down with him and make peace.” Moynihan agreed to insist that a strong civil rights plank be included in tuition tax legislation (it wasn’t in the Reagan Administration’s bill), and he promised to support all federal spending for public schools. “We agreed to disagree” on the remainder, Harding said, and the alliance was set. Moynihan got the Liberal endorsement again.

Moynihan cites another person who played a major role in his successful courtship of liberals. “It was Ronald Reagan,” he said. Reagan’s conservative policies gave Moynihan the opportunity to lead the liberal opposition, which he did swiftly on such issues as Social Security. But he also had to change the tone of his politics. “A lot of liberal antipathy to Moynihan was because of his saber-rattling, anti-Soviet posturing,” said a Democratic strategist. “He didn’t change the substance, but he toned down the rhetoric.” Rather than emphasize foreign policy, as he often did during Jimmy Carter’s Presidency, Moynihan “focused his image on domestic issues, and this was pleasing to liberals who were concerned about social programs,” the strategist said. Nearly as important, he resisted the temptation to take public shots at liberals, as he had done as recently as 1980 when he lashed out against the Kennedy “cadres.”

With liberals migrating to Moynihan, Russert went after the Senator’s prospective Republican opponent, a handsome former Representative named Bruce Caputo. His initial plan was to link Caputo to the new right, discrediting his candidacy through guilt by association. The conventional wisdom was that the Moynihan forces should wait until Caputo got the Republican nomination before pouncing. But Russert wanted to drive Caputo out early and create disarray among New York Republicans. He figured that going after Caputo last winter, during a slow political season, would get more undivided press attention. It did. Caputo has blamed Russert for leaking information that led to his withdrawal in February, but it didn’t happen quite that way. Russert had learned of discrepancies in Caputo’s account of his military background—or non-military background, as it turned out. Whenever Caputo criticized Moynihan, Russert would toss in a mention of Caputo’s military history in his response. “I would say, ‘Even his description of his military record varies from article to article,’” Russert said. Finally, reporters questioned Caputo on the subject, forcing him to concede that he had given the false impression that he had served in the Army. A scandal erupted and he withdrew from the race.

For Moynihan and Russert, the thrill is gone from the fall campaign. The Senator is campaigning doggedly. And Russert mounted a massive effort to keep a little-known Democrat, Melvin Klenetsky, off the primary ballot. Klenetsky had submitted 29,857 petition signatures; after Moynihan workers got through challenging them, he had scarcely enough names left (10,047) for a place on the ballot. Other opposition has either been co-opted or vanquished. “Some time ago we were very excited about the prospects of beating pro-abortion incumbent Senator Daniel Patrick Moynihan,” the National Pro-Life Political Action Committee confessed in a late summer newsletter, “but it appears now that no candidate is likely to put together the coalition necessary to defeat him. Moynihan now holds a 4 to 1 lead.” Whitney North Seymour, one of three Republicans who sought the Senate nomination against Moynihan, confessed in May that Republican prospects against Moynihan seemed “hopeless.” As if to make his prophecy self-fulfilling, Seymour managed to get arrested for illegally passing out campaign literature at a county fair.

Fred Barnes is national political correspondent for the Baltimore Sun.

Reagan v. black America.

MALIGN NEGLECT

THE REAGAN ADMINISTRATION’S civil rights policies are coming under increasing attack. In the second week of September, the chairmen of thirty-three state agencies affiliated with the U.S. Commission on Civil Rights sent a widely publicized letter to President Reagan, charging him with responsibility for a “dangerous deterioration in the Federal enforcement of civil rights.” Several days later a study prepared by the Washington Council of Lawyers was made public, which stated that the Administration “has retreated from well-established, bipartisan civil rights policies that were developed during both Democratic and Republican Administrations.” The same evening, in a speech before the National Black Republican Council, Reagan angrily denied that his Administration discriminates against blacks, and made the extraordinary statement that black Americans would be better off today if Lyndon Johnson’s Great Society programs had never been implemented.

It is by now widely acknowledged that the Reagan policies have had a devastating impact on blacks and other minorities. Unemployment figures are disproportionately high for blacks, especially black teenagers. In the two years since Reagan took office, unemployment has risen from almost 8 percent to almost 10 percent, while black unemployment has risen from almost 15 percent to almost 19 percent. Black teenage unemployment has jumped from almost 40 percent to
Drastic cutbacks in federal funding of education, particularly student loan programs, have had the heaviest effect on minority students. Subsistence programs, such as food stamps and AFDC, have been severely reduced. The Legal Services Corporation has been targeted for elimination by the White House, and the Department of Justice, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance, and other federal agencies have curtailed enforcement of the laws against housing and employment discrimination. On September 18, during the Congressional Caucus's annual legislative weekend, Walter Fauntroy, chairman of the caucus, commented, "The fact is that the Reagan policies have plunged black America into its deepest depression in this century."

Every Administration is entitled to make its mark on public policy, and this is no less true in civil rights than in other areas of the law. There continues to be plenty of room for debate about civil rights policy—debate about where the worst problems are, where to allocate federal resources, and how to improve remedies for illegal discrimination. But there is no room for debate about what the law requires and whether it should be enforced. The obligation of government—particularly the Department of Justice—is clear.

**UNDERLYING American civil rights law is a bipartisan consensus reflected in the statutes and court decisions of the last three decades.** The law has several important elements: first, all Americans have enforceable rights under the Constitution that cannot be taken away or restricted by legislative or executive action; second, a person's right to be free from discrimination on grounds of race, sex, religion, or national origin is protected, whether that discrimination is caused by the intentional or unintentional actions of government; third, the courts have principal responsibility for remedying the abridgement of constitutional rights.

The Reagan Administration insists that it has a strong commitment to civil rights and complains of being unjustly criticized for experimenting with new methods of enforcement. But the criticisms are more fundamental: in many areas the Administration is failing to enforce, or even undermining, the law.

In education the Administration has seemed to go out of its way to avoid the enforcement of civil rights. The law is unequivocal: the government has an affirmative obligation to desegregate public schools. Since the enactment of the Civil Rights Act of 1964, the Justice Department has had a statutory duty to protect the rights of public school children. In 1968 the Supreme Court made it clear, in *Green v. County Board of Education*, that "freedom of choice" plans are inadequate as remedies for school segregation because they put the burden of change on students rather than on the government, and because they have the effect of establishing a "right" of white children to "choose" to go to segregated schools.

Yet "freedom of choice" is the heart of the Administration's school desegregation policy. Last November, William Bradford Reynolds, Assistant Attorney General for Civil Rights, told a House judiciary subcommittee, "We are not going to compel children who don't choose to have an integrated education to have one." In Chicago, Houston, St. Louis, and other major metropolitan areas, the Administration is settling cases on "freedom of choice" principles, and is opposing student transfer plans that go beyond voluntary desegregation. Even where these plans are voluntarily adopted by local school boards, as they were in Seattle, the Administration is vigorously opposing them.

The Justice Department has attempted to defend its position upon the most feeble of pretexts. It has suggested that current desegregation policies require "racial balance" in public schools; they do not. It has said that busing can be ordered even if it is demonstrably harmful to children; the Supreme Court has made it clear that it cannot. When these false issues are removed, the department's position can be reduced to the following: since the Supreme Court has held that mandatory student transfers are remedies that can be used by federal courts only when necessary, the department should be free to decide that these remedies should *never* be used because they are, in the department's view, *never* necessary.

**THIS IS NOT a dispute over busing; it is a dispute over the role of government in eliminating segregation.** The Reagan Justice Department maintains that the government's only obligation is to remove legal racial barriers so that people can choose whether they want to desegregate. Yet the Supreme Court has held time and again that government has an affirmative obligation to ensure that public schools are desegregated and that no one has a right to choose to attend a segregated public school.

If the Reagan Administration does not believe it is violating the law, then the law must not mean what it says. That, in fact, is exactly what one Reagan White House official has publicly stated. Last December, Michael Uhlmann, a special assistant to the President who handles civil rights policy development, claimed it was inaccurate to say the Administration was not enforcing the law of the land, "unless you call all of the decisions of the Supreme Court the law of the land."

In addition to failing to enforce civil rights law, the Reagan Administration has consistently supported or deferred to the enactment of anticivil rights legislation at the federal, state, and local levels. In a Seattle school desegregation case recently decided by the U.S. Supreme Court (*Washington v. Seattle School District No. 1*), the Justice Department argued in favor of the constitutionality of a state statute prohibiting any busing or student assignments to achieve desegregation. The
statute conflicted with a voluntary desegregation plan adopted by the city of Seattle, which challenged it on constitutional grounds. The only federal interest at stake in this case was the interest of the Administration in supporting legislation that restricts busing. Ironically, this position violated President Reagan's frequently stated opposition to federal interference with local government. In June the Supreme Court struck down the statute as unconstitutional.

At the other extreme is a Texas case recently decided by the U.S. Supreme Court involving a statute barring the children of illegal aliens from attending state public schools (Plyler v. Doe). Here the Administration took the opposite position from the one it espoused in the Seattle case, and told the Supreme Court that it had "no interest" in the way the Constitution was being applied by the State of Texas. This statute was also struck down last June by the Supreme Court as unconstitutional. Even the Eisenhower Administration—no great friend of civil rights—took the position in 1954 that it had a clear interest in the way the Constitution was being applied in Kansas and South Carolina, when Brown v. Board of Education came before the Court.

In another Supreme Court case, which involves state or local restrictions on the constitutional right to choose abortion, the Administration has made sure that its views be known. In August it filed an amicus curiae brief in the Supreme Court supporting local ordinances in Akron, Ohio, which sharply curtail abortion rights. The Justice Department had no difficulty finding the federal interest it said was lacking in the Texas case, and it took the remarkable position that interpreting constitutional rights is ultimately a question for legislative bodies, not the courts. In its brief, the Justice Department told the Supreme Court:

In our democratic society the government body with the primary authority and responsibility to resolve competing policy views and pressures among citizens is the legislature. . . . The best way to determine who is right and who is wrong on these issues [of constitutional interpretation] is to permit and encourage the opposing sides to exercise their persuasive efforts on state legislators.

Under this theory, we might as well allow public opinion polls and lobbying campaigns to dictate constitutional law. That, of course, is exactly what the Reagan Administration is doing by supporting legislation to curtail the authority of the federal courts to use busing as a remedy in school desegregation, abortion, and school prayer cases.

The Reagan Administration has also challenged federal court jurisdiction. Instead of protecting the role of the courts in enforcing civil rights, it is trying to cut back court jurisdiction and circumvent judicial decisions. In its support of the Helms-Johnston antibusing bill, the Administration is tampering with the federal courts in a way that none of its predecessors has done.

The bill would bar busing as a desegregation remedy even where the courts have no available alternative. It also would amend the equal protection clause of the Constitution by simple legislative majority. If Congress can do that where school integration is involved, it can reverse any Supreme Court interpretation and enforcement of the Constitution with which it disagrees. The American Bar Association has charged that the Helms-Johnston bill would create "the most serious constitutional crisis since the Civil War."

The Reagan Administration's attacks on the federal courts may well come back to haunt it. Someday a frustrated Congress may attack the institution of private property, which today is guaranteed by such constitutional provisions as "just compensation" and "obligation of contract." It would be a great irony if such a Congress were to use as precedent the Helms-Johnston bill of today. Court-stripping is a game that can be played by all parts of the political spectrum.

The Helms-Johnston bill is just one of many examples of the Administration's attack on the federal courts. Last January the White House rescinded regulations by the Treasury Department denying tax-exempt status to racially discriminatory private schools. The Justice Department said the regulations had no legal basis, and as a result the Administration granted exemptions to two racially discriminatory schools. In doing so, the Department disregarded appellate court decisions upholding the regulations based on both the Constitution and the Internal Revenue Code.

In the Administration's consistent efforts to make it more difficult to prove illegal discrimination, it shows repeatedly its intention of contravening civil rights law. Again, this intention has manifested itself in the area of public education. Mr. Reynolds had made it clear that the Justice Department will not follow the rule established by the Supreme Court a decade ago, in Keyes v. School District No. One of Denver, which allows suits to be brought to desegregate entire school districts when there is proof of intentional segregation for only part of the district.

The Keyes rule is a sensible one intended to speed up the process of desegregation and to save the time and resources that would otherwise be required to litigate scores of separate lawsuits. But the Administration will have nothing to do with this rule, just as it will have nothing to do with class actions in employment discrimination cases. It spent more than a year opposing a voting rights bill designed to allow general relief from discriminatory voting practices.

The Administration's underlying rationale is that the Constitution is "color-blind," and does not protect classes or categories of minorities unless each member can prove individually that he or she was a victim of intentional discrimination. In addition to being burdensome and unrealistic, this approach to civil rights enforcement is fundamentally at odds with the devel-
opment of remedies responding to the history of race and sex discrimination in the United States. Can anyone doubt in 1982 that minorities and women as classes have been and are being discriminated against? The Administration's "color-blind" civil rights policy is blind to the reality of illegal discrimination and the efforts of the last three decades to address that reality.

The consequences of the Reagan civil rights program will be dangerous and far-reaching if it is fully implemented: constitutional rights will come to mean only what a political majority acting through legislative bodies says they mean, and they will only be enforced accordingly; federal courts will only be able to remedy denials of constitutional rights to the extent that they are authorized by Congress to do so; and a constitutional right will not be enforceable if it is abridged by the unintentional actions of government, no matter how severe the impact.

Of all the dangers in the Administration's civil rights policies, the danger that looms largest is that it will breed contempt for the law. How is the private employer, the small-town bureaucrat, or the city official to interpret this systematic withdrawal from civil rights enforcement except as a signal from Washington that the law does not have to be taken seriously?

JOHN SHATTUCK

John Shattuck is the national legislative director of the American Civil Liberties Union. This article is adapted from a speech delivered at the American Bar Association's annual convention in August 1982.

Can yellow journalism cover the world?

CITIZEN MURDOCH

BY PATRICK BROGAN

WITH GREAT fanfare, the New York Daily News announced on May 1, 1982: NEWS TO CITY: WE'RE HERE TO STAY. Its owner, the Chicago Tribune company, had just discovered that it could neither sell nor close the News, and had decided, perforce, to keep it going. On an inside page, the paper announced: TRIB TO RUPERT: DROP DEAD.

That blunt message was intended, of course, for Rupert Murdoch, Australian proprietor of the New York Post, the evening paper with which the News is waging the most acrimonious newspaper war the country has seen in years. Murdoch had won all the battles, so when the News suddenly recovered its hope of winning the war, it celebrated in its brashest style.

It had been galling for a leading American institution, which thought itself secure in its readership, advertising revenues, and reputation, to be beaten constantly by anything so dreadful as the Post. As exceptional an evening paper as the Post cannot overcome.

It was a damn close-run thing, as the Duke of Wellington said of Waterloo, and Murdoch's admirers might add that the final verdict is not yet in. The Tribune company, panicked by the News's losses, offered to sell it last December, but by spring there still were no viable takers. Then Murdoch sanctimoniously offered to take over the News himself. He would have merged the two papers, solved all of his money problems, and resumed his empire's expansion in America.

At the time, according to Murdoch, the Post was losing $20 million a year, and, having failed to kill or eat the News, he has to carry this considerable loss indefinitely, or admit defeat and close the paper. Its cover price has just been raised from 25¢ to 30¢ (no effect on sales has yet been admitted), and the Post has

Patrick Brogan, a freelance writer based in New York, was Washington correspondent of The Times of London from 1973 to 1981.