

## The Revival of Interposition

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The primary characteristic of every federal system is a specified division of sovereignty between the local governments establishing the federation and the general government established thereby. Consequently, as noted in the first chapter of this study, every federation must have a supreme court, the essential role of which is to resolve conflicting claims of sovereign power in particular cases.

Decisions of this court are from its nature primarily interpretive. And constitutional interpretation is more subtle than that of a will, or deed, or contract. It must take cognizance of changing circumstance as well as of the collective purpose of the authors and of all amendment of their original work. Nevertheless, the interpretation must be in reasonable accord with the basic principles of the constitution. Otherwise this "organic law" is left without significance and the political form of the organism created is undermined.

This general rule for federation is made applicable to the United States by the first two sections of Article III of the Constitution, defining the judicial power, and by Article VI, Section 2, which subordinates both national and State judiciary to the Constitution in the following explicit language:

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

There is, of course an essentially undemocratic flavor to any court which is thus empowered to override the actions of representative legislatures. These laws presumably represent majority opinion, whether local or national. To strike down a majority opinion is in no sense arbitrary, if the negation is in accord with all parts of the organic law. But such a negation is always likely to be undemocratic. It is for this reason that a unitary government, having no need for a supreme court, can be politically more democratic than a federal government.

It follows that a federation which is moving towards political democracy, and which is widely acclaimed as a political democracy, will necessarily in some way reveal a weakening of the power and authority of its supreme court. Broadly speaking, there are two ways in which this

judicial degeneracy would become apparent: either by active infringement upon the independence of the court by other governmental agencies, or by passive subservience of the court to those other agencies. Of course these two tendencies might, and probably would, be simultaneously apparent. Such improper subordination of a no longer truly supreme court would easily influence it towards arbitrary, arrogant and erratic judgments, illustrative of what in the case of an individual would be called an "inferiority complex."

In the case of the United States the prestige, and even the authority, of the Supreme Court has not infrequently been temporarily debased. We have noted its subservience to the Radical Congress when the Fourteenth Amendment was forced into the Constitution. Prestige was again injured, this time by executive criticism, in the "nine old men" attack from President Roosevelt. In 1954, the influence of the Court was again adversely affected, also by the executive in the name of democracy, as a result of pressures which certainly owed some of their strength to communist gibes about racial discrimination in the United States.

One must sympathize with the hard-pressed members of the Court, no longer able to disregard the many exigencies of the Administration's foreign and domestic policy. And one may sympathize the more because some of the decisions have been, in effect, suicidal. In recent years the Supreme Court has seemed to many almost an instru-

ment in the effort to shift the United States away from a federal form of government.<sup>1</sup> Yet if complete centralization can be made permanent there will no longer be any good reason for keeping the Supreme Court as an institution. It could be dismantled, along with the superfluous machinery of State governments.

The possibly superfluous character of the Supreme Court is paradoxically emphasized by assertion that its decisions are in themselves "the law of the land." This tends to suggest that law-making power can properly be usurped both from Congress and from the State legislatures. The fact that the Supreme Court, in deciding specific cases, has implicit authority to nullify statutes, both national and State, does not mean that it has power to legislate in substitution. It means, rather, that new, or different, legislation is necessary to meet constitutional requirements as interpreted by the Court. And should it ever become accepted national purpose to substitute decrees for legislation, this cumbersome Court would scarcely be chosen to formulate the edicts. In all the totalitarian democracies it is always the administrative officers who define the "general will." The courts are kept

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<sup>1</sup> Constitutional lawyers are almost unanimous on this point. The following comments are taken from the Autumn 1958, *Special Supplement* of the Univ. of Chicago *Law School Record*: Professor Allison Dunham: "since 1940 the Supreme Court and the Congress between them have drastically reduced a State's ability to deal with its own social order and economic enterprise as it wishes." (p. 55.) Asst. Prof. Roger C. Cramton: "the Court's frequent use in recent years of preemption doctrine to effect broad displacements of State authority reopens the important question of the soundness of preemption doctrine as it has been developed by the Court." (p. 25.)

merely for disciplinary matters, for window dressing and to draw a veil over the arrogance of naked dictatorship.

Respect for the Supreme Court's interpretations of the Constitution, whether welcome or unwelcome, is of course a fundamental obligation of citizenship. There can be no sympathy whatsoever with the contempt attributed to President Andrew Jackson in the case of *Worcester v. Georgia*: "John Marshall has made his decision; now let him enforce it."<sup>2</sup> But a proper deference towards the Court does not imply exaggeration of its constitutional function.

The distinction has been made time and again, but never with greater clarity than by Viscount Bryce in his classic study of *The American Commonwealth*. Indeed this British authority almost labors "the fact that the judiciary of the United States are not the masters of the Constitution but merely its interpreters. . . ." And this emphasis is the more interesting because Bryce was a profound admirer of the centralizing decisions of Chief Justice Marshall, partly because he "did not forget the duty of a judge to decide nothing more than the suit before him requires. . . ."<sup>3</sup> As Bryce sums it up, the sole and whole duty of Supreme Court Justices is "to construe the law":

And if it be suggested that they may overstep their duty, and may, seeking to make themselves not the exponents but the masters of the Constitution, twist and pervert it to suit their own political views, the answer is that such an exercise of judicial will would arouse the distrust and displeasure of the nation, and

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<sup>2</sup> Quoted by Beveridge, *John Marshall*, Vol. IV, p. 551.

<sup>3</sup> Bryce, *The American Commonwealth*, Vol. I, p. 385.

might, if persisted in, provoke resistance to the law as laid down by the court, possibly an onslaught upon the court itself.<sup>4</sup>

Such “an onslaught upon the court itself,” as foreseen by James Bryce in 1888, was produced two generations later precisely because its members seemed to many to “twist and pervert” the Constitution “to suit their own political views.” There are various illustrations of this tendency, but because of its outstandingly momentous consequences consideration here is limited to the consolidated opinion (*Brown v. Board of Education*) affecting the public school systems of Kansas, South Carolina, Virginia and Delaware.

This famous decision in behalf of racial integration, handed down by Chief Justice Warren on May 17, 1954, produced as one of its earlier consequences the Congressional Manifesto of March 11, 1956. In this nineteen Democratic Senators and seventy-seven Democratic Representatives pledged themselves “to use all lawful means” to reverse the verdict, which they defined as “a clear abuse of judicial power . . . contrary to the Constitution.” The indictment by this large section of the Congress, supported by a strong legal opinion by no means entirely confined to the South, was bolstered by the following arguments:

*First*, the Court assumed too lightly that the key phrase in the Fourteenth Amendment—“the equal protection of the laws”—is adversely affected by segregation in the public schools. Furthermore, the Court was in error when

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<sup>4</sup> *Ibid.*, p. 253.

it called evidence to the contrary “at best . . . inconclusive.”

It is recalled that the same session of Congress which initiated the Fourteenth Amendment simultaneously passed legislation establishing segregated schools in the District of Columbia “for the sole use of . . . colored children.” Moreover, in twelve of the States that ratified the Fourteenth Amendment the same legislatures made provision for segregated schools. Within two years after adoption of this Amendment two more States, Indiana and Maryland, also established racially separate schools. In seven other States pre-existent segregated schools were maintained after ratification of the Fourteenth Amendment. Clearly the practice was not then regarded as unconstitutional. And the evidence that changing circumstance has made it so can also be called “at best inconclusive.”<sup>5</sup>

*Second*, the Court went beyond its proper function, and espoused questionable doctrine, when it said: “In approaching this problem, we cannot turn the clock back to 1868 when the Amendment was adopted. . . .”

It is of course true that in this case the Supreme Court had to interpret wording of 1868 in the light of conditions in 1954. But in so doing it had also to give due consideration to the federal formula as written in 1787 and still essentially unaltered. If the clock cannot be turned back to 1868, then it could follow that there is still less validity

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<sup>5</sup> Cf. James J. Kilpatrick, *The Sovereign States*, Henry Regnery Co. (Chicago 1957) pp. 269–70.

in principles laid down even earlier. On that assumption, there would be no constitutional guarantee which could be held immune from destruction in the light of current conditions, or current sociological opinions.

It should be noted, however, that Chief Justice Warren was not the first to suggest the relativity of those principles which the Constitution was designed to safeguard. The permanence of all values was questioned even more sharply by Chief Justice Vinson when, on June 4, 1951, in *Dennis v. United States*, he said: "Nothing is more certain in modern society than the principle that there are no absolutes. . . . To those who would paralyze our Government in the face of impending threat by encasing it in a semantic straightjacket we must reply that all concepts are relative." Back of this viewpoint, in turn, stands the highly influential pragmatism of Justice Oliver Wendell Holmes, who said: "When it comes to the development of a *corpus juris*, the ultimate question is what do the dominant forces of the community want and do they want it hard enough to disregard whatever inhibitions may stand in the way." This is sincere flattery for Rousseau's assertion that we are all "under the supreme direction of the general will."<sup>6</sup>

It is not a new idea that the Supreme Court should interpret the Constitution in the light of what the dominant forces of the community seem to want. Unfortunately for

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<sup>6</sup> Professor Edward S. Corwin comments: "Justice Holmes became the mouthpiece of a new gospel of *laissez-faire*, namely of *laissez-faire* for legislative power, because legislative power represents, or under a democratic dispensation ought to represent, what he termed 'the dominant power of society.'" *Court Over Constitution*, Princeton Univ. Press (Princeton, N.J., 1938) p. 119.



the prestige of this organ, the guess made on May 17, 1954 was clearly wrong, so far as a great many American communities are concerned.

*Third*, the Court, in *Brown v. Board of Education*, relied on what it was pleased to call "modern authority" to bolster its assertion that "segregation . . . has a detrimental effect upon the colored children."

Whether this conclusion is true or false, it seems questionable in a Supreme Court decision, where the issue is, or should be, one of constitutional law. Prominent in the list of "modern authority" cited by the Court was that of the Swedish sociologist, Gunnar Myrdal. Other European authorities of socialistic persuasion could be found to advocate nationalization of the American steel industry, quite possibly on the grounds that the high wages it pays have a detrimental effect on the morale of school teachers. That would not justify the Supreme Court in demanding nationalization, unless there had been previous legislation on the subject, previously found constitutional on some test case brought thereunder. In a case subsequent to the one at issue the Court itself in effect admitted the validity of this point, saying: "It has not been deemed relevant to discussion of our problem to consider dubious English precedents . . . because they reflect a power of discretion vested in English judges not relevant to the constitutional law of our federalism."<sup>7</sup>

*Fourth*, there was not, and still is not, any national legislative act to implement the claim that the Fourteenth

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<sup>7</sup> *Bartkus v. Illinois*, March 30, 1959.

Amendment itself outlaws racial segregation in the public schools.

This legislative omission in no way affects the judicial power and duty of final interpretation. But it is nevertheless notable because the closing section of the Fourteenth Amendment goes out of its way to state: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." We have noted that this specification, now found at the close of four Amendments, is dubious. But, once enshrined in the Constitution, it necessarily cuts two ways. If legislative action is desirable to enforce, it follows that no legislative action means no effective desire to enforce.

In the matter of racial integration in the public schools there has never been any attempt by Congress to enforce, and if there had ever been such a law it is quite possible that it would have been declared unconstitutional, since the regulation of education has always been a field reserved to the States. It was at least partly in recognition of States' Rights that the Supreme Court, on six different occasions prior to 1954, had ruled that the provision of "separate but equal" public facilities met all the requirements of the Fourteenth Amendment. So we have a situation where the Supreme Court has itself decreed what it might well have overruled if proposed by statute law.<sup>8</sup>

*Fifth*, and finally, the illogic of the *Brown v. Board of*

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<sup>8</sup> The rule of *stare decisis*—"to stand by decisions" already handed down—is of course not immutable. But reasonable flexibility is very different from complete reversibility, which can easily produce a legal chaos.

*Education* opinion is not confined to abstruse points, but is in places apparent to everyone, as in Chief Justice Warren's flat assertion: "Separate educational facilities are inherently unequal." That is obviously only a personal opinion, not less so because of the concurrence of the other Justices. If true, it must also be true that boys' schools and girls' schools are at an "inherent" disadvantage compared with co-educational institutions—a proposition completely unsusceptible of proof.

It can be, and sometimes is, argued that the entire Fourteenth Amendment is unconstitutional. But, waiving this extreme ground, it is clear that a tortured interpretation by the Supreme Court has not compelled, and cannot compel racial integration in areas where public opinion will not tolerate it. All that the Court has decided is that a State may not deny to any person on account of race the right to attend any school that it maintains. As a last recourse this could mean, over large areas, abandonment of public education as a State function.<sup>9</sup> In that eventuality, however, it may be anticipated that the central government would move to establish national schools in such areas, thus driving another nail into the coffin of federalism. This possibility, plus the cumulative strength of the five general criticisms that have been summarized, gave determination to the "onslaught upon the court."

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<sup>9</sup> On June 2, 1959, the Board of Supervisors of Prince Edward County, Virginia, "with profound regret" eliminated all appropriations for the operation of public schools from its 1959-60 budget. The county had previously maintained 3 public high schools and 18 elementary schools. It was one of the five localities directly involved in the Supreme Court decision of May 17, 1954.

This reaction appropriately took the form of a revival of Interposition, a doctrine sanctioned by frequent use in the early days of the Republic, and one calculated to maintain formidable obstacles to any nation-wide enforcement of the judgment of May 17, 1954. The word "inherent" may properly be used for the association of the doctrine of Interposition with the federal form of government. Its connection with the racial issue, however, is wholly fortuitous. As the Attorney General of Texas has pointed out, Interposition could just as appropriately be invoked by a State to block intra-State regulation of gas and oil production by an agency of the central government. Revival of the doctrine is therefore a striking illustration of the tenacity of the federal tradition in American thinking, and a powerful weapon in the armory of those who seek to maintain the Republic.

Interposition is an official action on the part of a State Government to question the constitutionality of a policy established by the central government. The action at least temporarily interposes the sovereignty of the State between its citizens and the distant authority of Washington. Customarily there is some sort of formal declaration to the effect that the objectionable national policy will be opposed until or unless the moot issue of its constitutionality is satisfactorily resolved. The device has been used both to demand that the Supreme Court rule on the constitutionality of an Act of Congress and, as currently, to demand that Congress clarify the constitutionality of a dubious Supreme Court decision.

The justification for Interposition is strengthened by the fact that without it the constitutional system of check and balance would be in one vital respect deficient. The President is subject to check by both Court and Congress; the Congress is subject to check by both President and Court. *Sed quis custodiet custodes?* The right to challenge any usurpation of power on the part of the Supreme Court must by lack of alternative, if for no other reason, devolve upon the States.

Even so ardent a nationalist as Alexander Hamilton suggested this, before final ratification of the Constitution. In 1788 he cited the necessity of State consent to suit by an individual “as one of the attributes of sovereignty . . . now enjoyed by the government of every State in the Union.”<sup>10</sup> To the extent that the States have “attributes of sovereignty” they are of course entitled to act in defense of those attributes, which is what John C. Calhoun had in mind when he said: “This right of Interposition . . . I conceive to be the fundamental principle of our system, resting on facts as historically certain as our revolution itself.”

One of these historically certain facts is, of course, the Tenth Amendment, which rounds out the Bill of Rights by making it a constitutional assertion of States’ Rights as

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<sup>10</sup> The *Federalist*, No. 81. In the same essay Hamilton argues that the legislative authority will not be endangered by encroachment from the judiciary because, *inter alia*, of the latter’s “total incapacity to support its usurpations by force.” This ignores the support that the executive may be expected to give to judicial decisions.

well as those of individuals. The courts may be relied upon to protect the individual, but what governmental agency is there to safeguard the rights of a State? In particular, how can one or more States peacefully defend the powers “reserved” to it or them against encroachment on the part of the Supreme Court? It would seem that the assertion of State sovereignty must also be the defense of it—in a word, Interposition.

Ironically enough, Interposition was first found necessary in regard to the very point on which Hamilton had said State sovereignty was not endangered. Even more ironically, it was immediately after the adoption of the Bill of Rights that the Supreme Court, in *Chisholm v. Georgia*, ruled that a State could be sued by a citizen of another State. Although a summons was served on the then Governor of Georgia, as many years later on Governor Faubus of Arkansas, the former refused to appear before the Court. Not content with passive resistance, the hot-blooded Georgia House of Representatives passed a resolution providing that any United States Marshal attempting to levy on the property of Georgia under the court order “shall suffer death, without the benefit of clergy, by being hanged.”<sup>11</sup> Other States chimed in, the Congress took action and the result was the Eleventh Amendment, declaring the States immune from suits “by citizens of another State, or by citizens or subjects of any foreign

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<sup>11</sup> Quoted, Kilpatrick, *op. cit.*, p. 57.

State.”<sup>12</sup> Not for the last time, the Supreme Court was backed off the boards.

The next important use of Interposition was prompted not by any overt act on the part of the Supreme Court, but by a fear that the Court would fail to act in a manner contrary to the executive will. The Fifth Congress, disturbed by the effects of the French Revolution, in 1798 adopted three drastic laws, known as the Alien and Sedition Acts. The third of these made it a crime “to write, print, utter or publish” anything that might bring either the President or Congress “into contempt or disrepute.” This was clearly in violation of the constitutional guarantee of free speech and free press. But it was not so sure that the Supreme Court, under the influence of the Federalist Party, would so decide.

Therefore a delegation from the newly admitted State of Kentucky prevailed on Thomas Jefferson, then Vice-President, to draft anonymously a Kentucky Resolution of Interposition, questioning the constitutionality of these Alien and Sedition Acts. It was in this first Kentucky Resolution, adopted November 16, 1798, that Jefferson used the oft-quoted slogan: “In questions of power, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution.”

A month later the Virginia legislature adopted a similar, but somewhat milder, resolution, drafted by James Madison. This was the model used by the Virginia General

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<sup>12</sup> Cf. Beveridge, *op. cit.*, Vol. II, p. 84n.

Assembly in its equally historic Interposition resolution approved by the State Senate 36 to 2, and by the House of Delegates 90 to 5, on February 1, 1956. The Madison resolution called on other states to “concur with Virginia in declaring, as it does hereby declare, that the acts aforesaid are unconstitutional.” Kentucky then responded with a second, more aggressive, resolution, asserting “that a nullification, by those sovereignties [the States] of all unauthorized acts done under color of that instrument [the Constitution], is the rightful remedy.” Here was illustrated the important difference between a Resolution of Interposition and an Act of Nullification, such as that adopted by South Carolina in 1832 against the federal tariff laws. Interposition may threaten Nullification but of itself does nothing to nullify and is orderly protest as distinct from rebellion.<sup>13</sup>

Since the Kentucky and Virginia Resolutions of 1798, Interposition has been many times invoked against Supreme Court decisions. Following the Dred Scott case a total of twenty-two States declared that judgment without binding authority. One of these instances may be examined because it shows how Wisconsin, in 1859, used the device of Interposition in exactly opposite but comple-

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<sup>13</sup> It has been maintained (cf. Claude G. Bowers, *Jefferson and Hamilton*, pp. 409–11) that the Kentucky and Virginia Resolutions were primarily protests against governmental interference with freedom of speech and press; were only incidentally concerned with federal theory. This argument draws a distinction without a difference.



mentary manner to that employed by most of the Southern States, following the leadership of Virginia, in 1956.

Under the Fugitive Slave Law, as confirmed by the Supreme Court in the Dred Scott decision, a runaway Negro named Joshua Glover was arrested in Racine by a United States Marshal. The law prescribed his return to slavery. But Glover was forcefully freed from custody by abolitionists, whom the Wisconsin courts refused to prosecute. To give this local attitude at least a semblance of legality the Wisconsin legislature, on March 19, 1859, adopted a resolution of Interposition. It denounced the Supreme Court for "assumption of power" and declared "that the several States . . . have the unquestionable right" to exercise "positive defiance" in behalf of their interpretation of the powers reserved to the States by the Constitution.<sup>14</sup>

This was much stronger wording than anything found in the resolutions adopted by Virginia and nine other Southern States nearly a century later. But, no matter how moderately worded, a resolution of Interposition must by its very nature run counter to national authority, and also very possibly to the majority will of the nation as a whole, though obviously not to that of the State which adopts Interposition. So here is another outstanding instance in which federal and democratic doctrine, nationally interpreted, clash head-on.

When Interposition is attempted four reasonable out-

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<sup>14</sup> Quoted, Kilpatrick, *op. cit.*, p. 215.

comes are possible. The central government may tacitly back down; the State government may abandon the stand it has taken; there may be a mutually acceptable compromise between the two positions; or a solution may be found by clear-cut Constitutional Amendment. In the cases cited the position taken by the interposing States was successfully maintained. In the school issue good will and common sense may eventually bring a token integration which will satisfy both the prestige of the Court and the sovereignty of the recalcitrant State. Such a compromise would not mean that "democratic centralism" has overcome the basic principles of federalism.

Indeed it was scarcely accidental that, with the revival of Interposition, the Supreme Court opinions began to demonstrate a much more favorable attitude toward federal doctrine. A striking illustration is found in the case of *Bartkus v. Illinois*, mentioned above. In this "double jeopardy" case the Court divided 6 to 3 (Chief Justice Warren dissenting) in favor of the right of a State to prosecute and sentence, in the robbery of a federally insured savings and loan association, despite prior acquittal of the petitioner for the same offense in a federal court. Shortly thereafter, on June 8, 1959, the Court ruled (Warren again dissenting) that the controversial Steve Nelson case had not prevented a State from bringing "prosecutions for sedition against the State itself."

In *Bartkus v. Illinois* Justice Frankfurter emphasized that the case "raised a substantial question concerning the application of the Fourteenth Amendment"—the Due

Process Clause—and based the decision not so much on precedents, strongly attacked by the dissenting opinion, as on the principle of dual sovereignty. Here Justice Frankfurter did not hesitate to “turn back the clock.” He derided “some recent suggestions that the Constitution was in reality a deft device for establishing a centralized government. . . .” He approved the remark of Justice Brandeis that separation of powers was adopted “not to promote efficiency but to preclude the exercise of arbitrary power.” And Justice Frankfurter then concluded: “Time has not lessened the concern of the Founders in devising a federal system which would likewise be a safeguard against arbitrary government. The greatest self-restraint is necessary when that federal system yields results with which a court is in little sympathy.”

That wording could be used to justify the recalcitrance of the South on the Integration issue, and certainly suggests that this is not wholly, or even primarily, a matter of racial prejudice. Undoubtedly that is a factor, for people in general are uninterested in abstract ideas unless they are clarified by connection with daily experience. On the other hand, mere prejudice, completely unfortified by principle, has low vitality in any community which is open to the competition of broader thinking. A prejudice must have some measure of reasoned conviction behind it in order to survive.

Such a conviction was behind the stand which the South took in 1861, and a similar conviction is clearly present today. The defense of slavery as an institution was cer-

tainly a factor in Southern thinking a century ago, but many who were personally strongly opposed to slavery espoused the Southern cause. That cause had moral validity, and was stubbornly maintained against great odds, because it was grounded on the characteristically American belief in home rule, which was and is both sanctioned and sanctified in the Constitution. That organic law says nothing about democracy. But it has a great deal to say about States' Rights.

As already emphasized, the Civil War did not destroy, but on the contrary reaffirmed, the federal character of our government. It was not fought primarily to free the slaves, but to prevent the disruption of the Union. The legal outcome of the conflict did not destroy State citizenship, which is specifically re-emphasized in the first sentence of the Fourteenth Amendment. The South abandoned the theory of secession, and no serious claim to that previously alleged right has been made since Appomattox. But it is wholly natural that, in yielding this extreme claim, the resolution to safeguard States' Rights short of secession should have gained strength. And as the South has regained economic power its political philosophy has also naturally become more potent.

Tradition is strong in the South for many reasons. To justify their part in the "War Between the States" Southerners have had to study our constitutional history, and they are generally more familiar with it than are many in other sections of the country. Then there is the increasingly

idealized glamor and romance of the Lost Cause and the civilization for which it stood. Finally, a great deal of highly important economic and social self-interest is now involved. Against the combined strength of these factors the advocates of political democracy have as yet made no great headway.

It is not for a moment suggested that this attitude is morally justifiable. But unquestionably it is a traditionalist position not likely to be rapidly undermined; which may indeed grow stronger rather than weaker under what is regarded as external coercion. It is another, very important, illustration of the fact that tradition still counts strongly in the United States, and can operate to the detriment of what may quite properly be called "the national interest."

And the tradition is the stronger because its roots go back a long way. Indeed the Southern protest against the Supreme Court decision on Integration traces directly to action taken by the English Parliament in 1641. It was then that the King's Court of Star Chamber was abolished because, in the words of the statute, its judges "have undertaken to punish where no law doth warrant and to make decrees for things, having no such authority."<sup>15</sup>

There was no racial problem in England when Parliament refused to tolerate government by court decree. And

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<sup>15</sup> *17 Car. I, cap. 10*. The full text is given by Samuel Rawson Gardiner, editor, *Constitutional Documents of the Puritan Revolution 1625-1660*, Clarendon Press (Oxford 1906) pp. 179-86.

the racial problem is by no means the only element in the similar Southern protest today. As much as anything, the protest is directed against any tendency towards restoration of the tyrannical judge-made law which, under King Charles I, gave the phrase "star-chamber methods" to our language.