

F.B.I. Reform

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By Milton A. Loewenthal

One reform proposal which is gaining prominence as an outgrowth of Watergate is the deceptively simple notion of transforming the F.B.I. into an independent investigatory agency divorced from the President and his Attorney General. This is, in effect, a proposal to remove the F.B.I. from the control of the elected representatives of the people.

Such an idea appeals to our concern that the F.B.I. could be as severely compromised for political purposes as it apparently was during the Watergate "cover-up." The proposal is also attractive to our natural longing for a kind of mechanical even-handedness in law enforcement and a way of assuring that the highest officials of our Government are as subject to legal sanctions as ordinary citizens.

Ironically, this new cult of independence is most strongly supported by those liberals who for so long intoned against the independence of J. Edgar Hoover's F.B.I. from the policies of successive national Administrations. Then it was argued that the F.B.I. was still looking for Communists under every bed while showing softness in investigating violations of civil rights—at a time when national conditions and sentiment called for a different kind of emphasis. Those of us who supported this argument recognized that law enforcement is not mechanical. It necessarily involves policy decisions, selectivity and value judgments

which should, within limits, be subject to the control of the democratic process. Oddly, many of my colleagues who urged this position are now glorifying the former autonomy of the F.B.I., apparently forgetting the dangers of the independence which they had implored against. Could it be that they oppose autonomy only when they disagree with the policies of independent officials?

Our Federal judges are appointed for life and are essentially independent of electoral pressures—and we are better off for it. But there is a major difference between judges and large law-enforcement agencies. We could hardly accept the appointment for life terms of attorneys general, district attorneys or police commissioners any more than we could accept a secretary of defense or a chairman of the Joint Chiefs who is divorced from popular control.

Autonomous judges act openly as a check on majority will, but they do not represent the threat to our society that is posed by independent police forces or armies. These vast organizations possess such great potential for massive and secret invasions of democratic freedoms that we cannot risk their independence. We must not let our distress over Watergate allow us to turn to "remedies" that will further endanger our democratic institutions.

This is not to say that it is incorrect to stress the need for character and toughmindedness in those who administer criminal justice agencies. If

asked to shred evidence, violate the law, or act against his own conscience, any self-respecting official should be expected to refuse or resign. But institutional autonomy is not a guarantee of personal integrity. Indeed, a powerful, independent administrator who lacks integrity may be the greatest of dangers.

One major problem remains: who investigates the President, his staff and his Cabinet? No doubt it is too much to expect that even men of the highest character will vigorously investigate their "bosses." Moreover, we have been reminded by Watergate that in our system of separation of powers it is very difficult for the legislative branch to check on wrongdoing by executives who cannot be forced to appear before Congress or account to it.

One possible solution is the creation of an independent ombudsman agency whose sole authority would be to investigate Government officials. Such an agency would have no power over ordinary citizens but would act as a check on Government operations through investigations initiated either by citizen complaints or by the agency itself. Because of the limited power of the ombudsman, the risk of its independence might be worth taking. Certainly it would be much preferred to the dangers inherent in removing the F.B.I.—with its vast powers over American citizens—from the sway of the democratic process.

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