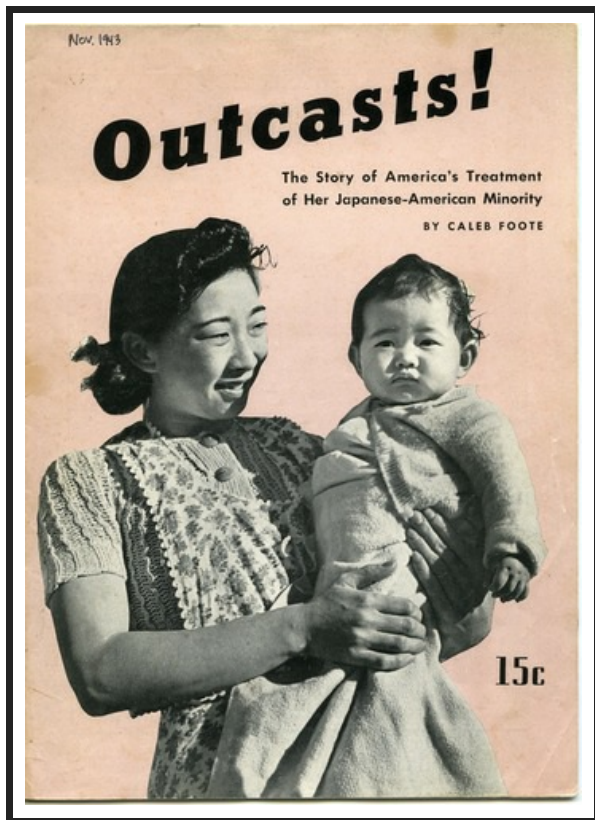
"I confess I am losing all patience with the Allan Hunter-Gerald Heard brand of this. For a while I thought I might be going 'religious' but all danger of that has passed. As far as I can now figure out, prayer should mean conversion of our intellectual beliefs into our actions, and that isn't what the mystics mean at all. Further I believe the only judge of what a religion is, is what it does, and on that score I'm still waiting to see what the litter of the 8 hour a day mystics will be like. Allan Hunter is for complete withdrawal into 1) mysticism and 2) personal religion. I am transferring a personal religion into a workable society." (Foote to Freeman, Nov. 10, 1941).

Not long after beginning his life on the west coast, Foote met a recent graduate of Black Mountain College, Hope Stephens, while the two were working at Hidden Villa, the home of activist Josephine Duveneck and a refuge for European Jews fleeing Nazism. Aligned socially and politically, the two quickly grew close, marrying on Nov. 17, 1942, and they settled into a rental in Japantown, San Francisco. While awaiting the call to military service that they knew would come, Hope taught kindergarten in Chinatown while Caleb traveled far and wide, speaking to increasingly hostile audiences about peace and racial tolerance. When he finally received his draft notice in the spring 1943, Foote promptly refused conscription and rejected the alternative of entering into Civilian Public Service (CPS), arguing that CPS lent legitimacy to forced conscription and that work there was mere "boondoggling," going to no socially productive end. His was direct with the authorities:

"The conscientious objector has a deeper duty to his fellow men than can be met by accepting military conscription and taking a relatively pleasant, out-of-the-way camp life. During the last two years I have sought to give full time, positive expression to my beliefs. Particularly in the field of racial tensions, I have tried to create better understanding between Negroes and whites, have sought to help and bring about an appreciation of American citizens of Oriental ancestry, and to lessen anti-Semitism." (Quote from his affidavit of facts submitted to Judge Goodman in 1943)



Caleb Foote, ca.1942



Foote's pamphlet opposing Japanese American relocation, 1943

In June 1943, a sympathetic Judge Louis Goodman sentenced Foote to a relatively lenient six-month term in federal prison, ending in his parole just prior to Christmas. Despite the experience, and despite his father's disapproval and his mother's pleas for a less confrontational approach, imprisonment did little to dampen Foote's absolutist support for resistance against war. Throughout 1944, he continued his Fellowship work, speaking out against Japanese relocation and supporting other conscientious objectors and resisters in Civilian Public Service. He remained clear of further governmental scrutiny until March 1945, when he was drafted a second time. Once again, he refused to cooperate. Summoned before the U.S. District Attorney in April 1945, he refused to cooperate, surrendering instead to the Federal Marshal. One month later, his first child, Robert, was born.

At trial, Foote repeated his decision to reject of conscription and all of the supposed alternatives for pacifists:

"I regard selective service, the administration of it, as an integral part of the war effort, and because it seems to me conscription is a denial of democracy. As long as I remember, I have been a pacifist and have been opposed to participation in war, the sanction of war, and certainly it seems to me, legislation such as selective service, which conscripts millions of young men, many of them unwilling, and sends them into the army, is the very backbone of the war effort. If I were to accept this order it seems to me I would be giving acquiescence to the whole effort." (U.S. v. Foote, June 9, 1945)

In response, the judge sentenced Foote to another year in the federal prison at McNeil Island, Washington. With the war finally over by the time he was released in May 1946, Foote returned to the Bay Area, his convictions still intact. He was among the 1,500 names that appeared on President Truman's list of pardons issued to religious conscientious objectors on Dec. 24, 1947, but since the list covered only a quarter of all objectors, Foote was among those who protested.

After wrapping up his work for the Fellowship, Foote tried his hand at farming and landscaping before returning east with his family in 1948 to become Executive Secretary for the Central Committee of Conscientious Objectors. During his two years with the CCCO, the Footes lived in Arden, Delaware, a community founded on the single tax principles of Henry George. Meanwhile his family continued to grow, adding a daughter Heather, and sons Andrew in 1949 and twins Ethan and David in 1958.

Deeply affected by his prison experiences and by the racial and economic inequities he witnessed in the courts and jails, Foote decided to leave the pacifist movement to enter law school at the University of Pennsylvania, earning his degree in 1953. From his earliest publications in the Penn Law Review, where he was managing editor, his legal sensibilities and concern for prisoners' rights were evident. Early work on due process, sentencing standards, and the treatment of sex offenders were just the beginnings of an academic career of nearly thirty-five years where Foote sought to apply legal theory to bring balance and equity to the criminal justice system. Two years at the relatively conservative law school at the University of Nebraska were followed by invitations to return to Penn in 1956 and then to the Boalt Hall School of Law at the University of California Berkeley in 1965. He made important contributions to empirical studies of the behavior of lower courts regarding vagrancy law and was author of a widely-used casebook on family law, and he became a national leader in bail reform, which he argued was biased against the poor and a burden on the falsely accused. In later years he stood in opposition to the growing trend of mass incarceration.

Foote retired from Berkeley in 1987 and spent most of his latter years in a home at the head of Tomales Bay in Point Reyes Station, Calif. He and Hope were active in environmentalist causes in Marin County. Foote died on March 4, 2006, aged 88, followed by Hope on April 30, 2011.

Scope of collection

An extraordinary archive of principled resistance to war, Caleb Foote's papers provide a thorough record of one man's experience as a conscientious objector during the Second World War, as an advocate for social justice, and as a professor of law and civil liberties. Much of the collection stems from the wartime years when Foote served as Field Secretary for the Fellowship of Reconciliation. The collection includes extensive documentation of Foote's refusal of military induction and his two ensuing stints in prison, along with hundreds of letters with fellow conscientious objectors. Much of the correspondence is associated with his

wartime work with the Fellowship and later work with the Central Committee for Conscientious Objectors. His later correspondence provides an important perspective on his developing legal career and work on mental health and criminal justice reform.

Lengthy, highly observant, and self-reflective, Foote's letters delve deeply into the spectrum of pacifist beliefs and reveal the tensions within peace movements during the Second World War. A radical resister refusing all compromise with conscription and war, Foote was fundamentally opposed to Civilian Public Service, but at the same time he corresponded, and often debated with fellow pacifists like the Quaker Russ Freeman, who viewed CPS as a middle road between absolutism and acquiescence. For other friends, like Robert L. Carter (later a noted civil rights activist, attorney, and jurist), the threat of Fascism led to a rejection of pacifism and to direct participation in the military. Foote's correspondence also highlights the sometimes stark divisions between religious and non-religious pacifists, between the doctrines and tactics of Friends and other peace churches, and between pacifists in prison and in CPS camps. Foote also paid close attention to resistance within the camps, running from work slow-downs to hunger strikes and quite simply walking away.

Given the holistic nature of Foote's social justice work, the series comprising this collection overlap extensively. Material relating to the Fellowship for Reconciliation, for example, is scattered throughout the correspondence and Peace and Social Justice series, and Foote's journals of his westward tour in 1939-1940 are as much letters as they are traditional journals, and speak to the evolution of his pacifism and politics.

Anguished letters of African American pacifist friend Robert Carter, who decides to service in the Army Air Corps, only to face the full impact of segregation and racism.

Foote's correspondence with his family is equally rich and often as revealing of his attitudes and social engagements. The letters from Caleb's mother are exceptional, joining him in his ardent pacifism (hers rooted in her Quaker faith), but constantly challenging him to examine his motives and the consequences of his actions, and counseling him to avoid fanaticism and consider that during a crisis, pacifists should learn when to speak and when not. Caleb also corresponded regularly with his brother Arthur (a Unitarian minister) and his wife Becca, his sister Agnes (who Foote called Agony, well after her childhood). During the 1930s and into the 1940s, the Footes also circulated "family letters," written by one member of the family to all others, regarding important topics of the day.

Series descriptions

Series 1. Correspondence

1903-1995

An avid writer, Footes' correspondence includes letters from dozens of other conscientious objectors and war resisters during and immediately after the Second World War, detained either in Civilian Public Service camps or federal prisons. Much of the correspondence is a product of Foote's work with the Fellowship of Reconciliation, including a thick exchange of letters with A. J. Muste, but Foote's correspondence includes a wide range of peace activists, friends from Harvard, and

Foote's correspondence with his family -- particularly with his parents and siblings Arthur and Agnes -- For a decade beginning in the late 1930s, Foote sent a single letter to his family

Series 2. Peace and social justice

1941/1988

From the time of his graduation at Harvard through the end of his life, Foote was committed to working for social justice. Appointed field representative for the Fellowship of Reconciliation in northern California in 1941, he worked on race relations in the Bay Area and became a vocal opponent of the Japanese evacuation and relocation. With the onset of the war

After his release from prison, Foote became a founding member of the Central Committee for Conscientious Objectors and one of its first officers.

Series 3. Law and academics

1953-1995

Although the collection contains a relatively small sampling of material from Foote's time on faculty at the law of the University of Nebraska, Penn, and University of California Berkeley, the

The series contains some particularly interesting content relating to Foote's employmen

Series 4. Family and personal

1851-1994

Series 3 contains a small assortment of biographical and family information along with materials relating to Caleb Foote's early life and his education at the Belmont Hill School, Harvard, and the University of Pennsylvania. Of particular note are the journals that Foote kept during his pos-college trip across the western United States. Written with Foote's characteristic style, the

journals are a Collegiate radicalism comes into direct incisive observations on America on the eve of the Second World War and not yet fully recovered from the impact of the Great Depression. Written with

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Related Material

A large collection of papers of Caleb Foote's father, Henry Wilder Foote, is housed at the Andover-Harvard Theological Library at Harvard Divinity School.

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World War, 1939-1945--Conscientious objectors

Contributors

Foote, Caleb, 1917-2006 [main entry]

Foote, Arthur, 1911-1999

Foote, Henry Wilder, 1875-1964

Foote, Hope Stephens

Muste, A. J. (Abraham John), 1885-1967

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