

impeaching Chambers' credibility.<sup>50</sup> The fact that some of the documents in Hiss' penciled handwriting which Chambers produced were first jotted down in extremely elliptical form and were later expanded in pencil of a different color is treated as corroborating Hiss' testimony that these were hurried notes he made to enable him to summarize the contents of longer documents for his chief in the State Department,<sup>51</sup> rather than notes which he might have made—in an equal hurry—to turn over to Chambers.

The direction in which each of these astounding inferences tends is illustrative of another serious shortcoming in Jowitt's book. Every conceivable doubt is resolved in favor of Hiss, no matter how difficult it may be to do so. Jowitt even seems to find some support for Hiss in the fact that some of the documents produced by Chambers were in Hiss' handwriting and others were identified as being typed on his typewriter. If Hiss had turned over to Chambers such easily traceable documents, says Jowitt, we have a picture of a man "at one and the same time . . . being very wicked and very foolish." And this, to Jowitt, is inherently improbable. Why? Because Jowitt, "in the course of a long life in the law," has found that "as a general rule the wicked people are not foolish, and the foolish people are not wicked."<sup>52</sup>

A book may some day be written which contains a thorough and objective analysis of the Hiss case, and such a book may support Jowitt's thesis that Hiss was not proven guilty beyond all reasonable doubt. In the meantime, however, the book which offers that thesis the most support is not Jowitt's effort, but that amazing mixture of mysticism and malevolence—Whittaker Chambers' *Witness*.

VERN COUNTRYMAN†

REPORT TO THE PRESIDENT AND THE CONGRESS (RANDALL REPORT). By The Commission on Foreign Economic Policy. Washington: Government Printing Office, 1954. Pp. v, 94. \$.35.

If the accumulation of official reports is any index of a nation's concern with an issue of public policy, there can be little doubt of the importance the United States attaches to the responsible handling of its foreign economic affairs. In little over three years we have been treated to four detailed studies on the subject.<sup>1</sup> The last of these is the recently published *Randall Report*<sup>2</sup>—the work of a Commission which Congress created at the behest of the

50. Pp. 37, 225-31, 312.

51. Pp. 279-99.

52. P. 297.

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1. The first three reports were: GRAY, REPORT TO THE PRESIDENT ON FOREIGN ECONOMIC POLICIES (1950) (the Gray Report); INTERNATIONAL DEVELOPMENT ADVISORY BOARD, PARTNERS IN PROGRESS (1951) (the Rockefeller Report); PUBLIC ADVISORY BOARD FOR MUTUAL SECURITY, A TRADE AND TARIFF POLICY IN THE NATIONAL INTEREST (1953) (the Bell Report).

2. Named for Clarence B. Randall of the Inland Steel Co., chairman of the seventeen-member Commission which drafted it.

President "to examine, study and report on the subjects of international trade and its enlargement consistent with a sound domestic economy, our foreign policy, and the trade aspects of our national security and total foreign policy; and to recommend appropriate policies, measures, and practises."<sup>3</sup>

Of the four reports the *Randall Report* is the document of greatest historical importance. This is not because it surpasses the others in the cogency of its analysis or the boldness of its recommendations. In both respects it is probably inferior. But the *Randall Report* should not be compared on these grounds alone, but in the light of two facts which distinguish it from its predecessors: First, it is the product of a Republican administration; second, its authors are not specialists sharing a large measure of agreement about the objects of foreign economic policy but mainly Congressmen and business leaders with a wide variety of political and economic viewpoints. The first fact might have justified the expectation that the *Report* would herald a retreat to economic nationalism. The second might have suggested the impossibility of drafting a single report at all—except in such generalities as to be virtually meaningless.<sup>4</sup> As it turns out, the *Randall Report* not only meets the issues head-on but treats them from a generally liberal perspective. This is fortunate, because the circumstances of its authorship give the *Randall Report* a much better chance than its predecessors of substantially influencing Government policy.<sup>5</sup>

The opening page of the *Report* bears witness to the responsible approach of its authors. "Dominating our thinking throughout," the Commission declares, "has been the sobering realization that the policies pursued and the actions taken by the United States in respect to foreign economic policy profoundly influence the destinies of all of the peoples of the world."<sup>6</sup> With this in mind the Commission adopts a broad definition of our foreign economic objectives and declares its primary concern "with the steps that this country can take toward solving the world's dollar problem, steps that will be consistent with our own political, economic, and security interests."<sup>7</sup>

The Commission does its best job of giving substance to these sentiments in its discussion of American trade and tariff policy. It rejects summarily the favorite argument of American protectionists that high tariffs are necessary to protect American workers against cheap foreign labor, and asserts that

3. 67 STAT. 472 (1953), 19 U.S.C. § 1351. (Supp. 1953).

4. The Commission did manage to produce a single report, although its two irreconcilable protectionists produced a dissenting statement. COMMISSION ON FOREIGN ECONOMIC POLICY, MINORITY REPORT BY DANIEL REED AND RICHARD M. SIMPSON (1954).

5. So far as this reviewer has been able to determine, none of the major recommendations of the *Gray*, *Rockefeller*, or *Bell Reports* has ever been translated into official action.

6. P. 1.

7. P. 5. The dissenting members of the Commission call this formulation a "clear misconception" of the congressional directive embodied in the statute which created the Commission. MINORITY REPORT, *op. cit. supra* note 4, at 4. In their view "foreign economic policy should be considered primarily in its relations to the domestic economy," *Id.* at 2.

tariff concessions should be withheld on this ground only when the wages in question are substandard in terms of the levels prevailing in the exporting countries themselves. The Commission dismisses with equal firmness the idea once shared by both American political parties, and embodied in tariff legislation up to 1934, that the purpose of trade barriers should be to "equalize costs of production." In the light of American history it is remarkable to find a Commission dominated by Republicans arguing that "[D]ifferences in cost provide the foundation of international trade just as much as such differences make possible trade within nations. Neither low wages nor low unit costs, in and of themselves, constitute 'unfair competition.'"<sup>8</sup>

In its specific tariff proposals the Commission adopts a modestly liberal approach. It does not propose that the United States make across-the-board cuts on a unilateral basis, but rather that this country continue the present policy of selective and reciprocal reduction. It recommends renewal of the Reciprocal Trade Agreements Act for a period of three years with a grant of additional authority to the President to reduce tariff rates by five percent a year, and to make deeper cuts in rates which are prohibitive or unduly high. Since the existing authority to reduce rates was largely exhausted in the tariff bargaining at Geneva and Torquay, these additional powers would enable the United States to continue its leadership toward more liberal trade practises under the General Agreement on Tariffs and Trade.<sup>9</sup> But the Commission also recommends the retention of the peril point and escape clause procedures which are designed to insure that tariff reduction does not "cause or threaten serious injury" to a domestic industry.<sup>10</sup> It might appear, therefore, that the Commission only gives with one hand what it takes away with the other. Fortunately, the interpretation recently accorded to the statutory language in which these procedures are embodied suggests that they need impose no insuperable obstacle to substantial increases in competitive imports.<sup>11</sup> In any case, the Commission had little alternative: it is almost cer-

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8. P. 62.

9. Overlooked in discussion of the *Randall Report* is its unfortunate suggestion that the new powers to reduce tariffs should replace rather than supplement the President's present power to reduce rates to fifty percent of their levels on January 1, 1945. While the present power has been largely exhausted in bargaining with other parties to the General Agreement on Tariffs and Trade, its retention might be useful in permitting substantial concessions to countries, such as Japan, which are not yet members of the G.A.T.T.

10. These procedures were written into the present law by §§ 3, 4, and 7 of the Trade Agreements Extension Act of 1951. 65 STAT. 72-5 (1951), 19 U.S.C. §§ 1354, 1360, 1361, 1364 (Supp. 1952).

11. The Randall recommendations would retain the present powers of the President to disregard the escape clause and peril point recommendations of the Tariff Commission when "the national interest" so requires. The future effect of these procedures depends, therefore, not only on the composition of the Tariff Commission (which has become increasingly protectionist) but also on the attitude of the Executive (which has not). Under the Truman Administration the escape clause was allowed to increase rates on only three items involving less than \$3 million in trade. That President Eisenhower will follow a similar policy is suggested by his recent action in sending back a recent recom-

tain in the future as in the past that Congress will insist on the inclusion of some such assurances to domestic producers.

In addition to its tariff proposals, the Commission suggests changes in other American trade policies—policies whose combined effect is hardly less protective than that of the tariff itself. It proposes simplification of customs procedures, elimination of "Buy America" policies in government procurement, repeal of discriminations against foreign shipping, and the adoption of domestic farm policies which would bring an end to the need for agricultural subsidies and import quotas. None of these recommendations is new; but the fact that a majority of the Commission joined in making them suggests that some at least may eventually be translated into Government policy.

The sections of the *Randall Report* dealing with foreign aid and investment are less consistent with the constructive note on which the *Report* begins. Here the authors are restricted by the determination of the present Administration to end economic aid as soon as possible. The Commission strives bravely to formulate principles which will reconcile the economy mood with our foreign policy requirements. It proposes that the United States give no more grants-in-aid to foreign countries except to support military forces or military operations "connected with our own security."<sup>12</sup> Other aid "in the interest of the United States" must henceforth be on a loan basis.<sup>13</sup> How the United States can insure that recipients of grants for military purposes do not offset them by shifting internal resources from military to civilian uses—thus turning the grants into "economic aid"—is not made clear.

But this is not the only objection to the loan-grant formula; its very principle is wrong. The Commission appears to recognize this when it admits that American security is a function not of military power alone but of "many political and economic considerations."<sup>14</sup> On this ground the Commission justifies the loan extended to Yugoslavia after its break with the Kremlin. There may be other cases where American interests would be served by granting aid unconnected with military operations, but where the recipient would not be in a position to service a loan. The United States has already made far too many "fuzzy" loans which should have been grants and is rapidly approaching the point where repayment of past loans will equal the rate of new foreign lending. The Commission would have done more justice to its broad definition of our foreign economic objectives had it rejected such superficially attractive fiscal formulae and left the Executive free to judge what

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mentation of the Tariff Commission for modification of rate concessions on hand-blown glassware. The President stated that the facts of the case did not show conclusively that the industry's difficulties were due to imports rather than to other factors, and expressed his desire that "any modification of existing concessions be made only on the basis of a clear cut demonstration of serious injury resulting from increased imports reflecting the tariff treatment under a trade agreement." Letter from President Eisenhower to Chairman, U.S. Tariff Commission, dated Nov. 20, 1953.

12. P. 9.

13. P. 10.

14. P. 8.

form of aid—loans or grants—would best serve the national interest in a variety of unforeseeable future contingencies.

A similar narrowing of the *Report's* initially liberal perspective is apparent in its section on foreign economic development. It pays lip service to "the great potential importance of the technical assistance programs in contributing to improved standards of living in countries with half the world's population" and "in countering Communist influence."<sup>15</sup> This is an ambitious claim for programs whose responsibilities are world-wide, but whose total appropriations scarcely exceed \$100 million. Unfortunately, significant progress toward "improved living standards" and "countering Communist influence" (does the Commission think these are the same?) cannot be bought at such a price. The Commission seeks to avoid this conclusion by suggesting that appropriate incentives could be used to induce private investors to do the job. But recent experience only confirms the view that the familiar tax, guarantee, antitrust, and treaty proposals contained in the *Randall Report* will do little to stimulate private foreign investment and still less to achieve the objectives of Point Four.<sup>16</sup> The *Randall Report* does not want to face the fact stated in uncompromising terms by one of its predecessors that "private investment cannot be expected to solve the problem of financing development alone" and that public funds will have to play a "substantial role."<sup>17</sup> Instead, it discusses the issue in moral terms, noting that "demands are increasing for general economic aid unconnected with recovery from war or preparation for defense. Underdeveloped areas are claiming a right to economic aid from the United States. . . . We recognize no such right."<sup>18</sup>

The *Randall Report* would have better served the public interest and more nearly sustained the constructive tone adopted in its introduction had it left aside the question of the "right" to development funds, and considered instead whether or not a judicious program of public investment in underdeveloped countries could have furthered the foreign economic objectives which it so admirably described. It might have taken a cue, for example, from President

15. P. 12.

16. The only tax proposal of more than a merely marginal character is the proposal to generalize the surtax exemption currently enjoyed by Western Hemisphere Trade Corporations. Judging from past experience, this exemption "appears to have provided a windfall to pre-existing investments rather than to have stimulated new ones." Shere, *Taxation of American Business Abroad*, N.Y.U. SEVENTH ANNUAL INST. ON FED. TAX. 812, 826 (1949). The guarantee proposal, already employed with respect to exchange risks, has been a notable failure. So complex are the administrative problems involved that the Export-Import Bank and private investors have been unable to agree upon payment by the government under a single guarantee contract. The conclusion of investment treaties has done little to produce a suitable "climate" for foreign investors in countries where such a "climate" does not already exist. The suggestion for changing the application of the antitrust laws to corporations engaged in foreign commerce is still so vague as to defy criticism. For a more detailed review of the reasons why these "incentives" are inadequate instruments for achieving "Point Four" goals see Comment, *Point Four: A Re-examination of Ends and Means*, 59 YALE L.J. 1277 (1950).

17. Gray Report, *op. cit. supra* note 1, at 63.

18. P. 9.

Eisenhower's famous statement last year that the United States stood ready to join with other nations in devoting "a substantial percentage of the savings achieved by disarmament to a fund for world aid and reconstruction."<sup>19</sup> According to the President's recent budget message, American defense spending in the next fiscal year should be reduced by some \$4 billion.<sup>20</sup> The devotion of about one-tenth of that sum to investment in underdeveloped areas would not appear to be excessive if world economic development is as important an objective as both the President and the Randall Commission themselves declare.

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ADMINISTRATION OF CRIMINAL JUSTICE. By Ernest W. Puttkammer. Chicago: The University of Chicago Press, 1953. Pp. vi, 249. \$5.00.

THIS is a volume I wish had been available to me forty-four years ago when I entered law school. Instead I had thrust at me a massive casebook on criminal law of over 1100 pages to be covered in forty-five classroom hours. Our instructor, though an able teacher and later Chief Justice of the United States, never did cover the volume or even a third of it in our only course in criminal law and criminal procedure. In view of the circumstances, it is not surprising that he was unable to quicken our interest in a subject that is vital to the welfare of both the individual and the state. Our sole concern was to learn enough about the field to satisfy the bar examiners, who, we quickly learned from our precursors, were as little devoted to it as we and our instructor were.

A reading of Professor Puttkammer's first chapter, "The Purposes of the Criminal Law," not only would have oriented criminal law in the field of the law, but it would have aroused our interest in the enforcement and improvement of criminal law as an essential element in our modern life. For this chapter deals not only with the law, but with rough human nature in a workaday world. Chapter I makes me wish that the author had gone on to deal with the substantive law of crimes, for I am convinced that criminal law is one of a number of subjects that cannot be taught effectively by the case method, even if more hours were devoted to it, though in the fierce competition for time in the law school curriculum the tendency seems to be to reduce what little time is still devoted to it. I am not here advocating a return to the lecture or textbook system of instruction, but of this more later.

Aside from Chapter I, Professor Puttkammer's subject matter is criminal procedure, but it is criminal procedure in the broad sense. He is not primarily interested in a mere set of legal rules or principles, but rather in how the criminal procedure of today operates from both the standpoint of the state and of the individual. The book traces in chronological order the life history

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19. 28 DEP'T STATE BULL. 602 (1953).

20. N.Y. Times, Jan. 22, 1954, p. 1, col. 5.

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