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10 EDITORIAL PAGE The Richmond News Leader
Tuesday, Nov. 22, 1955

The Right of Interposition

From the very day of the Supreme Court's opinion in the school segregation cases, the South, in searching for a wise course of action, has been handicapped by a fault that in ordinary times is among our highest virtues: It is our reverence for law, and our obedience to constituted authority.

Thus, when the Supreme Court handed down its decision, there was everywhere an agonizing, but automatic acceptance of the court's authority. The decision was wrong, we said; it was directly contrary to a long line of accepted judicial interpretations; it was violative of the Fourteenth Amendment as the amendment had been universally understood for more than 80 years. Yet the Supreme Court had declared that the right to operate racially separate schools was, as of May 17, 1954, a right now "prohibited to the States." And a people too long accustomed to submissiveness agreed that the court, indeed, was "supreme."

The Gray Commission, in a single great and simple paragraph, has explained to us what this agreement implies. "It means," said the commission, "that the most fundamental of the rights of the States and of their citizens exist by the court's sufferance." It means further, "that the law of the land is whatever the court may determine it to be by the process of judicial legislation."

This is the third time in 10 days that we have quoted these few lines from the report of the Gray Commission. They go to the very heart of the gravest issue to confront not merely Virginia and the South, but rather the entire nation, in nearly a century.

This is, as the Gray Commission said, *the transcendent issue*. Measured against its solemn implications, problems of local school segregation, serious as they are, seem almost petty.

What we must ask ourselves as Virginians, as heirs to the philosophical inheritance of Jefferson and Madison, is whether any means exist by which this "process of judicial legislation" may be brought to a pause. If the "most fundamental of the rights of the States and of their citizens" are not to be swept away by judicial encroachment, and the States reduced to the status of mere counties, must we not exert every possible effort to halt the courts in their usurpation of our sovereign powers?

Surely, it would appear, such an effort is imperative; and perhaps Governor Stanley and his Gray Commission, even at this desperately late hour, could explore fundamental principles as enunciated by Jefferson and Madison. Virginians of today may yet inquire if these great men, long ago, did not foresee the constitutional crisis before us in 1955 and point a way toward its peaceful solution.

The commission would find, we believe, that Jefferson and Madison did prophesy a time when the Federal government might usurp powers not granted it. And in such an emergency, these great men asserted, the States may declare their inherent right—inherent in the nature of our Union—to judge for themselves not merely of the infractions, but "of the mode and measure of redress."

This is the *right of interposition*.

Citation: James J. Kilpatrick, "The Right of Interposition," Richmond News Leader, Nov. 22, 1955.

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Interposition, Now!

With the publication on today's editorial page of Virginia's Resolution of 1829, this newspaper concludes its presentation of the historical background of the Right of Interposition. In the past week, we have offered excerpts from the Kentucky and Virginia Resolutions of 1798, the Madison Report of 1799, the Hartford Convention of 1814, Calhoun's address of 1831, the resolutions of the Wisconsin Legislature in 1859, and other material touching upon the right of sovereign States to challenge a usurpation of power by the General Government they have created.

These examples could be multiplied, for the amazing thing—as one delves into the subject—is not how seldom the States have resisted encroachment upon their powers, but how frequently they have arisen in their sovereign capacities and asserted the solemn powers so clearly inherent in the nature of our Union.

The resolution that occupies our page today is offered as one more assertion of this right, one more eloquent exposition of the fundamental principles upon which our Union was formed. It is not as moving, perhaps, as Madison's beautifully phrased Report of 1799, yet it merits a reading upon this eve of a session of the General Assembly of Virginia. For here is enunciated, in wonderfully clear terms, the tradition of Virginia's Assembly in the face of Federal encroachments: Whenever an attempt has been made to pervert the Constitution, said the Assembly in 1829, "Virginia has even been prompt to avow her unqualified disapprobation, and manifest her undisguised discontent."

More than this: "To subject our local or domestic affairs to any other authority than our own Legislature would be to expose to certain destruction the happiness and prosperity of the people of Virginia."

Responsibility Lies Upon the Legislature

And beyond this lies the comment that the founders of our Nation apprehended that "the sacred liberty of the American citizen should be invaded by the arbitrary acts of the General Government." How could these apprehensions be allayed? Only by the assurance and conviction "that the State Governments were adequate to the resistance of Federal encroachments." It is the Legislatures of the several States, said Virginia's General Assembly in 1829, which are "the guardians of our political institutions," and it is their sacred duty to preserve these institutions unimpaired.

That brings our discussion, then, at long last, to tomorrow's session of the General Assembly.

conduct. Whether or not such a resolution may be expedient, whether or not we win or lose, whether or not we are derided by centralists and scorned by the advocates of Federal supremacy, Virginia once more should enunciate the sovereignty of States; we should recur to fundamental principles. This is our heritage. This is our tradition. This was the philosophy of the great men who walked in the halls of our own Capitol; in the rights of States are the very guideposts of American Government, as the Resolution of 1829 made clear, that our fathers "happily pointed out to future generations." We ought not to repudiate them now. We ought, more properly, to express again our devotion to their high ideals of this Union, and by such an expression hope to awaken those States which have been so woefully apathetic to the Federal Government's encroachments upon their powers.

Secondly (and here we approach more immediate considerations), the General Assembly may well recognize that in defending racial segregation, we are defending a practice that to much of the Nation seems indefensible. We who live in the South know clearly the sound reasons that support the wisdom of a dual society; we know, vividly and by first-hand experience, the gulf that divides the mores of two disparate races.

We know these things, but others do not know. And the second advantage of the proposed resolution is that Virginia, by the adoption of such a resolution, might succeed in elevating this controversy from the regional field of segregation to the transcendent, national field of State sovereignty. There is a tactical advantage in higher ground, and we would do well to seek it.

The third point is this: The South desperately needs leadership. Virginia can provide it. Virginia, of all States, ought rightfully to provide it. We believe that if Virginia asserts the old right of interposition, other Southern States would rally to this standard, and would join us in demanding that a question of contested power be resolved by the sister States. Where one State alone might not be able to persuade the nation to hear a charge of encroachment, the appeals of five or six States would be more difficult to resist. In any event, the united action of several sovereign States would confront the court with infinitely more difficult problems in imposing its will upon a resentful people.

Plan Not in Conflict With Gray Commission

The fourth point (and here again we deal candidly with matters immediately at hand) is that a Resolution of Inter-

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Citation: James J. Kilpatrick, "Interposition Now," Richmond News Leader, Nov. 29, 1955.

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General Assembly.

The question we would submit to the Assembly—the "transcendent issue" that surpasses any questions of racial segregation—is whether the compact among the sovereign States has been violated by the Supreme Court; and if the compact has been violated, whether Virginia's General Assembly will meet the infraction with the same high courage, and the same eloquent reliance upon fundamental principles that Jefferson and Madison relied upon in years gone by.

That the Supreme Court acted unconstitutionally in its decision of May 17, 1954, this newspaper now asserts with all the earnestness at its command. Under the guise of "interpretation," the court so drastically cast aside the long-established construction of the Fourteenth Amendment as in effect to amend the amendment.

If that proposition be accepted, the remaining question, in the language of the resolution on this page today, is whether our State Government is "adequate to the resistance of Federal encroachments." If the Assembly fails to interpose now—if it fails to challenge this deliberate, palpable and dangerous encroachment of the Federal Government upon the amendatory rights of the States—our opportunity for effective action will have passed. It should be remembered that Virginia's Assembly has not met since the opinion of May, 1954. Ours is the challenging opportunity to speak now, to assert the existence of a contested power, to demand that our sister States—who alone have authority to decide such a contest—resolve the issue through constitutional process.

This newspaper has done everything within its power to suggest that such interposition is an age-old *right* of the Virginia Assembly. We would not be so presumptuous as to suggest that it is also a "sacred duty," but that is the term the Virginia Assembly itself employed in 1829.

Let us move, now, to the immediate present. Let us examine the benefits and advantages to be found in a legislative Resolution of Interposition, and ask ourselves if this is not the right, sound, and most eminently desirable course for Virginia to take.

Four Advantages Seen in Resolution

In the view of this newspaper, four prime considerations suggest the wisdom of the Assembly's adoption of a Resolution of Interposition.

The first of these (and if there were no more, this in itself would be sufficient) is simply that it is the course of right at hand) is that a Resolution of Interposition would in no way conflict with the recommendations laid down by the Gray Commission. The proposals of Senator Gray's group go directly to intra-State, family problems peculiar to Virginia's school system. One proposal would broaden the existing provisions by which local school boards may assign pupils to particular schools. The second major proposal would broaden the power now vested in localities to aid industrial and technical schools, by permitting public funds generally to be spent—under certain circumstances—for the education of Virginia children in private schools. This second proposal is designed to care for those communities in which the final, grave step may one day be taken of choosing no schools instead of integrated schools; but this step can be pushed farther into the distance if Virginia will interpose her sovereign powers between the court and the localities so desperately affected.

This newspaper is supporting the program of the Gray Commission, and will continue to support it for what it is: The best possible program that can be devised if Virginia is to acknowledge the Supreme Court's authority and surrender to it. But let us not deceive ourselves: It is a program of expediency. The pupil assignment plan necessarily contemplates some integration; the tuition grant program necessarily embraces the prospect, in certain areas, of abandoning public schools as a last resort.

The doctrine of interposition, on the other hand, rests not on expediency but on fundamental principles. It relies upon the simple, eloquent assertion of a sovereign State that the Supreme Court has acted unconstitutionally; that we are not bound in honor, or in duty, or in law to abide by unconstitutional decrees; and that the power to operate separate public facilities is *not* a power prohibited to the States until this prohibition is clearly spelled out by valid constitutional amendment.

This newspaper would submit that Virginia can stand on fundamental principles, where on expediency we must fall.

Now Is the Time For State to Interpose

The Gray Commission meets at the Capitol tonight. We would appeal to the members of that Commission—and its members include some of the most able and devoted men of this Commonwealth—to consider most seriously an assertion of interposition; and to ask themselves, not whether such a Resolution would leave Virginia worse off (for we could not be worse off), but rather to look at the transcendent issue and to ask themselves if it is better for Virginia to surrender by implication to the usurpation of power by the Supreme Court, or to resist that usurpation straightforwardly.

We believe the question can be answered in one way only. It is by pressing for adoption of the Gray Commission's own program in Virginia; and beyond this, by saying to the Nation that Virginia's answer is:

Interposition, now!

THE RICHMOND NEWS LEADER

Published every afternoon except Sunday at 110 North Fourth St., Richmond 13, Va., by Richmond Newspapers, Inc.

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JAMES JACKSON KILPATRICK, Editor

Subscription rates: By carrier, 30 cents a week; by mail, $12 a year. Mail subscriptions not accepted where carrier service is available.

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Citation: James J. Kilpatrick, "Interposition Now," Richmond News Leader, Nov. 29, 1955.

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