

# The Surveillance State and the Surveillance Private Sector: Pathways to Undercover Policing in France and the United States

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In the United States, undercover tactics play a central role in policing at all levels of government. The police use undercover stings to investigate everything from organized crime and terrorism to street corner drug dealers, petty thieves, and the clients of prostitutes. They target the poor but also senators, judges, and bankers. In a given week, undercover drug buys might be used to address neighborhood complaints about open-air drug markets, to spy on environmental activists and animal-rights organizations, to infiltrate mosques, and to “abate threats” by providing opportunities for aspiring terrorists to set off fake bombs. No crime is too petty or too serious to be addressed by sting operations.

But the United States is exceptional in making such broad use of undercover tactics. As I have argued elsewhere, many European policing systems, including in Germany, Italy, and France, engage in undercover tactics more sparingly.<sup>1</sup> They very rarely deploy them against elite offenders, as American law enforcement agencies frequently do in ferreting out price fixing, public corruption, influence peddling, and insider trading. Infiltration of criminal milieus and attendant participation in criminal activities are protected by law enforcement immunities even as undercover

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1. Jacqueline E. Ross, “Undercover Populism,” in *Contemporary Organized Crime: Developments, Challenges and Responses*, ed. Dina Siegel and Hans Nelen (New York: Springer Press, 2017), 231–51.

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tactics remain unburdened by a Fourth Amendment warrant requirement. Undercover policing remains virtually unregulated by local, state, or federal statutes. By contrast, France treats undercover tactics as a threat to privacy and has, accordingly, enacted statutes to limit the use of such tactics to only the most serious offenses, going well beyond the baseline requirements of the European Convention of Human Rights, as interpreted by the European Court of Human Rights (ECHR).<sup>2</sup> France requires advance judicial authorization for all undercover operations and provides undercover agents with only limited immunity for participating in criminal activity.

This article explores the origins of this investigative practice in the United States and France, where abuses of the practice are tellingly referred to as the problem of entrapment in the United States and the problem of the *agent provocateur* in France. Both countries faced industrialization, labor unrest, radical political ideologies, increased urban density, and a population made increasingly mobile by the advent of railroads and economic dislocations. Both countries saw a surge of interest in investigations—by police, private detectives, journalists, writers, and social scientists, throughout the nineteenth century. In the United States, however, the sparse and fragmented police presence in rural areas, particularly on the Western frontier, along with westward expansion and mass immigration played an important role in furthering private sector reliance on undercover tactics. These only gradually seeped into the public sector, through the influence of entrepreneurial private detectives and Progressive Era moral reformers. France, by contrast, faced revolution, war, and continuing political turmoil, leading successive regimes to lean heavily on the central administrative apparatus of the state and its expanding covert surveillance apparatus for survival.

I argue that undercover policing had a private origin in the United States and a public origin in France. But how did these disparate origins matter to the subsequent trajectory of such practices in each country and to the influence of such tactics on the way state power was exercised during the nineteenth and early twentieth centuries? These distinct origins, I contend, gave undercover tactics important but opposite state-building roles in each country.

Undercover tactics in France helped to consolidate state power and to extend the state's administrative reach at a time of incessant turmoil and regime change. A well-developed and centralized state bureaucracy defended a monopoly of legitimate stealth to which the American state could not aspire. The instability of successive French regimes provided French political authorities with a powerful incentive to expand their use of infiltration to monitor potential political enemies and to deny private actors the use of undercover tactics to investigate crime, to suppress

2. See e.g. *Lüdi v Switzerland* (App no 12433/86) ECHR June 15, 1992.

vice, or to infiltrate unions. These were sovereign prerogatives in France. But in the United States, these were the preferred domains of entrepreneurial private detectives and Progressive Era reform societies. In the United States, private detectives and reform societies alike staked their fortunes to undercover tactics, which they not only acknowledged but celebrated in nineteenth- and early twentieth-century memoirs as well as Progressive Era vice reports.

The further development of undercover policing in both countries accordingly followed different trajectories. In France, the public origin of undercover tactics made political high-policing uses paramount. Despite the early nineteenth-century efforts of Sureté Chief Eugene-Francois Vidocq to champion undercover investigations as a crime-fighting tactic, Vidocq's successors disavowed undercover tactics to differentiate crime fighting from high policing, in the hope of surviving the purges of the police that attended successive revolutions and coups. Responding to state political demands that they monitor itinerant social groups, anticipate grain riots, and identify political troublemakers, French police commissioners and prefects effectively consigned crime-fighting uses of undercover tactics to a pre-professional era in which detectives could themselves be former criminals.

For later memoirists like Louis Canler, repudiating the negative example of Vidocq meant repudiating undercover tactics. Canler, a later head of the Sureté who inherited Vidocq's former undercover agents as informants, claims that he continued to allow informants to go undercover to draw out confessions from prison cellmates, to identify former criminal acquaintances for the police to investigate, to wait on them in restaurants, and to keep them under surveillance, but under markedly different rules of engagement, which prohibited them, Canler claims, from posing as criminals in order to join or steer criminal conspiracies.<sup>3</sup> Canler particularly feared that the efforts of criminal investigators to professionalize their métier and to differentiate it from political surveillance were compromised by the use of *agents provocateurs* to instigate political conspiracies in order to “expose” nonexistent threats. An explicit denunciation of undercover tactics was part of the attempt to establish an independent legitimacy for crime-fighting expertise, and to differentiate crime-fighting tactics from those of political policing.<sup>4</sup>

Canler did regard informants—whom he called his “Cossack irregulars”<sup>5</sup>—as being essential to the success of criminal investigators. But

3. Louis Canler, *Memoires de Canler, Ancien Chef du Service de Sureté (1795–1865)* (Paris: Hachette, 1882), 719–21; 577–78.

4. See also Marie-François Goron, *Les Mémoires de Goron, Ancien Chef de la Sureté, de l'Invasion à l'Anarchie* (Paris: Ernest Flammarion, 1897), 185.

5. Louis Canler, *Mémoire*, 719.

when informants were managed by a criminal investigator, they became part of the investigators' professional capital. As colleagues, by contrast, informants became rivals and redefined the relevant skill set in ways that validated their superior ability to pass themselves off as criminals. If the ability to infiltrate gangs by impersonating a criminal became a core skill of criminal investigators, former thieves like Vidocq and his men would enjoy a clear advantage over men like Canler.

Canler thus rejected Vidocq's undercover crime-fighting tactics as unprofessional, while later American detectives—both public and private—promoted such ruses as essential investigative tools.<sup>6</sup> For Vidocq's successors, allowing police officers to *use* criminals was one thing; allowing them to *be* criminals (or ex-convicts) was another.<sup>7</sup>

In the United States, the private origin of undercover tactics made it possible for many activities to be carried out privately that would have been the domain of the state in France. The public sector could not compete with the resources that mining companies and railroads could muster for undercover investigations, which in turn positioned American private detectives to present themselves as tactical innovators who could sell their preferred investigative tool to public and private sectors alike, as a prolific and adaptable source of intelligence, evidence, non-judicial remedies (such as restitution of crime proceeds), and subject-matter expertise in the methods of professional criminals and anarchists. American private detectives promoted and commercialized their undercover know-how as the core of their emerging profession. This in turn allowed undercover tactics to be marshaled by elites inside and outside of government to advance their respective agendas against labor organizers, political radicals, and purveyors of vice.

Marketing themselves as tactical entrepreneurs, private detectives in the nineteenth-century United States promoted their undercover work as a form of self-help for private enterprise, in lieu of recourse to the police. Progressive Era anti-vice activists in turn harnessed the private detectives' tactical innovations to the activists' own efforts to promote reform causes that ranged from the suppression of prostitution and child labor to the regulation of dance halls and saloons. Nativist elites could use undercover tactics to challenge municipal political machines and to mobilize a repressive response around shifting moral panics that coalesced around immigrant leisure pursuits that nativist reform societies equated with prostitution and debauchery.

6. Canler's police career overlapped with that of Vidocq, extending from 1820 until the early years of Napoleon III's reign.

7. Louis Canler, *Mémoires*, 165–66.

While private detectives advertised undercover tactics to a paying clientele that pursued a variety of different ends, Progressive era reformers defined themselves by the ends rather than the means that they pursued; undercover tactics were simply a useful way to generate salacious vice reports or evidence against corrupt machine politicians and to amplify a range of moral panics that could be used to define and to promote diverse reform agendas. Undercover tactics allowed Progressive Era reformers to circumvent the state's enforcers by generating their own first-hand accounts that could be turned into evidence and vivid copy for a mass audience receptive to the shifting hot-button issues of the day. As courts and police reform commissions admitted evidence gathered by private undercover investigators, moral reformers could place pressure on public authorities to take action against corrupt politicians, and against gambling parlors, dance halls, beer gardens where German immigrants congregated on Sundays, art museums that catalogued nude paintings, opera houses that employed child actors, and purveyors of contraceptives.

If private detectives were tactical innovators who marketed their investigative techniques, moral reformers like George Kneeland harnessed these tactics to press for outright suppression rather than regulation of vice. Both detectives and reformers modeled their undercover tactics for the police; Progressive Era reformers, however, also shaped the reform agendas of public authorities at all levels of government.

Accordingly, this article traces not only the origins of undercover tactics but also the mechanisms by which undercover policing seeped into the public sector in the late nineteenth-century and early twentieth-century United States. Serving both public and private interests, private detectives sometimes amplified and sometimes replaced public authorities on the under-policed Western frontier. Federal agencies hired private detectives to go undercover on their behalf. Enterprising prosecutors delegated investigative power to the private sector when they hired private detectives to go undercover in order to expose corrupt machine politicians or gambling operations protected by the police. Private interests like the Mine Owners' Association in turn harnessed the state to their anti-labor agenda, financing private detectives' undercover work for high-profile criminal prosecutions of labor leaders, and sometimes paying prosecutors' salaries. Moral reformers bypassed the state when they used undercover tactics to circumvent a reluctant police, although they also sought to challenge the state's inaction and to shape the state's enforcement agenda.

Progressive Era reformers' policing of immigrants' public spaces led to private-public partnerships by which undercover tactics not only amplified state power but also helped to expand state surveillance capacity during

mobilization for World War I and during Prohibition thereafter. From the late nineteenth century onwards, private detectives infused the public sphere with their undercover tactics when they took on leadership roles in municipal police departments and federal agencies.

As private detectives migrated into the public sector and brought their undercover tactics with them, the state appropriated these private sector tactics alongside the anti-vice agenda of moral reformers. In the early twentieth century, Bureau of Immigration agents emulated the undercover tactics of private anti-vice activists like George Kneeland and New York's Committee of Fourteen, in an effort to deport foreign-born prostitutes. In 1929, anti-vice activists trained municipal police like the New York Police Department (NYPD) in undercover tactics. Undercover tactics were used to shape both the investigative means and the ends of such investigations, helping to build the state's enforcement apparatus from the outside in.

My argument draws on memoirs of private and public detectives from nineteenth-century America and France, along with American vice reports of undercover prostitution investigators and French treatises, memoirs, and budget requests for "secret expenditures." In each country, these first-person narratives reflect the pressures that led public and private investigators to defend or disavow the use of infiltration. These sources also suggest the relative prominence of such tactics in the investigative arsenal of public and private detectives in nineteenth-century and early twentieth-century America, even as such tactics became ever more marginal outside the high-policing realm in the country—France—that is most identified with their rise. One indication of this divergent trajectory of undercover tactics is that the principal expositors of undercover tactics in France were public officials. In the United States, by contrast, the principal literary protagonists of books and reports about undercover investigations throughout the long nineteenth century were private detectives along with the moral reformers who authored exposés of vice establishments.<sup>8</sup>

Catherine Denys, Brigitte Marin, and Vincent Milliot suggest that French police memoirs "take part in the construction of professional identities that allow the authors to build their own legitimacy" within the state's administrative apparatus.<sup>9</sup> And while a number of scholars have drawn on private and public detective memoirs in both the United States and France, the tactics around which detectives built their profession and the circulation

8. Jean-Marc Berliere and René Lévy, *Histoire des Polices en France. De l'Ancien Régime à Nos Jours* (Paris: Nouveau Monde, 2011), 645.

9. Catherine Denys, Brigitte Marin, and Vincent Milliot, *Reformer la police: les mémoires policiers en Europe au XVIII<sup>e</sup> siècle* (Rennes: Presses Universitaires de Rennes, 2009), 7–18, at 17.

of tactics between private and public sectors have received less attention. The same can be said of the divergent state-building role that these tactics played in both countries. Reading these sources against the grain for what they reveal about the self-presentation of detectives tells us something not only about the tactics that they believed they could acknowledge but also about the transmission of tactical know-how—or the lack thereof—between private and public sectors.

These primary sources can certainly not be accepted uncritically as faithful portrayals of the day-to-day work of private and public detectives. But precisely because the authors are primarily concerned with promoting themselves and their investigative methods, the memoirs reveal a great deal about how important detectives believed undercover tactics to be to their emerging profession or to its *lettres de noblesse*. Detective memoirs in both countries advertised a new métier along with a new literary genre, but in the United States, undercover tactics were far more central to the profession and to the genre than they were to the memoirs of French private and public detectives after the age of Vidocq.

The “individuating comparison” between policing in the two countries allows each system to “form a kind of commentary on one another’s character.”<sup>10</sup> The contrast between the American and French uses of undercover operations in the long nineteenth century is fruitful because United States unwillingness to develop a powerful national police force throughout the nineteenth century was a direct reaction to the French surveillance apparatus.

As a contrasting case, the example of France sheds light on certain peculiarities of our history that explain the relatively unfettered use of such tactics in the United States by comparison with other rule-of-law democracies. Benefiting from greater stability than France, at least until the advent of the Civil War, the United States had a far less developed surveillance capacity at all levels of government throughout the nineteenth century and had less reason to view the surveillance capacities of the private sector as a threat to regime survival. What is remarkable about the development of American surveillance practices, from a French perspective, is not only that these practices originated in the private sector but also how late such practices came to be appropriated by the state and how long they flourished outside of government throughout the nineteenth and into the twentieth century.

The American case in turn highlights key features of the French policing system, which did not reward private uses of undercover tactics to investigate crime, to suppress labor strife, or to regulate vice. France instead privileged the high policing over the crime-fighting uses of undercover tactics,

10. Clifford Geertz, *Islam Observed* (Chicago: University of Chicago Press, 1968), 4.

while preventing private detective agencies from emulating American detective agencies and from building their professional identity around claimed expertise in undercover tactics.

By explaining the origins of undercover policing in the United States with reference to the divergent French experience, this article offers a new perspective on the rise of law enforcement in modern America. It builds on the emerging consensus among historians that the modern American state was built from the periphery.<sup>11</sup> As Gary Gerstle explains, American statecraft in this era was characterized by “the use by the state of private organizations to achieve its ends.”<sup>12</sup> But Gary Gerstle notes that “the private-public interpenetration. . . [also] enabled private interests to use public power for their own purposes,” allowing private entities to “feast[] legally and illegally on public resources.”<sup>13</sup> The trajectory of undercover tactics from the private sector into the public realm illuminates the ways in which the relationship between the private and public sectors changed over time, as the private sector modeled undercover tactics and helped to build the state’s surveillance capacity. The private sector’s importance gradually diminished as the state appropriated the private sector’s undercover tactics, under the leadership of moral reform societies and private detectives. But while the state built up its own capacity to conduct undercover investigations, public authorities never asserted a monopoly of legitimate stealth.

Section I explores the beginnings of undercover policing as a means of private self-help in the nineteenth-century United States. Section II seeks to periodize the quintessentially American process of osmosis by which undercover tactics seeped from the private to the public sector into a dynamic sequence in which the private sector accepted delegations from the state, frequently replaced and bypassed the state, and then harnessed and challenged the state, until coming to amplify the state’s own growing surveillance capacity and to shape the state’s enforcement agenda through close partnerships with law enforcement agencies.

11. On the “outside-in” development of the American state, see among other key works, Jack P. Greene, *Peripheries and Center: Constitutional Development in the Extended Politics of the British Empire and the United States, 1607–1788* (Athens: University of Georgia Press, 1986); William Novak’s argument against applying the Weberian state-building paradigm to the United States, in William J. Novak, “The Myth of the ‘Weak’ American State,” *American History Review* 2 (2008): 752, 766; and William J. Novak, *The People’s Welfare: Law & Regulation in Nineteenth Century America* (Chapel Hill: University of North Carolina Press, 1996), 244.

12. Gary Gerstle, “Exchange: A State Both Strong and Weak,” *American History Review* 2 (2010): 779, 783.

13. *Ibid.*, 784.

Section III in turn argues that the French state used undercover tactics as a form of high-policing statecraft, to extend the state's power from the inside out; that is, from state to citizen, from Paris to the provinces, and from core concerns with regime survival to more peripheral forms of social control over labor and vice. The French state aspired to a monopoly over the legitimate use of infiltration, and to that end it crowded out private-sector crime-fighting uses of such tactics and relegated private detectives to the periphery of established professions. French private detectives protected family honor and inherited wealth, while exposing more enterprising private detectives to the risk of criminal sanctions for the usurpation of sovereign functions. This risk in turn dissuaded French private detectives from using their memoirs to market their undercover tactics. French private detectives did not boast of infiltrating labor unions or criminal gangs, as their American counterparts did, nor could French anti-vice activists use private undercover investigators to advance their reform agendas. Instead, French undercover tactics developed and remained a specialty of a state intelligence apparatus that increasingly came to serve as a mediator in social conflicts, a barometer of public opinion, and an interpreter of a constantly changing threat environment for successive regimes.

Nicolas Barreyre and Claire Lemerrier have recently challenged comparisons between nineteenth-century America with post-revolutionary France for overstating the contrast between the supposedly strong, centralized French state with the weakness of the federal government and the more diffuse forms of state power in nineteenth-century America.<sup>14</sup>

Barreyre and Lemerrier argue that state power in nineteenth-century America derived significant support not only from the greater trust Americans placed in local government but from delegations of authority across a porous divide between public and private sectors, despite the dearth of centralized bureaucratic institutions; at the same time, "severe practical limits to the power of the central states", which characterized both states, meant that state efforts to expand bureaucratic governance in post-revolutionary France were far more mediated by local elites, both public and private, than frequently supposed. The authors call for comparisons of state-building processes in the US and France to focus more on the "specific ways [each country developed] of enmeshing public and private forms" of governance.<sup>15</sup>

14. Nicolas Barreyre and Claire Lemerrier, "The Unexceptional State: Rethinking the State in the Nineteenth Century (France, United States)," *American Historical Review* 126 (2021): 481–503.

15. Barreyre and Lemerrier, "The Unexceptional State," 485.

Comparing the role of undercover tactics as an engine of social control in both countries can reveal mechanisms of state-building in the United States that were quite distinct from the model of delegated authority on which Barreyre and Lemerrier build their own comparison of state power in post-revolutionary America and France. While the nineteenth-century private surveillance sector in the United States sometimes accepted delegations of state power, eventually coming to amplify and partner with emerging state institutions with the advent of World War I, it was not always the state that diffused its power outwards through the mediation of private auxiliaries. Influence also flowed in the opposite direction. In using undercover tactics to replace, to bypass and sometimes to harness state institutions, including those of the criminal justice system, private undercover tactics enabled American elites to shape the enforcement agenda of the state and the means by which it was enforced.

Acting through the private surveillance sector, American elites could exert a significant degree of social control over criminal investigations; over the management of labor strife; and over the means and ends for which vice was suppressed. Using undercover tactics to work through and sometimes outside of state institutions also allowed local elites to shape police tactics in the image of their own preferred investigative techniques, by modeling such tactics for the public sector and by bringing these tactics with them into government employment. The diffusion of undercover tactics in turn permitted enterprising moral reformers to make vice enforcement investigations central to the state's enforcement agenda, while promoting anti-corruption stings as a means of exposing police and mayors who protected vice.

By contrast, French private detectives did not model undercover tactics for the state, which in turn privileged political over crime-fighting uses of the tactic. And French elites could not aspire to use undercover tactics either to shape or to circumvent the state's social control of labor, vice, and criminal justice agendas in a system in which public authorities jealously guarded their monopoly of undercover tactics in these realms.

As a result, undercover tactics were the engine of centralized state power in France, even as they were a motor of decentralized social control by competing private and public elites in the fragmented American state. Undercover tactics assumed importance in both public and private investigations because American private detectives were able to market their undercover technique to diverse and competing elites even as moral reformers used such tactics to highlight social conditions that they wanted to reform. In post-Vidocq France, by contrast, the factors that inhibited both public and private investigators from publicly acknowledging undercover tactics as legitimate sources of evidence in criminal prosecutions or

from harnessing undercover tactics to private sector reform agendas help explain the relatively marginal status that undercover investigations gradually acquired for all but the French state's high policing purposes.

### **Undercover Policing as Private Self-Help in Nineteenth-Century America**

Observing the French example, the framers of the United States Constitution feared the tyranny of state surveillance. With less fear of the private sector, and greater suspicion of the state, neither local, state, nor federal levels of government in nineteenth-century America possessed or even aspired to a monopoly of legitimate force, let alone of legitimate stealth.<sup>16</sup> Undercover tactics were not the exclusive preserve of the state, nor was the state even a major protagonist in the use of undercover tactics for most of the nineteenth century.

In the United States, it was the private sector that originated undercover tactics. During the antebellum period, industrialization and the advent of the railroad heightened the demand for new, systematic ways of monitoring what Lawrence Friedman calls "crimes of mobility," including "trust" crimes such as embezzlement, seduction, and fraud.<sup>17</sup> Large enterprises resorted to such tactics as a form of self-help, hiring private detective agencies to replace the public sector in the under-policed rural stretches of the Midwest and the Western frontier and in urban areas where police departments were slow to develop their own detective divisions and often relied on assistance from private citizens and private detectives.

Nor were urban police departments much concerned with criminal investigations until the second half of the nineteenth century, since the first urban police departments emphasized crime prevention and riot control.<sup>18</sup> New York did not establish its own police detective division until

16. On American anxieties about state surveillance, and reliance on private enforcement, see Adam Malka, *The Men of Mobtown: Policing Baltimore in the Age of Slavery and Emancipation* (Chapel Hill: University of North Carolina Press, 2018), 37, 53; Wilbur R. Miller, *History of Private Policing in the United States* (London: Bloomsbury Academic Press, 2018), 2.

17. Lawrence M. Friedman, "Crimes of Mobility," *Stanford Law Review* 43 (1991): 637–58. Lawrence M. Friedman, *Crime and Punishment in American History* (New York: Basic Books, 1993).

18. Jean-Paul Brodeur, *The Policing Web* (Oxford: Oxford University Press, 2010), 73; and Frank T. Morn, "*The Eye that Never Sleeps*": *A History of the Pinkerton National Detective Agency* (Bloomington: Indiana University Press, 1982), 13–14. Jennifer Fronc, *New York Undercover: Private Surveillance in the Progressive Era* (Chicago: University of Chicago Press, 2009), 11; and Malka, *The Men of Mobtown*, 39–40, 53.

1857, while Philadelphia and Chicago established their own detective divisions in 1859 and 1861, respectively—well after Allan Pinkerton founded his Chicago-based detective agency in 1855.<sup>19</sup> Undercover work—which required no uniform—allowed American private detectives to replace the state on behalf of both public and private interests. The same mobility and easy anonymity that facilitated crime facilitated undercover investigations by private detectives.

Allan Pinkerton's highly fictionalized memoirs suggest that workforce surveillance was part of the private detectives' business model from the outset. Pinkerton's memoirs were in part a form of advertising in which undercover policing played a prominent role. Between 1874 and 1884, he published sixteen detective books that emphasized the effectiveness of his undercover methods and the "necessity and respectability" of his profession.<sup>20</sup> Pinkerton's memoirs brimmed with tales of operatives who befriended suspects, in one instance drawing incriminating admissions from a suspect by offering to invest the criminal proceeds in nonexistent oil and coal fields.<sup>21</sup> Undercover detectives like Charlie Siringo—who also worked for the Pinkerton agency—infiltrated outlaw gangs, writing memoirs of undercover exploits that linked the emerging legend of the private detective with the older mystique of the cowboy. (Siringo always referred to himself as a "cowboy-detective".)<sup>22</sup> Pinkerton marketed his private detective agency's use of "spotters" to a consortium of six Midwestern railroads, for whom his undercover operatives monitored conductors to identify those who illegally pocketed the cash fares along the underpoliced rural stretches of the expanding railroad network. But Pinkerton's undercover operatives also investigated theft of freight from railroad shipments.<sup>23</sup>

For much of the nineteenth century, the federal government actively policed primarily those activities—like theft of mail or the production and passing of counterfeit currency—that could affect its claims to sovereign control over its territory, and its ability to carry out basic governmental functions—and, even then, the Postal Service and the Secret Service

19. Morn, "The Eye that Never Sleeps", 13; and Frank T. Morn, "Allan Pinkerton: Private Police Influence on Police Development," in *Pioneers in Policing*, ed. Philip John Stead, (Glen Ridge, NJ: Patterson Smith, 1978), 104–5.

20. Frank T. Morn, "The Eye that Never Sleeps," in *Pioneers*.

21. Allan Pinkerton, *Thirty Years a Detective* (Warwick, NY: 1500 Books, 2007; first published 1884), 433–70.

22. Charles A. Siringo, *A Cowboy Detective: A True Story of Twenty-Two Years with a World-Famous Detective Agency* (Chicago: M. Umbdenstock and Company, 1885), 51.

23. John Walton, *The Legendary Detective: The Private Eye in Fact and Fiction* (Chicago: University of Chicago Press, 2015), 12.

both delegated undercover investigation of mail theft and counterfeit currency offenses to private detective agencies, and to the Pinkerton agency in particular.<sup>24</sup> These delegations made it possible for private detectives to use their undercover tactics to amplify or replace state power.<sup>25</sup> In 1873, when the United States Post Office hired private anti-vice entrepreneur Anthony Comstock to investigate the distribution of obscene literature through the United States mail, it inaugurated an investigative specialty, entrusted initially to the private sector, that relied chiefly on undercover tactics; the Postal Service retained Comstock's technique of posing as an interested buyer to correspond directly with suspected purveyors of obscenity and has turned this tradition into a modern specialty in the undercover investigation of child pornography. When the Department of Justice was established in 1870, no official spy system was approved, and instead, "a yearly appropriation was used to hire private detectives."<sup>26</sup> Until the Palmer Raids, the advent of Prohibition, and the subsequent War on Crime, there was simply no centralized national police force tasked with identifying and mitigating threats to the state. Delegation helped to normalize private detectives' preferred investigative techniques, including the use of decoys, traps, and undercover agents. The Pinkerton detective agency pioneered many of the undercover tactics that later became law enforcement staples,<sup>27</sup> including not only the use of test letters to tempt dishonest mail carriers, but also the placement of undercover agents in jail cells to extract confessions for use at trial, deep cover infiltration of outlaw gangs, and so-called "buy-bust" operations, in which Alan Pinkerton bought contraband such as counterfeit currency from suspects before arresting them.<sup>28</sup>

Undercover private eyes were also useful to American prosecutors, who, unlike their French counterparts, could not call on judicial police to carry out investigative tasks. In the late 1880s, for example, District Attorney Kalter Skoll hired a Pinkerton detective to pose as an outlaw in order to track and capture the killer of a deputy sheriff.<sup>29</sup> Police themselves sometimes hired private detectives when they were under pressure to solve

24. Gary T. Marx, *Undercover: Police Surveillance in America* (Berkeley: University of California Press, 1988); and David Williams, *Call in Pinkertons* (Toronto: Dundurn Press, 1998.)

25. Cyrille Fijnaut and Gary T. Marx, "Introduction," in *Undercover: Police Surveillance in Comparative Perspective*, ed. Cyrille Fijnaut and Gary T. Marx (The Hague: Kluwer Law International, 1995), 1–27.

26. Morn, "The Eye that Never Sleeps", 180.

27. Fijnaut and Marx, *Undercover*, 17–35.

28. Morn, "The Eye that Never Sleeps", 21.

29. Siringo, *Cowboy Detective*, 51.

notorious crimes that they lacked the resources to investigate, a fact that private detective memoirs like to emphasize in advertising the value of their services. In his memoirs of a 50-year career that started in 1862, Thomas Furlong, who was then a private detective, recalled being summoned from out of state by the Dallas police to help a prominent physician investigate the murder of his brother.<sup>30</sup> But Furlong was also hired by other elites, including committees of influential citizens who pooled their resources on behalf of a friend who had been murdered under mysterious circumstances.<sup>31</sup> Insurance companies hired private detectives to avoid having to pay out on life insurance policies.<sup>32</sup>

The popularity of private detectives owed much to their use of undercover tactics. George McWatters was an officer of New York's Metropolitan Police Force from 1858 to 1870, before founding his own detective agency. In his memoirs, he described undercover tactics as the bread and butter of his *métier* as a private detective—and one for which the public police lacked the necessary resources.<sup>33</sup>

The dearth of law enforcement was even more severe on the frontier. But even if there had been more sheriffs, constables, and marshals on the Western frontier, they could not have invested the time and resources into solving crimes and tracking offenders that private businesses were willing and able to summon. In his memoirs, Charlie Siringo reports that a mining company dispatched him and a fellow detective to Alaska to investigate the theft of \$10,000 in gold ore by unknown employees. The two operatives first took jobs at the mining company, where they heard about two employees who had bought a boat and disappeared shortly after the theft. The mining company then set Siringo and his partner W. O. Sayles up with their own boat and a large supply of whiskey, so that Siringo and Sayles could travel along the Alaska coast, selling whiskey to the native tribes and eventually attracting the interest of their suspects. Befriending the suspected thieves, the detectives presented themselves as experienced gold miners and used a smelter to entice the men to reveal and dig up the gold; only then did he summon a United States marshal to make the arrest.<sup>34</sup>

Private detectives' ability to replace the state for private and public clients depended on self-promotion, such as Pinkerton's effort to present himself as "the Founder in America of a noble profession," as encapsulated on

30. Thomas Furlong, *Fifty Years a Detective* (St. Louis: C.E. Burnett, 1862), 148–50.

31. *Ibid.*, 200.

32. Siringo, *Cowboy Detective*, 231.

33. George S. McWatters, *Knots Untied: Or Ways, and By-ways in the Hidden Life of American Detectives* (Hartford: J.B. Burr and Hyde, 1871), 153–74, 417–60.

34. Siringo, *Cowboy Detective*, 197–223.

his memorial tombstone in Chicago's Graceland cemetery.<sup>35</sup> Undercover tactics were his basis for these claims. In Pinkerton's memoirs, like those of Paris police detective Eugene-Francois Vidocq, undercover tactics feature prominently as the alchemy that transformed quasi-criminal conduct into a form of criminal investigation. But Pinkerton and his imitators sought to legitimate themselves and their tactics by presenting themselves as businesses in the mold of the large companies who hired them, not as quasi-informants and former criminals in the mold of French undercover innovators like Vidocq and his brigade of ex-convicts.

Private detectives' claim to professionalism vis-à-vis informants and police also built on the refusal by some agencies like those of Pinkerton and Furlong to work for rewards (instead billing their clients for hours worked and expenses).<sup>36</sup> Since the police still worked on the award system, Furlong, in his memoirs, claimed for himself the mantle of working in the public interest while denying this to the police, whom he repeatedly described as interested primarily in the rewards that had been posted for making arrests in particularly notorious cases.<sup>37</sup>

By standardizing its surveillance reports, the Pinkerton agency sought to market its detectives as professionals distinct from the informers who reaped municipal bounties for reporting Sabbath violations in places like Baltimore in the 1830s and 1840s.<sup>38</sup> Alan Bilansky contends that the standardized surveillance reports that Pinkerton pioneered and delivered to his clients made it easier for corporate clients to integrate the Pinkertons' work product into their information streams.<sup>39</sup> Dashiell Hammett, who had himself been a Pinkerton private eye, recalled with amusement the editorial efforts that supervisors made in correcting his written reports. "A detective official in San Francisco once substituted "truthful" for "voracious" in one of my reports on the grounds that the client might not understand the

35. To view image of Pinkerton tombstone in Graceland Cemetery, see Gravely speaking, April 4, 2013, <https://gravelyspeaking.com/2013/04/04/allan-pinkerton/>.

36. Allan Pinkerton, *The Railroad Forger and the Detectives* (New York: G.W. Dillingham Company, 1881), 41.

37. Furlong, *Fifty Years a Detective*, 328–29.

38. Malka, *The Men of Mobtown*, 43.

39. Alan Bilansky views Allan Pinkerton's elaborate system for making and transmitting detailed investigative reports to corporate clients as being part of "a historical transition from the ad hoc methods of earlier spies and informants to the institutional practices of the corporation and modern nation-state." Alan Bilansky, "Pinkerton's National Detective Agency and the Information Work of the Nineteenth-Century Surveillance State," *Information & Culture: A Journal of History* 53 (2018): 67–84, at 69. See also Stephen Robertson "The Pinkertons and the Paperwork of Surveillance: Reporting Private Investigation in the United States, 1855–1940," in *Private Security and the Modern State*, ed. David Churchill, Dolores Janiewski, and Pieter Leloup (London: Routledge Press, 2020).

latter.”<sup>40</sup> Private detectives, unlike informants or vigilante committees, thus sought to market their undercover tactics as the hallmarks of an emerging new profession.

Instead of only *replacing* the state, however, private detectives sometimes *bypassed* the public sector altogether, as when businesses used undercover tactics to break unions, recoup losses, recapture stolen property, fire dishonest employees, or decide whether it was worth their while to pursue criminal sanctions.<sup>41</sup> Infiltrating labor unions likewise allowed management to bypass the state. According to the La Follette commission, the use of labor spies to infiltrate the workforce and manipulate unionization drives was “a common, almost universal practice in American industry. . . . No firm is too small to employ them.”<sup>42</sup> In the early twentieth century, for example, the owners of a Chicago movie theater hired the Burns detective agency to join its workforce to learn more about the unionization drive of its ushers.<sup>43</sup> According to the anonymous memoirs of labor spy GT-99, detective agencies armed themselves with information about incipient organizing efforts before sending salesmen “to call at the plant where the men were being organized [to] sell the officials on the idea of employing a full-time [undercover] operator who would keep in close touch with the employees and report what was going on. When I was able to dig up exact information . . . it wasn’t hard to scare an employer into giving us a job.”<sup>44</sup>

In the United States, undercover tactics not only allowed private detectives to *replace* and *bypass* law enforcement; undercover tactics also made it possible for private actors to *harness* the state’s coercive apparatus, while alternating between serving private and public interests. The memoirs of Fred Dodge suggest the reciprocal ways in which private and public sectors

40. Dashiell Hammett, “From the Memoirs of a Private Detective,” *The Smart Set*, subsection 9, March 1923.

41. See, for example, Siringo, *Cowboy Detective*, 245.

42. Cited in S. Paul O’Hara, *Inventing the Pinkertons, or Spies, Sleuths, Mercenaries, and Thugs* (Baltimore: Johns Hopkins University Press, 2016), 153. *Agents provocateurs* thus proliferated in the United States as they did in France, and in the years following World War I. But employers “were reluctant to spend money for surveillance in the absence of ‘labor trouble.’ [Private agency] provocateurs produced such trouble and, at the same time, enmeshed unionists, especially strikers and their leaders, in framed charges of law violation. . . . This entire process of surveillance, propaganda, provocative and aggressive tactics, and control inevitably created a self-perpetuating momentum in the drive to retain and expand the market for anti-union services.” Frank J. Donner, *The Age of Surveillance: The Aims and Methods of America’s Political Intelligence System* (New York: Alfred A. Knopf, 1980), 32.

43. LaFollette Civil Liberties Committee, hearings, pt. 15A, 5640–41.

44. GT-99, *Twenty Years a Labor Spy* (New York: Bobbs-Merrill Company, 1937), 110.

served each other on the Western frontier, with private detectives sometimes replacing the state, sometimes bypassing it, and sometimes capturing the state's coercive apparatus to serve their own ends. Fred Dodge was a contemporary of Siringo's, whom Wells Fargo dispatched for long-term undercover work as a gambler in Tombstone, Arizona, in 1881, while Virgil Earp was United States marshal and Wyatt Earp was his deputy. Dodge posed as a gambler, but his real job was to protect Wells Fargo interests in the area. Befriending rustlers and outlaw gangs, he helped Wells Fargo collect evidence that could be used to mobilize the state's enforcement apparatus on his employer's behalf. But Dodge also rode posse and served sporadically as town constable.<sup>45</sup> Occasionally, Dodge suggests, it was the private sector that harnessed the state, as when Dodge hired Wyatt Earp to "guard heavy shipments of Bullion and Money."<sup>46</sup>

Private co-optation of the state was particularly rampant in prosecutions of labor leaders accused of violent crimes. Instead of accepting a delegation of power from the public sector, private detectives often worked for private sector elites like the Mine Owners' Association (MOA)—which in turn mobilized the state apparatus against its enemies. During the prosecution of labor leaders for the 1905 assassination of Idaho's former governor Frank Steunenberg, private detective agencies vied for favor with the MOA by digging up evidence to link the known assassin to the leadership of the Western Federation of Miners.<sup>47</sup> The extent to which the mine owners' interest dominated the public agenda is suggested by the chief prosecutor's efforts to convince the MOA to defray his costs. Doing so, the prosecuted claimed, would "utterly discredit, and eventually destroy, the

45. Fred Dodge and Carolyn Lake, *Under Cover for Wells Fargo: The Unvarnished Recollections of Fred Dodge* (Oklahoma: University of Oklahoma Press, 1998).

46. Dodge and Lake, *Under Cover for Well Fargo*, 9.

47. J. Anthony Lukas, *Big Trouble: A Murder in a Small Western Town Sets off a Struggle for the Soul of America* (New York: Simon and Shuster, 1997), 158–64. Infiltration of labor organizations provided private detectives not only with evidence for criminal prosecutions but also with claims to expertise about the Molly Maguires or anarchism and thus with control over definitions of deviance that allowed business interests to conflate labor strife with anarchist violence and union organizing with criminal conspiracies. See Kevin Kenny, *Making Sense of the Molly Maguires* (Oxford: Oxford University Press, 1998), 234–35. It was only with the enactment of the Wagner Act and the La Follette Senate investigation of labor espionage that labor discipline shifted away from private detectives, with unions themselves assuming new duties to exclude radical elements, effectively taking on some of the surveillance roles performed by private detectives in the past. Robert P. Weiss, "Private Detective Agencies and Labour Discipline in the United States, 1855–1946," *The Historical Journal* 29 (1986): 103, 106.

Western Federation, rouse public anger against its form of unionism, and pave the way for a new industrial climate in the West.”<sup>48</sup>

It was not unusual for states to permit private financing of public prosecutions. In 1884, a California court approved the private financing of public prosecutions as having “existed and been acquiesced in almost since the organization of the state.”<sup>49</sup> After Franklin B. Gowan, President of the Philadelphia and Reading Railroad and Coal Company, hired the Pinkertons to investigate the Molly Maguires, Gowan had himself appointed the prosecutor to try them, leading Harold Aurand to describe the affair as “one of the most astounding surrenders of sovereignty in American history. A private corporation initiated the investigation through a private detective agency; a private police force arrested the alleged offenders; the coal company attorneys prosecuted them. The state only provided the courtroom and the hangman.”<sup>50</sup> The state was, in a sense, an extension of the private sector, which outsourced the management of its labor strife to prosecutors and private detectives, using a criminal case against an individual actor to discredit the Western Federation of Miners as a whole.

Private undercover tactics also influenced the public sector through a very different mechanism; undercover work allowed private detectives to work with local reformers to combat police corruption. Despite opposition from corrupt East St. Louis police, Thomas Furlong claims, he sent undercover private detectives into four local gambling dens to assist a local prosecutor unable to mobilize the local police.<sup>51</sup> Later on, undercover tactics were central to the success of Furlong protégé William J. Burns, who liked to catch corrupt politicians red-handed accepting bribes from undercover detectives.<sup>52</sup> Such exposés of corruption established early links between norm entrepreneurs such as anti-corruption activists, who mobilized around a cause, and tactical entrepreneurs, such as private detectives like Furlong and Burns, who mobilized their profession around their claimed expertise in undercover tactics. Building strategic alliances with social and political elites, private detectives used undercover tactics to challenge corrupt political machines from New York and St. Louis to San Francisco.

48. Lukas, *Big Trouble*, 352.

49. *Ibid.*, 354.

50. Harold W. Aurand, *From Molly Maguires to the United Mine Workers: the Social Ecology of an Industrial Union, 1869–1897* (Philadelphia: Temple University Press, 1971), 25.

51. Furlong, *Fifty Years a Detective*, 178.

52. William R. Hunt, *Front-Page Detective: William J. Burns & The Detective Profession 1880–1930* (Bowling Green, OH: Bowling Green State University Popular Press, 1990), 25, 42.

Undercover tactics helped prosecutors, politicians, and newspaper tell a gripping tale in the courtroom and in the press. During the Abe Ruef investigation of 1905, for example, prominent sugar magnate Rudolf Spreckels financed Francis Heney's corruption investigation of the Democratic politicians who ran the city, with prominent newspaper editor Fremont Older reporting the story and William J. Burns loaned out by the Secret Service to gather evidence for Heney, as "special agent of the district attorney."<sup>53</sup> Burns, who had founded his own private detective agency in 1909, brought his undercover techniques with him when he took the helm of the Bureau of Investigations in 1921. Cutting the Bureau's staff by 50%, he funneled a great deal of the Bureau's investigative work to his own agency.<sup>54</sup> This embedded favored investigative tactics in the public realm while eroding the distinction between the respective investigative prerogatives of public and private investigators.

Indeed, it was the regular appointment of prominent private detectives like Furlong and Burns to positions of prominence in local policing and in federal law enforcement agencies that cemented the private detective agencies' influence on the investigative tactics of public authorities. Allan Pinkerton helped to supplement the Chicago Police Department with private detectives, and in the late 1850s he advised the mayor on the reorganization of the Chicago police.<sup>55</sup> A superintendent of the Thiel detective agency, John F. Farley became police chief of Denver in 1889.<sup>56</sup> In the late 1890s, the Pinkerton agency's Philadelphia superintendent became chief of the Philadelphia Police Department. Another former Pinkerton employee became deputy commissioner and chief of detectives in the NYPD.<sup>57</sup>

### **The Progressive Era Vice Enforcement: Public Police versus Private Reformers**

During the Progressive Era, popular associations actively challenged municipal administrations, as social reform and anti-vice activists sought to promote increasingly ambitious reform agendas and to challenge what they saw as the corruption or inaction of municipal police beholden to political machines. Private detectives' use of undercover operations had

53. John Walton, *The Legendary Detective*, 42.

54. *Ibid.*, 146.

55. Morn, "The Eye that Never Sleeps," 30.

56. <http://www.coloradohistoricnewspapers.org>; Frank Morn, "The Eye that Never Sleeps," 160.

57. *Ibid.*, 165.

turned them into tactical entrepreneurs. Progressive Era anti-vice activists and reformers in turn served as norm entrepreneurs who capitalized on undercover tactics pioneered by private detectives and sought to use these tactics to promote their own enforcement agenda, sometimes in alliance with private detectives and sometimes with their own team of undercover operatives.

Activists' reliance on undercover work was a relatively recent phenomenon, even if vice enforcement was not. Morals regulation has a long history in nineteenth-century America. This older tradition included anti-liquor legislation and efforts by local notables to shut down "disorderly houses."<sup>58</sup> But the extent to which such prosecutions relied on neighbors giving character evidence about the proprietors' reputation in the community suggests not only "a morals law devoted as much to reinforcing local status relationships as to punishing criminal actions."<sup>59</sup> It suggests that police and prosecutors were willing to investigate and prosecute these legal actions, that community members were willing to testify and convict, and that these prosecutions were not driven by the testimony of undercover agents or private reform societies seeking to circumvent reluctant police and municipal authorities.

Progressive moral purity societies emerged as a white middle-class response to growing urban density and anti-immigrant nativism. These associations hired their own undercover investigators to monitor the morals and recreational habits of working class immigrants. Civic associations mobilized to address shifting moral panics around saloons, gambling, dance halls, prostitution, homosexuality, and racial mingling.<sup>60</sup> Moral purity activists from Anthony Comstock's Society for the Prevention of Vice to Rockefeller's American Social Hygiene Association sent undercover operatives to document prostitution, and New York's Committee of Fourteen used the reports of undercover agents to close down drinking establishments or dance halls that sold liquor outside of approved hours.<sup>61</sup> The moral entrepreneurs' undercover tactics directly challenged the inaction of public authorities, producing investigative commissions and

58. Novak, *The People's Welfare*, 158–61.

59. *Ibid.*, 167.

60. Fronc, *New York Undercover*; and George Chauncey, *Gay New York: Gender, Urban Culture, and the Making of the Gay Male World 1890–1940* (New York: Basic Books, 1994), 145–46. (During World War I, "[t]he Committee of Fourteen . . . sent agents to the major cruising streets [of New York City]. . . The Society for the Suppression of Vice played the most active role in the wartime crusade against homosexuality. . . orchestrating police raids of clubs, theaters, bath houses, subway washrooms, and restaurants.")

61. Richard Zacks, *Island of Vice: Theodore Roosevelt's Quest to Clean up Sin-Loving New York* (New York: Knopf Doubleday Publishing, 2012).

scandals that occasionally forced a reluctant municipality's hand and circumvented or harnessed its coercive resources. In 1879 alone, Gilfoyle contends, over ten establishments [in New York City] were described as "respectable and law-abiding by the police, contradicting reports by a preventive society."<sup>62</sup>

Progressive reformers drew on evidence produced by undercover tactics to expand and to control definitions of deviance, to bypass the state's enforcement apparatus, and to harness that apparatus when they could. Reform proposals pressed by voluntary citizens' associations benefited from vivid first-hand exposés presented through vice reports and live testimony before grand juries and public investigative commissions (like New York's Lexow and Mazet Commissions). These colorful narratives grounded claims to subject matter expertise by social activists seeking to mobilize legislative and executive branches of government around diverse reform agendas. But undercover investigations served evidentiary as well as diagnostic purposes, as undercover agents—both public and private—could present evidence of their first-hand observations in criminal prosecutions. The ambitious aims of Progressive Era reformers fed a quest for inside information that drew on social science, voyeurism, and the quest for admissible evidence.

Reverend Parkhurst's visits to New York's brothels in 1892 suggest the role that undercover tactics played in elite efforts to pressure the police into taking action against brothels.<sup>63</sup> Reverend Parkhurst used his undercover excursions to put the New York police on the defensive. "Rather than focusing on individual saloons or brothels or gambling parlors," Jennifer Fronc observes, "Parkhurst went to the source, pointing to the system of graft, bribery, and payoffs between proprietors and police that kept illegal and disorderly places running."<sup>64</sup>

But while private reform societies sometimes worked with private detectives, they often preferred to hire their own undercover operatives. Although New York's Committee of Fifteen claimed to rely largely on private detectives; for example, Jennifer Fronc has shown that its undercover investigations of gambling and prostitution mostly relied on investigators who were suggested by local social service organizations.<sup>65</sup> The Committee of Fourteen, which took the place of the Committee of Fifteen in 1905, openly eschewed private detectives. The Committee's

62. Timothy J. Gilfoyle, "The Moral Origins of Political Surveillance: The Preventive Society in New York City, 1867–1918," *American Quarterly* 38 (1986): 637–52, 645.

63. For regulation of brothels in previous decades, see Novak, *People's Welfare*, 158–67.

64. Fronc, *New York Undercover*, 19.

65. *Ibid.*, 44.

executive director, Frederick Whitin, conducted the bulk of the undercover work himself, then hired temporary investigators, including journalists and workers from other social service organizations.<sup>66</sup> Reformers themselves, not the detective profession, pushed the use of undercover tactics in vice enforcement.

The reformers sought to shape not only the enforcement agenda but also the tactics of the police. During Theodore Roosevelt's brief tenure as one of New York's Police Commissioners, starting in 1895, undercover tactics were used to prosecute brothel owners as well as their employees for running "disorderly houses" and for excise tax violations related to the sale of liquor.<sup>67</sup> Undercover tactics thus became an anti-vice tactic of public and private sectors alike. Indeed, the ordinariness of such tactics for police is evident from Roosevelt's outrage, during his tenure as police commissioner, over budget shortfalls that jeopardized reimbursement for detectives who "shelled out their own cash to pursue undercover *gambling*, brothel, and saloon arrests."<sup>68</sup> In response to members of the police administration who objected to the expense reimbursements, Roosevelt insisted that "the police for years had been spending money going undercover into brothels and that judges had recently been demanding two eyewitnesses before issuing warrants." Roosevelt claimed that that "no other means existed for making these cases" and that, in a 6-month period "between forty and fifty houses in this precinct have been closed, not one of which could have been closed save by procuring testimony of the kind to which the Comptroller objects."<sup>69</sup>

George Kneeland's undercover work for vice commissions exemplifies Progressive reformers' use of undercover tactics to lay claim to subject matter expertise, define deviance in ways that supported their reform agenda, and press their reform agenda on public authorities. Kneeland was a social worker who succeeded in turning his use of undercover tactics into an industry and a motor of social reform.<sup>70</sup> Kneeland's professional identity lent legitimacy to his undercover tactics.<sup>71</sup> The detailed vice report

66. Stephen Robertson, "Harlem Undercover: Vice Investigators, Race, and Prostitution, 1910–1930," *Journal of Urban History* 35 (2009): 486.

67. Zacks, *Island of Vice*, 192.

68. *Ibid.*, 262.

69. *Ibid.*, 273.

70. "In the early twentieth century, it was possible to make one's living as a professional vice investigator and George J. Kneeland, the most famous and important of [the New York Committee of Fourteen's] investigators, did just that." Thomas C. Mackey, *Pursuing Johns: Criminal Law Reform, Defending Character, and New York City's Committee of Fourteen, 1920–1930* (Columbus: Ohio State University Press, 2005), 27.

71. Mackey, *Pursuing Johns*, 28.

that Kneeland authored for Lancaster, Pennsylvania makes it clear how central undercover investigations were to Kneeland's empirical claims, his definitions of deviance, and his reform suggestions. Kneeland worked with four investigators from the Department of Investigation of the American Vigilance Association, who visited 53 Lancaster "vice resorts" in the fall of 1913, including 39 "parlor houses," or brothels. Each visit was the subject of a report recounting the numbers of prostitutes and customers who frequented a particular establishment and the conditions that prevailed there. But the report's normative agenda was not only to suppress prostitution but also to define deviance down to include a much wider range of "immoral" conduct, such as "suggestive" dancing by girls who offered up toasts while "hitching up" their skirts, singing bawdy songs, and smoking cigarettes.

Undercover operations thus provided the empirical basis for the Vice Commission's recommendations that the city shut down brothels entirely instead of merely regulating them geographically, and the fist-hand accounts of undercover agents supplied steady source of political pressure on municipal administrations that would have preferred to restrict prostitution to designated zones. But undercover tactics also provided evidence for direct legal action against brothels and against the prostitutes who worked there, so as to circumvent the reluctance of successive municipal administrations to conduct their own investigation and force the city to take action.<sup>72</sup> Chicago's own Committee of Fifteen (COF), which had been formed in May 1911, took its impetus for further undercover action from Kneeland's vice report for Chicago, sending out undercover operatives to collect evidence that could be used to implement the report's abolitionist recommendations.<sup>73</sup>

In the lead-up to World War I, anti-vice and anti-subversive efforts of private sector norm entrepreneurs came to coalesce. Preventive societies' initiatives against vice reinforced and came to encompass fears of organized labor and radical political movements. Undercover tactics underwrote the gradual transition from vice enforcement to the suppression of dangerous ideas. "The moral surveillance of preventive societies quietly, almost covertly, evolved into political surveillance . . . Privatized vigilante tactics to counteract radicals and political dissidents in the early twentieth century were, in the case of the preventive society, borrowed from similar efforts to stem the subversive effects of illicit sex in the late nineteenth century."<sup>74</sup>

72. See, for example, Jennifer Fronc's discussion of notarized "Disorder House Forms," which were filled out by private undercover investigators, and were admissible as evidence to document prostitution in violation of New York's Tenement House Law of 1901, in support of legal action initiated by the Committee of Fifteen. Fronc, *New York Undercover*, 44–48.

73. Thomas Mackie, *Pursuing Johns*, 27; Clifford Barnes, "The Story of the Committee of Fifteen of Chicago," *Journal of Social Hygiene* 4 (1918): 145–56.

74. Gilfoyle, "The Moral Origins of Political Surveillance," 648.

As the Commission for Training Camp Activities (CTCA) sought to suppress prostitution during World War I, undercover investigations became the shared currency of public–private partnerships, and the balance of powers between private and public sectors shifted as the state gradually acquired and increased its own surveillance capacities.<sup>75</sup> This process accelerated after the war. The COF’s most experienced undercover agent in Harlem, for example, trained the NYPD in the use of undercover tactics in 1929, before the COF itself went out of business, in 1932.<sup>76</sup> Labor infiltration took a similar turn from private infiltration that bypassed the state to private-public partnerships that gradually tilted more heavily towards the government. With the enactment of the Wagner Act and the La Follette Senate investigation of labor espionage, labor discipline marked a shift away from private surveillance of the labor movement. Fears of a Communist takeover of the labor movement spurred government involvement, as anti-union espionage became anti-radical espionage. If labor was largely policed by employers until World War I, the Justice Department’s partnership with private detectives brought the private detectives’ own undercover methods into the Bureau of Investigations, suggesting, in Weiss’s words, “the permeability of the membrane separating the private and public realms of policing,” including both personnel and tactics.<sup>77</sup>

Following the war, Prohibition marked both the high point of the private sector’s agenda setting power,<sup>78</sup> and the low point of its operational importance, as the state developed its own surveillance infrastructure.<sup>79</sup>

75. Fronc, *New York Undercover*, 148; Christopher Capozzola, *Uncle Sam Wants You: World War I and the Making of the Modern American Citizen* (Oxford: Oxford University Press, 2008), 123; Jessica R. Pliley, *Policing Sexuality: The Mann Act and the Making of the FBI* (Cambridge MA: Harvard University Press, 2014), 120; and Scott W. Stern, *The Trials of Nina McCall: Sex, Surveillance, and the Decades-Long Government Plan to Imprison ‘Promiscuous’ Women* (Boston: Beacon Press, 2018), 44.

76. Robertson, “Harlem Undercover,” 499.

77. Weiss, “Private Detective Agencies,” 107.

78. “The [Anti-Saloon] League was viewed as the organization chiefly responsible for adoption of a national prohibition amendment to the Constitution (the Eighteenth Amendment) and as the principal force pushing for compliance with the Volstead Act.” Jack S. Blocker, Jr., *American Temperance Movements: Cycles of Reform* (Boston: Twayne Publishers, 1988), 95–96. When the United States entered World War I, the anti-Saloon League “seized every opportunity to associate beer with the enemy.” *Ibid.*, 118. Navy Secretary Josephus Daniels’ set up “dry” zones around military camps to promote the war preparedness of the fighting force, while business elites and magnates like John D. Rockefeller and Henry Ford saw Prohibition as a means of “bolstering an efficient workforce.” Lisa McGirr, *The War On Alcohol: Prohibition and the Rise of the American State* (New York: W.W. Norton, 2016), 33, 29.

79. “During the 1920s. . . [g]overnment agents assumed responsibilities that private, social reform organizations had held from the nineteenth century through World War I. Federal

Prohibition agents like Izzy Einstein, who dedicated his memoirs to “the 4,932 persons I arrested,”<sup>80</sup> took over the undercover tactics of the Committee of Fourteen and the American Saloon League. Einstein’s memoir resonates with the genre of detective memoirs but is at the same time cartoonish, representing a *reductio ad absurdum* of the established crime-solving conventions of the detective genre or the vice reformers’ pursuit of moral purification. If French police memoirs lamenting the machinations of *agents provocateurs* sounded in tragedy, Einstein’s memoirs of his battle against alcohol sounded in farce. Einstein’s descriptions of his dramatic emergence from disguise to announce to New Year’s Eve revelers that “you are all pinched” prefigures the modern uses of undercover tactics for entertainment purposes, embodying the carnivalesque spirit of P.T. Barnum rather than the police procedural or Allan Pinkerton’s dogged pursuit of respectability as “founder in America of a noble profession.”

### **The Rise of Undercover Tactics in France**

Undercover tactics played a crucial state-building role in France. Beginning in the eighteenth century, the French state used such tactics to extend the central government’s control over state territories and to respond to mobility and social upheaval. In the seventeenth century, in particular, Jean-Baptiste Colbert, the Minister of Finance for Louis XIV, built an information-gathering network that helped to wrest control over legal, financial, and administrative records away from the *parlements* and the local nobility. Colbert’s efforts culminated in the creation of a corps of bureaucratic informers whom Colbert instructed “to find documents concerning the royal domain and ecclesiastical benefices in what amounted to potentially huge sums of income for Louis XIV.”<sup>81</sup> Colbert used his intendants to make covert acquisitions of archival holdings that could be used to press the central state’s legal claims against its landed aristocracy. Colbert’s encyclopedic information-gathering ambitions created a powerful police apparatus designed to funnel information to the top of a centralized hierarchy and to consolidate the administrative reach of a centralized state. This required the police to gather the information necessary to anticipate risks of insurrection, to monitor itinerant populations, to suppress all

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agents, pursuing Prohibition or Mann act prosecutions occasionally struck temporary coalitions with private organizations, but the private organizations were increasingly supplanted by agencies of the federal government.” Fronc, *New York Undercover*, 185.

80. Isidore Einstein, *Prohibition Agent No. 1* (New York: Frederick A Stokes Co., 1932).

81. Jacob Soll, *The Information Master: Jean-Baptiste Colbert’s Secret State Intelligence System* (Ann Arbor: The University of Michigan Press, 2009).

varieties of public disorder, and—not least—to solve crimes both low and high, with particular emphasis on ferreting out plots against the king. Undercover tactics remained fundamental for all of these purposes.

In the eighteenth century, accordingly, French police memoirs and treatises were written to build the institutional memory of the state's administrative apparatus and to advance its officials' claims to professional expertise. Delamare's 1705 treatise on policing insisted that a vigilant state must acquire "knowledge of illicit assemblies, of the emotions of the people, of who was carrying guns," as the right to bear arms was expressly reserved for high-level officials ("*baillys et senechauds*").<sup>82</sup> The breadth of these administrative responsibilities presupposed an extensive surveillance network. Addressing himself to a readership of high-level administrators, Delamare sought to transmit expert knowledge about how to use secret surveillance to extend the state's reach while anticipating potential threats to the state's control over public order.

Jean-Baptiste-Charles Lemaire's *Mémoire sur l'administration de la police de Paris* suggests the centrality of covert surveillance to the French state-building project.<sup>83</sup> In Lemaire's account, the Paris police encouraged active undercover work by informants and inspectors alike. Informants "continue to frequent dangerous subjects whom they know, to keep themselves in their [the subjects'] confidence, learn their plans, inform the inspectors, and put the inspectors in a position to take action accordingly."<sup>84</sup> Inspectors must recruit "observers" whom they pay "to listen to conversations in different public places . . . or wherever heated spirits" attack the conduct of government affairs.<sup>85</sup> Informants may in turn recruit their own subcontractors, or "*sous-mouches*." Tasked with "observation and investigation,"<sup>86</sup> the inspectors who coordinate this network of informants must go undercover themselves, seeking to catch pickpockets and thieves in the act of fencing their stolen goods.<sup>87</sup> Police inspectors, Lemaire insists, must be willing to play many sorts of people; must often plead a falsehood to get at the truth; must speak well or ill of someone to get information, or must "insinuate themselves into the confidence" of their subjects to extract their secrets,

82. Nicolas Delamare, *Traité de la Police* (Paris: Jean and Pierre Cot, 1705–1710).

83. On the complicated origins of the treatise, see Steven L. Kaplan and Vincent Milliot, "La police de Paris, une 'révolution permanente'? Du commissaire Lemaire au lieutenant de police Lenoir, les tribulations du *Mémoire sur l'administration de la police* (1770–1792)," in Denys, Marin, and Milliot, *Reformer la police*, 69–115.

84. *Ibid.*, 81.

85. *Ibid.*, 65.

86. *Ibid.*, 64–65.

87. *Ibid.*, 74, 76.

while taking care to conceal who they are.<sup>88</sup> Steven Kaplan and Vincent Milliot remark that “in reading Lemaire one could get the impression that Parisian society divides itself neatly in two classes: those who keep the registers and those whose names get recorded there.”<sup>89</sup> Lemaire’s treatise suggests how important systematic surveillance became to the state’s efforts to exert control over a restive population.<sup>90</sup>

In particular, Lemaire’s treatise suggests that skillful use of undercover tactics was part of the professional know-how enabling police commissioners to supply a centralized hierarchy with the intelligence that decision makers needed to identify the most urgent public order problems and to address them effectively.<sup>91</sup> The ability to synthesize, cross-check, and write up secret information from various sources was important in a system that sought to institutionalize surveillance as a routine tool of governance. By producing and controlling the written record, commissioners decided which threats to treat as salient and what information to relay to the apex of the administrative pyramid; but this in turn depended on the commissioner’s skillful collection and assemblage of information obtained from a dense network of infiltrators.<sup>92</sup>

In contrast with American uses of undercover tactics, however, Lemaire’s use of such tactics accompanied a vigorous assertion of what one might term the government’s monopoly of legitimate stealth. His treatise evinced a special concern with ferreting out impostors, people who use false names and disguises, soldiers who don the wrong uniform to conceal their true rank, or citizens who violate the ban on the wearing of masks and carrying of arms during carnival.<sup>93</sup> Mixing among the people was one of the prerogatives of criminal investigators and was, at the same time, denied to the military (who were prohibited from wearing civilian clothes), just as it was illegal for ordinary members of the public to present themselves as someone they were not.<sup>94</sup> In 1801, Napoleon issued a decree regulating the wearing of costumes during carnival and prohibited costumes that disturbed public order; costumed revelers were prohibited from ridiculing government or religion, nor could they dress in clerical garb.<sup>95</sup> American

88. *Ibid.*, 64–65.

89. Kaplan and Milliot, “La Police de Paris,” 92.

90. *Ibid.*, 73. See also, Dominique Monjardet and René Lévy, “Undercover Policing in France: Elements for Description and Analysis” in Fijnaut and Marx, *Undercover*, 30.

91. “Introduction,” in Denys, Marin, and Milliot, *Réformer la police*, 10.

92. Lemaire, *Mémoire*, 61–62.

93. *Ibid.*, 50–51.

94. *Ibid.*, 62–63.

95. Prefecture de police, Ordonnance concernant les travestissements et déguisements pendant les jours dits du Carnaval, 21 Pluviôse an IX de la République (February 3,

willingness to tolerate undercover tactics by private detectives suggests a society in which social rules were more fluid, social prerogatives and hierarchies less well-defined, speech was less regulated, and in which it was more acceptable to reinvent oneself as whomever one wished to be.

The French Revolution brought a more critical perspective to the covert practices that Lemaire had celebrated as statecraft. Critics like Citizen Manuel denounced generalized surveillance as a form of despotism—a view that undergirds nineteenth-century American unwillingness to create a federal police force or a powerful administrative state reliant on surveillance.<sup>96</sup> On the defensive, Lemaire’s successor Lenoir edited Lemaire’s unpublished manuscript by early 1790 to take out three paragraphs describing police inspectors’ reliance on informants who mingle with criminals.<sup>97</sup> But this “*refus du secret*”<sup>98</sup> soon gave way to the creation of an even more intrusive surveillance apparatus, under Joseph Fouché, to quiet internal unrest at a time of intense warfare against external enemies. Post-revolutionary efforts to decentralize policing by devolving responsibility to municipalities were gradually reversed, beginning with Napoleon Bonaparte’s establishment of a police prefecture under the command of the Ministry of the Interior, in 1800, which in turn increased political control over the police.<sup>99</sup>

Even amid growing criticism, undercover tactics remained a salient police practice. In 1800, for example, the General Police Commissioner of Lyon, François Louis Esprit Dubois, published a public accounting of the previous year’s “secret expenditures,” justifying his use of undercover tactics. If Lemaire’s treatise had conveyed confidential information about statecraft to the Austrian imperial court, Dubois’s open accounting of expenditures evinced some degree of confidence that undercover tactics could be acknowledged and defended before a public weary of public strife and crime. Dubois vaunted his success in disseminating secret agents throughout public spaces and even in private clubs “where I could expect a partisan spirit and the possibility of some plot,” while claiming that, for most property crimes, “the resources of the secret police are the most

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1803), published in *Journal des Debats*, 23 Pluviôse [February 12, 1801], quoted in Alphonse Aulard, ed., *Paris sous le Consulat*, 4 vols. (Paris: Librairie Leopold Cert, 1904), 2:169–70.

96. P. Manuel, *La police de Paris dévoilée par l’un des administrateurs de 1789* (Paris: J.-B. Garnery, 1791); and Vincent Milliot, “Ecrire pour policer: les ‘mémoires’ policiers, 1750–1850,” in *Les Mémoires Policiers 1750–1850*, ed. Vincent Milliot (Rennes: Presse Universitaire de Rennes, 2006), 15–41, at 33.

97. Kaplan and Milliot, “La Police de Paris,” 88.

98. The phrase is Vincent Milliot’s, in “Ecrire pour policer,” 33.

99. Quentin Deluermoz, *Policiers dans la Ville: La construction d’un ordre public a Paris, 1854–1914* (Paris: Publications de la Sorbonne, 2012), 29.

efficient means of arriving at reliable results.”<sup>100</sup> Wrestling with constant social and political upheaval, police reformer Jacques Peuchet changed his views about undercover tactics between the publication of his treatise in 1789 and 1791 and his later work in 1814. Immediately after the French Revolution, Peuchet had denounced undercover surveillance as the quintessence of despotism. In his 1814 treatise,<sup>101</sup> however, Peuchet argued that the police needed to expand its surveillance activities to better take the pulse of public opinion. Peuchet envisioned the police as a channel through which opposition forces could communicate directly with the government.<sup>102</sup> In 1822, a prefect made clear how intensive a form of undercover surveillance the newly expanded engagement with social protest movements entailed, instructing his commissioners that they were expected to prevent “all popular movements by being present in any crowd that could form for any reason.”<sup>103</sup>

Despite these concerns about political stability, French undercover tactics during the first third of the nineteenth century remained crime-fighting tactics, alongside the high policing uses that prefects and police commissioners made of infiltration in the pursuit of public order and political stability. Concerns about crime and political unrest sometimes coalesced, for the police, in the surveillance of itinerant populations. Associating geographic mobility with crime and with political unrest, the Ministry of the Interior and the state’s prefects required the police to monitor itinerant beggars, peddlers, and traveling entertainers (*saltimbanques*), along with foreigners, traveling swindlers, and political “troublemakers.”<sup>104</sup> Thus, mobility of populations, exacerbated by the advent of railroads and urban growth, was one of the problems to which undercover tactics

100. François-Louis Esprit Dubois, commissaire général de police, *Comptes des dépenses du commissaire général de police de Lyon*, Séance du 18 Pluviôse an XI (*Procès-verbaux des séances publiés par la municipalité d’après les manuscrits originaux (1800–1879)*) (Lyon: Imprimerie Lyonnaise, 1913. Tome I: an ix-an XIV), reproduced in Milliot, ed., *Les Mémoires Policiers*, Appendix 8, 409.

101. Jacques Peuchet, *Du Ministère de la Police Générale* (Paris: Imprimerie de C.F. Patris, 1814), 18; and Ethel Groffier, *Un Encyclopédiste Réformateur. Jacques Peuchet (1758–1830)* (Québec: Les Presses de l’Université Laval, 2009).

102. Pierre Karila-Cohen, “Du maintien de l’ordre à l’expertise du social. Jacques Peuchet et la crise de la police à l’âge libéral: réflexion sur un texte de 1814,” in *Les Mémoires Policiers*, 251–69, at 266.

103. Instruction of Prefect of Lyon to police commissioners in 1822, cited in John Merriman, *Police Stories: Building the French State 1815–1851* (Oxford: Oxford University Press, 2006), 92.

104. John Merriman, *Police Stories*, 111.

presented themselves as solutions, in both the United States and France.<sup>105</sup> But in France, as indeed elsewhere in Europe, the authorities defined the ensuing disorder as a threat first and foremost to the state, privileging these concerns over threats that this mobility might present to private business interests. In the United States, it was instead the threat that mobility presented to business interests that prompted the development of undercover tactics by the private sector, creating an opportunity for the emergence of a new profession of private detectives that could specialize in the use of undercover tactics to mitigate the impact of mobility and urbanization on private business interests.

Nationally appointed police commissioners in larger French cities presided over a municipal police recruited and funded by local mayors. Jean-Francois Tanguy, Dominique Kalifa, and Pierre Karila-Cohen contend that police commissioners were caught in the middle between mayors who privileged local interests and prefects who pursued national priorities, since commissioners were appointed, moved around, and promoted by the national state but paid by municipal councils.<sup>106</sup> The tension between pro-saic, local responsibilities and high policing thus translated into a tension between two types of undercover work: undercover policing of robbers and thieves, and “high policing” of political dissent. This conflict translates, roughly, into a tension between service to the public (who were concerned about crime and channeled these concerns through their mayors) and service to the state (which was concerned about threats to its power).<sup>107</sup> The 1834 insurrection by silk workers allowed the national authorities to centralize control over policing, reducing the mayor’s sway over the priorities of Lyon’s police commissioner. As a result, police commissioners, who reported to prefects and national authorities, came to privilege the political over the crime-fighting uses of undercover tactics.<sup>108</sup>

105. Denys, Marin, and Milliot, “Introduction,” in *Réformer la police*, 13; Vincent Milliot, “Réformer les polices urbaines au siècle des Lumières: le révélateur de la mobilité,” *Crime, histoire et sociétés* 10 (2006): 25–50; and *Gens de passage en Méditerranée de l’Antiquité à la période moderne. Procédures de contrôle et d’identification*, ed. Claudia Moatti and Wolfgang Kaiser (Paris: G.P. Maisonneuve and Larose, 2007).

106. Jean-Francois Tanguy, “Autorité de l’Etat et libertés locales: le commissaire central de Rennes face au maire et au préfet (1870–1914),” in *Maintien de l’ordre et polices en France et Europe au XIX siècle*, ed. Philippe Vigier (Paris: Creaphis, 1987), 167–182; see also Dominique Kalifa and Pierre Karila-Cohen, *Le commissaire de police au XIX siècle* (Paris: Publications de la Sorbonne, 2008), 19.

107. Steven Kaplan and Vincent Milliot see this heightened emphasis on surveillance as a response to growing unrest caused by the relative deregulation of grain prices and the riots that exploded once grain prices tripled. Kaplan and Milliot in “La Police de Paris,” in *Réformer la Police*, 74.

108. Merriman, *Police Stories*, 179. Deluermoz, *Policiers dans la Ville*, 30–31.

There were a number of strategies by which the Ministry of the Interior ensured the primacy of political policing among the commissioners' tasks. During the first third of the nineteenth century, the Ministry used central commissioners to supervise regular commissioners, thereby embedding its local representatives in hierarchies that held local commissioners accountable for their success in political policing. In addition, the Ministry entrusted commissioners with secret missions for the Ministry, which in turn contributed to the prestige of the commissioners' office, as "more than one CP (*commissaire de police*) liked to give the impression that he enjoyed the confidence of high officials in Paris."<sup>109</sup> During the Second Republic (1848–51), the Ministry also introduced "special commissioners to oversee the infiltration of radical milieus, including that of railroad workers, due to the state's special concern with "'nomadic' workers employed to build France's railroads."<sup>110</sup> And in 1880, the Director of the Sureté Generale penned a report "on the role... of the political police," in which he insisted that dangers emanating from Jesuits, striking workers, unions, and revolutionary movements urgently required an increase in budget allocations for special commissioners, particularly of the railroad police, a euphemism for the national intelligence service that eventually became the *Renseignements Generaux*.<sup>111</sup>

Malcolm Anderson contends that the Boulanger crisis of 1887–89, along with "apprehensions about the possibility of a military *coup d'etat*... reconciled many Republicans to the necessity of some form of political police." Increases in anarchist violence, violence accompanying strikes and public protests, and foreign radical groups motivated increases in political policing and in the undercover tactics that this entailed. Paris police prefect Louis Lepine was able to do this by building on a system of political policing proposed by Honore Cazelles in 1880.<sup>112</sup>

Like those of Canler, the memoirs of the late nineteenth and early twentieth century police prefect Louis Lepine treated surveillance tactics as a distasteful necessity of political policing, while the increasingly professionalized *métier* of criminal investigations relied on more "scientific" methods, such as *Bertillonage*, ballistics, and photography, in which the Paris Sureté became an international leader.<sup>113</sup> Marking what Jean-Marc Berliere and Rene Levy

109. Deluermoz, *Policiers dans la Ville*, 38.

110. *Ibid.*, 19.

111. "Rapport du directeur de la Sureté Générale au Ministère de l'Interieur (Constans) sur le Role, l'Utilité d'une Police Politique Nombreuse, Organisée et Efficace dans la Republique," archives nationales [an f7 12708], in Berliere and Lévy, *Histoire des polices en France*, 728–31.

112. Malcolm Anderson, *In Thrall to Political Change: Police and Gendarmerie in France* (New York: Oxford University Press, 2011), 270–72.

113. Louis Lépine, *Mes Souvenirs* (Paris: Payot, 1929).

term the transition “from ‘snitches’ to ‘experts,’”<sup>114</sup> the Paris Sureté modernized policing by subtracting old layers of expertise, effectively “downgrading other forms of know-how that have become obsolete.”<sup>115</sup>

Much as in the United States, the advent of the railroad created opportunities for undercover investigations. But while it was the private sector, particularly private detectives, who capitalized on these opportunities in the United States, it was the state that first used the railroad network to facilitate surveillance in France, doing so for specifically political ends, not for workforce surveillance, as in the United States.

### **Undercover Policing of Labor and Vice in Late Nineteenth-Century France**

In contrast with the United States, neither replacing, bypassing, harnessing, nor partnering with the French state was an option for private uses of undercover tactics in France. As the French state did not allow private detective agencies to use undercover tactics to collect evidence for criminal cases or to steer or disrupt the labor movement, private detective agencies could not expect to stake their fortunes or their professional identity on the undercover work that was so central to the rise of American private detectives.

The scope and intensity of political policing increased significantly as France became industrialized in the nineteenth century.<sup>116</sup> With the advent of labor unions, striking workers became legitimate subjects of surveillance. Accordingly, the state was not willing to leave the suppression of the labor movement to the private sector. French labor strife was not treated as primarily a matter of private interest to large business concerns, but as a threat to the stability of the regime and its ability to keep public order. In his urgent appeal for a budget increase to fund secret agents, the Director of the Sureté Generale warned, in 1880, that “should a political party announce a plan of coordinating” the working class electorate “to make them the instrument of a social revolution,” the government would be caught unaware and unable to differentiate between law-abiding unions

114. Berlière and Lévy, *Histoire des Polices en France*, 149.

115. Denys, Marin, and Milliot, “Introduction,” in *Réformer la Police*, 17.

116. But surveillance of the workforce had a longer tradition; the abolition of the Parisian professional guilds in 1776 first prompted the police to take over surveillance of apprentices from the guilds. Clive Emsley, “From Ex-Con to Expert: The Police Detective in Nineteenth Century France,” in *Police Detectives in History*, ed. Clive Emsley and Haia Shpayer-Makov (London: Routledge Press, 2017), 61–77, at 63.

and proto-revolutionary unions that might be mobilized against the government.<sup>117</sup>

Regulating prostitution had been a source of revenue for the French police since the days of Fouché, who replenished his fund for secret police operations using taxes on vice establishments.<sup>118</sup> Accordingly, the French police viewed vice regulation as an invaluable source of intelligence about politics and crime. Undercover tactics played a very different vice enforcement role in eighteenth- and nineteenth-century France than they came to play in the growing cities of the United States, particularly once the Progressive Era injected private reform societies into a leading role as anti-vice entrepreneurs. The French state did not need to act through private intermediaries, who would only have hindered the state's recruitment of prostitutes as informants.<sup>119</sup> Already during Lemaire's day, the police had monitored vice, but he insists that the police did so primarily with an eye to detecting and suppressing dissent.<sup>120</sup> This tradition continued during the nineteenth century. The head of the vice brigade "communicated daily with the mistresses of the houses of tolerance [brothels], over whom the chief exercises a power . . . without limits," Canler reported.<sup>121</sup>

Decades after Canler, Marie-Francois Goron claimed that the tolerance that police accorded to brothels was largely due to the information that the owners regularly relayed to the police.<sup>122</sup> The memoirs of Goron's contemporary, Louis Andrieux, who was prefect of police from 1879 to 1881, also treated prostitution as a useful window onto other offenses, which led him to merge the *brigade de mœurs* with the Sureté (detective division) in 1881, to facilitate the investigation of other offenses.<sup>123</sup>

Prostitution, then, was to be regulated, not suppressed. Beginning with the mobilization of Napoleonic armies, France had instituted a regulatory system of inscription, medical examination, and periodic administrative detention for all working-class prostitutes—a system that was further consolidated during the Restoration.<sup>124</sup> Known as the French Model, this

117. "Rapport du Directeur," in Berlière and Levy, *Histoire des Polices*, 730.

118. Stead, "Joseph Fouché: the Napoleonic Model of Police," in *Pioneers in Policing*, 64–81, 72.

119. Jill Harsin, *Policing Prostitution in Nineteenth Century Paris* (Princeton: Princeton University Press, 1985), 198 (noting that official regulation of prostitution "allowed many perfectly ordinary contacts with the police, so that the opportunity and the motive were there for the prostitutes to give information").

120. Lemaire, *Mémoire*, 93.

121. Canler, *Mémoires de Canler*, 119.

122. Marie-Francois Goron, *L'Amour à Paris* (Paris: Ernest Flammarion, 1899), 199–201.

123. Louis Andrieux, *Souvenirs d'un Préfet de Police* (Paris: Jules Rouff, 1885), 2:21–22.

124. Stephanie A. Limoncelli, "International Voluntary Associations, Local Social Movements and State Paths to the Abolition of Regulated Prostitution in Europe, 1875–

approach remained in place in modified form through World War I, the Interwar period, and World War II. Neither the regulationist approach nor its abolitionist challengers in the late nineteenth and early twentieth centuries relied on undercover tactics to investigate prostitutes.

Under the regulationist approach, unregistered prostitutes—known as “clandestines”—came to be “viewed as an obstacle not only to the regulatory system but also the health of nations.”<sup>125</sup> But to catch these women, nineteenth-century French police appear not to have relied on undercover tactics, given contemporary complaints that “police inspectors arrest without distinction all women that they find walking alone on the boulevards after a certain hour.”<sup>126</sup> Going on so-called “women hunts,” “[French] [a]uthorities followed women through the streets, hoping to see them enter or exit a brothel, or consort with known prostitutes. Prolonged ‘suspicious’ behavior was enough to merit arrest, as was another citizen denouncing a woman as a prostitute (or even a carrier of an STI).”<sup>127</sup>

Goron’s memoirs describe raids on lodging houses—known as *garnis*—as favorite means of catching unregistered prostitutes,<sup>128</sup> for each of which the *brigade de mœurs* would collect a bounty. And Jill Harsin reports that “public association with known prostitutes was sufficient reason for arrest. . . . Women picked up for public solicitation were formally charged, according to police guidelines, only after they had been observed several times on the street.”<sup>129</sup> Undercover tactics played no recognized evidentiary role. Prostitution itself was not a criminal offense, so therefore the police would not have had the motivation that American investigators did to make first-hand observations in an undercover capacity, by passing themselves off as potential customers; instead, the registration of suspected prostitutes was an administrative procedure, for which it was not necessary to catch women “*en flagrant delit*.”

Yet France certainly did not lack for moral reform societies battling pornography, and licentiousness and had its own movement to abolish prostitution in late nineteenth century and early twentieth centuries. Yet when abolitionist Yves Guyot attempted to challenge policing of prostitution by angry denunciation of the Parisian vice squad (*brigade de mœurs*), he used somewhat different tactics from those preferred by American

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1950,” *International Sociology* 21 (2006): 31, 35; and Vern Bullough and Bonnie Bullough, *Women and Prostitution: A Social History* (Buffalo, NY: Prometheus Books, 1987).

125. Harsin, *Policing Prostitution*, 251.

126. *Ibid.*, 200, quoting the landlady of a young Frenchwoman arrested for streetwalking in 1816.

127. Stern, *The Trials of Nina McCall*, 13.

128. Marie-Francois Goron, *L’Amour Criminel* (Paris: André Versaille, 1899/2009), 54.

129. Harsin, *Policing Prostitution*, 264.

activists. Instead of pursuing evidence that might embarrass the legal system into taking action against prostitutes, he sought to discredit vice enforcement through the media, first through a report on the violence of vice squad raids, issued in 1872, then through a series of newspaper stories on suicides attributed to the violent tactics of the vice squad, in 1876, and through a fictitious document published in 1878 as the anonymous confessions of a former vice squad agent (*Lettres d'un ex-agent des moeurs*), which "detailed the various forms of blackmail, corruption, and illegalities that were routine in the Brigade des moeurs."<sup>130</sup>

French abolitionists, like their American counterparts, advocated the complete suppression of brothels, but without themselves resorting to undercover tactics. The French abolitionist movement became a cohesive group in response to the visit, in 1874, of Josephine Butler, the British founder and representative of the International Abolitionist Federation. "At the national level, abolitionist efforts were virtually without result. When abolitionists chose to struggle at the more accessible local level, however, it meant that the battle had to be fought over and over again, in each separate municipality." And while the American abolitionist movement was strongly inspired by religious reformers, "the abolitionist movement in France... had a strong anti-clerical flavor," with prominent religious conservatives backing the regulationist approach.<sup>131</sup> That abolitionism was a left-wing cause in France led French reformers in a less punitive direction than American reformers, who sought to compel American law enforcement agencies to make more arrests of prostitutes, bring criminal prosecutions under the Mann Act, and deport foreign-born prostitutes.<sup>132</sup>

But in France, the main abolitionist opposition to the prefecture's regulationist approach came from the Paris municipal council, not from private organizations. French abolitionists argued for housing infected prostitutes in sanatoriums instead of detaining them in the St. Lazare prison, where prostitutes had traditionally been kept during their enforced treatment for venereal disease.<sup>133</sup> The municipal council controlled the budget for the dispensary (of medicines of prostitutes with venereal disease) and it used that power to compel investigations and to advance proposals for more humane housing and treatment of prostitutes. Neither abolitionists nor

130. Limoncelli, "International Voluntary Associations," 45; Harsin, *Policing Prostitution*, 327; and Alain Corbin, *Women for Hire, Prostitution and Sexuality in France After 1850* (Cambridge, MA: Harvard University Press 1990), 221–22.

131. Harsin, *Policing Prostitution*, 324–26.

132. Pliley, *Policing Sexuality*, 35–37.

133. Harsin, *Policing Prostitution*, 326–27, 338–39; and Corbin, *Women for Hire*, 220–22.

regulationists espoused undercover tactics to gather first-hand evidence against prostitutes plying their trade.

At a time when Progressive-Era New York and Chicago saw private undercover agents supporting the vice enforcement agendas of prominent social reform organizations, French politicians did make some attempts to allow French reform organizations to pursue their own enforcement agenda independently of the police. In 1893, for example, lawyer and social activist Paul Nourrisson—a member of the National League against Atheism—proposed that the National Assembly give private morality leagues and religious organizations the power to bring criminal complaints to court directly, on their own initiative, thus relieving police and prosecutors of their gatekeeping function in offenses against public morality.<sup>134</sup> Although the proposal received support from a prison reform society and from prominent social reformers like René Berenger, who headed several private associations dedicated to the improvement of public morals, the Senate defeated the proposal in 1898 and again in 1910.<sup>135</sup>

Instead of undercover stings, reformers channeled their energies into protests and political action. In one Paris district, known as the Goutte d'Or, Parisians formed a “defense committee of the moral interests of the district,” early in 1913, “bringing together socialists, radical socialists, and members of the morality societies.” Activists organized protest marches to call attention to the ways in which prostitution “harmed business, discouraged employers... and led to a rise in delinquency.”<sup>136</sup> Candidates for municipal office and the vice president of the Ligue de protection sociale variously blamed capitalism, called for imprisonment of brothel keepers, and demanded that local residents “clean up the mess” in their own neighborhoods.<sup>137</sup> For many reformers, the preferred instrument of change was political mobilization, not the covert collection of evidence against prostitutes.

Dominique Kalifa finds it surprising, even paradoxical, that French private detectives failed in their efforts to legitimate their métier as a true profession during the nineteenth century, given the concomitant development of new investigative techniques and narratives that propelled the way policing and journalism became professionalized.<sup>138</sup> Investigations were, after all, central to private and public detective work alike, as they were to reporting. However, French private detectives lacked the option of

134. Dominique Kalifa, *Naissance de la Police Privée* (Paris: Pion, 2002), 127.

135. *Ibid.*

136. Corbin, *Women for Hire*, 326-27.

137. *Ibid.*

138. Kalifa, *Naissance*, 277-78.

deploying undercover tactics for entrepreneurial prosecutors or police. French prosecutors did not welcome evidence from investigators such as private detectives operating “at the margins of recognized professions,” such as notaries, scribes, lawyers, and accountants. Private detective Paul Cesar’s memoirs lament his inability to win an acquittal for a man he believes may have been wrongly convicted of murder; the police showed no interest in the leads that he generated suggesting the identity of the “true” killers; and Cesar reports that he resorted unsuccessfully to the “*ligue des Droits de l’Homme*” as an intermediary, to convey his evidence to the judicial system.<sup>139</sup>

That French private detectives did not develop licensing procedures or governing legal structures until 1942 suggests that they lacked the professional status that could give them influence over the state’s tactics or enforcement agenda. Without an established professional identity of their own—and subsisting largely “at the margins of recognized professions,” such as notaries, scribes, lawyers, and accountants, private detectives emulated the investigative work of journalists and of the police (as more and more private detectives came from both professions after 1890).<sup>140</sup>

But there are other reasons why French private detectives could not make crime-fighting use of undercover tactics on behalf of corporate clients, as their American counterparts did. Unlike their American counterparts, French detective agencies in the nineteenth century did not serve captains of industry, who could fund the elaborate undercover operations that mining companies and railroads sponsored in the United States. Not until the early twentieth century did French private detectives succeed in appealing to a big business clientele, Jean-Marc Berliere and Rene Levy report, as large hotels, railroads, and banks in nineteenth-century France all maintained security services of their own to guard against theft.<sup>141</sup>

Accordingly, when undercover tactics do figure in the memoirs of French private detectives, particularly in the early twentieth century, the authors made mention of such tactics largely to underline their discretion in protecting family secrets, not to promote their tactics as a model for criminal investigations. When French private detective Cesar passed himself off as the private secretary to a government minister, he claims, he did so in order to spirit a young girl “discreetly” to a mental hospital, at the request of her family.<sup>142</sup> When Eugene Villiod used disguise and deception to locate an errant spouse or to retrieve compromising correspondence

139. Paul César, *Souvenirs d’un Détective* (Lyon: Les Editions du Fleuve, 1926), 113.

140. *Ibid.*, 114.

141. Berliere and Lévy, *Histoire des Polices*, 645.

142. *Ibid.*, 76.

from a blackmailer, Villiod claimed to have done so to avoid police attention, whereas undercover tactics advertised by American private detectives often culminated in some form of official action by police, courts, or licensing authorities, who were more willing than their French counterparts to rely on the testimony or affidavits of undercover agents.<sup>143</sup> In light of police mistrust, French private eyes had reason not to highlight the crime-fighting use of undercover tactics in their memoirs.

French private detectives simply lacked a favorable context that would have allowed them to replace let alone influence French criminal investigators in the public police. As early as 1832, when Vidocq was fired from the Bureau de Sureté, Paris was much more heavily policed than Chicago in 1855, when Pinkerton opened his agency, and the French police resented competition from private detectives.<sup>144</sup> French private investigators whose work too closely resembled police work could themselves face arrest for infringement of sovereign prerogatives.

This proved Vidocq's undoing after he left the Sureté and founded his own private detective agency. Vidocq was prosecuted for false arrest of a swindler whom the police had been tracking unsuccessfully. The police particularly resented Vidocq's efforts to profit from foreign contacts he had made as chief of the Sureté<sup>145</sup> and were angered by his use of files that he had kept after leaving office, which gave him access to the names of state informants and *agents provocateurs*. Private investigators in France who arrested pickpockets faced prosecution under article 258 of the Penal Code, which proscribed usurpation of titles and functions. And in 1888, a lawyer proposed applying this provision of the Penal Code to private investigators who sought access to information about a person's private life—an approach which, if successful, would have made most private detective work illegal.<sup>146</sup> Fearing that former police officers improperly traded on the secrets that they had acquired in public service, French police in 1895 raided the offices of Rossignol and Jaume to search for police files.<sup>147</sup> René Cassellari's career as a private detective was effectively destroyed when the police arrested him in 1919 on charges of influence peddling and blackmail.<sup>148</sup> The French state jealously guarded its secrets and its investigative prerogatives.

143. *Ibid.*, 87.

144. *Ibid.*, 645.

145. Eric Perrin, *Vidocq* (Paris: France Loisirs, 2001), 244–45; and Kalifa, *Naissance*, 43–45, 55.

146. Dominique Kalifa, *Histoire des détectives privés en France (1832–1942)* (Paris: Nouveau Monde, 2007), 240.

147. Kalifa, *Naissance*, 172–73, 222.

148. *Ibid.*, 200–201.

The French tradition of state liberalism reinforced a mistrust of private sector activity that too closely mimicked sovereign prerogatives. Critics inside and outside of the police—including most famously Balzac—characterize private investigation as a usurpation of a state function.<sup>149</sup> In prosecuting Vidocq, the state insisted that criminal investigations are only legal under the control of public authorities. “Statist liberalism,” according to Kalifa, “located the guarantee of individual rights in the pre-eminence of the state.”<sup>150</sup> If the state did not have a de facto monopoly of stealth, it did attempt to assert a monopoly of *legitimate* stealth over crime fighting and the regulation of prostitution and gambling.

### Conclusion

In France, unlike in the United States, undercover tactics were devised by and for the state, to consolidate its hold on power and its administrative apparatus. The primacy of political over crime-fighting uses of infiltration—firmly established by the mid-nineteenth century—meant that neither public nor private detectives built their professional identity around crime-fighting uses of undercover tactics. Openly espousing undercover tactics would have made it harder for criminal investigators within the police to differentiate their *métier* from that of the political police and thus to survive regime change. By the same token, advertising such tactics could have exposed private detectives to the risk of prosecution for usurping a sovereign function and thereby infringe the French state’s monopoly of legitimate stealth. Vidocq’s more adventurous forays into undercover crime fighting did not come to be professionalized but instead came to be viewed with suspicion as remnants of a pre-professional era when the police recruited its investigators from the ranks of professional criminals. Firing Vidocq definitively in 1832, the Paris Sureté eventually became known for its experimentation with new crime-solving techniques and its efforts to professionalize policing through scientific innovations like *Bertillonage*.<sup>151</sup> Undercover tactics were not among the specialties nineteenth-century chiefs of the Sureté advertised after the fall of Vidocq. Undercover tactics instead continued to play an important state-building function by helping the central state to extend its administrative reach to the provinces while protecting a succession of unstable regimes against a variety of threats.

149. *Ibid.*, 19.

150. Kalifa, *Detectives Privés*, 19.

151. Berlière and Lévy, *Histoire des polices*, 149.

Unlike their American counterparts, French advocates for the suppression of prostitution could not rely on undercover tactics to expose police inaction, define deviance, or press their reform agenda. Police regarded registered prostitutes as source of intelligence and police pursuit of clandestine prostitutes did not rely on undercover tactics. The prevention of strikes, too, was the domain of the political police. The French tradition of direct action and wildcat strikes limited the influence of infiltrators. Mediating between labor and management became a state prerogative for a political police concerned first and foremost with protecting precarious regimes from social and political turmoil.

Private detective agencies were largely relegated to the fringes of more established professions. If American detectives and private reformers made their names exposing vice, the memoirs of French private detectives largely advertised their discretion at protecting families from scandal. When they did investigate crimes, it was usually to exonerate, not to incriminate. French private detectives did not go back and forth between the public and private sectors as their American counterparts did. It would have been unthinkable for French private detectives to model crime fighting for the French police, and undercover crime-fighting tactics least of all. And despite the corporatism of so many other professions, the French detective profession did not establish its own licensing procedures until 1942. If Vidocq would have liked to call himself “the founder . . . of a noble profession” after founding his own private detective agency, as Pinkerton later did, the state’s repeated prosecution of Vidocq and the twin black legends of Vidocq and Fouche discredited both the crime-solving uses of undercover tactics and the private detective profession itself.

In nineteenth-century America, by contrast, the private origins of undercover tactics meant that infiltration did not develop a dominant identification with state surveillance, loosening the association of such tactics with state tyranny. Undercover tactics supplied private detectives and private reform societies with admissible evidence, helped to solve crimes, and intervened in labor strife by making it possible for management to harness the legal process and the coercive apparatus of the state to its interests. Moral reform societies concerned about vice also seized on such tactics, defining deviance in ways that legitimated the enforcement agendas of anti-labor and nativist elites who wished to shape the state’s enforcement agenda. As a result, no level of government in the United States could ever hope to assert a monopoly of legitimate stealth. The political authorities were only one set of players who used undercover tactics for social control, and they entered the arena late and keenly aware for much of the nineteenth and early twentieth centuries that they lacked the resources

that the private sector could muster against crime, corruption, organized labor, and vice.

Memoirs of American detectives, both public and private, helped build the profession around their self-professed expertise in going undercover to gather evidence of crime, to locate stolen property, and to expose criminal conspiracies in the labor movement. Vice reports in turn built their reform suggestions on their claimed expertise in gathering first-hand accounts of how vice establishment functioned. By contrast, these were tactics that could not be acknowledged let alone advertised neither in the memoirs of French criminal investigators or private detectives nor in the reform advocacy of private anti-vice activists in France. American private detectives succeeded in presenting themselves as businesses much like those of the clients who hired them, enabling private detectives to differentiate themselves from criminals and informants alike. If the trial testimony and press coverage of undercover agents like James McParlan and Charlie Siringo turned them into crime-fighting celebrities, French private detectives did not testify. Neither did French police commissioners who used such tactics to take the pulse of public opinion or to investigate potential trouble-makers and other high-policing targets. French commissioners rarely went undercover themselves, once they came to be recruited from the literate professions. Instead, they were judged by their ability to triage intelligence supplied by informants and to turn their insights into well-written reports that could be channeled upwards through the chain of command.

If undercover tactics allowed the French state to diffuse state power into all sectors of French society, American undercover tactics instead percolated into government from the private sector, which first performed such investigations in place of the state on behalf of both private and public sector clients, from mining companies to the Postal Service and Secret Service. Private detectives sometimes replaced the state and sometimes bypassed it altogether; for example, by seeking restitution from offenders, identifying dishonest employees, and infiltrating unions to disrupt the labor movement. But private detectives who worked closely with prosecuting attorneys to solve crimes, to investigate public corruption, or to frame labor leaders, also modeled undercover tactics investigations for municipal detective units and federal law enforcement agencies; and private sector influence on state and local government, along with private financing, made it possible for the state to harness the state's enforcement apparatus against labor leaders accused of high-profile crimes. Public authorities benefited from private detectives' undercover tactics but increasingly faced challenges from anti-vice activists—moral entrepreneurs who themselves appropriated the methods of tactical entrepreneurs and repurposed

undercover explorations to embarrass municipal agencies into taking action against dance halls, saloons, and brothels. Only in the lead-up to World War I did the public sector align more closely with private sector undercover tactics, which amplified state power and helped to shape state tactics as private detectives increasingly joined the public sector and brought their undercover tactics with them.

Eventually, undercover tactics (like those of the American Protective League and National Civic Federation during mobilization for World War I) helped private industry and voluntary associations to support the anti-radical agenda of the Bureau of Investigations, permitting the government to do through private actors what it lacked the manpower or political cover to do on its own.<sup>152</sup> With the advent of the Mann Act of 1910, the Harrison Narcotics Tax Act of 1914, the Sedition Act of 1918, and culminating in the enactment of the Prohibition Amendment and the Volstead Act, American law enforcement agencies came to adopt and channel the undercover methods and ever-shifting moral panics of the private sector, whether these coalesced around prostitution, narcotics, liquor, or radical politics and suspected subversion. Moving from conflict to partnership with the government, activists, and private detectives worked closely with municipal and federal agencies, helping to model and normalize undercover tactics and to build capacity at all levels of government (including the Bureau of Investigations, the Bureau of Prohibition, the Bureau of Immigration and Naturalization, and the Bureau of Narcotics, at the federal level alone) to conduct their own undercover operations.

Undercover operations thus became central to American criminal investigators in ways that had no French counterpart in either the public or private sectors. When France did introduce undercover tactic in 1991<sup>153</sup> (for drug trafficking investigations) and 2004<sup>154</sup> (for organized crime and terrorism), it did so by signaling a dramatic break from the tactic's high policing past, in a bid to reconcile the legality of such tactics with the modern demands of the rule of law (and the requirements of the European Convention on Human Rights). Legalization entailed a wholesale renunciation of domestic uses of undercover agents for high-policing purposes and a reinvention of such tactics as an elite professional specialty of the judicial police.

152. Capozzola, *Uncle Sam Wants You*, 53; Fronc, *New York Undercover*, 148; and Pliley, *Policing Sexuality*, 120.

153. Loi no. 91-1264 du 19 decembre 1991 relative au renforcement de la lutte contre le trafic des stupefiants.

154. Undercover policing was legalized for organized crime and terrorism investigation as part of the "loi du 9 mars 2004 portant sur l'adaptation de la justice aux évolutions de la criminalité," known as the "loi Perben II."

By contrast, American undercover tactics continue to be used for all manner of intelligence operations and criminal investigations, both high and low, at every level of government, without a warrant or a governing statute that defines the investigative prerogatives of the state. The growth of the public surveillance sector has never fully displaced the private use of such tactics for criminal investigations, journalism, entertainment, and profit. In modern France, however, the state has had to subject itself to stringent regulation as the price it must pay for its monopoly over an investigative tactic that remains strictly illegal for everyone else.