inner search. It is a position which is founded in science, in reason and in a love for fellow man, rather than in a love for God.

"We find the Bible to be nauseating, historically inaccurate, replete with the ravings of madmen. We find God to be sadistic, brutal, and a representation of hatred, vengeance. We find the Lord's Prayer to be that muttered by worms, groveling for meager existence in a traumatic, paranoid world.

"This is not appropriate untouchable dicta to be forced on adult or child. The business of the public schools, where attendance is compulsory, is to prepare children to face the problems on earth, not to prepare for heaven—which is a delusional dream of the unsophisticated minds of the ill-educated clergy.

"Fortunately, we atheists can seek legal remedy through our Constitution, which was written by deists (not Christians) who had *enough* of religion and wanted to grow toward freedom from it, not enslavement in it.

"Signed, Madalyn Murray, Baltimore, Maryland."

Equality and the American Political Tradition

"Every Frenchman," Charles de Gaulle has written somewhere, "wants a special privilege or two; that is how he expresses his passion for Equality." "Every American," I suppose an equally cynical observer here in the United States might say, "wants a right or two that he is by no means willing to concede to everybody else; that is how the American expresses *his* passion for Equality." The tacit premise in each case—that of the Frenchman who seeks special privileges, that of the American who denies to others rights that he claims for himself—must go something like this: The Frenchman, the American, has an official "commitment" to equality that he "handles" by paying it lip-service but refusing to live up to it; or, if you like, Both the Frenchman and the American publicly profess equality as a political ideal, but violate that ideal in the detail of their day-to-day living. Now: in the case of the Frenchman, at least, the official commitment, or public profession, is clear enough: the French Revolution did indeed do its mischief under the slogan "Liberty, Equality, Fraternity"; and, throughout French history, the slogan has been conspicuously displayed in French public places, vociferously iterated in French political discourse. If the Frenchman doesn't live up to the slogan, including its middle term, "Equality," he is indeed the man of divided counsels, the schizoid of the de Gaulle epigram; we are entitled to think poorly of him. But what about the American: is the epigram correct in suggesting that the American who wants the exercise of a couple of rights that he "brazenly" denies to others also has a public commitment to equality? Is he also refusing to live up to a political ideal to which he nevertheless pays lip-service, and to which his forefathers have paid lip-service before him? Is he also schizoid? I think the prevailing scholarly answer to these questions is, Yes, he has the same official commitment to equality as the Frenchman and, no less than the Frenchman, knows perfectly well that he does. Ask for proof that this is true, and quick as a flash you will be told about the findings of the team that produced Gunnar Myrdal's

American Dilemma. The team, in order to get on with their study of race relations in the United States (but, of course, especially in the South), wanted to know not merely, How do Americans actually behave in race relations? They wanted to know also, How do Americans think—or say they think—they ought to behave? To this end they put to their respondents in effect the question, What political ideals do you as an American believe in? And wherever they turned, even in the benighted South, they were told (quite usefully, it happens, for the purpose in hand), We believe in Liberty and Equality: the American political Creed is Liberty and Equality. Nor, since Myrdal published his book, do I recall any piece of writing in which that finding has been called into question. The American, we are constantly told, does have a public commitment to equality that—purely aside from the fact that he ought to anyway—he ought to live up to because it *is* his public commitment. And if he doesn't live up to it, he is in the same boat with the Frenchman: we are entitled to think poorly of him. (As, if we are Liberal, we certainly will.)

The Myrdal finding has, for the rest, a certain surface plausibility. The Declaration of Independence, we are reminded, does, indeed, say, as plain as the nose on your face, "All men are created equal," and does indeed sound as if it meant something should be done about it. We Americans, we are reminded, did indeed fight *our* Revolution under the Declaration, so that equality, here as in France, is indeed a slogan over which our hearts go—or ought to go—pit-a-pat. Never mind that you don't see it about quite as much as in France. Never mind, even, that the major egalitarian movement of our time in America, the Civil Rights movement, pins to its banners the slogan "Freedom," *not* "Equality." Never mind, either, that the word order in the Myrdal finding is suspiciously French—"Liberty, Equality," not, as in the Declaration of Independence, "Equality, Liberty." Never mind anything. Both the Declaration of Independence and Gunnar Myrdal say we are committed to equality as a political goal, so committed we are.

Now: as will have been guessed already, I have—or have begun to have—some doubts about all that, and I propose to ventilate those doubts in this article. Craving the reader's forbearance, however, I am going to come at them in a rather roundabout way and begin my argument with a thesis, or statement, that may seem rather far afield, namely, a thesis or statement about the United States Supreme Court.

There is shaping up amongst us—amongst Us the people of the United States—a series of *problems* relating to the *powers* of the Supreme Court. (I was tempted to write: an *issue* concerning the powers of the Supreme Court; but I am glad I didn't, since I believe the best hope for all of us is that the problems I speak of shan't ever turn into an issue, properly speaking, with lines sharply drawn, positions deeply entrenched, compromise or temporizing solutions irrevocably renounced; the problems I write of have *not* yet become an issue, and I celebrate the fact.) I repeat: there are problems shaping up amongst us about the powers of the Supreme Court, and these problems are sufficiently urgent to enable us to say: Every educated American ought to know what those problems are, how far they have already developed as problems, and what we can conclude, in a brief article like this one, as to their meaning as problems. It is, let me say, a complicated business, which I as a specialist can only try to make as simple as possible; and it will perhaps help if I begin by making about them a few observations that, taken one by one, can be kept reasonably free of complexities and technicalities.

First, the problems that are now shaping up about the powers of the Supreme Court are, as bones of contention, *new* problems: which is to say, we must not confuse them with, for example, the problem about the powers of the Supreme Court that arose under the New Deal. Then the issue—and it *was* an issue—had to do with the traditional power of the Supreme Court to take in its hand an enactment of the congress, scrutinize it, and, if the learned justices saw fit, declare it null and void, or unconstitutional. The problems now shaping up, we must be clear, have nothing to do with that issue; there is, at the moment, no clash between the Supreme Court and Congress, at least not overtly. And, to put it the other way around, the age of the New Deal, the age of the late Franklin Delano Roosevelt, knew nothing of the problems, the problems relating to the powers of the Supreme Court, that are now shaping up; and we must, I repeat, be clear about that, lest the problems slip through our fingers.

Second, the problems I speak of are not—not yet, anyhow—of such character as to make of the Supreme Court itself an issue (though Liberals sometimes try to state the problems in a way that *would* make it an issue). Nothing has happened up to now that is likely to put Conservatives into the business of trying to abolish the Supreme Court, or of trying to revise its role in the American constitutional

system. It is not, in short, that we have entered upon a period when the Conservatives are anti-Supreme Court, the Liberals pro-Supreme Court, and may the best man win. To put it that way is to misunderstand what the fight is really over.

Third, the problems—the problems that are "up," or at least shaping up, as contrasted with the potential problems, the ones that may begin to shape up later—have to do (this much, happily, *is* simple) with a single clause in the Fourteenth Amendment to the Constitution of the United States, namely, the clause concerning the equal protection of the laws—and that clause's equally famous sister, the "due process clause," which frequently comes up also, but comes up merely as the more convenient formula, as the lawyers see it, for achieving the objectives of the equal protection clause. Or, to make it just a little more complicated, the problems have to do with the relation of those two clauses to the Tenth Amendment to the Constitution of the United States. And here, I *must* go into a little history —about the Tenth Amendment, the Fourteenth Amendment, *and*, most particularly, the *idea* of equality (which is the key word in the whole business) in the American political tradition.

The roots of the American political tradition—so we are told, anyhow, by the official custodians of our national lore—lie in two great documents, the Declaration of Independence and the Philadelphia Constitution. The two documents were, as you know, written within a few brief—brief, but of course, crowded—years of one another, and by representatives of one and the same people, that is, of We (or, watching our grammar, Us) the people of the United States; and, that being the case, we have always liked to tell ourselves, We the people of the United States, that the two documents say more or less the same sort of thing—as, having been written so close together by *our* representatives, why shouldn't they? And yet—it gives me no pleasure to point it out—and yet, the most casual look at the two documents reveals that on one important point they do not say the same thing at all, or, if you like, that on one important point one of the two documents is eloquent and emphatic, the other, if I may put it so, tight-lipped and uncommunicative. Concretely: the Declaration of Independence puts forth, as one of the truths we the people hold as "self-evident," the proposition: All men are created equal. It puts that proposition forward, indeed, as the very *first* of the truths we hold,

and seems, therefore, to put it forward as *the* truth, along with the truth about certain natural rights, that is to be planted at the very heart of the American political experience. Not, I hasten to add, that anyone appears to have been very clear as to what it *meant* to declare all men created equal; no doubt the words, even at the moment they were uttered, meant different things to different persons, even to different persons among those immediately concerned. To some the words no doubt meant merely that all men were created equal in the eyes of God. To some they no doubt meant merely that all men were created with an equal claim to justice under the existing law. For some they no doubt expressed the hope, though merely the hope, that the republic about to be formed would be that land, the first land of all lands ever and anywhere, in which men would *become* equal, that is, achieve the equality of which humble and disadvantaged men have often dreamt dreams that other men have called Utopian. To some the words no doubt meant merely the hope that America would be a land in which men would be anyhow more equal than elsewhere —a land in which *in*equalities among men would be less glaring, less intimately related to what we fashionably call the accident of birth, less likely to be handed down to, say, the third and fourth generations. To some the words no doubt meant the hope that the new republic would be one in which men—well, white men, and male men only, not female men, for no one had yet thought of going in for that sort of thing—would cast equal votes in at least some elections for public office. To some they *may* have meant—that is all I can say because I find no evidence of it—the hope that America would be a land in which government, political authority, would take steps to *make* men equal—we cannot exclude the possibility, and must mention it because that is what the words have come, in the fullness of time, to mean to some amongst us, some even of the most learned amongst us.

But whatever the words may have meant to whomever, there are two things we may assert with some finality: first, that the Framers of the Philadelphia Constitution, by contrast with the Declaration, did not so much as mention the topic of equality in the new instrument of government—not even in the Preamble, where, remember, they pause to list the purposes (a more perfect union, the blessings of liberty, justice, etc.) for which We the people ordain and establish the Constitution, and where, if nowhere else, one might have ex-

pected them to recall that first proposition of the Declaration under which and for which, remember, they had just fought a great war; and second, that Publius, when he came to write the *Federalist*—which, we are told, is also one of the documents in which the American political tradition is rooted—has a way, if I may put it so, of clamming up whenever (as does sometimes happen) the topic of equality heaves into sight. And perhaps we can add, third, that when Madison, during the First Session of Congress, penned the Bill of Rights, he also failed to mention equality, and this despite the fact that the model he certainly had before him—the Virginia Declaration of Rights—begins with at least a courtly *bow* to equality. Let us, if you like, be cautious, and not make too much of all this: the fact stands that the only place you can go, among our so-called basic documents, to find equality placed high among the "values" of Us, the people of the United States, is the Declaration of Independence. Nor is it, I think, quite good enough to say: The Constitution, the Federalist, the Bill of Rights *naturally* did not have to say anything about equality; it was already there, as part of our political Credo, in the Declaration. Our Founding Fathers were *not*, I insist, all *that* reluctant to say things a second time. We can, rather, hardly avoid the conclusion that the Constitution, the Federalist, and the Bill of Rights conspicuously *avoid* any commitment on the point of equality—beyond, of course, the tacit commitment to the equal right of all men, under the existing laws, to equal and just treatment in the courts of law. But note that I say "under the *existing* laws." There is in the three post-Declaration documents no suggestion, as maybe there is maybe there isn't in the Declaration of Independence, that the existing laws ought to be made over, so to speak, in the *image* of equality. That idea, if it was ever there at all, promptly disappears after the Declaration of Independence, and does not appear again, in the American political tradition, until, to say the least, a much later date—perhaps, but only perhaps, in the Fourteenth Amendment (which was, as we know, adopted soon after the Civil War); I think not until certain Supreme Court cases that are the source of the problems I spoke of at the beginning, and that, I repeat, I believe, or fear, to be shaping up.

Now: what about the Fourteenth Amendment? Did it bring the promise of equality—that *promise* of equality for the citizens of our

Republic that some people see in the Declaration of Independence—did the Fourteenth Amendment bring the promise of equality back within the central meaning of our political experience? Certainly it restored the *word* "equal" to our political vocabulary; certainly it guarantees to all, and apparently in as plain language as anyone could ask for, the "equal" protection of the laws. But here, as so often happens in our constitutional law, the plain language, upon examination, proves not to be plain at all, and for a reason I have already anticipated, namely: the equal protection clause of the Fourteenth Amendment does not tell us, will never tell us no matter how hard we squeeze it, which of *two* things it actually means, and we must be very clear as to what those two things are. It might mean *first*, as the reader is already prepared to hear me say, that all are to have the equal protection of the *existing* laws, which *existing* laws may involve any amount you like of *in*equality, of *un*equal treatment, of *un*equal rights and privileges. Or it might mean *second* that, if I may put it so (I think no one ever has before), all are entitled to laws that in fact *give* equal protection to each. Now: if it means the first of these things, then all it calls for is the impartial enforcement of existing laws—existing laws, we must add, however unjust or inequitable those laws may be. If it means the second, it can of course become a standard—nay, *the* standard—by which existing laws may be tested and—where they fail to meet the test—set aside. In the first case, the laws would continue, after the Fourteenth Amendment as before, to be made—equal or unequal, equitable or inequitable, just or unjust—exclusively by the Congress and by the state legislatures, according to *their* lights. A man might, armed with the Fourteenth Amendment, go into the courts and demand the protection to which the existing laws, as made by Congress and the State legislatures, entitle him. But he could *never* go into the courts and say: "I demand that this law be set aside, be declared unconstitutional, because it is the kind of law that in and of itself gives unequal protection to different citizens." In the second case—that is, if the Fourteenth Amendment means that all are entitled to laws that in fact *give* equal protection to each—Congress and the State legislatures no longer have the last word about the existing laws: if those laws fail to meet the test of equal protection then the courts are entitled to strike them down, and to keep on striking them down until we have laws that, in the courts' view, do give equal protection. In the first case—that is, if the

Fourteenth Amendment merely guarantees the equal protection of the existing laws—the promise of equality in the Declaration of Independence remains just where it was before the Fourteenth Amendment was adopted, which is to say: pretty much nowhere among our public commitments. In the second case—that is, if the Fourteenth Amendment guarantees laws that will in fact provide equal protection—the equal protection clause becomes, as of the moment of its adoption, a summons to a legal revolution—and, necessarily, a legal revolution that must ultimately be presided over by the Supreme Court. So I can now repeat my question in a new and, I think, more manageable form: Does the Fourteenth Amendment call for the equal protection of existing laws? Or does it call for revising existing laws until they confer equal protection? And if I have dwelt long and teacherishly over the point, it is for a very good reason, namely: until one grasps these two possible meanings of the Fourteenth Amendment, one cannot hope to understand the problems that are shaping up in the United States about the Supreme Court—about, most particularly, the prayer decisions, and about so-called reapportionment.

Now: perhaps my one claim to uniqueness among students of the Fourteenth Amendment is that I do not believe the issue as to which of the two meanings is the "correct" one will ever be settled by appeal to the document itself. A pretty good case, to be sure, can be made out for each, but also neither case is such that it is likely to satisfy the proponents of the other. When the Supreme Court points to the plain language of the Fourteenth Amendment and says, The Mississippi ruling that keeps James Meredith from enrolling at Ole Miss denies James Meredith the equal protection of the laws, and is therefore unconstitutional because it violates the Fourteenth Amendment, it does have on its side—well, the plain language of the Fourteenth Amendment, which appears to guarantee to James Meredith *the* equal protection of the laws. And when Governor Ross Barnett answers that the Supreme Court is misinterpreting the Fourteenth Amendment, he also has some things to point to. He can, for instance, point to the fact—an incontestable fact by the way—that the very session of Congress that enacted the Fourteenth Amendment established a segregated school in the District of Columbia—which is to say: if the Fourteenth Amendment has the meaning the Supreme Court says it has, so that it prohibits segregated schools, the authors

of the Amendment didn't know that that was what it meant, which is surprising to say the least. Governor Barnett can also point to the speeches made by the state legislators in the process of ratifying the Fourteenth Amendment. Here, also, we find no evidence that the men who added the Fourteenth Amendment to our constitutional law contemplated a legal revolution presided over by the Supreme Court. And Governor Barnett can, finally, point to the fact—again an incontestable fact—that the Supreme Court itself, for decades and decades after the Fourteenth Amendment went into effect, leaned almost entirely toward the view that it guaranteed only the equal protection of existing laws—which is to say, Governor Barnett has behind him the Supreme Court's own long-pull tradition. But don't —because I state his points vigorously—understand me to be saying that Governor Barnett wins the argument. *My* point is that the argument, when conducted in those terms—and who ever heard of it being conducted in any other terms?—is inconclusive, and always will be. We shall never—never, never—be able to answer the question, What is the *true, intended* meaning of the Fourteenth Amendment? to everybody's satisfaction.

Let me round out that picture—that picture of the background of the problems that are shaping up—by bringing into it the Tenth Amendment as well—the Tenth Amendment, and the implicit principle of the Philadelphia Constitution that the Tenth Amendment merely restates. The Philadelphia Constitution, which, as we all know, was formed by the *representatives* of the original thirteen states—the Philadelphia Constitution assigned certain powers and functions of government to a newly-created *federal* government (the conduct of foreign affairs, for example, the national defense, the regulation of interstate commerce, etc.); but by clear implication it left all other powers and functions of government precisely where they had been before the Philadelphia Constitution was adopted, that is, with the states themselves. One of these powers, pretty clearly, one certainly reserved to the states, was the control of the suffrage; the making of decisions as to who in the United States may vote. Another such power, again pretty clearly, was the control of education—that is, the making of decisions about our public schools: what kind of education they are to provide, what persons shall attend what schools, etc. Still another such power, another of those powers

reserved to the states, was the whole business of making decisions about the relation between church and state—or, as I like to put it, between religion and politics: whether to have an established religion, whether to bring religion into the public schools or keep it out of the public schools, etc. Yet another such power, a power clearly reserved to the states, was the control of districting—the drawing of the lines that form the districts in which Congressmen, and State Senators, and State representatives, are elected—the power to decide, therefore, (to use the fashionable jargon) whether our legislatures, national and state, are to be "rural-dominated," or "urban-dominated," or so devised as to give both country-folk and city-folk a fair shake. Let's tick them off again—the four powers we have mentioned that were clearly reserved to the states, since they are part and parcel of our business here: the control of the suffrage, the control of education, the handling of problems of Church and State, and the control of legislative districts. At least these four powers, according to the Philadelphia Constitution, were to be *monopolies* of the states and their governments; at least these four things the state governments were to go ahead and run just as they would have had there been no federal government; at least these four things the new federal government was to keep its hand *off* of; at least these four things, therefore, the Supreme Court was to keep *its* hands off of, because the Supreme Court is an agency of the federal government, and what the federal government cannot touch the Supreme Court presumably cannot touch. That, if I may put it so, was the original *deal* between the states and the federal government; nothing, I hasten to add, sacred about it, nothing that couldn't be revised as time went on, but still: the original deal, as written into the Philadelphia Constitution, and as clearly understood on all sides.

Now: the Tenth Amendment, which as I have intimated we have *got* to bring into our picture, merely hammers down that original deal: Some powers and functions, it says in effect, are entrusted to the federal government; all remaining powers, including, of course, those four we have mentioned, are reserved to the states, that is, to the state governments, and to the people of the states, who presumably control the state governments just as We the people of the United States control the federal government. It says in effect: The deal's a deal: for some purposes we are going to be a nation, and have uniform laws and regulations all over the country; for other purposes we are going

to remain separate states—thirteen of them, or fifteen of them, or forty-four or forty-eight or fifty—and have different laws and regulations within these separate states. The deal's a deal, the Tenth Amendment says in effect, and can only be revised by the same solemn process by which it, the deal, came into effect. The deal's a deal, and can only be revised by Us, the people of the United States —which means, under the Philadelphia Constitution: the deal can be revised only by constitutional amendment, or, failing that, by congressional action under the "necessary and proper" clause. Powers can indeed, it says in effect, be moved across the line—powers now exercised by the states can indeed be assigned to the federal government—but only by a solemn act of Us the people of the United States acting through those instruments of government that are most intimately ours.

Now: put all that, all I have just said about the Tenth Amendment, put all that together with what I said above about the Fourteenth Amendment—put the two together and you will see where we have to come out: if the equal protection clause of the Fourteenth Amendment means merely that all are entitled to the impartial application of existing laws, then the original deal between states and federal government is still on; since there has been no constitutional amendment revising the deal, then the suffrage, education, religion, legislative districting all remain on the side of the line that belongs to the states. But if the equal protection and due process clauses of the Fourteenth Amendment mean that the laws must be revised and reinterpreted so as to in fact *give* equal protection to all, then the deal is off. If the two clauses mean that the laws must *give* equal protection to all, then any state enactment, or policy, or practice, that discriminates in favor of some persons and so against other persons, becomes the business of the Supreme Court—and so the business of the federal government. The Tenth Amendment line—between powers entrusted to the federal government and powers reserved to the states —loses all of its meaning as a line. Or, to put the matter in its most dramatic terms: if the Fourteenth Amendment means that the laws must give equal protection to all, then the Fourteenth Amendment *repeals* the Tenth Amendment. For the Tenth Amendment either gives equal protection or doesn't give equal protection, and if it does not give equal protection then, according to the Fourteenth Amend-

ment, it is, to that extent, void. And that consequence may properly be recognized, under our constitutional system by the United States Supreme Court. And we are at last in position to talk business about the problems I speak of as shaping up as really major problems—in particular, civil liberties, desegregation, and over-representation—and to fix attention on and explain what is making them major problems, namely: that the American Conservatives are resisting Supreme Court innovations under all three headings. The problems are, I am saying, major problems because the Conservatives are dragging their feet in all three areas, and because the Liberals are unwilling to acquiesce in their doing so.

The Conservatives *do* drag their feet.—Let the Liberals take note that I concede the point.—When a Conservative reads in his newspaper that nearly ninety percent of the Southern schools are still segregated, and that the rate at which Southern schools are being desegregated is tapering off, he does not—unlike the Liberal—feel moved to condemnation of the White Southerners for their allegedly wicked ways. When the Conservative learns, once again, that hundreds of thousands of Southern Negroes are denied the vote, he feels no stirring in his heart to go teach those Southerners a lesson about democracy. When the Conservative finds himself up against proof that the kids in the public schools of Middletown, Connecticut—which is ninety percent Catholic—recite "Hail Marys" in the classrooms and even in the corridors, he does *not* feel that liberty has died in America—any more than he feels that liberty has died in America when he learns that the public schools of the State of California are conducted just as they would be if California were populated exclusively by atheists and agnostics. And when the Liberal hammers the Conservative over the head with the awful fact that the good folk of New Haven and Hartford—again I speak of Connecticut, because I have lived there most of the time for many years—do not have the voice in the state legislature to which their numbers might seem to entitle them—when the Liberal hammers the Conservative over the head with that awful fact, I say, he feels no temptation to order a couple of divisions of the U.S. Army to Connecticut, to restore its republican form of government. I repeat: I concede the point that the Conservatives drag their feet on what are fashionably called civil liberties, equal representation, desegregation. I shall, indeed, go further and concede another point, namely: the Conservative will not feel differently about these matters, *basically* at least will not feel differently about them, when he learns that a federal court has ordered the public schools of Middletown to *stop* reciting Hail Marys, and that the court order is being *defied.* Not, of course, that he likes a situation where court orders are being defied: he does not. But he sees more things to be involved than just a court order. And he values some of those things equally with the sanctity of court orders.

Finally—though this is a point I make rather than concede—Conservatives are likely to continue to drag their feet on these matters for a long time off in the future. The Liberal may not like that. He may think it shocking. He may—I often think he does—hate the Conservative for it. But he had best get it through his head that those are the facts of life, and he had better, for the sake of his ulcers, get ready to live with them for quite a while. For if he doesn't, he simply doesn't understand American politics in their present phase, and, worse still, doesn't understand the *main* fact about even himself, namely: he is no Joshua. Joshua commanded the sun and the stars to stand still and they obeyed him. But when that would-be Joshua the American Liberal commands the sun and stars to stand still, they do not obey, and are not likely to begin to obey tomorrow or the next day. The Liberal's struggle for what he calls civil liberties, if he ever wins it, is going to be won in only one way, which is by *persuasion*—that is, by persuading the Conservatives, who are I believe the overwhelming majority of Us the people of the United States, over to his point of view. Not by court orders. Not by ordering federal troops to Little Rock, or Oxford, or Birmingham. But by *convincing* the Conservatives. And that, let me assure him, is going to take some doing.

Why is it going to take some doing? Well, let me, by way of summary, go back over the political science of the matter as I have laid it out.

All the current hullaballoo about civil liberties, about desegregation, about redistricting on a one-man-one-vote basis, is, I am saying, the result of one thing, namely: the Supreme Court decided, a few years ago, to revise its own traditional interpretation of the Fourteenth Amendment. From now on, it said in effect, the Fourteenth Amendment is going to require not equal protection under existing laws, but the revision of existing laws so that they will give equal

protection. And the effect of that change of mind and heart on the part of the Supreme Court was, quite simply, this: it put the Supreme Court into the business of upsetting the deal—the deal between the federal government and the states—written into the Philadelphia Constitution and the Tenth Amendment. The Conservative, however —and my hope for this article is that it will help to make him better understood—the Conservative was brought up to believe that that deal can be altered only by Us the people acting through the amendment process of the Philadelphia Constitution, or, in a pinch, by a consensus of Us the people acting through Congress under the necessary and proper clause. He *still* regards the suffrage, the relations between Church and State, the drawing of lines for legislative district, education—he *still* regards these things as the business exclusively of the states, as not, therefore, the business of the federal government, and not, therefore, the business of the Supreme Court. He still regards the equal protection and due process clauses of the Fourteenth Amendment as guarantees merely of impartial enforcement of existing laws. He still does not want to help silence Hail Marys in the State of Connecticut, because he still does not want Connecticut to be interfering in the affairs of *his* state. That is the Conservative state of mind—the American political tradition—with regard to the issues involved in recent Supreme Court innovations. And I repeat to the Liberals: Do not underestimate the Conservative politically. There is a lot of him, must be a lot of him because he is pretty certainly the overwhelming majority of the American people. And what I referred to as the problems that are shaping up I can now nail down as follows: about the future—the future of civil liberties, of desegregation, etc.—there are as I see it two possibilities: either the Liberals—and I make no distinction, for this purpose, between the Liberals and the Supreme Court—either the Liberals pull in their horns and decide to do it the hard way, that is, by persuading Us the American people over to their point of view; or, second, the Liberals will continue their present strategy, which is to attempt—from a mere minority position in American politics—to impose the new interpretation by sheer fiat of the Supreme Court. Either first, I say, the Liberals and the Supreme Court pull in their horns and let us get back to deciding these matters by public debate, or, second, we face a future of more Oxfords, more prayer decisions, more interference by the Supreme Court with the electoral and districting practices of

the states—with more hard feelings, more use of federal troops against American citizens, more attempts to bring about social revolution by court order. Either the one or the other. And I, as a Conservative, hope for the first—the Supreme Court pulling in its horns—but fear, because of the fanaticism of the contemporary Liberal, the second.