

Controlling the FBI

In thinking about the future of the FBI it may be useful to look at its origins and at the pattern of its growth. The FBI was created in 1924 by Harlan Fiske Stone when he was Attorney General of the United States, before his elevation to the Supreme Court. One of his first acts when he took charge of the Department of Justice was to abolish the Division of Investigation which had become mixed in politics and had played an ugly part in the arrest and deportation of aliens under the

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Attorney Generalship of A. Mitchell Palmer. In its place, Stone established a Bureau of Investigation, choosing a young man named J. Edgar Hoover as its director. In doing so, the Attorney General issued the following statement defining the bureau's role:

There is always the possibility that a secret police may become a menace to free government and free institutions because it carries with it the possibility of abuses of power which are not always quickly apprehended or understood...

It is important that its activities be strictly limited to the performance of those functions for which it was created and that its agents themselves be not above the law or beyond its reach...The Bureau of Investigation is not concerned with political or other opinions of individuals. It is concerned only with their conduct and then only with such conduct as is forbidden by the laws of the United States. When a police system passes beyond these limits, it is dangerous to the proper administration of justice and to human liberty, which it should be our first concern to cherish.

These are words worth remembering, worth rolling reflectively on the tongue. For they are not only prescient and prophetic, they are alive with political realism—the kind of realism that led the founders of the republic to limit the powers of government by a

written Constitution.

As everyone knows, the new bureau flourished, achieving a great reputation for honesty about money matters and for efficiency in capturing automobile thieves, bank robbers and kidnapers. Mr. Hoover had a flair for publicity as well as a genius for effective organization. Soon the FBI, with its laboratories and advanced crime

detection techniques and daring G-men, became not only the scourge of criminals but the most admired of all federal agencies.

It should be said in defense of Mr. Hoover that he did not initially reach out for power; power was thrust upon him. In 1939, with American involvement in the Second World War at hand, President Roosevelt instructed the FBI to take charge of all investigation "relating to espionage, counterespionage, sabotage, subversive activities, and violation of the neutrality laws." There were three things wrong with this:

First, it was without any statutory basis. Congress had authorized a Division of Investigation in the Department of Justice which afforded an adequate foundation for a Bureau of Investigation to do what Attorney General Stone empowered the bureau to do in the area of law enforcement. But Congress had not then, and has never since, authorized any agency of the Department of Justice to take charge of counter-intelligence although it has, to be sure, repeatedly approved appropriations to carry on such activities. Mr. Roosevelt went still further. He authorized the FBI, with the approval of the Attorney General, to tap telephones in national security cases, although this entailed a direct violation of an act of Congress, the Federal Communications Act of 1934.

Second, this assignment took the FBI into a field where it had no real competence or experience. Counter-intelligence is not the normal work of a law enforcement agency and is far too important to be left to policemen. Mr. Hoover seriously believed that actors and actresses who gave ambulances to loyalist Spain or entertained at Soviet-American rallies when the two countries were allied in war were perils to American security. He seriously

believed that a minister of religion who militantly sought equal rights for black Americans was bound to be a Communist agent. Mr. Hoover sincerely equated political heterodoxy with disloyalty and pursued it relentlessly as "subversive."

Third, the President's directive not only tremendously expanded the FBI's power but also radically changed its focus. Indeed, it brought the FBI right back into the political area from which former Attorney General Stone had removed it, the constitutionally protected area of political opinion and association. Subversive activities are essentially political activities displeasing to those in power but not necessarily criminal in character.

A few years later, in 1947, President Truman—also without any legislative authorization—gave the FBI full responsibility under the Federal Loyalty Program for investigating the suitability and trustworthiness of

government employees and of applicants for government jobs. Relying on accusations by unidentified informers, many of them former Communists, the FBI became, in effect, the definer of patriotism, the arbiter of political acceptability.

No wonder Mr. Hoover became a kind of Lord High Executioner, a law unto himself. No President governed him, no Attorney General ruled him, no Congress fixed boundaries for his roving authority. And so, step by step, we got unlimited surveillance, indiscriminate bugging and tapping and reading of our mail, Cointelpro and black bag jobs and official blackmail and all the other attributes of a police state that have become the commonplace in newspaper reports in recent weeks. The FBI became, in truth, precisely what Attorney General Stone warned against—"a menace to free government and free institutions."

Stone's words are still not heeded, moreover. The incumbent director of the FBI found himself capable of saying in 1975—without a perceptible tremor of embarrassment—that "we must be willing to surrender a small measure of our liberties to preserve the great bulk of them." Is liberty really now no more than a luxury, and a liability, in a

nation that has grown to greatness under it? Echoes of the tragic past! Must we destroy the Constitution in order to save it?

The FBI is not going to be brought under control by any congressional oversight committee—which will be told no more than the FBI wants it to know. It can be brought under control only by first being cut down to size—by having its role firmly defined by Congress, so that it becomes what it was meant to be in the first place, a law enforcement agency concerned, as Harlan Stone put it, “only with such conduct as is forbidden by the laws of the United States.”

The elephantine growth of the FBI is superbly symbolized—perhaps it would be better to say embodied—in the mammoth, and monstrous, edifice that now stands athwart Pennsylvania Avenue like a brooding Bastille and is identified by golden letters across its portals as the J. Edgar Hoover FBI Building. If it cannot be razed, could the House of Representatives not take it as a fourth, fifth or sixth office building, instead of taking the new congressional library annex? Then the FBI could be appropriately returned to the Department of Justice as a subordinate agency of that instrument of government.

At the very least can it not be renamed—say, the Harlan Fiske Stone Building—as a memorial not to our past folly but to the true character of our country, where liberty is valued alike as a means and as an end, and where a government of laws still prevails?



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