

American Journal of Sociology

MARX, GARY T. *Undercover: Police Surveillance in America*. Pp. xxv, 283. Los Angeles: University of California Press, 1988. \$25.00.

Drawing upon interviews with both federal and local law enforcement officials; analysis of judicial, legislative, and agency records; and a variety of secondary sources, Gary Marx has compiled an impressively detailed account of what he aptly terms "the cult and culture of surveillance."

Marx begins with a discussion of the history and current context of surveillance techniques, then provides a "conceptual framework" for classifying the different types now used. The second half of the book is devoted to analyzing the consequences of undercover surveillance; in good sociological form, Marx discusses both "intended" and "unintended" consequences. In his concluding chapter, he

reflects on the bigger concerns resulting from the "powerful new information-gathering technologies [that] are extending ever deeper into the social fabric."

Marx began the research, he says, seeing undercover surveillance as an "unnecessary evil." He ends, on the other hand, by seeing it as necessary evil, albeit as a tactic of last resort. It is unclear, however, why Marx switched his point of view. His evidence, it seems to me, suggests that the risks of undercover tactics outweigh the possible benefits.

The risks are high, as Marx demonstrates, primarily owing to the difficulty of control in undercover situations. The question of who guards the guards is never more pressing than when the guards are hidden.

The problem is that

those in the criminal justice system are likely to receive greater rewards for finding the guilty than for exonerating the innocent. When an expensive operation does not find evidence of violations, there may be strong pressures to keep looking or to use questionable means to produce results (pp. 83-84).

It is not easy to reduce these risks. Guidelines and codes of ethics may be imposed, but with great difficulty. Those who do police work, as Marx points out, "rarely have the luxury of thinking about the broad questions. Their concerns are immediate, short-range and pragmatic." In any case, even when guidelines or ethical standards do exist, the response of the front-line practitioner seems predictable: "Frankly, I don't give a shit. I have a job to do. How can you be ethical when you deal with unethical people?"

If the risks are high, the benefits, apparently are not. In terms of any number of criteria, these techniques—as Marx discusses in some detail—do not seem to work that well.

Of course, the evidence is not all in. Marx's work, although it leaves many questions unanswered, is persuasive about the need for further study by academics and further thought by policymakers.

One of the problems with the book is the rather loose style of documentation. Although there are some 38 pages of end notes, in several cases I found it difficult to identify the source of assertions made in the text; indeed,

more than a few of the notes seemed tangential to the text. No doubt much of the information for which no source is cited came from the 151 interviews conducted by Marx and his associates in the course of the research. Yet, in only a few cases does Marx cite these directly, and so one is left to guess the source of his information at many points throughout the book.

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Under Cover: Police Surveillance in America. By Gary T. Marx. Berkeley and Los Angeles: University of California Press, 1988. Pp. xxv + 283. \$25.00.

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Gary Marx admits that he began his inquiry into police undercover tactics with a predisposition against their use. After a thoughtful analysis of their

costs and benefits, he concludes that "given the American context, covert means [are] sometimes the best means" and that the problems associated with their use can be "held to an acceptable level" (p. 206).

A good portion of *Under Cover* outlines the actual and potential problems of covert policing. The most serious is one of crime creation. Criminal informers may use their "cover" to commit other crimes, or they may become "double agents," working for those they investigate. Police agents themselves may be "forced" into committing crime to maintain their covers and prove their criminal intentions. Other crimes are created when targets who may not have otherwise committed a crime are encouraged (or tricked) into doing so by undercover agents. In some cases, public officials who fail to "take the bait" and accept an illegal bribe are later charged with failure to report bribery attempts. When those with no known criminal past are approached in this way, the operation's goal becomes one of determining not whether people are corrupt, but whether they are corruptible. Marx concludes that covert activities should be most suspect when they create rather than detect crimes, although he does not rule out the possibility that certain circumstances may make such tactics acceptable.

Many of the police involved in covert activities also suffer unintended negative consequences. Deception may become a way of life, making it difficult for undercover agents to maintain family relations or return to ordinary policing duties. Agents may, on the one hand, become overzealous in their effort to enforce the law, or, on the other, become overly friendly and sympathetic to those they are watching. Especially in the 1960s, when there was considerable covert surveillance of leftist political activities, many agents became converts to the groups' causes. Excessive stress and psychological trauma also occur. In one undercover unit of 70 officers, Marx reports that 52 were eventually indicted on criminal charges, two committed suicide, and one had a mental breakdown.

There are negative consequences for society as well. Because there is the potential to use covert tactics against people for their political beliefs, such tactics may have a chilling effect on political dissent. Their use may also serve to erode trust among members of society, especially when the police pose as doctors, lawyers, priests, and journalists. These tactics also offer some risk of convicting the innocent because the evidence often produces an illusion of certainty. In fact, all the technology making this kind of surveillance possible can also be used to create "fake" evidence; covert activities magnify the potential for corruption and misuse of authority that regular policing offers.

There are, nonetheless, some benefits to the use of undercover tactics. The most compelling one offered by Marx is that they can be used to uncover crimes of the elite that cannot be easily detected by traditional policing strategies. High-level crimes in business and finance; political corruption among government officials; fraud committed by doctors and lawyers—these are crimes that regular police forces are powerless to

detect and ill equipped to investigate. Over the past few decades, many criminologists have revealed the property loss and human injury caused by elite crime and have complained about the class bias inherent in crime enforcement. Marx convincingly argues that only undercover tactics and covert surveillance can remedy this bias and offer some protection to a public that has become increasingly concerned with white-collar crime.

In the final chapter, Marx presents an overview of the technologies of the new surveillance: computers and data bases, miniature video and audio recorders, satellite photography, polygraphics, and biotechnology. These technologies, used not only by the police but also by employers, intrude into private lives and have the potential to turn everyone into suspects and our culture into "a maximum-security society." In spite of these dangers, Marx favors the use of these technologies by the police as long as they are subject to control. He suggests warrant requirements, review boards, monetary compensation for innocent targets, and clearer guidelines for the entrapment defense. Marx also suggests that such tactics should be used only as a last resort. He does not, however, identify the specific circumstances under which they ought to be allowed and ought to be limited. He hints at, but falls short of saying, for example, that covert activities should be used primarily against crime by the elite—white-collar and political crimes that cannot be uncovered through other techniques. This is where the strongest case can be made since these are the criminals who might use the new technologies to commit and cover up their crimes. If undercover tactics are widely used against "street crimes," the class bias built into current enforcement patterns will remain.

This book is oriented more toward raising questions than providing answers. It does a good job of outlining the issues and identifying the means-ends dilemmas inherent in the use of police covert activities and undercover surveillance techniques. In the end, Marx suggests that we may have to choose between anarchy and repression in accepting or rejecting them. Let us hope it will never come to that.

BOOK REVIEW

Undercover: Police Surveillance in America, by Gary T. Marx, University of California Press, Berkeley and Los Angeles, California, 1988, 283 pages.

Gary T. Marx, a professor of sociology at the Massachusetts Institute of Technology, documents the problems and pitfalls of covert tactics in domestic policing in America.

Marx's perspective on police undercover work is stated succinctly in the preface, "In starting this book, I viewed undercover tactics as an *unnecessary evil*. But, in the course of the research I have concluded, however reluctantly, that in the United States they are a *necessary evil*." (Emphasis in original.)

Despite Marx's aversion to undercover work, he has produced a thoughtful analysis that will appeal to law enforcement administrators and supervisors who want to impose stringent controls and safeguards on these types of police tactics.

This book comes at a time when police use of undercover tactics has expanded dramatically as a result of increased efforts to control narcotics trafficking. "Reverse stings" are now commonplace even in small police agencies. Police agencies are spending more

money on surveillance equipment than ever before.

Marx offers important points on the use of informants in undercover work—an area fraught with potential peril for law enforcement. Informants are often difficult to control, contingency fees encourage "creative" drug deals, and investigators sometimes become too friendly with or protective of informants.

The book also contains discussions on the problems involved in officers going to "deep cover" (e.g., personality changes, stress on family, difficulty in returning to normal duty after the operation ends); the potential for interagency conflict resulting from the lack of communications associated with undercover operations (e.g., undercover officers from different agencies attempting to arrest each other); and the "new surveillance" generated by advances in computer and equipment technology.

Law enforcement officials reading this book might not agree with some of Marx's interpretations and conclusions; but, he has provided us with a useful framework to continue the debate on the uses and abuses of police undercover work.

In the words of Sir Walter Scott, "Oh, what a tangled web we weave, when first we practice to deceive"†

Credit: Narcotics Control Technical Assistance Program News Letter.

Corporate Security October 1988

Undercover by Gary T. Marx (University of California Press, 2120 Berkeley Way, Berkeley, CA 94720; \$25). *Catching Spies* by H.H.A. Cooper and Lawrence J. Redlinger (Paladin Press, P.O. Box 1307 Boulder, CO; 303/443-7250; \$24.95).

Undercover is an extremely literate, probing analysis of police surveillance in America which will be intriguing to those interested in this aspect of criminal justice or to those who use covert investigations in their own corporations.

One particularly fascinating aspect that Marx, a sociologist, focuses on is the identity confusion suffered by long-time undercover operatives. He quotes one police officer involved in a deep-cover operation: "I remember one day—something snapped. I felt it like a jolt going through, and I was no longer afraid or nervous. It was like I had a handle on things. A short time after that—I didn't believe I was a cop." Undercover work, for some previously dedicated police personnel, may mean the start of a life of drugs and of crime, according to Marx, who cites examples.

The Bookwatch Nov. 1988

Undercover

Gary T. Marx
University of California Press
0-520-06286-8 \$25.00

Nov. '88

This chronicle of police surveillance's rise focuses upon incidences of computer and database surveillance techniques, pinpointing the development of major technological intrusive devices which ultimately represent changes in how police handle crimes, how society views prevention policies, and how individuals experience their civil rights liberties. Legal, ethical, and practical issues blend in Marx's survey, with challenging aspects of surveillance tactics making for engrossing technical reading, rather than casual sensationalist coverage of the topic. Any involved in enforcement will find his issues thought-provoking.

Covert operations

London Times Higher

Education Supplement

Undercover: police surveillance in America
by Gary Marx
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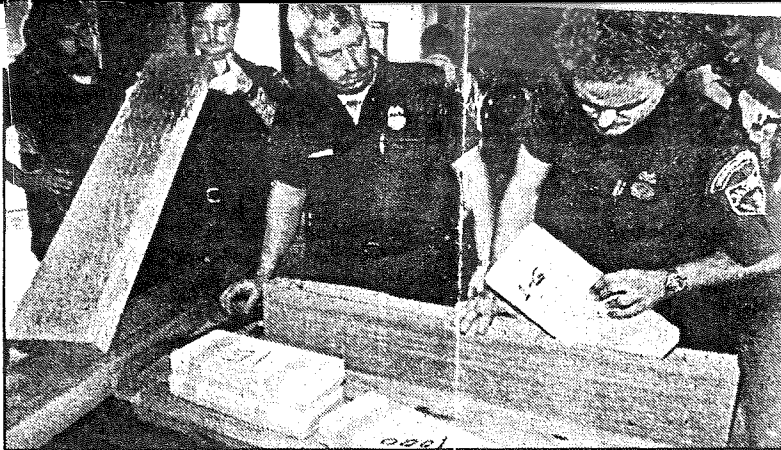
Nov. 25, 1988

When CIA chief William Webster was in charge of the FBI, he expressed the hope that "we won't go back to the days . . . when our agents walked into bars and ordered glasses of milk". According to Gary Marx, this is extremely unlikely to occur. America is well stocked with undercover operators of the type who would never commit a lactic solecism. They work for a wide variety of federal and local government agencies. Collectively, they comprise a potent threat to liberty and privacy, but they are at the same time, in Marx's view, an over-maligned and very necessary group of people.

Marx sets out to explain the phenomenon in a book that is shaky in its historical premisses, yet exudes a sustained and original genius. He devotes about a quarter of the text to demonstrating that undercover work in the United States has attained critical dimensions in recent years. He points, for example, to the 1968 Kerner Commission's call for more undercover work by city police. Other government investigators reinforced this call, and Congress responded with special funding. Between its creation in 1968 and its dissolution in 1982, the federal Law Enforcement Assistance Administration dispensed \$8 billion to local police programmes, many of them containing an undercover component. The result has been the development of an "actuarial society", in which both government officials and businessmen demand and obtain comprehensive knowledge of individuals' financial or private behaviour.

At the root of these developments, Marx perceives a fundamental shift in American attitudes. Americans are no longer, as they once were, avid defenders of personal privacy and liberty. The racial disorders and anti-Vietnam protests of the 1960s suggested a need for greater social control, although Watergate and the intelligence scandals of 1975 convinced people that political surveillance had gone too far, and Congress introduced some new restrictions. Throughout, Marx insists that the undercover machinery and budgets remained in place, giving rise inevitably to displacement activity and the identification of new targets. The increasing sophistication of organized crime and of white-collar frauds, and the spectacular expansion of the heroin and cocaine trades, supplied an unimpeachable rationale for the shift in focus. Confronted with a frightening succession of threats, the American people now tolerate invasions of privacy in support of law enforcement. They readily act as informers. And, Marx claims, they accept the dangerous assumption behind clandestine police operations: of guilt until proof of innocence.

What proof can Marx adduce for his postulated crisis of government intru-



Spectacular drugs busts (the one above netted over 8,000 pounds of cocaine hidden in wooden boards) can be used to justify clandestine police activities despite the resulting invasion of privacy.

sions in response to lawlessness? By his own admission, more information on the topic would be "desirable". In fairness to him, it must be stressed that the sketchy nature of the contemporary evidence is not his fault. For obvious reasons, the documentation and quantification of police activities in the underworld is a haphazard enterprise. Indeed, Marx is to be commended for having tried hard in frustrating circumstances. His conviction that some evidence, however imperfect, is preferable to none, is courageous and commendable.

Because Marx has decided to concentrate solely on undercover work of an official nature he ignores those major and time-honoured areas of undercover operations, labour espionage and divorce work. One might defend his choice of ground as being a necessary act of subject definition. But his claim that the expansion of undercover work is a product of the rise of the European-style nation state in America is surely vulnerable to the counter-claim that in recent years we have seen merely the more widespread governmental adoption of penetrative practices long followed in the private sector — and not a wholesale shift in attitudes.

Yet, the uncertain nature of the evidence means one can go no further than saying that the case for Marx's hypothetical crisis is not proven. Moreover, his qualitative description of the undercover phenomenon is admirable. He uses the helpful overall metaphor of the fishing net. The police no longer wait for a crime to be committed: they penetrate private lives and organizations at many levels and lie in wait, as they feel certain they will eventually net evidence of some kind of malfeasance.

This is the principle, for example, behind the property sting. The property sting is a form of police entrapment, achieved by establishing storefronts with the apocryphal mission of fencing goods.

John DeLorean was, Marx feels, the victim of another type of dragnet operation, the narcotics sting. The case brought against Ulster's would-be benefactor disturbed Marx, because the prosecution used video clips of the \$60 million cocaine deal out of context, and because an FBI informer and agent provocateur threatened the lives of DeLorean's children if his target did not go along with the proposed drugs deal. With this and other examples,

Marx paints a picture of the police inducing criminal behaviour, and bringing out the worst in us.

As Marx reminds us, it is often a question of deciding which ends, and under what circumstances, justify certain means. When may fraud and deceit be justifiable in the defence of social order? Marx is salutary in his warnings of the unintended consequences of some of the best-intentioned covert operations. In a drive to conserve bald eagles, law enforcement officers killed and sold a significant number of the creatures in order to entrap and arrest on good evidence 50 members of the bird-hunting Yankton Sioux Indians. Less exotically but more typically, Marx notes the problem of the policeman who descends into the sewer to catch the rats, and is himself contaminated.

Marx does not shrink from offering long lists of procedural and ethical guidelines which will help society and responsible police chiefs to decide where to draw the line in using tactics which are, he feels, a necessary evil. He suggests, for example, that before embarking on an undercover operation one needs to consider such factors as the seriousness of the anticipated crime, and the likely future preventive or deterrent effects of an arrest.

In spite of its strengths, though, *Undercover* invites criticism from several perspectives. Its ahistoricism is one flaw. Another arises from Marx's perception of the relationship between undercover work and social justice. He points out that whereas overt policing has discriminated against the poor, sophisticated clandestine operations can net the rich, the white-collar criminals, the computer fraudsters. But, even assuming that the rich were to lose, by some magical process, their influence over the means of social control, there is a difference between "can" and "will".

At the root of Marx's concern lies a desire for restored faith in a just society imbued with the fair-play values of the welfare state. But, as the thinking copper is quick to point out, it is doubtful whether any form of policing can in itself create the sense of a just society whose laws should be respected. In times of peace, the best way to create a sense of social justice is to struggle to achieve social justice itself.

Rhodri Jeffreys-Jones

Rhodri Jeffreys-Jones's next book, The CIA and American Democracy, will be published by Yale University Press.

Undercover: Police Surveillance in America

By Gary T. Marx
(Berkeley: University of
California Press, 1988)

Commencing with a brief overview of the nature of undercover work, the author, a Professor of Sociology at the Massachusetts Institute of Technology, turns to a selective history of the development of undercover work and its introduction and use in law enforcement in American history. Notably, when "lower-status drug dealers and users or prostitutes were the main targets, the tactic tended to be ignored, but when congressmen and business executives who can afford the best legal counsel became targets, congressional inquiries and editorials urging caution appeared." With some refreshingly candid depth, the book develops by observing the various sociological and legal factors contributing to law enforcement efforts to develop sources of information, including undercover agents. Indeed, as any California prosecutor is aware (and Professor Marx confirms), an increase in crime is normally accompanied by a reluctance on the part of citizens as victims, complainants, or witnesses, to come forward and provide police with information. Moreover, increased public awareness, interest, and growth in white-collar crime has functioned to stimulate the use of covert investigation by law enforcement.

Having presented the various factors compelling covert police investigations, Professor Marx discusses the types of covert investigations. In doing so, he uses particularly vivid and contemporary illustrations to describe the dimensions of such activity, and proceeds with a relatively in-depth and pointed analysis of both the intended and unintended consequences of undercover work. Frankly, but for the disquieting impact on the criminal justice system, various case histories used by Professor Marx to illustrate the unintended consequences of covert police work provide entertaining relief.

The value of this book for prosecutors lies in three areas: (1) the ethical and legal interplay underlying undercover activity and informed prosecutorial discretion, (2) the prosecutorial and judicial roles in controlling covert law enforcement activities, and (3) the rising impact of technology in surveillance.

In his conclusion, Marx admits to his initial skepticism about the need for undercover tactics in a free society (a proclivity more readily apparent from the book cover). However, his research concludes that such efforts by law enforcement are necessary—with proper controls.

The author's purpose in drafting the book was to document and explain covert law enforcement activities, report conclusions about the necessity of such activities, and suggest areas of policy change. His efforts are a remarkable success at weaving legal and sociological factors in an otherwise controversial and seemingly irreconcilable interplay of disciplines.

Jaime R. Wilczynski