

**Continuing
Legal
Education**

The Eleventh Annual Festival of Legal Learning

School of Law

The University of North Carolina
at Chapel Hill

February 9 & 10, 2001

**The William & Ida Friday
Continuing Education Center
Chapel Hill, North Carolina**

- ◆ Four, 3-Hour Blocks of Professional Responsibility
- ◆ Courses in Family, Criminal and Public Law;
Business; Professionalism; and Trial Practice.
- ◆ Internet Instruction for Attorneys
- ◆ One-Day Environmental Law Intensive
- ◆ One-Day Entrepreneurship Symposium

CAROLINA

Monstrous Offenders: Crime, Fear and the Criminal Justice System

Assistant Professor Joseph E. Kennedy, UNC School of Law

Many of the major changes to the criminal justice system over the last two decades have been driven by exaggerated fears about the nature and extent of crime in our society. This lecture will explore the public's fear of crime — what drives it, who shapes it and how those fears affect the decisions of lawyers working in the criminal justice system.

12:35 - 1:30 p.m.

Friday Center Lunch or Lunch on Your Own

(Please indicate on the registration form if you plan to attend the buffet lunch at the Friday Center. Buffet lunch reservations must be made with the CLE office no later than January 31.)

1:30 - 2:30 p.m.

Session Five

Censorship: The Comparative Influences of the Constitution, Laws and Culture. Perspectives by Chief Justice Hughes, Law Prof. Catherine MacKinnon, Lenin and Mr. Dooley

Walter Spearman Professor Chuck Stone, UNC School of Journalism and Mass Communication

Some of the identical words and phrases of our First Amendment's six-fold protection of freedom of speech, freedom of the press, freedom of religion, and the right of peaceful assembly and to petition the government for a redress of grievances are replicated in the constitutions of other countries, i.e. Russia, South Africa, and China. Yet, in practice, those written protections are not guaranteed and are not carried out. This may be a result of the overriding power of culture that determines the extent to which a nation's laws fail to protect the freedoms of its citizens whose mores historically have accepted a culture of excessive government censorship.

Current Problems in Professional Responsibility (Part I) *

PR
Clinical Professor Alice Ratliff, UNC School of Law; Alice Moseley, Assistant Executive Director, North Carolina State Bar

This will be an interactive session where participants will be asked to act as advisors to lawyers who are faced with professional responsibility issues. The emphasis will be on current issues such as multidisciplinary practice, advance fees, and financing litigation.

* "Current Problems in Professional Responsibility" is a three-hour professional responsibility course that begins with this session and concludes after Session 7. Participants seeking credit for this course are required to register for and attend Sessions 5 - 7.

Effective Appellate Advocacy: Recent Developments and Common Pitfalls to Review of Substantive Questions

Mark D. Martin, Associate Justice, N.C. Supreme Court

In the challenging world of appellate practice, every attorney needs to stay apprised of new developments and be reminded of common pitfalls. Justice Martin will discuss recent developments of interest to all appellate practitioners. He will also review some of the major pitfalls to avoid during trial and appellate process, including practical aspects of preserving error for appellate review, the waiver rule and its exceptions, and practical tips to help

Expert Witnesses After Daubert and the December 2000 Amendments to the Federal Rules of Evidence

Professor Walker Blakey, UNC School of Law

This lecture will deal with both the North Carolina response to *Daubert* and the Amendments to the Federal Rules of Evidence that should become effective December 1, 2000.

The Gramm-Leach-Bliley Act One Year Later: Has It Revolutionized Financial Services?

Professor Lissa S. Broome, UNC School of Law

This section will provide an overview of the landmark Gramm-Leach-Bliley Act of 1999, which dismantled the Glass-Steagall Act and made possible combinations of banking, insurance, securities, merchant banking and real estate development in the same holding company. The session will examine some of the regulations implementing this legislation and critique the regulatory scheme based on functional regulation.

North Carolina's ABC's and Student Accountability: The Legal Framework and the Broader Educational Issue

Professor John C. Boger, UNC School of Law

As a centerpiece of its educational "accountability movement," the state of North Carolina has enacted a series of statutes (known as "the ABC's of Education"). Acting pursuant to that statute, the State Board of Education has proposed new student accountability standards. Beginning in the spring of 2001, the new standards will require all fifth grade students to pass a statewide, end-of-year test in order to be promoted to the sixth grade. The following year, the statewide tests will be extended to third graders, eighth graders, and in 2002-03, to high school seniors. Some estimate between 40,000 and 80,000 children who would otherwise be promoted will be retained because of these new standards. This seminar will examine these laws, the implementing of regulations and their larger educational and social implications.

Transition Rules of UCC Rev. Article 9

Professor Caroline N. Brown, UNC School of Law

This session will examine the transition rules of the newly revised UCC Article 9.

2:35 - 3:35 p.m.

Session Six

Current Problems in Professional Responsibility (Part II) *

PR
Clinical Professor Alice A. Ratliff, UNC School of Law; Alice Moseley, Assistant Executive Director, North Carolina State Bar

* This program began in Session 5 and will conclude after Session 7. Participants seeking credit for this course are required to register for and attend Sessions 5 - 7.

Family Law Update

Adjunct Professor K. Edward Greene, UNC School of Law

A review of recent N.C. Appellate Court cases relevant to family law.



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A Preamble to Prof. Chuck Stone's Lecture

**"Censorship: The Comparative Influences of the Constitution,
Laws and Culture. Perspectives by Chief Justice Hughes,
Law Prof. Catherine MacKinnon, Lenin and Mr. Dooley"**

The two attached recent newspaper articles discretely describe in detail (and I might add, serendipitously) the symbiosis of culture, race and the laws that had been incorporated in this lecture prepared four weeks ago.

On Friday, January 19, 2000, The Wall Street Journal reported in a page one article George W. Bush's efforts to close the nation's cultural gap caused by the divergence in values, ideology, geography and race.

Throughout the article, the reporter, John Harwood, referred alternatively to the "racial divide," the "cultural gap" or the "cultural divide" and how Mr. Bush intends to try "reconciling the disparate camps."

The reporter cited polls that document the polarity between the two groups not only reflecting their values, geography, race, and religion, but what might be termed their TQ or tolerance quotient.

On Sunday, January 21, 2000, The Sunday New York Times' "Week in Review" featured a story by the Times' Moscow correspondent Michael Wines and headlined: "Russia's Latest Dictator Goes by the Name of Law." (my emphasis).

Several of Mr. Wines' observations, also had been incorporated in this lecture's paper, on the history of the Russian people's comfort threshold with "order, imposed from above." This Russian deus ex machina has been nurtured by the Slavic linearity of tsarism, communism, and now Putinism, the peculiar hybrid of a sleepy-eyed dictatorship and a face validity democracy.

Inaugural Test

As Bush Aims to Close Nation's Cultural Gap, He Risks Widening It

Trying to Convert the Camp That Voted for Gore, He Draws a 'Moral Line'

A Persistent Racial Divide

By JOHN HARWOOD

Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON—Shortly after noon Saturday, George W. Bush will stand on the steps of the Capitol and deliver an inaugural address that is expected to skirt matters of public policy and instead focus on the need to unite a divided nation.

But Mr. Bush has already discovered that his message, instead of uniting, may well divide. As the nation's 43rd president, he inherits a country split not by economics or politics so much as by culture. On one side is the America Mr. Bush already identifies with: mainly rural, religiously

Inauguration 2001

Hot tickets go for high prices as the inaugural gets auctioned off on the Internet. Article on page A6. In related stories:

- The new president faces a slowing economy, but his father faced worse, A6.
- Bush looks at wiping some of Clinton's slate clean—by erasing regulations, A16.
- Where other Republicans and Democrats are moving, W10.

observant, devoted to traditional notions of marriage and morality. On the other is the group he is reaching out to: largely urban, secular, tolerant of feminism and gay rights. And if the confirmation hearings for John Ashcroft as attorney general this week are any indication, Mr. Bush risks driving those two Americas even further apart.

In an interview last week, Mr. Bush left little doubt about his determination to bridge that divide. "There are a lot of people who are suspicious of Republican Southwesterners," he acknowledged at one point. "I'm not tone-deaf." But "I wouldn't have run for president if I wasn't an optimist." He added: "We'll see whether or not I'm up to the task."

Yet it's already clear that Mr. Bush's idea of uniting means drawing more Americans toward his side of the divide—not by acquiescing to opposing cultural views but by changing them. Throughout his campaign, he spoke of rolling back the excesses of the 1960s social revolution and forging a "responsibility era" for the new millennium. That's the message he has already sent in naming a staunch Christian conservative as his attorney general, in opposing U.S. financial support for international organizations supporting abortion, and in vowing to expand government support for "faith based" organizations to provide social services. "Some people think it's inappropriate to draw a moral line," he said when announcing his White House bid 19 months ago. "Not me." Such rhetoric—even when couched in the more-universal language of morality rather than that of religion itself—runs the risk of repelling some of those he seeks to attract.

Poll Results

The extent of the new president's challenge is shown graphically in a new Wall Street Journal/NBC News poll. Among Americans who say they attend church at least once a week, 48% say it's most important for the new president to restore moral and family values, while 37% say it's most important for him to maintain economic growth. Among those who don't attend church at all, 59% think the most important mission is maintaining economic growth, while only 25% say it is restoring moral and family values.

And the racial divide—which persists notwithstanding the conservative social views held by many African-Americans—has become a chasm. Among white Americans, 55% say they have positive feelings toward Mr. Bush; just 13% of blacks do. Almost half of white Americans say they are confident that Mr. Bush has the right set of personal characteristics to be president; only 6% of blacks feel that way. Almost six in 10 white Americans say they are pleased with Mr. Bush's appointments so far, but just 22% of blacks are pleased. That's in spite of the fact that by placing both Colin Powell and Condoleezza Rice in key national-security jobs, Mr. Bush has arguably given blacks a higher profile in his cabinet than they have had in any previous one.

Disparate Camps

The challenge of reconciling the disparate camps has been much on the new president's mind. He says he has read parts of conservative historian Gertrude Himmelfarb's book "One Nation, Two Cultures," which describes the gap between "strict" and "loose" American approaches to traditional moral standards. A top aide says he discussed cultural divisions in his recent private meeting with President Clinton at the White House earlier this month. His inaugural address—expected to be brief, at just over 10 minutes—will be his first major attempt to identify common ground.

The journey toward cultural renewal resonates in Mr. Bush's biography. Born into privilege, he lived through the 1960s social revolution as a student at Yale and Harvard and a self-described "irresponsi-

Bush Risks Widening Cultural Gap

Continued From Page A1

become a born-again Christian teetotaler and began laying the groundwork for the political career that has brought him to Washington.

"He speaks of what he has lived," says William Bennett, the conservative author and former Republican cabinet member. An instinctual politician rather than an intellectual one, Mr. Bush has nonetheless found affirmation in the writings of cultural conservatives such as Marvin Olasky and Myron Magnet.



The Journal/NBC survey shows that Americans credit his sincerity on issues of culture. He is rated most strongly—with three in five respondents rating him positively—for representing "traditional American values" and having "high personal standards that set the proper moral tone for the country." Says Democratic pollster Peter Hart, who conducts the survey with his Republican counterpart Robert Teeter, "These personal qualities are what he has clearly established at the outset of his presidency."

Allies say Mr. Bush can sustain that momentum in two ways. One is by using the bully pulpit, and accentuating the contrast with Mr. Clinton, whose personal scandals undercut his own attempts to sound traditional cultural themes. The other is by pressing a domestic-policy agenda that, while ranging from education overhaul to Social Security privatization to the next stage of welfare reform, sounds a consistent theme of increased personal responsibility.

'The Right Direction'

Mr. Bush also has an advantage in the prevailing social trends of the 1990s: declining crime, welfare rolls and teen pregnancy. The culture "is already moving in the right direction," says Bush political strategist Karl Rove, citing rising religious observance among baby boomers.

Yet those developments exist side by side with rising secularism. The simultaneous developments, says John Green, a leading scholar of religion and politics at the University of Akron, have sharpened the division between the two camps.

The cultural contrast has been heightened by the prosperity of the past decade. Boom times have reduced concern about the economic gap between the haves and the have-nots and helped focus more attention on the cultural divide.

The results of this shift were underscored by exit polls from last November's election. Bush's support across the income scale varied only slightly. About 47% of voters with incomes from \$30,000 to \$50,000 backed him, just slightly less than his 54% showing among those with incomes above \$100,000. By contrast, his support varied far more according to voters' religious practice. Mr. Bush received 63% support among voters who attend church more than once a week, nearly double his 32% showing among those who never attend. His support varied sharply depending on whether voters were married or single, lived in rural or urban areas, and whether they owned guns or not.

In states that Mr. Bush carried decisively, stretching from the South through the Plains states and Rocky Mountains, 73% of residents "completely agree" that everyone will be called before God on Judgment Day, according to a recent analysis by the Pew Research Center; just 47% agreed with that view in states that Mr. Gore won decisively, which include California, New York and Illinois. Thirty-eight percent of Bush-state voters say school boards should have the right to fire gay teachers, compared with 22% in Gore states. Three in 10 residents of Bush states say women should return to traditional roles, compared with 18% in Gore states.

Shifting Landscape

"The political divisions of midcentury, which were more often than not economic, have largely been overcome or displaced by cultural divisions," says William Galston, a former domestic-policy adviser to Mr. Clinton.

Until personal misbehavior shattered his credibility, Mr. Clinton himself found success on that shifting landscape by using culturally conservative themes to bolster his proposals on issues such as welfare and crime. But Mr. Clinton was trying to apply moderation to the approach of a party that mainstream Americans be-

lieved had veered too far toward moral permissiveness. By contrast, Mr. Bush leads a GOP struggling to shed a reputation for intolerance, even as its conservative base fears leaders haven't done enough to promote traditional moral standards.

Mr. Bush could run afoul of one side of the cultural divide or the other by doing too much—or too little. Some conservatives want the new president to embrace a quick legislative attempt to outlaw so-called partial-birth abortion, a ban Mr. Bush supports but hasn't made a top priority. Though the ban enjoys broad support in public-opinion polls, some GOP strategists privately want Mr. Bush to avoid a subject that has bedeviled other party candidates.

In the Journal/NBC poll, 49% of Americans express concern that Mr. Bush will "go too far" in regulating abortion; 54% express that concern about his advocacy of private-school vouchers, and 45% about appointing conservative justices to the Supreme Court.

Bully Pulpit

As the Ashcroft nomination has demonstrated, any overtly conservative gesture will spark discord, eliciting cheers from the right and an outcry from the left. But

'The purpose of presidential leadership has always been to try to create some civic faith.'

even a temperate use of the bully pulpit, such as a push for "family values," could get Mr. Bush into trouble, especially with cultural liberals dominating the media.

"The words 'homophobic,' 'antifeminist' and 'intolerant' will very quickly be applied to even gentle discussions of elevating the traditional family," cautions the University of Akron's Mr. Green.

The Rev. Eugene Rivers, acclaimed by politicians in both parties for his work among troubled youth in Boston, says Mr. Bush's opportunity for success lies precisely in his willingness to speak boldly on behalf of "faith based" approaches to social problems—and to back up his words with money.

"Standing for right is politically divisive," says Mr. Rivers, an African-American who delivered a benediction at last summer's Democratic convention and also recently met with Mr. Bush in Austin, Texas. One reason Mr. Clinton fell short, he adds, is that he wasn't willing to draw

Two Americas?

People who back George W. Bush differ widely in cultural orientation from those who oppose him. A look at the disparate camps:

Those who attend church more than once a week

Bush	63%
Gore	36%

Those who never attend church

Bush	32%
Gore	61%

Gun owners

Bush	61%
Gore	36%

Non-gunowners

Bush	39%
Gore	58%

Residents of rural areas

Bush	59%
Gore	37%

Residents of cities over 50,000 population

Bush	36%
Gore	61%

Married voters

Bush	53%
Gore	44%

Source: Exit polls, Nov. 7 election

moral lines sharply enough.

The effort by Mr. Bush and his top aides to craft tomorrow's inaugural address has in large part been an attempt to strike the right balance for governing a divided nation. "The purpose of presidential leadership has always been to try to create some civic faith," says one senior adviser. "You have to find values that are common but not trivial. . . . That's never an easy task. We're neither a liberal nor a conservative country."

What Mr. Bush's team cannot predict is whether issues of culture and values, which surged to the fore in recent years amid unprecedented economic prosperity, will recede in the face of looming economic strains. There's some evidence that that already is starting to happen. In the Journal/NBC poll, more respondents believe, by 46%-37%, that "maintaining economic growth" should be a higher priority for the new administration than "restoring moral and family values." As recently as October, the breakdown was 42%-28% in favor of values. That change could jeopardize Mr. Bush's slender electoral coalition, since cultural politics helped him draw votes last fall from critical swing voters—especially women in working-class suburbs—who would otherwise lean toward Democratic stances on issues such as education and health care.

Economic conditions aside, Mr. Clinton may himself reduce the political voltage of the values debate merely by leaving the White House. "The sense of two cultures has been exacerbated by Bill Clinton," notes Republican pollster Neil Newhouse. "Once he's out of office, the landscape may be totally different in six months."

The World

Russia's Latest Dictator Goes By the Name of Law

By MICHAEL WINES

OF the torrent of words unleashed in the last decade to describe Russia's experiment in self-government, maybe none are more revealing than the ones President Vladimir V. Putin uttered last year as he assured Russians that their democratic future was secure. The days of strongman rule are over, he said; in the new Russia, there will be only one dictatorship: a "dictatorship of the law."

A democracy, defined in terms of dictatorship: the concept is Russian to the marrow. For all its revolutionary rhetoric and flirtation with anarchy, what this sprawling nation knows best — almost all it has known — is order, imposed from above.

And after a year in power, that is what Mr. Putin has delivered: a dictatorship of the law, with greater emphasis on the first noun than the second.

Through deft and sometimes pitiless use of Russia's convoluted legal system, Mr. Putin's Kremlin has managed to produce a measure of order and even modest prosperity that his embattled predecessor, Boris N. Yeltsin, could only dream of. The days when tycoons ran the economy and owned politicians seem largely over. The governors of the 89 provinces, once little czars who openly scorned Moscow's orders, are largely docile.

The ideological gridlock that stalled Mr. Yeltsin's capitalist reforms has melted away, enabling the Kremlin to push through pension reforms, a flat tax and other thoroughly liberal economic measures.

But the cost has been extraordinarily high. Some of Mr. Putin's opponents are in self-imposed exile, driven abroad by highly selective — some would say political — criminal investigations. Others have been politically neutered by new laws or new twists on old ones.

Russian democracy now speaks with but one voice. Just 18 months ago, leaders of five ideological factions were waging a pitched public battle to succeed Mr. Yeltsin. Now there is only Mr. Putin, a man of no classifiable ideology beyond building a strong Russia, his rule endorsed by three of every four Russians, according to polls.

Mr. Putin's increasingly obvious authoritarian bent leads some experts to conclude that Russian democracy is about to hurtle off the rails. But the better question may be whether Russian democracy is simply on an altogether different track.

Mr. Putin has said more than once, of course, that Russian democracy will never parrot the West's liberal model, and that he believes a strong state is a guarantor of freedom, not a threat to it. He also makes no apologies for breaking eggs to make his democratic omelet: in Russia, he said in an interview last summer, even

nearly half his government programs by decree, and rewrote an entire constitution after putting down a communist putsch in 1993. And Mr. Putin's calming effect has even extended to the state parliament, where the lower house, the notoriously fractious Duma, has experienced a marked drop in fistfights.

The question is where a strong state ends and a strongman begins. And among many outsiders, the fear is that Mr. Putin's orderly democracy is being imposed without any of the niceties — like a compact between the governed and the government — that give the system lasting legitimacy.

Indeed, quite the opposite. "Putin is clearly aware that the development of the country depends on his ability to create some kind of predictable legal certainty," said Stephen Holmes, an expert on Russian politics

Everyone bends the rules,
but Putin pursues only some.
Guess who, and why.

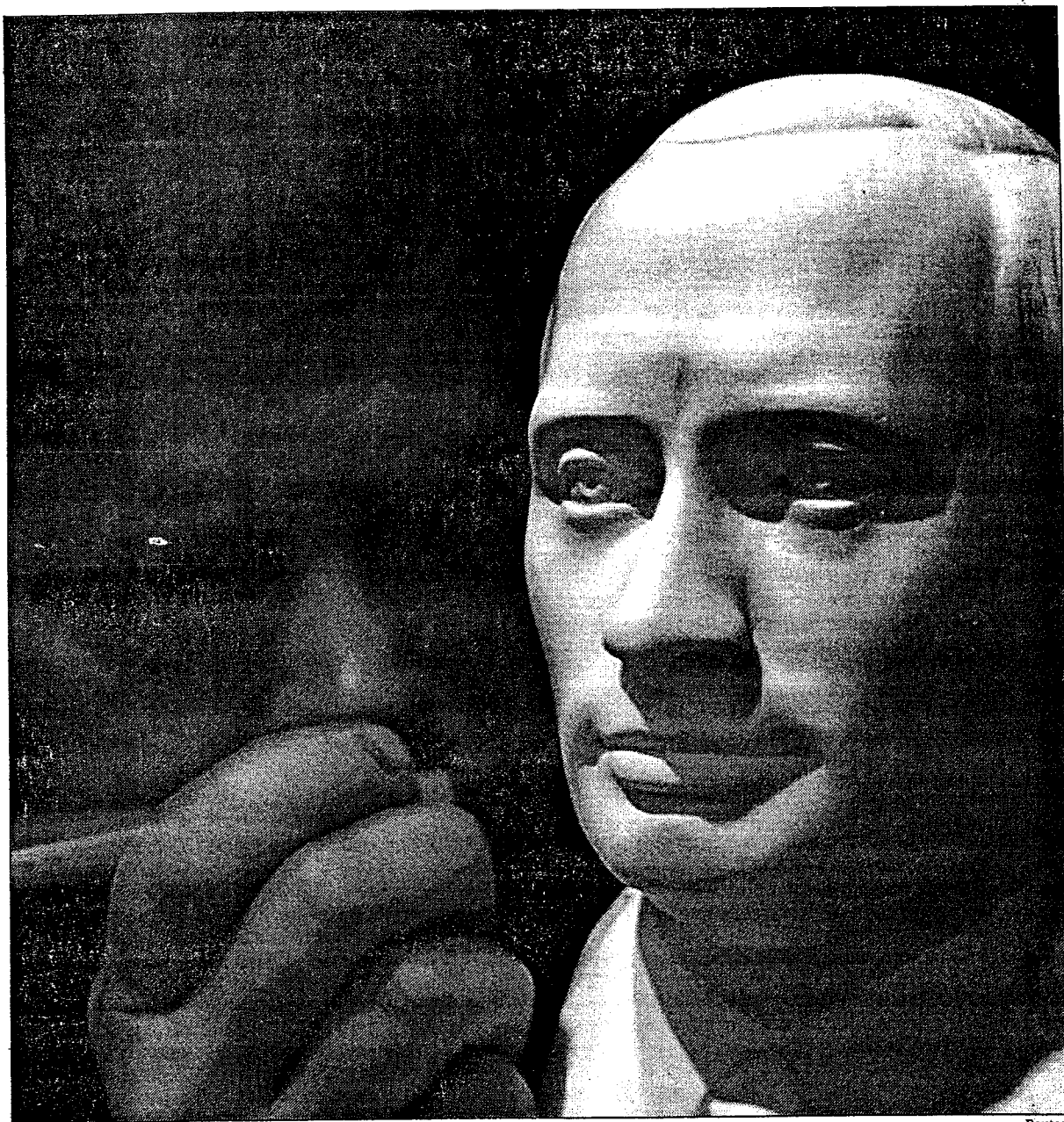
and professor at New York University's school of law. "But the law is being used almost at all levels as a threat which can be applied or not applied by officials who can then attract concessions."

"That isn't the rule of law," he said. "It's the use of a rule that actually instills a sense in people that they don't know what to expect" — a state that, in Soviet times, might have been called fear.

LOOK at last week's Russian police blotter, and judge for yourself where the legal dictatorship is going:

On Tuesday, Moscow prosecutors jailed the top fiscal officer at the Media-Most press empire, operator of Russia's only independent television network and a powerful critic of the government, on fraud charges. The arrest was part of what has universally come to be seen as a political vendetta: months of previous raids, arrests and charges against Media-Most officials have yet to produce a conviction or, sometimes, even to be explained. Asked about it, Mr. Putin says he will not meddle with the wheels of justice.

On Thursday, New York F.B.I. agents arrested Pavel Borodin on a warrant secured by Switzerland, which has charged him with laundering \$25 million tied to a notorious kickback scheme involving a 1990's renovation of the Kremlin grounds. Mr. Borodin is the Kremlin official who first brought Mr. Putin to Moscow



Reuters

Vladimir Putin has set out to bring more order to Russia, from the top. A sculptor models a bust of him.

ed the detainee's immediate release.

These are not isolated incidents.

Earlier this winter Aleksandr Rutskoi, a critic of the Kremlin who is governor of Kursk province, was bounced from his own re-election ballot for the slightest of reasons: misstating the size of his apartment and neglecting to report that he owned a used car.

When the newspaper Izvestia published harsh critiques last month of the Kremlin's plan to restore Stalin's national anthem, the government abruptly filed suit to reverse the 1990's privatization of the newspaper's headquarters — and then just as abruptly withdrew the suit, having sent its message of displeasure.

Boris Berezovsky, a powerful if widely despised tycoon who also opposes Mr. Putin, has fled the country under criminal investigation of his involvement in Aeroflot, the Russian airline. So has Vladimir Gusinsky, the head of Media-Most now under house arrest in Spain on

In July, Mr. Putin said the state had only picked up the cudgel against businessmen who sought to exercise political influence. Yet some tycoons — notably Roman Abramovich, an oilman who used his wealth to win a governorship in a remote Siberian province — have escaped the state's wrath.

The Kremlin insists that nobody is being prosecuted unfairly, and in a sense, it may be right. The mass privatization and spoils-divvying that followed the Soviet collapse in 1991 was so riddled with favoritism and rule-bending that a diligent lawman could find something wrong almost anywhere.

Everyone in Russia is guilty; the only issue is who gets caught. The situation is virtually the opposite of the Soviet system, in which almost everyone was innocent but lived in terror of being seized on trumped-up charges anyway. Whether the new arrangement will hasten a government that is also the opposite of Soviet



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**Censorship: the Comparative Influences of Constitutions,
Laws and Culture. Perspectives by Chief Justice Hughes,
Law Prof. Catherine A. MacKinnon, Lenin and Mr. Dooley."**

**By Chuck Stone
Walter Spearman Professor
UNC School of Journalism and Mass Communication**

**Affiliated Faculty
Center for Slavic, Eurasian and East European Studies**

Lecture at the 11th Festival of Legal Learning, School of Law,
The University of North Carolina at Chapel Hill, February 9 & 10,
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One of the recurring self-evident truths that ideologically
different politicians occasionally proclaim is that we are a
nation of laws, not men. Men are subject to capricious decisions,
they contend, while the law represents a comforting immutability,
capable of withstanding human arbitrariness.

Nothing could be further from the truth. Men - and in
today's more enlightened society, men and women - make the laws
as legislators or judges; they also change the laws. As Justice
Holmes once wrote: "The common law is not a brooding omnipresence
in the sky, but the articulate voice of some sovereign or quasi-
sovereign that can be identified." (Southern Pacific Co. v.
Jensen 1917).

In Thomas Jefferson's first inaugural address in 1801, he
extolled one of democracy's common law touchstones, parts of the
Bill of Rights and the Constitution's Article I, Section 9.

"It is proper," he reminded his audience in their democracy,
only 11 years old, "that you should understand what I deem to be
the essential principles of our government and consequently those
which ought to shape its administration."

After reciting a litany of democratic principles, Jefferson
singled out four pivotal freedoms as "the bright constellation
that has guided our steps": freedom of religion; freedom of the
press; freedom of person under the protection of habeas corpus;
and trial by juries impartially selected."

Of the four freedoms that Jefferson cited, the framers of the Constitution had included the right to a writ of habeas corpus in Article 1, Section 9, paragraph 2, according it a more immediate priority than the Bill of Rights.

In Marshall McLuhan's "global village" of today, those four freedoms are not radical ideas, even for nations existing under despotism. Russia's veneer of democracy is able to practice a genteel Machiavelism that censors journalists whom it deems enemies of the administration, denies habeas corpus, and institutes search and seizure of a television mogul's property, while simultaneously denying culpability for all of these actions.

What endowed Jefferson's pronouncement of the four freedoms with a historic majesty was its reaffirmation in 1801. In that same year, those four freedoms were non-existent in Russia. These differences resulted from two diametric cultures.

Last year, I delivered five lectures at Moscow State University's Institute of International Relations on freedom of speech, freedom of the press, censorship, multiculturalism and a global reportorial paradigm to transcend cultural barriers.

In an effort to establish at least one common ground with the students (all of whom spoke fluent English), I asked what four rulers they would nominate for a Russian monument comparable to our presidential Mt. Rushmore. Two nominations were easy - Peter the Great and Catherine the Great. After a few of them agreed with my suggestion of Lenin, the voting hit a verbal stonewall.

Catherine II, Empress of Russia celebrated as Catherine the Great, was a brilliant architect of Russian foreign policy. She transformed Russia into a great power, gaining recognition as one of the 18th century's most enlightened despots. Domestically, she issued reforms for the nobles and middle classes, but did nothing for the enserfed peasants whose position had deteriorated into a more miserable subjugation than before her despotic reign.

Catherine II died in 1796 at the age of 67, only five years before Jefferson's first inaugural address. Although American democracy was only 11 years, white males already had elected two presidents in a limited democracy that denied women the right to vote, restricted Indians to reservations and incarcerated on plantations African slaves whose condition was, ironically, more vassalized than the Russian peasants.

But it is important to note that America's 11-year-old democracy was a built-in corrective culture that facilitated progress by incorporating periodic change. By 1919, women had been enfranchised and African Americans were emancipated into citizenship, no longer "three-fifths of all other persons."

Even though still constitutionally segregated, African Americans also benefitted during Reconstruction from a brief fling with representative government as U.S. senators, representatives, governors, state elected officials and speakers of the House. Despite America's electoral and political flaws in 1919, the nation had clearly established a culture of democracy.

But if 1919 was a year for expanding the culture of American democracy, with its people's periodic exercise of their First Amendment rights, 1919 was also the year for perpetuating the culture of Russian tyranny through Lenin's Bolshevik revolution. The communists censored freedom of speech, shuttered freedom of the press, declared war on the churches and prevented the people from petitioning government for their grievances.

Lenin's dictatorship was an easy transition in history. After 372 years of tsarist rule beginning with Ivan the Terrible in 1547, generations of Russians had grown accustomed and inured to a national infrastructure of censorship as a centripetal matrix of their culture. Lenin was merely the latest chief censor in a long line of tsarist censors.

In our discussion, however, of the interaction of culture, laws, constitutions and censorship, we need to define our terms.

I would never have the presumptive chutzpah to attempt a definition of the law at a law school festival of legal learning of law school professors, lawyers and legal scholars. I do not suffer from modesty, but I do try to avoid succumbing to stupidity.

Because of a graduate degree and two visiting professorships in sociology, I am, however, on safer heuristic ground in attempting a definition of culture.

Culture is a complex domain of life, comprising mores, customs, laws, values, technology, language, religion, geographical adaptations and other factors that humans develop, nurture and pass from one generation to the next by a "self-monitoring group" of parents, teachers, educators, merchants, lawyers, judges, journalists, writers, scientists, movie directors and griots.

A **constitution** is the organic and fundamental law of a nation, written or unwritten, that specifies the basic principles to which its internal life is to be conformed and its government to be organized.

The distinction between written and unwritten is included because nations such as Great Britain and Israel do not have a written constitution as do America and even Russia and the People's Republic of China. The interpretation of the constitutions depend on a nation's culture and chronology.

In 1907, Chief Justice Charles Evans Hughes exalted our Constitution in an Elmira N.Y. speech, but with a qualifying caveat: "We are under a Constitution, but the Constitution is what the judges say it is." (my emphasis).

In 1911, South Carolina Gov. Coleman L. Blease dissented from Hughes' national unifying doctrine by exalting Southern culture over the Constitution and in effect, declaring that Southern culture, not the Constitution, ruled South Carolina: "Whenever the Constitution comes between men and the virtue of white women of South Carolina, I say -- to Hell with the Constitution."

Sir William Blackstone, English jurist, wrote in 1765: "That the king can do no wrong is a necessary and fundamental principle of the English Constitution."

The German scholar Hans Frank wrote in 1936: "Our Constitution is the will of the Fuehrer."

Pope Leo XII insisted in 1885 in his Immortale Dei: "All Catholics should do all in their power to cause the constitutions of states and legislation to be modeled on the principles of the true church."

Law Professor Catherine A. MacKinnon contends: "Those with power, not usually women, write constitutions...From a feminist perspective, male supremacist jurisprudence erects qualities valued from the male point of view...[T]he legitimacy of existing law is based on force at women's expense. A feminist theory of the state has rarely been imagined; systematically, it has never been tried." (Toward a Feminist Theory of the State by Catherine A. MacKinnon).

Lenin dismissed any constitutional legitimacy of a Communist state: "The revolution's decisive victory over tsarism means the establishment of the revolutionary-democratic dictatorship of the proletariat and the peasantry...The dictatorship of the proletariat is nothing else than power based upon force and limited by nothing - by no law and by absolutely no rule."

Mr. Dooley, Finley Peter Dunne's fictional, irreverent Irish wit at the turn of the 20th century, tied the Constitution to Chief Justice Hughes' reverence for its supremacy from the judges:

"There's wan thing I'm sure about."

"What's that?" asked Mr. Hennessy.

"That is," said Mr. Dooley, "no matter whether th' constitution follows th' flag or not, th' supreme coort follows th' illiction returns." (Mr. Dooley's Opinions, R.H. Russell, publisher).

Russia's democracy has not been established long enough to "follow any election returns." Although its constitution includes almost identical language contained in America's Bill of Rights (as will be shown later), it has not acquired enough historical antecedents to become a cultural democracy. Today, censorship in Russia may not be as brazen as its counterpart under communism or tsarism, but it is like that radio hero, the Shadow, who knows what evil lurks in the heart of its rulers.

Nonetheless, it is still possible to construct a definition of censorship that can apply to the entire global village.

Censorship, as a *modus operandi* in any society, consists of 12 elements -- the (1.) cyclical (2.) suppression, banning, expurgation or editing by (3.) an individual, institution, corporation, group or government that (4.) enforces or influences its decision against (5.) the public to (6.) prohibit (7.) any written or pictorial materials which (3.) deems (8.) destructive to family values, national security and other constitutionally protected speech and which (3.) deems (9.) so obscene or pornographic as to be (10.) "utterly without redeeming social value," or (11.) lacking literary, artistic, political and scientific value as (12.) determined by "contemporary community standards." (See Roth v. United States, 1957, Jacobellis v. Ohio, 1964; Miller v. California, 1973 and American Booksellers Association v. Hudnut, 1986.)

While those four landmark Supreme Court cases rejected the constitutional protection of pornography, their decisions were also rooted in a constitutional alliance with America's culture.

The law is not litigated in a cultural vacuum. Instead, the law and culture have continually interacted and influenced each other throughout this nation's history.

But when the Supreme Court hands down a decision that goes so egregiously against the nation's cultural grain, the people have two options - ignore it or begin to mobilize a consensual public movement that renders that Supreme Court decision impotent.

The Dred Scott v. Sandford, 1857 decision, for example, outraged enough Americans to strengthen and accelerate the abolitionist movement. One constitutional law book contends: "It is generally acknowledged that Dred Scott was one of the great disasters of the Supreme Court." (Constitutional Law by Stone et al). Another book characterized the decision as "controversial and ill-fated." (Constitutional Law by Gerald Gunther and Kathleen Sullivan).

A less historic, but still controversial Supreme Court decision was not so much a disaster as it later became an object of ridicule. Bradwell v. Illinois, 1873, ruled that women were not qualified to practice law because of divine ordination. As Justice Bradley wrote in a massive exercise in retardant scholarship:

"The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many occupations of civil life. The constitution of the family organization...is founded in the divine ordinance...

"It is true that many women are unmarried and not affected by any of the duties, complications and incapacities arising out of the married state but these are exceptions...The paramount destiny and mission of woman, are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator."

More recently, in Boy Scouts of America v. Dale, 2000, the Supreme Court ruled 5-4 that the organization had the right to dismiss a troop leader after learning he was homosexual. Chief Justice Rehnquist wrote in the majority decision that the right to freedom of association outweighed a New Jersey statute prohibiting discrimination against homosexuals.

But, just as the twin cultures of democracy and a changing public opinion eventually precipitated the reversal of Plessy v. Ferguson, 1896; Bradwell v. Illinois; and Dennis v. United States, 1951, it is possible that within the next eight years, widespread enlightened support for the right of homosexuals to participate fully in the life of organized America will be the catalyst to reverse the Supreme Court's 2000 decision.

Already, a growing number of school systems, church groups and an organization of rabbis have withdrawn permission from the Boy Scouts of America to use their facilities for meetings.

If, as public opinion and prominent leaders seem to be heading toward broader support for gays and lesbians, the Supreme Court case is a classic example of how culture, the Constitution and the court interlock to reaffirm ground rules for freedom of speech and freedom of association.

One other controversial Supreme Court decision, Bush v. Gore, 2000, requires a comment.

How controversial and how damaging to the public's respect for the Supreme Court's judicial integrity is a question that participants in this Festival of Legal Learning are far more qualified to assess than I.

But in my 42 years experience as a journalist and professor, I do not recall 554 law professors at 120 law schools taking out a full-page ad in The New York Times, accusing a Supreme Court five-justice majority of suppressing the facts and in so doing, tarnishing the court's "own legitimacy."

In the last seven years, two books have provided case studies of the sociological interaction between culture and race.

Six years ago, a distinguished African American professor at Princeton University, Cornel West, wrote a book, affirming race as a continuing power in the national dialogue: Race Matters.

Last year, two Harvard scholars, Lawrence E. Harrison and Samuel P. Huntington, authored an anthology of a historical self-evident truth about human behavior: Culture Matters: How Values Shape Human Progress."

A third literary work would seem to be a prima facie candidate for completing this symbiotic triad of our national heritage: The Law Matters.

In all three of those efforts, however, what matters is essentially dependent upon two questions: who decides what matters and what ideological propensities controlled their decisions. Answers to those two questions can be demonstrated.

In a TIME magazine review by Lance Morrow of Culture Matters, Morrow reports Huntingdon's speculation as to "why, say, South Korea and Ghana, [with] roughly the same GNP in 1960, went on to such different economic destinies - South Korea becoming an industrial giant, Ghana remaining pretty much unchanged. 'It seems to me,' Huntingdon writes, "South Koreans valued thrift, investment, hard work, education organization and discipline. Ghanians had different values. In short, cultures count."

So do racism and ideology.

A racist pre-determination may have influenced Huntingdon to compare South Korea and Ghana instead of South Korea and North Korea, both regions of the same ethnic heritage that goes back to the Hermit Kingdom in the first century. In 1948, however, the country was divided between a Soviet Union-backed North Korea and a United States-backed South Korea.

The economic logic and cultural fairness of Huntingdon's comparison demands a closer scrutiny. As the following table* proves, Ghana had both a higher gross development product (GDP) and higher per capital GDP than North Korea.

Query: why, then did Huntingdon substitute a comparison of Ghana's value of "thrift, investments and hard work," instead of North Korea's?

(* New York Times World Almanac and Book of Facts, 2001)

		South Korea	North Korea	Ghana
GDP	-	\$584.7 bil.	\$21.8 bil.	\$33.6
Per capita GDP	-	\$12,000	\$1,000	\$1,800
Life expectancy				
Males	-	71.13	67.76	55.38
Females	-	78.65	73.66	59.62
Infant mortality -				
(per 1,000				
live births	-	7.35	24.29	74.77
Literacy	-	98%	95%	64%

In three cultural domains, however, that have an ancillary influence on a nation's capacity to raise its standard of living - life expectancy, infant mortality and literacy - Ghana falls far behind both North and South Korea, particularly in the infant mortality rates. While North Korea's infant mortality rate is three times higher than South Korea's, Ghana's infant mortality rate is ten times that of South Korea's.

But Huntingdon never deigned to focus on the total cultures of the three nations, preferring to fall back on an a priori racial predilection that was to be expected from the book's acknowledgements. Both co-authors gratefully acknowledge the help they received "at the outset" from the Hoover Institution, one of the nation's most prestigious and strongly conservative think tanks.

Forty-two years ago, I was one of four field representatives who traveled around the nation, except in the South, setting up Ford Foundation-subsidized adult discussion groups on world affairs and American foreign policy.

As two of us were driving to a discussion group's meeting in Worcester, Massachusetts, we passed a courthouse. Above the courthouse's portal was a quotation by a distinguished Massachusetts senator, George Frisbie Hoar, admonishing his electoral descendants: "Obedience to law is liberty."

"Is that a democratic or a fascist concept?" I asked my colleague, Jerry Ziegler who later became dean of Cornell University's School of Ecology. Jerry replied, "Let's ask the group." Even though our inquisitorial heresy challenged the Bay Staters' patriotism, the question still provoked one of the 10 sessions' most tumultuous discussions.

The issue, however, is not so much one of political semantics as it is based on who ultimately controls government.

A cultural distinction does exist between President Lincoln's trilogy, "of the people, by the people and for the people," and Russian president Vladimir Putin's "dictatorship of the law," two different historical experiences and two different cultural heritages.

National pride spawns nationalistic pride. It becomes easy for Russia and America, an absolute monarchist in Saudi Arabia and a Chinese communist head of state to insist that obedience to their laws is liberty. Massachusetts Sen. Hoar would have been shocked by this misapplication of his well-intentioned patriotism.

Even worse, each of these rulers would logically claim a cultural justification for their government's judiciary.

Although my definition of censorship seems to require a brobdignagian tapestry for its banning and suppressing brushes, it neither dilutes nor weakens the First Amendment's historical integrity. Freedom of speech and freedom of the press are neither unqualified nor absolute freedoms.

I am not a First Amendment absolutist, as are so many of my professional colleagues, that places a higher value on the right of the press to exercise its freedom of expression, even when it collides with the rights protected by the Fifth, Sixth, Seventh and Eighth amendments. I favor the "balancing" of competing interests, as enunciated by Justices Frankfurter and Harlan.

When such a Miltonian collision occurs, for example between the First Amendment-protected free press and the sixth Amendment-protected fair trial by an impartial jury, an accommodation of what Justice Bork called "competing gratifications" or a balancing of the equities must take place to protect equally the rights guaranteed by all of the amendments.

Yet, among many journalists, a subliminal perception exists that because the First Amendment is the first of the Bill of Rights' 10 amendments, it is primus inter pares or first among equals. Adopting that line of reasoning leads to a gossamer conclusion that the First Amendment's establishment clause -

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof" - has a higher political value than the second and third parts of the First Amendment - "abridging the freedom of speech or of the press" because those two parts are not first.

A distinguished journalistic legend, Eugene C. Patterson, the Pulitzer Prize-winning editor of the Atlanta Constitution and later chief executive officer of the St. Petersburg Times, once questioned the First Amendment's claim to absolute primacy. In the words of a phrase made famous by J. William Fulbright, Patterson "dared to think unthinkable thoughts," in a lecture eight years ago at Duke University titled, "The First Amendment Does Indenture the Press with Companion Obligations.

Patterson's first observation was a unifying call to journalistic arms. "The press is obligated to defend the First Amendment against any attempt to limit it." The second observation, however, may have raised a few journalistic eyebrows. "The public's grant of freedom obligates the press to do its job."

But the third observation was downright adversarial. "If the press forfeits, the public can always take back the freedom it gave."

Even Thomas Jefferson who had an unrequited love-hate relationship with newspapers never suggested the possibility that the First Amendment could be curtailed. In a letter to Edward Carrington, Jefferson accorded newspapers a permanently protected status in democracy's pantheon when he wrote:

"Were it left to me to decide whether we should have a government without newspapers or newspapers without government, I should not hesitate a moment to prefer the latter."

Patterson further warned his colleagues that "the press owes it to the court to come before them as adherents to high standards and not as claimants of the right to be reckless under the First Amendment."

The courts, however, have been careful to respect the constitutional permissibility of freedom of speech; the right not to be a witness against oneself; the right to a speedy trial by an impartial jury supported by compulsory process for obtaining witnesses; the right of trial by jury; the right not to be required to pay excessive bail or be denied a writ of habeas corpus.

Jefferson felt sufficiently strong about habeas corpus as a guarantee of freedom of person as to mention it in his inaugural address.

But, even acknowledging the imperative for equal judicial treatment of all First Amendment cases, it is still arguably true that the freedom of expression-censorship controversies are the multitudinous centerpieces of the 383 Supreme Court cases on the First Amendment decided between 1876 and 1997.

The court must answer two questions in deciding issues involving content-based restrictions: 1.) In what circumstances may the government, consistent with First Amendment protections, restrict speech because its expression, i.e., subversive activity, may cause harm to government, to private persons or to society? 2.) What criteria does the court use to determine "low value speech" that is not constitutionally protected, such as false statements of fact, group defamation, obscenity, pornography, hate speech, offensive speech and "fighting words?"

In addition to constitutionally unprotected "low value speech," three institutions - prisons, the military and schools - as "restricted environments" do not enjoy First Amendment-protected free expression. Even though the U.S. Constitution's First Amendment does make exceptions for freedom of speech and freedom of the press, it still must contend with an empirically defined history ingrained in the culture of American democracy.

This is not true of Russia and China. Both have constitutions, some of whose phrases are almost identical to the U.S. Constitution.

But the Russian and Chinese governments do not abide by their constitution's articles that proclaim protection of the rights to freedoms of religion, speech and the press; trial by a jury of one's peers; no excessive bail; the right to a writ of habeas corpus; the right to confront one's accusers and have supporting witnesses; and the right not to self-incriminate oneself.

The proclamation that is not consonant with the implementation recalls the biblical story of Esau, a favorite of his father, Isaac, who bestowed blessings on his son, Esau. When Esau's brother, Jacob, also sought his father's blessings, Jacob put goatskins on his hands to simulate Esau's hairy hands.

The father heard Jacob's pleas, felt his hands and then said: "The voice is Jacob's voice, but the hands are the hands of Esau."

The words in the Russian and Chinese constitutions that proclaim the protections of freedoms are Jacob's voice, but the American reality of constitutional practice are the hands of Esau.

The following Russian articles delineate the freedoms that are protected by the American Constitution's Article I, Section 9; First Amendment; Fifth Amendment; Sixth Amendment and Seventh Amendment.

Article 22 - "No person shall be detained for more than 48 hours without an order of a court of law." Article 28 - "Everyone shall be guaranteed the right to freedom of conscience, to freedom of religious worship."

Article 29 - "Everyone shall have the right of freedom of thought and speech...The freedom of the mass media shall be guaranteed. Censorship shall be prohibited."

Article 30 - "Everyone shall have the right to association, including the right to to create trade unions."

Article 31 - "Citizens of the Russian Federation shall have the rifght to gather peacefully, without weapons, and to hold meetings, rallies, demonstrations, marches and pickets."

Article 47 - "Anyone charged with a crime has the right to have his or her case reviewed by a court of law with the participation of jurors in cases stipulated by the federal law.

Article 52 - No one shall be obliged to give evidence against himself or herself.

Under President Vladimir V. Putin, has the Russian Federation adhered to these articles? "The voice is Jacob's voice, but the hands are the hands of Esau."

With Putin's private approval, Russia's government has harassed journalists who criticized him and in one instance, was implicated in the firing of a prominent television commentator, Sergei Dorenko.

Putin has made no secret of his intense desire to break up the largest and most powerful television and newspaper combine, Media-Most owned by one of Russia's richest and most powerful tycoons, Vladimir V. Gusinsky.

Media-Most has infuriated the Kremlin with its relentless and acerbic criticism of government corruption, economic policies and Russia's scorched earth-war in the Russian breakaway republic, Chechnyn. Last year, Putin's Kremlin kept up a steady drumbeat of charges against Gusinsky for allegedly swindling \$10 million from the government. Gusinsky was arrested and jailed until international pressures gained his release.

A surprisingly naive U.S. State Department official asked why Gusinsky was not released under a writ of habeas corpus. Gusinsky went to Israel and then fled to Spain where he has been under house arrest, waiting extradition in order to stand trial.

Another powerful tycoon, Boris Berezovsky, was the ultimate Kremlin insider during the Yeltsin presidency with control over major television stations and newspapers. Last November, he went into exile and said he would not return to answer a summons of criminal charges because Putin "is trying to impose his control over the main mass media."

As a USA Today report from Vologda, Russia ponted out on August 4, 2000 under the headline, "Free press struggles in Russia," that the "independent media outlets flounder for survival as national government makes moves to exert even more control."

When Russia's most famous and popular television journalist, Sergei Dorenko, used his prime-time program to criticize Gusinsky's arrest, the government's culpability in the deaths of 116 sailors in the sinking of the Russian nuclear submarine, Kursk, and other government failures, he was warned by a television executive to "get on the team." When Dorenko continued his harsh criticisms, Dorenko said Putin summoned him, saying he thought they were on the same team.

Dorenko reminded Putin for a third time that he was not on anybody's team. Putin implied there would be changes in the television management. Dorenko met Putin again and reminded Putin of Putin's longtime experience with the Russian KGB (secret police). Two months later, Korenko's program was taken off the air

Despite the Russian constitution's article 28 guaranteeing freedom of religious worship, the Russian parliament ignore it by passing a law in 1997 that required all foreign religious groups, especially Protestant and Catholic ones to register.

If the heads of such religious groups were not born in Russia, they can become Russian citizens only through marriage, an impossible requirment for Catholic priests.

"I find there's a lot of misunderstanding about the Catholic Church," Bishop Jerzy Mazur wryly observed to a Los Angeles Times reporter last November. Mazur is one of two Catholic prelates who have been trying to obtain permission to live and work in Russia.

Fortunately, the government has not vigorously enforced the law, according to Lawrence Uzzell, directr of the Keston Institute at Oxford which monitors freedom of religion in the former Soviet Union.

The Russian Orthodox Church strongly supported the new law and some expert observers believe the law is part of a government effort to make the Russian Orthodox church the state religion, thereby winning the support of a grateful ally of the Putin Kremlin by becoming a member of "the same team."

In the Chinese constitution's Chapter Two, The Fundamental Rights and Duties of Citizens (my emphasis), are spelled out for "Citizens of the People's Republic of China."

Article 35 - ...freedom of speech, of the press, of assembly, of association, of procession and of demonstration."
[Editor's Note: Except in Tiananmen Square].

Article 36 - ... freedom of religious belief, [but] "No one may make use of religion to engage in activities that disrupt public order" [a constitutional rationale for banning the popular religious sect, Falun Gong, after it had staged the largest unauthorized demonstrations in Beijing since 1989].

Article 37 - "No citizen may be arrested except with the approval or by decision of a people's procuratorate , or by decision of a people's court...unlawful search of the person of citizens is prohibited.

Article 40 - The freedom and privacy of correspondence of citizens of the People's Republic of China are protected by law...except in cases where, to meet the needs of state security or investigate criminal offenses, public security or procuratorial organs are permitted to censor correspondence in accordance with procedures prescribed by law."

There are no articles or sections in the Chinese Constitution that spell out any prosecutorial and judicial duties and rights of the defendant, jury selection and trial.

China has one of the most omnipresent and omnipotent bureaucracies for censoring movies, books, pamphlets, television programs, newspapers, movie stars, writers and playwrights, especially those which cast aspersions, ridicule, or satire on the People's Republic or on the Chinese people.

Unlike Russia, China, however, makes no pretense at being a democracy and reminds his citizens all through the Constitution's articles that its principles are "under the leadership of the Communist Party of China and the guidance of Marxism-Leninism, and Mao Zedong Thought."

In my Journalism School's course on Censorship, the section on foreign censorship examines the censorious activities of 30 countries from Albania to Zaire. No country exceeds China's continuous, recurring and ubiquitous patterns of government censorship.

In comparing the comparative impact and extent to which a nation's constitution, laws and culture interact, it is clear that culture remains the dominant force that guides the nation's people. A constitution is a fixed star in a culture which may change in response to technological and industrial developments. The essentiality of the culture survives, but it adapts to new political and economic challenges.

Even the laws do not enjoy an immutability comparable to the constitution's steadfast permanence.

Laws are reversed, overturned, replaced, quietly disobeyed, sometimes ignored or simply allowed to die out when they have outlived their usefulness or the people are convinced the laws exert excessive punitive circumscriptions on a people's freedom.

Democracy is a process, not an end and it never surrenders its capacity for the inexorability of change.

As De Tocqueville reported with a certain measure of gleeful smugness in his 1848 epic, Democracy in America, "I have never been more struck by the good sense and the practical judgment of the Americans than in the manner in which they elude the numberless difficulties resulting from their Federal Constitution."