Law and History Review (2025), **43**, 195–198
doi:10.1017/S0738248025000148

ASLH AMERICAN SOCIETY FOR LEGAL HISTORY
CAMBRIDGE UNIVERSITY PRESS

FORUM

Response: Forum on Willrich's American Anarchy

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On November 11, 1919, the thirty-second anniversary of the hangings of four anarchists convicted of the murder of seven policemen at Chicago's Haymarket, Alexander Berkman wrote a letter to his lawyer. As with other young immigrant toilers who found anarchy in the lethal industrial cities of Gilded Age America, "the judicial murder" of the "Chicago martyrs" had been a formative event in the making of the infamous "Sasha" Berkman, the failed assassin of Henry Clay Frick and Emma Goldman's dearest comrade in the American anarchist movement. Now, newly released from the U.S. Penitentiary in Atlanta, where he had served most of a two-year term for conspiracy to obstruct the World War I draft, Berkman faced with Goldman the final legal battle of their long American careers. Federal officials in Washington were at that moment making elaborate preparations to deport the infamous "alien anarchists." The anarchists' advocate, Harry Weinberger, was drafting one last legal argument on their behalf. "Regarding your 'brief'—I suggest that you make it *very* brief," Berkman told Weinberger. "Nothing that you or I can do in the matter of legal procedure or public speeches will in the least alter the reactionary tendencies of the government, nor even influence … the deportation situation."[1]

Harry Weinberger did not take Berkman's advice. But I will.

I want to start this very brief note by expressing my deep gratitude to Kyle G. Volk for conceiving this forum and to Volk, Daniel J. Sharfstein, and Sarah E. Igo for training their expertise and wonderful historical minds on *American Anarchy*. In beautifully crafted essays, Igo, Volk, and Sharfstein have each engaged with a single plot, subplot, or historical theme in the book in a way that

[1] Alexander Berkman to Harry Weinberger, Nov. 11, 1919, Harry Weinberger Papers, Yale University Library Manuscripts and Archives, Box 27, Folder 18, emphasis added. Michael Willrich, *American Anarchy: The Epic Struggle between Immigrant Radicals and the US Government at the Dawn of the Twentieth Century* (New York: Basic Books, 2023), 13, 49.

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https://doi.org/10.1017/S0738248025000148 Published online by Cambridge University Press

has enriched my own understanding of this story. Igo brings her incisive critical eye to the book's claim that the government's early twentieth-century "war on anarchy" was a major driver for the development of institutions and tactics that we now call "the surveillance state." Volk asks very productively what this history of immigrant radicals and their challenges to the capitalist state might have to say about "the politics of political economy." And Sharfstein digs beneath the main narrative line of *American Anarchy* to uncover within its pages a legal history of immigrants, a "social and legal history of how people become American." The conceptual richness of each of these essays affirms a central conceit of my book: Anarchists are good to think with, especially for legal historians.[2]

Igo's excellent paper generously captures what I've tried to achieve in this book. She points out the ironic fact that by taking these immigrant radicals and their political ideas seriously, my "stance is closer to that of contemporary foes like A. Mitchell Palmer and J. Edgar Hoover than to most U.S. historians."[3] In his famous dissenting opinion in the 1919 *Abrams* case, Justice Oliver Wendell Holmes Jr. contemplated the immigrant anarchist defendants and their beliefs with condescension and contempt, even as he defended their right to speak out against the government. Holmes dismissed the anarchists' allegedly seditious leaflets as "poor and puny anonymities," filled with the "usual tall talk" and "pronunciamentos." Their alleged conspiracy against the government, he said, amounted to little more than "the surreptitious publishing of a silly leaflet by an unknown man." That has *not* been my approach in this book; throughout I have taken the anarchists seriously as political thinkers and legal actors.[4]

Igo rightly observes that we now have many different origin stories of the U.S. surveillance state, accounts that find drivers of state development in the nation's long history of controlling the bodies and movements of enslaved people and free Black Americans; in the U.S. colonial administration of the Philippines; in the enforcement of public health orders and alcohol prohibition laws; and so on. There is no question that modern institutions and technologies of population surveillance—wielded by both public and private actors—grew out of efforts to control and contain many actual and perceived threats to the social order and the state.[5]

[2] Sarah E. Igo, "Saboteurs as State Builders: Forum on Willrich's *American Anarchy*," *Law and History Review* 43, no. 1 (February, 2025): 175. Kyle G. Volk, "The Politics of Political Economy in the Industrial Age: Forum on Willrich's *American Anarchy*," *Law and History Review* 43, no. 1 (February, 2025): 181. Daniel J. Sharfstein, "Reading *American Anarchy* as a Legal History of Immigrants: Forum on Willrich's *American Anarchy*," *Law and History Review* 43, no. 1 (February, 2025): 196.

[3] Igo, "Saboteurs as State Builders," 176.

[4] *Abrams v. United States*, 250 U.S. 616 (1919), at 626, 628, 629. For revealing recent histories of anarchists and their politics, see Kenyon Zimmer, *Immigrants Against the State: Yiddish and Italian Anarchism in America* (Urbana: University of Illinois Press, 2015); and Rachel Hui-Chi Hsu, *Emma Goldman,* Mother Earth*, and the Anarchist Awakening* (Notre Dame, Ind.: University of Notre Dame Press, 2021).

[5] In addition to the works cited by Igo in her first footnote, see Jennifer Fronc, *New York Undercover: Private Surveillance in the Progressive Era* (Chicago: University of Chicago Press, 2009); and,

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But there really *was* something exceptional about the way the U.S. Government conceived of and responded to immigrant anarchists. Anarchism was an international movement, with distinctive regional variations. Everywhere the fight against anarchist terrorism accelerated the development of state surveillance and security systems. In the 1890s, European states responded to a stunning wave of anarchist assassinations and bombings by modernizing their police forces, adopting new identification systems such as Alphonse Bertillon's *portrait parlé*, and forging international extradition and intelligence-sharing agreements. In the United States, where a long constitutional tradition gave the fullest police powers to the states, it was anarchists' proud status as noncitizens that made them especially vulnerable to *federal* power. As I argue in the book, "It is simply impossible to explain the dramatic rise in the early twentieth-century United States of the federal surveillance state—an interlocking set of administrative agencies that served a congressional mandate to spy on citizens and to deport noncitizens who held radical beliefs—without appreciating the abiding importance of anarchism in the nation's public life."[6]

In his richly conceptualized paper, Kyle Volk pulls together the anticapitalist and antistatist ideas and political practices of the book's central characters into a different analytical frame: "the politics of political economy." He uses this idea to tie together the anarchists' critiques of patriarchal authority and marriage with their challenges to the industrial capitalist economic order and the state, their street-level politics with their transformation of courtrooms into theaters of protest, and their forsaking of democratic institutions with their embrace of revolutionary propaganda. Goldman's attention to the politics of gender and sexuality was a hard sell for many of her anarchist comrades—including her young women followers. Katya Blackman arrived in New York from Odessa in 1907, at the age of twelve. Before long she was attending anarchist meetings with her older sisters. "We went to Emma Goldman's lectures on drama and birth control, which we regarded as secondary issues," she recalled in an interview with the historian Paul Avrich. "We were fiery young militants and more concerned with economic and labor issues." But as Volk rightly observes, feminism, sexual freedom, and the struggle against capitalism were of a piece in Goldman's thinking and politics.[7]

At the end of his essay, Volk asks why readers don't learn more from *American Anarchy* about Harry Weinberger's intimate life, especially given all that we know about Goldman's and Berkman's. The answer is simple: Weinberger *wanted it that way*. The lawyer disapproved of Goldman's decision to include so many details about her sex life in her autobiography—"a great

of course (!), Sarah E. Igo, *The Known Citizen: A History of Privacy in Modern America* (Cambridge, Mass.: Harvard University Press, 2018).

[6] Willrich, *American Anarchy*, 12–13. See Richard Bach Jensen, *The Battle Against Anarchist Terrorism: An International History, 1878–1934* (Cambridge, UK: Cambridge University Press, 2014).

[7] Volk, "The Politics of Political Economy in the Industrial Age," 181. Paul Avrich, *Anarchist Voices: An Oral History of Anarchism in America* (Edinburgh: AK Press, 2005), interview with Kate Wolfson, née Katya Blackman, 74.

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mistake," he told one New York book editor, that "manages to throw her whole life as written out of focus."[8] Although the lawyer and his most famous client had a flirty epistolary relationship, nothing in his personal correspondence with Goldman—or with anyone else for that matter—reveals much about the intimate life of this confirmed bachelor. Weinberger had always planned to write a memoir of his own. He wanted to call it "The Fight." You can bet he would have left the sex out.[9]

Dan Sharfstein brilliantly mines the "nooks and folds" of *American Anarchy* for a different kind of legal history of New York immigrants, a story of law shaping immigrants' identities as Americans. Shifting attention from the scenes of border enforcement and the free speech battlegrounds, Sharfstein highlights in the book a story of immigrants at work, where their "uniquely American and legal anarchist consciousness … took shape amid a host of routine, private processes, from working under labor contracts to buying and selling goods and services and paying rent."[10]

Sharfstein is exactly right about this. As I sifted through the transcripts of Goldman and Berkman's 1917 draft trial, I was time and again struck by how the very minutiae of the prosecution's exhibits—a theater rental contract, a receipt from a printer, canceled checks, telephone company contracts, and the like—showed the anarchists' reliance, as American city-dwellers, on the basic and, given their line of work as writers and lecturers, unavoidable legal instruments of capitalist exchange.[11] To Sharfstein's catalog of well-culled evidence from the book, I would add two additional exhibits. It was not just the immigrant radicals for whom the forms and institutions of law served as forces of Americanization. In the great national testing ground of World War I and the First Red Scare, we find Harry Weinberger, a New York-born Jew, still striving to become American through his constitutional arguments in the courts. And there he frequently had to contend with American-born Jewish judges, men like Judge Julius Marschuetz Mayer of the U.S. District Court for the Southern District of New York, who subjected Weinberger's immigrant Jewish anarchist clients to a particularly severe and consequential form of respectability politics.

Many thanks to Igo, Sharfstein, and Volk for these insightful and crisply written essays. It is quite a thing for an author to have readers such as these.

[8] "While Emma Goldman in her book played up her sex life, my own opinion is that that was a great mistake," Weinberger wrote to the New York book editor Charles A. Madison. "It manages somehow to throw her whole life as written out of focus." Weinberger to Madison, June 9, 1943, Emma Goldman Collection, Tamiment Library and Robert F. Wagner Labor Archives, New York University, Box 3. See Emma Goldman, *Living My Life*, 2 vols. (New York: Knopf, 1931).

[9] Harry Weinberger Papers. Harry Weinberger, "A Rebel's Interrupted Autobiography: A Personal Document on the Impact of War on One Who Has Made a Lifelong Fight Against It," *American Journal of Economics and Sociology* 2 (1942), 111.

[10] Sharfstein, "Reading *American Anarchy* as a Legal History of Immigrants," 190.

[11] Willrich, *American Anarchy*, 228–229.

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