Law and History Review (2025), 1–6
doi:10.1017/S0738248025100916

ASLH AMERICAN SOCIETY FOR LEGAL HISTORY
CAMBRIDGE UNIVERSITY PRESS

ORIGINAL ARTICLE

Saboteurs as State Builders: Forum on Willrich's *American Anarchy*

Sarah E. Igo

Andrew Jackson Professor of American History, Vanderbilt University, Nashville, USA
Email: sarah.igo@vanderbilt.edu

Abstract

My contribution to this Forum highlights the ways that Michael Willrich's story of early-twentieth-century anarchism intersects with and complicates existing scholarly accounts of the development of the American "surveillance state." My essay reflects on the way the subjects of Willrich's history—immigrant radicals, those who sought to subdue and deport them, and those who defended them—shine a new light on ongoing struggles over the boundaries of modern social regulation.

American Anarchy opens with a hushed tableau: several hundred passengers departing from New York by ship in 1919 in the dark of an early December morning. Here is how Michael Willrich sets the scene: "Huddled together, cigarettes glowing," they traveled "under the stars on the frost-covered deck." The lovely image quickly gives way to a more menacing one. These were immigrant anarchists, he reveals, "the unwilling subjects of the US government's first experiment in the mass deportation of political dissenters" (p. 1). Guards with rifles, passing right under the gaze of the Statue of Liberty, complete the picture.

It is classic Willrich: both the beautiful prose and the clear-eyed view of state power—in this case, the crushing and arguably illegitimate authority of the emergent U.S. surveillance state. Its apparatus was growing in leaps and bounds in the early twentieth century, in no small part in response to those dissenters, Willrich tells us. His book makes the case that the growth and character of the modern U.S. state owes much to a group typically consigned to the eccentric fringe of American society.

Anarchist activity was, first of all, alarming enough to spur the rapid expansion of federal policing capacity (notably the Bureau of Investigation and the Army's Military Intelligence Division) and the drafting of restrictive speech

laws and policies—indeed, an entire government operation devoted to stamping it out. Radicals, that is, accelerated the formation of a punitive state. The second plank of Willrich's case is more surprising, given anarchists' assumed marginality, not to mention their philosophical opposition to the rule of law (which he pithily characterizes as "so much patriotic bunting, which the state draped over everything," p. 10-11). Despite that stance, Willrich contends, anarchists advanced legal claims that would eventually expand the scope of civil liberties in the United States.

It is a daring line of argument. Placing anarchists at the center of a state-building story, we can acknowledge, offers paradoxes aplenty. Perhaps even nervier, Willrich takes anarchists' challenge to the early-twentieth-century American political order seriously. Treating them as a force to be reckoned with, his stance is closer to that of contemporary foes like A. Mitchell Palmer and J. Edgar Hoover than to most U.S. historians. In what follows, I want to examine these radical ideas—Willrich's as much as the anarchists'—for the light they shine on what we have learned to call "the surveillance state."

American Anarchy is the story of those immigrants huddled on that chilly deck, especially two among them, Emma Goldman and Alexander Berkman. But it is also about those they provoked into counter-action: the officials who believed anarchist voices so threatening to "the peace and security of the United States" (p. 5) that they needed to be quieted, by force if necessary. It is, finally, the tale of those who defended anarchists' right to write and speak in opposition to the U.S. government. Most important in this last camp is Goldman's and Berkman's stalwart champion, Harry Weinberger, a night-schooled legal fighter who defined the category of cause lawyer before people had a name for it.

The book's focus on a set of colorful characters enlivens a familiar chronicle of the origins of modern civil liberties doctrine: the Haymarket Affair of 1886, William McKinley's assassination in 1901, the creation of the Bureau of Investigation (later the FBI), the empowering of the American Protective League, the passage of the World War I-era Espionage and Sedition Acts, the restrictive Immigration Act of 1918, *Abrams v. the United States*, the Palmer Raids, the first Red Scare, and the birth of the American Civil Liberties Union. Willrich captures the texture of radical New York across three turbulent decades. We can almost feel the electricity in the air at mass outdoor rallies, Goldman rousing the crowd alternately in Yiddish and English. We listen in on the scrappy Weinberger, strategizing via letter and telegram with his famous clients about how to exploit the theater of the courtroom to best advantage. And we sense the pulsing social network of radical labor unionists, birth control advocates, socialists, anti-conscriptionists, Greenwich Village bohemians, and the occasional well-heeled liberal as they fall in and out of sympathy with the anarchist cause.

The effect, and Willrich's signal victory in the book, is to bring anarchism—a tiny, unpopular, radical, foreign-coded, and never unified movement—into the American fold. Anarchists, both those who espoused violence to serve their ends and those whose only bombs were ideas, played an outsized role in the imagination of U.S. officialdom. Their philosophies were branded not just as

https://doi.org/10.1017/S0738248025100916 Published online by Cambridge University Press

alien but as perilously so, fundamentally inimical to American values. Many anarchists, of course, did come from the ranks of immigrants. Mostly noncitizens, they were easy targets of heated rhetoric and political repression. But this obscures the fact that some were home-grown and that many had come to their convictions through intimate encounters with American factories or prisons. A persistent emphasis on anarchists' *foreignness* begins to look, as Willrich's story unfolds, like a sleight of hand, a way for the established order to evade the pointed questions anarchists lobbed at U.S. creeds and institutions.

Indeed, Willrich paints anarchists as among the most fervent claimants to certain American ideals. Emma Goldman, the Lithuanian-born "Queen of the Anarchists," loved and lamented her adopted homeland in equal measure, always holding out hope for a return ticket in the years following her deportation in 1919. Even if she never fully inhabited the status of a U.S. citizen, she was savvier than most of her enemies at pulling the American levers of public opinion and celebrity. Her "every arrest became a pitch for fundraising, every trial a stage" (p. 121), observes Willrich. Goldman believed enough in American words to goad the United States to live up to its promise of free speech, expression, and assembly—even as she made clear her contempt for the rule of law and the container of the nation-state. She recognized the incongruity of this position, wryly informing a mass assembly of draft resisters in 1917 that "the only people who still believe in the Constitution are you poor fools" (p. 375).

American Anarchy has many dividends for historians of immigration, labor, radicalism, urban life, and political economy. What, though, can a social history of early-twentieth-century anarchism tell us about the contours of the modern surveillance state? An impressive scholarly literature has looked elsewhere to tell this story. Alfred McCoy's *Policing America's Empire* describes the rehearsals for American domestic repression that took place in the U.S.-controlled Philippines. Lisa McGirr's *The War on Alcohol* tracks Prohibition's expansion of the federal government's punitive reach. Simone Browne's *Dark Matters* places the American state's investment in monitoring specific bodies on a longer timeline, its origins in slave patrols and lantern laws.[1] This is not even to mention scholarship on urban policing, vice patrols, identification systems, border controls, and public health surveillance (something the author of *Pox* knows quite a bit about!), or more focused institutional histories of the Federal Bureau of Investigation such as Beverly Gage's recent *G-Man* (2022).[2]

Given this rich portrait of the diverse agents and impulses underwriting modern state surveillance, it is worth asking what Willrich's immigrant anarchists bring to the table. How, for instance, did Goldman's and Berkman's

[1] Alfred W. McCoy, *Policing America's Empire: The United States, the Philippines, and the Rise of the Surveillance State* (Madison: University of Wisconsin Press, 2009); Lisa McGirr, *The War on Alcohol: Prohibition and the Rise of the American State* (New York: W. W. Norton & Company, 2016); Simone Browne, *Dark Matters: On the Surveillance of Blackness* (Durham, N.C.: Duke University Press, 2015).

[2] Michael Willrich, *Pox: An American History* (New York: Penguin Press, 2011); Beverly Gage, *G-Man: J. Edgar Hoover and the Making of the American Century* (New York: Penguin Books, 2023).

https://doi.org/10.1017/S0738248025100916 Published online by Cambridge University Press

encounters with authorities compare to those of turn-of-the-century colonial subjects, Prohibition-era scofflaws, or Black Americans of any era (to take McCoy's, McGirr's, and Browne's subjects)? What was the anarchists' relationship to other groups of non-citizens and suspect citizens, say the sickly or unskilled? Was the policing of dangerous ideas different in substance or form from the policing of dangerous bodies—and was it ever possible to disentangle the two? What does the anarchists' "epic struggle" contribute to our account of the theories, institutions, and technologies that converged to build the tracking capabilities of the U.S. state? And in what ways did that struggle capitalize on or redirect national projects, well afoot by the turn of the twentieth century, to police the "borders of belonging"—deeply rooted in racism, xenophobia, and religious animus?[3]

These are all the questions that I would love to take up with Michael Willrich. But by placing the weight of its attention not on the state but on the state's opponents, *American Anarchy* opens up a different set of questions. Willrich explores the ways historical actors came to know state authority, not by being *subjected* to it so much as by mobilizing *against* it—and in the process, locating its limits. This is the crucial flip side, much less explored, to our accounts of the surveillance state. Such inquiries catalog gaps and vulnerabilities in the projection of power. This, I think, is precisely Willrich's point in focusing on radicals' decision to engage the law, and on Harry Weinberger's novel legal defenses. *American Anarchy*, in this light, is a case study of how new modes of state action do not simply proceed, implacably. Instead, at least in a country that considers itself a liberal democracy, they are *tested*, meeting with counter-pressure from segments of the public or even from within the government itself. What is remarkable about Willrich's account is that anarchists (again: a tiny, unpopular, radical, foreign-coded, and never unified movement) were able to exert considerable counter-pressure in the form of new legal resources and arguments, and ultimately a potent civil liberties strain in American law.

For historians of the state and of surveillance, this alters the terrain of inquiry. Questions about how radicals were policed make way for questions about radicals' attempts to police the authorities. And if we assume that something like a "surveillance state" would have emerged (indeed, was already emerging) without anarchists' help—given labor-capital skirmishes across the industrial world, new technologies for information capture, and the high stakes of World War I—we can fruitfully ask: what difference did Goldman and her comrades (and their lawyers) make to its shape?

To answer that, we need to know at a nuts-and-bolts level what "the state" consisted of. And Willrich, quite wonderfully, tells us. Circa 1918, it was a collection of ambitious, professionalizing men; a series of impulses looking to be organized; an incipient bureaucracy, rife with internal fissures and competition. More specifically, he writes: "Bomb squad detectives, city attorneys, federal

[3] Barbara Young Welke, *Law and the Borders of Belonging in the Long Nineteenth Century United States* (New York: Cambridge University Press, 2010).

https://doi.org/10.1017/S0738248025100916 Published online by Cambridge University Press

prosecutors, bureau agents at 15 Park Row and their bosses in Washington, Ellis Island immigration inspectors and *their* bosses in Washington: these men *were* the surveillance state" (p. 307). It is as human scale a depiction as you can get of that particular abstraction.

The state's cast of characters, perhaps unsurprisingly, are drawn somewhat less vividly in *American Anarchy* than the agitators they faced. But in their crackdowns and institutional flexing—as well as their stumbles and the odd heroic reversal (Louis F. Post!)—we glean how the state's agents were shape-shifting in response to pressure. The government apparatus that Goldman ranged herself against in the 1890s was a different beast than the one she faced during World War I. Willrich persuasively argues that some of this transformation can be laid at the feet of anarchists themselves. They were provocateurs twice over, first inciting officials to respond to the threat that they posed; then provoking a backlash to the state's overreach.

What Willrich brilliantly exposes is the intense improvisation on both sides of this struggle. Anarchists and the early-twentieth-century state sharpened their tactics, and honed their arguments, on each other. Emma Goldman learned the law, entrusted her principles and her liberty to a lawyer pledged to the Constitution, and found channels for advertising anarchist beliefs within the U.S. justice system.

Her foes innovated too. "Are we to understand she is on trial for her opinions?" (p. 82) demanded an affronted *New York World* regarding Goldman's incitement to riot charge in 1893. The notion that immigration laws, and the tool of deportation specifically, could be used to banish heterodox views was an extremist position in the waning years of the nineteenth century. Lawmakers of that era, Willrich writes, "stopped short of excluding immigrants for the ideas in their heads" (p. 85). But intolerance for anarchist opinions—and tolerance for using any means necessary, including deportation, to quash them—had become mainstream by 1918. In the pitched battle over radical political activity of the early twentieth century, then, we see the co-development of state and society, federal power and individual legal claims.

American Anarchy reveals the on-the-ground, hand-to-hand combat over the boundaries of modern social regulation—in courtrooms, pamphlets, public oratory, editorials, and legal rulings. Radicals found space to criticize police tactics, to expose prison abuses, and even to prompt questions about whether the actual danger to American freedoms came from anarchists or, rather, the authoritarian response to them. Of course, the contest was not even remotely symmetrical: the preponderance of power was always with the government. Still, radicals occasionally gained the upper hand. The young Bureau of Investigation was poorly staffed and amateurish, mostly confined to chasing rumors and stuffing files. Anarchists, on the other hand, had a network that could orchestrate a cloud of thousands of anti-government pamphlets lofting down simultaneously from New York rooftops.

The conclusion to draw is not that anarchists could have won. Rather, it's something that may today seem just as improbable: that there is reason to

https://doi.org/10.1017/S0738248025100916 Published online by Cambridge University Press

distrust the solidity of the "surveillance state"—its coherence, its sure-footedness, its immovability. Historians and laypeople alike have, understandably, invested that construct with enormous force. Michael Willrich helps us to see it freshly, as something still unsettled and unfinished as recently as the dawn of the last century.

Cite this article: Sarah E. Igo, "Saboteurs as State Builders: Forum on Willrich's *American Anarchy*," *Law and History Review* (2025): 1–6. https://doi.org/10.1017/S0738248025100916