

Justice Stewart Exposes a Myth

THERE ARE some Americans, Justice Potter Stewart of the U.S. Supreme Court said recently, who "firmly believe that the former Vice President and former President of the United States were hounded out of office by an arrogant and irresponsible press that had outrageously usurped dictatorial power."

It is extremely interesting to us, as part of that press, to learn that Justice Stewart has gone to some pains to disabuse his fellow-citizens of this idea. In an address to the Yale Law School, of which he is a graduate (in the same class, incidentally, with President Ford), Justice Stewart defends the role that the press played throughout the era of Watergate and the Pentagon Papers. The address is reported in the current edition of the Yale Law Report.

As to the press's having hounded Vice President Agnew and President Nixon out of office, it was Justice Stewart's thesis that "on the contrary, the established American press has in the past ten years and particularly in the past two years performed precisely the function it was intended to perform by those who wrote the First Amendment of our Constitution."

IN SETTING UP the three branches of the federal government, with their checks and balances, he said, the Founders set out "to save the people from autocracy" and with a similar motive wrote the guarantee of free press into the Constitution "to create a fourth institution outside the government as an additional check on the three official branches."

He cited the famous Pentagon Papers case as an instance wherein the Supreme Court examined the line between secrecy and openness in the affairs of government and could find no constitutional prohibition whatever against the publication of allegedly stolen government documents. "So far as the Constitution goes," he said, "the autonomous press may publish what it knows, and may seek to learn what it can."

Justice Stewart conceded that newspapers, TV, and magazines have at times been "abusive, untruthful, arrogant and hypocritical" and that a constitution might have been written in which some limited regulation of the press was prescribed and the newspapers and networks could be required "to promote contemporary government policy or current notions of social justice."

SUCH A CONSTITUTION might indeed work reasonably well, he said, but it is not the Constitution that the Founders wrote, nor the Constitution that has served us well for almost two centuries. He closed his remarks thus:

"Perhaps our liberties might survive without an independent established press. But the Founders doubted it, and . . . I think we can all be thankful for their doubts."

Here, from the best of all possible sources, comes the best of all possible answers to a question often hurled at the press: "Who elected you?"