



# ALASKA JUSTICE FORUM

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## Comparing the American and Russian Constitutions

David Mannheimer

The twentieth-century English philosopher and archaeologist Robin Collingwood held the view that it was impossible to understand a system of thought or analysis fully until one understood what questions the framers of that system were attempting to answer. Collingwood applied this mode of inquiry to philosophical studies, but his method is equally fruitful when the task is to understand the constitutions of nations.

In a general sense, of course, the constitution of every nation addresses itself to the same basic issues:

- How will the government be constituted, and how will authority be distributed within the government?
- How will political power be invested in leaders, transferred to new leaders, and revoked prematurely if need be?
- What will be the relationship between the government and its citizens? In particular, what will be the protected rights of the citizenry and the corresponding limits on the power of the state? And what will be the government's obligations to its citizens, and the citizenry's obligations

### Editor's Note

Since 2002, the Alaska Court System and representatives from other Alaska justice system agencies have worked with their professional counterparts in the Khabarovsk region of Russia to examine the issues posed by the administration of justice under the emerging Russian democratic system.

This effort—KAROL (Khabarovsk-Alaska Rule of Law) is one of the partnerships organized under the Russian-

- to the government?
- What will be the relationship between the national government and the various sub-levels of government, as well as the government's relationship with the various cultural, civic, ethnic, and religious groups within society?
- How will the national income and resources be generated, distributed, and regulated?

Sometimes, the answers to these questions will be found in the explicit provisions

American Rule of Law Consortium—a national program that has paired state judicial systems with Russian courts.

The *Alaska Justice Forum* asked Judge David Mannheimer of the Alaska Court of Appeals and Marla Greenstein, Executive Director of the Commission on Judicial Conduct, who have both been involved with KAROL from its inception, to contribute articles to this issue.

of a nation's constitution; sometimes they will be found in what the constitution does *not* say. And sometimes (as, for example, the United States Constitution's original provisions regarding slavery), a constitution will either explicitly or implicitly leave important questions unanswered—deferring the resolution of these issues to later political, or even physical, battles.

Whenever a society asks itself such questions, however, the answers are not

*Please see Constitutions, page 8*

## Editor's Goodbye

This will be the last regular issue of the *Alaska Justice Forum* to appear under my editorship. I will be leaving the Justice Center at the end of April.

The *Forum* is a collaborative work: It involves the combined efforts of all those who work at the UAA Justice Center—and also many individuals outside the Center. I want to thank all who have contributed during my tenure as editor—the editorial board; those who have written articles, discussed ideas and provided feedback; and those who have done the layout, printing and mailing. I am grateful to the many police and correctional officers, attorneys, judges, research analysts, database managers, social service administrators, court administrators, and other civil servants, as well as members of the general public, who have helped me learn about the Alaska community. Their willingness to take my phone calls and answer my questions about the details of their work has helped me shape the publication.

As editor, I have tried to present social science research and

writing in a way that bridges the gap between the world of academic scholarship and the daily routines of those who work in the Alaska justice system.

The research underlying many *Forum* articles is quantitative in nature. While statistical studies can seem rarefied, it would be dangerous to try to fashion public policy for a community of 600,000 people without the insights such research can facilitate. Quantitative research can steady policy discussion which otherwise might be distorted by the latest crime report or by inaccuracies stemming from political posturing. With the *Forum* the Justice Center attempts to foster a solidly grounded discussion that is both humane and accurate.

A final comment—for me, this editorship has been an incomparable position from which to view the state, and I am very grateful to have had this opportunity to participate in Alaska's civic conversation.

—Antonia Moras

## History of KAROL—The Khabarovsk-Alaska Rule of Law Partnership

*Marla Greenstein*

The Alaska justice system's historic partnership with the legal community of Khabarovsk began with a visit to Alaska by Justice John Dooley of the Vermont Supreme Court. Justice Dooley had been active in creating partnerships between various court systems in the eastern United States and the western regions of Russia, under the umbrella of a not-for-profit organization—the Russian-American Rule of Law Consortium. After learning how existing partnerships had begun and flourished between the eastern states of our country and the western regions in Russia, the Alaska Supreme Court decided to participate. The choice of Khabarovsk, in the Russian Far East, was urged by Court of Appeals Judge David Mannheimer, who had visited the region.

The partnership began officially in December 2001, with Judge Mannheimer and myself as co-chairs working with a steering committee of lawyers, judges, and active community members. An initial expression of these efforts involved a visit to Khabarovsk by Judge Patricia Collins and lawyer Steve Yoshida.

In June 2002, we hosted our first partner visit by judges and lawyers from Khabarovsk to Alaska. The purpose of this visit was to plan for the future of the partnership. Because we needed orientation regarding current issues in Khabarovsk and the Khabarovsk jurists, in turn, desired an overview of the Alaska legal system, these initial sessions covered many topics—judicial independence, jury trials in criminal cases, court administration, and development of the legal profession.

The first formal partnership conference took place in Khabarovsk in September 2002. The theme of that initial program in Russia was legal reforms, including a focus on the new Russian Code of Criminal Procedure.

March 2003 brought another Khabarovsk delegation to Anchorage to discuss court management, organization of the bar association, ethics, Alaska's court observer program, and the place of volunteers. The following September, Khabarovsk lawyers and judges working

with Russia's new jury system came to Anchorage for a week of jury trial observation and study. That trip was followed by a conference in Khabarovsk in December that Alaska Federal Public Defender Rich Curtner and Judge Eric Smith helped to facilitate.

Judge Collins took over the role of co-chair, replacing Judge Mannheimer in 2004. In September 2004, yet another group from Khabarovsk came to Anchorage and Juneau to study commercial court issues and bankruptcy law. The following June, Rich Curtner with Justice Paul DeMuniz of the Oregon Supreme Court taught a class on the jury at the law school in Khabarovsk. This was followed by a conference on civil litigation for legal practitioners in Khabarovsk, in which Judge Patricia Collins and then-Chief Justice Alexander O. Bryner participated.

The past two years have been equally rich in programming. In September 2005, a delegation of Russian women lawyers and judges came to Alaska for a view of our handling of family violence and juvenile justice issues. A juvenile justice conference was held in Khabarovsk in June 2006 with retired judge Elaine Andrews, Justice Walter L. Carpeneti and Juneau Mayor Bruce Botelho participating from Alaska. Therapeutic and preventative models for community-court cooperation were presented, along with the concepts behind children's advocates in our

courts. September 2006 brought another group from Khabarovsk to learn Alaska's approach to court transparency and court employee ethics.

Our pattern of hosting a group of Khabarovsk lawyers, judges, law professors and court administrators in Alaska as a prelude to a larger conference on the same topic in Khabarovsk has proven to be a successful model. This past year I traveled with Judge Collins and Deputy Attorney General Rick Svobodny to Khabarovsk to discuss court transparency issues, the role of technology, privacy issues, public accountability, and the effect of all of these on the criminal justice system. Last September, we hosted a group in Alaska to focus on the voir dire process, public access to the courts, media issues, and the role of plea-bargaining.

The history of this project is more than a mere chronology: It shows the evolution of a sophisticated dialogue between legal professionals and those affected by the courts. While cultural, political, and geographic differences have created features particular to the Russian and American systems, our goals are the same: to improve justice in our communities, creating and maintaining fair, predictable, accessible courts.

*Marla Greenstein is Executive Director of the Alaska Commission on Judicial Conduct and co-chair of the KAROL partnership.*

**Figure 1. Location of Khabarovsk in Relation to Alaska**



## Children with Parents in Prison

Over 10 percent of children taken into custody by the Alaska Office of Children's Services (OCS) in both 2006 and 2007 had at least one parent incarcerated, according to figures assembled by OCS (Table 1). In all likelihood, the total number of children in OCS care who have a parent or parents in prison is higher, since the data maintained by the agency only cover those children for whom the caregiver parent's incarceration was one reason for OCS assuming custody. Further, the overall population of Alaska children who have a parent incarcerated—including those children who are not in OCS custody—is undoubtedly much higher. (According to the latest census estimates available from the Alaska Department of Labor and Workforce Development, the general population under 18 in 2005 was 187,000).

Although limited, the OCS figures are important because, in general, very little data on the children of prisoners are available. The figures give some idea of the ethnic and regional breakdowns of this population.

As the prison population continues to grow in both Alaska and the U.S. as a whole (see "Prisoners in Alaska and the U.S." in this issue of the *Forum*), the number of chil-

dren who have a parent or parents incarcerated also continues to grow. This tends to be a hidden population: Precise figures for individual states are not available, but the number of minor children in this situation nationwide is now estimated to be over 2 million.

As discussed previously in the *Forum* (see "Children of Incarcerated Parents," Summer 2002 and "Incarcerated Parents in Alaska Prisons," Summer 2004), social workers, teachers, Alaska Department of Corrections personnel, church workers and many others are aware of the problems these children face: lack of stability in living conditions, poverty, and lack of contact with the imprisoned parent—something that in Alaska is particularly a problem because of the size of the state.

The topic now receives somewhat more attention; there has been a proliferation of websites devoted to the needs of these children. Funding for specific programs aimed at the needs of these children, however, seems to have declined in recent years. In Alaska one of the few agencies that does have a program for this population is Big Brothers Big Sisters, which receives funding from the federal "Mentoring Children of

Prisoners" program. The Big Brothers Big Sisters program matches adult volunteers with children of prisoners; it uses a faith-based model—the Amachi program—which was initiated in Philadelphia. The funding for the Big Brothers Big Sisters effort seems to be the only federal grant money now directed at this social issue in Alaska.

The Department of Corrections directs its efforts and resources primarily toward assisting female prisoners with minor children. (The population of women prisoners in Alaska has grown 82 percent since 2000.) The department does not collect information on the children of prisoners in any systematic way, but parenting classes are offered at most institutions. The Hiland Mountain facility, where most sentenced women prisoners are incarcerated, currently has an internship position which focuses on assisting women in maintaining contact with their children through visits or by phone. The position also oversees a literacy program which encourages women to read with their children during visits, over the phone or via tapes. The intern also works with OCS and tribal authorities on issues involving the children of prisoners.

**Table 1. Children in Custody of Alaska Office of Children's Services with at Least One Incarcerated Caregiver, by Gender, Race, and Census Area, 2006–2007**

	2006			2007		
	Total children in state custody	At least one caregiver incarcerated <sup>a</sup>		Total children in state custody	At least one caregiver incarcerated <sup>a</sup>	
		N	%		N	%
<b>Total</b>	<b>3,171</b>	<b>331</b>	<b>10.4 %</b>	<b>3,203</b>	<b>387</b>	<b>12.1 %</b>
<b>By gender</b>						
Male	1,604	172	10.7 %	1,585	190	12.0 %
Female	1,567	159	10.1	1,618	197	12.2
<b>By race</b>						
Native <sup>b</sup>	1,876	188	10.0 %	1,863	212	11.4 %
White <sup>c</sup>	932	97	10.4	981	126	12.8
Other	332	40	12.0	335	42	12.5
Undetermined	31	6	19.4	24	7	29.2
<b>By census area</b>						
Anchorage	1,342	112	8.3 %	1,399	125	8.9 %
Bethel	244	46	18.9	261	44	16.9
Juneau	287	27	9.4	309	40	12.9
Kenai	230	46	20.0	245	78	31.8
Mat-Su	229	24	10.5	202	25	12.4
Other	839	76	9.1	787	75	9.5

<sup>a</sup> Case worker checked "caregiver incarcerated" as at least one of the reasons for child having a placement in state custody. Does not indicate if the parent/caretaker was incarcerated after custody was assumed, nor when one parent was incarcerated but child was removed from other caretaker.

<sup>b</sup> "Native" is any mention of Alaska Native or American Indian listed in the race category.

<sup>c</sup> White only, excluding all other races.

Source of data: Alaska Office of Children's Services



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## Prisoners in Alaska and the U.S.

The number of people incarcerated both in Alaska and the country as a whole continues to rise. In this state the rise has been steeper than in the country as a whole and is particularly marked for the female prison population and for those sentenced to more than a year—essentially those convicted of a felony. The increases in the prison population have the state's prison operating at above capacity, with approximately a third of those incarcerated now in a private facility in Arizona.

### U.S.

Figures released by the Bureau of Justice Statistics in December 2007 show that federal and state correctional authorities held jurisdiction over close to 1.6 million prisoners at the end of 2006. This was an increase of 2.8 percent over the previous year. Between 2000 and 2006, the correctional prison population grew from nearly 1.4 million to almost 1.6 million (Table 1). This is a total increase of 13 percent in six years.

The preceding figures cover only those under state and federal jurisdiction. If the number of inmates in local jails is added, the total at the end of 2006 was close to 2.26 million—an increase of 17 percent since 2000 (Table 2). This total still excludes those in military facilities, in jails in Indian country, in Immigration and Customs Enforcement detention facilities, in territorial prisons and in juvenile facilities (Table 3).

### Alaska

The number of people incarcerated by Alaska has been rising at a rate faster than in the nation as a whole—from 4,173 in 2000 to 5,069 at the end of 2006—an increase of over 21 percent.

### Sentenced Prisoners

The sentenced prisoner population—those serving sentences of more than one year—has grown nationally by 13 percent, from more than 1.3 million in 2000 to slightly over 1.5 million in 2006. In Alaska, the rise in this population has been much steeper, growing 46 percent over the same period, from 2,128 to 3,116.

### Women Prisoners

The number of female prisoners in both Alaska and the nation as whole has also grown faster than the overall prisoner

**Table 1. Prisoners Under the Jurisdiction of State or Federal Correctional Authorities, by Region and Jurisdiction, 2000, 2005, and 2006**

	Total			Average annual change, 2000 to 2005 <sup>a</sup>	Percent change 2005 to 2006
	12/31/00	12/31/05	12/31/06		
<b>U.S. total</b>	<b>1,391,261</b>	<b>1,527,929</b>	<b>1,570,861</b>	<b>1.9 %</b>	<b>2.8 %</b>
Federal	145,416	187,618	193,046	5.8	2.9
State	1,245,845	1,340,311	1,377,815	1.5	2.8
<b>Northeast</b>	<b>174,826</b>	<b>172,910</b>	<b>177,817</b>	<b>-0.2 %</b>	<b>2.8 %</b>
Connecticut <sup>b</sup>	18,355	19,442	20,566	1.2	5.8
Maine	1,679	2,023	2,120	3.8	4.8
Massachusetts	10,722	10,701	11,032	0.0	3.1
New Hampshire	2,257	2,530	2,805	2.3	10.9
New Jersey	29,784	27,359	27,371	-1.7	0.0
New York	70,199	62,743	63,315	-2.2	0.9
Pennsylvania	36,847	42,380	44,397	2.8	4.8
Rhode Island <sup>b</sup>	3,286	3,654	3,996	2.1	9.4
Vermont <sup>b</sup>	1,697	2,078	2,215	4.1	6.6
<b>Midwest</b>	<b>237,378</b>	<b>254,683</b>	<b>261,446 *</b>	<b>1.4 %</b>	<b>2.7 %</b>
Illinois	45,281	44,919	45,106	-0.2	0.4
Indiana	20,125	24,455	26,091	4.0	6.7
Iowa <sup>b</sup>	7,955	8,737	8,875	1.9	1.6
Kansas	8,344	9,068	8,816	1.7	-2.8
Michigan	47,718	49,546	51,577	0.8	4.1
Minnesota	6,238	9,281	9,108	8.3	-1.9
Missouri	27,543	30,823	30,167	2.3	-2.1
Nebraska	3,895	4,455	4,407	2.7	-1.1
North Dakota	1,076	1,385	1,363	5.2	-1.6
Ohio	45,833	45,854	49,166	0.0	7.2
South Dakota	2,616	3,463	3,359	5.8	-3.0
Wisconsin	20,754	22,697	23,431	1.8	3.2
<b>South</b>	<b>561,214</b>	<b>608,138</b>	<b>623,563</b>	<b>1.7 %</b>	<b>2.5 %</b>
Alabama	26,332	27,888	28,241	1.2	1.3
Arkansas	11,915	13,541	13,729	2.6	1.4
Delaware <sup>b</sup>	6,921	6,966	7,206	0.1	3.4
District of Columbia <sup>c</sup>	7,456	— <sup>c</sup>	— <sup>c</sup>	— <sup>c</sup>	— <sup>c</sup>
Florida	71,319	89,768	92,969	4.7	3.6
Georgia <sup>d</sup>	44,232	48,749	52,792	2.0	8.3
Kentucky	14,919	19,662	20,000	5.7	1.7
Louisiana	35,207	36,083	37,012	0.5	2.6
Maryland	23,538	22,737	22,945	-0.7	0.9
Mississippi	20,241	20,515	21,068	0.3	2.7
North Carolina	31,266	36,365	37,460	3.1	3.0
Oklahoma	23,181	26,676	26,243	2.8	-1.6
South Carolina	21,778	23,160	23,616	1.2	2.0
Tennessee	22,166	26,369	25,745	3.5	-2.4
Texas	166,719	169,003	172,116	0.3	1.8
Virginia	30,168	35,344	36,688	3.2	3.8
West Virginia	3,856	5,312	5,733	6.6	7.9
<b>West</b>	<b>272,427</b>	<b>304,580</b>	<b>314,969</b>	<b>2.3 %</b>	<b>3.4 %</b>
Alaska <sup>b</sup>	4,173	4,812	5,069	2.9	5.3
Arizona <sup>d</sup>	26,510	33,565	35,892	4.8	6.9
California	163,001	170,676	175,512	0.9	2.8
Colorado	16,833	21,456	22,481	5.0	4.8
Hawaii <sup>b</sup>	5,053	6,146	5,967	4.0	-2.9
Idaho	5,535	6,818	7,124	4.3	4.5
Montana	3,105	3,532	3,572	2.6	1.1
Nevada	10,063	11,782	12,901	3.2	9.5
New Mexico	5,342	6,571	6,639	4.2	1.0
Oregon	10,580	13,411	13,707	4.9	2.2
Utah	5,637	6,382	6,430	2.5	0.8
Washington	14,915	17,382	17,561	3.1	1.0
Wyoming	1,680	2,047	2,114	4.0	3.3

\* Detail for 12/31/06 for Midwest does not add to total; apparent error in source data.

<sup>a</sup> Average annual percentage increase from 2000 to 2005.

<sup>b</sup> Prisons and jails form one integrated system. Data include total jail and prison population.

<sup>c</sup> D.C. prisoners were transferred to the Federal Bureau of Prisons in 2001.

<sup>d</sup> Population figures are based on custody counts.

Source: Bureau of Justice Statistics, "Prisoners in 2006," NCJ-219416.

population. Again, this increase has been marked in Alaska. In Alaska, the number of women prisoners at the end of 2000 was 284; in 2006 it was 518. This was an increase of 82 percent (Table 4).

The increase in the national female prison population was 21 percent.

### Prisoners in Private Facilities

The Alaska in-state prison facilities were operating at 105 percent of highest capacity in 2006, and approximately one third—1,681 prisoners—of Alaska's total incarcerated population was held in a private facility in

Arizona at the end of 2006. (Alaska sends only male prisoners, usually those sentenced to longer terms, to the Arizona facility.)

*Figures in this article were derived from The Bureau of Justice Statistics Bulletin "Prisoners in 2006" (NCJ-219416).*

**Table 2. Inmates in Custody in State or Federal Prisons or in Local Jails at Yearend 2006**

	2000	2001	2002	2003	2004	2005	2006	Percent change 2005 to 2006	Average change 2000 to 2006 <sup>a</sup>
<b>Total inmates in custody</b>	<b>1,937,482</b>	<b>1,961,247</b>	<b>2,033,022</b>	<b>2,081,580</b>	<b>2,135,335</b>	<b>2,195,873</b>	<b>2,258,983</b>	<b>2.9 %</b>	<b>2.6 %</b>
<b>Federal prisoners<sup>b</sup></b>	<b>140,064</b>	<b>149,852</b>	<b>158,216</b>	<b>168,144</b>	<b>177,600</b>	<b>186,364</b>	<b>190,844</b>	<b>2.4 %</b>	<b>5.3 %</b>
Prisons	133,921	143,337	151,618	161,673	170,535	179,220	183,381	2.3	5.4
Federal facilities	124,540	130,601	137,942	146,279	152,832	159,318	163,118	2.4	4.6
Privately operated facilities	9,381	12,736	13,676	15,394	17,703	19,902	20,263	1.8	13.7
Community corrections centers <sup>c</sup>	6,143	6,515	6,598	6,471	7,065	7,144	7,463	4.5	3.3
<b>State prisoners</b>	<b>1,176,269</b>	<b>1,180,155</b>	<b>1,209,331</b>	<b>1,222,135</b>	<b>1,243,745</b>	<b>1,261,980</b>	<b>1,302,129</b>	<b>3.2 %</b>	<b>1.7 %</b>
State prison facilities	1,121,326	1,125,957	1,153,982	1,167,865	1,186,133	1,198,705	1,224,205	2.1	1.5
Privately operated facilities	75,292	71,661	73,638	73,842	73,860	80,387	86,065	7.1	2.3
<b>Inmates held in local jails<sup>d</sup></b>	<b>621,149</b>	<b>631,240</b>	<b>665,475</b>	<b>691,301</b>	<b>713,990</b>	<b>747,529</b>	<b>766,010</b>	<b>2.5 %</b>	<b>3.6 %</b>
<b>Incarceration rate<sup>e</sup></b>	<b>684</b>	<b>685</b>	<b>701</b>	<b>712</b>	<b>723</b>	<b>737</b>	<b>751</b>		

**Note:** Counts include all inmates held in public and private adult correctional facilities and local jails.

<sup>a</sup> Average annual percentage increase from 2000 through 2005.

<sup>b</sup> As a result of the National Revitalization Act of 1997, District of Columbia (D.C.) inmates sentenced to more than 1 year were transferred to the Federal Bureau of Prisons. This transfer was completed in 2001.

<sup>c</sup> Non-secure, privately operated community corrections centers.

<sup>d</sup> Inmates held in local jails are for June 30 each year. Counts were estimated from the Annual Survey of Jails in every year except 2005, when a census was conducted.

<sup>e</sup> Number of prison and jail inmates per 100,000 U.S. residents as of January 1 in each year following the reference year.

**Source:** Bureau of Justice Statistics, "Prisoners in 2006," NCJ-219416.

**Table 3. Total Incarcerated Population at Yearend 2006**

	2005	2006	Percent change, 2005 to 2006
Federal and state prisons <sup>a</sup>	1,448,344	1,492,973	3.1 %
Territorial prisons	15,735	15,205	-3.4
Local jails <sup>b</sup>	747,529	766,010	2.5
Immigration and Customs Enforcement facilities	10,104	14,482	43.3
Military facilities	2,322	1,944	16.3
Jails in Indian country <sup>c</sup>	1,745	1,745	0.0
Juvenile facilities <sup>d</sup>	94,875	92,854	-2.1
<b>Total</b>	<b>2,320,634</b>	<b>2,385,213</b>	<b>2.8 %</b>

**Note:** Data are based on custody counts.

<sup>a</sup> Excludes state and federal prisoners housed in local jails.

<sup>b</sup> As of June 30 of each year.

<sup>c</sup> As of June 30, 2004.

<sup>d</sup> Counts are taken from the *Census of Juveniles in Residential Placement* (CJRP), conducted by the Office of Juvenile Justice and Delinquency Prevention. The 2005 count is for October 22, 2003; for 2006, the count is as of March 29, 2006.

**Source:** Bureau of Justice Statistics, "Prisoners in 2006," NCJ-219416.

**Table 4. Male and Female Prisoners in the U.S. and Alaska, 2000 and 2006**

	Male	Female	Total
<b>2000</b>			
U.S.	1,298,027	93,234	<b>1,391,261</b>
Alaska	3,889	284	<b>4,173</b>
<b>2006</b>			
U.S.	1,458,363	112,498	<b>1,570,861</b>
Alaska	4,551	518	<b>5,069</b>
<b>Percent change 2000–2006</b>			
U.S.	12.4 %	20.7 %	<b>12.9 %</b>
Alaska	17.0	82.4	<b>21.5</b>

**Source of data:** Bureau of Justice Statistics

# Immigrants, Refugees and Asylees over the Last Century

Over the last century, legal immigrants to the United States—people admitted as legal permanent residents—have accounted for about one-fifth of the total population increase. Over 45 million people entered the U.S. as documented immigrants between 1910 and 2006 (Table 1), and according to the U.S. Census, the country's population grew from 92 million in 1910 to 300 million in 2006. The total legal immigrant population thus accounted for almost 22 percent of this increase. These figures show the impact over ten decades. From decade to decade during the century, however, the flow of immigrants grew or declined, with peaks occurring in the period 1910 to 1919 and over the last sixteen years.

The mix of countries of origin for immigrants has shifted over the century. In the early years of the twentieth century most immigrants to the United States came from Europe; by the beginning of the twenty-first century they arrived from the countries of the Western Hemisphere and Asia.

In addition to those admitted as legal immigrants, people have entered the country with the legal status of refugees or been awarded asylum after arriving here (Tables 2 and 3). Others have been admitted to the country on non-immigrant, temporary visas, as tourists, diplomats, students and temporary workers (Table 4).

## Data Source

The Department of Homeland Security is the primary source for the most reliable and detailed figures assembled on immigration to the United States. The figures were previously maintained by the Immigration

and Naturalization Service (INS). In 2003, the newly-formed Department of Homeland Security (DHS) incorporated the various functions of INS, including the maintenance of data on immigration. In general, separate figures on refugees and asylees have been available only since 1981.

## Legal Immigration—1910–2006

The flow of documented immigrants to the U.S. over the last century has been steady but with ebbs in certain decades. In recent decades it has been increasing in actual numbers, but the figures show that the heaviest influx—as a percentage of the U.S. total population—occurred in the decade 1910 to 1919. During these ten years, 6.3 million people entered the U.S. as immigrants (Table 1). According to U.S. Census records, the total population of the country in 1910 was 92 million; in 1920, it was 106 million. The number of immigrants represented 45 percent of the total population increase over the decade—a very high figure.

A vast majority—nearly five million—of the immigrants during this period came from Europe. The decade encompassed both World War I and the Russian Revolution. Over one million people came from Russia; over one million from Italy; and over one million from Austria-Hungary.

Another one million immigrants entered the U.S. from the countries of the Western Hemisphere, with over 700,000 coming from Canada. Only 185,000 came from Mexico.

In absolute numbers, the immigrant flow did not again approach the level of the years 1910–1919 until the 1980s. Immigration

slowed from 1920 through 1979—dramatically so from 1930 to 1949, despite the upheavals of the Second World War.

By the decade 1980–1989, the mix of countries of origin had changed. Over this period, the largest number of immigrants came from Asia—2.4 million—and the countries of the Western Hemisphere—2.7 million. Fewer than 700,000 people came from Europe. Mexico was the origin country for the largest number—over 1 million. Other countries from which many people came during that period were the Philippines, Korea, Vietnam, India, and the Dominican Republic.

Over the decade 1990–1999, immigration again increased substantially, with nearly 10 million people entering the U.S. as documented immigrants. This represented an increase of 57 percent over the previous decade. The total number of immigrants represented over 30 percent of the growth in population during the decade. (As stated earlier, immigration accounted for 45 percent of the total population increase from 1910 through 1919.)

The mix of countries of origin continued to shift over this period, with over 50 percent of all immigrants from 1990–1999 coming from countries in the Western Hemisphere—nearly 2.8 million from Mexico—more than double the number in the previous decade.

From 2000 to 2006, an additional 7 million immigrants entered the U.S.—the majority continuing to come from the Western Hemisphere and Asia.

## Refugees and Asylees

While many immigrants, at all periods,

**Table 1. Persons Obtaining Legal Permanent Resident Status by Region of Last Residence, FY 1910–2006**

Region of last residence	1910–1919	1920–1929	1930–1939	1940–1949	1950–1959	1960–1969	1970–1979	1980–1989	1990–1999	2000–2006
<b>Africa</b>	8,867	6,362	2,120	6,720	13,016	23,780	71,408	141,990	346,416	446,792
<b>Asia</b>	269,736	126,740	19,231	34,532	135,844	358,605	1,406,544	2,391,356	2,859,899	2,265,696
<b>Europe</b>	4,985,411	2,560,340	444,399	472,524	1,404,973	1,133,443	825,590	668,866	1,348,612	1,073,726
<b>Americas</b>	1,070,539	1,591,278	230,319	328,435	921,610	1,674,172	1,904,355	2,695,329	5,137,743	3,037,122
North America <sup>a</sup>	1,014,909	1,531,713	213,464	263,263	742,677	1,302,187	1,509,335	1,956,008	3,956,893	2,040,079
Central America	15,692	16,511	6,840	20,135	40,201	98,560	120,374	339,376	610,189	440,563
South America	39,938	43,025	9,990	19,662	78,418	250,754	273,608	399,862	570,624	556,463
Other America <sup>b</sup>	—	29	25	25,375	60,314	22,671	1,038	83	37	17
<b>Oceania<sup>c</sup></b>	12,339	9,860	3,306	14,262	11,353	23,630	39,980	41,432	56,800	47,087
<b>Not specified</b>	488	930	—	135	12,472	119	326	305,406	25,928	138,899
<b>Total</b>	<b>6,347,380</b>	<b>4,295,510</b>	<b>699,375</b>	<b>856,608</b>	<b>2,499,268</b>	<b>3,213,749</b>	<b>4,248,203</b>	<b>6,244,379</b>	<b>9,775,398</b>	<b>7,009,322</b>

a Includes Canada, Mexico, and nations in the Carribean.

b Included in "Not specified" until 1925.

c Includes Australia, New Zealand, and other South Pacific nations.

Source of data: 2006 Yearbook of Immigration Statistics, Office of Immigration Statistics, U.S. Department of Homeland Security

**Table 2. Refugee Arrivals by Region of Origin, FY 1997–2006**

Region of origin	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Africa	6,069	6,665	13,048	17,624	19,070	2,550	10,719	29,110	20,746	18,185
Asia	11,771	13,669	14,041	13,622	15,356	6,885	5,862	10,896	14,977	9,245
Europe	48,450	54,260	55,877	37,664	31,526	15,406	11,269	9,254	11,316	10,456
North America	2,986	1,587	D	3,233	2,968	1,924	305	2,998	6,368	3,145
South America	—	—	D	—	5	8	149	579	331	119
Oceania	—	—	—	—	—	—	—	—	—	—
<b>Total</b>	<b>69,276</b>	<b>76,181</b>	<b>85,076</b>	<b>72,143</b>	<b>68,925</b>	<b>26,773</b>	<b>28,304</b>	<b>52,837</b>	<b>53,738</b>	<b>41,150</b>

D = Data withheld to limit disclosure.

*Source of data:* 2006 Yearbook of Immigration Statistics, Office of Immigration Statistics, U.S. Department of Homeland Security

have been trying to flee untenable political situations, only since 1980 have political refugees admitted to the United States and those granted asylum had statutory status separate from others admitted to the country. (The main distinction between refugees and those seeking asylum is that refugees apply for admission while still outside the country and asylees apply when they enter or at

some point afterward.) In comparison to the total number of immigrants, the number of those admitted under these categories has been relatively low. From 1997 through 2006 only 574,000 refugees arrived in the country; about 181,000 people were granted political asylum. Tables 2 and 3 show that these individuals have arrived from all over the world. At various points over the decade,

people fled from countries on all continents. The countries of Oceania (Australia, New Zealand and some smaller Pacific island nations) were the exception.

*More complete tables for the figures discussed in the preceding article are available at [http://justice.uaa.alaska.edu/forum/24/4winter2008/e\\_immigrationtables.html](http://justice.uaa.alaska.edu/forum/24/4winter2008/e_immigrationtables.html).*

**Table 3. Individuals Granted Asylum Affirmatively by Region of Origin, FY 1997–2006**

Region of origin	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Africa	3,102	4,945	7,124	7,286	6,338	5,850	3,988	3,785	2,659	1,985
Asia	8,686	3,408	5,870	7,807	10,477	10,211	4,486	2,411	3,470	2,929
Europe	2,301	2,562	2,766	3,700	4,019	2,883	1,780	1,420	1,018	880
North America	1,765	1,704	1,349	1,394	1,689	1,374	1,498	2,211	2,910	3,625
South America	322	396	715	2,643	5,842	5,156	3,419	4,260	3,307	3,397
Oceania	8	3	35	82	342	176	60	60	23	15
Unknown	79	60	85	65	117	106	61	56	36	42
<b>Total</b>	<b>16,263</b>	<b>13,078</b>	<b>17,944</b>	<b>22,977</b>	<b>28,824</b>	<b>25,756</b>	<b>15,292</b>	<b>14,203</b>	<b>13,423</b>	<b>12,873</b>

*Source of data:* 2006 Yearbook of Immigration Statistics, Office of Immigration Statistics, U.S. Department of Homeland Security**Table 4. Nonimmigrant Admissions (I-94 Only) by Category of Admission, FY 2006**

Region of country of citizenship	Tourists and business travelers		Students and exchange visitors <sup>c</sup>	Temporary workers <sup>d</sup>	Diplomats and other representatives <sup>e</sup>	All other classes	Unknown	Total
	Visa waiver <sup>a</sup>	Other <sup>b</sup>						
Africa	1,919	297,661	31,529	25,310	26,855	9,169	1,666	<b>394,109</b>
Asia	4,211,777	2,756,737	547,033	574,897	76,775	156,799	12,328	<b>8,336,346</b>
Europe	10,810,361	973,978	346,053	487,271	109,476	98,054	9,137	<b>12,834,330</b>
North America	8,658	7,776,187	127,628	435,880	29,339	77,075	37,529	<b>8,492,296</b>
South America	7,391	2,037,408	92,356	142,373	35,493	104,556	12,406	<b>2,431,983</b>
Oceania	892,075	39,165	15,139	38,551	12,655	7,286	34,988	<b>1,039,859</b>
Unknown	53,144	62,106	8,282	5,671	2,253	4,174	2,775	<b>138,405</b>
<b>Total</b>	<b>15,985,325</b>	<b>13,943,242</b>	<b>1,168,020</b>	<b>1,709,953</b>	<b>292,846</b>	<b>457,113</b>	<b>110,829</b>	<b>33,667,328</b>

a Included GB, GT, WB, and WT admissions.

b Includes B-1, B-2, and a limited number of Border Crossing Guard (BCC) admissions.

c Includes principals, spouses, and children (F-1 to F-3, J-1, J-2, and M-1 to M-3 admissions).

d Includes principals, spouses, and children (E-1 to E-3, H-1B, H-1B1, B-1C, H-2A, H-2B, H-3R, H-3, H-4, I-1, L-1, L-2, O-1 to O-3, P-1 to P-4, Q-1, R-1, R-2, TD, and TN admissions).

e Includes principals, spouses, and children (A-1 to A-3, G-1 to G-5, and N-1 to N-7 admissions).

*Source of data:* 2006 Yearbook of Immigration Statistics, Office of Immigration Statistics, U.S. Department of Homeland Security

## Non-Citizens in the Alaska Correctional System

The number of non-citizens who are held by the state correctional system at any time seems to be very low—less than the percentage of non-citizens in the population as a whole. In other words, non-citizens are arrested or detained less frequently than citizens—for any reason, whether for criminal activity or immigration violations. This contradicts a frequently-made assertion that immigrants—with or without legal docu-

mentation—are more frequently involved in crime.

The figures in the accompanying table present the totals of non-citizens in Department of Correctional facilities for June 30 for eight successive years, from 1999–2006. The figures were reported by DOC to the Bureau of Justice Statistics as part of national reporting program on non-citizens in state prisons. They include all non-citizens—both those in the U.S. with valid documentation and those without (those popularly termed *illegal aliens*)—who are being held for any reason and any length of time in Alaska facilities. These individuals may have been charged with a criminal offense or held for an immigration violation pending review, deportation, or transfer to an immigration facility. (Immigration violations are not

criminal offenses.)

The figures show that the number of non-citizens being arrested for any reason or detained for an immigration violation has been consistently low—never rising even to one percent of the total incarcerated population. This is less than half the representation of non-citizens in the general population: According to U.S. Census data for 2005, the total non-citizen resident population for the state was 14,190—two percent of the state's total population (641,724).

A Justice Center study of those arrested in Anchorage for drug-related offenses from 2000 through 2002 (see “Non-Citizens Among Anchorage Arrestees,” *Alaska Justice Forum*, Spring 2003) also shows similarly low percentages of non-citizens in the jailed population.

**Table 1. Non-Citizens Held in Alaska Correctional Facilities, 1999–2006**

1999	29	2003	16
2000	20	2004	17
2001	18	2005	12
2002	14	2006	11

*Source of data:* Bureau of Justice Statistics

### Constitutions

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written on a blank slate. Instead, the political, social, economic, and physical conditions that the society already faces (or expects to face shortly) will ineluctably shape and limit the range of potential answers—that is, the range of answers that are both feasible and acceptable to members of the society.

The constitutions of the United States and the Russian Federation were written half a world and more than two hundred years apart. Despite this fact, the two constitutions appear to be remarkably similar on many levels.

Both constitutions provide a framework for nationwide governance of a diverse group of constituent states or regions that are acknowledged to be sovereign in their own right. Both constitutions establish a federal government with three independent branches—the executive, the legislative, and the judicial. Both constitutions provide for a bicameral legislature: a smaller upper house consisting of two representatives from each state or region, and a more numerous lower house with representatives elected by popular ballot. (Under the original version of the American constitution, senators were not elected by popular ballot; rather, they were chosen by the state legislatures.) Both constitutions reject the English system of direct parliamentary control over the executive branch. Instead, both the American president and the Russian are elected by nationwide ballot, separate from the elections for the legislature; and the president's au-

thority is designed to be distinct from (and, at times, a counterpoise to) the legislature's authority.

Yet these surface similarities mask some strong differences—differences in the explicit provisions of the two constitutions and also differences in how seemingly equivalent provisions have been put into practice. These differences are mainly attributable to two factors: the extremely different political problems facing the two nations when they drafted their constitutions and the different political traditions that shaped the drafters' choices and emphasis.

The American constitution was drafted in 1787. Two hundred thirty years later, we in America often take this document for granted. From a modern perspective, the choices made by the drafters assume an air of inevitability—as if the provisions of the American constitution were self-evident rules for governing a democratic society. We forget that the U.S. Constitution was ratified only after vociferous and passionate debate and that it was forged at a time when many Americans distrusted any effort to establish a stronger central government, when the states often viewed each other as rivals, and when Americans had many differing ideas about how society should be organized.

The Revolutionary War had been fought, not by a true national government, but by the joint effort of thirteen independent states. Although the states had created a national congress and the Continental Army, the separate states retained almost every aspect of fiscal and political sovereignty. Under the existing national charter (the Articles of Confederation), the American national

government had no mechanism for settling disputes between the states, no power to tax, very little power to regulate commerce, and essentially no way to engage in foreign policy or to fund a war effort without the active assent of the wealthiest states.

The American constitution was drafted as an arm's-length agreement among these thirteen newly independent states. The people of these states were clearly linked in interest, and while they recognized the need for national cooperation, especially in matters of commerce and defense, they had just fought a long and costly war to free themselves from a distant king and parliament. They already enjoyed functioning, representative governments in their respective states—and many, if not most, Americans were distrustful of efforts to establish a new, strong, centralized government. Moreover, rivalries and conflicts existed between the small and large states, between manufacturing interests and agricultural interests, between the eastern states and the growing western populations, and between the slave states and the free. Each group feared that their opponents would take control of a new national government and use that power to impose their particular political and economic policies.

To allay these fears and to solve these political problems, the drafters of the American constitution created a federal government whose power was intended to be limited strictly to the enumerated areas of authority. And to try to protect the states and the people from arbitrary or authoritarian use of this federal power, the drafters turned to the French philosopher Montesquieu's idea

of a government containing several competing organs of power—a principle now known to us as the doctrine of “separation of powers”—the system of “checks and balances.”

The drafters of the Constitution of the Russian Federation faced a strikingly different political problem.

Russia was already a nation. The eighty-nine provinces and regions of the Russian Federation had been under a unified political authority for more than one hundred fifty years (first under the tsars, and then under Soviet rule), but in 1993, Russia had just regained its independence from the recently dissolved Soviet Union. The country was undergoing extreme political and economic turmoil, made intolerable by a stalemate between the presidency and the Parliament. Because Russia’s existing constitution (inherited from Soviet days) declared that *both* the president and the Parliament were sovereign, it did not provide a mechanism for resolving their inevitable differences. The people who drafted the Russian constitution in the summer and fall of 1993 were motivated by the threat that the federation would fall apart.

On the other hand, the Russian people had just emerged from seventy years of communist totalitarianism. If the federal government was reconstituted so that it had sufficient strength to hold the country together, there was a danger that newly-won civil and economic liberties would disappear.

The drafters’ response was to craft a constitution that (1) clearly declared or re-affirmed federal supremacy over the constituent provinces and regions; (2) gave the presidency great power—to try to make sure that the government would not again be paralyzed by irreconcilable differences between the executive and legislative branches; and (3) contained numerous explicit guarantees of the civil and economic rights and liberties to be enjoyed by Russian citizens.

### Federal Supremacy

Both the American constitution (Article VI) and the Russian (Articles 4, 5, 15, 71, 76, and 77) explicitly provide for federal supremacy within specified spheres of federal authority. Indeed, it is hard to imagine that any federal government could function without such supremacy. The two constitutions, however, define that sphere of federal authority quite differently.

In the U.S. Constitution, the areas of federal supremacy are primarily set forth in Article I, Section 8 (which lists the areas of authority that are affirmatively granted to Congress), Article I, Section 10 (which lists

the areas of authority that are prohibited to the states), and Article III, Section 2 (which lists the types of litigation entrusted to the federal courts).

In general, these provisions give the federal government pre-eminent authority in matters of interstate and international commerce, national defense, and international relations. They also give the federal courts the power to adjudicate disputes between states and between states and foreign governments. These were the areas where Americans most keenly felt the weakness of the pre-existing confederation and where they perceived the greatest need for a federal government able to enforce a nationwide uniformity of law and policy.

Under the Russian constitution, the federal government is granted a much more expansive role. Article 71 gives the federal government jurisdiction over some four dozen aspects of government, including:

- “regulation and protection of the rights and liberties of [the] citizen;”
- establishing “procedure[s] for the organization and activities” of the three branches of federal government;
- “determining . . . policy and . . . programs in the fields of state structure, the economy, the environment, and the social, cultural and national development of the Russian Federation;”
- “federal power grids, . . . federal transport, railways, [and] information and communications;” and
- “law courts; the Procurator’s office; [and] criminal [and] criminal procedure . . . legislation[.]”

Moreover, Article 72 of the Russian constitution gives the federal government and the provincial/regional governments joint jurisdiction over many other governmental functions, including:

- “issues [concerning] the possession, use, and management of land, mineral resources, water, and other natural resources;”
- “protection of the environment and ecological safety;”
- “general questions of upbringing, education, science, culture, physical culture, and sports;”
- “coordination of health issues, protection of the family, motherhood, fatherhood, and childhood, [and] social protection including social security;”
- “administrative, . . . labor, family, housing, land, water, and forestry legislation;”
- “[the membership of] the judiciary and law-enforcement agencies, the bar, [and

the] notariate;” and

- “establishment of general guidelines for the organization of . . . bodies of state power and local self-government.”

Although Article 72 declares that these foregoing concerns fall within the joint authority of the federal and the provincial/regional governments, Article 76 states that, in these areas of joint jurisdiction, “federal laws shall be issued and, in accordance with them, laws and other regulatory acts of [the constituent provinces, and regions] shall be adopted.” In other words, the federal government’s laws on these matters are controlling.

### The Presidency

Both the American and the Russian constitutions provide for a president to be elected by nationwide popular vote, but while the American contains a detailed description of the powers (and the limitations on the power) of Congress, it devotes very little space to defining the authority of the president. The Russian, on the other hand, contains a lengthy description of the powers of the president and very little description of the authority of the Parliament.

The powers of the American president are set forth in Article II, Sections 2 and 3. The president is the commander-in-chief of the armed forces (and of the state militias, “if they have been called into the service of the United States”). In addition, the president has the authority to appoint, with the consent of the Senate, all officers of the federal government (i.e., all officers whose manner of selection is not otherwise specified in the constitution). (Article II, Section 2 allows Congress to enact statutes that eliminate the requirement of Senate approval for specific federal officers and that authorize the “Heads of Departments” or the “Courts of Law” to appoint certain federal officers instead of the president.)

Beyond this, the American president is empowered (1) to require the principal heads of the departments of the federal government to report on any subject relating to their duties, (2) to grant pardons and reprieves, (3) to convene the Congress “on extraordinary occasions,” and (4) to “receive ambassadors and other public ministers [of foreign countries].” The president is also directed to “take care that the laws be faithfully executed.”

In contrast, Article 80 of the Russian constitution declares that the president “shall be the head of state” and “the guarantor of the Constitution . . . and of human and

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civil rights and freedoms.” The president is directed to “take measures to protect the sovereignty of the Russian Federation, its independence and [its] state integrity,” to “ensure concerted functioning and interaction of all bodies of state power,” and to “define the basic domestic and foreign policy guidelines of the state.”

Under Article 83, the president has complete power to appoint all officers of the federal government except the prime minister (an office described as the “Chairman of the Government of the Russian Federation”). Article 83 specifies that the Duma (i.e., the lower house of Parliament) must consent to the president’s choice for prime minister.

However, under Article 111, if the Duma refuses to accept the president’s nominee for prime minister three times in succession, the president is authorized to appoint the prime minister unilaterally, dissolve the Duma, and call for new elections. Similarly, under Article 117, if the Duma gives a vote of “no confidence” in the prime minister’s government twice in a three-month period, the president is given the choice of either dismissing the government or dismissing the Duma and calling for new elections.

Article 85 gives the president the power to suspend the operation of a law “pending the resolution of the issue in the appropriate court” if the president believes that a law passed by a constituent province or region violates the federal constitution or any federal law or that it violates “human and civil rights and liberties.”

And under Article 90, the president is empowered to “issue decrees and executive orders [that are] binding throughout the territory of the Russian Federation,” so long as these decrees and orders “[do] not contravene the Constitution . . . or federal laws.”

### The Rights of Citizens

Americans are justly proud of our Bill of Rights—the first ten amendments to the United States Constitution, which deal with issues such as freedom of speech, freedom of the press, freedom from unreasonable government searches and seizures, the right to jury trial, the right to the assistance of counsel and to confront government witnesses in criminal cases, and the right to fair compensation when the government exercises its authority to take private property. The Russian constitution, however, guarantees a far greater array of liberties and rights for its citizens.

It would be a mistake to view the Ameri-

can Bill of Rights through a twenty-first century lens: These ten amendments were not intended to be federal guarantees of individual liberties in the sense that the federal government could enforce these liberties on the states. Rather, when the Bill of Rights was proposed and adopted in the late 1700s, it was seen as a series of restrictions on federal power—measures designed to make sure that the new federal government could do nothing to alter state law on these subjects. It was designed to prohibit the federal government from otherwise infringing the rights that Americans believed they had inherited from English common law.

For instance, the First Amendment prohibits the Congress from establishing a religion—i.e., selecting a religion to be officially favored by the federal government, which could be supported by federal taxes (in other words, money taken from people who did not necessarily agree with that religion). This provision was viewed as a salutary limit on federal power, but it was not intended to apply to the states. At the time the United States Constitution was adopted (and until 1818), the State of Connecticut was, in many respects, a theocracy. The Congregationalist Church was the established church, and all citizens were obliged to support it. No one thought that the enactment of the First Amendment required any change in Connecticut’s state government.

It would take two more centuries—encompassing a civil war, the enactment of the Fourteenth Amendment, and a series of Supreme Court decisions in the 1950s and 1960s—before the Bill of Rights would assume its modern role in American law as a set of federally guaranteed rights and liberties.

In contrast, the Constitution of the Russian Federation explicitly commits the federal government to protect a whole panoply of civic rights and benefits—and not just political and religious rights. The Russian constitution also guarantees the types of economic and social benefits that Russian citizens received (or, at least, were theoretically entitled to) under the socialist framework of the Soviet Union.

Many of the rights guaranteed by the Russian constitution correspond to rights that Americans have come to expect under the Bill of Rights.

For instance, Article 14 guarantees that there will be no state-sponsored or mandatory religion, and Article 28 guarantees an individual’s right to practice any religion, “or to profess no religion.” Article 13 guarantees “ideological pluralism,” in other words, it guarantees that there will be no state-sponsored or mandatory political/so-

cial ideology (as there was under the days of Soviet rule). Similarly, Article 30 protects the right of association—both political association and economic association (e.g., trade unions). Again, to prevent a return to Soviet practices, Article 30 declares that “[n]o one may be coerced into joining any association.”

Article 29 guarantees “freedom of speech and thought”—although it expressly forbids “[p]ropaganda or campaigning to incite social, racial, national, or religious hatred and strife.” This same article also guarantees freedom of the media, it forbids censorship, and it guarantees public access to information. Article 44 guarantees “freedom of literary, artistic, scientific, intellectual, and other . . . creative activity.” Article 31 guarantees the right to assemble peaceably and to hold political meetings, rallies, and demonstrations. Article 33 guarantees the right to petition the government.

Articles 19 and 32 guarantee the legal equality of all people. Article 19 commits the federal government to be the guarantor of “the equality of rights and liberties regardless of sex, race, nationality, language, origin, property or employment status, residence, attitude to religion, convictions, membership of public associations or any other circumstance.” Article 32 guarantees all citizens equal access to state services and the right to participate in government.

Article 22 guarantees an individual’s right to “freedom and personal inviolability,” and it declares that the government cannot hold a person in custody for more than forty-eight hours without a court order. Article 23 guarantees the right to privacy, and it provides that the government cannot infringe the privacy of “correspondence, telephone communications . . . and other communications” without a court order.

Article 25 states that the government cannot “enter a home against the will of the persons residing in it except under a court order or in other instances provided by federal law.”

Articles 46 and 47 guarantee equal access to the courts as well as judicial protection of citizens’ rights. Article 48 guarantees the right to counsel, and Article 49 guarantees the presumption of innocence in criminal cases. Article 51 guarantees the right against self-incrimination. Article 50 forbids repeated conviction for the same offense, and it also guarantees defendants the benefit of the exclusionary rule: the government cannot rely on “evidence obtained in violation of federal law.” Article 54 forbids *ex post facto* laws.

Articles 35, 36, and 44 guarantee the right to hold private property (including land and intellectual property) as well as the right of

inheritance. Article 35 also guarantees fair compensation for people whose property is taken by the government. And Article 37 forbids forced labor—similar to the American Thirteenth Amendment’s prohibition on “involuntary servitude.”

While these constitutionally guaranteed rights are familiar to Americans, the Russian constitution also protects many other rights that are not found in, or at least are not explicitly guaranteed by, the American constitution.

Article 24 declares that it is forbidden “to gather, store, use, or disseminate information on the private life of any person without his or her consent.”

Article 21 declares that no person shall be subjected to torture “or any other harsh or humiliating treatment,” nor “subjected to medical, scientific, or other experiments without his or her free consent.”

Article 26 guarantees all citizens the right to choose their “national identity”—that is, the right to decide their racial or ethnic affiliation (instead of having the government decide this).

Articles 34 and 37 guarantee the right of private enterprise and the right to choose one’s occupation freely.

Article 37 also guarantees the right to work under safe and hygienic conditions and forbids wage discrimination. It guarantees “the right to rest and leisure,” by requiring all work contracts to adhere to federal law regarding the maximum work week, days off and holidays, and paid, annual vacation.

In addition, Article 57 contains an *ex post facto* clause that restricts the government’s authority to tax: “Laws instituting new taxes or worsening the condition of tax payers shall not have retroactive force.”

Article 27 guarantees freedom of movement and residence within the Russian Federation, as well as the right to travel outside the Russian Federation (and to return from these travels).

A series of constitutional provisions guarantee a social safety net to all Russian citizens. Article 39 guarantees social security payments to people in their old age, and it also guarantees payments to people in financial need because of “disease, loss of a breadwinner, [or the need] to bring up children.” Article 40 guarantees a home—that is, a place to live—to all citizens, and it requires the government to provide housing to people who cannot afford it. Article 43 guarantees all children the right to an education through secondary school and the right to free higher education if they pass a competitive entrance examination.

Article 41 guarantees the right to health care and medical services. Article 42 commits the government to provide

compensation to people who have been injured or who suffer ill health because of violations of environmental laws.

Article 52 guarantees the rights of crime victims—both the right of “access to justice” and the right to receive “compensation for injury.”

Although Article 68 declares that Russian is the state language of the Russian Federation, this same article also guarantees other ethnic groups “the right to preserve their native language and to create the conditions for its study and development.”

Article 61 guarantees Russian citizens that they will not be extradited to another country, and Article 63 forbids the federal government from extraditing a non-Russian citizen to another country if that person is being persecuted for political views or facing prosecution for “actions (or inaction) that would not qualify as criminal under the law of the Russian Federation.”

### The American Emphasis on Procedure

There is one more distinction between the American and Russian constitutions that should be discussed: the American’s emphasis on matters of procedure.

As explained earlier, the American constitution created a federal government that was founded on the doctrine of “separation of powers” or “checks and balances.” To implement this doctrine, the American drafters relied on a legal premise inherited from England—the premise that, in the long run, fairness is ensured by the procedures that decision-makers must follow, rather than by the identities of the decision-makers.

If you examine the United States Constitution as it was originally submitted to the states (that is, before the addition of the Bill of Rights), you will discover that more than half of the text is devoted to matters of procedure—how the Congress, the president, and the judges of the federal courts are to be selected and removed from office; the procedural rules under which these three branches (especially the Congress) are to operate; and the methods for amending the constitution in the future.

This emphasis on details of procedure (especially the details regarding the selection of senators, representatives, and the president) is directly attributable to the long tradition of parliamentary government inherited from England, as well as the drafters’ belief that procedural rules would provide a crucial guarantee that the states would not be overwhelmed by the federal government and that different states and political factions would always have their fair opportunity to influence the federal government.

The Russian constitution is different in

this regard. The Russian drafters had no corresponding tradition of parliamentary government and procedural guarantees to draw from—because the preceding seventy years of Soviet rule, and the three-and-a-half centuries of tsarist rule before that, were characterized by the arbitrary and dictatorial use of state power rather than legislative rule and procedural regularity.

Not until 1988—that is, only five years before the drafting of the Russian constitution—did Mikhail Gorbachev advocate reforming the Soviet Union into a government of laws (*pravovoe gasudarstva*). This goal—the rule of law—is explicitly embodied in Articles 1, 3, 11, and 15. The drafters, however, were not sure what this rule of law would look like, so they left many important details to future development.

Thus, for example, Article 77 declares that “federal law”—that is, statutory law—will control the “organization of the legislative and executive [branches of government]” in the constituent provinces and regions of the Russian Federation.

Article 78 authorizes the executive branch of the federal government to “set up their own territorial structures [i.e., governmental districts] and appoint respective officials [for these districts].”

Under Article 81, “[t]he procedure for electing the President of the Russian Federation shall be determined by federal law.”

Article 95 provides for a bicameral legislature. It declares that the upper house (the Federation Council) comprises two representatives from each province and region—one from the legislative branch and one from the executive branch—but it does not further specify their manner of selection. Similarly, Article 95 declares that the lower house (the Duma) consists of 450 elected deputies—but, again, it does not further specify the manner of their selection. Instead, the following article (Article 96) declares that “[t]he procedure for forming the Federation Council and the procedure for electing deputies to the State Duma shall be established by federal law.”

Article 114 enumerates the various powers of the Russian federal government, but the last clause declares that the federal government shall also “exercise any other powers vested in it by . . . federal laws [or] the decrees of the President of the Russian Federation.”

Article 128 specifies that the judges of the Russian Federation’s three highest courts—the Constitutional Court, the Supreme Court, and the Supreme Commercial (*Arbitrazh*) Court—are nominated by the president and confirmed by the Federation Council. But all

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other judges in the Russian Federation “shall be appointed by the President of the Russian Federation in accordance with procedures established by federal law.” Moreover, Article 121 states that a judge’s powers may be terminated or suspended “under procedures and on grounds established by federal law.”

In other words, the Russian constitution is much more open-ended on the questions of how federal officials are to be selected, what tenure these officials will have, how the federal and provincial/regional governments are to be organized, and what powers the federal government will wield.

\* \* \*

My aim in this essay has been to compare the American and Russian constitutions, but not to assess their relative worth, since each constitution has bequeathed both benefits and problems to the nation that adopted it. Rather, my hope has been to point out that each constitution reflects the drafters’ earnest attempt to address the major political problems confronting their society at the time. The solutions embodied in each constitution were shaped by the political, social, and economic tools that history and culture had provided to each country.

*This article uses the English translation of the Constitution of the Russian Federation from the Bucknell University website: [http://](http://www.departments.bucknell.edu/russian/const/constit.html)*

*www.departments.bucknell.edu/russian/const/constit.html. A longer version of the article, with a list of references, is available at [http://justice.uaa.alaska.edu/forum/24/4winter2008/a\\_constitutionfull.html](http://justice.uaa.alaska.edu/forum/24/4winter2008/a_constitutionfull.html).*

*David Mannheimer sits on the Alaska Court of Appeals.*

## Justice Center Move

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