REVIEWS


The President's Committee has received a well-deserved accolade of praise from the civilized, and of brickbats from the blood-fanatics, for its report on civil rights in America, of which more than a million copies have been reprinted. So far as I know, however, none of the commentators on this important document has noted that it is not the first in its field. Some 78 years before the landing of the Pilgrims, the first comprehensive report on the civil rights of Americans was completed. In the concluding paragraphs of his report, dated December 8, 1542, Fra Bartholomew de las Casas expressed some doubt as to "whether it could be worse to give the Indians into the charge of the devils of hell than to the Christians of the Indies." Unfortunately the world's mightiest government, in 1542, was not mighty enough to correct the abuses that Las Casas reported. A number of high-minded statutes outlawing various current forms of racial discrimination and oppression were promulgated, but they were not enforced. And because Spain, in its American dominions, could not assure equal justice to its people, the lands it ruled were blighted, and its imperial power slowly crumbled into the dust.

The President's Committee on Civil Rights follows the report of Las Casas to King Philip in its basic conception that a man has a right to liberty and to equal justice before the law, not because of his skin color, religion, or ancestry, but just because he is human. To be human, as both reports recognize, is to have potentialities of achievement and of contribution to the common good or the glory of God (depending upon one's language), and these potentialities are poisoned by intolerance. The manifestations of racial and religious intolerance which both these great documents recount are too clear to justify skepticism and too vivid to warrant retelling in poorer language. The documents speak for themselves. The question remains: What do we who read them do?

When Las Casas made his report, he may have had some doubt as to the reception that would be accorded by the King of Spain to his devastating criticism of Spanish lawlessness and racial bigotry in the New World. At any rate, the preface to his Briefest Report on the Destruction of the Indies expressly recognizes that, since the King can do no wrong, responsibility for the excesses reported must lie elsewhere:

"As divine Providence has ordained that in this world, for its government, and for the common utility of the human race, Kingdoms and Countries should be constituted in which are Kings almost fathers and pastors, (as Homer calls them), they being consequently the most noble, and most gener-
ous members of the Republics, there neither is nor can be reasonable doubt as to the rectitude of their royal hearts. If any defect, wrong, and evil is suffered, there can be no other cause than that the Kings are ignorant of it; for if such were manifested to them, they would extirpate them with supreme industry and watchful diligence." ¹

A similar assumption is made by the President's Committee on Civil Rights. The distinguished members of this committee are unwilling to assume that the President who appointed them, and to whom they report, can be responsible for the violations of civil rights that their report recounts. Prime responsibility for these conditions and for their cure is accordingly ascribed, by what lawyers call an "irrebuttable presumption," to the Congress of the United States, which did not appoint the Committee and which has few defenders among the readers of such reports. This may or may not be good politics, but is certainly not good law or good science.

Racial discrimination in the armed forces, for example, is roundly and justly censured by the President's Committee.² "The Marine Corps has 7,798 officers—all white," the Committee reports, with the effective pictorial representations that make this document almost unique among Government reports. And after a shocking list of discriminations in the armed forces, what does the President's Committee do? It recommends "the enactment by Congress of legislation, followed by appropriate administrative action, to end immediately all discrimination and segregation based on race, color, creed, or national origin, in the organization and activities of all branches of the Armed Services."³ The fact remains that the President, as Commander-in-Chief of our armed forces, could abolish such discrimination and segregation by Executive order tomorrow. Congress has never imposed discrimination or segregation on the armed services by any statute, and there is no reason in the world why the President, in whose hands Congress has placed such matters, should continue to sanction discriminatory practices in the armed services until Congress gets around to passing legislation on the subject. Under these circumstances, the Committee's recommendation that "appropriate administrative action," which is possible now, should follow legislation, which is neither possible nor necessary, sounds suspiciously like a bit of election-year buck passing.

The same may be said of discrimination and segregation in the school, hospital, and recreation systems of the District of Columbia, which rest not upon any law but upon the decisions of the President and his subordinate executive officers. Segregation has been abolished in golf courses, tennis courts, swimming pools and theaters operated in the District of Columbia by the Department of the Interior, and segregation is insisted upon in similar facilities operated by the District Commissioners, not because of anything

¹. MacNutt, Bartholomew De Las Casas, His Life, His Apostolate and His Writings 311 (1909).
³. P. 162.
in the law but because different subordinates of the same President have different ideas about racism. Segregation in the public institutions of the Nation's capital could be abolished tomorrow by Executive order or by a series of letters or telephone calls from the President to various of his subordinates. Yet the President's Committee sends its readers barking up a tree without possums when it recommends:

"The enactment by Congress of a law stating that discrimination and segregation, based on race, color, creed, or national origin, in the rendering of all public services by the national government is contrary to public policy." 4

Does anyone really think that the President is now deterred from abolishing discrimination in activities of the Federal Government by lack of such a statement? Would such a statement by Congress today add substantially to the statement on the question of human equality which Congress made on July 4, 1776?

So it is with several other subjects on which, after a learned, powerful, and devastating account of current evils, the Committee ends up with perfectly irrelevant legal recommendations. Why in the world the President's Committee should ask Congress to pass a law to eliminate race discrimination in the Canal Zone,6 when the President himself could do this tomorrow by a phone call to the Military Governor, has never been explained. There is certainly no reason for continued military government in Guam and Samoa, but this again is the result of a Presidential decision, not a Congressional decision. Only the Committee's irrebuttable presumption that the President can do no wrong prevents it from noting that, however desirable legislation on these subjects may be, presidential action under existing law would be more effective and a great deal faster. Perhaps the Committee was actually unaware of the scope of Executive power and responsibility in these matters. Perhaps the Committee merely succumbed to the popular American battle-cry, "There ought to be a law," which so often blinds us to the possibility or the importance of enforcing the laws we already have. Perhaps the Committee was merely being polite in not blaming the President who appointed it for the evils that it uncovered. Perhaps some of the members of the Committee really believe that Kings and Presidents can do no wrong. But whatever the explanation may be, the Report will send a good many letters to the wrong address.

The proper address for appeals to eliminate racial discrimination and other infringements of civil liberties in the armed services or the civil service of the United States, in the administration of outlying possessions now under military government, in the public services of the District of Columbia, or in federal housing projects or other service activities of the Federal Government is 1600 Pennsylvania Avenue. When action that may be taken in the White House has been taken, the recommendations that proceed from the White

5. P. 172.
House to Capitol Hill for legislation on the protection of civil rights will have both a more limited scope and a greater moral force.

Even in those large fields where Executive action could not by itself wholly eliminate the evils which the President’s Committee reports, there are available lines of Executive action which would bring us a good deal nearer to the goals which the Committee so persuasively proclaims. For example, Section 2 of the Fourteenth Amendment to the Federal Constitution expressly declares that when the right to vote is denied (except for commission of a crime) to any portion of the adult population of any state the representation of that state in Congress shall be reduced proportionately. If this provision of the Constitution were enforced, the poll tax states would lose a large part of their Congressional representation, which is at present sizeable enough to kill most of the progressive legislation that the President’s Committee recommends. But it is in the President, and in his subordinates in the Census Bureau and the Department of Commerce, that responsibility for submitting the population basis for Congressional reapportionment is vested. And no President of the United States, apparently, has ever attempted to enforce this provision of the Fourteenth Amendment. It may very well be that, if the President acted in the manner prescribed by the law of the land, Congress would refuse to accept the reapportionment he would be bound to formulate. But at least the first necessary step would have been taken to rectify one of the most glaring of our violations of the Federal Constitution, and the responsibility for not taking the final step would then be clearly fixed upon Congressmen unwilling to accept the Constitution as the supreme law of the land.

There is no field of legislation in which racial and religious intolerance has played a larger role than in our immigration laws. Anti-Catholic, anti-Semitic, and anti-Oriental prejudices are the dominant forces that have moulded our immigration laws for some decades. Yet even here there are many forms of discrimination that are primarily Executive in origin, that could be eliminated by Executive action. For example, one of the more subtle but most basic of our discriminations against Catholic and Jewish immigration is found in the assumption of our immigration authorities that the early settlers of America were nearly all Englishmen, as a result of which more than half of our immigration quotas are now assigned to the British Isles, which do not use them. This calculation is based largely upon the use of family names as an index of the national origins of our native-born population. Thus families bearing the name of Cabot are classified as of British descent, though we know, as an historical fact, that the original Cabots who first visited our land hailed from Italy and spelled their family name Caboto. We know, too, that most other foreign names are Anglicized within three or four generations of American life. The President and various Cabinet officers of his could admit to our shores thousands of victims of anti-Catholic and anti-Semitic persecution by simply correcting the distortions in our current basis of quota allocations, which are a heritage from days of anti-Catholic and anti-Semitic
hysteria. An act of Congress specifically authorizes such revision. But this, too, has never been enforced.

Of course, there are many other fields where Congressional responsibility is primary. The recommendations of the President's Committee for strengthened civil rights laws, anti-lynching legislation, fair employment legislation, self-government for the District of Columbia, elimination of racial discrimination from our naturalization laws and the elimination of segregation in federal-supported institutions (on which the Committee split) are powerfully presented and thoroughly justified. But these recommendations would carry greater force if they were not intermingled with evasive "buck slips" by which presidential responsibilities are covered up with the fiction that only Congress has the power to remedy our sins against the ideals of democracy on which this Nation was founded. The fact remains that Congressmen are human, with enough work to keep them busy even if they do not attempt also to do the President's work. Moreover every Congressman represents a small section of the United States with sectional prejudices that he cannot wholly disregard if he wishes to serve long enough to be effective. Only the President represents all the people of the United States, a people in which all minorities, added together, total the entire population. Only the President, therefore, can take the lead in a great campaign to bring the practices of our Federal Government into line with the ideals that have made our Nation great and honored as few nations in history have ever been honored by the peoples of the world.

The evils which demand remedy have been clearly charted by the President's Committee with respect to the place of the Negro in American life. Here the Committee was able to build on a vast body of scientific analysis of the wrongs that are suffered by our colored citizenry and the ways in which these wrongs tear down the society that inflicts them.

There is considerably less clarity in some of the Committee's references to other minorities.

The most tragic of our war-time blunders on the civil rights front was the wholesale arrest, exile, and unconstitutional imprisonment of thousands of American citizens whose only offense was to have been born of Japanese parents. Here for the first time, by executive order, we reverted to the barbarity of punishing children for the crimes of their grandfathers and second cousins. What was done in a war against Japan to persons of Japanese de-
scent can be done in a war against Russia or Italy or Spain to persons of Russian or Italian or Spanish descent. Thus the civil rights of all Americans have come to hang on international politics. Even the administrators who carried out our first racial proscriptions and the attorneys who defended them in the courts have confessed error. Yet on this most critical issue of civil rights the President's Committee does little more than pussyfoot: "The proposed permanent Commission on Civil Rights and the Joint Congressional Committee might well study this problem." Passing the buck to an agency that exists is bad enough, but passing the buck to two agencies that do not exist is the height of a discretion which is not the better part of valor.

The President's Committee gets even further from reality in its brief comments upon the Indian problem. In Arizona and New Mexico, Indians are not permitted to vote. This is a clear violation of the Fifteenth Amendment, which forbids racial discrimination in the franchise. Test cases are now pending in both states to force recognition of the constitutional voting rights of our Indian citizens. The President's Committee, however, suggests that the cure for Indian disfranchisement lies in amendments to the state constitutions of Arizona and New Mexico, on which, of course, the Indians would not vote. One rather expects enemies of federal anti-poll tax legislation, for example to advance the argument that this is a problem properly dealt with by state or federal constitutional amendments. It is rather dismaying to find that line advanced by friends of democracy.

Equally remote from reality is the Committee's comment on the plight of our Alaskan natives, who, being robbed right and left of their sources of food and livelihood, are dying of tuberculosis at a rate over 30 times the national average. Recognizing these facts, the Committee comments: "The situation is such that federal officials are seriously considering a proposal made by the Governor of Alaska to appoint a public defender for those groups." This statement is untrue; a suggestion to this effect was rejected by the Department of Justice more than a year ago and has not been heard from since. The Secretary of the Interior was authorized to protect Indian rights by act of Congress in 1849, but in 1946 Alaskan Indians were advised by the Secretary of the Interior that they could no longer expect his department to render legal assistance in their battles with white canning and mining interests. Is it likely that a local public defender could resist pressures to which even Cabinet officers bow? The fact is that one of the leaders in territorial moves to separate the Alaskan natives from their property is the

15. P. 159.
legal adviser of the Governor of Alaska, the Attorney General of the Territory. Comments upon our treatment of the natives who are held practically as serfs on the Pribilof Islands and denied all the usual rights of citizens, were discreetly eliminated from the Committee's final report.

Equally inadequate are the Committee's comments upon the problem of discrimination against the foreign born and their children, a discrimination which has been carried to its most fantastic extremes in the enlistment policies of the Navy's Intelligence Service, which has generally limited enlistments to third generation Americans.

The deficiencies of the Committee's report outside of the field of Negro problems are not the result of any lack of human sympathy, but rather a natural consequence of the prevalent failure to recognize that human intolerance takes many forms. The fact that intolerance towards Catholics or Jews does not ordinarily take the form of lynchings or Jim-Crow cars does not mean that such intolerance is unimportant. Intolerance towards the Negro does not express itself in bars to naturalization or immigration, as does intolerance towards the Oriental, nor in expropriation of Negro landholdings, as does intolerance towards the American Indian, but that does not mean that intolerance towards the Negro is unimportant. There is much that we have still to learn about the operation of intolerance, but it seems safe to say that all of its forms involve the acceptance of a non-human stereotype applied to a class of human beings. Such stereotypes are fashionable fictions which save us the trouble of learning to know other human beings as they really are. In large part they are outward projections of our own basic discomforts rather than factual descriptions. We say that a man works like a dog, meaning that he works very hard, or that he is as lazy as a dog, meaning that he doesn't work at all, and in the common speech of the South a member of the colored race is often substituted for the dog in both similes. This does not mean that we think lazy people work hard, but only that we accept the object of the simile as inhuman and thus mean to say that so-and-so is inhumanly industrious and that somebody else is inhumanly lazy. So, too, when people say that Jews are communists, in one breath, and, in the next breath, that they are international bankers, that they are "clannish" in sticking to themselves and that they push into company where they are not wanted, those who speak in this fashion do not mean really to assert that communists are bankers or that people who stay among their own kind are forcing their company on unwilling strangers. What an objective appraiser of such speech gathers is that the speaker does not like Jews, whether they are communists or capitalists, and whether they mix with other Jews or with non-Jews. And when General DeWitt condemned the Nisei with his famous remark: "The very fact that no sabotage has taken place to date is a disturbing and confirming indication that such action will be taken," the substance

of his statement was that he was afraid of these people whether or not they had done anything wrong.

We are all irritated at the sight of those we have wronged. That is why we have Jim-Crow cars and ghettos and restrictive covenants and segregated schools and concentration camps for the Nisei of the West Coast but not for those of Hawaii, who have been comparatively well-treated. That is why the Supreme Court, after putting a stop to the naturalization of Asians, in 1922, could so easily, a year later, uphold the anti-Japanese land laws, that the President's Committee condemns, with the bootstrap argument: "It is obvious that one who is not a citizen and cannot become one lacks an interest in, and the power to effectually work for the welfare of, the state, and, so lacking, the state may rightfully deny him the right to own and lease real estate within its boundaries."

The same sense of irritation at the sight of those whom we have wronged shows itself dramatically in laboratory proportions in our treatment of the American Indian. Deep in the American conscience is a sense of having wronged the original possessors of our continent. This twinge of national conscience may show itself in appropriations for aid to the starving Navajo, or in other humanitarian efforts. But most deeply it shows itself in a desire to believe that the Indian is, either physically or culturally, a dying race, unable to utilize white man's civilization, and therefore an obstacle in the road to progress. And so we think of the Indian, head bowed on a drooping horse at "the end of the trail." In the face of that stereotype, the fact that Indians are today the most rapidly increasing racial group of our population, trying to exercise rights of local self-government and all other rights of citizenship, and resisting all efforts to "emancipate" them from their reservation lands or other property, makes little impression. And so, because our ancestors wronged their ancestors, we can go blithely along legislating the Indians of Alaska or Nevada out of their lands, timber and fisheries, or abolishing their municipal governments and cooperatives, and not even a President's Committee on Civil Rights takes notice of these assaults on the basic rights of a helpless minority.

It is precisely because the wrongs we commit lead us to hate those we have

20. P. 162.
22. As this is written a bill (S. 30) to grant lands of the Pyramid Lake Indians to white squatters at a small fraction of their value, overruling a series of court decisions adjudicating the land to be the property of the Indians, has passed the Senate unanimously and is pending in the House; a bill to turn over Indian fisheries to favored corporations (S. 1446, H.R. 3859), backed by the Secretary of the Interior, has been favorably reported; a bill to transfer the timber holdings of Alaskan natives to timber companies has been passed by unanimous consent, Pub. L. No. 385, 80th Cong., 1st Sess. (Aug. 8, 1947); and several bills to confiscate Indian land reserves and abolish Indian civic and municipal organizations are pending.
wronged and thus lead us to seek to avoid their sight, it is because these wrongs lead to chain reactions ending in the destruction of civilization, that the problems raised by the President's Committee are so vital. Oppression has not often destroyed the life of the oppressed, but it has always poisoned that of the oppressor. Vast gaps in the Committee's report which reflect vast gaps in popular understanding, will be filled by those who come after. But even if those gaps are far more serious than this reviewer believes them to be, the Committee will have deserved well of the country it has served. To have renewed the old American vision of a nation of nations, without aristocracy of ancestry or creed, is to have revivified our efforts to make that vision a reality.

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Professor Carr's monograph on the federal civil rights laws comes at a particularly opportune time. The epochal report of the President's Committee on Civil Rights (Mr. Carr was its executive secretary) has stimulated nation-wide discussion of the need to secure the fundamental rights of Americans. Professor Carr's exceedingly useful book furnishes the indispensable background against which can be evaluated current proposals to strengthen the Civil Rights Section of the Department of Justice and to furnish it with new statutory weapons.

Within ten years after the Civil War Congress had adopted three constitutional amendments and seven comprehensive statutes to protect the newly-acquired freedom of the Negro. Yet within an additional twenty years almost this entire effort had collapsed, largely because the United States Supreme Court refused to approve the program. Professor Carr's analysis of the debacle, like the rest of his book, is accurate and incisive.

The Supreme Court began its attack on the Reconstruction laws by holding that the "privileges or immunities" of United States citizens which the Fourteenth Amendment forbade the states to abridge referred only to privileges of national citizenship and then pumped all the meaning out of that term by an artificial and limited enumeration of the rights of citizens. It then held that the Federal Government could not punish a lynching mob because the Fourteenth Amendment was directed only against state action and not against that of private persons. Finally in Plessy v. Ferguson the

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1. Slaughter House Cases, 16 Wall. 36 (U.S. 1873).
2. United States v. Harris, 106 U.S. 629 (1883). This doctrine was reaffirmed in the better-known Civil Rights Cases, decided the same year, 109 U.S. 3 (1883).