

for the people

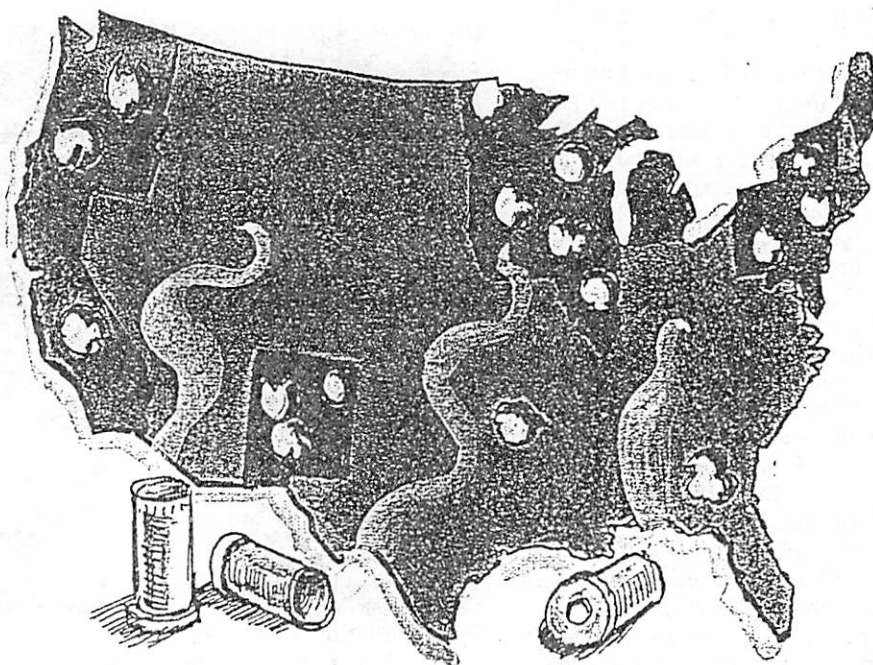
By Stephen Goode

Interesting Numbers in Bush v. Gore

Do you recall the words of White House adviser Paul Begala right after the election? He was looking at a map on which counties that voted for George W. Bush were shaded red and Al Gore counties were shaded blue. "If you look closely at that map you see a more complex picture," Begala said. "You see the state [Texas] where James Byrd was lynch-dragged behind a pickup truck until his body came apart — it's red. You see the state [Wyoming] where Matthew Shepard was crucified on a split-rail fence for the crime of being gay — it's red."

But there's another way of looking at things, as always. *For the people* came across the following at www.federalist.com. They were compiled by law professor Joseph Olson.

- A. Counties won by Bush: 2,434.
Counties won by Gore: 677.
- B. Population of counties won by Bush: 143 million.
Population of counties won by Gore: 127 million.



- C. Square miles of country won by Bush: 2,427,000.
Square miles of country won by Gore: 580,000.

And now for the most remarkable finding: Average murder per 100,000 residents in counties won by Bush: 2.1; average murder per 100,000 residents in counties won by Gore: 13.2.

The Federalist's staff of researchers found one more interesting fact that might help explain these disparate murder rates: Gun-ownership rates in the counties won by Bush are much higher than in the counties won by Gore!

Party of Rules vs. Party of Feelings

After all the counting is over it comes down to this: Americans are *not* divided by race, ideology or special interests. We are not easily bamboozled by Bolshevism or unvarnished socialism. All those virtual 50-50 splits in the courts, in the popular vote and in the electoral vote for president, in the elections for the House and the Senate — even in the percentage of eligible voters actually voting — are telling us that we have a two-party system of a very different kind.

The real two-party system goes much deeper than mere politics. Labels such as “Republican” and “Democrat” are meaningless to describe fundamental instincts that are pre-political. Even the words “conservative” and “liberal” are too slippery to get a firm grasp on the problem.

Half of all Americans belong to the Party of Feelings; the other half belongs to the Party of Rules. The Party of Feelings believes that government should guarantee the happiness of citizens, no matter how the citizens pursue it; the Party of Rules believes that happiness is the result of honest pursuit. Having lined up on the one side or the other, Americans seek out institutions that will support the one platform or the other.

The Party of Feelings wants an emotionally satisfying consequence. It looks for, or establishes, neighborhoods, communities, churches, schools and other organizations in which each person depends upon another, and greed or anxiety is assuaged essentially by imposing equal outcomes.

The Party of Rules draws back from such a worldview. It sees the embrace of feeling and the arbitrary imposition of equal outcomes as fundamentally unfair, totalitarian and lacking in spiritual compassion. The honest methodology for the development of the fullness of humanity, says the Party of Rules, is, well, to post the rules — and then assist each individual to develop strategies and strength to obey them. Freedom exists only in a rule-based society.

For this reason, the legal system in the United States faces a crisis. It once was believed that our legal tradition was based on the Ten Commandments (most of which are not specifically religious), the English common law (which by precedent embodied the outlook of the Ten Commandments), the U.S. Constitution (which specifically guaranteed the rule of the common law) and the enactments of the state legislatures and the U.S. Congress. But that was when the Party of Rules was dominant. Under the growing influence of the Party of Feelings, the common law was more and more abandoned in

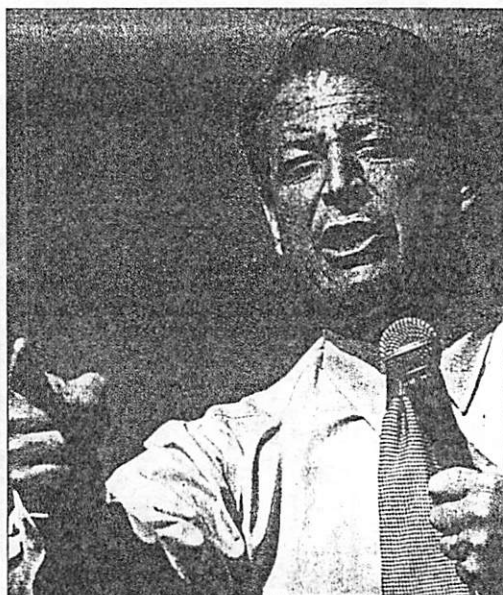
favor of the law of equity — that is, fashioning a remedy for relief when, in the eyes of the judges, the law was inconsistent or deficient. But while the original courts of equity in England looked for cases where the law was inconsistent or deficient in its language, the new version of equity practiced in the United States looks for what seems inconsistent with the judge’s feeling of what is fair.

Thus the Constitution became a “living document,” meaning that it changed as the feelings of the U.S. Supreme Court justices changed. The understanding of a rule as a precept known to all beforehand no longer prevailed. *Brown v. Board of Education* was based on suppositious sociology. *Baker v. Carr* was based on egalitarian concepts of equity in establishing congressional districts. *Roe v. Wade* was based on a junk science of biological “viability,” even though it already was known in laboratories that the unique DNA of each individual is fully established at the moment of conception. Law no longer was found in the text of the founding documents and enactments, but in the hearts of judges.

Thus, for the Party of Feelings, the legislative and executive branches became subordinate to the judiciary because it is what the judge says that counts. A kind of holy awe settled around the enactments of the courts and the personae of the justices, even though the Founders had nothing of that kind in mind. Enter Al Gore, who famously said that “there was no controlling legal authority” to prevent him from fund raising on the premises of a government office, even though the law had been on the books for decades and scrupulously was observed by most members of Congress. What he meant was that the courts had not yet pronounced with finality.

Bill Clinton is the great exemplar of the man who feels your pain but scorns your rules. Gore, although a wooden imitation, is cast in the same mold. So when he lost the count and the recount in Florida, why wouldn’t he ask for recounts in the three counties where he had the biggest majorities? Heretofore, most candidates had asked for recounts where they lost. He asked not for a count of all votes actually cast, but a count of all votes that might have been cast if the voters had known what they were doing. The Florida Supreme Court, specifically using its “equitable powers” instead of law, set aside the pre-enacted decision of the state legislature that a date certain for certification was necessary to bring finality under the federal timetable for the Electoral College. And so, on the basis of a living Constitution, we began the Night of the Living Election, which lasted for 36 days, until a stake was driven through its heart by the U.S. Supreme Court.

What are we to make of this? That the court turned “political” and squandered its “credibility”? No, it rather looks like the court is turning back toward the Party of Rules before it is too late.



The Party of Feelings: Gore regarded the rule of law as subordinate to equity.

By James P. Lucier
Senior Editor