

The Changing Nature of Undercover Work

I hope we won't go back to the days, Mr. Chairman, when our agents walked into bars and ordered glasses of milk.

—FBI Director Webster

Undercover work has changed significantly in the United States in the past decade, expanding in scale and appearing in new forms. Covert tactics have been adopted by new users and directed at new targets and new offenses. Applying ingenuity previously associated only with fictional accounts, law enforcement agents have penetrated criminal and sometimes noncriminal milieus to an extraordinary degree. Even organized crime, long thought to be immune, has been infiltrated. (In a stellar performance, FBI agent Joe Pistone spent five years as a close associate of members of the Bonanno family.) The lone undercover worker making an isolated arrest has been supplemented by highly coordinated team activities involving complex technology, organizational fronts, and multiple arrests. What was traditionally viewed as a relatively marginal and insignificant weapon used only by vice and “red squads” has become a cutting-edge tactic.

This book speaks to our understanding of contemporary social control and to what undercover tactics say about our society. It also speaks to those in law enforcement.

Those with the practical task of enforcing the law rarely have the luxury of thinking about the broad questions. Their concerns are immediate, short-range, and pragmatic. Crime and the fear of it are major social issues, and there is enormous public pressure for action. Viewed from this perspective, undercover means are simply one more tool for law enforcers. For them, the key questions concern the selection, training, and supervision of agents, and the tactical choices that determine the nature of an operation.

However, the issues around undercover work go far beyond tactical and strategic questions and even beyond whether, in any given investigation, justice was done. Specifically, they include consideration of what may be a subtle and deep-lying shift in the nature of American social control. Social control has become more specialized and technical, and, in many ways, more penetrating and intrusive. In some ways, we are moving toward a Napoleonic view of the relationship between the individual and the state, where the individual is assumed to be guilty and must prove his or her innocence. The state's power to seek out violations, even without specific grounds for suspicion, has been enhanced. With this comes a cult and a culture of surveillance that goes beyond government to the private sector and the interaction of individuals.

As powerful new surveillance tactics are developed, the range of their legitimate and illegitimate use is likely to spread. Where there is a way, there is often a will. There is the danger of an almost imperceptible surveillance creep. It was roughly half a century ago that Secretary of War Henry Stimson indignantly observed, in response to proposed changes in national security behavior: "Gentlemen do not read each other's mail." His observation seems touchingly quaint in light of the invasions of privacy that subsequent decades have witnessed. The question is whether 50 years from now observers will find our concerns over current surveillance and undercover operations equally quaint. Will the occasional incidents seen in the past decade of police posing as priests, newspaper reporters, lawyers, psychologists, lovers, or students; of their selling drugs, distributing pornography, running casinos and houses of prostitution, filing false affidavits, lying under oath and bugging a judge's chambers; and of covert operations carried out in our most hallowed institutions—churches, elections, courts, and legislatures—have become commonplace? Are we taking slow but steady steps toward making the informer a national hero? Is the moral distinction between crime and criminal justice weakening? Are we moving toward a society where suspiciousness and mistrust will become the norm?

Some recent changes may be attributed to a temporary perception of a crisis in law and order and to the new availability of federal funds to conduct covert operations. As that perception recedes and as funds are reduced, so too will the use of covert tactics. They may also lessen as criminals become "wise" and learn to take defensive actions.

There will always be ebbs and flows in the power of social control, but I think it is wrong to view recent changes only in this context. More

sophisticated covert practices are one part of an extension and redefinition of social control, which, together with other practices, constitute what can be called the “new surveillance.”

The popular song “Every Breath You Take,” sung by a celebrated rock group known as the Police, is a love song, rather than one of protest, but it calls attention to an important social issue and offers examples of the new surveillance. It contains these lines:

Every breath you take	[breath analyzer]
Every move you make	[motion detector]
Every bond you break	[polygraph]
Every step you take	[electronic anklet]
Every single day	[continuous monitoring]
Every word you say	[bugs, wiretaps, mikes]
Every night you stay	[light amplifier]
Every vow you break	[voice stress analysis]
Every smile you fake	[brain wave analysis]
Every claim you stake	[computer matching]
<i>I'll be watching you</i>	[video surveillance].

The new forms of social control tend to be subtle, invisible, scattered, and involuntary. They are often not defined as surveillance, and many people, especially those born after 1960, are barely conscious of them. They have, after all, been brought up in an age of police stings, computerized dossiers, X-rayed luggage at airports, video cameras in banks, lie detector tests for employment, urinalysis tests for drugs, tollfree hot-lines for reporting misdeeds and suspicions, and electronic markers on consumer goods, library books, and even people. To them, these conditions represent the normal order of things. Their elders too are often unaware of the extent to which surveillance has become embedded in everyday relationships.

My focus is only on the undercover component of surveillance, but all the tactics are spawned in the same environment and often reinforce each other.

The new surveillance is related to broad changes in both technology and social organization. The rationalization of crime control that began in the nineteenth century has crossed a critical threshold as a result of these changes. Technology has enhanced the power of social control. The information-gathering powers of the state and of private organizations have torn asunder many of our conventional notions of privacy. Traditional lines between private and public and between the rights of

the individual and the power of the state are being redrawn. By studying one form of this phenomenon in detail, we may obtain insight into the general phenomenon.

NEW AND TRADITIONAL USERS

THE FBI

The agency with the greatest change in its application of undercover operations is the Federal Bureau of Investigation (FBI). It has moved from viewing them as too risky and costly for routine use to viewing them as important tools. The FBI has come a long way from the description offered by leading agent Melvin Purvis in 1936: "No government operative may enter into illegal compacts or pursue illegal courses of action; it does not matter what desirable ends might be served."¹ Four decades later, an FBI agent wrote: "Undercover operations have become the cutting edge of the FBI's effort to ferret out concealed criminal activity."²

The FBI began using undercover agents in criminal investigations in 1972, following J. Edgar Hoover's death. Internal agency rules regarding things such as dress, hair style, the prohibition of alcohol consumption on duty and the need to frequently report in when in the field, which worked against complex covert operations, were loosened. In 1973 and 1974, undercover agents were used in approximately 30 "investigative matters," apart from the collection of domestic intelligence. From 1977 to 1985, the numbers were as follows:

1977	53
1978	176
1979	239
1980	314
1981	463
1982	384
1983	387
1984	391
1985	350

The FBI's first appropriation request for undercover activities appeared in 1977.³ From 1977 to 1984 the requests were as follows:

1977	\$ 1,000,000
1978	3,000,000
1979	2,910,000
1980	2,910,000
1981	4,500,000
1982	7,500,000
1983	9,008,000
1984	12,518,000

Hoover fought against a proposal to merge the FBI with the Prohibition Bureau and kept his agents away from narcotics enforcement. But in 1982 President Reagan authorized the FBI to play a more active role. The FBI was given supervision over the Drug Enforcement Administration and in 1985 there were over 800 joint investigations (no pun intended). By mid-1985 one in eight agents was working full time on drugs. In 1981 the FBI expended \$8.3 million on narcotic-related matters and in 1984 \$97.2 million. The FBI has emphasized drug enforcement as it relates to its high-priority areas—organized crime, financial crime and public corruption.

OTHER ENFORCEMENT AGENCIES

The Bureau of Alcohol, Tobacco and Firearms (BATF) foreshadowed this expansion by significantly increasing its use of undercover methods after the passage of the 1968 Gun Control Act. An executive of the Immigration and Naturalization Service (INS) reports that his agency is “increasing the undercover capacity and the undercover techniques that we use.”

In 1982 the Internal Revenue Service (IRS), as part of a “new and wide-ranging investigative toughness,” vastly expanded its intelligence and undercover activities. A special unit was created with unprecedented powers to collect and analyze data on taxpayers, including the increased use of undercover agents and sting operations.⁴

United States marshalls have made extensive use of covert tactics to facilitate the location and apprehension of fugitives through Operation FIST (Fugitive Investigative Strike Team). In what was heralded as the “largest and most successful manhunt in U.S. history,” thousands of wanted persons were tricked into turning themselves in. In Florida,

more than three thousand persons were lured out of hiding by promises of free trips and prizes; many of them showed up at a fake airline counter after receiving a letter that began, "Congratulations! You are the winner of a weekend retreat in the Bahamas. Enclosed please find your champagne flight boarding pass." In California, several thousand fugitives were arrested when notice was sent to their last-known addresses that they could claim a nonexistent "valuable package" from the fictitious "Fist Bonded Delivery Service." In Denver the lure was free Super Bowl tickets, and in New York persons wanted on drunk-driving charges were arrested after responding to an invitation to a "cocktail party and banquet" to "test" a new alcoholic beverage.

Following the recommendations of several national commissions, covert means have also become more sophisticated and significant at the local level since the late 1960s. The Commission on Law Enforcement and Administration of Justice (1967) urged every major city to establish "a special intelligence unit solely to ferret out organized crime," and the Kerner Commission (1968) called on cities to develop intelligence units that would use undercover police personnel and informants to learn about actual or potential civil disorders.⁵

In many local law enforcement departments, undercover work has come to be seen as an important and innovative tactic, carried out by carefully chosen, elite units. Increased prestige and professional recognition result from assignment to tactical or special squads that use undercover methods in new ways. Competition for assignments to these units, for example, anticrime decoy or intelligence squads, is often intense.

The past decade has also seen state attorneys general, county district attorneys, and special prosecutors taking greater independent initiatives against crime, often using their own investigators and conducting their own undercover operations. In addition, undercover operations have brought what were often relatively uncooperative federal, local, or regional police agencies together in joint ventures via the task force approach. Joint public-private undercover investigations have also appeared, as with an FBI-IBM (International Business Machines) operation against Japanese companies in Silicon Valley involving the sale of supposedly stolen IBM secrets.

NONENFORCEMENT AGENCIES

Federal agencies whose primary goal is not criminal law enforcement, such as the departments of Agriculture, Interior, and Housing

and Urban Development; the Customs Service; the Government Services Administration; the Nuclear Regulatory Commission; the Commodity Futures Trading Commission and the Securities and Exchange Commission; and congressional committees have also made increased use of undercover tactics, as have consumer, health, environmental protection, and motor vehicle agencies, and departments of investigation at the state and local levels. Even Smokey the Bear may be going undercover. In 1985 the U.S. Forest Service revealed a plan to crack down on marijuana growing in national forests involving the use of 500 special agents and the expenditure of up to \$20 million a year. Under former Director William Casey, the Central Intelligence Agency (CIA) was given new authority to conduct domestic undercover operations.⁶ The tactic is being used for civil and administrative, as well as for criminal, violations.⁷

NEW TARGETS

Not only has the number of covert operations increased, so has the variety of targets. Traditionally, undercover operations were targeted against consensual crimes (a crime between consenting individuals, such as a buyer and a seller of drugs), and they tended to focus on petty operators, street criminals, and other so-called lower-status persons. This has changed.

Anticrime decoys, fencing stings (police posing as purchasers of stolen goods), and infiltration have brought the tactic to relatively unorganized street crime and burglary, thus including crimes where there is a clearly identifiable victim. Undercover agents have adopted a new role—that of victim rather than co-conspirator. For example, a police officer may now pose as a derelict with an exposed wallet in order to foster a crime.

New targets also have emerged within traditional vice operations. In what is termed the “sell-bust” strategy, customers (whether consumers or distributors) have joined “suppliers” as targets. For example, police-women may pose as prostitutes and arrest men who proposition them.⁸ This contrasts with the more traditional undercover role where a male agent pretends to be a customer. Undercover officers may offer to sell drugs and other contraband instead of just buying it.

The sell-bust technique may also be seen in some antifencing operations. In spite of their name, most antifencing police storefronts target thieves rather than fences. This is not the case with “bait sales,” where

the undercover agent pretends to be a thief and offers to sell “stolen” property to a person thought to be a fence.

The expansion of covert operations into white-collar crime means that corporate executives, bankers, persons in retail and service businesses, labor leaders, and elected and other government officials (including judges, police, and prosecutors) have all become targets. This represents a shift in emphasis to crimes involving corruption, labor racketeering, industrial espionage, and export trade law violations.

This expansion may also help explain the increased public controversy around the tactic. 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.

In the late 1970s, the Drug Enforcement Administration (DEA) began to favor quality, high-level cases over quantity arrests. This meant increased attention to large-scale operations instead of street sales. Similarly, the IRS, which previously went after “Mom and Pop” operations, flea markets, or garage sales to monitor cash exchanges, has started putting agents “in banks and businesses instead.”

Other new targets include foreign businesses suspected of trade violations, exporters of high technology and military equipment, dumpers of hazardous wastes, promoters of tax shelters, landlords, building inspectors, automobile salesmen and mechanics, fixers of horse races, poachers of cacti, elk, bighorn sheep, and bear, and traffickers in endangered or protected plants and wildlife, such as Jamaican boa constrictors and great horned owls.⁹ Even baseball fans are facing increased covert surveillance. Thus, in 1982 the New York Yankees began an ambitious program of placing plainclothes police in the stands pretending to be fans. Hip, young, and wearing running shoes and rock star T-shirts, they were barely distinguishable from the potential troublemakers they sought to eject.

NEW GOALS

Rather than being directed at specific crime categories, investigations may start with suspect groups or individuals to find out what offenses they might be committing. In other words, authorities now actively seek out violators. With this focus on potential offenders and offenses, targeting has become more fluid and based more on probabilities. Inves-

tigations, for example, may be directed at various white-collar groups (business people, labor leaders, government officials) where a variety of offenses may be occurring.

The scope of most traditional undercover investigations (excluding those against political groups) has been relatively limited. Their goal has been to apprehend either a specific person or persons believed likely to commit a limited range of previously identified offenses. The investigations are reactive in that they occur in response to a particular crime, a crime pattern, or to specific factors that arouse police suspicion. This investigative model has been supplemented by one that is more proactive, diffuse, and open-ended. The new model involves a radar-like discovery sweep. Many investigations have become uncoupled from specific complaints, suspects, or offenses and (at least initially) less focused. Deterrence and intelligence gathering have become important objectives, along with the traditional goal of apprehending those responsible for specific offenses.¹⁰

The above changes are illustrated by the FBI's Silicon Valley and Abscam investigations. Neither began with the specific targets and offenses with which it ended. The Silicon Valley operation, one of the largest industrial espionage cases in U.S. history, was set up "to get a little better handle on problems in Silicon Valley, like the gray market [trading in stolen chips] and the sale of defective parts to the military." The "operation got off on a tangent with the Japanese thing" when the "unexpected opportunity" to investigate trade law violations was presented.

Abscam (short for Abdul scam) involved an FBI agent posing as a sheik. It began as an inquiry into stolen art and securities, but it ended as an investigation of political corruption. When a subject spoke of his ability to influence politicians, the focus of the investigation changed. As a Senate committee of inquiry observed: "Abscam was virtually unlimited in geographic scope, persons to be investigated and criminal activity to be investigated . . . [it] was in practical effect, a license for several special agents to assume false identities, to create a false business front, and to see what criminal activities could be detected or developed throughout the country."¹¹

There is a parallel to fishing in rich waters with a big net and attractive bait. One can never be sure what kind of fish will be caught. To quote a prosecutor who played a key role in an unfocused corruption investigation, "you leave your bait out long enough, you gotta catch something. One way or the other, we got ourselves a fish fry."¹² The

contrast with more defined conventional investigations that occur in response to a crime, or more focused undercover operations, is clear.

Abscam departed from many other undercover operations that lack prior suspects but that are at least organized to yield a strong presumption of guilt. For example, in police-run fencing fronts, there are reasonable grounds for suspecting anyone who comes to the fence with property to sell at a fraction of its value. But in Abscam, showing up at a meeting to discuss campaign contributions did not offer equivalent grounds for suspicion. For a crime to occur, the government agent had to make a bribe offer. Nor was Abscam a passive operation in the sense of being dependent on suspects who voluntarily came forward; those to be tempted were brought in by unwitting informers.

UNWITTING INFORMERS

The increased use of informers who do not know they are part of a law enforcement operation is an important factor in the new undercover model. In Abscam, unwitting informers were delegated the initial role in choosing the politicians to be tempted. This is in sharp contrast to traditional corruption investigations that are likely to involve either a person from whom a bribe is demanded, playing along under police supervision, or a “turned” suspect who agrees to cooperate with authorities in return for leniency.¹³

The case of businessman John DeLorean offers an example of an offense that is an artifact of the investigation. The government went to great lengths to involve him in a cocaine caper, having no reason to believe that he was a drug dealer. DeLorean was eager to raise money to save his car company. A neighbor who was a con man and an FBI informer put DeLorean in touch with a drug dealer. The idea for the drug buy appears to have come from the informer who told DeLorean he could earn \$60 million by financing a major cocaine deal. The informer introduced DeLorean to an FBI agent posing as a banker, and the “banker” loaned DeLorean the money. The agent testified that, if he had not offered DeLorean a method of financing the deal, the caper would not have occurred. The government thus provided a person not previously involved in drug trafficking with both a drug dealer and the money to finance a drug deal. DeLorean was vulnerable. Whether he was entrapped is a legal question that is separate from the criteria that ought to be used in selecting those whose honesty will be tested.

Secret testing on a random basis is a well-established aspect of private policing, for example, the testing of cashiers, and it has become

more common in the public sector as well. Some investigations have taken as their implicit goal the determination of whether or not a person can be induced to break the law, rather than whether the person is in fact breaking the law.

The question “Is he corrupt?” may be replaced by the question “Is he corruptible?” Some operations amount to random integrity testing. Rather than intervention into ongoing criminal activities, there is an effort to create them apart from specific grounds for suspicion. Using the tactic for general intelligence purposes or to test at random represents a significant extension of law enforcement discretion.

DEFINING TYPES OF POLICE WORK

The difference between undercover and conventional police tactics is highlighted when we consider two dimensions: whether the law enforcement nature of the operation is overt or covert and whether the police work is nondeceptive or deceptive. Although covert and deceptive practices are often linked, just as overt and nondeceptive practices are, in principle they are independent.¹⁴ When these aspects are combined, we identify four types of police activity (table 1).

Most police work is *overt and nondeceptive* (cell A). In conventional criminal investigations, victims, witnesses, or others notify police that a crime has occurred; less frequently, uniformed patrols discover an offense. Persons whose police identity is clear then make inquiries and gather evidence. Such police-citizen encounters are reasonably straightforward and involve questioning; giving aid, orders, or information; making arrests; or issuing citations.

But police work may also be *overt and deceptive* (cell B). The television detective Columbo illustrates this. In weekly episodes, he tricked interrogated suspects into confessing by telling them they faced a long prison sentence, that a companion had confessed, or that police had incriminating witnesses or evidence—none of which was true. This has its real-life counterpart when police issue threats that they have no intention of carrying out. They may also use deception to get around various legal restrictions, e.g., creating a false arrest, or by falsely claiming that contraband was dropped or a weapon was in plain view in order to justify a search.¹⁵

Overt deception is also used to create the impression of police omnipresence. This so-called “scarecrow” (misinformation) phenomenon includes visible surveillance cameras with blinking lights but no film or monitor; signs warning of monitoring through one-way mirrors or elec-

TABLE I TYPES OF POLICE WORK

		Are police actions	
		<i>overt?</i>	<i>covert?</i>
Does police action involve	<i>nondeception?</i>	A. uniformed patrol	C. passive surveillance
	<i>deception?</i>	B. trickery by persons whose police identity is known	D. undercover

tronic devices, and notices that “violators will be towed” or signs stating that traffic laws are strictly enforced when that isn’t the case; or highway patrol cars strategically placed along busy roads with a visible radar device and mannequins seated inside.

Covert techniques need not involve active efforts to deceive. Much secret electronic or direct visual surveillance is *covert and nondeceptive* (cell C). A camera, transmitter, interceptor, or tape recorder may simply be hidden (though rarely in anything so exotic as a martini olive!). An agent who watches a suspicious corner from a rooftop, follows a likely victim at a discreet distance, listens to speeches at a demonstration, or monitors a suspect’s mail is not actually deceiving anyone in face-to-face interaction. Unobtrusive surveillance does not directly intervene to shape the suspect’s environment, perceptions, or behavior.

Undercover work is both *covert and deceptive* (cell D). Unlike conventional police work, which, in a protracted process, tends to move from discovery of the offense to discovery of the identity of the perpetrator, then to arrest, the investigation may go on *before and during* the commission of the offense. It may start with the offender and only later document the offense. Discovery of the offender, the offense, and the arrest may occur almost simultaneously.

Covert and deceptive (undercover) techniques seek to overcome the limitations of conventional means. The latter tend to be irrelevant when police do not know that a crime has taken place and ineffective when no one will cooperate or adequate evidence cannot be gathered. They permit the state to observe directly actual or planned criminal activity.

Covert or deceptive tactics often resemble undercover practices. They also offer a means of discovering otherwise unavailable information, and they may constitute an invasion of privacy or a violation of trust.

But it is the deliberate convergence of covertness and deception that makes undercover practices so powerful and sometimes problematic.

THE INCREASE IN UNDERCOVER WORK

Unlike a singular tactic, such as legal wiretapping, for which agencies must file annual reports with the Justice Department, there are no standard means of measuring undercover practices, nor is there a central agency to receive reports. The topic must be dealt with obliquely and through rough estimates. Little information is routinely collected, and even less is made public. The quality and nature of the data that are available are not usually in a form that is useful for explanatory or comparative purposes (whether across agencies, over time, or among types of operation). Nonetheless, some generalizations can be made.

Undercover practices are more characteristic of federal police than of local; of detective units than of patrol; and of private police than of public. They are most likely to be used for offenses that are consensual (e.g., vice); that involve a recurring organized set of exchanges; where victims or witnesses are lacking because they are unaware of the crime (e.g., consumer fraud) or fail to come forward because they are intimidated, fearful, rewarded, indifferent, or apathetic.

The most direct measure of the increase in undercover work is simply to make yearly comparisons. Such data, as I have noted, exist only for the FBI, but other indirect measures are available. One indication is the size of federal police compared to local police. Because federal police are primarily detective agencies, and local police are primarily uniformed patrol agencies, a relative expansion of the former would be consistent with an increase in undercover work. Between 1970 and 1981, federal expenditures for police protection increased from 9 to 13 percent of total national police expenditures.

Within local police departments, the expansion of investigative work relative to other police work is also consistent with the increased use of undercover tactics. Data gathered from seven large cities showed that the number of police assigned to investigative jobs increased by almost one-third from 13 percent in 1971 to 17 percent in 1981 of total police positions.¹⁶ The number of officers assigned to intelligence work, perhaps the category most closely linked to undercover means and informers, almost doubled; those assigned to criminal investigations increased by almost one-third; and vice assignments increased by 9 percent. When disaggregated by city and personnel category, the increases held for 18 of 21 possible comparisons.

As we note in more detail in chapter 3, programs and resources associated directly or indirectly with covert work have also increased (e.g., witnesses in the Federal Witness Protection Program or interagency strike forces). It is likely that the number of unmarked police vehicles, body recorders, transmitters, and related surveillance equipment has increased. Confidential funds (for the purchase of contraband or to pay informers) have probably increased, both absolutely and relatively, as a share of police budgets.

Finally, indirect evidence of the expansion of undercover means can be seen in changing local arrest patterns. Between 1960 and 1980, arrests for offenses where undercover tactics are often used rose from 5.8 to 10.8 percent of the total. There was a significant increase in arrests for narcotics, prostitution and commercial vice, fraud, and possessing and receiving stolen property; only gambling arrests declined.

The expansion and change in the nature of undercover work has been neither uniform across agencies and types of offenses nor perfectly linear over time. If the overall profile is upward, its contours are jagged. Thus, the increased attention to narcotics and property crime has been at least partly offset by a deemphasis on political and gambling cases.

Even with the extended application of undercover tactics, we are not in the midst of a massive conversion from overt to covert policing. George Orwell is not yet around the corner. At the local level, the uniformed patrol is and will remain the predominant means of carrying out police work. Even at the federal level, undercover means are only one of several prominent investigative means. The fraction of resources going into deceptive investigations is still small. Judged quantitatively, the increases in undercover means are insignificant in the broad enforcement picture, but, compared with other democratic industrial nations or with the United States in 1960 (or 1860 or 1760), they are worthy of note.¹⁷

However, even if this were not the case, important qualitative changes have occurred. Their subtlety would not necessarily be captured by quantitative data, even if better data were available. The fact that the FBI, the most prestigious and powerful American law enforcement agency, now routinely uses undercover tactics—often in highly publicized ways—is significant.

Undercover means have become a prominent and sophisticated part of the arsenal of American law enforcement. This represents a marked departure from the police activities envisioned by the founders of the country and from the Anglo-American police ideal that eventually evolved.

The extension of covert means in the United States has had an international impact. Via cooperative investigations and the provision of models, resources, and instruction, the United States is helping to spread criminal undercover investigations worldwide. Ironically, practices that came to the U.S. from Europe are being reintroduced there in new American forms.¹⁸

MAJOR QUESTIONS

These changes in undercover activity raise important questions for social understanding and public policy. Given the protective secrecy surrounding the tactic and its potential conflict with the lofty ideals of American democracy, police accountability, civil liberties, and fair play, our lack of knowledge is not surprising. However, the importance of the issues involved and the risks to cherished liberties make our ignorance disquieting.

There has been almost no comprehensive analysis of undercover practices. Criminologists, public policy analysts, and other social scientists have rarely approached the topic, except as an adjunct to a consideration of narcotics enforcement, political surveillance, an enforcement agency, or a particularly celebrated investigation. There is a body of legal literature, although it is largely restricted to issues around entrapment. There is a small philosophy literature. There is a practitioner's literature that takes as "given" the desirability of the tactic. There is an interesting, although in general nonprobing, descriptive literature involving first-person and journalistic accounts and novels.¹⁹

In the absence of carefully specified criteria, adequate data, and systematic analysis, many observers have "knee-jerk" responses to undercover police tactics. The operations are considered either all good and beyond reproach or all bad and beyond justification. Proponents stress their unique effectiveness and argue for increased use; problems are minimized or seen as worth the risk. Opponents stress their unique problems and argue for decreased use; policy solutions are dismissed as unworkable, and potential risks are treated as matters of fact rather than as questions to be researched.

Such sweeping generalizations and *a priori* assumptions about whether undercover tactics are the problem or the solution fail to make distinctions among the types of undercover operations or to note the extensive variation within them. They do not define the broad array of criteria by which the tactic can be judged. Nor do they consider empirical data for assessing the frequency with which a given problem or advan-

tage occurs. They fail to specify the policy measures that are likely to minimize or maximize desirable or undesirable outcomes.

Given societal changes and a high degree of public concern over crime, shifts in law enforcement activity may well be appropriate. However, changes in such a sensitive area as covert operations should be preceded by a careful assessment of how the tactic works, the possible risks, the hidden costs, and the unintended consequences.

To begin to grasp the complexity of the topic and to make informed decisions, answers to nine broad questions are needed:

1. What is the history of undercover practices?
2. What accounts for recent changes?
3. What are the main types of undercover operation, and what are the major sources of variation within them?
4. What competing values are at stake, and what questions should be asked in deciding whether or not undercover means are desirable as a broad strategy and as tactically implemented?
5. What does the available research reveal about their intended impact and effectiveness?
6. What unintended consequences can the tactic have for targets, third parties, and informers?
7. What unintended consequences can the tactic have for police?
8. What means are available to control undercover activities?
9. How do covert practices relate to other trends in surveillance and social control, and what are the broad implications of undercover practices for society in the future?

Each of these questions forms the basis for the chapters that follow.