

**PROTECTORS OF PRIVILEGE: RED SQUADS AND POLICE REPRESSION IN URBAN AMERICA.** By Frank Donner.<sup>1</sup> Berkeley, Los Angeles, and Oxford: University of California Press. 1990. Pp. xiv, 503. Cloth, \$34.95.

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The disintegration of the former Soviet Union has inspired renewed interest in federalism, a subject teachers of constitutional law have long struggled to convince their students is more than a dull topic of merely theoretical interest. The drive of Russia and her sister republics to increase their own power and decrease the authority, and ultimately to eliminate entirely, the central Soviet government has given Americans cause to reflect upon the desirability of the trend toward centralization that is one of the central themes of our country's constitutional history during the lifetime of the late USSR. If the road from oppression to democracy seems to Lithuanians, Ukrainians and even Russians to lead in the direction of greater local autonomy, then perhaps we erred in failing to heed the counsel of those, such as Justice Louis Brandeis, who stressed the values and virtues of a meaningful federalism.<sup>3</sup>

Anyone inspired to think along such lines by recent events in the collapsing Soviet empire should read Frank Donner's *Protectors of Privilege*. This is in several respects a flawed book, but despite its defects, it is a damning demonstration of the dangers of local autonomy. Donner confirms the accuracy of Brandeis's observation that the absence of constitutional constraints imposed by the Supreme Court facilitates local experimentation.<sup>4</sup> Unfortunately, what his book also shows is that such experimentation can produce not only

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3. See Philippa Strum, *Louis D. Brandeis: Justice for the People* 80, 221, 238, 376, 410 (Harv. U. Press, 1984); Melvin I. Urofsky, *Louis D. Brandeis and the Progressive Tradition* 143-44 (Little Brown, 1981).

4. In his famous dissenting opinion in *New State Ice Co. v. Liebmann*, 285 U.S. 262, 280 (1931), Brandeis wrote:

It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country. This Court has the power to prevent an experiment. We may strike down the statute which embodies it on the ground that, in our opinion, the measure is arbitrary, capricious or unreasonable. We have the power to do this, . . . [b]ut in the exercise of this high power, we must ever be on our guard, lest we erect our prejudices into legal principles.

*Id.* at 311.

innovative solutions to economic and social problems, but also innovative forms of political repression. *Protectors of Privilege* provides less support for the idealization of local autonomy that links Brandeis to contemporary Croatians than for Andrezej Rapaczynski's observation that, "[q]uite apart from the special problem of racial discrimination, . . . there are in fact good reasons to believe that the states represent a more direct threat than the national authorities to the rights of small minorities. . . ."<sup>5</sup> Indeed, when those small minorities have been dissident political groups, this book suggests, it has been municipal governments, and more particularly the "red squads" of city police departments, that have proved to be the greatest menace of all to their rights.

Red squads have received insufficient attention from students of political repression in the United States. Scholarship on that subject has tended to focus on the national government. There are a few good case studies of repression at the state and local levels,<sup>6</sup> and Robert Justin Goldstein has discussed it as part of a broader survey of the entire subject.<sup>7</sup> But those scholars interested in political espionage and aggressive political counterintelligence have concentrated on documenting the misdeeds of federal agencies.<sup>8</sup> Their favorite target has been the FBI.<sup>9</sup> In an earlier study of political

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5. Andrzej Rapaczynski, *From Sovereignty to Process: The Jurisprudence of Federalism after Garcia*, 1985 Sup. Ct. Rev. 341, 385.

6. See, e.g., Julian F. Jaffe, *Crusade Against Radicalism: New York During the Red Scare, 1914-1924* (Kennikat Press, 1972); Charles H. Martin, *The Angelo Herndon Case and Southern Justice* (Louisiana State U. Press, 1976).

7. Robert Justin Goldstein, *Political Repression in Modern America: From 1870 to the Present* 217-32, 255-61, 318-59, 504-17, and *passim* (G.K. Hall, 1978). See also Alan Wolfe, *The Seamy Side of Democracy: Repression in America* (D. McKay Co., 1973). For a discussion of cooperation between the federal government and local authorities in the repression of dissent, see Michal R. Belknap, *Uncooperative Federalism: The Failure of the Bureau of Investigation's Intergovernmental Attack on Radicalism*, 12:2 *Publius* 25 (1982).

8. See, e.g., Athan G. Theoharis, *Spying on Americans: Political Surveillance from Hoover to the Houston Plan* (Temple U. Press, 1978); Christopher H. Pyle, *Military Surveillance of Civilian Politics, 1967-1970* (Garland Pub., 1986); James Bamford, *The Puzzle Palace: A Report on America's Most Secret Agency* (Houghton Mifflin, 1982).

9. See, e.g., Athan G. Theoharis, *The FBI's Stretching of Presidential Directives, 1936-1953*, 91 *Pol. Sci. Q.* 649 (1976-77); Athan G. Theoharis, *FBI Surveillance During the Cold War Years: A Constitutional Crisis*, 3 *Pub. Historian* 4 (1981); Athan G. Theoharis, *The Presidency and the Federal Bureau of Investigation: The Conflict of Intelligence and Legality*, 2 *Crim. Just. Hist.* 131 (1980); Athan G. Theoharis, *FBI Surveillance: Past and Present*, 69 *Cornell L. Rev.* 883 (1984); Kenneth O'Reilly, *Hoover and the Un-Americans: The FBI, HUAC, and the Red Menace* (Temple U. Press, 1983); Kenneth O'Reilly, "Racial Matters": *The FBI's Secret File on Black America, 1960-1972* (Free Press, 1989); David J. Garrow, *The FBI and Martin Luther King, Jr.* (Viking Penguin, 2d ed. 1983); William Walton Keller, *The Liberals and J. Edgar Hoover* (Princeton U. Press, 1989); Nelson Blackstock, *Cointelpro: The FBI's Secret War on Political Freedom* (Pathfinder Press, 1975); David Williams, *The Bureau of Investigation and Its Critics, 1919-1921: The Origins of Federal Political Surveillance*, 68 *J. Am. Hist.* 560 (1981); Michal R. Belknap, *The Mechanics of Repression: J. Edgar Hoover, the Bureau of Investigation and the Radicals 1917-1925*, 7 *Crime & Soc. Just.* 49 (1977). The

surveillance in America, Donner himself dealt almost exclusively with the Bureau and other departments of the national government.<sup>10</sup>

In *Protectors of Privilege* he turns his attention to the local police "red squads." Donner reports that the first of these organizations was set up in the aftermath of the 1886 Haymarket bombing in Chicago. Red squads proliferated in American cities until, at their peak in the 1960s, they numbered in the hundreds and employed around 300,000 people. As Donner explains, these specialized police units "predominantly engaged in political repression, which, in the context of policing, may be defined as police behavior motivated or influenced in whole or in part by hostility to protest, dissent, and related activities perceived as a threat to the status quo." They began by targeting outdoor protest gatherings, which they broke up with liberal applications of force, while also subjecting the participants to mass roundups and pretext arrests. Initially justified as necessary to keep the peace, red squad operations acquired a law enforcement rationale during the Progressive era, due to the adoption of a host of repressive state statutes and local ordinances. As dissent agendas matured and dissenters moved inside, red squads adopted new methods, such as raids and informer infiltration. During the 1930s judicial imposition of constitutional constraints curbed the harsher forms of police intervention in protest activities, but this merely inspired an increased emphasis on the collection of intelligence, a mission eventually rationalized during the Cold War as essential to the preservation of national security. Ideology replaced behavior as the focus of concern, and by the 1960s "police antiradical units [had become] the dominant voice of the countersubversive tradition. . . ." Their activities, which progressed beyond passive monitoring of protest to harassment and confrontation, damaged protected freedoms. That is why red squads concern Donner, a veteran civil liberties lawyer, long deeply involved in the work of the American Civil Liberties Union.

He has a simple explanation for the development of the red squads and for their long-running war on dissent. According to Donner, these specialized urban police units have functioned as

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FBI's involvement in political spying and aggressive counterintelligence also receives substantial attention in two biographies of the Bureau's longtime Director, J. Edgar Hoover. See Athan G. Theoharis and John Stuart Cox, *The Boss: J. Edgar Hoover and the Great American Inquisition* (Temple U. Press, 1988); Richard Gid Powers, *Secrecy and Power: The Life of J. Edgar Hoover* (Collier Macmillan, 1987).

10. See Frank J. Donner, *The Age of Surveillance: The Aims and Methods of America's Political Intelligence System* (Random House, 1980). Although eschewing discussion of the political intelligence operations of state and local police departments, this book does devote one chapter to "Countersubversive Intelligence in the Private Sector." Id. at 414-51.

“the protective arm of the economic and political interests of the capitalist class.” That is the significance of the title, *Protectors of Privilege*, which he gave his book. Donner insists “a strong case” can be made for the thesis that during the past hundred years urban police red squads have acted as defenders of the property and position of the capitalists. Perhaps so, but in over 500 pages he has failed to make that case.

Donner does point to occasional instances of red squad operations that served to protect capitalist interests. For example, he notes that in Baltimore during the early 1970s the business community supported and praised Police Commissioner Donald Pomerleau because it believed his heavy-handed surveillance of black militants was protecting the city from a recurrence of the ghetto rioting that had devastated it in 1968. This is an exceptional instance, however. More often, Donner’s evidence tends to show that urban police departments exploited the fears of capitalists to advance their own interests. Prior to the 1984 Olympics, for example, Los Angeles Police Chief Daryl Gates, fearing a cut in the budget of his department’s red squad (the Public Disturbance Intelligence Division), released a pamphlet predicting terrorists would try to disrupt the games. Donner even acknowledges that in Frank Rizzo’s Philadelphia, “[t]he business community agreed that the police could betray the public interest, engage in corrupt practices, and do what they pleased to minorities and the lower orders generally, as long as they left the Philadelphia elite undisturbed.” While Rizzo’s cops were providing capitalists with security of a sort, it is a gross distortion of the English language to characterize them as protectors of those whom they merely refrained from harassing.

Rather than making a case for the thesis that the specialized intelligence units of urban police forces shielded the wealthy from threats to their privileged positions, Donner simply catalogues the repressive behavior of a number of these organizations. After devoting just sixty-four pages to explicating the evolution of red squads from the time of the Haymarket bombing through the 1960s, he spends nearly 280 inventorying the abuses perpetrated in recent decades by the police forces in a mere nine cities.<sup>11</sup> Full chapters deluge the reader with detail on political surveillance in Chicago,

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11. Explaining his approach, Donner writes at the end of the third of his three historical chapters:

Now that we have completed the dark journey from the pre-Haymarket era to the early seventies of this century, when red squad activities subsided, we must retrace our course—but along different paths. We need to explore in greater detail the recent history of police intelligence in large cities where dissent and protest flourished. (89)

New York, Philadelphia and Los Angeles. Mercifully, Donner lumps what he characterizes as "second tier" cities—Detroit, Baltimore, Birmingham, New Haven, and Washington, D.C.—together in a single chapter. Still, readers of *Protectors of Privilege* will learn more about police spying on and harassment of dissidents even in those communities than anyone who does not live in one of them would ever want to know. Despite massively documenting the misdeeds of a series of red squads, Donner never makes any systematic effort to establish that these were perpetrated on behalf of the capitalist class. The proposition that the police in the cities he discusses were "protectors of privilege" remains at the end of a 503 page book nothing more than an unproved assumption.

Donner's failure to prove, or really even to attempt to prove, this thesis is only one of a number of flaws that mar his book. Another is his persistent failure to document properly what he has to say. Sometimes it is broad generalizations—such as, "[b]eginning in the twenties, police monitoring of labor disputes became a routine function whether or not violence was reported"—that he serves up without supporting footnotes. More often, it is quite specific assertions of fact. For example, during a discussion of surveillance in Chicago, Donner states, "Even marches of welfare recipients were swelled by red squad detectives and undercover agents." Without bothering to footnote either accusation, he charges the Washington Metropolitan Police Department with supplying intelligence reports on antiwar activists to the CIA and the Army's 113th Military Intelligence Group with providing tear gas, mace, electronic equipment, and financial support to a right-wing organization, known as the Legion of Justice. These allegations may be true, but Donner's failure to indicate where he got the information does not inspire confidence in their reliability.

A small number of clear factual errors make one reluctant simply to accept such undocumented assertions of fact on faith.<sup>12</sup> So does Donner's rather clear political bias. He vigorously disputes the claims of urban police departments that they have been rigidly evenhanded in their intelligence operations, displaying as much concern with internal security threats from the right as with those

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12. For example, he refers to Viola Liuzzo, the housewife from Michigan who was murdered by Ku Klux Klansmen in Alabama at the time of Dr. Martin Luther King, Jr.'s 1965 voting rights march from Selma to Montgomery, as "Violet." (292). Donner states that in 1919 William J. Flynn was the New York area chief of the Federal Bureau of Investigation, although the FBI did not yet exist then, and Flynn was the head of the entire predecessor agency, known as the Bureau of Investigation of the Department of Justice. See Richard Gid Powers, *Secrecy and Power: The Life of J. Edgar Hoover* 63, 185 (Collier Macmillan, 1987).

from the left. Yet, Donner himself is no more evenhanded than those he criticizes. “[E]ven a restrained low-profile intelligence system typically focuses on the left as the main target, by reason both of its ingrained political assumptions and the cultural bias of its cadres,” he declares. Predictably, this assertion of fact appears without a footnote.

Although Donner repeatedly neglects to provide proper documentation for factual pronouncements and questionable contentions, the reason does not seem to be failure to research his topic adequately. He draws extensively on relevant secondary literature from the fields of law, history, and criminology and has consulted doctoral dissertations and even M.A. theses. In addition, Donner has mined a plethora of primary sources. These include not only published material, such as newspapers, periodicals, and congressional committee hearings, but also unpublished government documents, obtained from the FBI and the CIA through use of the Freedom of Information Act. Donner draws not only on published judicial opinions, but also on unpublished depositions, grand jury reports, and trial transcripts. He has looked at internal documents generated by police intelligence units in Birmingham and Washington and has also done a significant number of personal interviews.

Although the mounds of information Donner has amassed from these diverse sources do not demonstrate that red squads were “protectors of privilege,” they do establish beyond question that for much of the past century the urban police departments he investigated have been extensively involved in political repression. “The Haymarket tragedy . . . marked the emergence of a new form of policing: anarchists were indiscriminately surveilled not only as a means of crime suppression, but for ideological reasons alone,” Donner shows. By the late 1960s the Chicago red squad, which pioneered this political police work, had expanded its area of interest to include the activities of racial minorities and antiwar activists, and had added extensive surveillance and dossier compilation to the indiscriminate arrests on trumped-up charges which it had once utilized to control dissidents. According to Donner, “The record indisputably establishes that Chicago’s red squad for at least a decade engaged in a campaign of guerrilla warfare against substantial sectors of the city’s population.” The situation was similar in the other cities that he studied. In Philadelphia, for example, the so-called “Civil Defense Squad” targeted “virtually every dissenting . . . organization, some six hundred in all.” Among its victims were Quakers and the ACLU.

Although justified as necessary to predict and prevent violence,

red squad surveillance operations failed to accomplish either objective, as the 1967 Detroit race riots and the 1969 "Days of Rage" chaos in Chicago (initiated by the thoroughly infiltrated Weatherman faction of the Students for a Democratic Society) dramatically demonstrated. The New Haven police could not even prevent a Black Panther group whose phone they had tapped from torturing and murdering a suspected informer. Red squads proved to be far better at harassing antagonists of their departments than at saving their cities from violence. In Philadelphia Donner found it "unmistakably clear that . . . Rizzo used the CD file collection as a weapon against police critics and his political enemies." The New York department's Bureau of Special Services (BOSS) utilized its files to blackmail and neutralize hostile office holders, and New Haven's Chief James Ahern even bugged the conference room of his supposed superiors on the police commission.

Besides demonstrating, through the presentation of endless examples, that urban red squads engaged in politically and ideologically motivated surveillance and harassment of their critics, and of dissidents in general, *Protectors of Privilege* establishes that the actions of these police organizations posed a major threat to constitutional rights. As Donner is quick to point out, Ahern's wiretap operation targeted "activities protected by the First amendment." So did the activities of Rizzo's Philadelphia police, who were ultimately enjoined by a federal judge from interfering further with members of a collective that published a radical newspaper. In an opinion sharply critical of BOSS, New York Judge Peter J. McQuilgan captured the essence of the danger posed by red squad operations: "Unwarranted police surveillance will destroy our capacity to tolerate—and even encourage—dissent and non-conformity; it promotes a climate of fear; it intimidates, demoralizes and frightens the community into silence."<sup>13</sup>

Besides chilling the exercise of first amendment freedoms, red squads also undermined other constitutional values. BOSS repeatedly invaded the privacy of black activist Robert Steele Collier. In Los Angeles, after being arrested along with twenty-seven members of the radical Progressive Labor Party (PLP) following a clash with police, red squad informer Connie Milazzo participated in conferences between her co-defendants and their lawyers. This gross violation of the sixth amendment right to counsel resulted in the dismissal of eight felony charges against PLP members. Besides be-

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13. *People v. Collier*, 376 N.Y.S.2d 954, 979 (N.Y. Sup. 1975) (quoted by Donner at 194).

ing unconstitutional, Milazzo's role in this case was "yet another instance of the fatal impact of surveillance on law enforcement."

Since he views red squad monitoring and harassment of political dissent as both counterproductive and a threat to constitutional values, Donner is happy to report that it is now rather largely a thing of the past. Beginning in the late 1960s, a backlash against police spying made itself felt. "Coalitions of civic groups, lawsuits, legislative probes, urban power shifts, the outcries of victimized minorities, and a new generation of adventurous journalists, supported by a media turnabout, all contributed to the restoration of police behavior to reform agendas. . . ." In a number of large cities restrictive administrative guidelines were adopted, but during the seventies the favored remedy for police abuses was litigation. The decade witnessed at least thirty suits in state and federal courts attacking political surveillance by local red squads. Although not all of these were successful, they helped to discredit and bring an end to nearly a century of spying and harassment.

As Donner is quick to point out, however, a revival of political intelligence-gathering by those responsible for local law enforcement in America is a very real possibility. It is a prospect that should distress all those concerned about the preservation of individual liberties. Abuse and denial of constitutional rights by local law enforcement was for a long time the dark side of American federalism. Reacting against the failure of the states to protect adequately the civil liberties of powerless and unpopular minorities, the Supreme Court, during the chief justiceship of Earl Warren, nationalized most of the Bill of Rights. By holding that the due process clause of the fourteenth amendment required states and their political subdivisions to comply with its criminal procedure provisions, the Court safeguarded individual rights while reducing local autonomy.<sup>14</sup> Congress took a step in the same direction when, as a part of the Civil Rights Act of 1968, it increased the penalties to which those who deprived others of their federal rights while acting under color of state law were subject (raising the maximum to life in prison for violations that result in death). This law also made the sort of racially motivated violence and intimidation with which local police in the South had long refused to interfere a federal crime.<sup>15</sup>

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14. See Alfred H. Kelly, Winfred A. Harbison and Herman Belz, 2 *The American Constitution* 619-24 (W.W. Norton, 7th ed. 1991); Richard C. Cortner, *The Supreme Court and the Second Bill of Rights* 291-98 (U. of Wisconsin Press, 1981); Henry Julian Abraham, *Freedom and the Court: Civil Rights and Civil Liberties in the United States* 61, 83, 90 (Oxford U. Press, 4th ed. 1982).

15. Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 73 (1968) codified at 18

In recent years the focus of legislative, judicial, and popular concern has shifted. During the Reagan era, those worried about the erosion of individual liberty generally identified the national government as the preeminent menace to freedom. Washington absorbed the energies and attention not only of political conservatives but also of liberals concerned about political surveillance.<sup>16</sup> *Protectors of Privilege* is a potent reminder that there is danger in focusing too narrowly on the national government. Donner demonstrates that your local police can pose as great a danger to political freedom as the FBI or Army intelligence. He has written a warning that, contrary to what the last seventy years of their history may have led Russians to believe, not all oppression comes from the center. *Protectors of Privilege* is a ponderous admonition against idealizing local autonomy.

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U.S.C. § 245 (1968). See generally Michal R. Belknap, *Federal Law and Southern Order* 205-28 (U. of Georgia Press, 1987).

16. See works cited in notes 7 and 8.