
Nutty Professors

November 27, 2000 at 8:00 am

This essay originally appeared in *The New Republic*.

Partisanship has run rampant in Indecision 2000. The candidates, the lawyers, the pundits—even many of the voters—have jumped from one legal and ethical argument to the next to justify the outcome they want. But if there's one group you'd think would stay above the partisan fray, it's America's leading professors—intellectuals with historical perspective, time for study and contemplation, and a devotion to constitutional procedure.

You'd think so. And you'd be wrong. Because last week some of the nation's best-known liberal academics proved that they too can place partisanship ahead of scholarship. They did so by joining the “Emergency Committee of Concerned Citizens 2000” and running a pair of hastily composed advertisements in *The New York Times*. The scholars' ostensible goal was to “preserve the dignity and legitimacy of American democracy.” But instead their clumsily spun partisan proclamation exposed to ridicule the ideal of reasoned inquiry on which their professional authority, and in no small measure the dignity and legitimacy of American democracy, depend.

The committee's first ad began on a note of gracious high-mindedness. “The outcome of last Tuesday's election is threatening to produce a constitutional crisis,” the ad said. “This threat must be addressed with utmost solemnity and fairness to sustain the legitimacy of our national political process.” And then, though praising Bush for conducting himself honorably, it solemnly proceeded to play unfair. “There is good reason to believe,” the ad continued, “that Vice President Gore has been elected president by a clear constitutional majority of the popular vote and the electoral college.”

Of course, there's nothing “clear” about Al Gore's tiny popular plurality. As the ad went to press, there remained millions of uncounted absentee ballots, which could still swing the popular vote back to Bush. But even worse is the suggestion that the popular vote—whichever way it goes—has any constitutional significance. The phrase “constitutional majority of the popular vote and the electoral college” is nonsensical. As even Gore has acknowledged, the electoral college is the only rightful arbiter of presidential succession. After warning of a “constitutional crisis,” the ad's signers sow the kind of confusion that makes one more likely.

Some of the committee's members could perhaps be forgiven such twaddle. You don't expect Robert DeNiro, Nora Ephron, or Bianca Jagger to have mastered the Constitution's finer points. But surely eminent professors of law—like Bruce Ackerman, Ronald Dworkin, and Cass Sunstein—ought to know better, as should prominent historians (Peter Gay). Rosie O'Donnell might be excused for arguing that "to preserve the dignity and legitimacy of American democracy, it is essential to remove any hint of inaccuracy in the final result," as the ad urged. But a serious scholar like Princeton's Sean Wilentz must realize that removing "any hint of inaccuracy" is simply not possible, given the margin for human error inherent in any voting system, and particularly in the alternatives suggested as remedies in this case.

The follow-up ad, which appeared the next day, was even more presumptuous. This time, the committee took it upon itself to speak for the entire nation: The ad appeared under the title "We the People." At the very moment the country had shown itself to be profoundly ambivalent, a small group of unelected private citizens presumed to speak with the people's voice and to propose in the people's name an optimal solution to the Florida election. Needless to say, they did so without including in their list of signatories a single prominent centrist Democrat, to say nothing of a Republican or recognizable conservative.

More incredibly, "We the People" did not include many of the people listed among its signatories. Ackerman, Dworkin, and Sunstein say they never saw the second ad, did not sign it, and do not approve of it. It was Harold Evans, former editor-in-chief of the New York Daily News, who took the lead in preparing it. He drew on the first ad but, owing to space constraints, distilled what he took to be the essence, and, owing to time constraints, the distillation was not circulated widely.

And what did the rump committee propose on Saturday as the "quickest, fairest, and most democratic" way to resolve the controversy? Insisting its proposal "has nothing to do with the rights or wrongs of the electoral college or party politics," the committee proclaimed that the solution was "to ask the people who know best: the voters of Palm Beach County. Those who voted on November 7 should be asked to vote again as soon as possible, without pressure from any party, but under the strictest scrutiny. And there should be an accurate hand count in certain counties under question."

Lo and behold, the committee's proposal tracked the Gore campaign's developing strategy. It didn't just track it generally—to a Republican, after all, a new vote in heavily Democratic Palm Beach County is hardly free of "party politics"—it tracked it day to day. On Friday, when the Gore camp was eyeing a revote, the committee's ad stressed that option. By Saturday, after Team Gore had shifted its emphasis to a recount, by hand, the committee's new ad drew attention to that remedy as well. Not a hand count throughout Florida, mind you, but a hand count "in certain counties." Could it be that the committee meant exactly the counties for which the Gore campaign was vigorously lobbying?

This has been a long time coming. It's no coincidence that some of the committee members took high-profile, highly partisan roles in the Clinton impeachment fight two years ago. Now they're at it again. When scholars do what partisans do—fudge the facts, bend the truth, and pass off political judgments as emanations from the Constitution or the people or universal reason—they aggravate democratic distrust of intellectuals and ideas. They accelerate the cheapening of words. And they exacerbate the creeping anxiety that there is no such thing as objective truth—that reason is just a clever disguise for will and self-interest. Once the dust from this remarkable contest settles, we should consider whether democracy, which depends on both scholarship and partisanship, might benefit from professors who honor the distinction.